

**The Fourth Amendment  
and  
Search & Seizure**  
*An Update*

***Table of Contents***

*A Publication of The California Legal Update*

*Twentieth Edition*

February, 2020

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

© 2020 by Robert C. Phillips

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***

	Page
<b><i>Chapter Summary:</i></b>	
<i>Chapter 1: The Fourth Amendment, United States Constitution</i>	1
<i>Chapter 2: Consensual Encounters</i>	114
<i>Chapter 3: Detentions</i>	136
<i>Chapter 4: Arrests</i>	299
<i>Chapter 5: Searches and Seizures</i>	606
<i>Chapter 6: Searches with a Search Warrant</i>	687
<i>Chapter 7: Warrantless Searches</i>	951
<i>Chapter 8: Searches of Persons</i>	1015
<i>Chapter 9: Searches of Vehicles</i>	1146
<i>Chapter 10: Searches of Residences and Other Buildings</i>	1303
<i>Chapter 11: New and Developing Law Enforcement Technology</i>	1385
<i>Chapter 12: Open Fields</i>	1428
<i>Chapter 13: Searches of Containers</i>	1430
<i>Chapter 14: Border Searches</i>	1477
<i>Chapter 15: Fourth Waiver Searches</i>	1498
<i>Chapter 16: Consent Searches</i>	1567

	Page
<b>Topics:</b>	
<b>Chapter 1:</b>	1
Unreasonable Searches and Seizures:	1
Rule:	
The Fourth Amendment	1
California Constitution, Art I, § 13	1
Purpose	1
The Supremacy Clause	2
Scope:	3
“Due Process”	3
Persons, Houses, Papers, and Effects	3
Double Jeopardy:	4
The Double Jeopardy Clause	4
Exception: Dual Sovereignty	4
Penal Code §§ 654 & 1023	5
The Exclusionary Rule; Overview:	5
Theory	6
History	6
The Primary Purpose of the Exclusionary Rule	7
The Rule of Reasonableness:	9
Rule	9
Unreasonableness in the Execution of a Search Warrant	9

Exceptions	10
Balancing Test; Totality of the Circumstances	10
Delays in Obtaining a Search Warrant	11
Private Persons and the Exclusionary Rule	12
Limited Use of the Exclusionary Rule:	13
General Rule	13
Case Law in General	14
Case Law: Evidence Admitted under <i>Herring</i>	15
Case Law: Evidence Excluded despite <i>Herring</i>	16
Good Faith	16
Statutory Violations	20
Is The Exclusionary Rule’s Application to the States Mandated?	21
Rule of Exclusion:	23
Benjamin Cardozo	23
Factually Based Question	23
Verbal Evidence	23
Federal Rules of Evidence, Rule 402	23
Fruit of the Poisonous Tree:	24
General Rule	24
Factors	24
Exceptions:	26
Demise of the Independent State Grounds Theory; “Proposition 8”	26

Defendant and His Identity	28
Identity of a Witness	28
Search Warrant Executed by Someone Other than a Peace Officer	29
Immigration Issues	30
Searches by Foreign Entities	30
Impeachment Evidence	31
New Crimes Committed in Response to an Illegal Detention or Arrest	32
Searches Based Upon Existing Precedent	32
The “Minimal Intrusion Doctrine”	33
In a 42 U.S.C. § 1983 Civil Suit	34
In an Administrative Proceeding	35
Expectation of Privacy:	35
Rule	35
Examples	36
Standard of Review On Appeal:	37
Motion to Suppress	37
P.C. § 995 Motion to Dismiss Ruling	38
Constitutionality of a Statute	40
Sufficiency of the Evidence	40
Habeas Corpus	43
Juvenile Cases:	44
General Procedures	44

The Exclusionary Rule	45
Civil Liability:	45
Integral Participation Requirement	46
Due Process	46
Qualified Immunity:	47
General Rules	47
Two Steps	48
“Clearly Established” Principles	49
Additional Case Law	55
Statutory Immunity from Civil Liability:	59
Gov’t. Code § 815.2	59
Gov’t. Code § 820.2	59
Gov’t. Code § 821.6	60
Civ. Code § 43.55(a)	60
P.C. § 847(b)(1)	60
Veh. Code § 17004.7	61
Public Entities	62
Case Law Immunity from Civil Liability	62
Effect of a Prior Conviction, Sentence, or Probable Cause Determination:	62
Rule: <i>Heck v. Humphrey</i>	62
Exceptions	66
Civil Suits Based Upon an Alleged Retaliation Theory	66

Doctrines of “Issue Preclusion” or “Collateral Estoppel:”	69
Rule	69
Two Forms:	70
Claim, or Res Judicata	70
Issue, or Collateral Estoppel	70
Forfeiture	71
Examples of Preclusion	72
“Law of the Case” Doctrine	74
Summary Judgment	75
Directed Verdict	76
Civil Liability of an Employing Government Entity ( <i>Monell</i> )	77
Police Power vs. Fifth Amendment Eminent Domain:	79
Rule	79
Examples	80
Standards of Proof:	80
Reasonable Suspicion	80
Preponderance of the Evidence	81
Probable Cause	81
Clear and Convincing Evidence	82
Proof Beyond a Reasonable Doubt	82
Burden of Proof	83

Plea Bargaining and Cooperation Agreements:	83
Rule	83
The Prosecutor:	84
Absolute Immunity	84
Ethical Considerations	84
Due Process and Discovery Obligations:	85
General Rule	85
<i>Brady v. Maryland</i>	85
<i>Pitchess v. Superior Court:</i>	86
Rule	86
Statutory Procedures:	86
Evid. Code § 1043	86
Evid. Code § 1044	88
Evid. Code § 1045	88
Evid. Code § 1046	89
Evid. Code § 1047	90
Pen. Code § 832.5	90
Pen. Code § 832.7	92
Pen. Code § 832.8	103
Limitation	104
Procedure	104
Confidentiality	108

Case Law <u>Priorities</u> :	108
The Courts' Order of Priority	108
Decisions from the United States Supreme Court	108
Decisions from lower Federal Courts:	109
State Court Interpretation taking Precedence	109
Decisions From Other States	110
Opinions of the California Attorney General	110
Writs of Habeas Corpus	111
Unpublished Cases	112
The Outline:	112
Police-Citizen Contacts	112
Other Topics	113
<b>Chapter 2:</b>	114
Consensual Encounters:	114
General Rule	114
Test	115
Limitations:	117
Searches, Frisks and Detentions Not Allowed	117
Unintended Detentions	117
No Detention:	117
Obtaining Personal Identification Information, Running a Warrant Check	117
Asking for Identification	118

Mere Police Questioning	119
Walking Along With, or Driving Next to, a Person	120
Asking to Step Out of the Vehicle	121
Flashlighting or Spotlighting a Person	121
Parking a Patrol Car Behind the Suspect’s Vehicle	122
Inquiring Into the Contents of a Subject’s Pockets	122
Asking a Person to Remove His Hands From His Pockets	122
A Consensual Transportation	122
Inquiring Into Possible Illegal Activity	122
Displaying a Badge, or Being Armed	123
Contacts on Buses	123
During a “Knock and Talk”	123
Following a Lawful Detention	124
Consensual Encounters vs. Detentions or Arrests:	124
The Three Contact Categories:	124
Consensual Encounters	124
Detentions	124
Formal Arrests	124
Factors to Consider	125
Examples	125
Specific Issues:	127
Contacts on Buses	127

Flight:	128
Rule	128
Exceptions	128
Chasing the Suspect	131
Photographic and Videotape Evidence	132
Knock and Talks	135
<b>Chapter 3:</b>	138
Detentions:	138
General Rule	138
Purpose	139
Show of Authority	140
Standard of Proof; “Reasonable Suspicion”	141
Test	144
Burden of Proof	146
Factors	146
On Appeal	147
Patdown for Weapons During a Detention	148
Officer Safety	148
Detention Without a Reasonable Suspicion	150
Racial Profiling	152
Detentions vs. Arrests:	153
General Rule	153
Factors	153

Examples	154
Indicators of an Arrest:	154
The Use of Firearms	154
The Use of Handcuffs	155
A Locked Patrol Car	155
Overwhelming Show of Force	155
Physical Touching	156
Non-Consensual Transportation of a Detainee	156
Use of Emergency Lights	156
Exceptions:	157
In General	157
Factors	158
Examples Where No Arrest Found:	159
Firearms	159
Handcuffing	159
Putting into a Patrol Car	160
Additional Case Law	160
<i>Miranda</i>	164
Non-Consensual Transportation Exceptions	164
Reasonable Suspicion:	166
Defined	166
Detention of a Victim or Witness:	169
General Rule	169

Exceptions	170
Immunity Situations	172
Articulate Objective Suspicion	172
A Hunch	173
The Totality of the Circumstances	175
The Officer’s Subjective Conclusions	177
A Seizure	177
Probable Cause vs. Reasonable Suspicion	177
Various Factors:	177
In General	178
A “High Crime” or “High Narcotics” Area	178
Ethnicity	180
Statutory Interpretation	180
Rules	180
The “Rule of Lenity”	182
Types of Detentions:	182
Traffic Stops:	182
Rule	182
Standard of Proof	183
Random License Checks	184
Personal Observation	185
Detention vs. Arrest	185
When No Law Enforcement Involvement	186

Moving Violations	187
Estimates of Speed	190
Lying to the Suspect as to the Reasons for the Stop	191
In Retaliation	191
Avoiding a DUI (or Immigration) Checkpoint	191
Vehicle Code Registration Violations	192
Vehicle Code Equipment Violations	195
Seat Belt Violations	195
Illegally Tinted Windows	196
Windshield Obstructions	196
Weaving Within the Lane:	198
State Rule	198
Federal rule	198
Weaving Plus	199
False Personation During a Traffic Stop	199
Vehicle Stops Involving Agricultural Irrigation Supplies, per V.C. § 2810.2	199
Community Caretaking Function	200
Parking Tickets	201
Gang-Related Investigations	201
Using a Controlled Tire Deflation Device (CTDD)	201
Checking the Vehicle for a Wanted Suspect	202

Mistake of Law vs. Mistake of Fact:	202
Mistake of Law:	202
Original Rule	202
New Rule	204
Mistake of Fact	205
Pretext Stops:	207
<i>Whren v. United States</i>	207
California Rule	208
Pretext Issues	208
Exceptions:	209
Rule	209
Administrative Searches	210
Vehicle Impound Searches	212
Special Needs Searches or Seizures	213
When the Use of a Pretext is illegal	213
Racial Profiling	214
Motor Vehicle Passengers:	218
To Arrest a Passenger	218
To Detain a Passenger	218
Ordering Out	221
Ordering In	222
Demanding Identification	223
Flight	224

Search Incident to a Citation	225
To Identify a Suspect in a Criminal Offense	226
Detention of a Person to Determine Citizenship:	227
Rule:	227
Statutory Limitations:	227
Gov't. Code §§ 7284-7284.12; The "California Values Act:"	227
Gov't. Code § 7284.6(a)(1)	227
Pen. Code § 679.015: Victim and Witnesses' Protection from being Turned over to Immigration Authorities	228
Detentions in a Residence	229
Detention of Residents (or Non-Resident) During the Execution of a Search Warrant	230
Detention of Residents (or Non-Resident) During the Execution of an Arrest Warrant	231
Prolonged Detentions:	231
During Issuance of a Traffic Citation	232
While Executing a Search Warrant	235
Unlawful Extentions of a Detention	235
Lawful Extentions of a Detention	240
The Prolonged "De Minimis" Detention:	242
Old Rule	242
New Rule	243
Over-Detention in Jail	244
Enlarging the Scope of the Original Detention	244

Taking Fingerprints	248
Driving Under the Influence Cases:	248
Weaving	248
Question: DUI (and Other Regulatory “Special Needs”) Checkpoints Are They Legal?:	249
Answer	249
Reasonableness Requirement	249
Factors Determining Predetermined Specified Criteria	250
Case Law	251
Issue; Avoiding a DUI Checkpoint	251
Other Regulatory Checkpoints:	252
License and Registration Inspection Checkpoints	252
Border Patrol Checkpoint Inspections	252
Airport Security Searches	252
To Regulate Hunting Licenses	252
Agricultural Inspection Checkpoints	252
Vehicle Mechanical Inspection Checkpoints	252
Security Checkpoints at Military Bases	253
Sobriety Checkpoints on a Federal Military Base	253
A Forest Service Checkpoint	253
Traffic Safety Checkpoints	253

