

# ILLINOIS PEACE OFFICER'S FIELD GUIDE



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## Acknowledgements

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The numbers associated with the rules herein are the counterpart page numbers in the *Illinois Officer's Legal Source Book(s)*. There you will find a more comprehensive discussion of the topic.

This book contains only constitutional issues. Statutory rules are generally not included in this advisor except as necessary and integral to and with a constitutional rule.

## DISCLAIMER

**NOTHING IN THIS BOOK IS INTENDED AS LAW OR LEGAL ADVICE. LAW AND LEGAL ADVICE MUST COME FROM YOUR OWN ATTORNEY / LEGAL ADVISOR. YOU MUST ALWAYS OBTAIN ADVICE FROM YOUR ATTORNEY BEFORE PROCEEDING TO ACT IN ANY GIVEN SITUATION. DETRIMENTAL RELIANCE MAY NOT BE CLAIMED BY TAKING ACTIONS DISCUSSED IN THIS BOOK. NO ATTORNEY-CLIENT RELATIONSHIP IS ESTABLISHED BY READING OR REFERRING TO IT.**

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There is no 100% rule in constitutional law. There are 99% rules and some exceptions. Generally, this book will recite only a 99% rule.

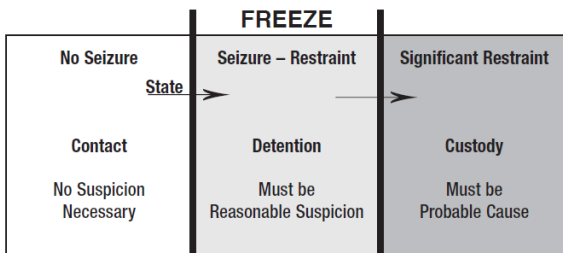
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## SEIZURES AND SEARCHES OF PEDESTRIANS

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This chapter is devoted to your relationship to pedestrians (as opposed to persons in vehicles). You are 99% (hereafter often “always”) in one of three tiers with all pedestrians.

### SEIZURE MODEL (PERSONS)



### Consensual Encounters - Tier 1 in Seizure Model

A consensual encounter occurs when a person (hereafter often “suspect”) is free to leave.

If you do not have reasonable suspicion and you want to talk to a suspect, you must engage in a consensual encounter.

To engage in a consensual encounter, you must understand the MENDENHALL factors (20-21 & 222-269):

- Have only one or two officers;
- Do not pull your weapon;
- Do not grab the suspect;
- Speak conversationally—no orders.

If possible, include any other factors (e.g. tell the suspect he / she was free to leave). All factors indicating the suspect was free to leave should be in your report.

### **Reasonable Suspicion (RS) - Tier 2 in Seizure Model**

If a court rules that you have seized the suspect (a TERRY or a traffic stop, i.e. not free to leave), the court will require that you have reasonable suspicion. Reasonable suspicion (RS) is more than a hunch and less than probable cause. Examples of reasonable suspicion are flight in a high-crime area

and an anonymous informant who can predict the movement of the suspect. (33-51, 222-269)

As a practical matter or metaphor, you might consider reasonable suspicion as being a quarter of a pail full of water. (Probable cause would be about half full. And proof beyond a reasonable doubt would be the pail filled to the brim.)

### **Your Powers and the Suspect's Rights during a TERRY Stop - Tier 2 (Freeze Power)**

You have the power to detain / restrain during a TERRY stop in order to determine if you can develop PC to arrest. Think of it like the power you usually execute at a traffic stop. Generally, you may use the power of your voice or reasonable hands-on force during these detentions. You should not use intermediate force (batons, tasers, pepper spray, etc.) unless there is some articulable threat you can put in your report. (51-72)

Also, during stops, think of the suspect as being in an ice cube. When the ice melts after a reasonable time and you don't have probable cause to arrest, the detention is over; you must let the suspect go.



