All rights reserved. No part of this Outline may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or through any information storage or retrieval system, if and when done for commercial purposes or for any form of a monetary return or profit, except as expressly permitted by federal copyright law and as indicated below.

This Outline has been prepared and published for the purpose of aiding law enforcement officers, police and private investigators, law enforcement administrators, prosecutors, the judiciary, other attorneys including but not limited to those engaged in the practice of criminal law, students, and legal educators and scholars, in accessing, using and understanding the field of Fourth Amendment Search and Seizure Law. As such, permission is expressly granted by the author to the above listed persons, or any other person, to use, reproduce, cite, and/or employ in the fields of law enforcement, criminal prosecution or defense, education or instruction, any or all of this Outline, provided the source is properly and correctly identified, and except when done for commercial purposes or profit as described above.

The information provided in this Outline is a summary of various aspects of Fourth Amendment Search and Seizure Law and related topics, and in many respects represents no more than the author’s opinions, interpretation and conclusions concerning the various topics discussed. Readers are advised not to rely upon the information provided in this publication without first researching and verifying the legal rules and issues intended to be used. This Outline is not intended to be a substitute for the reader’s own professional judgment and legal research. The author accepts no legal responsibility or liability for a user’s failure to properly research and verify the continued validity or correctness of any of the cases, rules, conclusions, or opinions contained in this Outline. In other words, your use of this Outline is at your own personal risk.

Comments concerning errors, depublished cases, misinterpretations, and/or other suggestions for correcting, expanding, or improving the information provided in this Outline are respectfully solicited, and should be directed to the author.

Robert C. Phillips
Deputy District Attorney (Retired)
RCPhill101@goldenwest.net
858-395-0302

How To Use This Manual: To locate the law on any particular subject of interest to you, it is suggested that you first note the general description of the subject under “Chapter Summary,” on page iii, below. This will guide you to the correct page of the Table of Contents under “Topics,” beginning on page iv. There you will find a more detailed description of the various legal issues. This in turn will note for you the specific page in the expanded Outline where you will find the relevant cases and rules on that topic.
# Table of Contents

**Chapter Summary:**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The Fourth Amendment, United States Constitution</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Consensual Encounters</td>
<td>66</td>
</tr>
<tr>
<td>3</td>
<td>Detentions</td>
<td>86</td>
</tr>
<tr>
<td>4</td>
<td>Arrests</td>
<td>231</td>
</tr>
<tr>
<td>5</td>
<td>Searches and Seizures</td>
<td>494</td>
</tr>
<tr>
<td>6</td>
<td>Searches with a Search Warrant</td>
<td>567</td>
</tr>
<tr>
<td>7</td>
<td>Warrantless Searches</td>
<td>817</td>
</tr>
<tr>
<td>8</td>
<td>Searches of Persons</td>
<td>871</td>
</tr>
<tr>
<td>9</td>
<td>Searches of Vehicles</td>
<td>989</td>
</tr>
<tr>
<td>10</td>
<td>Searches of Residences and Other Buildings</td>
<td>1058</td>
</tr>
<tr>
<td>11</td>
<td>New and Developing Law Enforcement Technology</td>
<td>1134</td>
</tr>
<tr>
<td>12</td>
<td>Open Fields</td>
<td>1170</td>
</tr>
<tr>
<td>13</td>
<td>Searches of Containers</td>
<td>1172</td>
</tr>
<tr>
<td>14</td>
<td>Border Searches</td>
<td>1217</td>
</tr>
<tr>
<td>15</td>
<td>Fourth Waiver Searches</td>
<td>1237</td>
</tr>
<tr>
<td>16</td>
<td>Consent Searches</td>
<td>1300</td>
</tr>
</tbody>
</table>
### Topics:

#### Chapter 1:

The Fourth Amendment, United States Constitution: 1

- The Fourth Amendment: 1
  - California Constitution, Art I, § 13 1

Purpose 1

The Supremacy Clause 2

Scope: 3

- “Due Process” and the Fourteenth Amendment 3
- Persons, Houses, Papers, and Effects 3

Double Jeopardy: 4

- The Double Jeopardy Clause 4
- Exception: Duel Sovereignty 4
- Penal Code §§ 654 & 1023 5

The Exclusionary Rule; Overview: 5

- Theory 5
- History 5

- The Primary Purpose of the Exclusionary Rule 6
- The Rule of Reasonableness 7
- Private Persons and the Exclusionary Rule 9

Limited Use of the Exclusionary Rule:

  - General Rule 9
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good Faith</td>
<td>12</td>
</tr>
<tr>
<td>Statutory Violations</td>
<td>14</td>
</tr>
<tr>
<td>Is The Exclusionary Rule’s Application to the States Mandated?</td>
<td>15</td>
</tr>
<tr>
<td>Rule of Exclusion:</td>
<td>17</td>
</tr>
<tr>
<td>Benjamin Cardozo</td>
<td>17</td>
</tr>
<tr>
<td>Factually Based Question</td>
<td>17</td>
</tr>
<tr>
<td>Verbal Evidence</td>
<td>17</td>
</tr>
<tr>
<td>Federal Rules of Evidence, Rule 402</td>
<td>18</td>
</tr>
<tr>
<td>Fruit of the Poisonous Tree:</td>
<td>18</td>
</tr>
<tr>
<td>General Rule</td>
<td>18</td>
</tr>
<tr>
<td>Factors</td>
<td>18</td>
</tr>
<tr>
<td>Exceptions:</td>
<td>20</td>
</tr>
<tr>
<td>Demise of the Independent State Grounds Theory; “Proposition 8”</td>
<td>20</td>
</tr>
<tr>
<td>Defendant and His Identity</td>
<td>22</td>
</tr>
<tr>
<td>Identity of a Witness</td>
<td>23</td>
</tr>
<tr>
<td>Immigration Issues</td>
<td>23</td>
</tr>
<tr>
<td>Searches by Foreign Entities</td>
<td>24</td>
</tr>
<tr>
<td>Impeachment Evidence</td>
<td>25</td>
</tr>
<tr>
<td>New Crimes Commited in Response to an Illegal Detention or Arrest</td>
<td>25</td>
</tr>
<tr>
<td>Searches Based Upon Existing Precedent</td>
<td>26</td>
</tr>
<tr>
<td>The “Minimal Intrusion Doctrine”</td>
<td>27</td>
</tr>
<tr>
<td>In a 42 U.S.C. § 1983 Civil Suit</td>
<td>27</td>
</tr>
</tbody>
</table>
In an Administrative Proceeding

Expectation of Privacy:

Rule: 29

Examples 29

Juvenile Cases 30

Standard of Review On Appeal:

Motion to Suppress 30

Appeal from a P.C. § 995 Motion to Dismiss Ruling 31

Constitutionality of a Statute 32

Sufficiency of the Evidence 32

Habeas Corpus 35

Civil Liability:

Integral Participation Requirement 37

Qualified Immunity 37

Statutory Immunity from Civil Liability:

Gov’t. Code § 815.2 44

Gov’t. Code § 820.2 44

Gov’t. Code § 821.6 45

Civ. Code § 43.55(a) 45

P.C. § 847(b)(1) 45

Public Entities 45

Case Law Immunity from Civil Liability 45
Effect of a Prior Conviction, Sentence, or Probable Cause Determination: 46

Rule: Heck v. Humphrey 46

Exceptions 49

Civil Suits Based Upon an Alleged Retaliation Theory 50

Doctrine of “Issue Preclusion” or “Collateral Estoppel” 52

“Law of the Case” Doctrine 52

Summary Judgment 54

Directed Verdict 55

Civil Liability of an Employing Government Entity 56

Standards of Proof: 57

Reasonable Suspicion 57

Preponderance of the Evidence 58

Probable Cause 58

Clear and Convincing Evidence 59

Proof Beyond a Reasonable Doubt 59

Burden of Proof 60

Plea Bargaining and Cooperation Agreements: 60

Rule 60

Case Law: 61

The Courts’ Order of Priority 61

Decisions from the United States Supreme Court 61
Decisions from lower Federal Courts: 62

State Court Interpretation taking Precedence 62

Decisions From Other States 63

Opinions of the California Attorney General 63

Writs of Habeas Corpus 63

Unpublished Cases 65

The Outline: 65

Police-Citizen Contacts 65

Other Topics 65

Chapter 2: 66

Consensual Encounters: 66

General Rule 66

Test 66

Limitations: 68

Searches, Frisks and Detentions Not Allowed 68

Unintended Detentions 69

No Detention: 69

Obtaining Personal Identification Information,
Running a Warrant Check 69

Asking for Identification 70

Mere Police Questioning 71

Walking Along With, or Driving Next to, a Person 72

Asking to Step Out of the Vehicle 72

Flashlighting or Spotlighting a Person 73
Inquiring Into the Contents of a Subject’s Pockets 73
Asking a Person to Remove His Hands From His Pockets 73
A Consensual Transportation 73
Inquiring Into Possible Illegal Activity 73
Displaying a Badge, or Being Armed 74
Contacts on Buses 74
During a “Knock and Talk” 74
Consensual Encounters vs. Detentions or Arrests: 75
The Three Contact Categories 75
Factors to Consider 75
Examples 76
Specific Issues: 77
Contacts on Buses 77
Flight: 78
Rule 78
Exceptions 78
Chasing the Subject 80
Photographing and Videotaping Subjects 81
Knock and Talks 83

Chapter 3: 86
Detentions: 86
General Rule 86
Purpose 87
Show of Authority 87
Standard of Proof; “Reasonable Suspicion” 88
Test 90
Burden of Proof 93
Factors 93
On Appeal 94
Patdown for Weapons During a Detention 94
Officer Safety 94
Detention Without a Reasonable Suspicion 96
Racial Profiling 97
Detentions vs. Arrests:
   General Rule 99
   Factors 100
   Examples 100
   Indicators of an Arrest:
      The Use of Firearms 100
      The Use of Handcuffs 101
      A Locked Patrol Car 101
      Overwhelming Show of Force 101
      Physical Touching 102
      Non-Consensual Transportion of a Detainee 102
      Use of Emergency Lights 102
Exceptions: 103

In General 103

Factors 104

Examples Where No Arrest Found: 105

Firearms 105

Handcuffing 105

Putting into a Patrol Car 106

Additional Case Law 106

Miranda 109

Non-Consensual Transportation Exceptions 110

Reasonable Suspicion: 112

Defined 112

Detention of a Victim or Witness: 115

General Rule 115

Exceptions 115

Immunity Situations 117

Articulable Objective Suspicion 118

A Hunch 118

The Totality of the Circumstances 120

The Officer’s Subjective Conclusions 122

A Seizure 122

Probable Cause vs. Reasonable Suspicion 122
Various Factors: 122

In General 122

A “High Crime” or “High Narcotics” Area 123

Ethnicity 124

Statutory Interpretation 124

Types of Detentions: 126

Traffic Stops: 126

Legal Basis 126

Standard of Proof 126

Random License Checks 128

Personal Observation 128

Detention vs. Arrest 129

When No Law Enforcement Involvement 129

Moving Violations 130

Estimates of Speed 133

Lying to the Suspect as to the Reasons for the Stop 134

Avoiding a DUI (or Immigration) Checkpoint 134

Vehicle Code Registration Violations 134

Vehicle Code Equipment Violations 138

Windshield Obstructions 139

Weaving Within the Lane: 140

State Rule 140

Federal rule 141
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>False Personation During a Traffic Stop</td>
<td>141</td>
</tr>
<tr>
<td>Vehicle Stops Involving Agricultural Irrigation Supplies, per V.C. § 2810.2</td>
<td>142</td>
</tr>
<tr>
<td>Community Caretaking Function</td>
<td>143</td>
</tr>
<tr>
<td>Parking Tickets</td>
<td>143</td>
</tr>
<tr>
<td>Gang-Related Investigations</td>
<td>144</td>
</tr>
<tr>
<td>Narcotics-Related Traffic Stops Using a Controlled Tire Deflation Device (CTDD)</td>
<td>144</td>
</tr>
<tr>
<td>Checking the Vehicle for a Wanted Suspect</td>
<td>144</td>
</tr>
<tr>
<td>Mistake of Law vs. Mistake of Fact:</td>
<td>145</td>
</tr>
<tr>
<td>Mistake of Law:</td>
<td>145</td>
</tr>
<tr>
<td>Original Rule</td>
<td>145</td>
</tr>
<tr>
<td>New Rule</td>
<td>146</td>
</tr>
<tr>
<td>Mistake of Fact</td>
<td>148</td>
</tr>
<tr>
<td>Pretext Stops:</td>
<td>149</td>
</tr>
<tr>
<td>Whren v. United States</td>
<td>149</td>
</tr>
<tr>
<td>California Rule</td>
<td>150</td>
</tr>
<tr>
<td>Pretext Issues</td>
<td>151</td>
</tr>
<tr>
<td>Exceptions:</td>
<td>151</td>
</tr>
<tr>
<td>Rule</td>
<td>151</td>
</tr>
<tr>
<td>Administrative Searches</td>
<td>153</td>
</tr>
<tr>
<td>Vehicle Impound Searches</td>
<td>154</td>
</tr>
<tr>
<td>When the Use of a Pretext is illegal</td>
<td>155</td>
</tr>
</tbody>
</table>
Driving Under the Influence Cases: 183

