

SEARCH AND SEIZURE

Ground Rules



The **FOURTH AMENDMENT** to the **U.S. CONSTITUTION PROTECTS** the right of the people against “unreasonable searches and seizures.”

The question that judges, prosecutors, police officers and criminal defense attorneys wrangle with is this:

What is “unreasonable”?



Clearly, officers **DO NOT HAVE** unbridled authority to conduct searches or seize items at random. At the very least, officers must have a reasonable suspicion of criminal activity. Whether the officers' conduct in your case was unreasonable, in violation of your constitutional rights, will depend on the particular facts of your situation.

Here, we will examine several common types of police encounters and the ground rules that apply to searches and seizures in those situations.



CROSS

POLICE LINE DO NOT CROSS

POLICE LINE DO NOT

Search in Connection With an Investigative Stop



The police may detain you briefly and pat you down for weapons, without arresting you, if they have a reasonable suspicion, based on specific facts, that criminal activity is afoot.

This is called a “Terry” stop, after the Supreme Court case that approved this type of police conduct. [*Terry v. Ohio*, 392 U.S. 1 (1968).]

A Terry stop-and-frisk is reasonable and, therefore, constitutional, if the police use “the least intrusive means reasonably available” to achieve their legitimate investigative purposes.



Automobile Stop

The police may stop a car when they have a reasonable suspicion to believe a traffic offense has been committed. Upon stopping the car, the police may:

Ask for the driver's license and registration, and ask identifying questions

Shine a flashlight inside and seize whatever they see in plain view

Move papers to look at the vehicle identification number

Order the driver and passengers out of the vehicle

Automobile Search



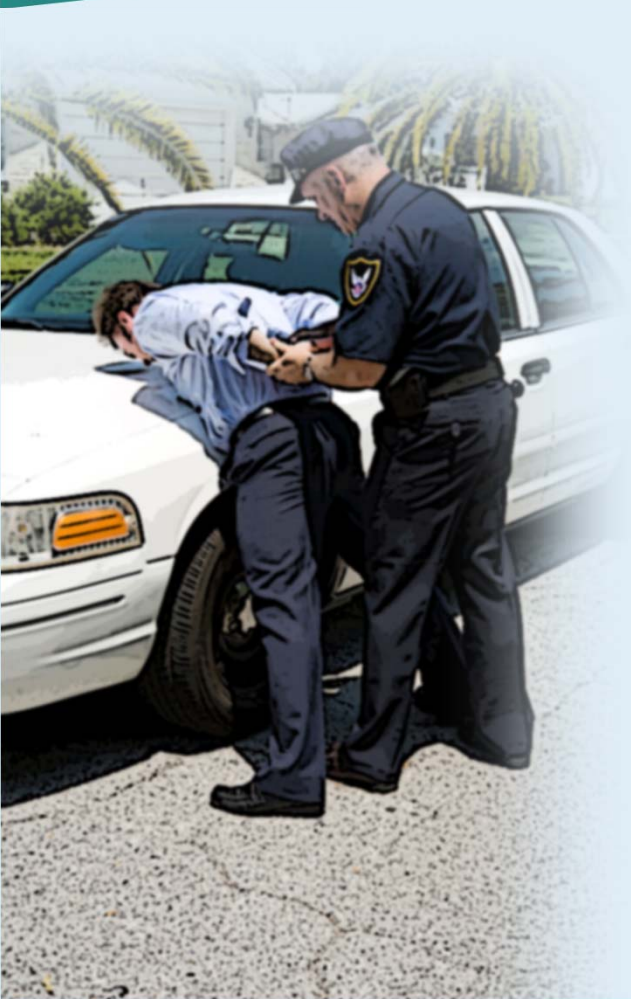
If a traffic stop leads to an arrest, the vehicle may be searched only if the search is necessary to protect the officer's safety or to preserve evidence that may be in the vehicle and relevant to the crime for which the individual is being arrested.



If, however, the police issue the driver a citation for a traffic violation, rather than arresting him, they may not search the car or frisk the driver, absent some specific, reasonable suspicion that the driver poses a danger.



Search Incident to Arrest



Upon arrest, police officers lawfully may search the person arrested and the area within his “immediate control.” “Immediate control” means the area from within which the individual might gain possession of a weapon or destructible evidence (also known as, the “grab area”).



Inventory Search



Upon an arrest or seizure, the police may inventory personal effects, cars and seized material if the inventory is conducted pursuant to standard police operating procedures, and is not a ruse for general rummaging in the hope of discovering incriminating evidence.

The inventory search must be consistent with the goals of

(1) protecting the individual's property

(2) protecting the police against claims or disputes over lost property

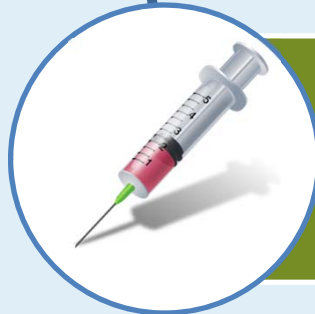
(3) protecting the police from danger

Plain View Search

A police officer may seize an object which he believes to be the instrumentality of a crime if the object is in plain view and these three conditions are met:



the officer was lawfully in the location where he viewed the object;



the officer had lawful access to the object; and



the object's incriminating nature was immediately apparent – that is, simply by viewing the object, the officer had probable cause to believe it was contraband, without the need for any further search of the object.

Consent Search

When you voluntarily consent to a search, you voluntarily give up (or "waive") your Fourth Amendment rights, thus rendering the search "reasonable."

Officers may rely on a third party's consent to search your property or possessions if the circumstances reasonably suggest that the third party has some authority over the premises or items.



Consult With an Experienced Criminal Defense Attorney



Fourth Amendment law is complicated and constantly evolving. If you suspect the police overstepped their constitutional authority, and the search and seizure of evidence in your case was unlawful, contact an experienced criminal defense attorney to discuss your legal options.