Finally, avoid handcuffs, guns, etc., except in relatively extreme situations—usually when there is RS that the suspect is violent. (68, 69, 260-263)

PS: Suspects / pedestrians do not have to give their names during TERRY stops. (58-59)

### **Custody/Arrest – PC - Tier 3 in Seizure Model**

Unless you have probable cause to arrest, generally, you may not restrain someone in a significant way (e.g. handcuffing). (51-71) PC is a totality test, meaning more than reasonable suspicion but less than a preponderance. It is not a “more-than-likely” test. (72-87)

### **Searches of Pedestrians**

**Frisks: (Tier 2)** You must prove that you have RS to believe the suspect was armed and dangerous during a lawful TERRY stop. (87-99)

**Searches Incident to Arrest: (Tier 3)** You may search any area in lunging distance if the arrestee is not yet cuffed. You may search any property, including closed containers, in the possession of arrestees if they are cuffed and even if it is a minor

offense, as long as it is a lawful custodial arrest.  
(77, 99-106)

### **Tips**

It is unconstitutional to be in a tier higher than the respective level of suspicion. You cannot always control the level of suspicion you have. **But you are always in control of the tier a suspect is in.**

If you are in a tier that is too high, do not do anything constitutionally salient (like asking for consent or obtaining admissions). When it is safe to do so, lower the tier if you do not have the amount of suspicion to justify your situation, and make sure the suspect acknowledges that he / she understands the reduced level. Then be sure to note that in your report.

Also, always seek voluntary consent for everything you want to do.

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## PREMISES

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### SEARCH MODEL (THINGS)

No Search	Search	Scope
No reasonable expectation of privacy	There is a reasonable expectation of privacy	Must search only areas permitted by valid search doctrine
No standing	Officers need search doctrine (depends on what is searched)	Plain View: 1. Lawful Presence 2. Probable Cause

*Note: An arrow labeled "State" points from the "No Search" column to the "Search" column.*

### **Reasonable Expectation of Privacy**

**Tier 1** The Mailman Rule: Generally, you can go wherever the mailman can go without violating the rights of those in the premises. (124-147)

**Tier 2:** You may not go into fenced back yards or stick your foot or your arm in the door without one of the theories / doctrines below. (132-134)

(Theory and doctrine are used interchangeably in this book.) Motel rooms and motor homes that are tied into facilities are generally protected like homes by the Fourth Amendment. (143-144)

## **Theories / Doctrines that Support “Searches” of Premises - Tier 2 in Search Model**

- Arrest or Search Warrants (401-434)
- Exigency (148-167)
- Emergency (167-178)
- Consent (178-193)

### **Arrest Warrants**

If you have PC to arrest a suspect in a home, the 99% rule is that you must have an arrest warrant to enter a suspect’s home and must have probable cause to believe the suspect is home. (84-85)

### **Search Warrants**

You must obtain a search warrant to enter a third party home to arrest a person you have an arrest warrant for, unless the arrestee “lives with” the third party. (85-86)

You must obtain a search warrant to enter a home if you have PC to believe there is crime-related evidence in the home (e.g. you smell marijuana coming from a home). (401-434; Vol II, 62-63)

### Exigencies

Exigent circumstances exist when you have:

- PC that someone in the house has committed a felony (or DUI), and you do not have time to get a warrant—usually like a hot pursuit. (148-161)  
*or*
- PC to believe the house contains crime-related evidence that might be destroyed or moved, and you do not have time to get a warrant. (162-167) – does not include marijuana (get a warrant). (Vol II, 62)

### Emergencies

Emergency circumstances exist when you reasonably believe that someone inside the premises needs immediate assistance to protect them or their property. (167-178)

### Consent

Consent is a voluntary waiver of rights. The consenter must have at least “apparent” joint access to the area searched. (178-193)

You should normally seek consent even if you have other theories for the search or seizure.

If one spouse consents and the other will not, you cannot search (unless the search integrally involves a domestic situation). (191) If a parent permits the search of a child's room, make sure the parent has "joint access" to the room. (189-190)

### **Scope - Tier 3 in Search Model**

The scope issue is, if you are lawfully in the home, where can you go and how long can you stay.

Plain view is usually a "scope" issue in that you must always stay within the scope of a theory in order to be able to seize evidence that you see. In addition, you must always have probable cause that the evidence is crime-related to seize it. (194)

You must have a search theory for wherever you go in the house and for however long you stay.

