

EV03 - Pedestrian Stops
 Session 14 - Warrantless Search and Seizures
 LD16 - Search and Seizure

Date Revised: 9/19/2019

Course Goal: To teach recruit officers warrantless searches and seizures.

Learning Objective:

- Recognize the conditions and circumstances where warrantless searches and seizures are considered reasonable and legal [\[16.3.C\]](#)
- Recognize the scope and necessary conditions for conducting the following types of warrantless searches: [16.3.D]
 - Cursory / frisk / pat searches [\[16.3.D.1\]](#)
 - Consent searches [\[16.3.D.2\]](#)
 - Searches pursuant to exigent circumstances [\[16.3.D.3\]](#)
 - Searches incident to arrest [\[16.3.D.4\]](#)
 - Probation / parole searches [\[16.3.D.5\]](#)
- Recognize the legal framework establishing a peace officer’s authority to seize physical evidence from a subject’s body: [16.5.A]
 - With a warrant [\[16.5.A.1\]](#)
 - Without a warrant [\[16.5.A.2\]](#)
- Recognize conditions under which a peace officer may use reasonable force to prevent a subject from swallowing or attempting to swallow evidence [\[16.5.B\]](#)
- Recognize the conditions necessary for legally obtaining blood samples [\[16.5.C\]](#)
- Recognize the conditions for legally obtaining the following evidence: [16.5.D]
 - Fingerprints [\[16.5.D.1\]](#)
 - Handwriting samples [\[16.5.D.2\]](#)

Session Time: 3 Hours

Resources: <ul style="list-style-type: none"> • Classroom with tables • Handout: SPICE / PePPer Chart 	
Session Summary: The instructor will lead a facilitated discussion accompanied with learning activities with the whole class.	
Outline	Instructor’s Notes
<p><i>Note: 16.3.A & 16.3.B covered in Ch 2 Session</i></p> <p>I. Warrantless Searches and Seizures</p> <p>A. Warrantless Searches in General [16.3.C]</p> <p>1. Under Fourth Amendment, searches of private property are presumptively illegal, but case law has created some exceptions and the following</p>	<p><u>TTS 16.3.C - 16.3.D.5 (1.5 Hours)</u></p> <p style="background-color: yellow;">No PowerPoint</p> <p>Ask: Based on what we learned from consensual encounters, detentions, and arrests, what warrantless searches can police</p>

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<p>do not need warrants:</p> <ol style="list-style-type: none">a. cursory /frisk / pat downb. consent searchesc. searches pursuant to exigent circumstancesd. searches incident to custodial arreste. probation / parole searches <p>2. To establish basis, courts will consider totality of the circumstances and officers must demonstrate search was done by one of the exceptions above.</p> <p>B. <u>Cursory / Frisk / Pat Searches [16.3.D.1]</u></p> <ol style="list-style-type: none">1. Strictly limited search for weapons of the outer clothing of a person who has been lawfully detained.2. Necessary Conditions<ol style="list-style-type: none">a. The person must be lawfully detained for an investigative purpose.b. The searching officers must be able to articulate specific facts which caused them to reasonably believe the person is dangerous or may be carrying a weapon.3. Scope of Search<ol style="list-style-type: none">a. Limited to outer clothing for weapons or potential weapons only.b. Once object is determined not be a weapon, no further manipulation can be done.4. Absolute certainty not required, only reasonable suspicion based on specific facts<ol style="list-style-type: none">a. Clothing: bulge or heavy coat on warm dayb. Actions<ol style="list-style-type: none">1) Trying to hide something2) Appearing overly nervous3) Acting in a threatening mannerc. Prior knowledge of carrying weapons or being violentd. Reason for detention, such as stopped for violent crime or armed offensee. Companions revealed to have weaponsf. Location, such as a violent area or other officers are far awayg. Time of day / amount of light	<p>officers make on individuals? Answer: Cover points in TTS 16.3.C</p> <p>Ask: What are the scope and necessary conditions for conducting pat down searches?</p> <p>Note: TTS 16.3.D.1 also covered in LD 15, TTS 15.3.D [Infused LD 15]</p>
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- h. Ratio: detainees outnumber officer
- 5. If contraband is discovered during, officers can seize it and conduct a full search.
- 6. Containers
 - a. Containers can be searched if it is reasonable to believe a weapon can be in it.
 - b. In general, common containers like cigarette packs and film containers are not searchable.
- 7. An officer may reach inside a subject's clothing or pockets to inspect an object further only if:
 - a. The object reasonably felt like a weapon or something that could be used as a weapon
 - b. The subject's clothing is so rigid or heavy that the officer could not rule out the possibility of a weapon or potential weapon.
- 8. If a potential weapon is discovered, officers can seize it but must return it if the detention ends.
- 9. Transporting passengers
 - a. Officers may conduct a cursory / frisk / pat search of any person the officers have a duty or are obligated to transport before permitting the person to ride in a law enforcement vehicle.
 - b. If there is no obligation to transport, they must inform the passengers
 - 1) They have the right to refuse the ride
 - 2) If they accept the ride, they must first consent to a cursory / frisk / pat search
- C. Consent Searches
 - 1. Warrant Search vs Consent Search
 - a. Without a warrant:
 - 1) The occupant of the property has the right to refuse entry and therefore refuse the search
 - 2) Even if they enter with consent, officers may not detain persons who are on the premises unless they have reasonable suspicion of criminal activity
 - 3) Officers should seek warrant instead of consent if they have probable cause but