Checkpoints at the Entrance to a Prison Parking Lot	253
Checkpoint to Thwart an Imminent Terrorist Attack or to Catch a Dangerous Criminal	253
Checkpoints for the Purpose of Collecting Information	253
An Information Station	253
Checkpoint to Prevent Illegal Hunting in a National Park	254
Luggage Searches at New York’s Subway Entrances	254
A Vehicle-Inspection Exhaust Checkpoint, pursuant to V.C. § 2814.1(a)	254
V.C. § 2814.1(d): Motorcycle-Only Checkpoints	254
Dual Purpose Checkpoints	254
Multiple Agency Checkpoints	254
Drug Interdiction (or “Ordinary Criminal Wrongdoing”) Checkpoints:	254
Rule	254
Exceptions	255
Checkpoints on Indian Land by Indian Authorities	256
A Field Interview:	257
General Rule	257
Examples	257
Gang Membership	258
During Execution of a Search or Arrest Warrant, or Fourth Waiver Search	258

Pending the Obtaining of a Search Warrant	261
Detentions Away from the Place being Searched	263
Detention Examples, in General	263
Anonymous Information:	266
Rule	266
Patdown for Weapons	267
Detentions in Highly Dangerous Situations	267
Detentions with Sufficient Corroboration	271
Illegal Detentions; Examples	273
Knock and Talks	274
To Establish Probable Cause	274
In Prison or Jail	274
Detentions Involving Minors:	275
Minors on Campus:	275
By School Officials	275
The Use of Restraints and/or Seclusion as a Disciplinary Measure by School Officials	277
By a School Resource Officer	278
By Other Law Enforcement Officers	280
Minors Violating Curfew	281
<i>Miranda</i>	281
Use of Force:	282
Rule	282

Factors	283
Refusal to Submit	284
Reasonableness of the Force Used:	285
Rule	285
Lesser Degree of Force	286
When Force is Used Against a Person Who was Not the Intended Target of the Force	287
Expert Testimony Re: Excessive Force Issue	288
Narcotics-Related Traffic Stops Using a Controlled Tire Deflation Device (CTDD)	288
Deadly Force	288
Demanding Identification; A Person’s Refusal to Identify Himself:	289
Rule	289
Issue	289
Detentions of Employees in the Workplace (or Students at School):	294
The Problem	294
Case Authority	294
Statutory Authority for Seizure of Firearms During a Detention:	296
Gov’t. Code § 8571.5	296
P.C. § 833.5	296
P.C. §§ 18100-18500	296
P.C. § 25850(b)	296
Wel. & Inst. Code § 8102(a)	297
P.C. § 1524(a)(10)	297

Merchants, Library Employees, Theater Owners, and Amusement Park Employees:	297
P.C. § 190.5(f)	297
P.C. § 490.6(a)	297
Indefinite Detentions Pursuant to Federal Law:	298
Pen. Code § 145.5	298
<b>Chapter 4:</b>	299
Arrests:	299
Defined	299
Standard of Proof; Probable Cause:	299
Defined	299
Reasonable Seizures	301
When Probable Cause Exists	302
Judicial Determination Probable Cause in Misdemeanor Custody Cases:	309
Pen. Code § 991	309
Case Law	310
Mistaken Identity	311
Mistaken Belief in the Existence of an Arrest Warrant	311
First Amendment Issues:	311
Arresting/Detaining an Individual for being Verbally Uncooperative	311
Other Freedom of Speech Issues	313
Freedom of Religion	313
The Collective Knowledge Doctrine	314

With Multiple Suspects	315
Dissipation of Probable Cause	316
Search and Seizure of Children	317
Use of Hearsay	318
An Officer's Expertise	318
Conflicting Evidence	318
A Suspect's Own Admissions	319
Border Cases	319
Retaliatory Arrests	320
No Probable Cause	320
Arrests in a Courthouse:	321
Civil Code § 43.54	321
Code of Civ. Proc. § 177	321
Additional Case Law	321
Test: Has a Person Been Arrested?	322
Unlawful Arrests:	322
General Rule	322
Suppression of Resulting Evidence	323
Effect of Later Civil Suit on a Determination as to the Legality of an Arrest	323
Effect of Conflicting Evidence on a Determination as to the Legality of an Arrest	323
Exceptions to the Rule:	324
Abduction From Abroad	324

In Violation of a State Law	327
Prosecutions in Federal Court	328
California’s Exclusionary Rule; Propostion 8	328
Statutory Elements of an Arrest:	329
P.C. § 834	329
P.C. § 835	329
P.C. § 835a	329
P.C. §§ 834, 836, 837	329
W&I § 625	329
Legal Authority for Arrests:	329
Peace Officer:	329
P.C. § 830: Peace Officer Defined	329
P.C. § 830.1: Peace Officer Authority	329
P.C. § 830.2: Listed California Peace Officers	331
P.C. § 830.3: Listed California Peace Officers	333
P.C. § 830.31: Listed California Peace Officers	337
P.C. § 830.32: Listed California Peace Officers	338
P.C. § 830.33: Listed California Peace Officers	339
P.C. § 830.34: Listed California Peace Officers	342
P.C. § 830.35: Listed California Peace Officers	342
P.C. § 830.36: Listed California Peace Officers	343
P.C. § 830.37: Listed California Peace Officers	344
P.C. § 830.38: Listed California Peace Officers	345

P.C. § 830.39: Listed California Peace Officers	345
P.C. § 830.40: Listed California Peace Officers	347
P.C. § 830.41: Listed California Peace Officers	349
P.C. § 830.5: Listed California Peace Officers	349
P.C. § 830.53: Youth Correctional Officers, Correctional Officers, and Correctional Counselors, as Peace Officers	351
P.C. § 830.55: Listed California Peace Officers	353
P.C. § 830.6: Listed California Peace Officers	354
P.C. § 830.65: Listed California Peace Officers	356
Har. & Nav. Code § 663: Peace Officer” Defined	357
Case Law	357
Arrests by a Peace Officer:	357
P.C. §§ 834, 836	357
P.C. §§ 150, 1550; “Posse Comitatus”	358
In a Domestic Violence Case	359
Arrests by a Private Person:	360
P.C. §§ 834, 837	360
P.C. § 490(f)(1); A Merchant, Library Employee, or Theater Owner	360
P.C. § 839; Summoning Others to Assist	361
P.C. § 847; Disposition of Arrestee	361
Domestic Violence Cases	362
The Stale Misdemeanor Rule	362

The “In the Presence” Requirement	362
Out of State Officers in Fresh Pursuit:	363
P.C. § 852.2	363
P.C. § 852.3	363
Federal Officers:	363
P.C. § 830.8	363
P.C. § 830.85	366
Supremacy Clause Immunity	366
Bounty Hunters or Bail Enforcement Agents:	367
General Rules	367
The Bail Fugitive Recovery Persons Act:	369
Pen. Code § 1299: Title	369
Pen. Code § 1299.01: Definitions:	369
Subd. (a): “Bail Fugitive”	369
Subd. (b): “Bail”	369
Subd. (c): “Depositor of Bail”	370
Subd. (d): “Bail Fugitive” Recovery Person”	370
Pen. Code § 1299.02: Persons Authorized to Arrest Bail Fugitives	370
Pen. Code § 1299.04: Qualifications of a Bail Fugitive Recovery Person	371
Pen. Code § 1299.05: Bail Fugitive Apprehensions	372
Pen. Code § 1299.06: Required Apprehension Documentation	372

Pen. Code § 1299.07: Representing Oneself to be a Sworn Law Enforcement Officer	373
Pen. Code § 1299.08: Procedural Requirements in Making Arrests	373
Pen. Code § 1299.09: Forcible Entries	375
Pen. Code § 1299.10: Use of Firearms or Other Weapons	375
Pen. Code § 1299.11: Violating the Act	375
Pen. Code § 1299.12: Licensing Private Investigators	376
Arrest Options:	376
Release Without Charges	376
Seek an Arrest Warrant	378
Issuance of a Misdemeanor Citation	379
Booking into Jail	380
Take the Subject Directly Before a Magistrate	380
Legal Requirements of an Arrest:	381
Felonies	381
Misdemeanors and Infractions:	381
“In the Presence” Requirement:	381
V.C. § 40300	381
“In the Presence” Defined	381
Exceptions:	382
Juvenile Arrests	382

Driving While Under the Influence Arrests	382
Battery on School Grounds	384
Carrying a Loaded Firearm	384
Assault or Battery Against the Person of a Firefighter, Emergency Medical Technician or Paramedic	384
Domestic Violence Protective or Restraining Orders	384
Domestic Violence Assaults or Batteries	385
Elder Abuse	386
Carrying a Concealed Firearm at an Airport	386
Operating a Vessel or Recreational Vessel or Manipulation of Water Skis, Aquaplane or Similar Device While Under the Influence	387
Operating a Vessel While Under the Influence of Alcohol and/or Drugs with an Accident	387
Vehicle Code Violations, Exceptions:	387
V.C. § 16028(c): Traffic Collision Investigators	387
V.C. § 40600(a): POST Certified Peace Officers at Traffic Collisions	387
V.C. § 14602.6(a)(1): Driving on a Suspended, Revoked, or Restricted License, or Never Had a License	387
Vehicle Code Parking Citations	288

Stale Misdemeanor Rule	388
Sanctions for Violations	389
Arrests for an Infraction or Misdemeanor:	391
Release Requirement	393
Exceptions	393
V.C. § 40302: Mandatory Custodial Arrests	394
Other Satisfactory Evidence of Identity	395
V.C. § 40303: Arrestable Offenses	396
V.C. § 40303.5: “Fix-It Tickets”	397
V.C. § 12801.5(e): The Unlicensed Driver	398
V.C. § 40305: Non-Residents	399
V.C. § 40305.5: Traffic Arrest Bail Bond Certificate	399
P.C. § 853.6(i): Misdemeanor Citations; Exceptions	399
With an Existing Warrant of Arrest:	402
P.C. § 818	402
P.C. § 827.1	402
Arrest Warrants:	403
Defined	403
Content	403
Case Law	404
Other Types of Arrest Warrants:	405
Bench Warrant	405

Electronic Arrest Warrant	407
<i>Ramey</i> Warrant	407
A “DNA, John Doe” Warrant	408
P.C. § 3455(b): Post-Release Supervision Warrant	408
A Federal “Administrative Warrant”	408
Necessity of an Arrest Warrant	409
Service and Return:	410
Felony Arrest Warrants	410
Misdemeanor Arrest Warrants:	409
Night Service	410
Necessity for Having a Copy of the Arrest Warrant	410
Knock and Notice	411
Procedure After Arrest:	411
Disposition of Prisoner:	411
In-County Arrest Warrants	411
Out-of-County Arrest Warrants	411
Arrests without a Warrant	411
Necessity of Having Probable Cause or a Reasonable Suspicion Before Entering a Residence	411
The <i>Steagald</i> Warrant	414
Statute of Limitations	415
Expiration	415

Detention of Other Occupants of a Home While Executing an Arrest Warrant	415
Use of a Motorized Battering Ram	415
Effect of an Arrest Warrant on the Exclusion of Evidence after an Illegal Detention	415
A Defective Arrest Warrant	415
Statutory Limitations:	417
Daytime and Nighttime Arrests:	417
Felony Arrests:	417
Without an Arrest Warrant	417
With an Arrest Warrant	417
Misdemeanor (and Infraction) Arrests:	417
Without an Arrest Warrant	417
With an Arrest Warrant	418
Penal Code § 964: Victim and Witness Confidential Information	419
Live Lineups	419
Case Law Limitations:	419
<i>People v. Ramey</i> :	419
General Rule	419
Exceptions:	420
Consent:	420
Limitations	420
Express or Implied Consent	421
Authority to Give Consent	421

Undercover Entries	421
Plain View Observations; Reentry to Seize the Property Observed	422
Exigent Circumstances	422
Fresh or Hot Pursuit	423
Already Lawfully Inside	430
Standing in the Threshold	430
A Parolee or Fourth Waiver Probationer	431
Inviting Defendant Outside	431
Sufficiency of Evidence that the Suspect is Inside	434
Within a Third Person's Home	436
Consequences of a <i>Ramey/Payton</i> Violations	437
Knock and Notice:	439
Statutory Rule	439
Suppression of Resulting Evidence	439
Arrest Issues:	440
Arresting for the Wrong Offense	440
Post-Arrest, Pre-Trial Detentions	441
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:	442
The Problem	442
The Rule	442
Extension of the Rule	442

The Reasoning	443
Law Enforcement vs. Non-Law Enforcement Source:	444
Law Enforcement Source Cases:	444
Police Computer Records	444
Parole	444
Probation	445
Exception; DMV Hearings	445
Non-Law Enforcement Source Cases:	446
Fourth Waiver Information from the Courts	446
Reversed Prior Conviction	446
Legislative Sources	446
Department of Motor Vehicles Sources	447
Juvenile Probation	447
Arresting and Searching in Ignorance of an Existing Warrant of Arrest	448
Minors:	448
Curfew Violations	448
Truancy Violations	449
The Americans with Disabilities Act (ADA):	450
The Issue	450
Title II of the ADA	450
Information Provided to an Arrested Person:	451
P.C. § 841; Information to be Provided	451