Weaving 183

Question: DUI (and Other Regulatory “Special Needs”) Checkpoints: 184

Answer 184

Reasonableness Requirement 185

Factors Determining Predetermined Specified Criteria 185

Case Law 186

Issue; Avoiding a DUI Checkpoint 187

Other Regulatory Checkpoints: 187

License and Registration Inspection Checkpoints 187

Border Patrol Checkpoint Inspections 187

Airport Security Searches 188

To Regulate Hunting Licenses 188

Agricultural Inspection Checkpoints 188

Vehicle Mechanical Inspection Checkpoints 188

Security Checkpoints at Military Bases 188

Sobriety Checkpoints on a Federal Military Base 188

A Forest Service Checkpoint 188

Traffic Safety Checkpoints 188

Checkpoints at the Entrance to a Prison Parking Lot 188
### Checkpoints to Thwart an Imminent Terrorist Attack or to Catch a Dangerous Criminal 188

### Checkpoints for the Purpose of Collecting Information 188

### An Information Station 189

### Checkpoint to Prevent Illegal Hunting in a National Park 189

### Luggage Searches at New York’s Subway Entrances 189

### Vehicle Inspection Checkpoints, per V.C. § 2814.1(a) 189

### Dual Purpose Checkpoints 189

### Multiple Agency Checkpoints 189

### Drug Interdiction (or “Ordinary Criminal Wrongdoing”) Checkpoints: 190

#### Rule 190

#### Exceptions 190

### Checkpoints on Indian Land by Indian Authorities 191

### A Field Interview: 192

#### General Rule 192

#### Examples 192

#### Gang Membership 193

### During Execution of a Search or Arrest Warrant, or Fourth Waiver Search 194

### Pending the Obtaining of a Search Warrant 196

### Detentions Away from the Place being Searched 198
Detention Examples, in General 198

Anonymous Information: 202

Rule: 202

Patdown for Weapons 202
Detentions in Highly Dangerous Situations 203
Detentions with Sufficient Corroboration 206
Illegal Detentions; Examples 208
Knock and Talks 209
To Establish Probable Cause 209
In Prison or Jail 210

Detentions Involving Minors: 210

Minors on Campus: 210

By School Officials 210
By a School Resource Officer 212
By Other Law Enforcement Officers 214

Minors Violating Curfew 214

Miranda 215

Use of Force: 215

Rule 215
Factors 216
Refusal to Submit 217
Reasonableness of the Force Used: 218

Rule 218
Lesser Degree of Force

When Force is Used Against a Person Who was not the Intended Target of the Force

Expert Testimony Re: Excessive Force Issue

Narcotics-Related Traffic Stops Using a Controlled Tire Deflation Device (CTDD)

Deadly Force

Demanding Identification:

Rule

Issue

Detentions of Employees in the Workplace (or Students at School):

Problem

Case Authority

Statutory Authority for Seizure of Firearms During a Detention:

Gov’t. Code § 8571.5

P.C. § 833.5

P.C. § 25850(b)

Wel. & Inst. Code § 8102(a)

P.C. § 1524(a)(10)

Merchants, Library Employees, Theater Owners, and Amusement Park Employees:

P.C. § 190.5(f)

P.C. § 490.6(a)

Indefinite Detentions Pursuant to Federal Law:

Pen. Code § 145.5
Chapter 4:

Arrests: 231

Defined 231

Standard of Proof; Probable Cause: 231

Defined 231

Reasonable Seizures 233

When Probable Cause Exists 234

Judicial Determination Probable Cause in Misdemeanor Custody Cases: 240

Pen. Code § 991 240

Case Law 241

Mistaken Identity 242

Mistaken Belief in the Existance of an Arrest Warrant 242

First Amendment Issues: 243

Arresting/Detaining an Individual for being Verbally Uncooperative 243

Freedom of Religion 244

The Collective Knowledge Doctrine 244

With Multiple Suspects 246

Dissipation of Probable Cause 246

Seizure of Children 247

Use of Hearsay 247

An Officer’s Expertise 247

Conflicting Evidence 248
Legal Authority for Arrests: 257

Peace Officer: 257

P.C. § 830: Peace Officer Defined 257
P.C. § 830.1: Peace Officer Authority 257
P.C. § 830.2: California Peace Officers 258
P.C. § 830.3: California Peace Officers 260
P.C. § 830.31: California Peace Officers 264
P.C. § 830.32: California Peace Officers 266
P.C. § 830.33: California Peace Officers 266
P.C. § 830.34: California Peace Officers 269
P.C. § 830.35: California Peace Officers 270
P.C. § 830.36: California Peace Officers 271
P.C. § 830.37: California Peace Officers 271
P.C. § 830.38: California Peace Officers 272
P.C. § 830.39: California Peace Officers 273
P.C. § 830.40: California Peace Officers 275
P.C. § 830.41: California Peace Officers 276
P.C. § 830.50: California Peace Officers 276
P.C. § 830.55: California Peace Officers 280
P.C. § 830.6: California Peace Officers 281
P.C. § 830.65: California Peace Officers 283
Har. & Nav. Code § 663: Peace Officer” Defined 284
Arrests by a Peace Officer:

P.C. §§ 834, 836  

P.C. § 150; “Posse Comitatus”  

In a Domestic Violence Case  

Arrests by a Private Person:

P.C. §§ 834, 837  

P.C. § 490(f)(1); A Merchant, Library Employee, or Theater Owner  

P.C. § 839; Summoning Others to Assist  

P.C. § 847; Disposition of Arrestee  

Domestic Violence Cases  

The Stale Misdemeanor Rule  

The “In the Presence” Requirement  

Out of State Officers in Fresh Pursuit:

P.C. § 852.2  

P.C. § 852.3  

Federal Officers:

P.C. § 830.8  

P.C. § 830.85  

Bounty Hunters or Bail Enforcement Agents:

General Rules  

The Bail Fugitive Recovery Persons Act:

Pen. Code § 1299: Title
Pen. Code § 1299.01: Definitions: 293

Subd. (a): “Bail Fugitive” 293

Subd. (b): “Bail” 293

Subd. (c): “Depositor of Bail” 293

Subd. (d): “Bail Fugitive Recovery Person” 294

Pen. Code § 1299.02: Persons Authorized to Arrest Bail Fugitives 294

Pen. Code § 1299.04: Qualifications of a Bail Fugitive Recovery Person 295

Pen. Code § 1299.05: Bail Fugitive Apprehensions 296

Pen. Code § 1299.06: Required Apprehension Documentation 296

Pen. Code § 1299.07: Representing Oneself to be a Sworn Law Enforcement Officer 296

Pen. Code § 1299.08: Procedural Requirements in Making Arrests 297

Pen. Code § 1299.09: Forcible Entries 298

Pen. Code § 1299.10: Use of Firearms or Other Weapons 299

Pen. Code § 1299.11: Violating the Act 299

Pen. Code § 1299.12: Licensing Private Investigators 300

Arrest Options: 300

Release Without Charges 300

Seek an Arrest Warrant 302
Issuance of a Misdemeanor Citation 303
Booking into Jail 303
Take the Subject Directly Before a Magistrate 304

Legal Requirements of an Arrest: 304

Felonies 304

Misdemeanors and Infractions: 305

“In the Presence” Requirement: 305

V.C. § 40300 305

“In the Presence” Defined 305

Exceptions: 305

Juvenile Arrests 305

Driving While Under the Influence Arrests 305

Battery on School Grounds 307

Carrying a Loaded Firearm 307

Assault or Battery Against the Person of a Firefighter, Emergency Medical Technician or Paramedic 307

Domestic Violence Protective or Restraining Orders 308

Domestic Violence Assaults or Batteries 308

Elder Abuse 310

Carrying a Concealed Firearm at an Airport 310
Operating a Vessel or Recreational Vessel or Manipulation of Water Skis, Aquaplane or Similar Device While Under the Influence 310

Operating a Vessel While Under the Influence of Alcohol and/or Drugs with an Accident 310

Vehicle Code Violations, Exceptions: 310

V.C. § 16028(c): Traffic Collision Investigators 311

V.C. § 40600(a): POST Certified Peace Officers at Traffic Collisions 311

V.C. § 14602.6(a)(1): Driving on a Suspended, Revoked, or Restricted License, or Never Had a License 311

Vehicle Code Parking Citations 211

Stale Misdemeanor Rule 312

Sanctions for Violations 313

Arrests for an Infraction or Misdemeanor: 316

Release Requirement 316

Exceptions 317

V.C. § 40302: Mandatory Custodial Arrests 318

Other Satisfactory Evidence of Identity 318

V.C. § 40303: Arrestable Offenses 319

V.C. § 40303.5: “Fix-It Tickets” 320

V.C. § 12801.5(e): The Unlicensed Driver 321

V.C. § 40305: Non-Residents 322
V.C. § 40305.5: Traffic Arrest
Bail Bond Certificate 322

P.C. § 853.6(i): Misdemeanor Citations; Exceptions 322

With an Existing Warrant of Arrest 325

Arrest Warrants: 326

Defined 326

Content 326

Case Law 327

Other Types of Arrest Warrants: 328

Bench Warrant 328

Electronic Arrest Warrant 329

Ramey Warrant 330

A “DNA, John Doe” Warrant 330

P.C. § 3455(b): Postrelease Supervision Warrant 330

A Federal “Administrative Warrant” 331

Necessity of an Arrest Warrant 331

Service and Return: 332

Felony Arrest Warrants 332

Misdemeanor Arrest Warrants: 332

Night Service 332

Necessity for Having a Copy of the Arrest Warrant 333

Knock and Notice 333
Procedure After Arrest: 334

Disposition of Prisoner: 334

In-County Arrest Warrants 334

Out-of-County Arrest Warrants 334

Arrests without a Warrant 335

Necessity of Having Probable Cause or a Reasonable Suspicion Before Entering a Residence 335

The Steagald Warrant 337

Statute of Limitations 337

Expiration 337

Detention of Other Occupants of a Home While Executing an Arrest Warrant 337

Use of a Motorized Battering Ram 338

Effect of an Arrest Warrant on the Exclusion of Evidence after an Illegal Detention 338

A Defective Arrest Warrant 339

Statutory Limitations: 339

Daytime and Nighttime Arrests: 339

Felony Arrests: 339

Without an Arrest Warrant 339

With an Arrest Warrant 340

Misdemeanor (and Infraction) Arrests: 340

Without an Arrest Warrant 340

With an Arrest Warrant 341
Penal Code § 964: Victim and Witness Confidential Information 341

