

**SEARCH AND SEIZURE UPDATE**  
**AG LAW ENFORCEMENT CONFERENCE**  
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- I. Fourth Amendment to the U.S. Constitution and Section 14, Article I, Ohio Constitution, prohibit unreasonable searches and seizures.
  
- II. Search Defined
  - Infringes on an Objectively Reasonable Expectation of Privacy
    - Katz v. US, 389 US 347 (1967)
  
  - A. No Reasonable Expectation of Privacy
    - 1. Abandoned Property
      - State v. Freeman, 640 Ohio St. 2d 291 (1988) – Intent to abandon can be inferred from words spoken, acts and objective fact.
  
    - 2. Nature of Police Activity - Fly Over
      - State v. Mims, 2006 Ohio 862 (6<sup>th</sup> Dist. Ct of App. 2006)  
Helicopter at 500 feet over backyard not search.
  
    - 3. Nature of Property
      - State v. Buzzard, 112 Ohio St. 3d 451 (2006) - Peering through crack in locked but warped doors of business not search.
  
  - B. Reasonable Expectation of Privacy
    - Kyllo v. US, 533 US 27 (2001) – Targeting home with thermal scanner is search.
  
- III. Reasonableness of Searches
  - A. Search Warrant
    - Katz, supra – Warrant required, unless fits generally recognized exception to the warrant requirement.
  
  - B. Exceptions to the Warrant Requirement
    - a. Emergency
    - b. Consent
    - c. Incident to Arrest
    - d. Vehicle Exception

- e. Inventories
- f. Frisk
- g. Special Needs

**IV. Seizure Defined**

Government action which interferes with freedom of movement or possession of property.

Brower v. County of Inyo, 486 US 593 (1989)

Arizona v. Hicks, 480 US 321 (1987)

**V. Reasonableness of Seizures of Persons**

“...the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests.”

Graham v. Connor, 490 US 386 (1989)

A. Arrest – Probable cause of criminal activity

Beck v. Ohio, 379 US 89 (1964)

B. Investigative Detention – Reasonable suspicion of criminal activity

Terry v. Ohio, 392 US 1 (1968)

**VI. Search Warrants**

A. Acquisition

Groh v. Ramirez, 540 US 551 (2004) – Failure to describe items to be seized in warrant caused search to be unreasonable.

B. Execution

1. Knock and Announce

Hudson v. Michigan, 547 US 586 (2006)

State v. Oliver, 112 Ohio St. 3d 447 (2007) –

Violation of K & A does not necessarily require suppression.

2. Detention of Occupants

Muehler v. Mena, 544 US 93 (2005) – Handcuffing of four detainees for 2-3 hours by two officers in search of gang house for weapons reasonable.

3. Scope – Where described items can be found.

B. Extensions of Warrant Requirement to Entry into Premises to Arrest

1. Subject’s Residence

Payton v. NY, 445 US 573 (1980) – In absence of consent or emergency, arrest warrant is necessary.

2. Third Party Residence  
Steagald v. US, 451 US 204 (1981) – In absence of consent or emergency, search warrant is necessary.
3. Protective Sweep and Plain View  
Maryland v. Buie, 494 US 325 (1990) – Plain view requires lawful presence and immediately apparent item is evidence. Protective sweep includes space immediately adjoining place of arrest. Sweep of other areas requires reasonable suspicion areas may harbor individual posing danger

## VII. Exceptions to the Search Warrant Requirement

### A. Emergency

#### 1. Justification

- a. Probable cause risk of escape or destruction/removal of evidence.

Cupp v. Murphy, 412 US 291 (1973)

- b. Reasonable suspicion of danger to life.

Maryland v. Buie, 494 US 325 (1990)

#### 2. Scope

The action necessary to resolve the emergency.

Arizona v. Mincey, 437 US 385 (1978) – Once emergency is resolved, SW or other recognized exception is required.

### B. Consent

#### 1. Justification

- a. Voluntary Waiver

Schneckloth v. Bustamonte, 412 US 218 (1973) –

Voluntariness is determined by totality of circumstances.

- b. By One Having Lawful Control

Illinois v. Rodriguez, 497 US 177 (1990) – Reasonable for officers to believe girlfriend had authority to search when had key, clothes were there, and she claimed she lived there.

Georgia v. Randolph, 547 US 103 (2006) – Unreasonable search when one with control refuses in presence of other with control.

U.S. v Hudspeth, 518 F3d 954 (8<sup>th</sup> Cir. 2008) – Reasonable search when refused outside presence of consentor.

U.S. v. Murphy, 516 F 3d 1117 (9<sup>th</sup> Cir. 2008) –

Unreasonable search when refused outside presence of consentor.

