**Search and Seizure**

***The Law***

**Definitions:**

**Search**: A search is any government intrusion into an area where a person has a reasonable expectation of privacy. A search of a person, a person’s belonging or property by a police officer requires a valid search warrant to be a legal search, with some exceptions.

**Seizure:** A seizure is taking control by the government over a person or thing.

**Arrest:** An arrest occurs when the police take a person into custody against his or her will for purposes of criminal prosecution or interrogation.

**Probable Cause**: There is enough trustworthy information so that a reasonable police officer would believe that a suspect has committed or is committing a crime.

**Reasonable Suspicion:** Some proof of wrongdoing. It must be more than a hunch. There must be facts that suggest criminal activity.

**Warrant:** A legal document issued by a judge that authorizes the police to conduct a search or seizure. It must describe the places to be searched and the items to be seized. A warrant will be issued if the judge believes that there is probable cause to believe that the area to be searched or item to be seized will uncover evidence of a crime.

The right of individuals to be secure in their homes and belongings is a constitutional right under the Fourth Amendment to the United States Constitution. Although the general rule is that a police officer or other agent of the government must have a warrant to conduct a search or seizure, there are several exceptions to the warrant requirement.

**WHEN ARE SEARCHES AND SEIZURES WITHOUT WARRANTS LEGAL?**

**Plain view:**

The police may seize any item he or she sees in plain view if:

* The officer is lawfully on the premises and in a position to view the evidence, and
* The officer has probable cause to believe that the item is evidence of a crime.

**Consent**

* A person may waive Fourth Amendment protection by consenting to a search.
* Consent may be withdrawn at any time.
* Consent may be given by only those with some authority over the area (for example, a person sharing an apartment can consent to a search of the apartment even if the other tenant would not have consented; a parent may consent to the search of a child’s room.)

**Searches of individuals:**

The police may stop (seize) a person for investigative purposes even if they lack probable cause to arrest. The police must have reasonable suspicion of criminal activity or involvement in a crime. The stop must be brief. If during the stop the officer develops probable cause, the officer can arrest the person and conduct a search. This is called a search “incident to a lawful arrest.” The primary goal of this search is to make certain the person isn’t carrying a weapon or destroying evidence.

Remember that an officer can always stop a person walking on the street and ask questions. However, the person does not have to answer the questions.

**Search of automobiles:**

The police may stop a car if they have reasonable suspicion that the driver of the car has violated a traffic law. They may order the driver and passengers to get out of the car. If during the traffic stop the police have probable cause to believe there is evidence of a crime in the car, they may search the car and everything inside the car without a warrant, this includes the glove compartment and the trunk. This exception to the warrant requirement exists because a car and the evidence in it can be driven away. The police may impound a car that has been involved in a crime and search it as part of the routine police inventory search. Police may remove property and place it in a locked area of the station. This protects the person’s belongings.

**Searches of houses/apartments:**

If the police do not have a search warrant, and they want to search your house, they must ask permission to do so. You may refuse to let them enter. If the police obtain a search warrant to come into your house, you must let them conduct a search and you must not interfere with the process. The warrant must describe what they have permission to look for. If they find anything else illegal during their search, they may take that object and arrest you. Anything in your house that is found may be used to charge you with additional crimes. If you cause trouble, you may be arrested.

In some cases, such as a hot pursuit of an offender or an emergency, the police may search your home without a warrant.

**Searches in group homes/correctional facilities:**

There is no expectation of privacy in either situation. This means your room, locker etc. may be searched at any time.

**CAN MY LOCKER BE SEARCHED?**

Yes. Your locker belongs to your school. You have no expectation of privacy in property that is owned by someone else. Because of this, school officials have the right to enter your locker whenever they want to. They do not need to notify you in advance. However, they do not have permission to search your belongings in your locker. They can do this only when they have reasonable suspicion that you are involved in criminal behavior.

**WHAT HAPPENS IF THE SEARCH IS ILLEGAL?**

In some cases, evidence seized through a search in violation of the Constitution will not be admissible in court and may not be used in the preparation of the case. This is called the Exclusionary Rule.

**Search and Seizure**

***Questions***

1. Define search and seizure.

2. What is the difference between probable cause and reasonable suspicion? Give an example that shows the difference between the two.

3. Can a police officer stop you in your car if you have not violated a traffic law?

4. Under what circumstances can a police officer search your car?

5. When is it legal for a police officer to conduct a search on an individual?

6. When can a police officer search your house without a warrant?

7. If, while searching for the objects outlined in the search warrant, the officer finds something else illegal in your house, can you be charged with another crime?

**Search and Seizure**

***Activity: What do you think?***

**Case One**

A police officer is riding through a neighborhood when he hears a car alarm go off. The window is broken and the car radio is gone. Next to the car is a group of young adults. The police officer pulls over and starts to question the individuals. During the questioning, the police officer notices a bag with a metal bar sticking out of the bag. At that point he arrests the young man with the bag and begins to conduct a full search.

1. Was the officer justified in questioning the young people who were standing around the car? Use the definitions in the search and seizure packet to support your answer.
2. At what point did the police officer decide to make an arrest? Was this legal? Explain your answer using the search and seizure terminology.

**Case Two**

The police have been chasing a man who they believe was involved in an assault. The man jumped in a car and a high-speed chase began. The man in the car finally stopped and ran into a house. The police came to the door and searched the house for the man.

1. Was this a legal search? Explain your answer.

**Case Three**

The police have come to your house and want to search for stolen goods. You say that they need a search warrant, but they proceed to search anyway.

1. Is this a legal search? Explain your answer.
2. What should you do?

**Case Four**

The police come to your house with a search warrant. The warrant indicates that they are looking for marijuana and other illegal drugs. During the process of their search they find several unregistered handguns and assault rifles. They do not find any drugs. You are arrested for possession of illegal firearms.

1. Did the police conduct a legal search?
2. They did not find any drugs, but arrest you for the illegal firearms. Is this a legal arrest? Explain your answer.

**Case Five**

You are currently living in a correctional facility. An expensive ring has been stolen and everyone's room is being searched. Several of the residents are protesting saying that they have a right to privacy.

1. Does the staff at a correctional facility have the right to search the rooms of the residents? Explain your answer.