Exceptions	451
Foreign Nationals:	451
Vienna Convention on Consular Relations	451
Advisal to Arrestee/Detainee	452
Standing	452
Automatic Notice to Foreign Country	452
Sanctions for Violations	453
<i>Miranda:</i>	457
Rule	457
Real and Physical Evidence	457
Arrested Minors:	457
Wel. & Inst. Code § 625(c): Advisal of Rights	457
Wel. & Inst. Code § 627.5: Minor Taken Before a Probation Officer	458
Wel. & Inst. Code § 625.6: Minors Age 15 and Younger, and Mandatory Attorney Consultations	458
Follow-Up Requirements After Arrest:	460
Other Rights of the Arrestee:	460
Right to Access to an Attorney; P.C. § 825(b)	460
Right to Access to a Physician or Psychiatrist; P.C. § 825.5	461
Right to Telephone Calls; P.C. § 851.5(a):	462
Rule	462
Case Law	463

Minors; W&I § 627(b)	464
Other Statutory Obligations of the Arresting Officer :	465
P.C. § 848: Arrests by Warrant	465
P.C. § 849(a): Arrests Without a Warrant	465
P.C. § 849(b): Release From Custody	465
P.C. § 849(c): Record of Arrest of Released Person Deemed a Detention Only	466
Undocumented Aliens:	466
Gov't. Code §§ 7283, 7283.1, & 7283.2: The “Transparent Review of Unjust Transfers and Holds” (TRUTH) Act	466
Civil Code § 1670.9: Detentions of Noncitizens for Purposes of Civil Immigration Custody	467
Gov't. Code § 7282.5: Limitations On Law Enforcement’s Cooperation with Immigration Authorities	467
Gov't. Code §§ 7284-7284.12: The “California Values Act:”	468
Gov't. Code § 7284: Title of Chapter	468
Gov't. Code § 7284.2: Legislative Findings and Declarations	468
Gov't. Code § 7284.4: Definitions	469
Gov't. Code § 7284.5: Exceptions to the Non-Cooperation Restrictions	471
Gov't. Code § 7284.6: Prohibited Activities; Exceptions; Annual Report; Information Exchange; Jurisdiction	475
Gov't. Code § 7284.8: Model Policies for Other Governmental Entities; Database Use Guidance	480
Gov't. Code § 7284.10: Department of Corrections and Rehabilitation Duties and Responsibilities	481

Gov't. Code § 7284.12: Severability	482
Gov't. Code § 7310: Contracts with Federal Government to Detain Non-Citizens	482
Gov't. Code § 7311: Contracts with Federal Government to House or Detain Non-Citizen Minors	482
Gov't. Code § 12532: Review of Detention Facilities	483
Pen. Code § 679.015: Victim and Witnesses' Protection from being Turned over to Immigration Authorities	484
Use of Force:	484
Reasonable Force	484
Factors	485
Factors Under <i>Tennessee v. Garner</i>	486
Three-Step Evaluation of an Excessive Force Claim, by "Stages:"	486
General Principles; Fourth Amendment Issues	487
Provocation Rule	492
Intervening (or Superseding) Circumstances	493
Cruel and Unusual Punishment; Eighth Amendment Issues:	494
The Eighth Amendment	494
Excessive Punishment	495
Deliberate Indifference, Conditions of Confinement, and Excessive Force in Prisons/Jails	501
Due Process; Fifth and Fourteenth Amendment Issues:	502
Use of Force Cases	502
The Failure to Protect: "Danger Doctrine:"	504
General Rule	504

Exceptions	504
Necessary Elements of the Danger Doctrine	505
Additional Case Law	506
Deprivation of Liberty Cases	508
Deprivation of Property Cases	508
Parent-Child Relationship Cases:	510
Rule	510
Case law Implicating the Custody of a Child	510
Case Law Involving the Use of Deadly Force	513
Pre-Trial Detainee Jail Condition Cases	515
Qualified Immunity from Civil Liability	516
Absolute Immunity from Civil Liability:	518
Law Enforcement Officer Cases Denying Absolute Immunity	518
Prosecutors	519
California Civil Code § 52.1; the “Bane Act:”	519
Specific Weapons or Techniques:	521
The Taser	521
Chemical Irritants; Pepper Spray, Pepperball Guns and Tear Gas	525
Chokehold	528
Pain Compliance <i>and</i> “ <i>Take Down</i> ” <i>Maneuvers</i>	528
Flashbang Devices	530
Batons	530

Bean Bag Firearms	531
Firearms	531
Handcuffs	537
Duty to Warn	539
Applicable Statutes:	540
P.C. § 147: Inhumanity to Prisoners	540
P.C. § 149: Assaults by Officers	541
P.C. § 196: Homicide: Use of Justifiable Deadly Force by Police Officers	541
P.C. § 692: Lawful Resistance	542
P.C. § 693: Party About to be Injured	543
P.C. § 694: Other Parties	544
P.C. § 834a: Resisting Arrest	544
P.C. § 835: Restraint of Detained or Arrested Person	544
P.C. § 835a: Use of Reasonable Force	545
P.C. § 843: Arrest by Warrant; Use of Force	548
P.C. § 844: Knock and Notice	548
P.C. § 845: Use of Force to Exit a House	548
P.C. § 846: Securing Weapons	548
P.C. § 490.5(f)(2): Use of Force by Merchant, Library Employee or Theater Owner	548
Use of Force in Making a Blood Draw:	548
Rule	548
Examples	549

<i>McNeely</i> Limitation	549
History	550
Use of Deadly Force:	550
Causing Death	550
Deadly Force Defined	550
Non-Criminal Homicides	551
Applicable Statutes:	552
P.C. § 196: Justifiable Homicide by Public Officers	552
P.C. § 197: Justifiable Homicide	553
History	554
Limitations:	554
Forcible and Atrocious Crimes	554
The Fourth Amendment	554
“Forcible and Atrocious Crime” Defined	555
Burglary of a Residence:	556
P.C. § 198.5	556
Cases	557
Self-Defense:	557
General Rules	558
Elements	558
Examples	559
Imminent Peril	560

Bare Fear	561
Apparent Necessity	561
Imperfect Self-Defense	562
Original Aggressor Claiming Self-Defense	562
Mutual Combat	565
Burden of Proof	568
Fleeing Felon	568
Transferred Intent	570
Use of Deadly Force by Police Officers:	571
Rule	571
Balancing Test	571
Case Law	572
Law Enforcement's Written Policy RE: Use of (Deadly) Force	574
Deadly Force Used Against Armed Individuals	577
Use of Force Upheld	578
Deadly Force Unreasonable	582
Federal Officers:	585
General Rule	585
Case Law	586
Supremacy Clause Immunity:	587
Removal Statute	587
Case Law	587
Rule of Reasonableness	589

Use of Deadly Force Against Foreign Nationals, in a Foreign Country	592
High Speed Pursuits	593
Outrageous Government Misconduct:	599
Rule	599
Factors	599
Case Law	600
Civil Liability Protections:	601
California Statutory Protection from Civil Liability:	601
P.C. § 836(a), (b)	601
P.C. § 838	601
P.C. § 839	601
Gov't. Code § 815(a)	601
Gov't. Code § 815.1(b)	601
Gov't. Code § 815.2(a)	602
Gov't. Code § 818.4	602
Gov't. Code § 820(a)	602
Gov't. Code § 820.2	602
Veh. Code § 17001	602
Veh. Code § 17004.7	602
Federal Civil 42 U.S.C. § 1983 Civil Liability and Qualified Immunity	603

<b>Chapter 5:</b>	606
Searches and Seizures:	606
Things Subject to Search and Seizure	606
Protection from Unreasonable Searches and Seizures, and the Right to Privacy:	606
Rule	606
Case Law	607
Searches and Seizures:	608
Search:	608
Trespassory Searches: “Persons, Houses, Papers and Effects”	608
Satellite-Based Monitor (SBM)	608
Taking a DNA Sample	608
The Extraction of Blood	608
Law Enforcement and a Suspect’s Vehicle’s Tires	609
Seizure	609
Search vs. Seizure	611
For a Search & Seizure to be Lawful: General Rule:	611
Search Warrant Defined	611
Probable Cause	612
Legal Presumptions	612
Remedy for Violations; The Exclusionary Rule:	612
The Fourth Amendment Applicable to the States	613

Procedural Remedy: Motion to Suppress per P.C. § 1538.5:	613
Procedure	613
Pre-Trial Review of the Magrate’s Ruling	616
Appellate Review	617
Juvenile Proceedings	619
Misdemeanors	619
One-Hearing Rule:	619
General Rule	619
Exceptions	620
The Fruit of the Poisonous Tree:	621
Rule	621
Examples	621
Exceptions:	623
The Independent Source Doctrine	623
The Inevitable Discovery Doctrine	623
The Attenuation Doctrine	624
Problem: The “Coordinated Traffic Stop”	626
Problem: The Naked Body and Privacy Rights	627
Problem: Key in a Lock	628
Exceptions:	631
Private Persons:	631
Rule	631
Exception to Private Persons Exception: “Agents of Law Enforcement”	631

The Good Faith Exception	633
The Taint has been Attenuated:	633
Factors:	633
Temporal Proximity	633
Intervening Circumstances	634
Purpose and Flagrancy	634
<i>Miranda</i>	634
Outstanding Arrest Warrant or Fourth Waiver	635
When the Purposes of the Exclusionary Rule are not Served	635
The Minimal Intrusion Exception	637
Statutory-Only Violations:	639
Rule	639
Examples	640
Doctrine of Inevitable Discovery:	643
Rule	643
Cases	644
Exceptions	646
Searches Based Upon Existing Precedent: The “Faith In Case Law” or “Statute” Exception	648
An Injured Person	650
Evidence of identity	650
Impeachment Evidence	650

Asset Forfeiture Proceedings	651
Parole and Probation Revocation Hearings:	651
Parole Hearings	651
Probation Hearings	652
Standing:	653
Defined	653
Standing in Civil Cases	654
Reasonable Expectation of Privacy	655
Test	655
Burden of Proof	656
Factors to Consider	656
General Principles	657
Prior California Rule: “Vicarious Standing”	658
Examples:	659
Vehicles	659
Residential Occupants and Visitors	662
Personal Property	665
Abandoned Property:	668
Rule	668
Abandonment Caused by a Threatened Illegal Detention	671
Outside, Common Areas	672
Indoor, Common Areas	673

Businesses	673
Social Media Accounts	674
Renting with a Stolen Credit Card	675
Disclaiming Standing:	676
Rule	676
Exceptions	677
On Appeal	678
Reasonableness; Evaluated for Purposes of Search & Seizure:	678
Rule	678
Determining Reasonableness:	679
Factors	679
Case Law	679
The Officer's Intentions:	680
Old Rule	680
New Rule; Subjective Motivations are Irrelevant	680
Pretext Stops	681
Posse Comitatus; Use of the Military by Civilian Law Enforcement:	681
The Posse Comitatus Act	681
Prohibited Activity	682
Exceptions	682
Purpose	684
Case Law	684
Sanctions for Violations	685

<b>Chapter 6:</b>	687
Searches with a Search Warrant:	687
Search Warrant Defined	687
Basic Requirements	687
Preference for Search Warrants	687
Why Search Warrants are Preferred:	689
Presumption of Lawfulness ( <i>or Reasonableness</i> ):	689
Burden of Proof	689
Motion to Quash	690
Motion to Traverse:	691
A “ <i>Franks</i> Hearing”	691
Material Omissions	693
Presumption of Unlawfulness (or Unreasonableness) Without a Warrant	698
Good Faith:	698
History	688
The Exclusionary Rule Restricted	699
Civil Cases and Qualified Immunity	702
Exceptions to the Good Faith Rule:	702
Rule	702
Exceptions:	703
Magistrate Misled	703
Magistrate Abandoned Judicial Role	703
Lack of Indicia of Probable Cause	704

Warrant Deficient	706
Fifth Exception:	707
Affidavit Based on Illegally Collected Information	707
Exigent Circumstances	707
Examples	708
<i>Ramey</i> Inapplicable	708
Consensual Searches	709
Informants	709
Acting in the Performance of His (or Her) Duties	709
Opportunity to Objectively Evaluate Existing Probable Cause	709
Mental Patients Detained per W&I § 5150 and “Gun Violence Restraining Orders” per P.C. §§ 18100-18500: Seizure of Weapons:	709
Warrant Requirement and W&I § 8102(a)	709
P.C. § 1524(a)(10); Search Warrants	710
Exigent Circumstances	710
Gun Violence Restraining Orders	710
Independent Source Doctrine	711
Non-Standard Types of Warrants:	712
Types of Warrants:	712
Telephonic Search Warrants:	712
Rule	712
Procedure	712

