

EV5 - Property Crimes  
 Session 04 - Warrant Search and Seizure  
 LD16 - Search and Seizure

**Date Revised:** 9/24/2019

**Course Goal:** To teach recruit officers the criminal justice system.

**Learning Objective:**

- Recognize how probable cause serves as a basis for obtaining a search warrant [\[16.2.A\]](#)
- Recognize the necessary conditions for securing an area pending the issuance of a search warrant [\[16.2.B\]](#)
- Identify the time limitations for serving a search warrant [\[16.2.C\]](#)
- Recognize the elements for compliance with the knock and notice requirements when serving a search warrant [\[16.2.D\]](#)
- Recognize the application of the Nexus Rule while conducting an authorized search [\[16.2.E\]](#)
- Recognize why a plain view seizure does not constitute a search [\[16.3.A\]](#)
- Recognize the legal requirements for seizure of items in plain view [\[16.3.B\]](#)

**Session Time: 1 Hour**

<p><b>Resources:</b></p> <ul style="list-style-type: none"> <li>• Classroom with tables</li> <li>• Overhead projector</li> <li>• Computer with multimedia software and Microsoft PowerPoint</li> </ul>	
<p><b>Session Summary:</b> The instructor will lead a facilitated discussion accompanied with learning activities with the whole class.</p>	
Outline	Instructor's Notes
<p>I. Warrant Searches and Seizures</p> <p>A. Intro to Warrant Searches</p> <p>1. A search warrant is:</p> <ol style="list-style-type: none"> <li>a. An order in writing, in the name of the people</li> <li>b. Signed by a magistrate</li> <li>c. Directed to a peace officer</li> <li>d. Commanding the officer to search for an individual or individuals, a thing or things, or personal property</li> <li>e. In the case of a thing or things or personal property, to bring the same before the</li> </ol>	<p><u>TTS 16.2.A - 16.3.B</u></p> <p><b>Run</b> Learning Activity # 1 in conjunction with <b>PowerPoint slides # 2 – 28.</b></p> <p>Note: See last page for learning activity # 1</p>

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magistrate (PC 1523)

2. The courts have found searches and seizures to be reasonable and lawful when authorized by a valid warrant.
  3. Statutory Grounds for Search Warrant
    - a. Stolen or embezzled (PC 1524(a)(1))
    - b. Used as means of committing a felony (PC 1524(a)(2))
    - c. Possession of someone with intent to use as means of committing a public offense or the item is in possession of another to conceal or prevent being found (PC 1524(a)(3))
    - d. Evidence that shows a felony was committed or a particular person committed a felony (PC 1524 (a)(4))
    - e. Evidence that shows sexual exploitation of a child (PC 1524(a)(5))
    - f. Property or thing of a third person must be entered to execute an arrest warrant. (PC 1524(a)(6))
  4. Content of a Search Warrant
    - a. The names of all those who have sworn that the facts presented as probable cause are true
    - b. The statutory grounds for issuing the warrant
    - c. Descriptions of the places and/or persons to be searched
    - d. Descriptions of the things or property to be seized
    - e. The magistrate's signature
    - f. The date issued
    - g. An indication by magistrate if nighttime service is authorized
- B. Probably Cause to Search
1. May be based on the collective knowledge of all the officers involved in an investigation, and all the inferences which may reasonably be drawn from this information, with that particular officer's training and experience.