- Exigency / emergency (196-199);  
Homicide scenes—get a warrant. (197)
- Emergency, e.g. overdoses (170, 198)

- Consent (199-202)
- The search incident to arrest doctrine limits you to searches within the reach of the arrestee (if not cuffed) and property in the “possession” of the arrestee. (202-204)
- The protective sweep doctrine is based on TERRY: Is there articulable reasonable suspicion to believe there is someone in the house who can hurt you? (204-205)

### **Seizure of Premises**

If you have PC that there is crime-related evidence in a home, but no warrant, you must generally seize the home from the outside. (205-207)

### **Tip**

Before you ever get to the front door, you must know whether you have a theory / doctrine (one of the 4 theories listed above) to go in—or not. It is very dangerous to guess.

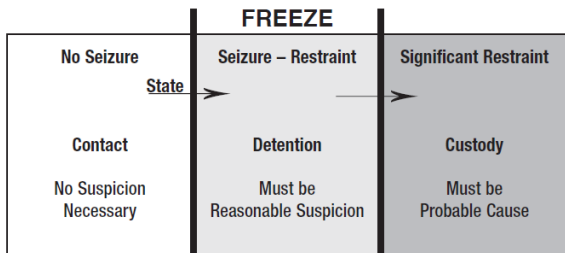
Once you are in the house, know where you can go and how long you can stay.

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## VEHICLES – SEIZURES OF OCCUPANTS

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### SEIZURE MODEL (PERSONS)



### Non-Seizure of Occupants of Vehicles - Tier 1

This issue will arise 99% only when a car is parked. The question is controlled by the four [MENDENHALL](#) factors. (See page 2.)

**Tier 1:** You do not seize occupants of a vehicle when a car is parked and

- you talk to / converse with the occupants;
- you have returned the driver's license, etc;
- you make "requests" of occupants; or
- you use your take down lights. (213-219)



**Tier 2:** You do seize occupants of parked vehicles

- when you turn on your emergency lights;
- when you block the suspect's car in;
- when you take an ID; or
- when you order an occupant around.

(213-219)

### **Traffic and TERRY Stops - Tier 2**

You must have at least reasonable suspicion (RS) that an occupant of a vehicle has committed a crime or traffic offense to stop / detain / seize a driver or occupant of a vehicle. (222-245)

### **Powers during Traffic and TERRY Stops -Tier 2**

#### *Freeze Powers*

You may use reasonable power to detain occupants of a vehicle during a stop. If you have a good reason (e.g. suspicion of DUI or a gun), you have the power to order drivers and passengers out of the vehicle and may order them in the vehicle.

(245-269)

Usually, the clearest indication of going beyond your powers during stops / detentions (Tier 3) is

handcuffing, putting suspects in the back seat of your car, or pointing a gun at the suspect. (260)  
There are exceptions where you may do the above during a traffic or TERRY stop. (68, 69, 260-263)

You have reasonable time to complete a traffic or TERRY stop. Think of the occupant as being in an ice cube. When the ice melts, if you don't have probable cause, you must let the suspect go. Generally, your rule of thumb should probably be around 12-13 minutes for one ticket. (251-259)

Unless you develop reasonable suspicion that the car contains drugs, you should have the dog there to sniff the car within 12-13 minutes. (256-257)

### **Arrest Custody PC - Tier 3**

Think of PC as a half full bucket of water of evidence. (Charging requires the bucket be full.) Generally, you must have PC to handcuff occupants in vehicles. (If you handcuff, put them in the back seat of your car, etc., you must also Mirandize them before questioning.) (260-263)

## **Searches of Occupants Incident to the Seizure**

**TERRY Searches:** During the stop, occupants may be frisked if you can prove / articulate that there was reasonable suspicion (RS) the occupants were armed and dangerous. (264-269, 303-310)

**Searches Incident to Arrest:** After probable cause or an arrest, you may search the areas within the lunging distance of un-handcuffed arrestees, including passenger compartments. (298-299)

After an arrest, handcuffed occupants may be searched and items in their personal possession may be searched. (296-303)

### **Tip**

You are 100% in control of what tier the vehicle's occupants are in, so you must determine your level of suspicion and gauge your level of power and the rights of the occupants accordingly.