Live Lineups 342

Case Law Limitations: 342

*People v. Ramey:* 342

General Rule 342

Exceptions: 343

Consent 343

Exigent Circumstances 344

Fresh or Hot Pursuit 345

Already Lawfully Inside 352

Standing in the Threshold 352

A Parolee or Fourth Waiver Probationer 353

Inviting Defendant Outside 354

Sufficiency of Evidence that the Suspect is Inside 356

Within a Third Person’s Home 358

Consequences of a *Ramey/Payton* Violations 359

Knock and Notice: 361

Statutory Rule 361

Suppression of Resulting Evidence 361

Arrest Issues: 362

Arresting for the Wrong Offense 362

Post-Arrest, Pre-Trial Detentions 363
Mistaken Belief in Existence of Probable Cause to Arrest or Search, an Arrest Warrant, or that a Fourth Waiver Exists, Based upon Erroneous Information Received from Various Sources:

The Problem 364

The Rule 364

Extension of the Rule 364

The Reasoning 365

Law Enforcement vs. Non-Law Enforcement Source: 365

Law Enforcement Source Cases: 366

Police Computer Records 366

Parole 366

Probation 366

Exception; DMV Hearings 367

Non-Law Enforcement Source Cases: 367

Fourth Waiver Information from the Courts 367

Reversed Prior Conviction 367

Legislative Sources 368

Department of Motor Vehicles Sources 369

Juvenile Probation 369

Arresting and Searching in Ignorance of an Existing Warrant of Arrest 369

Minors: 370

Curfew Violations 370

Truancy Violations 371
The Americans with Disabilities Act (ADA): 371

The Issue 371

Title II of the ADA 371

Information Provided to an Arrested Person: 372

P.C. § 841; Information to be Provided 372

Exceptions 372

Foreign Nationals: 373

Vienna Convention on Consular Relations 373

Advisal to Arrestee/Detainee 373

Standing 373

Automatic Notice to Foreign Country 374

Sanctions for Violations 374

Miranda: 378

Rule 378

Real and Physical Evidence 378

Arrested Minors: 378

Wel. & Inst. Code § 625(c): Advisal of Rights 378

Wel. & Inst. Code § 627.5: Minor Taken Before a Probation Officer 379

Wel. & Inst. Code § 625.6: Minors Age 15 and Younger, and Mandatory Attorney Consultations 379

Follow-Up Requirements After Arrest: 382

Other Rights of the Arrestee: 382

Right to Access to an Attorney; P.C. § 825(b) 382
Right to Access to a Physician or Psychiatrist; P.C. § 825.5 383

Right to Telephone Calls; P.C. § 851.5(a): 383

Rule 383

Case Law 384

Minors; W&I § 627(b) 385

Other Statutory Obligations of the Arresting Officer:

P.C. § 848: Arrests by Warrant 386

P.C. § 849(a): Arrests Without a Warrant 386

P.C. § 849(b): Release From Custody 386

P.C. § 849(c): Record of Arrest of Released Person Deemed a Detention Only 387

Undocumented Aliens:

Gov’t. Code §§ 7283, 7283.1, & 7283.2: The “Transparent Review of Unjust Transfers and Holds” Act (TRUTH) 387

Civil Code § 1670.9: Detentions of Noncitizens for Purposes of Civil Immigration Custody 388

Gov’t. Code § 7282.5: Limitations On Law Enforcement’s Cooperation with Immigration Authorities 389

Gov’t. Code §§ 7284-7284.12: The “California Values Act:” 389

Gov’t. Code § 7284: Title of Chapter 389

Gov’t. Code § 7284.2: Legislative Findings and Declarations 389

Gov’t. Code § 7284.4: Definitions 391

Gov’t. Code § 7284.6: Prohibited Activities; Exceptions; Annual Report; Information Exchange; Jurisdiction 392
Gov’t. Code § 7284.8: Model Policies for Other Governmental Entities; Database Use Guidance 396

Gov’t. Code § 7284.10: Department of Corrections and Rehabilitation Duties and Responsibilities 397

Gov’t. Code § 7284.12: Severability 398

Gov’t. Code § 7310: Contracts with Federal Government to Detain Non-Citizens 398

Gov’t. Code § 7311: Contracts with Federal Government to House or Detain Non-Citizen Minors 399

Gov’t. Code § 12532: Review of Detention Facilities 399

Pen. Code § 679.015: Victim and Witnesses’ Protection from being Turned over to Immigration Authorities 400

Use of Force: 400

Reasonable Force 400

Factors 401

Factors Under Tennessee v. Garner 402

Three-Step Evaluation of an Excessive Force Claim, by “Stages:” 403

General Principles; Fourth Amendment Issues 403

Provocation Rule 408

Intervening (or Superseding) Circumstances 409

Cruel and Unusual Punishment; Eighth Amendment Issues 410

Due Process; Fifth and Fourteenth Amendment Issues: 414

Use of Force Cases 414

Deprivation of Liberty Cases 416

Deprivation of Property Cases 416
Parent-Child Relationship Cases 418

Pre-Trial Detainee Jail Condition Cases 421

Qualified Immunity from Civil Liability 422

Absolute Immunity from Civil Liability 424

California Civil Code § 52.1; the “Bane Act:” 425

Specific Weapons or Techniques:

The Taser 427

Chemical Irritants; Pepper Spray, Pepperball Guns and Tear Gas 431

Flashbang Devices 433

Batons 434

Bean Bag Firearms 435

Firearms 435

Pain Compliance 440

Handcuffs 441

Duty to Warn 442

Applicable Statutes:

P.C. § 692: Lawful Resistance 443

P.C. § 693: Party About to be Injured 445

P.C. § 694: Other Parties 445

P.C. § 834a: Resisting Arrest 445

P.C. § 835: Restraint of Detained or Arrested Person 446

P.C. § 835a: Use of Reasonable Force 446
P.C. § 843: Arrest by Warrant; Use of Force 446

P.C. § 844: Knock and Notice 447

P.C. § 845: Use of Force to Exit a House 447

P.C. § 846: Securing Weapons 447

P.C. § 490.5(f)(2): Use of Force by Merchant, Library Employee or Theater Owner 447

Use of Force in Making a Blood Draw:

Rule 447

Examples 448

McNeely Limitation 448

History 448

Use of Deadly Force:

Causing Death 449

Deadly Force Defined 449

Non-Criminal Homicides 450

Applicable Statutes:

P.C. § 196: Justifiable Homicide by Public Officers 451

P.C. § 197: Justifiable Homicide 451

History 452

Limitations:

Forcible and Atrocious Crimes 453

The Fourth Amendment 453

Forcible and Atrocious Crime Defined 453
Burglary of a Residence: 454
P.C. § 198.5 455
Cases 455

Self-Defense: 456
General Rules 456
Elements 457
Examples 457
Imminent Peril 458
Bare Fear 459
Apparent Necessity 459
Imperfect Self-Defense 460
Original Aggressor Claiming Self-Defense 461
Mutual Combat 463
Burden of Proof 466

Fleeing Felon 466
Transferred Intent 468

Use of Deadly Force by Police Officers: 468
Rule 468

Law Enforcement’s Written Policy RE: Use of (Deadly) Force 470
Use of Force Upheld 471
Deadly Force Unreasonable 475
Federal Officers 478
Rule of Reasonableness 479
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use of Deadly Force Against Foreign Nationals, in a Foreign Country</td>
<td>482</td>
</tr>
<tr>
<td>High Speed Pursuits</td>
<td>483</td>
</tr>
<tr>
<td>Outrageous Government Misconduct:</td>
<td>488</td>
</tr>
<tr>
<td>Rule</td>
<td>488</td>
</tr>
<tr>
<td>Factors</td>
<td>489</td>
</tr>
<tr>
<td>Civil Liability Protections:</td>
<td>490</td>
</tr>
<tr>
<td>California Statutory Protection from Civil Liability:</td>
<td>490</td>
</tr>
<tr>
<td>P.C. § 836(a), (b)</td>
<td>490</td>
</tr>
<tr>
<td>P.C. § 838</td>
<td>490</td>
</tr>
<tr>
<td>P.C. § 839</td>
<td>490</td>
</tr>
<tr>
<td>Gov’t. Code § 815(a)</td>
<td>490</td>
</tr>
<tr>
<td>Gov’t. Code § 815.1(b)</td>
<td>490</td>
</tr>
<tr>
<td>Gov’t. Code § 815.2(a)</td>
<td>490</td>
</tr>
<tr>
<td>Gov’t. Code § 818.4</td>
<td>490</td>
</tr>
<tr>
<td>Gov’t. Code § 820(a)</td>
<td>491</td>
</tr>
<tr>
<td>Gov’t. Code § 820.2</td>
<td>491</td>
</tr>
<tr>
<td>Veh. Code § 17001</td>
<td>491</td>
</tr>
<tr>
<td>V.C. § 17004.7</td>
<td>491</td>
</tr>
<tr>
<td>Federal Civil 42 U.S.C. § 1983 Civil Liability and Qualified Immunity</td>
<td>492</td>
</tr>
<tr>
<td>Chapter 5:</td>
<td>494</td>
</tr>
<tr>
<td>Searches and Seizures:</td>
<td>494</td>
</tr>
<tr>
<td>Things Subject to Search and Seizure</td>
<td>494</td>
</tr>
</tbody>
</table>
Protection from Unreasonable Searches and Seizures,  
and the Right to Privacy 494

Searches and Seizures: 495

Search: 495

Trespassory Searches:  
“Persons, Houses, Papers and Effects“ 495

Satellite-Based Monitor (SBM) 496

Taking a DNA Sample 496

The Extraction of Blood 496

Issue; Key in a Lock 496

Seizure 498

Search vs. Seizure 500

General Rule: 500

Search Warrant Defined 500

Probable Cause 500

Legal Presumptions 500

Remedy for Violations; The Exclusionary Rule: 501

The Fourth Amendment Applicable to the States 501

Procedural Remedy: Motion to Suppress per P.C. § 1538.5: 501

Procedure 502

Pre-Trial Review of the Magrate’s Ruling 503

Appellate Review 504

Juvenile Proceedings 506

Misdemeanors 506
One-Hearing Rule: 506
  General Rule 506
  Exceptions 507

The Fruit of the Poisonous Tree: 508
  Rule 508
  Examples 508
  Exceptions: 510
    The Independent Source Doctrine 510
    The Inevitable Discovery Doctrine 510
    The Attenuation Doctrine 510

Problem: The “Coordinated Traffic Stop” 512
  Exceptions: 513
    Private Persons: 513
      Rule 513
      Exception to Private Persons Exception: 514
        “Agents of Law Enforcement” 514

The Good Faith Exception 515

The Taint has been Attenuated: 516
  Factors: 516
    Temporal Proximity 516
    Intervening Circumstances 516
    Purpose and Flagrancy 516

Miranda 517
Outstanding Arrest Warrant
or Fourth Waiver 517

When the Purposes of the
Exclusionary Rule are not Served 518

The Minimal Intrusion Exception 519

Statutory-Only Violations:

Rule 521

Examples 522

Doctrine of Inevitable Discovery:

Rule 526

Cases 527

Exceptions 529

Searches Based Upon Existing Precedent:
The “Faith In Case Law” or “Statute” Exception 530

An Injured Person 532

Evidence of identity 532

Impeachment Evidence 532

Asset Forfeiture Proceedings 533

Parole and Probation Revocation Hearings 533

Standing:

Defined 535

Standing in Civil Cases 536

Reasonable Expectation of Privacy 537

Test 538
Burden of Proof 538

Factors to Consider 538

General Principles 539

Prior California Rule: “Vicarious Standing” 540

Examples: 541

Vehicles 541

Residential Visitors 543

Personal Property 547

Abandoned Property: 550

Rule 550

Abandonment Caused by a Threatened Illegal Detention 552

Outside, Common Areas 553

Indoor, Common Areas 554

Businesses 554

Renting with a Stolen Credit Card 555

Disclaiming Standing: 557

Rule 557

Exceptions 557

On Appeal 559

Reasonableness; Evaluated for Purposes of Search & Seizure: 559

Rule 559

Determining Reasonableness 559
The Officer’s Intentions: 560
Old Rule 560
New Rule; Subjective Motivations are Irrelevant 560
Pretext Stops 561
Posse Comitatus; Use of the Military by Civilian Law Enforcement: 561
The Posse Comitatus Act 561
Prohibited Activity 562
Exceptions 562
Purpose 563
Case Law 564
Sanctions for Violations 565
Chapter 6: 567
Searches with a Search Warrant: 567
Search Warrant Defined: 567
Basic Requirements 567
Preference for Search Warrants 567
Why Search Warrants are Preferred: 568
Presumption of Lawfulness: 568
Burden of Proof 569
Motion to Quash 570
Motion to Traverse: 571
A “Franks Hearing” 571
Material Omissions 573
Presumption of Unlawfulness (or Unreasonableness)
Without a Warrant 577

Good Faith: 578

History 578

The Exclusionary Rule Restricted 578

Civil Cases and Qualified Immunity 581

Exceptions to Good Faith Rule: 581

Magistrate Misled 582

Magistrate Abandoned Judicial Role 582

Lack of Indicia of Probable Cause 583

Warrant Deficient 585

Affidavit Based on Illegally Collected Information 585

Exigent Circumstances 585

Examples 586

Ramey Inapplicable 587

Consensual Searches 587

Informants 587

Acting in the Performance of His (or Her) Duties 587

Opportunity to Objectively Evaluate Existing Probable Cause 587

Mental Patients Detained per W&I § 5150: Seizure of Weapons: 587

Warrant Requirement and W&I § 8102(a) 587

P.C. § 1524(a)(10); Search Warrants 588

Exigent Circumstances 588

xlii
Independent Source Doctrine 588

Non-Standard Types of Warrants: 590

Types of Warrants: 590

Telephonic Search Warrants: 590
Rule 590
Procedure 590
Pen. Code § 1526 590
Pen. Code § 1528(b) 591

Anticipatory Search Warrants: 592
Rule 592
Prerequisites 592
Case Authority and Restrictions 592

Sneak and Peek Warrants 595

P.C. § 1524.1: AIDs Testing 596

P.C. § 1524.2(b): Records of Foreign Corporations Providing Electronic Communications or Remote Computing Services: 596

Definitions: 597

Electronic Communications Services and “Remote Computing Services 597
Foreign Corporation 597
Properly Served 597
Providing the Requested Information 598
Out-of-State Warrants 598
Pen. Code § 1524.3(a): Records of Foreign Corporations Providing Electronic Communications or Remote Computing Services in Misdemeanor cases 598

Pen. Code §§ 11470-11482: Court Orders Authorizing the Interruption of Communication Services: 600

Public Util. Code §§ 7907-7908; Repealed 600

Pen. Code § 11470: Definitions: 600

Communication Service 600

Government Entity 600

Interrupt Communication Service 600

Judicial Officer 601

Service Provider 601

Pen. Code § 11471: Prohibition on the Interruption of Communications Services; Exceptions 601

Pen. Code § 11472: Application for Court Order 602

Pen. Code § 11473: Issuance of a Court Order; Necessary Findings 604

Pen. Code § 11474: Contents of a Court Order 604

Pen. Code § 11475: Required Actions of a Government Entity Interrupting a Communication Service; Application for a Court Order; Statement of Intent 605

Pen. Code § 11476: Interruption of Communication Services for a Geographical Area; Notification to the Governor’s Office of Emergency Services 606

Pen. Code § 11477: Notice to the Service Provider and the Customer 606
Pen. Code § 11478: Civil Liability; Designation of a Security Employee; Compliance with PUC or Federal Communication Commission Rules and Notification Requirements 607

Pen. Code § 11479: Customer’s Remedies 607

Pen. Code § 11480: Legislature’s Finding and Declaration 607

Pen. Code § 11481: Exceptions 608


Business Records:

Evid. Code § 1560(f): Search Warrants for Business Records; Admissibility in Criminal Proceedings 609

Evid. Code § 1561: Affidavit of Custodian Of Records for Business Records Obtained via Subpoena Duces Tecum or Search Warrant 609

P.C. § 1524.4: Service Providers and Law Enforcement Contact Process 609

Requirement of a “Neutral and Detached” Magistrate:

Rule 611

Violations 611

No Violation 612

Composition of a Search Warrant:

Three Parts 612

The Warrant:

P.C. §§ 1523, 1529: Contents 612
P.C. § 1524(a)(1) through (18): Statutory Grounds for Issuance:

1. For Stolen or Embezzled Property
2. For Property Used to Commit a Felony
3. For Property Intended to Use to Commit a Public Offense, or is being Concealed
4. For Evidence of a Felony
5. For Child Sexual Exploitation Evidence
6. For a Person Wanted on an Arrest Warrant
7. For Evidence Possessed by a Provider of an Electronic Communication service or Remote Computing Service
8. For Evidence of a Labor Code § 3700.5 Violation
9. For Firearms and Deadly Weapons at a Domestic Violence Scene
10. For Firearms and Deadly Weapons Possessed by Mental Patients
11. For Firearms Possessed by Persons Subject to Certain Orders
12. For Installation of Tracking Devices:
   Search Warrant Requirement
   P.C. § 1534(b): Tracking Device Search Warrant Procedures
13. For Blood Draw Evidence in DUI Cases
14. For Firearms and Ammunition in Possession of Persons Subject to A Gun Violence Restraining Order
15. For Firearms in Possession of Convicted Felons
(16) For Controlled Substances or Devices for Administering Controlled Substances 620

(17) For Blood Draw Evidence in Boating DUI Case 620

(18) For violations of P.C. § 647(j)(1), (2), or (3) 621

For Grounds Not Listed 622

Other Provisions: 623

P.C. § 1534(c): Duplicate Originals 623

P.C. § 1534(d): Returns 623

P.C. §§ 1524.2(b) and 1524.3(a), re: Records of Foreign Corporations 623

Other Case Law 623

The Affidavit to the Search Warrant: 623

Defined 623

Probable Cause 623

DNA Swab Search Warrant Taken for the Purpose of Eliminating Others as a Suspect 630

Minimum Contents: 631

The Name or Names of the Affiant(s) 631

The Statutory Grounds for Issuance 631

A Physical Description of the Persons, Places, Things and Vehicles to be Searched 632

A Physical Description of the Persons, Things or Property to be Seized 632

A Detailed Statement of the Expertise of the Affiant 632
A Chronological Narrative and Factual Description of the Probable Cause 632

Police Reports, Charts, Maps, Etc. 633

The Affiant’s Conclusion 633

Justification for a Nighttime Search 634

The “Reasonable Particularity” Requirement; The Persons, Places, Things and Vehicles to be Searched: 634

Rule 634

Factors 635

Suggested Procedures 635

Good Faith 636

Cases 636

The “Reasonable Particularity” Requirement; The Property to be Seized: 640

Rule 640

Issues 640

Cases 640

General Warrants 646

Supplementing the Affidavit 650

Combined Affidavit with Warrant 651

Multiple Affiants/Affidavits 651

Staleness: 651

Drug Sales Cases 652

Animal Cruelty Case 652

Exception: Historical Warrants 653
Other Exceptions 653

Fingerprints 655

Description of the Facts; Factual vs. Conclusory Language 656

Good Faith 656

Use of Hearsay 657

_Miranda_ 657

Third Party’s Fourth Amendment Violation 657

Privileged Information:

Rule; Passive Recipient 658

Deliberate Violation 658

Cases 658

Proposed California Rule of Professional Conduct Rule 4.4 659

Nighttime Searches 660

Leaving a Copy at the Scene 661

P.C. § 964: Victim and Witness Confidential Information 661

The Receipt and Inventory 661

Sources of Information Establishing Probable Cause:

Other Police Officers 662

Citizen Informants 663

Reliable (“Tested”) Informants 666

Unreliable (“Untested”) Informants 667
Anonymous Informants: 668
Rule 668
Corroborations: 669
Rule 669
Examples 670
Keeping Confidential Informants Confidential: 671
Problem 671
Rule 671
Restrictions 671
Revealing an Informant’s Identity 672
Procedure 672
Motions to Reveal the Identity of an Informant 672
Luttenberger Motions; Discovering An Informant’s Background History 673
An Informant Sworn Before A Magistrate; A Skelton Warrant 674
P.C. § 1111.5; Uncorroborated In-Custody Informants 674
Probable Cause Issues: 675
Anonymous Information 675
Searches of a Residence: 675
Stolen Property 675
The Cleland Warrant; Narcotics 675
Trashcan Searches 676
Computer Searches: 677
  Rule 677
  Cases 677
Miscellaneous Searches 680
Conspiracy 680
Use of a Search Warrant: 680
  Rule 680
Exceptions: 681
  Exigent Circumstances 681
  Consent 681
  Probationary or Parole Fourth Waiver Searches 681
  Inevitable Discovery 682
  Searches of Vehicles 683
  Searches of Persons with Probable Cause 683
  Searches Incident to Arrest 683
  Administrative/Regulatory Searches 684
Crime Scene Searches: 684
  Murder Scene 684
  Arson Scene 684
Bank Records: 685
  Right to Privacy Act; Gov’t. Code §§ 7460-7493: 685
    Customer Authorization 685
    Administrative Subpoena or Summons 685
Search Warrant 685
Judicial Subpoena or Subpoena Duces Tecum 685
Police Request 686
Victimized Financial Institution 686
Case Law 686
Mortgage Fraud Records: 687
P.C. § 532f(a): Mortgage Fraud 687
Commercial Mail Receiving Agency Records: 687
B&P Code § 22780: Postal Service Form 1583 687
Credit Card Information 688
Telephone Records: 688
Unlisted Numbers 688
Telephone Calls Made 689
Certification for Non-Disclosure 689
Pen Registers and Trap and Trace Devices: 689
P.C. § 638.50: Definitions: 690
Wire Communication and
Electronic Communication 690
Pen Register 690
Trap and Trace Device 690
P.C. § 638.51: Prohibitions on Installation of Pen
Registers and Trap & Trace Devices; Exceptions 691
P.C. § 638.52: Court Orders 691
P.C. § 638.53: Emergency Court Orders 695
P.C. § 638.54: Notice to Identified Targets; Order Delaying Unsealing of Order and Notification 696

P.C. § 638.55: Motion to Suppress; Civil Action by Attorney General to Compel Compliance; Petition to Void or Modify Warrant, Order, or Process, or for Destruction of Information 697

Pen. Code § 1546.1: Search Warrants and Pen Registers and Trap and Trace Devices 698

Federal Rules: 698

A “Mirror Port” 698

18 U.S.C. § 3121; Expanded Definitions 699


California’s Stricter Rules 700

Records of Foreign Corporations Which Provide Electronic Communications Services or Remote Computing Services to the General Public: 701

P.C. § 1524.2: Out-of-State Electronic Communications Information 701

P.C. § 1524.3(a): Records of Foreign Corporations Providing Electronic Communications or Remote Computing Services 703

 Marijuana Issues: 704

H&S Code § 11485: Disposition of Personal Property Seized Pursuant to a Search Warrant 704