Pen. Code § 1526	713
Pen. Code § 1528(b)	714
Anticipatory Search Warrants:	714
Rule	714
Prerequisites	715
Case Authority and Restrictions	715
Sneak and Peek Warrants	717
P.C. § 1524.1: AIDs Testing	718
P.C. § 1524.2(b): Records of Foreign Corporations Providing Electronic Communications or Remote Computing Services:	719
Definitions:	719
Electronic Communications Services and “Remote Computing Services	719
Foreign Corporation	720
Properly Served	720
Providing the Requested Information	720
Out-of-State Warrants	720
Pen. Code § 1524.3(a): Records of Foreign Corporations Providing Electronic Communications or Remote Computing Services in Misdemeanor cases	721
Pen. Code §§ 11470-11482: Court Orders Authorizing the Interruption of Communication Services:	723
Public Util. Code §§ 7907-7908; Repealed	723

Pen. Code § 11470: Definitions:	723
Communication Service	723
Government Entity	723
Interrupt Communication Service	723
Judicial Officer	723
Service Provider	723
Pen. Code § 11471: Prohibition on the Interruption of Communications Services; Exceptions	723
Pen. Code § 11472: Application for Court Order	724
Pen. Code § 11473: Issuance of a Court Order; Necessary Findings	726
Pen. Code § 11474: Contents of a Court Order	727
Pen. Code § 11475: Required Actions of a Government Entity Interrupting a Communication Service; Application for a Court Order; Statement of Intent	728
Pen. Code § 11476: Interruption of Communication Services for a Geographical Area; Notification to the Governor’s Office of Emergency Services	728
Pen. Code § 11477: Notice to the Service Provider and the Customer	729
Pen. Code § 11478: Civil Liability; Designation of a Security Employee; Compliance with PUC or Federal Communication Commission Rules and Notification Requirments	729
Pen. Code § 11479: Customer’s Remedies	730
Pen. Code § 11480: Legislature’s Finding and Declaration	730

Pen. Code § 11481: Exceptions	730
Pen. Code § 11482: The Public Utilities Commission	731
Business Records:	731
Evid. Code § 1560(f): Search Warrants for Business Records; Admissibility in Criminal Proceedings	731
Evid. Code § 1561: Affidavit of Custodian Of Records for Business Records Obtained via Subpoena Duces Tecum or Search Warrant	732
P.C. § 1524.4: Service Providers and Law Enforcement Contact Process	732
Requirement of a “Neutral and Detached” Magistrate:	733
Rule	733
Violations	735
No Violation	735
Composition of a Search Warrant:	735
Three Parts	735
The Warrant:	735
P.C. §§ 1523, 1529: Contents	736
P.C. § 1524(a)(1) through (18): Statutory Grounds for Issuance:	737
(1) For Stolen or Embezzled Property	737
(2) For Property Used to Commit a Felony	737
(3) For Property Intended to Use to Commit a Public Offense, or is being Concealed	737
(4) For Evidence of a Felony	737
(5) For Child Sexual Exploitation Evidence	737

(6) For a Person Wanted on an Arrest Warrant	737
(7) For Evidence Possessed by a Provider of an Electronic Communication service or Remote Computing Service	737
(8) For Evidence of a Labor Code § 3700.5 Violation	737
(9) For Firearms and Deadly Weapons at a Domestic Violence Scene	738
(10) For Firearms and Deadly Weapons Possessed by Mental Patients	738
(11) For Firearms Possessed by Persons Subject to Certain Orders	739
(12) For Installation of Tracking Devices:	740
Search Warrant Requirement	740
P.C. § 1534(b): Tracking Device Search Warrant Procedures	740
(13) For Blood Draw Evidence in DUI Cases	742
(14) For Firearms and Ammunition in Possession of Persons Subject to A Gun Violence Restraining Order	743
(15) For Firearms in Possession of Convicted Felons	743
(16) For Controlled Substances or Devices for Administering Controlled Substances	743
(17) For Blood Draw Evidence in Boating DUI Case	744
(18) For violations of P.C. § 647(j)(1), (2), or (3)	744
(19) For a Vehicle’s Internal “Recording Device”	748
For Grounds Not Listed	749

Other Provisions:	749
P.C. § 1534(c): Duplicate Originals	749
P.C. § 1534(d): Returns	749
P.C. §§ 1524.2(b) and 1524.3(a), re: <i>Records</i> of Foreign Corporations	749
Other Case Law	623
The Affidavit to the Search Warrant:	750
Defined	750
Probable Cause	750
DNA Swab Search Warrant Taken for the Purpose of Eliminating Others as a Suspect	758
Minimum Contents:	758
The Name or Names of the Affiant(s)	758
The Statutory Grounds for Issuance	758
A Physical Description of the Persons, Places, Things and Vehicles to be Searched	759
A Physical Description of the Persons, Things or Property to be Seized.	759
A Detailed Statement of the Expertise of the Affiant	759
A Chronological Narrative and Factual Description of the Probable Cause	759
Police Reports, Charts, Maps, Etc.	760
The Affiant’s Conclusion	760
Justification for a Nighttime Search	761

The “Reasonable Particularity” Requirement; The Persons, Places, Things and Vehicles to be Searched:	761
Rule	761
Factors	762
Suggested Procedures	762
Good Faith	763
Cases	763
The “Reasonable Particularity” Requirement; The Property to be Seized:	767
Rule	767
Issues	767
Cases	767
General Warrants	774
Supplementing the Affidavit	777
Combined Affidavit with Warrant	778
Multiple Affiants/Affidavits	779
Staleness:	779
Drug Sales Cases	779
Animal Cruelty Case	780
Exception: Historical Warrants	780
Other Exceptions	780
Fingerprints	782
Description of the Facts; Factual vs. Conclusory Language	783
Good Faith	784

Use of Hearsay	784
<i>Miranda</i>	784
Third Party’s Fourth Amendment Violation	784
Use of Privileged Information:	785
Rule; Passive Recipient	785
Deliberate Violation	785
Cases	786
California Rule of Professional Conduct Rule 4.4	787
Nighttime Searches	787
Leaving a Copy at the Scene	788
P.C. § 964: Victim and Witness Confidential Information	788
The Receipt and Inventory	789
Sources of Information Establishing Probable Cause:	789
Other Police Officers	789
Citizen Informants	791
Reliable (“Tested”) Informants	793
Unreliable (“Untested”) Informants	795
Anonymous Informants:	795
Rule	795
Corroboration:	796
Rule	796
Examples	797

Keeping Confidential Informants Confidential:	798
Problem	798
Rule	798
Restrictions	799
Revealing an Informant's Identity	799
Procedure	799
Motions to Reveal the Identity of an Informant	799
<i>Luttenberger</i> Motions; Discovering An Informant's Background History	800
An Informant Sworn Before A Magistrate; A <i>Skelton</i> Warrant	801
P.C. § 1111; Accomplice Corroboration	802
P.C. § 1111.5; Uncorroborated In-Custody Informants	802
Probable Cause Issues:	803
Anonymous Information	803
Searches of a Residence:	803
Stolen Property	803
The <i>Cleland</i> Warrant; Narcotics	803
Trashcan Searches	805
Computer Searches:	805
Rule	805
Cases	805
Miscellaneous Searches	808
Conspiracy	808

Use of a Search Warrant:	809
Rule	809
Exceptions:	809
Exigent Circumstances	809
Consent	810
Probationary or Parole Fourth Waiver Searches	810
Inevitable Discovery	810
Searches of Vehicles	811
Searches of Persons with Probable Cause	811
Searches Incident to Arrest	812
Administrative/Regulatory Searches	812
Crime Scene Searches:	813
Murder Scene	813
Arson Scene	813
Bank Records:	813
Right to Privacy Act; Gov't. Code §§ 7460-7493:	813
Customer Authorization	813
Administrative Subpoena or Summons	813
Search Warrant	814
Judicial Subpoena or Subpoena Duces Tecum	814
Police Request	814
Victimized Financial Institution	815
Case Law	815

Mortgage Fraud Records:	815
P.C. § 532f(a): Mortgage Fraud	815
Commercial Mail Receiving Agency Records:	816
B&P Code § 22780: Postal Service Form 1583	816
Credit Card Information	817
Telephone Records:	817
Unlisted Numbers	817
Telephone Calls Made	817
Certification for Non-Disclosure	818
Pen Registers and Trap and Trace Devices:	818
P.C. § 638.50: Definitions:	818
Wire Communication and Electronic Communication	818
Pen Register	819
Trap and Trace Device	819
P.C. § 638.51: Prohibitions on Installation of Pen Registers and Trap & Trace Devices; Exceptions	819
P.C. § 638.52: Court Orders	820
P.C. § 638.53: Emergency Court Orders	823
P.C. § 638.54: Notice to Identified Targets; Order Delaying Unsealing of Order and Notification	824
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	826
Pen. Code § 1546.1: Search Warrants and Pen Registers and Trap and Trace Devices	826

Federal Rules:	827
A “Mirror Port”	827
18 U.S.C. § 3121; Expanded Definitions	827
The Federal Electronic Communication Privacy Act; 18 U.S.C. §§ 3121-3127	827
California’s Stricter Rules	828
Records of Foreign Corporations Which Provide Electronic Communications Services or Remote Computing Services to the General Public:	829
P.C. § 1524.2: Out-of-State Electronic Communications Information:	829
“Electronic Communications Services” and “Remote Computing Services”	830
“Foreign Corporation”	831
“Properly Served”	831
Additional Requirements	831
P.C. § 1524.3(a): Records of Foreign Corporations Providing Electronic Communications or Remote Computing Services	832
Marijuana Issues:	832
H&S Code § 11485: Disposition of Personal Property Seized Pursuant to a Search Warrant	832
Validity of a Search Warrant	833
Limitations on the Use of Search Warrants:	833
Newsroom Searches	833
Searches of, and on Tribal Property:	834
Search Warrants	834

Applicability of the Fourth Amendment	835
Jurisdictional Issues	836
Search of Unauthorized Cell Phone Recovered at CDCR	836
Mechanics of Preparation	836
Service and Return:	838
Who May Serve:	838
Only a Peace Officer	838
Exceptions	839
Rules as to Others Who are Not California Peace Officers:	840
Federal Criminal Investigators and Federal Law Enforcement Officers	840
Victims	840
Police Dogs	840
News Media, Etc.	840
Necessity to Serve	841
Night Service	841
Use of a Motorized Battering Ram	842
In-County Service	842
Out-of-County Service	842
Out-of-State Crimes	843
Knock and Notice:	843
General Rule	843
P.C. § 1531: Authority to Break Open any Door or Window	844

Purpose	844
Problem	845
Exceptions:	845
Businesses	845
Inner Doors of a Residence	845
Refusal:	846
Implied Refusal	846
Reasonable Time	846
Exigent Circumstances	848
Doctrine of Substantial Compliance	851
No-Knock Search Warrants	852
Entry by Ruse	853
Standing: An Absent Tenant	855
Sanctions for Violations	855
Not Necessarily a Fourth Amendment Violation	859
Seizing Items not Listed in the Warrant:	861
Plain View Doctrine	861
Problem of Overbreath	863
P.C. § 1542.5: Seizure of a Restrained Person’s Firearms During the Execution of a Search Warrant	867
Answering the Telephone	868
Detentions in a Residence During the Execution of a Search Warrant	869
Time Limitations	869

One Continuous Search	871
Leaving a Copy of the Warrant:	871
The Receipt and Inventory	872
The Federal Rules of Criminal Procedure, Rule 41(d)	872
The Ninth Circuit Court of Appeal’s Opinion	872
Destruction of Property	874
Sealing the Warrant Affidavit; <i>the “Hobbs Warrant:”</i>	876
The Problem	876
The Solution	876
No Right to Public Access	876
How Accomplished	876
When Warrants May be Sealed	877
Criticism of Procedure	878
Court Procedures	878
Retention of the Documents	881
Wiretap Case	882
Post-Investigation Disposition of Warrant Application and Supporting Affidavits	882
Return of Property:	883
Rule	883
Stolen or Embezzled Property	883
Unclaimed Property	883
Case Law	883

Federal Rules	884
Burden of Proof when the Return of Property is Contested	885
Marijuana Cases:	885
H&S Code § 11473.5	885
Case Law	886
Extensions	887
Special Masters:	888
Rule	888
When Not Applicable	888
The “Special Master”	889
Documentary Evidence	889
Procedure	889
The Court Hearing	890
Other Service Conditions	890
The Electronic Communications Privacy Act	891
Other Warrants:	891
Inspection (or Administrative) Warrants:	891
A Regulatory Scheme	891
CCP §§ 1822.50: Definition of Inspection Warrant	891
CCP § 1822.51: Consent:	891
If Consent is Refused	891
Necessary Showing	892