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## SEARCHES OF VEHICLES

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### SEARCH MODEL (THINGS)

No Search	Search	Scope
No reasonable expectation of privacy	There is a reasonable expectation of privacy	Must search only areas permitted by valid search doctrine
No standing	Officers need search doctrine (depends on what is searched)	Plain View: 1. Lawful Presence 2. Probable Cause

### **Reasonable Expectation of Privacy (REP) / Standing – Tier 1 in Search Model**

The following are examples where you are not “searching” a vehicle, i.e. when the suspect has no reasonable expectation of privacy / REP (276-284):

- if you are outside the vehicle;
- if you shine a flashlight from the outside;
- if a person abandons the vehicle;
- if the vehicle is stolen;
- if you run the plate of the vehicle;
- if they are passengers but not the owners.

If you enter a vehicle, you have generally conducted a search (at least as to the owner and the lawful driver—not the passengers) that requires some search theory below. (276-284)

### **PC Search - Tier 2**

Generally, vehicles may be searched on probable cause alone. This is the automobile exception. Examples are officers or their dogs smelling burnt or fresh marijuana in a vehicle. (285-292)

### **Search Incident to Arrest - Tier 2**

You may search the passenger compartment incident to arrest if the arrestee is not cuffed and is within lunging distance of the vehicle. (298-299)

If the arrestee is cuffed, you may search anything in the possession of the arrestee and for evidence in the vehicle that is closely related to the reason for the arrest (e.g. drug or DUI arrests). (296-303)

### **TERRY Search - Tier 2**

Furtive moves, such as reaching under the seat during a stop, may—or may not—be sufficient to conduct a TERRY search of that area of the vehicle. Suspicious conduct should result in

getting the suspect(s) out of the vehicle and asking questions until you are sure there is reasonable suspicion to believe the suspect(s) is / are armed and dangerous. It is lawful for a citizen to have a gun if they have a license. In most instances, ask the occupant if you are suspicious, get consent, and take safety measures. (303-310)

### **Consent - Tier 2**

Consent must be voluntarily given by an occupant who has at least joint access to the area to be searched. Always ask for consent. (310-314)

### **Emergencies - Tier 2**

You may enter vehicles to protect a life or property, where reasonable (e.g. a baby in an unattended vehicle with the windows rolled up on a day where the temperature is 100 degrees).

### **Inventory - Tier 2**

A vehicle in the lawful custody of officers (e.g. community caretaking, forfeiture, DUI) may be inventoried according to your departmental policies. (314-319)

## **Searches of Trunks - Tier 2**

Generally, you may search trunks only with probable cause (warrant or automobile exception), consent, or inventory. (288, 310, 314) Searching with other theories is often Tier 3 and beyond the scope of those theories.

## **Miscellaneous Searches**

Attaching a GPS device is usually a search requiring that a warrant be obtained (even if the officer never enters the vehicle). (276)

You may check the VIN on a lawfully stopped vehicle. Entering the vehicle to view the VIN is a search (but a reasonable one). (320-321)

## **Scope of Searches**

You may use about 10 different search theories / doctrines to search a passenger compartment. You can use only 3 or 4 to search the trunk (generally, PC, consent, and inventory). Searching the trunk is often unconstitutional (beyond the scope of a search theory) even when searching the passenger compartment on the same theory is not. (321-325)

**Tip**

Each search doctrine has different rules associated with it. You cannot mix and match the theories. You must know and follow the rules related to each theory.

Before entering a vehicle to search, always try, if possible, to have more than one theory for your search (e.g. ask for consent even when you have other theories for the search). If you are asked on the witness stand why you would ask for consent when you already have PC, simply answer that you always want to provide more than one search theory for the prosecutor.



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## CLOSED CONTAINERS

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### SEARCH MODEL (THINGS)

No Search	Search	Scope
No reasonable expectation of privacy	There is a reasonable expectation of privacy	Must search only areas permitted by valid search doctrine
No standing	Officers need search doctrine (depends on what is searched)	Plain View: 1. Lawful Presence 2. Probable Cause

### Reasonable Expectation of Privacy (REP)

**Tier 1** of Search Model: The air around a container is not protected. When suspects “abandon” closed containers or give them to third parties, the suspect generally loses his / her REP in the container. Also, suspects normally have no REP to object to the search of someone else’s containers. Finally, garbage is usually not protected. (328-334)

**Tier 2** of Search Model: You should treat most closed containers the same way you treat a suspect’s bedroom. Even paper sacks are protected by the Fourth Amendment. (327)

### **PC - Warrant**

You must get a warrant if the only theory to search a container is PC. You may seize the container on PC until you can get a warrant. (335-337)

