



Basic Search & Seizure

For Academy Recruits
8 - Hour Course

Lesson Plan

Blue to Gold Law Enforcement Training
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Course Introduction – 10 minutes

- 1) Instructor introduction.
- 2) Explain the course objective.
- 3) Encourage attendees to ask questions and share feedback with other attendees.
- 4) Explain that certificates will be emailed after the class and each student will be registered in the Blue to Gold University.
- 5) Go over the three disclaimers:
 - a) Laws and agency standard operating procedures may be more restrictive. Blue to Gold teaching the federal standard unless otherwise stated. Therefore, students must know their state and local requirements in addition to the federal standard.
 - b) If students have any doubts about their actions, ask a supervisor or legal advisor.
 - c) The course is not legal advice, but legal education. Therefore, nothing we teach should be interpreted as legal advice. Check with your agency's legal advisor for legal advice.

Performance Objectives: Upon completion of this class the student will be able to:

- 1) Understand the Fourth Amendment and to recognized constitutional protections.
- 2) Identify the concept of “reasonable expectation of privacy.”
- 3) Recognize “standing” and how it applies to reasonable expectation of privacy.
- 4) Understand Probable Cause and the link between Fourth Amendment protections and search and seizure.
- 5) How probable cause can aid in obtaining a search warrant.
- 6) Fully understand the exclusionary rule and how that applies.
- 7) Identify all the conditions for a search warrant, including time limitations for serving a search warrant, conditions for

securing an area pending a search warrant and the elements for compliance with a knock and notice when serving a search warrant.

- 8) Know why a plain view seizure does not constitute a search.
- 9) What the legal requirements are for a seizure of items in plain view.
- 10) How to apply the following when conducting a warrantless search:
 - A. Conditions and/or circumstances where a warrantless search and seizure is considered reasonable and legal.
 - B. The scope and necessary conditions for conducting a warrantless search include:
 - i. Cursory/Frisk/Pat Searches
 - ii. Consent Searches
 - iii. Searches pursuant to exigent circumstances
 - iv. Search incident to arrest
 - v. Probation/Parole Searches
- 11) Assess the scope and necessary conditions for conducting the following types of motor vehicle searches:
 - A. Probable cause searches
 - B. Seizure of items in plain view
 - C. Protective searches
 - D. Consent searches
 - E. Searches incident to custodial arrest
 - F. Instrumentality searches
- 12) Recognize the scope and necessary conditions for conducting a vehicle inventory.
- 13) Analyze the legal framework establishing a peace officer's authority to seize physical evidence from a subject's body to include:
 - A. With a warrant
 - B. Without a warrant
- 14) Recognize the conditions under which a peace officer may use reasonable force to prevent a subject from swallowing or attempting to swallow evidence.
- 15) Indicate the conditions necessary for legally obtaining blood samples.

16) Summarize the conditions for legally obtaining the following evidence, fingerprints and handwriting samples.

17) Identify the importance of a peace officer's neutral role during an identification procedure.

You will routinely be asked questions, many are repetitive, this is by design.

Module One – Fundamentals

Time: 30

1. The Fourth Amendment: 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.

Legal Rule: Being reasonable essentially means you articulate C.R.E.W. Consent, Recognized Exception, Warrant

2. Warrantless Presumption

Legal Rule: Warrantless searches and seizures are presumed invalid. Search and seizure based on warrants are presumed valid by subsequent courts.

Module Two - Searches & Seizures

Time: 60

1. Seizures – There are two types of Seizures: Show of authority or physical seizure.

Legal Rule – A person is seized when a reasonable person would believe he was not free to leave, and he submits to your authority. Your intentions don't matter!

California v. Hodari D. (1991)

2. Watch Video "Investigative Detention." Ask class:
 - Were the two suspects on the left detained?
 - Assume there was no R.S. to detain?

- What evidence is coming in?
 - When was suspect who ran detained?
3. Legal Rule – Physical seizure occurs when you use force with the intent to subdue! Accidents seizure may result in civil liability, but not a constitutional violation
Torres v. Madrid (2021)
4. Watch Video “Fourth Amendment Seizure.” Ask class:
- When was suspect detained?

Watch Video “Empire State Building Shooting.” Ask class:

- When were the nine innocent people seized under the Fourth Amendment?
- When was Jeffery Johnson seized under the Fourth Amendment?

Takeaway – If a person is “seized” under the Fourth Amendment it must be justified. Think C.R.E.W.