Examples:	892
Residences	892
Commercial Areas	893
CCP § 1822.53: Examination of Witnesses	894
CCP § 1822.54: Issuance and Contents of Warrant	894
CCP § 1822.55: Duration, Extension or Renewal of Warrant; Execution and Return	894
CCP § 1822.56: Manner of Inspection; Notice	894
CCP § 1822.57: Punishment	895
CCP § 1822.58: Inspections by Personnel of Fish and Game Department	895
CCP § 1822.59: Inspections for Purpose of Animal or Plant Pest or Disease Eradication	895
CCP § 1822.60: Warrant for DOJ Inspections	895
Hotels and Motels	896
Entry to Make Arrests	896
Rendition (or Extradition):	896
Art. IV, § 2, Clause 2, U.S. Constitution	896
The Implementing Statute; 18 U.S.C. § 3182	896
International Extraditions	897
Extradition by the States: Uniform Criminal Extradition Act:	897
P.C. § 1548.1; The Governor’s Duty	897
Procedure:	897
P.C. § 1548.2: The Demand	897

P.C. § 1548.3: Investigating the Demand	898
P.C. §§ 1547 et seq: The Governor’s Warrant	898
Waiver of Extradition; P.C. § 1555.2	899
Ignoring Extradition Treaties	899
Unlawful Flight to Avoid Prosecution (“UFAP”):	899
Scope	899
The Primary Purpose	899
Procedure	899
Parental Kidnappings	900
Avoiding Custody or Confinement	900
Avoiding Giving Testimony	900
Avoiding Service of Process	900
State Extradition	901
Dismissal of Federal Complaint	901
Wiretaps and Eavesdropping:	901
Wiretaps vs. Right to Privacy:	901
Federal Omnibus Crime Control and Safe Streets Act of 1968 vs. P.C. §§ 629.50 et seq.	901
Pen. Code § 630: Statement of Legislative Purpose	902
Pen. Code § 631: Unauthorized Wiretaps	902
Subd. (a): Prohibitions:	902
The Prohibitions	902
Punishment	903

Fourth Amendment	903
Subd. (b): Exceptions:	903
In General	903
Prison Visitors	904
Subd. (c): Non-Admissibility of Resulting Evidence	904
Similar Restrictions:	904
P.C. § 632: Electronic Eavesdropping in General	904
P.C. § 632.5: Cellular Radio Telephone Communications	904
P.C. § 632.6: Cordless Telephone Communications	904
P.C. § 632.7: Recording Communications Between Cellular Radio Telephones and Cordless Telephones or a Landline Telephone	904
A Controlled Phone Call	904
Pen. Code § 632: Eavesdropping or Recording Confidential Communications	904
Pen. Code § 632.01: Disclosure or Distribution of Confidential Communications with a Health Care Provider	907
Pen. Code § 632.7: Eavesdropping On, and Recording of, Communications Transmitted Between Cellular or Cordless Telephones; Punishment	909
Pen. Code § 633: Exception: Law Enforcement	910
Pen. Code § 633.5: Exceptions; Recording by Party to the Communication for the Purpose of Obtaining Evidence	912

Jail and Prison Inmates	913
Wiretap Procedures and Restrictions	913
Pen. Code § 629.50: Requirements for a Wiretap Order:	913
Application for a Wiretap Order:	913
Made in Writing Upon the Personal Oath or Affirmation	913
Be Made To . . .	914
Included Information	915
Pen. Code § 629.51: Definitions:	921
Wire Communication	921
Electronic Pager Communication	921
Electronic Cellular Telephone Communication	921
Aural Transfer	922
Pen. Code § 629.52: Authority to Issue a Wiretap Order	922
Pen. Code § 629.53: Judicial Guidelines	927
Pen. Code § 629.54: Contents of the Wiretap Order	927
Pen. Code § 629.56: Oral Approval in Lieu of Court Order	927
Pen. Code § 629.58: Duration of a Wiretap Order	928
Pen. Code § 629.60: Progress Report	929
Pen. Code § 629.61: Report to Attorney General	930
Pen. Code § 629.62: Annual Report to the Legislature	931
Pen. Code § 629.64: Recording, Sealing and Retaining Intercepted Communications	933
Pen. Code § 629.66: Application and Orders to be Sealed	935

Pen. Code § 629.68: Notice to Parties to Intercepted Communications	935
Pen. Code § 629.70: Discovery Prerequisites to Use in Evidence	936
Pen. Code § 629.72: Motions to Suppress	937
Pen. Code § 629.74: Disclosure to Other Law Enforcement Agencies	938
Pen. Code § 629.76: Use of Intercepted Information	939
Pen. Code § 629.78: Disclosure of Intercepted Information in Testimony	939
Pen. Code § 629.80: Privileged Communications	940
Pen. Code § 629.82: Interception of Communications Relating to Crimes Other Than Those Specified in the Authorization Order:	941
Specified Felonies	941
Other Felonies	941
Right to Notice and Copy	942
The “Plain View” Doctrine	942
Case law	943
Pen. Code § 629.84: Criminal Punishment for Violations	943
Pen. Code § 629.86: Civil Remedies for Unauthorized Interceptions	944
Pen. Code § 629.88: Effects of Other Statutes	944
Pen. Code § 629.89: Covert Residential Entries	945
Pen. Code § 629.90: Order for Cooperation of Public Utilities, Landlords, Custodians and Others	945

Pen. Code § 629.91: Civil or Criminal Liability; Reliance Upon Court Order	946
Pen. Code § 629.92: Authority to Conform Proceedings and Order to Constitutional Requirements	946
Pen. Code § 629.94: Training and Certification of Law Enforcement Officers	946
Pen. Code § 629.96: Severability	947
Pen. Code § 629.98: Automatic Repeal	947
Pen. Code § 632: Eavesdropping, Compared	947
Pen. Code § 633.8: Eavesdropping in Hostage or Barricading Situations	948
<b>Chapter 7:</b>	951
Warrantless Searches:	951
General Rule	951
Exceptions to the Search Warrant Requirement	951
Plain Sight Observations:	952
Rule	952
No Search	952
Justification for a Seizure	952
No Expectation of Privacy	953
Examples	954
Exception	956
The “Plain Sight Observation” vs. the Right To Enter a Residence	956
Plain Hearing	956

Plain Smell:	957
General Rule	957
Odors in a Residence	957
Odor on the Person	958
Odors in Vehicles:	958
Pre-Legalization	958
Other Jurisdictions	959
Post-Legalization:	959
Issue	959
Legal Argument	960
Case Law	962
Odor of Ether in a Residence	965
Odor From a Container	966
Exigent Circumstances:	966
Defined	966
Rule	967
Examples:	968
Destruction of Evidence	968
Officers' Safety	970
Fresh or Hot Pursuit	970
Fighting a Fire	971
Search for Additional Suspects	971
Protection of Life and Property	971

To Prevent the Escape of Suspects, or When Suspects Arm Themselves	973
To Prevent a Person From Committing Suicide	973
Requirement of a Pre-Seizure Hearing	974
Warrantless Seizure of a Child for Protective Custody Purposes	975
Special Needs Searches and Seizures:	977
Test	977
Examples:	978
Random Testing of Student Athletes	978
Suspicionless Drug Testing of Teachers and Administrators	978
Random Metal Detector Searches of Students	979
Search of a Student's Computer	979
Drug Testing for United States Customs Service Employees	979
Searches of Employees' Backpacks	979
Pre-Departure Airport Screening Procedures	979
Drug and Alcohol Testing for Railway Employees	979
Administrative Inspections of Closely Regulated Businesses	979
Administrative Inspection of Fire-Damaged Premises	979
Administrative Housing Code Inspections	979
Border Patrol Checkpoints	979
Sobriety Checkpoints	980

Entry into a Residence to Enforce a Court Order	980
Fourth Waiver Searches	980
A Search Warrant Issued Pursuant to P.C. § 1524.1 (i.e., HIV)	980
Taking of Biological Samples for DNA Databases	980
Search of Luggage in a Subway Facility	980
The Search of a High School Student’s Pockets	981
Enforcement of Fish and Game Regulations	981
Depriving Parents of the Liberty Interest in the Care, Custody and Control of their Child due to Medical Necessity	981
Breathalyzer Tests for Police Officers Involved in Shootings	982
Home “Walk-Throughs” for Purposes of Determining Welfare Eligibility	982
Text Messages from a Police Officer’s City Owned Pager	982
Searching of School Lockers for a Weapon	982
Searches and Seizures of Students in the School Setting	982
Jail Booking Strip Searches	982
In responding to Sounds of Gunfire and in Preventing Violence in a High Crime Area	983
Exceptions to Exceptions:	984
A Highway Drug Interdiction Checkpoint	984
A State Hospital Blood Testing Program	984

Examples Where the “Special Need” Fails to Outweigh a Person’s Right to Privacy:	984
Preemployment Drug and Alcohol Screening Requirement for Part Time Minor Employees	984
A Urinalysis Drug Test Requirement for Candidates for Public Office	984
Drug Testing for Lesser Customs Employees	984
A State Hospital’s Drug Testing Policy for Unwed Mothers	985
A Forced, Warrantless Extraction of a DNA Sample	985
A Forced Medical Examinations of Minor Children Without Notice to Parents	985
Undecided Application of the Speical Needs Doctrine; Interviewing a Child Victim on a School Campus:	985
The <i>Camreta v. Greene</i> Issue	985
P.C. § 11174.3: Interviews with Suspected Child Victims of Abuse or Neglect	986
Closely or Pervasively Regulated Businesses or Activities:	987
Rule:	987
“Closely regulated” businesses	987
“Pervasively regulated” businesses	987
Criteria:	988
Substantial Governmental Interest	988
Necessary Warrantless Inspections	988
A Constitutionally Adequate Substitute for a Warrant	988

General Examples:	988
Commercial Trucking	988
A County Jail	988
Liquor Sales	989
Firearms Dealers	989
Mining	989
Automobile Junkyards	989
Where Licenses Include a Consent to Search	989
Exceptions:	989
Hotels and Motels	989
As an Excuse to Perform a Criminal Function	989
Other California or United States Regulatory/Administrative Searches:	990
Vehicle Code:	990
V.C. § 13353: Blood or Breath Tests for D.U.I. Arrestees:	990
<i>Schmerber v. California</i>	990
<i>Missouri v. McNeely</i>	991
The Unconscious DUI Arrestee	991
Veh. Code § 23612; California’s “Implied Consent Law”	993
Burden of Proof	998
V.C. § 320(b): Auto Dismantlers	999
V.C. § 2805: Vehicle Inspections in Connection with Theft Investigations	999

Penal Code:	1000
P.C. § 171e: Inspection of a Firearm in State Buildings and Residences	1000
P.C. § 25850(b): Inspection of a Firearm in a Public Place.	1000
P.C. § 18250: Seizure of Deadly Weapons at Domestic Violence Scenes	1000
Fish and Game Code:	1000
F&G § 8011	1000
Cases	1000
Financial Code:	1001
Fin. Code § 21206: Inspection of Pawned Property	1001
United States Code:	1002
14 U.S.C. § 89(a): The Coast Guard Search Authority	1002
49 U.S.C. § 44901: Transportation Security Administration (TSA) Search Authority	1002
Miscellaneous:	1002
Arson Investigations	1002
School Searches:	1002
Rule	1002
Students in General:	1003
Rule	1003
Constitutional Protections and Statutory Restrictions:	1003
Cal. Const., Article I, Section 28(c)	1003

Ed. Code § 49050	1004
The Use of Restraints and/or Seclusion as a Disciplinary Measure by School Officials	1005
Case Law	1006
Athletics and Extracurricular Activities; Drug Tests:	1010
School athletics	1010
Extracurricular activities	1010
Airport Searches:	1010
Reasonableness	1010
Second, Random Screening	1011
Baggage Searches	1012
The Minimal Intrusion Exception:	1012
General Rule	1012
Federal Cases	1013
California Law	1013
<b>Chapter 8:</b>	1015
Searches of Persons:	1015
Privacy Rights	1015
Rule	1016
Search Incident to Arrest:	1016
History Behind the Rule	1016
Legal Justification	1016
Blood vs. Breath Tests in DUI Cases	1017

Exceptions:	1018
Cellphones	1018
Blood Samples in DUI Cases	1018
Physical Body Cavity Searches	1019
Legal Justification Under Debate	1019
Transportation of an Arrestee; the “Custodial Arrest” Requirement:	1021
Rule	1021
Search Incident To a Citation	1023
Officer’s Intent to Transport	1024
Transporting an Arrested Minor	1025
Contemporaneous In Time and Place:	1026
General Rule	1026
Search Before or After Arrest	1028
Exceptions	1029
Other Requirements and Limitations:	1029
Search Incident to a Citation	1029
Searches of Containers	1030
Property of Booked Person	1031
Arrest in the Home	1032
Arrest in a Vehicle	1033
Exceptions:	1033
Strip Searches	1033
Cellphones Found on the Person	1033