### **Consent**

If possible, you should always ask for consent to search a container, in addition to other search theories. (339-342)

### **Search Incident to Arrest**

You may search a closed container in a vehicle incident to arrest if the arrestee is not handcuffed and could get to the vehicle. You may not search a cell phone incident to arrest. (101-103, 342-344)

If suspects are cuffed, you may search any closed containers on their persons or in their possession (e.g. backpacks, suitcases, etc.). (342-344)

### **TERRY Search - Search Incident to Detention**

You may search containers during a lawful TERRY or traffic stop if you have reasonable suspicion the suspects are armed and dangerous and the container is within their control. (344-345)

## **Administrative Searches**

You may search a container during lawful inventories and booking searches if you have lawful custody of the container and your departmental rules permit the search. (345-347)

### **Tip**

Remember that closed containers are protected by the Fourth Amendment.

When appropriate, ask suspects if the closed containers are theirs. If they adamantly deny ownership, they most often lose any REP.

Be sure to keep your theories separate. You cannot mix and match search theories and each one has different rules governing the search doctrines.

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## **MISCELLANEOUS SEARCHES**

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### **Binoculars**

You may use binoculars to see that which may be lawfully seen from a closer viewpoint. (364-365)

### **Blood Draw for DUI**

This must be under warrant, consent, or exigency (dissipation of BAC alone is not enough). (110-112)

### **Booking and Inventory**

Booking and inventory are administrative searches which must be conducted according to department rules. All officers in the department should always do them the same. (365-367)

### **Cell Phones**

You must have a warrant, exigency / emergency, or consent to search cell phones. (368-369)

### **Conversations**

Electronic monitoring must be conducted in association with an attorney. (371-373)

## **Dogs**

Dogs may be used to create PC in cars or closed containers, but not premises, including apartments and motel rooms. (144, 263, 329, 364)

## **Good Faith**

You can rely in good faith on Illinois case law and court orders even if they are later determined to be unconstitutional. (376-381)

## **Independent State Grounds**

Illinois, by statute or case law, can set standards higher than the United States Supreme Court for officers—and sometimes does. (381-383)

## **Papers**

Papers are specifically protected by the Fourth Amendment. (383-385)

## **Parks**

You generally need a theory to search tents, closed containers, etc., on campgrounds. (385-387)

### **Probationers and Parolees**

Generally, they have lowered expectations of privacy, partly based on their terms of release. (385-387, 391-394)

### **Students**

Students have rights. You should not search without a theory. School personnel can generally search on reasonable suspicion. (395-398)

### **Video and Audio Recording by Citizens**

Suspects may audio and video record you when you are in public places. (398-399)

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## WARRANTS

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\*Important — Check the statutes in this area.

### **Arrest Warrant**

You must have an arrest warrant to enter suspects' premises to arrest them, unless there is an exigency, emergency, or consent. In addition, you must have PC that the suspect is home prior to entering. (125, 126, 406, 420)

An arrest warrant is not sufficient to enter a third party's home unless the arrestee lives there. (162)

The arrest warrant is an attenuating factor permitting evidence to be admissible even after unconstitutional stops of suspects. (26)

### **Search Warrant**

Search warrants are given the benefit of the doubt under the good faith doctrine. (402-403, 411-412). But misstatements in a warrant / affidavit can cause the warrant to be thrown out. (408-410)

A warrant is stale when it appears that the evidence may no longer be present. (413-414)

The place to be searched and the evidence to be seized must be specifically described. (414-418)

### **Executing the Warrant**

- Be sure to knock, announce, and wait.
- If you handcuff persons present for safety reasons, be sure to let them leave after a short period if they are not residents or you have no other reason to hold them.
- If you frisk persons who are present, be prepared to explain why you believed they were armed and dangerous.
- If you question persons in handcuffs, you must Mirandize them. It is much better to take the cuffs off to question and then tell the suspects they are not in custody. Make them acknowledge that they understand.



