

EXPANDED COURSE OUTLINE  
REGULAR BASIC COURSE  
**LEARNING DOMAIN 16**  
SEARCH AND SEIZURE

I. LEARNING NEED

Peace officers must have a clear understanding of their authority, responsibility, and potential for liability in the areas of search and seizure law, as well as the protections provided by constitutional law, statutory law, and case law against unreasonable searches and seizures.

LEARNING OBJECTIVES

- A. Recognize constitutional protections guaranteed by the Fourth Amendment
  - 1. Privacy
  - 2. Liberty
  - 3. Possession of property
  
- B. Identify the concept of reasonable expectation of privacy
  - 1. The individual has indicated that they personally (subjectively) expect privacy in the object or area
  - 2. Their expectation is one which society is prepared to recognize as legitimate
  - 3. Expectation of privacy beyond a home or person
  
- C. Recognize standing and how it applies to an expectation of privacy
  - 1. Ownership
  - 2. Lawful possession
  - 3. Authority
  - 4. Control of the area searched or the property seized
  
- D. Recognize probable cause to search and its link between Fourth Amendment protections and search and seizure law
  - 1. Having enough facts or information to provide fair probability or a substantial chance the item sought is located in the place to be searched.
  - 2. Requires something less than an absolute or even a near certainty, but more than a mere hunch or suspicion
  - 3. Probable cause, when meeting the requirements, allow the fourth amendment rights to be violated and/or a warrant to be issued

- E. Recognize how the exclusionary rule applies to a peace officer's collection of evidence
  - 1. If search and seizure is not reasonable all items seized during the search could be ruled inadmissible or excluded as evidence at trial
  - 2. Created by the United States Supreme Court to encourage proper law enforcement conduct.
  - 3. Evidence excluded is a penalty for the illegality of the search or seizure.

## II. LEARNING NEED

To search for and seize evidence legally, peace officers must know the rules and requirements for obtaining and executing a search warrant.

### LEARNING OBJECTIVES

- A. Recognize how probable cause serves as a basis for obtaining a search warrant
  - 1. Probable cause is a constitutional requirement
  - 2. Supported by oath or affirmation
  - 3. Provides the place to be searched and the items to be seized.
- B. Recognize the necessary conditions for securing an area pending the issuance of a search warrant
  - 1. Secure pending issuance of a search warrant if the suspect has been arrested inside the location
  - 2. Area can be secured pending issuance of a search warrant if companions of the suspect may destroy items sought upon learning of the arrest.
  - 3. Circumstances or information at hand the evidence will likely be destroyed or removed before a search warrant can be obtained
  - 4. Refusal to consent to enter, by itself, does not provide justification to secure the premises
- C. Identify the time limitations for serving a search warrant
  - 1. Within 10 days of issuance must be executed and returned
  - 2. Beginning with the day after the warrant is issued and running until midnight of the 10<sup>th</sup> day.
  - 3. 10 day period expires
  - 4. Return of the warrant in a timely manner
  - 5. Normally served between the hours of 7:00 a.m. and 10 p.m.
  - 6. Night time service exceptions

D. Recognize the elements for compliance with the knock and notice requirements when serving a search warrant

1. Knock or otherwise announce their presence
2. Identify themselves as peace officers
3. State purpose
4. Demand entry
5. Wait a reasonable time
6. If necessary, forcibly enter the premises

E. Recognize the application of the Nexus Rule while conducting an authorized search

1. Officers may seize items not listed in the warrant when the items are discovered during the lawful search and
2. Have probable cause to believe the item is contraband, evidence of criminal behavior, or
3. will aid in apprehension or conviction of the criminal

### III. LEARNING NEED

When certain conditions are met, officers may lawfully search and seize evidence without a search warrant. For evidence to be admissible at trial, officers must have a clear understanding of the legal requirements for warrantless searches.