Searches with Probable Cause:	1034
Rule	1034
The Exigency	1034
Probable Cause from the Defendant's Admissions	1034
P.C. § 833; Search of an Arrestee	1035
Order of Search & Arrest	1035
Intrusions Into the Human Body:	1037
Substantial Justification	1037
The Interests in Human Dignity and Privacy	1037
Shocking the Conscience	1037
Factors to Consider	1037
Driving Under the Influence Cases:	1038
Urine Samples	1038
Blood Extraction	1038
Blood vs. Breath Tests	1039
Lesser Intrusions	1040
<i>Missouri v. McNeely</i> and <i>Schmerber v. California</i>	1040
Implied Consent:	1042
Veh. Code § 23612	1042
Actual Consent vs. Implied Consent	1049
Implied Consent and the Unconscious or Deceased DUI Suspect	1052

<i>McNeely</i> is Not Retroactive	1054
P.C. § 1524(a) Amended	1054
Case Law	1055
Use of Force in Making a Blood Draw	1055
Other Examples of Bodily Intrusions:	1057
Reasonable	1057
Unreasonable	1058
Privacy in the Hospital Room and During Medical Emergencies	1060
DNA Swabs taken for the Purpose of Eliminating Others as a Suspect	1061
Choking:	1061
Rule	1061
Examples	1062
Searches with Less Than Probable Cause:	1062
Persons in Pervasively Regulated Industries or Sensitive Positions:	1062
Government Employees	1062
Railway Workers	1063
Drug Testing for Customs Officers	1063
Exceptions:	1063
Candidates for Public Office	1063
A State Hospital's Drug Testing Policy for Unwed Mothers	1063
For Students	1063

Frisks (or Patdowns or Patsearches) for Offensive Weapons:	1063
Defined	1053
Constitutionality	1064
Articulable Facts	1065
For Weapons Only	1067
Examples of Lawful Patdowns	1067
A Reasonable or Rational Suspicion	1068
Factors to Consider:	1070
Visible Bulge	1070
Seeing a Weapon	1071
Sudden Movements	1071
Evasive and Deceptive Responses	1071
Unnatural Hand Postures	1071
Dispelling the Officer’s Suspicions	1071
The Nature of the Crime as a Factor	1071
The “Totality of the Circumstances”	1073
Reasonable Suspicion that is Dispelled	1073
Vehicle Drivers and Passengers	1074
Consensual Patdowns	1075
In the Absence of a Reasonable Suspicion, as a “Special Needs” Search	1075
Permissible Procedures:	1076
Limited to Outer Clothing; Exceptions	1076

Removal of Weapons	1076
When Suspect Reaches for a Weapon	1076
P.C. § 833.5; Detentions	1077
Problems:	1077
During Consensual Encounter	1077
During Execution of a Search Warrant or a Fourth Waiver Search	1077
Feeling a Controlled Substance: The “Plain-Feel” Doctrine	1078
Frisk Based Upon Uncorroborated Anonymous Tip	1080
Other Situations	1082
Abandoned Property:	1082
General Rule	1082
Trashcans	1084
The “Threatened Illegal Detention”	1085
Searching for Identification:	1086
General Rule	1086
Exceptions	1086
Searching for a Driver’s Identification and/or Vehicle Documentation	1086
Fingerprint Evidence:	1087
No Right to Refuse, Upon Arrest	1087
Use of Force	1089
Refusal Upon Less than an Arrest	1090

Right to Assistance of Counsel	1090
Handwriting (and Other Types of) Exemplars	1090
Jail, Prison, and Prisoner Searches:	1091
Booking Inventory Searches:	1091
Scope	1091
Purposes	1091
Justifications:	1092
To Safeguard the Person's Property	1092
To Prevent Introduction of Weapons and Contraband Into the Jail Facility	1092
To Discover Evidence	1092
Belated Search Incident to Arrest	1092
Containers:	1092
Exception; Cellphones	1093
Post-Booking Searches of Impounded Property:	1093
Exceptions	1093
Strip Searches of Prisoners:	1095
Fifth and Fourteenth Due Process, and Fourth Amendment Search and Seizure Issues:	1095
Rule	1095
The Fourth Amendment	1095
The (Fifth and) Fourteenth Amendment(s); Due Process	1095
Reasonableness	1096

Visual Body Inspections	1096
Strip Searches Restricted	1097
Strip Searches Upheld	1099
Resolution of the Conflict	1099
Continued Limitations	1100
Misdemeanor (and Infraction) Booking Searches:	1100
Due Process	1100
Statutory Rules:	1101
P.C. § 4030(a): Legislative Purpose	1101
P.C. § 4030(b): For Pre-Arrestment Detainees Arrested for Infractions and Misdemeanor Offenses	1101
Definitions:	1101
P.C. § 4030(c)(1): Body Cavity	1101
P.C. § 4030(c)(2): Physical Body Cavity Search	1101
P.C. § 4030(c)(3): Strip Search	1102
P.C. § 4030(c)(4): Visual Body Cavity Search	1102
P.C. § 4030(d)(1): Authorization for Patdown, Metal Detector, Body Scanners and Thorough Clothing Searches:	1102
Subd. (d)(2): Pregnant Women and Body Scanners	1102
P.C. § 4030(e): Restrictions on Strip & Visual body Cavity Searches	1102

P.C. § 4030(f)(1) & (2): Restrictions on Confinement in General Jail Population	1103
P.C. § 4030(g): Restrictions on Physical Body Cavity Searches; Search Warrant Requirement	1104
P.C. § 4030(h): Recording of Required Documentation	1104
P.C. § 4030(i): Touching Restrictions	1104
P.C. § 4030(j): Physical Body Cavity Search Requirements	1104
P.C. § 4030(k)(1): Same Sex Requirements:	1104
Subd. (k)(2): Same Sex Viewing Body Scanners	1104
P.C. § 4030(l): Privacy for Strip, Visual, or Physical Body Cavity Searches	1105
P.C. § 4030(m): Criminal Penalties for Violations	1105
P.C. § 4030(n), (o): Civil Remedies for Violations	1105
P.C. § 4031: Searches of Minors in Juvenile Detention Centers:	1105
Subd. (a): Applicable to all Minors Held in Juvenile Detention Centers	1105
Subd. (b): Restriction on Touching	1105
Subd. (c): Restrictions on Physical Body Cavity Searches	1105

Subd. (d): Same Sex Requirements for Visual or Physical Body Cavity Searches	1105
Subd. (e): Privacy Requirements for Strip, Visual, and Physical Body Cavity Searches	1106
Subd. (f): Criminal Penalties for Violations	1106
Subd. (g): Other Civil and Criminal Remedies for Violations	1106
Subd. (h): Civil Actual, Punitive, or Injunctive Relief for Violations	1106
Subd. (i): Remedies for Persons Described in P.C. § 4030(b) Not Limited	1106
Additional Case Law	1106
Searches of Jail Cells	1107
Male Correctional Officers and Female Inmates; P.C. § 2644	1109
Monitoring of Jail Visitations and Telephone Calls:	1109
Rule	1109
Exceptions:	1111
P.C. § 636(a): Eavesdropping on Conversations with an Attorney, Religious Advisor, or Licensed Physician	1111
Lulling an Inmate into Believing a Conversation was Confidential	1112
Monitoring Jail Mail	1112

Regulating Jail/Prison Visitations:	1115
Rule	1115
Exceptions	1116
The Rule of <i>Estes v. Rowland</i>	1116
A “Manual” or “Physical” Body Cavity Search of a Jail Visitor	1118
A Prisoner’s Retained Constitutional Rights:	1118
Infringement of Rights	1118
Rights Retained by Prison Inmates	1119
P.C. §§ 295 et seq: The DNA and Forensic Identification Database and Data Bank Act of 1998:	1119
DNA Testing	1119
California’s Statutes:	1119
P.C. § 295(a): Name of the Act	1119
P.C. § 295(b): Statement of Intent	1119
P.C. § 295(c): Purpose	1119
P.C. § 295(d): Identification of Criminal Offenders	1120
P.C. § 295(e): Biological Samples Limited to “Buccal” Swab Samples	1120
P.C. § 295(f): Collection of Blood Samples	1120
P.C. § 295(g) & (h): DNA and Forensic Identification Database and Data Bank Program	1120
P.C. § 295(i): Counties’ Responsibilities	1120
P.C. § 295(j): Costs	1121
P.C. § 295(k): DNA Testing Fund	1121

P.C. § 295(l): The “Jan Bashinski DNA Laboratory.”	1121
P.C. § 295.2: Prohibition on DNA Being Used for Testing, Research, or Experiments	1121
P.C. § 296(a): Offenders Subject to Collection of Specimens, Samples and Print Impressions	1121
P.C. § 296(b): Applies to All Qualified Persons Regardless of Sentence	1125
P.C. § 296(c): Applies to All Qualified Persons Regardless of Placement	1125
P.C. § 296(d): Provisions are Mandatory	1125
P.C. § 296(e): Duty of a Prosecutor to Notify the Court	1126
P.C. § 296(f): Duty of a Court to Inquire	1126
P.C. § 296.1(a): Collection of Samples For Present and Past Qualifying Offenses:	1126
Subpara. (1): Collection From Adult for a P.C. § 296(a)(2)(A), (B) or (C) Felony Arrest	1126
Subpara. (2): Collection From Persons Already Confined After Conviction or Adjudication	1128
Subpara. (3): Collection from Persons on Probation, Parole, or Other Release	1128
Subpara. (4): Collection From Parole Violators and Others Returned to Custody	1129
Subpara. (5): Collection From Persons Accepted Into California From Other Jurisdictions	1130
Subpara. (6): Collection From Persons in Federal Custody	1130
P.C. § 296.1(b): Retroactivity of Provisions	1131
P.C. § 296.2: Procedures for Obtaining Replacement Samples	1131

P.C. § 297: Analysis of Crime Scene Samples	1131
P.C. § 298: Procedures for Collection of Samples	1131
P.C. § 298.1(a): Sanctions for Failure to Provide Required Samples	1133
P.C. § 298.1(b)(1): Use of Force	1133
P.C. § 298.1(b)(2): Withdrawal of Blood in a Medically Approved Manner	1133
P.C. § 298.1(c)(1)(A), (2)(A): “Reasonable Force,” Defined	1133
P.C. § 298.1(c)(1)(B), (2)(B): Written Authorization to Use Force	1134
P.C. § 298.1(c)(1)(C), (2)(C): Efforts to Secure Voluntary Compliance	1134
P.C. § 298.1(c)(1)(D), (2)(D): Videotaping of “Cell Extractions”	1134
P.C. § 299: Expungement of Data	1134
P.C. § 299.5: Confidentiality Requirements	1138
P.C. § 299.6: Dissemination of Information to Law Enforcement Agencies	1138
P.C. § 299.7: Disposal of Samples	1139
P.C. §§ 300 et seq.: Construction and Severability	1139
Additional Case Law	1140
Taking DNA Samples from Minors:	1143
Wel. & Inst. Code § 625.4:	1143
Subd. (a): Conditions for Requesting Voluntary DNA Samples	1143
Subd. (b): No Right to Counsel	1143

Subd. (c): Unreasonable Extension of Detention	1143
Subd. (d): Admissibility of DNA Sample	1144
Subd. (e): Expungement of DNA Sample if Minor No Longer a Suspect	1144
Subd. (f): Requests for Expungement of DNA Sample	1144
Subd. (g): DNA Samples for Use in Other Investigations	1144
Subd. (h): Penalty for Violation of this Section	1144
Subd. (i): Scope of This Section	1145
<b>Chapter 9:</b>	1146
Searches of Vehicles:	1146
General Rule	1146
Warrantless Searches of Vehicle	1146
Searches Incident to Arrest:	1147
The Rationale	1147
Containers in the Vehicle:	1147
Rule	1147
Exception; Cellphones	1148
Probable Cause Not Needed	1148
Limitations:	1148
The Lunging Area	1148
Contemporaneous in Time and Place	1149
Limitation of the <i>Chimel/Belton</i> “Bright Line” Test:	1150
Rule Criticized	1150

<i>Arizona v. Gant</i>	1151
<i>Gant's</i> Alternative Theory	1152
Subsequent Case Law	1154
Exception	1157
Exception to Exception	1158
Retroactivity	1158
Transportation	1159
Search Incident to a Citation	1159
Searches where Arrestee is a “Recent Occupant:”	1160
Old Rule	1160
New Rule	1160
Searches With Probable Cause:	1162
General Rule	1162
The “Automobile Exception”	1163
Justifications for the Rule:	1163
The Ready Mobility of the Automobile	1162
The Lessened Expectation of Privacy	1163
The Expense, Delay, and Risk of Loss in Securing a Vehicle	1164
The Need for Clear Guidelines for Police	1164
Case Law	1164
Problem: Limited Amount of Contraband	1170
Problem: Odor of Marijuana From a Vehicle:	1172
General Rule	1172