5. Searches – The term “search” is said to imply some exploratory investigation, invasion, quest, looking for or seeking out. A search implies some sort of force. Implies a prying into hidden places for that which is concealed or hidden.
- Though searching relies mostly on sight, the mere looking at that which is open to view is not a Fourth Amendment search.
- A Fourth Amendment search involves a protected area...if not it's not a “search.”

Emphasize to the class: **“sort of force”, “open to view is not a Fourth Amendment search” and “protected area.”**

There are two types of searches – Reasonable expectation of privacy and Trespass into a protected area.

Review the following case samples with the class.

- A. Discuss the Katz Telephone Booth Case and explain why there was a reasonable expectation of privacy. Suspect expected privacy AND society would consider it reasonable. Both are required! This can be a difficult test to apply in the field....Apply this test instead: Would a survey of 100 people consider the situation was private? If yes, then you do not have both.

- B. If a copy shined a light between the bed of a truck and a camper is that a search? If you were the truck owner, would you consider it a search? According to *Raettig v. State*, “When a person has taken affirmative measures to safeguard his property within an area from public view, a minute crack on the surface of such area can hardly be regarded as an implied invitation to any curious passerby to take a look.”
 - C. Police allegedly trespassed on private property and saw a guest at a house engaged in unlawful activity. The guest had a key and was allowed to enter whenever he wanted. HELD: Despite not being an overnight guest, the guest had a reasonable expectation of privacy.
 - D. Police unlawfully searched a driver and got keys to an apartment building. The driver abandoned (tainted) the keys and police used them to gain access to the common areas and discovered evidence. HELD: Defendant had REP in the common hallway because it was secured, and they had no valid consent to enter.
6. There are two requirements that constitute a “search.”
- Police touch or enter a protected area
 - They have an intent to gather information
7. Every search and seizure requires C.R.E.W. THERE ARE NO EXCEPTIONS! When conducting a search or seizure under the Fourth Amendment you need to articulate C.R.E.W.

Module Three – Burdens of Proof

Time: 25

1. Hunches – Legal Rule: Hunches indicate a “slight possibility” of illegal activity and cannot be used to search or seize.
Hunches are still useful though. They can point you in the right direction and can lead to consensual encounters.
2. Reasonable suspicion – Legal Rule: Reasonable suspicion requires a “moderate chance” of illegal activity.

Ask yourself, what general criminal activity do you suspect?
Why do you believe this? Strive for at least 5 reasons.

3. Probable Cause – Legal Rule: Probable cause requires a “fair probability” of crime committed.
According to *IL v. Gates*: “In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.
Ask yourself, what particular crime was committed? Why do you believe this? Strive for 5 reasons.
4. Ask the class: “Who is in charge of finding enough evidence for a beyond a reasonable doubt case? Answer: You Are!
5. Who is in charge of delivering a beyond a reasonable doubt case? Answer: Prosecutors are responsible for delivering a beyond a reasonable doubt case to the court.

Module Four – Exclusionary Rule

Time: 20

Legal Rule – If police unlawfully find evidence, it will likely be excluded.

1. There are three reason to exclude evidence:
 - To deter police misconduct
 - Courts don’t want to become “accomplices” in unlawfulness
 - Instill public trust/confidence in government

Legal Rule - In order for a defendant to challenge the constitutionality of a search or seizure he must show that he had a legitimate expectation of privacy.

2. Pro Tip – Admitting evidence because of not standing is usually an admission that the officer violated the Fourth Amendment.
Watch the “Fourth Amendment Standing” video with the class. Ask the class, “When does C.R.E.W. apply?”

Module Five – Consensual Encounters

Time: 20

Legal Rule – Ultimate question: Would a reasonable person believe they could ignore you with legal repercussions?

1. Pro Tip: Start your encounter with a question:

- May I speak with you?
- How are you?
- You got a second?

It doesn't matter what your mindset is.

2. Watch video "Consensual Encounter" El Paso. Ask the class: Was the encounter consensual? Answer: The officer did not leave car, no lights, didn't block, inquisitive, conversational, concerned, asked permission to come over. Yes.

Ask the class: When did detention occur? Answer: When the officer said "do you know what this looks like?"

3. Can you ask for I.D.? Answer: Yes.

Can you hold onto I.D.? Answer: No, because the person is not free to leave.



Module Six – Consent to Search

Time: 40

1. Ask the class: Why are some reasons a suspect would consent to a search.

- Can explain away evidence
- Hope evidence won't be found
- Appear cooperative
- Consent is consistent with innocence
- May fee discovery is inevitable

2. Consent has two requirements: First you must obtain free and voluntary consent...then...your search cannot exceed implied or express limitations.