#### LEARNING OBJECTIVES

A. Recognize why a plain view seizure does not constitute a search

1. When an officer sees something in plain view from an area he has a lawful right to be, no search has taken place.
2. No expectation of privacy for items in plain view
3. No expectation of privacy-no Fourth Amendment protection

B. Recognize the legal requirements for seizure of items in plain view

1. Probable cause
2. Lawful right to be in the location
3. Lawful access to the item

C. Recognize the conditions and circumstances where warrantless searches and seizures are considered reasonable and legal

1. Cursory/frisks
2. Consent searches
3. Searches pursuant to exigent circumstances

4. Searches incident to arrest
  5. Probation/parole searches
- D. Recognize the scope and necessary conditions for conducting the following types of warrantless searches:
1. Cursory frisk/pat searches
  2. Consent searches
  3. Searches pursuant to exigent circumstances
  4. Searches incident to arrest
  5. Probation/parole searches

#### IV. LEARNING NEED

The Fourth Amendment's protection against unreasonable searches and seizures extends to a person's vehicle and property inside the vehicle. However, the courts have created several exceptions to the Fourth Amendment's warrant requirement because of the potential mobility of a motor vehicle.

##### LEARNING OBJECTIVES

- A. Recognize the scope and necessary conditions for conducting the following types of motor vehicle searches:
1. Probable cause searches
  2. Seizures of items in plain view
  3. Protective searches
  4. Consent searches
  5. Searches incident to custodial arrest
  6. Instrumentality searches
- B. Recognize the scope and necessary conditions for conducting a vehicle inventory
1. Necessary conditions
  2. Scope of search
  3. Purpose of search

#### V. LEARNING NEED

Peace officers must recognize when a search or the seizure of evidence involves intrusion into a subject's body. Special care must be taken to balance the subject's reasonable expectation of privacy under the Fourth Amendment against the government's need to collect evidence.

##### LEARNING OBJECTIVES

- A. Recognize the legal framework establishing a peace officer's authority to seize physical evidence from a subject's body:
  - 1. With a warrant
  - 2. Without a warrant
  
- B. Recognize conditions under which a peace officer may use reasonable force to prevent a subject from swallowing or attempting to swallow evidence
  - 1. If they have probable cause to believe that the suspect has evidence in their mouth
  - 2. Prevent the person from swallowing the evidence
  - 3. Can exert minimal pressure on the neck area but may not prevent breathing or substantially impair the flow of blood to the person's head.
  - 4. Officers should be aware of their own department policies and procedures
  
- C. Recognize the conditions necessary for legally obtaining blood samples
  - 1. Probable cause that the test results will show evidence of a crime
  - 2. The removal will be conducted by trained medical personnel in accordance with accepted medical practices
  - 3. Exigent circumstances
  - 4. If above conditions exist the sample can be taken when the suspect is unconscious or where the officers need to use reasonable force
  
- D. Recognize the conditions for legally obtaining the following evidence:
  - 1. Fingerprints
  - 2. Handwriting samples

## VI. LEARNING NEED

Peace officers must be aware of the due process rights that protect against impermissible suggestiveness when conducting any procedure involving a subject's identification.

### LEARNING OBJECTIVES

- A. Identify the importance of a peace officer's neutral role during an identification procedure
  - 1. May not suggest in any way to the victim or witness that the person to be observed committed the crime
  - 2. Peace officers must be careful to avoid any conduct before, during, and after the identification process which may be ruled suggestive.
  - 3. Officers should not do anything that suggests or could be interpreted as suggesting which person to select during any type of identification procedure.

- B. Identify officer actions before, during, and after an identification procedure to prevent impermissible law enforcement suggestiveness when conducting a:
  - 1. Field show-up
  - 2. Photographic spread
  - 3. Custodial lineup

VII. REQUIRED TESTS

- A. The POST-Constructed Comprehensive RBC Test 1.
- B. The POST-Constructed Comprehensive RBC Test 2.
- C. The POST-Constructed Comprehensive RBC Test 3.

VIII. REQUIRED LEARNING ACTIVITIES

- A. The student will participate in one or more learning activities from the POST-developed *Instructor’s Guide to Learning Activities for Leadership, Ethics and Community Policing* or other comparable sources regarding search & seizure. At a minimum, each activity, or combination of activities must address the following topics:
  - 1. Examples of resources within a community that may help an officer establish probable cause to obtain a search warrant
  - 2. Fairness, trustworthiness and respect as it relates to duties performed by an officer during searches and seizures
  - 3. Ability to balance officer safety with the protection of individual rights and the preservation of property
  - 4. Legal and agency policy issues

Description	Hours
POST Minimum Required Hours	<u>12</u>
Agency Specific Hours	<u>0</u>
Total Instructional Hours	<u>12</u>