

## The Fourth Amendment: Search and Seizure Law

### *What is the Fourth Amendment?*

The Fourth Amendment of the United States Constitution protects individuals against unreasonable searches and seizures by law enforcement officers. The Fourth Amendment of the United States Constitution provides:

*The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

Article I, section 10, of the Minnesota Constitution is nearly identical to the Fourth Amendment, but the Minnesota Supreme Court has at times afforded individuals greater protection against unlawful searches and seizures under the Minnesota Constitution than that available under the Federal Constitution. Protection of the home is at the core of the Fourth Amendment, but protection also applies to persons, papers, and effects.

### *To what conduct does the Fourth Amendment apply?*

The Fourth Amendment applies only to certain situations. In general, the question of whether the Fourth Amendment applies turns on whether a person has a reasonable expectation of privacy in a particular situation. Whether a person has a reasonable expectation of privacy turns on both a subjective and objective analysis. First, the individual must have a subjective intent to keep something private. Second, and more importantly,

the expectation must be one that society is willing to recognize as reasonable.

To analyze further whether the Fourth Amendment applies, the analysis must address the place searched, the person doing the search, the person being searched, and the reason for the search.

### *What protection does the Fourth Amendment provide?*

Central to the Fourth Amendment is its charge that police act reasonably when they engage in search or seizure activities. In general, for a search or seizure to be reasonable, it must be supported by a warrant issued by a neutral and detached magistrate or judge who has determined probable cause exists to support a particular search or seizure. As defined by the United States Supreme Court, “[p]robable cause exists where ‘the facts and circumstances within [the police officer’s] knowledge, and of which they had reasonable trustworthy information, [are] sufficient in themselves to warrant a man of reasonable caution in the belief that’ an offense has been or is being committed.” *Brinegar v. United States*, 338 U.S. 160 (1949).

In some cases, the Supreme Court has found searches and seizures to be constitutional absent a warrant, provided the conduct passes a reasonableness test. Under this test, the Court balances the government interest in investigating crime against the extent of the intrusion into a person’s privacy. Because the sanctity of the home is given significant Fourth Amendment protection, the Court is more inclined to require a warrant for a search of a home. When the Court is dealing with encounters on the streets or in public places, however, the Court often applies a reasonableness test to assess whether a search or seizure is

constitutional. This approach provides greater investigational efficiency, but less Fourth Amendment protection.

The United States Supreme Court has recognized many clear exceptions to the warrant requirement; in these cases, a search or seizure is deemed reasonable and constitutional absent a warrant provided probable cause and certain circumstances exist. In some situations, a limited search or seizure is deemed reasonable absent a warrant and with a level of suspicion lower than probable cause, provided the police have an articulable suspicion to believe criminal activity is afoot.

### ***What are the exceptions to the warrant requirement?***

Courts have recognized numerous exceptions to the warrant requirement, including:

- *exigent circumstances*, or the need to engage in a search or seizure immediately due to an emergency situation where life and/or safety is at risk;
- *search incident to a lawful arrest* to locate and seize weapons and thereby protect the arresting officer and prevent the destruction of evidence;
- the *automobile exception* to seize and search an automobile based upon the exigency present due to the mobility of a vehicle before a warrant can be obtained;
- the *container exception* to search a container in an automobile based upon the same exigency present with the automobile exception, but if the container is not in an automobile, the police may seize (based on exigency due to mobility of container), but may not search, the container;
- *consent* when the police have a reasonable assumption that the party granting consent has lawful authority to do so and the consent is voluntary; and

- the *plain view/plain feel doctrine*, which allows the seizure of evidence when there has been a prior valid intrusion into a constitutionally protected area, an item is spotted in plain view or is within “plain feel,” and there is probable cause to believe the item is evidence.

### ***In what situations will an articulable suspicion support a search or seizure?***

Limited searches and seizures based upon articulable suspicion are really exceptions to the warrant requirement. In order to exercise the exception, law enforcement must have an articulable suspicion that criminal activity is afoot. This exception stems from the United States Supreme Court case, *Terry v. Ohio*, and is referred to as the *Terry* exception. *Terry v. Ohio*, 392 U.S. 1 (1968). The exception authorizes a limited seizure or stop, usually briefer than a full-blown arrest and at the location where the stop occurred. The search authorized under *Terry* is based on officer safety. For the search to be justified, the officer must have some articulable suspicion that the individual may be armed, and the officer may conduct only a pat-down of the person’s clothing (i.e., a “frisk”).

### ***What is the remedy for violation of a person’s Fourth Amendment rights?***

A person who has been subjected to an unreasonable search or seizure may challenge the action and seek suppression of any evidence obtained as a result of the unlawful action. With limited exceptions, the evidence that may be suppressed includes both the evidence directly discovered as well as any other evidence police are led to as a result of obtaining information unlawfully. A person whose Fourth Amendment rights have been violated may also bring a civil rights lawsuit under federal law for damages and/or injunctive relief, provided the person can satisfy certain requirements.

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