### C. Incident to Arrest

#### 1. Justification

##### Custodial Arrest

US v. Robinson, 414 US 218 (1973)

- a. State v. Murrell, 94 Ohio St. 3d 489 (2002) – overruled Brown to bring into harmony with Belton. Custodial arrest of occupant of vehicle for traffic offense justifies search of passenger compartment contemporaneous to arrest.
- b. Arizona v. Gant, 556 US \_\_\_, 129 S. Ct. 1710(2009) – Police may search passenger compartment of vehicle incident to arrest only if reasonable to believe arrestee might access vehicle at time of search, or vehicle contains evidence of offense for which arrested.

#### 2. Scope

##### a. Arrestee and items in possession

US v. Finley, 477 F 2d (5<sup>th</sup> Cir. 2007) – Scope includes container or cell phone on person at time of arrest.

State v. Smith, 2008 Ohio 3717 (2d District Ct. of Appeals 2008) – Search incident to arrest justified search of cell phone for call record.

##### b. Area within immediate control

Chimel v. California, 395 US 752 (1969)

NY v. Belton, 453 US 454 (1981) – Includes passenger compartment of vehicle.

State v. Mercier, 2007 Ohio 2017 (1<sup>st</sup> Dist. Ct. of App. 2007) – Passenger's purse left within vehicle susceptible to search incident to arrest of driver.

### D. Vehicle Exception

#### 1. Justification

Probable Cause evidence is in vehicle

Carroll v US, 267 US 132 (1925)

#### 2. Scope

Same as if had search warrant

US v. Ross, 456 US 798 (1982)

State v. Moore, 90 Ohio St. 3d 47 (2000) – Smell of marijuana sustains probable cause to search vehicle, but does not standing alone establish search of trunk.

## E. Inventory

### 1. Justification

- a. Lawful custody of property  
South Dakota v. Opperman, 428 US 364 (1976)
- b. Standardized Procedure  
Colorado v. Bertine, 479 US 367 (1987)  
Florida v. Wells, 495 US 1 (1990) – Cannot be used as ruse.  
State v. Huddleston, 123 Ohio App. 3d 17 (10<sup>th</sup> Dist. Ct. of App. 2007) – Neither ordinance nor police department directive authorized impounding of vehicle in parking lot when arrestee not in or near vehicle when arrested.
- c. Scope

## F. Special Searches

### 1. Probation

US v. Knights, 543 US 112 (2001) – Parole search reasonable when supported by reasonable suspicion and condition of probation.

### 2. Vehicle Checkpoints

Indianapolis v Edwards, 531 US 32 (2000) – Narcotics vehicle checkpoint was for general criminal purpose and unreasonable when not supported by reasonable suspicion.

### 3. School Search

New Jersey v. TLO, 469 US 325 (1985) – Reasonable suspicion standard applies to school administrator’s search of student. Scope must be reasonably related to objectives of search and not excessively intrusive in light of age and sex of student and nature of infraction.

Safford Unified School District v. Redding 557 US \_\_\_, 129 S. Ct. 2633(2009) – Absence of sufficient suspicion to warrant extending search by making student pull out underwear.

## VIII. Investigative Detention

### A. The Stop

1. Factual Justification - Reasonable suspicion involved in criminal activity

Terry v. Ohio, 392 US 1 (1968)

US v. Cohen, 481 F 3d 896 (6<sup>th</sup> Circuit 2007) – Detention of vehicle leaving street from where 911 hang-up call made four minutes earlier was not sufficiently corroborated to support reasonable suspicion.

US v. Campbell, 486 F3d 949 (6<sup>th</sup> Circuit 2007) – Stop occurs when reasonable person feels not free to walk away. Stop did not occur until officer advised “could be on way when IDed.”

State v. Langston, 2007 Ohio 4383 (6<sup>th</sup> District Court of Appeals 2007) – Anonymous CB tip of erratic driving corroborated by description of vehicle and license number did not establish reasonable suspicion.

2. Reasonableness Factors

a. Duration of stop

Blue Ash v. Kavanagh, 113 Ohio St. 3d (2007) – Deployment of canine while waiting for impound tow did not unreasonably prolong detention, distinguishing from Robinette, Ohio St. 3d 234 (1997), where could have left after citation.

State v. Batchilli, 113 Ohio St. 3d 403 (2007) – Deployment of canine while awaiting CCH and DL inquiries was diligent and justified.

b. Level of Force

B. The Frisk (Search)

1. Factual Justification – Reasonable suspicion armed.

Terry, supra

State v. Lozada, 92 Ohio St. 3d 74 (2001) – Placing driver in patrol car not alone enough to justify frisk if for convenience of officer. Justified if need to protect officer or driver from dangerous condition and patrol car is least intrusive means to avoid dangerous condition.

2. Scope

Michigan v. Long, 463 US 1032 (1981) – Includes area of immediate control where can get weapon as could return to car if not arrested. Includes areas in passenger compartment where weapon could be found.

Minnesota v. Dickerson, 508 US 366 (1993) – Plain feel applies when reasonable suspicion armed and immediately apparent weapon or contraband. Not immediately apparent when had to manipulate, squeeze and slide.