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<p>lack exigent circumstance to justify warrantless entry.</p> <ol style="list-style-type: none">4) Consent search can serve to warn others of law enforcement activity and evidence can be destroyed or moved5) Cannot secure premises in situations where exigency was created by officers' actions. <p>b. For consent to be valid, it must be [16.3.D.2]</p> <ol style="list-style-type: none">1) Voluntary, and2) Obtained from a person with apparent authority or to give that consent <p>c. Scope of search</p> <ol style="list-style-type: none">1) Must search where they reasonably believe consent was given2) Can only search in areas where consent was given, expressly or implicitly3) Limit to places and things where specific object can be found <p>d. Consent must be voluntary, free of duress or coercion. Otherwise, evidence can be excluded.</p> <p>2. Peace Officer Conduct</p> <ol style="list-style-type: none">a. Officers must make it clear they are requesting consent and not demanding it.b. Examples of actions influencing voluntary consent:<ol style="list-style-type: none">1) Show of force, such as resting hand on gun.2) Misinterpretation of authority.<ol style="list-style-type: none">a) State or imply they have a legal right to conduct an immediate search.b) Falsely state they have a warrant when they do not.c) Request entry for a purpose other than to conduct a search.3) Illegal seizure from an illegal detention or arrest.4) Verbally demanding consent rather than requesting.5) Intimidating demeanor	<p>Ask: What are the scope and necessary conditions for conducting consent searches? Note: TTS 16.3.D.2 was covered briefly in LD 15 Consensual Encounter lesson plan.</p>
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- a) Appear in large numbers.
 - b) Use a demanding tone of voice.
 - c) Act in an overly authoritative manner, etc
 - d) fail to recognize or acknowledge the consenting person may be
 - (1) Too young to understand the implications of the consent.
 - (2) Severely under the influence of alcohol or drugs.
 - (3) Mentally incapable of giving permission.
 - (4) Overly distraught or too emotional to understand.
3. Express vs Implied Consent
- a. Express
 - 1) Person consenting clearly authorizes the search, orally or in writing
 - 2) No inferences needed
 - b. Implied
 - 1) Consenting person gives permission through actions or behavior such as nodding or stepping aside
 - 2) Must be reasonably inferred.
4. It is not necessary for officers to advise people they have a right to refuse consent, but is a strong positive factor indicating voluntariness.
5. Consent must come from someone who has actual and apparent authority
- a. Husband / wife / roommates can give consent to areas with joint access (kitchen, living room) but cannot for others' personal items (suitcase, tool box) or if someone is there to object to those items.
 - b. Landlords can give consent if they have regained possession of property but cannot if tenants still live there.
 - c. Employers / employees can give consent to common areas (rooms, unlocked files) but cannot for personal objects.
6. Withdrawal of Consent

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- a. Consent can be withdrawn at any time.
- b. Failure to stop search can result in evidence becoming inadmissible during trial.
- c. Consent withdrawn by:
 - 1) Expressly doing so (e.g., "I don't want you to search anything more")
 - 2) Making a statement (e.g., "I want you to leave now")
 - 3) Engaging in conduct that reasonably indicates that the consent is being withdrawn (e.g., blocking a doorway and saying "I don't want you to go in there," or not handing over the keys)
- D. Exigent Circumstance Search
 - 1. Officers can make entry in exigent circumstances to prevent [\[16.3.D.3\]](#)
 - a. Imminent danger to a person's life or safety
 - 1) Sick or injured
 - 2) Child abuse
 - 3) Violent assault
 - 4) Domestic violence
 - b. Serious damage to property
 - 1) Burglary
 - 2) Other emergencies such as a fire or dangerous chemicals
 - c. Imminent escape of a suspect
 - 1) Hot pursuit
 - 2) Fresh pursuit- no physical chase, but officers are quickly responding to information concerning the suspect's whereabouts, and the officers reasonably believe the suspect's escape is imminent.
 - d. Imminent destruction or removal of evidence
 - 2. Scope of search is limited to plain view and whatever search is necessary to secure the emergency.
 - 3. When exigent circumstances exist, peace officers are normally not required to comply with knock and notice procedures before entering.