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## SUSPECTS' STATEMENTS

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A M E N D M E N T	<b>Factors present which reflect that the officer has violated the suspect's rights</b>	<b>Type of Violation</b>
<b>4<sup>th</sup></b>	custody / arrest (restraint in a significant way) and interrogation  *without probable cause*	unconstitutional seizure
<b>5<sup>th</sup></b>	custody / arrest / restraint in a significant way and interrogation  *without Miranda warnings and waiver*	Miranda violation
<b>6<sup>th</sup></b>	formal proceedings (e.g. grand jury or, usually, initial appearances when attorney is appointed) and interrogation  *without Miranda warnings and waiver*	right to an attorney
<b>14<sup>th</sup></b>	coercive tactics, promises, and / or deception to induce a suspect to give a statement  *without countervailing voluntary factors*	due process / voluntariness

## **Importance of Getting Statements**

You should always get statements from suspects and all witnesses. Statements make the difference between winning and losing a case. (439-445)

## **The Fourteenth Amendment – Voluntariness**

The statement must be *voluntary*—avoid coercion, threats, promises, and deception. Do things to make the statement voluntary, e.g. give breaks, tell suspects you can't make promises, etc. (446-461)

## **The Fifth Amendment – MIRANDA**

If suspects are in custody (e.g. handcuffed), you must give them their Miranda rights. Then when someone later questions them, they generally won't have to (re-)warn them. (462-472)

You cannot question a suspect related to the crime if the suspect is in custody and has not been warned (“warm-up” questioning about the crime if the suspect is in custody is prohibited). (482)

If suspects in custody assert their right to remain silent, you must immediately cut off questioning and wait an hour before checking if they changed

their mind. If they have, you must re-warn them and obtain a waiver. (495, 502)

If suspects in custody assert their right to an attorney, you must wait at least 14 days to see if they have changed their minds or wait for the suspect to reinitiate. (504) If you are from another jurisdiction and are not aware that a suspect in custody has asserted his / her rights, you must also still wait 14 days. (505) Again, if you wait the 14 days, you must re-warn and obtain a waiver.

If you are questioning a suspect in custody and his / her attorney arrives at the station, the attorney may assert the rights of the client. (493-494)

### **The Sixth Amendment – MASSIAH**

The suspect's right to an attorney is triggered by formal proceedings (e.g. arrest warrant, indictment, initial appearance, etc.). (511-517)

If formal proceedings have begun, such as the issuance of an arrest warrant or a grand jury indictment, you must give the suspects their Miranda warnings even if they are not in custody. Also, if the suspect has an attorney on the charge,

you may be prohibited from questioning at all. Talk to the prosecutor about this. (512-513)

A suspect who has an attorney on one charge can still be questioned about other crimes. In such circumstances, the suspect must be Mirandized if he is in custody. (515-516)

### **The Fourth Amendment – Significant Seizures Without Probable Cause**

Suspects who are in custody or restrained in a significant way should not be questioned unless there is probable cause for the seizure, and then they should also be Mirandized. (517-521)

#### **Tip**

Juveniles have been given many additional rights by statute that you must know and follow also.

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## IDENTIFICATIONS

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<b>A M E N D M E N T</b>	<b>Factors which make the identification unconstitutional</b>	<b>Exception or extenuating circumstance that makes the identification constitutional</b>	<b>Type of violation</b>
<b>4<sup>th</sup></b>	moving the suspect for an identification without probable cause	if soon after the crime (but should bring the witness to the suspect, if possible)	un-constitutional seizure
<b>5<sup>th</sup></b>	questioning a suspect about his identity which is integral to the crime	a suspect's identity or physical characteristics are usually not protected	testimonial self-incrimination
<b>6<sup>th</sup></b>	physical lineup without attorney after adversarial proceedings have begun	physical lineup before adversarial proceedings and photo spreads	right to attorney
<b>14<sup>th</sup></b>	suggestivity in identification procedure	identification is still reliable	due process

## **Fourteenth Amendment Right to Due Process -- Undue Suggestivity**

You should avoid undue suggestivity when conducting photo and physical line-ups. In show-ups occurring soon after the crime (usually within a half hour, if possible), try your best to avoid undue suggestivity in any way you can. (525-527)

## **Statutory Requisites to Avoid Undue Suggestivity**

The legislature has created some guidelines to avoid undue suggestivity (527):

- video record the lineup;
- have an independent person show the lineup;
- have the witness sign the report after viewing the line;
- provide the witness with an “instruction sheet” explaining the procedure;
- have a departmental policy that includes the statutory requisites.