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<p>2. Probable cause to search vs probable cause to arrest</p> <ul style="list-style-type: none"><li>a. In search warrants, peace officers must articulate probable cause that:<ul style="list-style-type: none"><li>1) A crime has been committed, and</li><li>2) Evidence concerning the crime or the identity of the perpetrator is located at the place to be searched.</li></ul></li><li>b. In arrest warrants, peace officers must articulate probable cause that: <a href="#">[16.2.A]</a><ul style="list-style-type: none"><li>1) A crime has been committed, and</li><li>2) The individual to be arrested committed that crime.</li></ul></li></ul> <p>3. Elements of probable cause to search: There must be a fair probability that:</p> <ul style="list-style-type: none"><li>a. A crime occurred</li><li>b. Evidence pertaining to that crime exists, and</li><li>c. The evidence is located at the place to be searched</li></ul> <p>4. Related Terms</p> <ul style="list-style-type: none"><li>a. Reasonable inference is the act of drawing a conclusion from a fact; it is similar to making a presumption (e.g., seeing smoke and inferring there is a fire).</li><li>b. Direct evidence is evidence that proves a fact directly, without an inference or presumption (e.g., the sale of a controlled substance to an undercover officer).</li><li>c. Circumstantial evidence is evidence that proves a fact indirectly; personal knowledge or observations from which deductions must be drawn by the jury or court (e.g., partial six-pack of beer found on the car seat supports inference that someone in the car has been drinking).</li></ul> <p>C. Execution of a Search Warrant</p> <ul style="list-style-type: none"><li>1. Securing an area pending issuance of a search warrant <a href="#">[16.2.B]</a><ul style="list-style-type: none"><li>a. An area may be secured pending issuance of a search warrant if the suspect has</li></ul></li></ul>	
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- been arrested inside the location.
- b. An area may be secured pending issuance of a search warrant if companions of the suspect may destroy items sought upon learning of the arrest.
- c. Refusal of consent to search is not enough to justify securing a location.
- 2. Officers can only detain the suspect temporarily while they determine the person's involvement.
- 3. Time limit for service [\[16.2.C\]](#)
  - a. Shall be executed and returned within 10 days from issuance
    - 1) Starts first day after issued
    - 2) No exceptions to weekends or holidays
    - 3) Note: Felony for peace officer to disclose existence of search warrant to prevent the search
  - b. If 10 days expired, must
    - 1) Obtain a new warrant
    - 2) Resubmit the expired warrant so it may be reissued and revalidated
- 4. Failure to make timely return
  - a. If 10<sup>th</sup> day falls on a weekend or holiday, the return can be delivered on next business day.
  - b. A late return will not normally invalidate the warrant or result in suppression, particularly if it happens unintentionally, unless the defendant can show prejudice.
- 5. Normally, a search warrant may be served only between the hours of 7:00 a.m. and 10:00 p.m.
- 6. If good cause is shown, magistrate can issue nighttime service. Good cause includes:
  - a. Nighttime service will decrease danger to the peace officers
  - b. A drug sale occurred at the search location at night
  - c. Prompt execution might preclude murders

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- d. The property sought will likely be gone, sold, or removed by dawn
- e. The stolen items are primarily perishable or easily disposable goods
- f. Note: As long as search begins before 10pm, no nighttime service needed
- 7. Knock and Notice Rule and Procedure [\[16.2.D\]](#)
  - a. Purpose of the knock and notice is to protect the privacy of occupants in their home and to minimize the possibility of a violent confrontation between peace officers and private individuals
  - b. Before entering a dwelling to serve warrant, officers must give notice through certain actions.
    - 1) Knock or otherwise announce their presence
    - 2) Identify themselves as peace officers
    - 3) State their purpose
    - 4) Demand entry
    - 5) Wait a reasonable amount of time
    - 6) If necessary, forcibly enter the premises
- 8. Wait/Refusal Requirement
  - a. Before forcing entry, peace officers must be refused entry, based on
    - 1) Verbal statement
    - 2) Individual conduct
    - 3) Passage of a reasonable amount of time
      - a) Amount of time considered reasonable varies.
      - b) One minute safe period in most cases but can be shorter depending on situation.
- 9. Once knock and notice requirements are met, including refusal, officers may legally force entry or break in (PC section 1531).
- 10. Once inside, inner doors do not require knock and notice.
- 11. Exceptions to knock and notice