Pre-Legalization of Marijuana	1172
Other Jurisdictions	1173
Post-Legalization of Marijuana	1174
Issue	1174
Legal Argument	1174
Case Law	1176
Problem: More than One Occupant	1178
Problem: Vehicle Already Impounded	1179
Problem: Closed Containers:	1179
Old Rule	1179
New Rule	1180
Problem: When the Vehicle is Parked in the Curtilage of a Residence	1181
Problem: When the Item Searched is a Cellphone	1182
Problem: Motorhomes (and Other Similar Vehicles)	1182
Problem: Expanding the Scope of the Search	1184
Evidence of Probable Cause	1185
When the Vehicle Itself is Evidence of a Crime	1186
Inventory Searches of Impounded Vehicles:	1187
General Rule	1187
Impoundment of a Vehicle; Statutory Authority:	1188
V.C. § 14602.5: Impoundment of a Vehicle on Conviction for Driving with a Suspended or Revoked License	1188

V.C. § 14602.6: Upon Determination That a Person was Driving Without Valid License; Arrest:	1189
Case Law	1196
V.C. § 14602.7: Rights and Procedures for Impoundment; Release to Legal Owner	1199
V.C. § 14602.8: Impoundment of Vehicle; Release	1206
V.C. § 14602.9: Impoundment of Bus or Limousine of Charter-Party Carrier	1214
V.C. § 22650: Limitation on Authority; Burden of Proof at Hearings	1220
V.C. § 22651: Circumstances In Which Removal of a Vehicle Permitted:	1221
Case Law	1232
V.C. § 22651.05: Removal of Vehicle by Trained Volunteer in Specified Circumstances	1234
V.C. § 22651.07: Duties of Person Charging for Towing or Storage; Rights of Vehicle Owner or Agent; Civil Liability for Violations	1235
V.C. § 22651.1: Payment of Towing and Storage Costs	1235
V.C. § 22651.2: Impoundment of Vehicle Used to Advertise Event or Function	1236
V.C. § 22651.3: Impoundment of Vehicles in Offstreet Public Parking Facility; Multiple Parking Violations	1236
V.C. § 22651.4: Impounding of Commercial Motor Vehicles From Other Countries	1238
V.C. § 22651.5: Removal of Vehicle with Activated Alarm Device	1238
V.C. § 22651.6: Removal of Vehicle Used by Person Arrested for Speed Contest	1239

V.C. § 22651.7: Immobilization of Vehicle as Alternative to Removal; Multiple Parking Violations	1239
V.C. § 22651.8: Satisfactory Evidence of Payment of Parking Violations	1240
V.C. § 22651.9: Vehicle Left on Street with “For Sale” Sign	1241
V.C. § 22652: Removal of Vehicle From Stall or Space Designated for Disabled Persons	1242
V.C. § 22652.5: Removal of Vehicle From Disabled Parking Space; Immunity From Liability of Offstreet Parking Facility	1242
V.C. § 22652.6: Removal of Vehicle From Disabled Parking Space by Peace Officer	1242
V.C. § 22653: Removal From Private Property of Vehicle Reported Stolen Or Involved in Offense	1243
V.C. § 22654: Authorized Moving of Vehicle	1243
V.C. § 22655: Removal of Vehicle Believed to Have Been Involved in Hit-And-Run Accident	1245
V.C. § 22655.3: Removal and Storage of Vehicle Used to Flee or Evade Peace Officer	1246
V.C. § 22655.5: Removal of Vehicle Used in Crime	1247
V.C. § 22656: Removal of Vehicle From Railroad Right-Of-Way, Street Railway, or Light Rail Line	1247
V.C. § 22658: Removal of Vehicle From Private Property by Property Owner	1248
V.C. § 22659: Removal of a Vehicle From State Property	1260
V.C. § 22659.5: Nuisance; Abatement; Impoundment	1261

V.C. § 22659.6: Authorization of Cities of Los Angeles, Oakland, and Sacramento to Conduct Pilot Program for Removal of Vehicles Used in Commission of Pimping, Pandering, or Solicitation; Report	1268
V.C. § 22660: Abatement and Removal of Abandoned Vehicles as Public Nuisance	1270
V.C. § 22661: Contents of Ordinance Establishing Procedures for Removal of Abandoned Vehicles	1271
V.C. § 23594: Duration of a DUI Impoundment	1273
V.C. § 2814.2: Impoundment of a Vehicle at a Sobriety Checkpoint	1274
The “Standardized Procedures” Requirement:	1275
Rule	1275
Format	1275
Containers in the Vehicle	1275
Limitations	1276
Additional Case Law	1276
Pretext Impounds: Prohibition of an Investigatory Purpose	1277
Inventory Searches as an Exception to the Rule of <i>Whren v. United States</i>	1279
The Community Caretaking Doctrine	1282
Rule	1282
Case Law	1282
When Alternatives to Impounding a Vehicle are Available	1288
Discovery	1288
“Patdown” (or “Protective Search”) of a Vehicle:	1289
General Rule	1289

Case Law	1289
Statutory Automobile Inspections:	1290
V.C. § 2805(a): Elements	1290
V.C. § 2805(b): Elements	1291
Penalties for Refusal to Comply	1292
Relevant Definitions:	1292
Identifiable Vehicle Component; V.C. § 2805(a)	1292
Garage; V.C. § 340	1292
Repair Shop; V.C. § 510	1292
Terminal; V.C. § 595	1292
Automobile Dismantler; V.C. § 220	1292
Case Law	1293
Use of Force	1294
Non-Commercial Property	1294
Statutory Automobile Searches:	1295
V.C. § 9951(c)(2): Downloading the Contents of an “Event Data Recorder:”	1295
Court Order Requirement	1295
Subd. (b) “Recording Device,” Defined	1295
Subd. (d): Information Retrieved for Diagnostic Purposes	1295
Subd. (f): Vehicles Manufactured After July 1, 2004, Only	1296
Case Law	1296

V.C. § 2814.1: Vehicle Checkpoints	1296
V.C. § 2810.2(d) & (e): Vehicle Stops Involving Agricultural Irrigation Supplies	1297
Searching a Vehicle for a Driver’s License and/or Vehicle Registration, VIN Number, Proof of Insurance, etc.:	1297
General Rule	1297
Exceptions	1297
Warrantless Searches of a Vehicle for the Driver’s Identification	1298
Checking for a Vehicle’s Identification Number (“VIN”)	1299
Seizure and Searching of Vessels:	1300
Har. & Nav. Code § 523: Removal of Vessels from Public Waterways:	1300
Subd. (a): Authority for Peace Officers to Remove Vessels; Circumstances	1300
Subd. (b): Costs	1301
Subd. (c): Authority for Peace Officers to Remove and Store Vessels; Circumstances	1301
Subd. (d): “Vessel,” Defined	1302
Har. & Nav. Code § 668.5: Impoundment of a Vessel Upon the Owner being Convicted of DUI with the Unlawful Killing of a Person	1302
Har. & Nav. Code § 651: Operator of a Vessel	1302
Har. & Nav. Code § 663: Peace Officer Defined	1302
<b>Chapter 10:</b>	1303
Searches of Residences and Other Buildings:	1303
General Rule	1303
Private Residences & Expectation of Privacy	1303

Other Buildings and Places:	1305
Commercial Businesses	1305
Hotel & Motel Rooms:	1306
Hotels	1306
Motels	1306
In General:	1307
Expired Tenancy	1307
Renting a Room by Fraud	1307
Abandonment	1309
The Guest Register	1309
Civ. Code § 53.5: Releasing Guest Information to Non-California Peace Officers	1311
Boarding House	1311
Garage	1312
Fishing Retreat	1312
Hospital Room	1312
Jail Cell	1312
Shack	1312
Recreational Vehicles	1312
Military Housing	1312
Curtilage of the Home:	1313
Rule	1313
General Case Law	1313

Specific Examples	1314
Warrantless Entry into the Curtilage	1515
Exceptions	1317
Temporary or Impermanent Residences:	1319
General Rule	1319
Tents	1319
A Cardboard Box	1320
A Cave on Federal Property	1320
In a “Squatter’s Community” on Public Property	1320
Under a Bridge Abutment	1320
Businesses:	1321
Rule	1321
Case Law	1321
Workplace Searches of Government Employees:	1322
Rule	1322
Reasonableness	1322
Public Restrooms, Adult Bookstores and Dressing Rooms:	1323
Rule	1323
Examples:	1323
Pay Toilets	1323
Men’s Restroom in a Department Store	1323
Doorless Stall in a Public Restroom	1324
Curtained Booth in an Adult Bookstore	1324

Fitting Room in a Department Store	1324
Spying into Bathrooms, Etc.; Statutes:	1324
P.C. § 647(k)(1): Through a Hole or Opening	1324
P.C. § 647(k)(3): Use of Cameras	1324
P.C. § 653n: Two-Way Mirrors	1325
Problem: When Officers Trespass	1325
Securing the Premises Pending the Obtaining of a Search Warrant:	1326
Fourth Amendment	1326
General Rule	1326
Exigency of the Officers' Own Making:	1327
With Probable Cause	1327
With No Probable Cause	1328
New Rule?	1328
Securing Cases	1329
Miscellaneous Issues:	1330
Detention of a Residence	1330
Detaining Residents Outside	1331
Knock and Talk:	1332
Rule	1332
Test	1332
Legal Knock and Talks	1332
Illegal Knock and Talks	1333
The Doctrine of "Consent Once Removed"	1335

Observing Contraband from Outside	1336
Using a Ruse to Cause a Suspect to Open his Door:	1336
Split of Authority	1336
Held to be Illegal	1337
Held to be Legal	1338
Possible Resolution: <i>Kentucky v. King</i>	1340
Searches Incident to Arrest:	1340
Legal Justification	1340
In a Residence	1340
Protective Sweeps:	1342
Defined	1342
Limitation	1343
Arrests Immediately Outside	1346
Detentions Outside the House	1347
Commercial Establishment	1347
Other Situations	1347
Plain Sight Observations:	1348
Rule:	1348
Limitation: Necessity of a Search Warrant	1351
Preserving the Peace:	1352
Rule	1352
Case Law	1352
Preventing the Destruction of Evidence:	1353

Rule	1353
Case Law	1353
Differentiating Felony vs. Misdemeanor cases	1354
Welfare Checks; the “Community Caretaking Function;” “Exigencies,” and the “Emergency Aid Doctrine:”	1356
Rule	1356
Community Caretaking:	1357
Does Community Caretaking Apply to Residences?	1357
The United States Supreme Court	1357
The Ninth Circuit Court of Appeal	1358
Other Federal Circuits	1359
California’s Lower Courts	1360
The California Supreme Court	1362
Exigency Aid Exception:	1362
General Rule	1362
The Ninth Circuit Court of Appeal	1363
The California Courts’ Analysis	1365
The United States Supreme Court’s Rule	1368
Other Cases	1370
Misellaneous Exigent Circumstances	1374
Officer Safety	1376
Animal Control Cases	1377
Fleeing Misdemeanant or Non-Dangerous Felon	1378
Emergency Exception and the Odor of Ether	1378

Executing an Arrest Warrant	1379
Sufficiency of Evidence to Believe the Suspect is Inside	1381
Third Parties Entering with Police	1383
Knock and Notice	1383
<b>Chapter 11:</b>	1385
New and Developing Law Enforcement Technology:	1385
The Problem	1385
Thermal Imaging Device	1388
A Buster	1389
Spike Mike	1390
Aerial Surveillance	1390
Drones:	1390
Limited Authority	1390
Federal Law:	1391
14 Code of Federal Regulations, Part I & Part 21	1391
14 Code of Federal Regulations Part 107	1391
Code of Federal Regulations: Operating a Drone:	1391
14 C.F.R § 107.23: In a Careless or Reckless Manner	1391
14 C.F.R § 107.39: Above Non-Consenting People	1391
14 C.F.R § 107.51: Over 400 Feet	1391
Punishment	1391

California Law:	1391
Civ. Code § 1708.8: Civil Liability	1391
Gov't. Code §§ 853, 853.1; Civil. Code § 43.101: Destruction of Drones by Government Entities	1392
Gov't. Code § 853.5: Definitions:	1392
Unmanned Aircraft	1392
Unmanned Aircraft System	1392
Pen. Code § 402: Sightseeing at the Scene of an Emergency; Drones	1392
Pen. Code § 647(j)(1): Privacy Invasion	1392
Pen. Code § 4577: Drone Use Over State Prison, Jail, Juvenile Hall, Camp, or Ranch; Exceptions; Definitions	1393
Facial Recognition Software and Biometric Features:	1394
Facial Recognition Software	1394
Biometric Features	1394
Pen. Code § 832.19: Statutory Restrictions on the Use of Biometric Surveillance System Used Via an Officer Body Camera	1394
Stingray (Kingfish) Device	1397
Automated License Plate Readers	1397
Electronic Tracking Devices (Transmitters) and “Pinging” a Cellphone:	1398
Electronic Tracking Devices	1398
P.C. § 637.7: Use of Electronic Tracking Devices:	1402
Use of Electronic Tracking Devices: Subd. (a)	1402

