

## The 4<sup>th</sup> Amendment – Search and Seizure

When the U.S. Constitution was written, the oppressive and unfair practices of the British monarchy were fresh in the minds of the Founders. For that reason, after they drafted the Constitution, they quickly added 10 amendments, known collectively as the “Bill of Rights,” which sought to ensure that no future government could repeat the abusive practices of the British.

One of the most important of these amendments is the 4<sup>th</sup>, which reads: *“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”*

Note that the amendment only states under what conditions a search warrant may be issued, and what the warrant must contain. But it doesn’t say when, or even if, a warrant is required to conduct a search. It simply says that the government can’t engage in “unreasonable” seizures, without bothering to say what “unreasonable” means, or even provide any examples.

As a result of this vagueness, the federal courts have had to interpret the 4<sup>th</sup> Amendment to fill in these gaps. Over the last 200 years or so, the basic rule is that any search without a warrant is presumed to be unreasonable (and therefore unlawful), unless an exception (to be discussed later) exists.

Any evidence which is seized in violation of the 4<sup>th</sup> Amendment cannot be used in a criminal court. This is known as the “exclusionary rule.”

### **Procedure for Obtaining a Search Warrant**

In order to obtain a search warrant, the police must have “probable cause” to believe that contraband or evidence in a criminal case will be found at the place to be searched. This is a fairly easy standard to meet. A tip from a witness or images from a surveillance operation will usually suffice.

Once this happens, the police will have to go before a neutral judge or magistrate, who, if satisfied that probable cause exists, issues a warrant.

Once this happens, the police have a right to search the place, and seize the people or things, described in the warrant.

### **When Is A Warrant Not Required?**

While a search without a warrant is generally seen as unreasonable, there are exceptions. They include:

- Search incident to a lawful arrest: if a person is being lawfully arrested, the police officer is allowed to search the person of, and area immediately surrounding, the suspect for weapons and contraband. Anything found in such a search can be used in court.
- Automobile Search: If you have been pulled over for a valid reason, the police can search your car without a warrant. This is mainly because a person has less of an expectation of privacy while in a car, as opposed to a home. Note that, as long as the officer had a valid reason to pull you over (and it's pretty difficult to drive in a way that doesn't violate some obscure traffic rule), they can search your car if they have virtually any reason to suspect that there's contraband in it, even if this has nothing to do with the reason you were pulled over.
- Consent: If you consent to have your dwelling searched by the police, they are perfectly free to take you at your word, and anything they find can be used in court. Of course, to be valid, consent must be clear and unambiguous, and not obtained by coercion.
- Hot Pursuit: If you ever find yourself being chased by the police after having committed a crime, don't be surprised to learn that the rules of tag don't apply: there is no "home base." If you are being actively chased by the police, and run into a private residence, they can pursue you into the building, without having to wait for a warrant.

### **What Happens When Evidence is Seized in Violation of These Rules?**

Generally, when the police seize evidence without a search warrant, the remedy is simple: the evidence cannot be used in court. Now, this is not always an automatic "get-out-of-jail-free" card. If the prosecutors have enough evidence to support a conviction, even excluding the evidence that is suppressed, they can go forward with a trial, which obviously creates the possibility that the suspect could be convicted.

Of course, if the evidence that gets suppressed is the lynchpin of the entire case (the drugs that form the basis of a charge of drug possession, for example), the charges will have to be dropped. There has been some criticism of this "exclusionary rule" because it has, undoubtedly, led to guilty people going free, possibly to commit more crimes. However, most agree that this rule is the only practical way to provide police with an incentive to follow the law when obtaining evidence, and that living in a free society requires some trade-offs.

There are some cases, however, when it's hard to say if evidence has actually been seized because of a violation of the 4<sup>th</sup> Amendment.

For example, suppose the police, without a warrant or any exception to the warrant requirement, barge into a house, and happen to find some sort of criminal activity. They find some documents which name other people involved in that activity.

This evidence was clearly seized illegally and cannot be used in court. But can it be used to obtain a search or arrest warrant to go after the people named in the documents?

That's a trickier issue. Generally, anything that the illegally-seized evidence leads to is branded "the fruit of the poisonous tree," and cannot be used in court. There are exceptions, however. For example, if it can be proven that the fruit of the poisonous tree would have inevitably been discovered anyway, it might be allowed in court. Also, if the causal connection between the illegal seizure of evidence, and the resultant discovery of new evidence, is extremely distant and tenuous, the evidence might be useable in court.

### Conclusion

As you have probably gathered, the 4<sup>th</sup> Amendment's protections against unreasonable search and seizure are wide-ranging, and involve a delicate balancing act between protecting civil liberties, and ensuring that law enforcement is not unduly constrained.

If you have an issue that you think involves the 4<sup>th</sup> Amendment, you should contact a [criminal lawyer](#) immediately.