Validity of a Search Warrant 704

Limitations on the Use of Search Warrants: 705

Newsroom Searches 705
Searches of, and on Tribal Property: 705

Search Warrants 705

Applicability of the Fourth Amendment 706

Jurisdictional Issues 707

Search of Unauthorized Cell Phone Recovered at CDCR 707

Mechanics of Preparation 707

Service and Return: 709

Who May Serve: 709

Only a Peace Officer 709

Exceptions 709

Rules as to Others Who are Not California Peace Officers: 710

Federal Criminal Investigators and Federal Law Enforcement Officers 710

Victims 711

Police Dogs 711

News Media, Etc. 711

Necessity to Serve 711

Night Service 712

Use of a Motorized Battering Ram 712

In-County Service 713

Out-of-County Service 713

Out-of-State Crimes 713

Knock and Notice: 714

General Rule 714
P.C. § 1531: Authority to Break Open any Door or Window 714

Purpose 714

Problem 715

Exceptions: 715

   Businesses 715

   Inner Doors of a Residence 716

Refusal: 716

   Implied Refusal 716

   Reasonable Time 716

Exigent Circumstances 718

Doctrine of Substantial Compliance 721

No-Knock Search Warrants 722

Entry by Ruse 724

Standing: An Absent Tenant 725

Sanctions for Violations 726

Not Necessarily a Fourth Amendment Violation 729

Seizing Items not Listed in the Warrant: 731

   Plain View Doctrine 731

   Problem of Overbreadth 733

P.C. § 1542.5: Seizure of a Restrained Person’s Firearms During the Execution of a Search Warrant 737

Answering the Telephone 738
Detentions in a Residence During the Execution of a Search Warrant 740

Time Limitations 740

One Continuous Search 741

Leaving a Copy of the Warrant: 742
   The Receipt and Inventory 742
   The Federal Rules of Criminal Procedure, Rule 41(d) 742
   The Ninth Circuit Court of Appeal’s Opinion 743

Destruction of Property 745

Sealing the Warrant Affidavit; the “Hobbs Warrant:” 746
   The Problem 746
   The Solution 746
   No Right to Public Access 747
   How Accomplished 747
   When Warrants May be Sealed 747

Criticism of Procedure 748

Court Procedures 749

Retention of the Documents 752

Wiretap Case 752

Post-Investigation Disposition of Warrant Application and Supporting Affidavits 753

Return of Property: 753
   Rule 753
   Stolen or Embezzled Property 753
Unclaimed Property 753
Case Law 754
Federal Rules 754
Burden of Proof when the Return of Property is Contested 755
Marijuana Cases: 756
  H&S Code § 11473.5 756
  Case Law 756
Extensions 757
Special Masters: 758
  Rule 758
  When Not Applicable 759
  The “Special Master” 759
  Documentary Evidence 759
  Procedure 758
  The Court Hearing 760
  Other Service Conditions 761
  The Electronic Communications Privacy Act 761

Other Warrants: 761
  Inspection (or Administrative) Warrants: 761
    A Regulatory Scheme 761
    CCP §§ 1822.50: Definition of Inspection Warrant 762
    CCP § 1822.51: Consent:
      If Consent is Refused 762
Necessary Showing 762

Examples: 763

Residences 763

Commercial Areas 763

CCP § 1822.53: Examination of Witnesses 764

CCP § 1822.54: Issuance and Contents of Warrant 764

CCP § 1822.55: Duration, Extension or Renewal of Warrant; Execution and Return 764

CCP § 1822.56: Manner of Inspection; Notice 764

CCP § 1822.57: Punishment 765

CCP § 1822.58: Inspections by Personnel of Fish and Game Department 765

CCP § 1822.59: Inspections for Purpose of Animal or Plant Pest or Disease Eradication 765

CCP § 1822.60: Warrant for DOJ Inspections 766

Hotels and Motels 766

Entry to Make Arrests 766

Rendition (or Extradition): 766

Art. IV, § 2, Clause 2, U.S. Constitution 766

The Implementing Statute; 18 U.S.C. § 3182 766

International Extraditions 767

Extradition by the States: Uniform Criminal Extradition Act: 767

P.C. § 1548.1; The Governor’s Duty 767
Procedure: 767

P.C. § 1548.2: The Demand 767

P.C. § 1548.3: Investigating the Demand 768

P.C. §§ 1547 et seq:
The Governor’s Warrant 768

Waiver of Extradition; P.C. § 1555.2 768

Ignoring Extradition Treaties 769

Unlawful Flight to Avoid Prosecution (“UFAP”): 769

Scope 769

The Primary Purpose 769

Procedure 769

Parental Kidnappings 770

Avoiding Custody or Confinement 770

Avoiding Giving Testimony 770

Avoiding Service of Process 770

State Extradition 770

Dismissal of Federal Complaint 771

Wiretaps and Eavesdropping: 771

Wiretaps vs. Right to Privacy: 771

Federal Omnibus Crime Control and Safe Streets Act
of 1968 vs. P.C. §§ 629.50 et seq. 771

P.C. § 630: California: Statement of Legislative Purpose 772

P.C. § 632: Eavesdropping or Recording Confidential
Communications 772
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>P.C. § 632.01</td>
<td>Disclosure or Distribution of Confidential Communications with a Health Care Provider</td>
</tr>
<tr>
<td>P.C. § 633</td>
<td>Exception: Law Enforcement</td>
</tr>
<tr>
<td>P.C. § 633.5</td>
<td>Exceptions: Recording by Party to the Communication for the Purpose of Obtaining Evidence</td>
</tr>
<tr>
<td></td>
<td>Jail and Prison Inmates</td>
</tr>
<tr>
<td>P.C. § 631</td>
<td>Wiretapping:</td>
</tr>
<tr>
<td>Subd. (a)</td>
<td>Prohibitions:</td>
</tr>
<tr>
<td></td>
<td>The Prohibitions</td>
</tr>
<tr>
<td></td>
<td>Punishment</td>
</tr>
<tr>
<td></td>
<td>Fourth Amendment</td>
</tr>
<tr>
<td>Subd. (b)</td>
<td>Exceptions:</td>
</tr>
<tr>
<td></td>
<td>In General</td>
</tr>
<tr>
<td></td>
<td>Prisoner Visitors</td>
</tr>
<tr>
<td>Subd. (c)</td>
<td>Non-Admissibility of Resulting Evidence</td>
</tr>
<tr>
<td>Similar Restrictions:</td>
<td></td>
</tr>
<tr>
<td>P.C. § 632</td>
<td>Electronic Eavesdropping in General</td>
</tr>
<tr>
<td>P.C. § 632.5</td>
<td>Cellular Radio Telephone Communications</td>
</tr>
<tr>
<td>P.C. § 632.6</td>
<td>Cordless Telephone Communications</td>
</tr>
<tr>
<td>P.C. § 632.7</td>
<td>Recording Communications Between Cellular Radio Telephones and Cordless Telephones or a Landline Telephone</td>
</tr>
</tbody>
</table>
A Controlled Phone Call

P.C. §§ 629.50 through 629.98: Implementation of Wiretaps

P.C. § 629.50: Requirements for a Wiretap Order:

Application for a Wiretap Order:

Made in Writing Upon the Personal Oath or Affirmation

Be Made To . . .

Included Information

P.C. § 629.51: Definitions:

Wire Communication

Electronic Pager Communication

Electronic Cellular Telephone Communication

Aural Transfer

P.C. § 629.52: Authority to Issue a Wiretap Order

P.C. § 629.53: Judicial Guidelines

P.C. § 629.54: Contents of the Wiretap Order

P.C. § 629.56: Oral Approval in Lieu of Court Order

P.C. § 629.58: Duration of a Wiretap Order

P.C. § 629.60: Progress Report

P.C. § 629.61: Report to Attorney General

P.C. § 629.62: Annual Report to the Legislature

P.C. § 629.64: Recording, Sealing and Retaining Intercepted Communications

P.C. § 629.66: Application and Orders to be Sealed
P.C. § 629.68:  Notice to Parties to Intercepted Communications  802

P.C. § 629.70:  Discovery Prerequisites to Use in Evidence  803

P.C. § 629.72:  Motions to Suppress  804

P.C. § 629.74:  Disclosure to Other Law Enforcement Agencies  805

P.C. § 629.76:  Use of Intercepted Information  806

P.C. § 629.78:  Disclosure of Intercepted Information in Testimony  806

P.C. § 629.80:  Privileged Communications  806

P.C. § 629.82:  Interception of Communications Relating to Crimes Other Than Those Specified in the Authorization Order:  808

Violent Felonies  808

Other Than Violent Felonies  808

Right to Notice and Copy  809

The “Plain View” Doctrine  809

P.C. § 629.84:  Criminal Punishment for Violations  810

P.C. § 629.86:  Civil Remedies for Unauthorized Interceptions  810

P.C. § 629.88:  Effects of Other Statutes  811

P.C. § 629.89:  Covert Residential Entries  811

P.C. § 629.90:  Order for Cooperation of Public Utilities, Landlords, Custodians and Others  812

P.C. § 629.91:  Civil or Criminal Liability; Reliance Upon Court Order  812
P.C. § 629.92: Authority to Conform Proceedings and Order to Constitutional Requirements 812

P.C. § 629.94: Training and Certification of Law Enforcement Officers 813

P.C. § 629.96: Severability 813

P.C. § 629.98: Automatic Repeal 814

P.C. § 632: Eavesdropping, Compared 814

P.C. § 633.8: Eavesdropping in Hostage or Barricading Situations 815

Chapter 7: 817

Warrantless Searches: 817

General Rule 817

Exceptions to the Search Warrant Requirement 817

Plain Sight Observations: 818

Rule 818

No Search 818

Justification for a Seizure 818

No Expectation of Privacy 819

Examples 819

Exception 821

The “Plain Sight Observation” vs. the Right To Enter a Residence 821

Plain Hearing 822

Plain Smell: 822

General Rule 822
Odors in a Residence 823
Odor on the Person 823
Odors in Vehicles: 824
  Pre-Legalization 824
  Other Jurisdictions 824
  Post-Legalization: 825
    Issue 825
    Legal Argument 825
    Case Law 828
Odor of Ether in a Residence 830
Odor From a Container 830
Exigent Circumstances: 831
  Defined 831
  Rule 832
  Examples: 832
    Destruction of Evidence 832
    Officers’ Safety 834
    Fresh or Hot Pursuit 834
    Search for Additional Suspects 835
    Protection of Life and Property 835
    To Prevent the Escape of Suspects, or When Suspects Arm Themselves 837
    Requirement of a Pre-Seizure Hearing 837
Warrantless Seizure of a Child for Protective Custody Purposes 838

Special Needs Searches: 840

Test 840

Examples: 842

Random Testing of Student Athletes 842

Suspicionless Drug Testing of Teachers and Administrators 842

Random Metal Detector Searches of Students 842

Search of a Student’s Computer 842

Drug Testing for United States Customs Service Employees 842

Searches of Employees’ Backpacks 842

Pre-Departure Airport Screening Procedures 842

Drug and Alcohol Testing for Railway Employees 842

Administrative Inspections of Closely Regulated Businesses 843

Administrative Inspection of Fire-Damaged Premises 843

Administrative Housing Code Inspections 843

Border Patrol Checkpoints 843

Sobriety Checkpoints 843

Entry into a Residence to Enforce a Court Order 843

Fourth Waiver Searches 843

A Search Warrant Issued Pursuant to P.C. § 1524.1 (i.e., HIV) 843
Taking of Biological Samples for DNA Databases 843

Search of Luggage in a Subway Facility 844

The Search of a High School Student’s Pockets 844

Enforcement of Fish and Game Regulations 844

Depriving Parents of the Liberty Interest in the Care, Custody and Control of their Child due to Medical Necessity 845

Breathalyzer Tests for Police Officers Involved in Shootings 845

Home “Walk-Throughs” for Purposes of Determining Welfare Eligibility 845

Text Messages from a Police Officer’s City Owned Pager 845

Searching of School Lockers for a Weapon 846

Jail Booking Strip Searches 846

Exceptions to Exceptions: 846

A Highway Drug Interdiction Checkpoint 846

A State Hospital Blood Testing Program 846

Examples Where the “Special Need” Fails to Outweigh a Person’s Right to Privacy: 847

Preemployment Drug and Alcohol Screening Requirement for Part Time Minor Employees 847