### **The Suspect's Sixth Amendment Right to an Attorney**

Generally, a suspect does not have a right to an attorney prior to a show-up if the show-up is otherwise constitutional. The suspect does have the right to an attorney for line-ups after adversarial / formal proceedings have begun. (529-530)

### **The Suspect's Fourth Amendment Rights**

If possible, you should bring the witness to a show-up rather than moving the suspect. Generally, a suspect should not be moved to appear in a line-up without probable cause or court order. (530-531)

### **Tip**

As a practical matter, you must take careful notice of tattoos and scars, etc., so that your identification is not subject to impeachment at hearings and trials.

Finally, you must understand and comply with the rules of all four amendments and the statutes.

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## **REPORT WRITING AND TESTIMONY**

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### **Importance of Writing a Professional Report**

You must avoid opinions, conclusions (especially conclusory statements like, “I patted him down for my safety.”), theories, or assumptions. (535-546)

You must always include every fact that goes to an issue relevant to the case, e.g. probable cause or reasonable suspicion.

Remember the mantra: *If it's not in your report, it didn't happen.*

### **Importance of Professional Testimony**

Always read any paperwork the prosecutor has and will give you, especially motions to suppress by the defense attorney. Always ask the prosecutor to review the case with you. Don't be afraid to ask questions (e.g. What is the defense attorney going to ask me?) (547-568) and don't be afraid to explain to the ASA legal theories you had for your actions.

Competent defense attorneys will use any trick to try to win the case. Get a good night's sleep!



Don't talk to the defense attorneys or their investigators without someone from the prosecutor's office being present.

Know your report and any testimony you have previously given. If there was a video or audio recording, watch and study it.

Generally, you are only required to answer what you saw, smelled, felt, or heard. Avoid answering questions that require you to speculate or give an opinion. They are usually trick questions.

If the prosecutor asks a leading question and the defense attorney successfully objects, be prepared on the next question to answer the leading question the prosecutor asked previously.

To avoid mistrials during a jury trial, never testify about any other prior bad act by the suspect (e.g. "I showed the victim a mugshot of the defendant.") Also, never mention to a jury that the defendant asserted his Fifth or Fourth Amendment rights.

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## **CIVIL LIABILITY (Volume II)**

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### **Civil Liability – Causes of Action**

There are two main causes of action of concern:

- Common Law (94-96)
- Section 1983 (Most of Volume II)

### **Common Law**

Common law came down as judge-made law from England and centuries of court-made law here in the United States. (Think about it this way: (e.g.) You invite someone for dinner. He / she slips on the ice and breaks his / her back. He / she sues for your negligence. All this “tort law” is court-made by case law.)

The common law rule related to negligence has been modified (in your favor) by the Illinois legislature. Generally, you cannot be liable under common law unless a plaintiff can prove that your conduct was “wanton and willful.” (94-96) These cases are usually litigated through the state courts.

### **Section 1983 (This chapter is Volume II)**

This book is mainly about USC Section 1983. Section 1983 was created by Congress to permit

people to sue you for violating the person's / citizen's / suspect's constitutional rights. (1-4)

These rights are normally litigated in federal district court and appealed to the Seventh Circuit Court of Appeals and the United States Supreme Court.

Presently, most of the time, the rights being litigated under Section 1983 are Fourth Amendment rights. The most serious cases are those where the issue is excessive force and your conduct was videotaped.

### Excessive Force

**Reasonable Deadly Force:** You must be able to show that the suspect represented a threat of serious bodily injury or deadly force that was relatively imminent. (28-37)

**Reasonable Non-Deadly Force:** The force must be reasonable under *Graham v Connor* factors:

- How serious is the crime?
- How great is the threat?
- How great is the resistance—or escape?

You should also consider giving a warning and the tier you are in as different tiers represent different power. Also, in order to use intermediate force (taser, baton, pepper spray), you must show that the suspect was an articulable threat. (37-55)

*Arrest/Custody without Probable Cause (False Arrests)*

Courts and juries have treated this constitutional violation very seriously. Normally, you cannot handcuff suspects, put them in the back seat of your patrol car, take them to the station, lock them in an interview room, etc., without probable cause. (19-28)

*Other Constitutional Violations*

You can be held liable for any constitutional violation. (89-93)