Ask: What are the scope and necessary conditions for conducting exigent circumstance searches?

Fill Out appropriate boxes in SPICE / PePPER chart regarding exigent circumstances

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<ul style="list-style-type: none">4. Following the exigent circumstance, peace officers must vacate the premises within a reasonable amount of time and may not reenter unless they obtain a search warrant or consent.5. Peace officers may not use exigent circumstances as an excuse for a warrantless entry if they have created the emergency unnecessarily by their own conduct. <p>E. Searches Incident to Arrest</p> <ul style="list-style-type: none">1. A search incident to arrest may be conducted when: [16.3.D.4]<ul style="list-style-type: none">a. Probable cause for a lawful arrest existsb. The suspect is taken into custodyc. The search is contemporaneous with the arrest2. Scope of search includes:<ul style="list-style-type: none">a. Full search of the arrestee's personb. Containers on the arrestee's personc. Nearby physical area that was under the immediate control of the arrestee (within arm's reach)<ul style="list-style-type: none">1) Includes any area from which the arrestee may:<ul style="list-style-type: none">a) Grab a weaponb) Obtain any item that could be used as a weaponc) Destroy evidenced) Note: Can still searched arm's reach while handcuffede) Note: Cannot move suspect around to search different areas3. To conduct a lawful search incident to arrest, the person must be taken into custody.<ul style="list-style-type: none">a. The person will be transported to another location or facility, such as a station, jail, detox center, juvenile hall, or school.b. No search incident to arrest during cite and release.4. Contemporaneous Search<ul style="list-style-type: none">a. Search must be contemporaneous with arrest.	<p>Ask: What are the scope and necessary conditions for conducting searches incident to arrest?</p>
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<ul style="list-style-type: none">1) At or near the time of arrest, although either can precede the other2) At or near the place of the arrest3) While the arrestee is still on the sceneb. Can be delayed somewhat, if the delay is reasonably necessary (e.g., for safety reasons), and the search is conducted as soon after the arrest as practical.5. Protective Sweep<ul style="list-style-type: none">a. Brief search for individuals only if there's factual basis believing there is other people inside who pose danger to them.b. Scope of search limited to spaces immediately adjoining the area of an arrest:<ul style="list-style-type: none">1) Where another person could be hiding2) From which an attack could be immediately launched3) Can search beyond immediate area if reasonable suspicion there is someone who poses danger to officerc. Any contraband discovered during search can be seized.F. Probation / Parole Searches [16.3.D.5]<ul style="list-style-type: none">1. Probation<ul style="list-style-type: none">a. Sentencing alternative for a person convicted of a criminal offense and is granted at a judge's discretion.b. Probationers must agree to certain conditions, including:<ul style="list-style-type: none">1) Getting a job2) No drugs and other criminal behavior3) Not traveling outside a limited area4) Periodic searches without a warrant, probable cause, or reasonable suspicion2. Parole is a conditional release from a state prison which allows an individual to serve the remainder of a sentence outside of prison3. Necessary Conditions<ul style="list-style-type: none">a. Probationer must have search conditionsb. Officer must know parolee is on parole and search cannot be for arbitrary, capricious or	<p>Ask: What is the difference between parole and probation?</p> <p>Ask: How do searches of parolees and probationers differ?</p>
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harassment reasons.

4. Scope of search
 - a. Parolee's person, residence, and any other property under their control (e.g., vehicle, backpack, etc.).
 - b. Probation search depends on the specific terms of the probationer, which may be as broad as parole conditions.
5. Search of residence
 - a. Officer must have information that reasonably indicates it is their residence.
 - b. Must comply with knock / notice requirements unless excused for good cause.
 - c. Do not need consent from joint occupants and refusal from joint occupants does not invalidate search.
 - d. Can search rooms under probationer / parolee's control, including joint areas
 - e. Can search personal property or jointly owned property
 - f. Officers not required to accept denials if probationer / parolee says they do not live there or own an item.
6. Harassment
 - a. Searches must always be related to rehabilitative, reformatory, or legitimate law enforcement purposes.
 - b. Searches may be considered harassment if they:
 - 1) Occur too often
 - 2) Take place at an unreasonable hour
 - 3) Are unreasonably prolonged
 - 4) Demonstrate arbitrary or oppressive peace officer conduct
 - 5) Are undertaken with personal animosity toward the probationer / parolee
7. Notification of probation searches
 - a. Notification to probation officer not required if search conditions authorize search by any law enforcement officer or any peace officer.