A Urinalysis Drug Test Requirement for Candidates for Public Office 847

Drug Testing for Lesser Customs Employees 847

A State Hospital’s Drug Testing Policy for Unwed Mothers 847

Ixvi
A Forced Warrantless Extraction of a DNA Sample 847

Interviewing a Child Victim on a School Campus 847

Closely or Pervasively Regulated Businesses or Activities: 848

Rule 848

Criteria: 848

Substantial Governmental Interest 848

Necessary Warrantless Inspections 848

A Constitutionally Adequate Substitute for a Warrant 848

General Examples: 849

Commercial Trucking 849

A County Jail 849

Liquor Sales 849

Firearms Dealers 849

Mining 849

Automobile Junkyards 849

Where Licenses Include a Consent to Search 849

Exceptions: 850

Hotels and Motels 850

As an Excuse to Perform a Criminal Function 850

Other California or United States Regulatory/Administrative Searches: 851

Vehicle Code: 851

V.C. § 13353: Blood or Breath Test for D.U.I. Arrestees 851
V.C. § 320(b): Auto Dismantlers 858

V.C. § 2805: CHP and Auto Theft Detectives
Stolen Parts Investigations 858

Penal Code: 858

P.C. § 171e: Inspection of a Firearm in State
Buildings and Residences 858

P.C. § 25850(b): Inspection of a Firearm
in a Public Place. 858

P.C. § 18250: Seizure of Deadly Weapons
at Domestic Violence Scenes 859

Fish and Game Code: 859

F&G § 8011 859

Cases 859

Financial Code: 860

Fin. Code § 21206: Inspection of Pawned Property 850

United States Code: 860

14 U.S.C. § 89(a): The Coast Guard Search
Authority 860

49 U.S.C. § 44901: Transportation Security
Administration (TSA) Search Authority 860

Miscellaneous: 861

Arson Investigations 861

School Searches: 861

Rule 861

Students in General: 861

Rule 861
Constitutional Protections and Statutory Restrictions: 861

Cal. Const., article I, section 28(c) 861

Ed. Code § 49050 863

Case Law 863

Athletics and Extracurricular Activities; Drug Tests: 867

School athletics 867

Extracurricular activities 867

Airport Searches: 867

Reasonableness 867

Second, Random Screening 868

Baggage Searches 869

The Minimal Intrusion Exception: 869

General Rule 869

Federal Cases 869

California Law 870

Chapter 8: 871

Searches of Persons: 871

Privacy Rights 871

Rule 871

Search Incident to Arrest: 872

History Behind the Rule 872

Legal Justification 872
Exceptions: 873

Cellphones 873
Blood Samples in DUI Cases 874
Physical Body Cavity Searches 874
Legal Justification Under Debate 875

Transportation Requirement: 876
Custodial Arrest Requirement 876
Transporting an Arrested Minor 880

Contemporaneous In Time and Place: 881
General Rule 881
Search Before or After Arrest 884
Exceptions 884

Other Requirements and Limitations: 885
Search Incident to a Citation 885
Searches of Containers 886
Property of Booked Person 886
Arrest in the Home 887
Arrest in a Vehicle 888

Exceptions: 888
Strip Searches 888
Cellphones Found on the Person 888

Searches with Probable Cause: 889
The Exigency 889
Choking: 909

Rule 909

Examples 909

Searches with Less Than Probable Cause: 910

Persons in Pervasively Regulated Industries or Sensitive Positions: 910

Government Employees 910

Railway Workers 910

Drug Testing for Customs Officers 910

Exceptions: 910

Candidates for Public Office 910

A State Hospital’s Drug Testing Policy for Unwed Mothers 910

For Students 911

Frisks (or Patdowns or Patsearches) for Offensive Weapons: 911

Defined 911

Constitutionality 911

Articulable Facts 912

For Weapons Only 913

A Reasonable or Rational Suspicion 913

Factors to Consider 916

The Nature of the Crime as a Factor 917

The “Totality of the Circumstances” 919

Reasonable Suspicion that is Dispelled 919

Ixxii
Vehicle Drivers and Passengers 920

Consensual Patdowns 920

Permissible Procedures: 921
  Limited to Outer Clothing; Exceptions 921
  Removal of Weapons 921
  When Suspect Reaches for a Weapon 921

P.C. § 833.5; Detentions 922

Problems: 922
  During Consensual Encounter 922
  During Execution of a Search Warrant or a Fourth Waiver Search 922
  Feeling a Controlled Substance: The “Plain-Feel” Doctrine 923
  Frisk Based Upon Uncorroborated Anonymous Tip 925

Other Situations 927

Abandoned Property: 927
  General Rule 927
  Trashcans 929
  The “Threatened Illegal Detention” 930

Searching for Identification: 931
  General Rule 931
  Exceptions 931
Fingerprint Evidence: 932

No Right to Refuse, Upon Arrest 932
Use of Force 933
Refusal Upon Less than an Arrest 934
Right to Assistance of Counsel 934

Handwriting (and Other Types of) Exemplars 934

Jail, Prison, and Prisoner Searches: 935

Booking Inventory Searches: 935
Scope 935
Purposes 935
Justifications 936
Belated Search Incident to Arrest 936
Containers: 936
Exception; Cellphones 937
Post-Booking Searches of Impounded Property: 937
Exceptions 937
Strip Searches of Prisoners: 939
Fifth and Fourteenth Due Process, and Fourth Amendment Search and Seizure Issues: 939
Rule 939
The Fourth Amendment 939
The (Fifth and) Fourteenth Amendment(s); Due Process 939
Reasonableness 940
Visual Body Inspections

Strip Searches Restricted

Strip Searches Upheld

Resolution of the Conflict

Continued Limitations

Misdemeanor (and Infraction) Booking Searches:

Due Process

Statutory Rules:

P.C. § 4030(a): Legislative Purpose

P.C. § 4030(b): For Pre-Arraignment Detainees Arrested for Infractions and Misdemeanor Offenses

Definitions:

P.C. § 4030(c)(1): Body Cavity

P.C. § 4030(c)(2): Physical Body Cavity Search

P.C. § 4030(c)(3): Strip Search

P.C. § 4030(c)(4): Visual Body Cavity Search

P.C. § 4030(d)(1): Authorization for Patdown, Metal Detector, Body Scanners and Thorough Clothing Searches:

Subd. (d)(2): Pregnant Women and Body Scanners

P.C. § 4030(e): Restrictions on Strip & Visual body Cavity Searches
P.C. § 4030(f)(1) & (2): Restrictions on Confinement in General Jail Population 946

P.C. § 4030(g): Restrictions on Physical Body Cavity Searches; Search Warrant Requirement 947

P.C. § 4030(h): Recording of Required Documentation 948

P.C. § 4030(i): Touching Restrictions 948

P.C. § 4030(j): Physical Body Cavity Search Requirements 948

P.C. § 4030(k)(1): Same Sex Requirements:
  Subd. (k)(2): Same Sex Viewing Body Scanners 948

P.C. § 4030(l): Privacy for Strip, Visual, or Physical Body Cavity Searches 948

P.C. § 4030(m): Criminal Penalties for Violations 949

P.C. § 4030(n), (o): Civil Remedies for Violations 949

P.C. § 4031: Searches of Minors in Juvenile Detention Centers:
  Subd. (a): Applicable to all Minors Held in Juvenile Detention Centers 949
  Subd. (b): Restriction on Touching 949
  Subd. (c): Restrictions on Physical Body Cavity Searches 949
Subd. (d): Same Sex Requirements for Visual or Physical Body Cavity Searches

Subd. (e): Privacy Requirements for Strip, Visual, and Physical Body Cavity Searches

Subd. (f): Criminal Penalties for Violations

Subd. (g): Other Civil and Criminal Remedies for Violations

Subd. (h): Civil Actual, Punitive, or Injunctive Relief for Violations

Subd. (i): Remedies for Persons Described in P.C. § 4030(b) Not Limited

Additional Case Law

Searches of Jail Cells

Male Correctional Officers and Female Inmates; P.C. § 2644

Monitoring of Jail Visitations and Telephone Calls:

Rule

Exceptions:

P.C. § 636(a): Eavesdropping on Conversations with an Attorney, Religious Advisor, or Licensed Physician

Lulling an Inmate into Believing a Conversation was Confidential

Monitoring Jail Mail
Regulating Jail/Prison Visitations:

Rule

Exceptions

The Rule of *Estes v. Rowland*

A “Manual” or “Physical” Body Cavity Search of a Jail Visitor

A Prisoner’s Retained Constitutional Rights:

Infringement of Rights

Rights Retained by Prison Inmates

P.C. §§ 295 et seq: The DNA and Forensic Identification Database and Data Bank Act of 1998:

DNA Testing

California’s Statutes:

P.C. § 295(a): Name of the Act

P.C. § 295(b): Statement of Intent

P.C. § 295(c): Purpose

P.C. § 295(d): Identification of Criminal Offenders

P.C. § 295(e): Biological Samples Limited to “Buccal” Swab Samples

P.C. § 295(f): Collection of Blood Samples

P.C. § 295(g) & (h): DNA and Forensic Identification Database and Data Bank Program

P.C. § 295(i): Counties’ Responsibilities

P.C. § 295(j): Costs

P.C. § 295(k): DNA Testing Fund
P.C. § 295(l): The “Jan Bashinski DNA Laboratory.” 965

P.C. § 295.2: Prohibition on DNA Being Used for Testing, Research, or Experiments 965

P.C. § 296(a): Offenders Subject to Collection of Specimens, Samples and Print Impressions 965

P.C. § 296(b): Applies to All Qualified Persons Regardless of Sentence 967

P.C. § 296(c): Applies to All Qualified Persons Regardless of Placement 967

P.C. § 296(d): Provisions are Mandatory 968

P.C. § 296(e): Duty of a Prosecutor to Notify the Court 969

P.C. § 296(f): Duty of a Court to Inquire 969

P.C. § 296.1(a): Collection of Samples For Present and Past Qualifying Offenses 969

P.C. § 296.1(b): Retroactivity of Provisions 974

P.C. § 296.2: Procedures for Obtaining Replacement Samples 974

P.C. § 297: Analysis of Crime Scene Samples 974

P.C. § 298: Procedures for Collection of Samples 974

P.C. § 298.1(a): Sanctions for Failure to Provide Required Samples 975

P.C. § 298.1(b)(1): Use of Force 976

P.C. § 298.1(b)(2): Withdrawal of Blood in a Medically Approved Manner 976


P.C. § 298.1(c)(1)(B), (2)(B): Written Authorization to Use Force 976
P.C. § 298.1(c)(1)(C), (2)(C): Efforts to Secure Voluntary Compliance 976

P.C. § 298.1(c)(1)(D), (2)(D): Videotaping of “Cell Extractions” 976

P.C. § 299: Expungement of Data 976

P.C. § 299.5: Confidentiality Requirements 980

P.C. § 299.6: Dissemination of Information to Law Enforcement Agencies 981

P.C. § 299.7: Disposal of Samples 982

P.C. §§ 300 et seq.: Construction and Severability 982

Case Law 982

Taking DNA Samples from Minors: 986

Wel. & Inst. Code § 625.4: 986

Subd. (a): Conditions for Requesting Voluntary DNA Samples 986

Subd. (b): No Right to Counsel 986

Subd. (c): Unreasonable Extension of Detention 986

Subd. (d): Admissibility of DNA Sample 987

Subd. (e): Expungement of DNA Sample if Minor No Longer a Suspect 987

Subd. (f): Requests for Expungement of DNA Sample 987

Subd. (g): DNA Samples for Use in Other Investigations 987

Subd. (h): Penalty for Violation of this Section 987

Subd. (i): Scope of This Section 987

Ixxx

© 2019 Robert C. Phillips. All rights reserved.
Chapter 9:

Searches of Vehicles: 989

General Rule 989

Warrantless Searches of Vehicle 989

Incident to Arrest: 989

The Rationale 989

Containers in the Vehicle: 990

Rule 990

Exception; Cellphones 991

Probable Cause Not Needed 991

Limitations: 991

The Lunting Area 991

Contemporaneous in Time and Place 992

Limitation of the Chimel/Belton “Bright Line” Test: 993

Rule Criticized 993

Arizona v. Gant 994

Gant’s Alternative Theory 995

Subsequent Case Law 997

Exception 1000

Exception to Exception 1001

Retroactivity 1001

Transportation 1002

Search Incident to a Citation 1003
Searches where Arrestee is a “Recent Occupant:”

Old Rule

New Rule

Search With Probable Cause:

General Rule

Justifications for the Rule:

The Ready Mobility of the Automobile

The Lessened Expectation of Privacy

The Expense, Delay, and Risk of Loss in Securing a Vehicle

The Need for Clear Guidelines for Police

Case Law

Problem: Limited Amount of Contraband

Problem: More than One Occupant

Problem: Vehicle Already Impounded

Problem: Closed Containers:

Old Rule

New Rule

Problem: When the Vehicle is Parked in the Curtilage of a Residence

Problem: When the Item Searched is a Cellphone

Problem: Motorhomes (and Other Similar Vehicles)

Problem: Expanding the Scope of the Search

lxxxii
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Probable Cause</td>
<td>1022</td>
</tr>
<tr>
<td>When the Vehicle Itself is Evidence of a Crime</td>
<td>1023</td>
</tr>
<tr>
<td>Inventory Searches and Impounding Vehicles:</td>
<td>1025</td>
</tr>
<tr>
<td>General Rule</td>
<td>1025</td>
</tr>
<tr>
<td>The “Standardized Procedures” Requirement</td>
<td>1025</td>
</tr>
<tr>
<td>Closed Containers</td>
<td>1026</td>
</tr>
<tr>
<td>Pretex Impounds</td>
<td>1027</td>
</tr>
<tr>
<td>Inventory Searches as an Exception to the Rule of Whren v. United States</td>
<td>1030</td>
</tr>
<tr>
<td>The Community Caretaking Doctrine</td>
<td>1031</td>
</tr>
<tr>
<td>When Alternatives to Impounding a Vehicle are Available</td>
<td>1037</td>
</tr>
<tr>
<td>V.C. § 14602.6(a)(1): Driving on a Suspended License (or Never Had a License), per V.C. § 14601.1 (or V.C. § 12500)</td>
<td>1038</td>
</tr>
<tr>
<td>Impounding a Vehicle Used for Prostitution, Etc., per Local Ordinance:</td>
<td>1040</td>
</tr>
<tr>
<td>Preemption</td>
<td>1040</td>
</tr>
<tr>
<td>V.C. § 22659.6: Pilot Program</td>
<td>1040</td>
</tr>
<tr>
<td>V.C. § 2814.2: Impoundment of a Vehicle at a Sobriety Checkpoint</td>
<td>1043</td>
</tr>
<tr>
<td>Discovery</td>
<td>1044</td>
</tr>
<tr>
<td>“Patdown” (or “Protective Search”) of a Vehicle:</td>
<td>1044</td>
</tr>
<tr>
<td>General Rule</td>
<td>1044</td>
</tr>
<tr>
<td>Examples</td>
<td>1044</td>
</tr>
</tbody>
</table>
Statutory Automobile Inspections: 1046

V.C. § 2805(a): 1046
Elements 1046

V.C. § 2805(b): 1047
Elements 1047

Penalties for Refusal to Comply 1048

Relevant Definitions: 1048

Identifiable Vehicle Component; V.C. § 2805(a) 1048
Garage; V.C. § 340 1049
Repair Shop; V.C. § 510 1048
Terminal; V.C. § 595 1048
Automobile Dismantler; V.C. § 220 1048

Case Law 1049

Use of Force 1050

Non-Commercial Property 1050

Statutory Automobile Searches: 1051

V.C. § 9951(c)(2): Downloading the Contents of an “Event Data Recorder:” 1051

Court Order Requirement 1051
Subd. (b) “Recording Device,” Defined 1051
Subd. (d): Information Retrieved for Diagnostic Purposes 1051
Subd. (f): Vehicles Manufactured After July 1, 2004, Only 1051

Case Law 1052
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>V.C. § 2814.1: Vehicle Checkpoints</td>
<td>1052</td>
</tr>
<tr>
<td>V.C. § 2810.2(d) &amp; (e): Vehicle Stops Involving Agricultural Irrigation Supplies</td>
<td>1053</td>
</tr>
<tr>
<td>Searching for Driver’s License and Vehicle Documentation:</td>
<td>1053</td>
</tr>
<tr>
<td>General Rule</td>
<td>1053</td>
</tr>
<tr>
<td>Exceptions</td>
<td>1053</td>
</tr>
<tr>
<td>Searches for Vehicle Documentation</td>
<td>1054</td>
</tr>
<tr>
<td>Checking for a Vehicle’s Identification Number (“VIN”)</td>
<td>1055</td>
</tr>
<tr>
<td>Seizure and Searching of Vessels:</td>
<td>1055</td>
</tr>
<tr>
<td>Subd. (a): Authority for Peace Officers to Remove Vessels; Circumstances</td>
<td>1055</td>
</tr>
<tr>
<td>Subd. (b): Costs</td>
<td>1056</td>
</tr>
<tr>
<td>Subd. (c): Authority for Peace Officers to Remove and Store Vessels; Circumstances</td>
<td>1056</td>
</tr>
<tr>
<td>Subd. (d): “Vessel,” Defined</td>
<td>1057</td>
</tr>
<tr>
<td>Har. &amp; Nav. Code § 663: Peace Officer Defined</td>
<td>1057</td>
</tr>
<tr>
<td>Chapter 10:</td>
<td>1058</td>
</tr>
<tr>
<td>Searches of Residences and Other Buildings:</td>
<td>1058</td>
</tr>
<tr>
<td>General Rule</td>
<td>1058</td>
</tr>
<tr>
<td>Private Residences &amp; Expectation of Privacy</td>
<td>1058</td>
</tr>
<tr>
<td>Other Buildings and Places:</td>
<td>1060</td>
</tr>
<tr>
<td>Commercial Businesses</td>
<td>1060</td>
</tr>
<tr>
<td>Hotel &amp; Motel Rooms:</td>
<td>1060</td>
</tr>
</tbody>
</table>
Hotels 1060
Motels 1061
In General: 1061
  Expired Tenancy 1061
  Renting a Room by Fraud 1062
  Abondonment 1063
  The Guest Regester 1064
Civ. Code § 53.5: Releasing Guest Information to Non-California Peace Officers 1065
  Boarding House 1066
  Garage 1066
  Fishing Retreat 1066
  Hospital Room 1066
  Jail Cell 1066
  Shack 1066
  Recreational Vehicles 1066
  Military Housing 1067
Curtilage of the Home:
  Rule 1067
  General Case Law 1067
  Specific Examples 1068
  Warrantless Entry into the Curtilage 1069
  Exceptions 1071
Temporary or Impermanent Residences: 1073

General Rule 1073

Tents 1073

A Cardboard Box 1074

A Cave on Federal Property 1074

In a “Squatter’s Community” on Public Property 1974

Under a Bridge Abutment 1075

Businesses: 1075

Rule 1075

Case Law 1075

Workplace Searches of Government Employees: 1076

Rule 1076

Reasonableness 1077

Public Restrooms, Adult Bookstores and Dressing Rooms: 1077

Rule 1077

Examples: 1077

Pay Toilets 1077

Men’s Restroom in a Department Store 1077

Doorless Stall in a Public Restroom 1078

Curtained Booth in an Adult Bookstore 1078

Fitting Room in a Department Store 1078

Spying into Bathrooms, Etc.; Statutes: 1078

P.C. § 647(k)(1): Through a Hole or Opening 1078
P.C. § 647(k)(3): Use of Cameras 1078

P.C. § 653n: Two-Way Mirrors 1079

Problem: When Officers Trespass 1079

Securing the Premises Pending the Obtaining of a Search Warrant: 1080

Fourth Amendment 1080

General Rule 1080

Exigency of the Officers’ Own Making: 1080

With Probable Cause 1080

With No Probable Cause 1082

New Rule? 1082

Securing Cases 1083

Miscellaneous Issues: 1084

Detention of a Residence 1084

Detaining Residents Outside 1085

Knock and Talk: 1085

Rule 1085

Test 1086

Legal Knock and Talks 1086

Illegal Knock and Talks 1087

The Doctrine of “Consent Once Removed” 1089

Observing Contraband from Outside 1089

Using a Ruse to Cause a Suspect to Open his Door: 1090

Split of Authority 1090
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Held to be Illegal</td>
<td>1090</td>
</tr>
<tr>
<td>Held to be Legal</td>
<td>1092</td>
</tr>
<tr>
<td>Possible Resolution: <em>Kentucky v. King</em></td>
<td>1093</td>
</tr>
<tr>
<td>Searches Incident to Arrest:</td>
<td>1093</td>
</tr>
<tr>
<td>In a Residence</td>
<td>1093</td>
</tr>
<tr>
<td>The Protective Sweep:</td>
<td>1095</td>
</tr>
<tr>
<td>Defined</td>
<td>1095</td>
</tr>
<tr>
<td>Limitation</td>
<td>1096</td>
</tr>
<tr>
<td>Arrests Outside</td>
<td>1099</td>
</tr>
<tr>
<td>Detentions Outside</td>
<td>1100</td>
</tr>
<tr>
<td>Commercial Establishment</td>
<td>1100</td>
</tr>
<tr>
<td>Other Situations</td>
<td>1100</td>
</tr>
<tr>
<td>Plain Sight Observations:</td>
<td>1102</td>
</tr>
<tr>
<td>Rule:</td>
<td>1102</td>
</tr>
<tr>
<td>Limitation; Necessity of a Search Warrant</td>
<td>1104</td>
</tr>
<tr>
<td>Preserving the Peace:</td>
<td>1105</td>
</tr>
<tr>
<td>Rule</td>
<td>1105</td>
</tr>
<tr>
<td>Case Law</td>
<td>1105</td>
</tr>
<tr>
<td>Preventing the Destruction of Evidence:</td>
<td>1106</td>
</tr>
<tr>
<td>Rule</td>
<td>1107</td>
</tr>
<tr>
<td>Case Law</td>
<td>1107</td>
</tr>
<tr>
<td>Differentiating Felony vs. Misdemeanor cases</td>
<td>1107</td>
</tr>
</tbody>
</table>
Welfare Checks; the “Community Caretaking Function;” “Exigencies,” and the “Emergency Aid Doctrine;” 1110

Rule 1110

Community Caretaking 1110

Exigency Exception 1114

Emergency Aid Doctrine 1114

The Ninth Circuit Court of Appeal 1114

California Courts in Accord 1117

The United States Supreme Court’s Rule 1118

Other Cases 1120

Misellanous Exigent Circumstances 1124

Officer Safety 1126

Animal Control Cases 1126

Fleeing Misdemeanant or Non-Dangerous Felon 1127

Emergency Exception and the Odor of Ether 1128

Executing an Arrest Warrant 1129

Sufficiency of Evidence to Believe the Suspect is Inside 1130

Third Parties Entering with Police 1132

Knock and Notice 1133

Chapter 11: 1134

New and Developing Law Enforcement Technology: 1134

The Problem 1134

Thermal Imaging Device 1137

A Buster 1137
Spike Mike

Aerial Surveillance

Drones

Facial Recognition Software and Biometric Features:
  Facial Recognition Software
  Biometric Features

Stingray (Kingfish) Device

Automated License Plate Readers

Electronic Tracking Devices (Transmitters) and “Pinging” a Cellphone:
  Electronic Tracking Devices
  P.C. § 637.7: Use of Electronic Tracking Devices
  “Pinging” a Cellphone

Flashlights and Spotlights

Binoculars

Night Vision Goggles

Controlled Tire Deflation Device (“CTDD”)

