

The Hackers Guide to Search and Arrest.
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I. When Can an Officer Legally “Stop” an individual?

A. Voluntary Stops

It is legal for an Officer at any time to “Ask” a person to stop and talk.

- A person has the right to say “yes” or “no”.

B. Investigative Stops

- Reasonable Suspicion required.

C. Administrative Stops

- Commercial Vehicles, etc.

D. Road Blocks

Ask: Is there a legitimate public interest? If so, stop is limited to scope.

1. Border Checkpoints: Officers can check everything coming into the country.
 - i. Routine searches no RS or PC needed.
 - ii. Strip Search: Reasonable suspicion required
 - iii. Body Cavity: Probable cause
2. Drunk Driving Checkpoints: Checkpoints are valid if procedure is followed.
3. Drivers license, registration, and Insurance Checkpoints: Valid
4. Fleeing felon Checkpoints: Valid
5. Crime Witness Checkpoints: Valid
6. Security Checkpoints: Valid
7. Weigh Stations for trucks: Valid
8. Game Warden: Valid
9. Agricultural Inspection: Valid

II. When Can an Officer Legally Arrest an individual?

All Arrests must be based on Probable Cause.

Probable Cause defined: There are enough facts and circumstances to lead police officers, in the light of their experience, to the reasonable belief that a person has committed, is committing, or is about to commit a crime.

1. Probable Cause based on the testimony of others.
2. Probable Cause based on physical evidence.

Arrests in Public Places

- No warrant required.

Arrests in a person's own home.

- Arrest requires a warrant or emergency circumstances.

III. When does an Officer have the legal right to conduct a "Search" of a Person, Auto, or Building?

A. "Consent" Search

Search of person

- Can only give consent to the search of yourself or your minor child.

If a person has legal control over an Auto or Building they can give consent.

<u>Landlord:</u>	Can Not give consent to search tenant's property.
<u>Hotel Manager:</u>	Can Not give consent to search tenant's room.
<u>Parents:</u>	Can Give consent to search all rooms of their home they maintain control over.
<u>Roommates:</u>	Can Give consent only to common areas and spaces under their control.

B. Warrant

If Law Enforcement Has a Warrant you must let them Search.

- They will not wait while you call your lawyer.

Warrant for Home

1. Usually a search of a home requires a Warrant.

Exceptions:

- i. Hot pursuit
- ii. Emergency circumstances (see below)

2. Knock and Announce Requirement

- Police must Knock and Announce before entering, Unless evidence of crime may be destroyed or other emergency circumstances.
- If no one is home, they will enter.
- Unreasonable damage must be paid for by the government.

C. Plain View, Plain Smell, Plain Hear

*** Not a search**

- Officer must have legal right to be there.
- Officer must use normal senses.
- Discovery is by chance.

D. Emergency Circumstances

Ask: Is the evidence going to be destroyed, is there some type of danger, or will the suspect avoid capture unless the officer acts quickly?

An Emergency Search is limited to the circumstances.

E. “The Frisk”

1. A Frisk is for Weapons only.
2. Officer must have reasonable suspicion a crime is “afoot”.
3. Must have reasonable suspicion that suspect is armed.
4. A “frisk” is a pat-down Only.

* Any item seized must be a weapon or “immediately apparent” it is contraband.

F. “Search Incident to an Arrest”

Requires:

- Lawful arrest
- Search is limited to person and immediate area in control of person.
- Cars included.

G. “Protective Sweeps”

Officers may perform a protective sweep for other people and weapons.

H. Intimate body Searches (Stomach, Cavity, etc.)

Non surgical searches require reasonable suspicion or probable cause depending on circumstances.

Surgical searches require probable cause.

I. Work place

Employers will usually give the police the right to search. Only the employee’s personal property (in which they have an expectation of privacy) can not be search with employer’s permission. Ie. Purse, briefcase, etc.

J. Inventories

Not a Search rather a procedure.

No warrant or PC needed.

K. Abandoned Property

Any property that is “Abandoned” can be examined and taken by the police.

1. Once your trash has been taken to the edge of your property it can be taken by anyone, including the police.

L. Containers

To search an officer must have probable cause to believe evidence of crime is inside container.

M. Student Searches

1. On High School Property

No warrant or probable cause required to run dog.

Only reasonable suspicion required to search students and lockers.

2. On College Property

Warrant required to search dorm rooms unless for safety or health reasons.

IV. When and How Can An Officer Use a “Tool” to aid in his Search?

A. Flashlight

- Law Enforcement may legally use a flashlight at any time.

B. Vision Enhancers: Binoculars, Night Vision

Can only use for area in the public view otherwise a warrant is needed.

Ie. Can't peep into windows.

C. Hi-Tech Devices:

Infra Red: Need warrant

X-Ray: Need Warrant except in safety related areas with advanced notice.

Metal Detector: Usually Consent Search that turns into a 'Frisk'.

D. Dogs

Ask does the officer have “right” to be there?

E. Aircraft

Law Enforcement can legally use Aircraft per flight laws.

V. Interception of Electronic Data

A. Wire Tapping (Roving, Stationary)

No wire tap without a warrant.

Warrant for Wire tap must show:

- a. Crime has been, is being, or is about to be committed.
- b. The communications to be intercepted will contain information about the offense.
- c. The place monitored is used in the offense.

B. Pen Registers

Not A Search. NO Warrant Needed.

C. Cordless Phones

It Depends on the frequency.

No warrant needed to intercept conversations from older Cordless telephones.

D. Email and other Internet Communications

- Easiest Interception is via Employers. Employer can access their own email system.
- Email warrants.

VI. The Use of “Bugs” by Law Enforcement.

A. On agent

Legal as long as agent has the “right” to be there.

B. In suspect’s home or business

- Warrant required.

C. In Police Car

- Expectation of Privacy

D. Jail Cell

- Expectation of Privacy

VII. Fighting Back against Illegal Searches and Arrests.

Exclusionary Rule: Illegally obtain evidence cannot be used in court.

Criminal Law: Prosecuting the officer.

- Rodney King

Civil Law: Law Suits

- Section 1983.... Your attorney fees are paid if you win.

Internal Affairs: Police department discipline.

- Time off, reduction in rank, fired.