

WHEN CAN THE POLICE LEGALLY SEARCH YOU?

A guide to understanding your rights when it comes to police seizures and searches.

Under the Fourth Amendment of the United States Constitution, we are guaranteed protection from unreasonable searches and seizures. But what actually does that mean? It's a little more complicated than just the plain reading of the text. The Fourth Amendment continues to this day to be refined and redefined through case law and judge's interpretations. But thankfully, there are some things we are sure about.

First and foremost, any time the police conduct a search, either on your person or your property, they must have either: 1) a warrant, or 2) a valid search warrant exception (meaning the police can legally search you without the need of a warrant).

What is a Search Warrant?

A search warrant is an order signed by a judge, based on probable cause (more on that in a moment), that authorizes the police to search in a specific area for certain things or items.

How are Search Warrants Obtained?

Search warrants are obtained when the police provide enough information to either a judge or magistrate that demonstrates that they (the police) have probable cause for a search. Usually the information the police provides to the judge or magistrate is in the form of a statement signed under oath and penalty of perjury called an "affidavit." These statements that the police provide can be based on the officer's personal observations, the specific and reliable statements of another, or both.

What Exactly is Probable Cause?

The Constitution doesn't really define what probable cause is, so the courts have created their own definitions. Probable Cause exists when there is a likelihood that a crime is either being committed or is likely to occur. But how is that determined? The courts look to a number of factors, including:

- how specific is the information
- how reliable is the information
- has any of the information been verified
- is the person a witness to the alleged crime or a victim of the alleged crime
- the police officer's own observations

What Does a Search Warrant Entitle the Police to Do?

The police can only search when or wherever the search warrant states and only in those places where the items to be searched for could be reasonably located. However, it

doesn't necessarily mean that the police can only seize the items described in the search warrant. If the police come across other contraband during a legal search, then those items can be seized as well.

What to Expect When the Police Have a Search Warrant

First, if you are in your home or a dwelling or building of some kind, the police have to first knock on the door and announce themselves as police officers with a warrant. This is referred to as "knock and announce." There are some instances where police can possibly obtain a "no knock warrant," meaning that they can enter without first announcing their presence, but those are very rare. The police will have to give you a reasonable time to respond and let them in (usually 10 seconds or so—those no magic number). If the police either get no response or get a negative response to their request, the police may then gain entry by force. You absolutely have a right to see the search warrant that the have against you.

Can the police stake out my house and prevent anyone from leaving or entering until they obtain a search warrant? Yes! The Supreme Court of the United States held in the case of *Illinois v McArthur* (2001) that the police could do exactly that in order to prevent the destruction of evidence.

What if I'm at a house that the police have a search warrant for? Can the police search me too? No! Police can other search the places and persons that the warrant says they can. However, if the police have reason to believe that you are engaging in criminal activity, the police can, when based on reasonable suspicions, perform a patdown (or "pat and frisk") checking for weapons in order to ensure the officer's safety.

I was at a house that the police had a search warrant for and they told me that I couldn't leave. Can they do that? Yes! For officer's safety, as well as to prevent any further criminal activity or the destruction of evidence, the police can do that.

If a police officer knocks on my door and asks permission to enter can I ask if he has a warrant and refuse him entry if he doesn't? Technically, yes. However, as we will discuss in further detail in another legal guide, the police do not always need a warrant to enter your place and perform a search or arrest you. The officer may very well have a reason for arresting you or searching you without a warrant. If the officer insists, it is better to step aside and avoid injury or being charged with "resisting and obstructing" and let the officer do what he came to do. It is always better to let the court decided if what the officer did was legal.

Search Warrants are an exhaustive topic. That is why we have broken up the subject into two guides. The next guide will discuss when and why the police can search or arrest you without a warrant.

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