Exceptions: (Subd. (b) & (c))	1402
Subd. (d): “Electronic tracking device” Defined	1402
Subd. (e): Punishment	1402
Subd. (f): Revocation of a Business License	1402
“Pinging” a Cellphone:	1403
Old Rule	1403
New Rule	1404
Exceptions	1407
The “Stored Communications Act”	1407
The Cloud Act, § 103(a)(1)	1408
Flashlights and Spotlights	1408
Binoculars	1409
Night Vision Goggles	1409
Controlled Tire Deflation Device (“CTDD”)	1409
Videotaping and Photographing:	1410
General Rule	1410
Case Law	1410
Videotaping From Off the Property	1411
Videotaping and Photographing by Private Citizens	1412
P.C. § 632: Illegal Eavesdropping on Confidential Communications	1414
Metal Detectors:	1414
On School Campuses	1414
At Airports	1415

Dogs:	1415
Used to Search:	1415
General Rule	1415
Sniffs of a Person	1421
Used to Track (or Trail)	1421
Use of Dogs in Making Arrests	1414
Shooting Dogs in Self-Defense	1426
Cellphones, Disks, Computers and Other High Tech Devices	1427
<b>Chapter 12:</b>	1428
Open Fields:	1428
General Rule	1428
Observations Into Private Areas from an Open Field	1428
<b>Chapter 13:</b>	1430
Searches of Containers and Electronic Devices:	1430
General Rule	1430
Exceptions to the Warrant Requirement:	1431
Incident to Arrest:	1431
Transportation Required	1431
Booking Searches	1432
Incident to Arrest, in a Vehicle	1433
With Probable Cause, in a Vehicle	1434
When at Least One Person in a Vehicle is Subject to a Fourth Waiver	1435

With Defendant’s Admission as to the Contents	1436
Abandoned Property	1437
During a Fourth waiver search of a Residence	1440
Special Needs Searches	1440
Other “Expectation of Privacy” Issues	1441
With Consent of a Third Person having Common Authority	1441
The “Single Purpose Container” Theory	1442
Containers First Searched by Non-Law Enforcement	1443
Exterior of a Container	1446
Customs Inspections	1447
“Manipulating,” “Squeezing” or “Poofing” Containers:	1447
At an Airport	1447
At a Bus Station	1448
During a Detention and Pat Down	1448
Detention of a Container	1448
Searches of Cellphones, Disks, Computers and Other High Tech Devices:	1452
Issue	1452
Recent Trend	1452
Arguable Continued Exceptions to the Search Warrant Requirement:	1454
Property Seized Incident to Arrest	1454
In a Vehicle for Which There is Already Probable Cause	1454
When the Possessor is Booked	1454

When the Container is Seized, but not Inspected, Pursuant to a Warrant	1454
With Exigent Circumstances	1455
The Person is Without Standing:	1456
The Person is Subject to a Fourth Waiver	1456
Border Searches	1457
Additional Case Law	1459
Search of Unauthorized Cellphone Recovered at CDCR	1464
The California Electronic Communications Privacy Act: P.C. §§ 1546-1546.4:	1464
P.C. § 1546.1: Compelling Production of Electronic Communication Information:	1465
Subd. (a): Prohibitions	1465
Subd. (b): Exceptions: Warrant, Court Order, or Subpoena	1465
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	1466
Subd. (d): Required Contents of the Warrant	1468
Subd. (e): Power of the Court to Appointing a Special Master and/or Destroy Irrelevant Information	1468
Subd. (f): Authority of the Service Provider to Disclose Electronic Communication Information or Subscriber Information	1469
Subd. (g): Obligation of the Government Entity to Destroy Communication Information; Exceptions	1469

Subd. (h): Disposition of Electronic Information Received Pursuant to an Emergency Involving Danger of Death or Serious Physical Injury to a Person	1469
Subd. (i): Authority of a Government Entity to Use an Administrative, Grand Jury, Trial, or Civil Discovery Subpoena	1470
Subd. (j): Authority of the Public Utilities Commission and the State Energy Resources Conservation and Development Commission	1470
Subd. (k): Authority of a Government Entity to Have and Employee Return an Electronic Device	1471
P.C. § 1546: Relevant Definitions:	1471
Subd. (a): Adverse Result	1471
Subd. (b): Authorized Possessor	1471
Subd. (c): Electronic Communication	1471
Subd. (d): Electronic Communication Information	1471
Subd. (e): Electronic Communication Service	1472
Subd. (f): Electronic Device	1472
Subd. (g): Electronic Device Information	1472
Subd. (h): Electronic Information	1472
Subd. (i): Government Entity	1472
Subd. (j): Service Provider	1472
Subd. (k): Specific Consent	1472
Subd. (l): Subscriber Information	1472

P.C. § 1546.2: Procedures for Obtaining a Warrant as a Follow-up to an Emergency Situation	1473
P.C. § 1546.4: Suppression Procedures and Other Remedies	1473
Case Law	1473
Gov't. Code § 53166: Mandated Security Procedures for Cellular Communications Interception Technology:	1474
Subd. (a): Relevant Definitions:	1474
(1) Cellular Communications Interception Technology	1474
(2) Local Agency	1474
Subd. (b): Security Procedures and Privacy Policy	1474
Subd. (c): Prohibitions on Acquiring Cellular Communications Interception Technology	1475
Subd. (d): Civil Remedies for Violation	1476
<b>Chapter 14:</b>	1477
Border Searches:	1477
General Rule	1477
8 U.S.C. § 1357(a): Statutory Arrest and Search Authority	1478
31 U.S.C. § 5317: Interdiction Authority	1480
Routine vs. Non-Routine Searches:	1482
Routine Searches	1482
Non-Routine Searches:	1483
Factors	1484
X-Rays of the Person	1484

Extended Detentions	1484
Cutting Open Luggage	1485
Cellphone Searches	1485
Destructiveness of the Search	1487
Reasonableness of the Search	1488
The Functional Equivalent of a Border:	1489
An International Airport	1489
The First Port Where a Vessel Docks	1489
Sorting Hub for Express Consignment Services	1489
The “Extended Border Search Doctrine:”	1489
The “Reasonable Cause to Suspect” Rule	1489
Case Law	1490
Immigration Checkpoints Away from the Border	1492
Roving Patrols	1493
Search of a Residence	1496
The San Ysidro Port of Entry	1497
<b>Chapter 15:</b>	1498
Fourth Waiver Searches:	1498
“Prior Consents:” Search & Seizure (“Fourth Waiver”) Conditions:	1498
General Rule	1498
Parole v. Probation: Consent	1499
Parole:	1500
Statutory Authorization	1500

Constitutionality	1501
Areas Subject to Search	1501
P.C. § 3067(c) vs. Cal. Code of Regs, Title 15, § 2511	1501
Officer’s Prior Knowledge	1502
Use of a Global Positioning System; GPS	1503
Post-Release Community Supervision Act of 2011:	1504
Supervision by County Probation	1504
P.C. § 3453: Postrelease Community Supervision Agreement	1505
Probation:	1506
General Rules	1506
Government Interests	1507
General Principles	1507
Degree of Suspicion Required	1508
Statutory Authorization	1508
Validity of a Fourth Waiver Condition	1509
The Language of the Specific Fourth Waiver Condition	1517
Sex Offender Registration of Internet Identifiers per Pen. Code § 290.024; Internet Identifier Defined	1520
Non-Disclosure of Internet Identifiers to the Public; Pen. Code § 290.45	1521
Juvenile Probationers:	1521
General Rules	1521

Statutory Authority:	1522
W&I § 727: Reasonable Orders	1522
W&I § 730(b): Reasonable Conditions of Probation	1523
W&I §§ 790 et seq: Mandated Waiver Condition in Post- Plea Diversion Programs	1523
Juveniles and Electronic Device and/or Social Media Probation Conditions; First District	1523
From the Second District	1528
The Fourth District Court of Appeal	1529
The Sixth District Court of Appeal	1531
The California Supreme Court	1531
First Amendment Issues	1532
Parole vs. Probation	1532
A “Special Needs” Search	1533
Pre-Trial Fourth Waiver	1535
Warrantless Blood-Draws of a DUI Probationer/Parolee Suspect	1536
Taking a DNA Sample	1536
Constitutionality	1536
Expectation of Privacy	1536
Standard of Proof Required:	1537
Probation	1537
Parole	1539

Limitation: Searches Conducted for Purposes of Harassment:	1540
Rule	1540
Case Law	1540
Examples of “Unreasonable” Searches	1541
Who May Conduct a Fourth Waiver Search?	1542
California Rule	1542
Federal Rule	1542
Need to Seek Permission From the Probation or Parole Officer:	1543
Probation	1543
Parole	1543
Searching While In Ignorance of a Search Condition:	1544
Issue	1544
Earlier Case Law	1544
Present State of the Rule	1544
Exceptions	1548
Arresting and Searching While in Ignorance of an Existing Warrant of Arrest	1549
Discovery of a Search Condition as the Product of an Illegal Detention	1550
Parole and Probation Revocation Hearings:	1550
Parole Hearings	1550
Probation Hearings	1550
Entering a Residence; Probable Cause or Reasonable Suspicion	1550
Searching a Container; Probable Cause or Reasonable Suspicion	1552

Duration of a Fourth Waiver	1552
Good Faith Belief in the Existence of a Search Condition	1543
Search and Seizure Conditions Discovered After the Fact	1554
Miscellaneous:	1554
Burden of Proof	1554
Rights of Third Parties:	1555
Rule	1555
Common Areas	1555
Private Areas	1558
When it is Unknown Who Owns the Property About to be Searched	1561
Detention of Third Persons	1562
In a Vehicle	1563
Knock and Notice	1564
Detentions, Patdowns, and Arrests:	1565
Detentions	1565
Patdowns:	1565
Old Rule	1565
New Rule	1566
Arrests	1566
Out-of-State Probationer or Parolee	1566
AIDS and HIV	1566

<b>Chapter 16:</b>	1567
Consent Searches:	1567
Rule	1567
Why Do People Consent?	1567
Limitation; Free and Voluntary Requirement:	1568
General Rule	1568
Submission to Authority	1568
False Claim of Exigent Circumstances	1569
Burden of Proof	1569
Factors	1570
Circumstances Affecting Voluntariness:	1570
Under Arrest	1570
Use of Firearms	1571
Threatening to Obtain a Search Warrant	1571
Threatening to Use a Drug-Sniffing Dog	1572
Threatening the Suspension of One's Driver's License and Other Consequences for Refusing a Blood Test after a DUI Arrest	1572
Threatening to Search the Home of a Loved One	1574
Implying Guilt	1574
Using a Ruse	1575
Threats to Take Away One's Children	1575
Other Inducements	1576
Combination of Inducements	1576

During a Consensual Encounter	1577
A Suspect’s Failure to Object	1577
Manner of Inquiry:	1577
Reasonable Person Test	1577
Age of the Suspect	1578
Product of a Constitutional Violation:	1578
Rule	1578
Illegal Search	1578
Illegal Detention	1579
Illegal Arrest	1580
Illegal Interrogation	1581
Right to Counsel Violation	1581
Consent During a Prolonged Detention:	1582
General Rule	1582
Lawfully Prolonged Detentions	1582
After Detention Ends	1583
The Scope of the Consent:	1585
Burden of Proof	1585
Test	1585
Case Law	1586
Multiple Searches Based Upon a Single Consent	1588
Implied Consent to Provide Blood Sample as a Condition of the Privilege to Drive:	1589
Veh. Code § 23612(a)(1)(D): Implied Consent	1589

Veh. Code § 23612(a)(2)(C): Drug Cases	1591
Veh. Code § 23577: Penalties	1591
Veh. Code § 23578: Enhanced Penalties	1592
Use of Blood Samples for Other Purposes	1592
Legal Effects of California’s Implied Consent Law	1593
V.C. § 13384; Express Written Consent	1595
Case Law	1596
Express vs. Implied Consent to Search, Etc.:	1598
Express Consent	1598
Implied Consent	1598
Examples Where Implied Consent was Found	1599
The Totality of the Circumstances	1600
Specific Issues:	1600
Withdrawal of Consent	1600
Limiting the Consent	1602
Use of a Drug-Sniffing Dog	1602
Placing Conditions on the Consent	1602
Use of a Ruse or Deception	1602
Suspect Under Arrest Giving Consent	1603
Consent to Search a Residence with No Suspicion	1603
Other Elements of a Consent Search:	1604
The Right to Refuse	1604
<i>Miranda</i>	1604

Written Consent	1605
Answering the Telephone	1606
Consent by Others:	1606
General Rule:	1606
Actual Authority	1606
Apparent Authority	1606
Examples:	1610
Landlord	1610
Parent	1611
Child	1612
Co-Occupants (Roommates, Husband and Wife, and Parent and Child):	1614
General Rules	1614
The Rule of <i>Georgia v. Randolph</i>	1614
Evidence of a Defendant's Refusal to Consent to a Warrantless Search	1621
Sanctions for Violations	1621