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<p>b. If not authorized, it is up to the probation officer to conduct search.</p> <p>c. If condition states probationer must submit to searches “upon request” officers must contact the probation officer.</p> <p>8. Notification of parole searches</p> <p>a. Notification to parole officers not legally required but California Department of Corrections and Rehabilitation (CDCR) requests notification prior to warrantless searches of homes or business.</p> <p>II. Searches and Seizures Involving Bodily Intrusions</p> <p>A. Warrant Requirements [16.5.A.1]</p> <p>1. A person’s reasonable expectation of their own body is very high, therefore, a warrant is usually required to enter a person’s body.</p> <p>2. Constitution / Bill of Rights in relation to bodily intrusions</p> <p>a. Fourth Amendment protects against unreasonable search and seizures.</p> <p>b. Fifth Amendment</p> <p>1) No person has the legal right to withhold or destroy physical evidence</p> <p>2) Protects self-incrimination against what a person says, not any physical evidence that person may possess.</p> <p>3. Wording must be clear. “Home, car, and person” does not include inside a person’s body. Warrants must have wording that expressly permits bodily intrusion.</p> <p>4. Probable Cause Plus</p> <p>a. The courts require that the more intense, unusual, prolonged, uncomfortable, unsafe, or undignified the procedure contemplated, the greater the showing for the procedure’s necessity must be.</p> <p>b. Additional Requirements and Considerations</p> <p>1) Method used- What is the likelihood this type of search will result with evidence?</p> <p>2) Seriousness of the offense - Does the</p>	<p><u>TTS 16.5.A.1 - 16.5.D.2 (1.5 Hours)</u> No PowerPoint</p> <p>Ask: If a rape suspect was arrested, can we remove evidence from their body by swabbing their hands or fingernails? Answer: yes</p> <ul style="list-style-type: none">• There is no high expectation of privacy• Allow discussion if the answer is not given quickly <p>Ask: What if we needed to take blood samples? Can we stick a syringe in a suspect and take his / her blood? Answer: yes, also considered minimal intrusion and common routine</p> <ul style="list-style-type: none">• Must have probable cause• Must be medically approved <p>Ask: What if the suspect had a bullet lodged in them that was fired from a victim in self-defense? The bullet remains in the suspect because the doctors decided it did not cause a threat to the suspect’s life. Can we bring them to a hospital and have it removed for evidence?</p> <ul style="list-style-type: none">• Discuss probable cause plus• Ask What considerations should be made when deciding to apply for a warrant that requires probable cause plus?
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<p>nature of the offense justify the infringement on the person's privacy and dignity?</p> <ol style="list-style-type: none">3) Importance of the evidence to the investigation - Is the evidence absolutely necessary or does it just corroborate other existing evidence?4) Existence of alternate means - Are there any other less intrusive methods or means?5) Safety and intrusiveness - Will the method or extent of the proposed intrusion:<ol style="list-style-type: none">a) Threaten the individual's safety or health?b) Be conducted in accordance with accepted medical practices?c) Involve unusual or untested procedures?d) Result in psychological harm to the individual? <p>c. Note: Probable cause plus is almost non-existent when drawing blood since it is considered minimal intrusion and common routine in society.</p> <ol style="list-style-type: none">1) Probable cause must exist that results will show evidence of a crime2) Must be done in a medical approved manner <p>B. Warrantless Requirements [16.5.A.2]</p> <ol style="list-style-type: none">1. Consent<ol style="list-style-type: none">a. Must be valid consent and not considered unreasonably intrusive.b. Implied Consent<ol style="list-style-type: none">1) A person who drives a motor vehicle in California has given implied consent for chemical testing (blood, breath, or urine) without a warrant.2) VC 23612 includes implied consent if arrested for DUI.3) Refusal to comply may result in a fine,	<p>Ask Other than a search warrant, how can search and remove evidence from a person?</p> <ul style="list-style-type: none">• Discuss points in 16.5.A.2• Allow recruits to provide answers• Fill in what is not provided by recruits