Videotaping and Photographing:
  General Rule
  Case Law
  Videotaping From Off the Property
  Videotaping and Photographing by Private Citizens
  P.C. § 632: Illegal Eavesdropping on Confidential Communications
Metal Detectors:  1158

On School Campuses  1158

At Airports  1158

Dogs:  1158

Used to Search:  1158

General Rule  1158

Sniffs of a Person  1163

Used to Track (or Trail)  1164

Use of Dogs in Making Arrests  1167

Shooting Dogs in Self-Defense  1169

Cellphones, Disks, Computers and Other High Tech Devices  1169

Chapter 12:  1170

Open Fields:  1170

General Rule  1170

Observations Into Private Areas from an Open Field  1170

Chapter 13:  1172

Searches of Containers and Electronic Devices:  1172

General Rule  1172

Exceptions to the Warrant Requirement:  1173

Incident to Arrest:  1173

Transportation Required  1173

Booking Searches  1173

Incident to Arrest, in a Vehicle  1175
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>With Probable Cause, in a Vehicle</td>
<td>1176</td>
</tr>
<tr>
<td>When at Least One Person in a Vehicle is Subject to a Fourth Waiver</td>
<td>1178</td>
</tr>
<tr>
<td>With Defendant’s Admission as to the Contents</td>
<td>1179</td>
</tr>
<tr>
<td>Abandoned Property</td>
<td>1179</td>
</tr>
<tr>
<td>During a Fourth waiver search of a Residence</td>
<td>1181</td>
</tr>
<tr>
<td>Special Needs Searches</td>
<td>1182</td>
</tr>
<tr>
<td>Other “Expectation of Privacy” Issues</td>
<td>1182</td>
</tr>
<tr>
<td>With Consent of a Third Person having Common Authority</td>
<td>1183</td>
</tr>
<tr>
<td>The “Single Purpose Container” Theory</td>
<td>1183</td>
</tr>
<tr>
<td>Containers First Searched by Non-Law Enforcement</td>
<td>1185</td>
</tr>
<tr>
<td>Exterior of a Container</td>
<td>1188</td>
</tr>
<tr>
<td>Customs Inspections</td>
<td>1189</td>
</tr>
<tr>
<td>“Manipulating,” “Squeezing” or “Poofing” Containers:</td>
<td>1189</td>
</tr>
<tr>
<td>At an Airport</td>
<td>1189</td>
</tr>
<tr>
<td>At a Bus Station</td>
<td>1189</td>
</tr>
<tr>
<td>During a Detention and Pat Down</td>
<td>1190</td>
</tr>
<tr>
<td>Detention of a Container</td>
<td>1190</td>
</tr>
<tr>
<td>Searches of Cellphones, Disks, Computers and Other High Tech Devices:</td>
<td>1194</td>
</tr>
<tr>
<td>Issue</td>
<td>1194</td>
</tr>
<tr>
<td>Recent Trend</td>
<td>1194</td>
</tr>
</tbody>
</table>
Arguable Continued Exceptions to the Search Warrant Requirement:

Property Seized Incident to Arrest

In a Vehicle for Which There is Already Probable Cause

When the Possessor is Booked

When the Container is Seized, but not Inspected, Pursuant to a Warrant

With Exigent Circumstances

The Person is Without Standing:

The Person is Subject to a Fourth Waiver

Border Searches

Additional Case Law

Search of Unauthorized Cellphone Recovered at CDCR

The California Electronic Communications Privacy Act: P.C. §§ 1546-1546.4:

P.C. § 1546.1: Compelling Production of Electronic Communication Information:

Subd. (a): Prohibitions

Subd. (b): Exceptions: Warrant, Court Order, or Subpoena

Subd. (c): Exceptions: Access to Device With Warrant, Court Order, Subpoena, “Specific Consent,” Emergency, Device Lost, Stolen or Abandoned, or When Seized From An Inmate

Subd. (d): Required Contents of the Warrant

Subd. (e): Power of the Court to Appointing a Special Master and/or Destroy Irrelevant Information
Subd. (f): Authority of the Service Provider to Disclose Electronic Communication Information or Subscriber Information 1209

Subd. (g): Obligation of the Government Entity to Destroy Communication Information; Exceptions 1209

Subd. (h): Disposition of Electronic Information Received Pursuant to an Emergency Involving Danger of Death or Serious Physical Injury to a Person 1209

Subd. (i): Authority of a Government Entity to Use an Administrative, Grand Jury, Trial, or Civil Discovery Subpoena 1210

Subd. (j): Authority of the Public Utilities Commission and the State Energy Resources Conservation and Development Commission 1210

Subd. (k): Authority of a Government Entity to Have and Employee Return an Electronic Device 1211

P.C. § 1546: Relevant Definitions: 1211

Subd. (a): Adverse Result 1211

Subd. (b): Authorized Possessor 1211

Subd. (c): Electronic Communication 1211

Subd. (d): Electronic Communication Information 1211

Subd. (e): Electronic Communication Service 1211

Subd. (f): Electronic Device 1212

Subd. (g): Electronic Device Information 1212

Subd. (h): Electronic Information 1212
Subd. (i): Government Entity 1212
Subd. (j): Service Provider 1212
Subd. (k): Specific Consent 1212
Subd. (l): Subscriber Information 1212

P.C. § 1546.2: Procedures for Obtaining a Warrant as a Follow-up to an Emergency Situation 1212

P.C. § 1546.4: Suppression Procedures and Other Remedies 1213

Case Law 1213

Gov’t. Code § 53166: Mandated Security Procedures for Cellular Communications Interception Technology: 1214

Subd. (a): Relevant Definitions: 1214

(1) Cellular Communications Interception Technology 1214

(2) Local Agency 1214

Subd. (b): Security Procedures and Privacy Policy 1214

Subd. (c): Prohibitions on Acquiring Cellular Communications Interception Technology 1215

Subd. (d): Civil Remedies for Violation 1216

Chapter 14: 1217

Border Searches:

General Rule 1217

8 U.S.C. § 1357(a): Statutory Arrest and Search Authority 1218

31 U.S.C. § 5317: Interdiction Authority 1220

Routine vs. Non-Routine Searches: 1222
Routine Searches 1222
Non-Routine Searches: 1223
Factors 1224
X-Rays of the Person 1224
Extended Detentions 1224
Cutting Open Luggage 1225
Cellphone Searches 1225
Destructiveness of the Search 1227
Reasonableness of the Search 1227
The Functional Equivalent of a Border: 1228
An International Airport 1228
The First Port Where a Vessel Docks 1228
Sorting Hub for Express Consignment Services 1228
The “Extended Border Search Doctrine:” 1229
The “Reasonable Cause to Suspect” Rule 1229
Case Law 1229
Immigration Checkpoints Away from the Border 1231
Roving Patrols 1232
Search of a Residence 1235
The San Ysidro Port of Entry 1236

Chapter 15: 1237
Fourth Waiver Searches: 1237
“Prior Consents:” Search & Seizure (“Fourth Waiver”) Conditions: 1237

General Rule 1237

Parole v. Probation: Consent 1238

Parole: 1239

Statutory Authorization 1239

P.C. § 3067(c) vs. Cal. Code of Regs, Title 15, § 2511 1239

Officer’s Prior Knowledge 1240

Post-Release Community Supervision Act of 2011: 1241

Supervision by County Probation 1241

P.C. § 3453: Postrelease Community Supervision Agreement 1142

Probation: 1243

Government Interests 1243

General Principles 1244

Degree of Suspicion Required 1244

Statutory Authorization 1245

Validity of a Fourth Waiver Condition 1246

The Language of the Specific Fourth Waiver Condition 1251

Sex Offender Registration of Internet Identifiers per Pen. Code § 290.024; Internet Identifier Defined 1254

Non-Disclosure of Internet Identifiers to the Public; Pen. Code § 290.45 1255

Juvenile Probationers: 1256
General Rules 1256

Statutory Authority: 1257

W&I § 727: Reasonable Orders 1257

W&I § 730(b): Reasonable Conditions of Probation 1257

W&I §§ 790 et seq: Mandated Waiver Condition in Post-Plea Diversion Programs 1258

Juveniles and Electronic Device and/or Social Media Probation Conditions 1258

Parole vs. Probation 1265

A “Special Needs” Search 1267

Pre-Trial 1269

Warrantless Blood-Draws of a Probationer/Parolee DUI Suspect 1269

Taking a DNA Sample 1270

Constitutionality 1270

Expectation of Privacy 1270

Standard of Proof Required: 1271

Probation 1271

Parole 1273

Limitation: Searches Conducted for Purposes of Harassment: 1274

Rule 1274

Case Law 1274

Examples of “Unreasonable” Searches 1275
Who May Conduct a Fourth Waiver Search? 1275

California Rule 1275

Federal Rule 1276

Need to Seek Permission From the Probation or Parole Officer: 1276

Probation 1276

Parole 1276

Searching While In Ignorance of a Search Condition: 1277

Issue 1277

Earlier Case Law 1277

Present State of the Rule 1278

Exceptions 1282

Arresting and Searching While in Ignorance of an Existing Warrant of Arrest 1283

Parole and Probation Revocation Hearings: 1283

Parole Hearings 1283

Probation Hearings 1284

Entering a Residence; Probable Cause or Reasonable Suspicion 1284

Searching a Container; Probable Cause or Reasonable Suspicion 1285

Duration of a Fourth Waiver 1285

Good Faith Belief in the Existence of a Search Condition 1286

Search and Seizure Conditions Discovered After the Fact 1287

Miscellaneous: 1287

Burden of Proof 1287
Factors

Circumstances Affecting Voluntariness:

Under Arrest

Use of Firearms

Threatening to Obtain a Search Warrant

Threatening to Use a Drug-Sniffing Dog

Threatening the Suspension of One’s Driver’s License and Other Consequences for Refusing a Blood Test after a DUI Arrest

Threatening to Search the Home of a Loved One

ImPLYing Guilt

Using a Ruse

Threats to Take Away One’s Children

Other Inducements

Combination of Factors

During a Consensual Encounter

A Suspect’s Failure to Object

Manner of Inquiry:

Reasonable Person Test

Product of a Constitutional Violation:

Rule

Illegal Search

Illegal Detention

Illegal Arrest
Illegal Interrogation 1313
Right to Counsel Violation 1313
Consent During a Prolonged Detention: 1313
   General Rule 1313
   Lawfully Prolonged Detentions 1313
   After Detention Ends 1314
The Scope of the Consent: 1316
   Burden of Proof 1316
   Test 1316
   Case Law 1317
Multiple Searches Based Upon a Single Consent 1319
Implied Consent to Provide Blood Sample as a Condition of the Privilege to Drive: 1320
   Veh. Code § 23612(a)(2)(C): Drug Cases 1321
   Veh. Code § 23577: Penalties 1321
   Veh. Code § 23578: Enhanced Penalties 1322
Use of Blood Samples for Other Purposes 1323
Legal Effects of California’s Implied Consent Law 1323
   Case Law 1325
Express vs. Implied Consent: 1327
   Express Consent 1327
   Implied Consent 1327
Examples Where Implied Consent was Found 1328
The Totality of the Circumstances 1329

Specific Issues: 1329
Withdrawal of Consent 1329
Limiting the Consent 1331
Use of a Drug-Sniffing Dog 1331
Placing Conditions on the Consent 1331
Use of a Ruse or Deception 1331
Suspect Under Arrest Giving Consent 1332
Consent to Search a Residence with No Suspicion 1332

Other Elements of a Consent Search: 1332
The Right to Refuse 1332
Miranda 1333
Written Consent 1334
Answering the Telephone 1334
Consent by Others: 1335
General Rule: 1335
Actual Authority 1335
Apparent Authority 1335
Examples: 1338
Landlord 1338
Parent 1339
Child 1341
Co-Occupants (Roommates, Husband and Wife, and Parent and Child)  1342

Evidence of a Defendant’s Refusal to Consent to a Warrantless Search  1350

Sanctions for Violations  1350