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- a. Harm to the officers or other individuals  
e.g., hostages
- b. The destruction of evidence
- 12. Peace officers may use a false identity, a ruse or trick to obtain consent to enter as long as they already have a judicially-authorized right to enter, such as a search warrant.
- 13. Presenting the search warrant
  - a. Peace officers should show the occupant the original warrant and give the occupant a copy
  - b. If no one is home, a copy of the warrant may be left in a conspicuous place.
  - c. Officers must leave behind a detailed list of the property taken, whether anyone is home or not. (Penal Code Section 1535)
  - d. Note: There's no statutory requirement to present a copy of warrant, so failure to do so will not result in suppression of evidence.
- 14. Scope and specificity of warrant
  - a. Officers' scope is limited to the information specified in the warrant.
  - b. Search warrants must include specific:
    - 1) Statutory grounds for issuance
    - 2) Identification of the area(s) or person(s) that may be searched
    - 3) Identification of the item(s) to be seized
- 15. Detaining persons on the premises
  - a. Peace officers may detain and frisk/pat search persons who are present and have demonstrated a connection with the premises
    - 1) Already inside the premises
    - 2) Has a key to enter the premises freely
    - 3) Enters the premises without knocking
  - b. Arrival by itself is not enough for detention or pat search.
  - c. If at commercial establishment, can only detain those that appear connected to

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criminal activity.

16. Any container can be searched if what is being sought can be hidden in them, unless what is being sought is a specific container.
17. Nexus rule: officers may seize items not listed in the warrant when [\[16.2.E\]](#)
  - a. The items are discovered while the officers are conducting a lawful search for the listed evidence, and
  - b. They have probable cause to believe the item is contraband, evidence of criminal behavior, or would otherwise aid in the apprehension or conviction of the criminal.
  - c. Nexus means a reasonable connection or link between two or more items.

II. Warrantless Searches and Seizures

A. Plain View Seizures [\[16.3.A\]](#)

1. There is no expectation of privacy or Fourth Amendment protection when objects are in plain view and officers are in a place they have a lawful right to be.
2. In order to legally seize items in plain view, officers must have: [\[16.3.B\]](#)
  - a. Probable cause
    - 1) Incriminating character of item must be immediately apparent to the officer.
    - 2) Officers can use all senses, including smell, hear, and touch from lawful position.
  - b. Lawful right to be in the location; vantage point that does not violate expectation of privacy.
  - c. Lawful access to the item
    - 1) Consent
    - 2) Exigent circumstance
    - 3) Lawfully entered through other purpose, e.g. parole/probation search
3. Surveillance is not considered a search as long as the observations are done from a place the

TTS 16.3.A & 16.3.B is covered in Search Warrant learning activity above. Optional question if further facilitation needed. **Ask:** Is there any Fourth Amendment protection when objects are in plain view and officers are standing in a lawful location?

**Ask:** What is necessary for officers to legally seize items in plain view?

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officers have a right to be.

4. Sensory aids
  - a. Flashlights and night vision goggles may be used from a lawful vantage point.
  - b. Binoculars may be used to enhance only what can already be seen by the naked eye from a lawful observation point.
  - c. Dogs
    - 1) Considered non-intrusive when in place they have lawful right to be.
    - 2) Can provide probable cause to search but in some cases may need a search warrant.
5. Abandoned property, including trash at curbside, have no expectation of property and no Fourth Amendment protection.



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**Learning Activity # 1 - Warrant Searches and Seizures**