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<p style="text-align: center;">mandatory imprisonment if convicted, and suspension or revocation of driving privileges.</p> <ol style="list-style-type: none">2. Incident to Arrest - Must have<ol style="list-style-type: none">a. Probable cause to arrest.b. Probably cause to search.c. Exigent circumstances.d. A need that outweighs the intrusiveness.3. Exigent Circumstances<ol style="list-style-type: none">a. Officers may seize evidence from a person's body if it reasonably appears the evidence will be lost or destroyed if the officers wait to obtain a warrant.b. Stable Evidence- Evidence will not change over time (blood samples for DNA).c. Evanescent Evidence- Evidence will change over time (blood samples for drug/alcohol levels). <p>C. Use of Force During Bodily Intrusion Searches and Seizures</p> <ol style="list-style-type: none">1. Reasonable force that is necessary to overcome the person's resistance and recover the evidence.2. Preventing suspect from swallowing evidence. [16.5.B]<ol style="list-style-type: none">a. May use reasonable force to remove it, or to prevent the person from swallowing it.b. Permitted to exert minimal pressure on the neck area to prevent swallowingc. May not prevent breathing or impair the flow of blood to the person's head.3. Options if evidence is swallowed<ol style="list-style-type: none">a. Detain the suspect under controlled conditions and wait until the evidence naturally passes through the suspect's system, orb. If a doctor declares the suspect's life is in danger or is at risk for serious bodily injury then suspect's stomach can be pumped or an emetic can be administered to induce vomiting,	<p>Ask If we had the lawful right to remove evidence from a suspect (warrant, exigent circumstance, probable cause, etc), do you think it would be OK to use force? If so, how much?</p> <ul style="list-style-type: none">• Allow recruits to provide answers• Fill in what is not provided by the recruits <p>Review the conditions in order to remove blood samples as evidence.</p> <p>Blood samples from DUI arrests require a warrant.</p> <p>Review the conditions in order to obtain fingerprints.</p> <p>Review the conditions in order to obtain handwriting samples.</p>
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- c. The suspect may give consent to a stomach pump or emetic but it should occur under the supervision of a doctor.
- d. Should be assumed that a search warrant would be required to pump a suspect's stomach or administer an emetic
- 4. Officers must present enough information to show that their actions were necessary and that the amount of force was reasonable under the totality of the circumstances.
- D. Specific Circumstances
 - 1. Blood samples [\[16.5.C\]](#)
 - a. Probable must exist that show evidence of crime will exist
 - b. Removal must be done in accepted medical practice
 - c. Subjects' failure to participate in tests they have no legal right to refuse may be used as evidence of consciousness of guilt.
 - 2. Fingerprints [\[16.5.D.1\]](#)
 - a. Can obtain prints from consent or arrested
 - b. If arrested, no legal right to refuse.
 - c. May use reasonable force to obtain.
 - 3. Handwriting samples [\[16.5.D.2\]](#)
 - a. Refusal to give a handwriting sample may be commented upon later at a person's trial as consciousness of guilt.
 - b. Court may order them to provide one or be held in contempt-of-court.
 - 4. Voice evidence
 - a. A person has no legal right to refuse voice evidence, but cannot be forced.
 - b. Refusal can be commented at trial to show consciousness of guilt.

Run Learning Activity # 1

Note: See last page for learning activity # 1

Advise class in order to be prepared for next week's search & seizure of vehicles session, read LD 16, Ch 4.

Learning Activity # 1

Run below scenario at end of class. Infused with LD 20 and introduces concealed gun, which Tactics Unit will use in upcoming lesson plan.

- Radio call: “Man with a gun”. (provide description of role-playing suspect)
- Have suspect set up in some location outside (eg. patio behind ARTC)
- Have suspect place holstered gun in right waist band under shirt
- Provide radio call to recruits in classroom while role player sets up.
- Pick two recruits to play the officers
- As scenario plays out, instructor can control the extent of the recruits’ actions
 - Option to simulate high risk or play it out
 - Option to simulate pat search
 - Instructor can switch out officer role players as scenario develops
 - If recruit initiates consensual encounter, stop scenario and ask for recruit that would do something different. Switch out recruit role players until a recruit initiates a detention immediately.
- Radio call provides enough reasonable suspicion to detain suspect
 - Not a consensual encounter
- Allow pat search until gun is found.
- Debrief scenario
 - Should detain
 - Misdemeanor to carry loaded firearm in public
 - Certain people can carry: peace officers & CCW