**Purpose:** To teach the recruits how to develop probable cause for a search warrant.

**Description:**

1. **Divide** the class into learning teams of 6 - 8 recruits
2. **Explain:** Now that we understand the concept of expectation of privacy, we will utilize it in a problem solving exercise as a means of developing probable cause.
3. **Pass out** the handout, "Letter from Concerned Citizen." The letter is a complaint from a concerned citizen regarding drug activity by a man named "Charlie" at 1234 S. Main Street.
4. Utilizing CAPRA, problem-solve the exercise and develop an investigative response
5. Conduct a facilitated discussion, building off the CAPRA-based investigation, deriving probable cause to obtain a search warrant.
  - a. Clients: Concerned citizen, community/neighbors
  - b. Analyze
    - 1) Information we have:
      - a) Anonymous informant
      - b) Narcotics sales
      - c) Suspect "Charlie"
      - d) 1234 S. Main St
      - e) Side window
      - f) Different buyers
    - 2) Information we need:
      - a) Who is informant?
      - b) Who is Charlie?
      - c) Any other people involved?
      - d) Who lives at location?
      - e) Who owns location?
      - f) What activity is actually occurring?
      - g) Who are the customers?
  - c. Partners/Resources
    - 1) Police Resources: Specialized Department Information Centers [LAPD]
      - a) Utilities check
      - b) Criminal history
      - c) DMV info/Photo
    - 2) Non-Police
      - a) District Attorney for criminal filing
      - b) City Attorney
        - a. Neighborhood Prosecutor Program
        - b. Abatement
    - 3) Community. **EXPLAIN:** The community is a valuable resource; however, caution should be exercised when utilizing the community while the investigation is ongoing. The officer must ensure that the community member is not involved or

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connected to the activity before making them aware of the investigation. [LD 3 infused]

- d. Response
- 1) Intelligence gathering
    - a) Specialized Department Information Centers
    - b) Narcotics
    - c) Area Detectives
    - d) SLO/Officers
  - 2) **Explain:** Unless it is an emergency situation, officers should gather as much information about a problem, prior to conducting any field investigation
  - 3) Surveillance
    - a) Determine if the activity is actually occurring
    - b) Determine method of operation
    - c) Determine suspects involved
    - d) Observe any tactical concerns
  - 4) Survey and arrest buyers
    - a) Arrest buyers leaving location
    - b) Arrest at a safe distance away to preserve investigation
    - c) Confirms activity
    - d) Interview/interrogate buyers to gain additional intelligence
  - 5) Controlled buy
    - a) Undercover officer or credible, reliable informant (CRI)
    - b) Further confirms activity
    - c) Gain additional intelligence
  - 6) Obtain search warrant
  - 7) **Explain:** Probable cause for obtaining a search warrant [LD 16.2.A]
    - a) Refer to SPICEPePPer chart [LAPD]
    - b) **Explain:** In previous sessions, we learned about types of searches. These searches are warrantless searches, which means that they are exceptions to the 4<sup>th</sup> Amendment search warrant requirement
    - c) Warrantless searches were established via case law
    - d) Review the warrantless searches covered to date, and explain that as the academy training progresses, they will learn additional searches
    - e) Have the recruits enter information regarding probable cause for building and structures
  - 8) Secure an area pending a search warrant [16.2.B]
  - 9) Once the learning groups develop the probable cause needed to obtain a search warrant, conduct a group discussion and ensure to discuss the following
    - a) Probable cause to search and 4<sup>th</sup> Amendment protections [16.1.D]
    - b) Time limitations for serving search warrants [16.2.C]
    - c) Knock and notice [16.2.D]
      - a. **Ask:** Once we obtain a search warrant, should we just break into the location? Can we just break into the location unannounced?
      - b. If not, how should we carry out the warrant?
      - c. Cover all of TTS 16.2.D
    - d) Nexus rule application [16.2.E]

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- a. **Ask:** What can officers seize during a search warrant?
- b. **Ask:** Can officers take items not listed in the warrant?
- c. Cover TTS 16.2.E
- e) Plain view searches (View lesson plan if facilitation questions needed)  
[16.3.A] [16.3.B]
- e. Allow the learning teams to conduct an **Assessment** of their investigation and determine what they did right and/ or could have done better. In addition, what types of follow-up activity would they conduct to ensure that the problem was abated.
  - 1) District Attorney: ensure criminal prosecution
  - 2) City Attorney: Neighborhood Prosecutor Program & abatement
  - 3) Narcotics Division: Narcotics Abatement Unit
  - 4) SLO/Officers: Continue to monitor location to ensure problem remains abated
  - 5) Community: Continue to monitor location to ensure problem remains abated

**Resources needed:**

- Classroom
- Projector
- PowerPoint Presentation

**Handouts:**

- Photographs depicting homes of varying degrees of privacy
- SPICE/PePPER Chart

**Time required:** 1 Hour