3. Legal Rule – Voluntary consent means the person had a CHOICE in the matter.

A. Watch the video "Consent to Search." Ask the class was the consent free and voluntary?

B. Legal Rule – Consent may be withdrawn or modified at any time.

C. Ask the class about the scope issue in the video. Words matter!

- Search: Looking for something carefully and thoroughly.
 - Peek: Look quickly
- D. A handcuffed and arrested suspect in the back of a police car was asked for consent to search his car. He was told he had a right to refuse. Held: This factor held find valid consent.
- E. Ask the class the following questions regarding the “Consent to Search” video.
- Did the scene include the cupholder?
 - Was the consent free and voluntary?
 - Constructive possession?
- F. Legal Rule – A destructive search requires express consent.

Module Seven – Terry Stops

Time: 40

1. Patdowns; Legal Rule – You may pat down the person’s outer clothing if you believe them to be armed and dangerous.
 - A. Factors to Consider:
 - High-crime area
 - Lack of backup
 - Officer-suspect ratio
 - Reason for stop
 - Occupants’ behavior
 - B. Watch the video “Terry Stop.” Ask the class if the patdown was lawful and if Miranda was required.
2. Plain Feel; Legal Rule – Under plain feel, you can seize something if it’s immediately apparent as contraband, evidence, or fruits of instrumentalities of a crime.
 - A. Plain Feel Seizure: Legal Rule – Courts will provide NO wiggle room if you don’t believe the item could be a weapon. At that point, it’s either immediately apparent as evidence or it’s not.
 - Lawful patdown
 - Immediately apparent
 - Probable cause as evidence

Review the following case samples with the class.

- B. You lawfully begin to patdown a suspect who was alleged to have been involved in narcotics sales. During patdown officer felt “hard but flexible” object and removed it. Plain feel? Held: It needs to be “immediately apparent” as contraband.
- C. Officer lawfully patted down suspect and felt a Tic Tac container. Based on training and experience he knew that many people kept drugs in these containers. Good? Held: Evidence suppressed. Officer needed to articulate why this container likely contained contraband.
- D. Pro Tip – Immediately apparent is based on the totality of the circumstances. Factors to consider:
 - Prior history
 - High drug area
 - Admissions
 - Evasiveness and nervousness

Module Eight – Arrests

Time: 40

1. Legal Rule – You can search any container in the immediate control of the suspect at the time of the arrest. Three reasons why:
 - Evidence
 - Weapons
 - Means of escape
2. Review the following cases with the class:



“

When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape...In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule.

Chimel v. California

“

A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

Chimel v. California

3. Three Requirements: PC to arrest, contemporaneous, immediate control.
 - A. PC to arrest. Legal Rule – The officer must have PC to arrest BEFORE the search. The evidence found cannot justify the initial arrest.
 - B. Contemporaneous. Legal Rule – Courts require the search to be substantially contemporaneous with the arrest. Pro Tip: Courts are lenient about time, especially if a reason is provided. Review the following cases with the class:

Review the following case samples with the class.



During a search warrant an occupant ran from the home. He was caught, searched, and then brought back to the home. He was “formally” arrested an hour later.

- United States v. Sanchez, 555 F.3d 910 (10th Cir. 2009) -

“

An hour would seem to be at the outer limits of “substantially contemporaneous,” if not beyond. However, the government's argument is an attractive one. The hour delay resulted from the officers' pursuing their primary mission—executing the search warrant. To delay the formal announcement of an arrest while that effort is underway strikes us as eminently reasonable.

United States v. Sanchez, 555 F.3d 910 (10th Cir. 2009)

- C. Immediate Control: Legal Rule – Most require the “possibility” of access during the search. Otherwise, police may want to use the booking inventory exception.
Immediate Control: Arrestee’s Person = Never an issue. Removed backpacks, purses, etc. = requires possible access.

Review the following case samples with the class.

- D. A drug dealer resisted arrest and tried to grab gun in waistband. While handcuffed on the ground, another officer looked in nearby entertainment center and found drugs. Legal search? Held: Search was upheld because it was under his “immediate control” at the time of the arrest.
- E. Per US. V. Tejada “The fact that it is no longer under his control at the time of the search does not invalidate the search. The rationale is that if the police could lawfully have searched the defendant’s grabbing radius at the moment of arrest, he has no legitimate complaint if, the better to protect themselves from him, they first put him outside that radius.

- F. Suspect was arrested in handcuffs. He is removed from the house and a backpack what was near him at the time of arrest was searched. Legal search? Held: Because it was possible for him to break free, he could have accessed backpack. Pro Tip- Some courts are pushing back when the search occurs when there is not ability to access the item.

Module Nine – Dealing with Vehicles

Time: 40

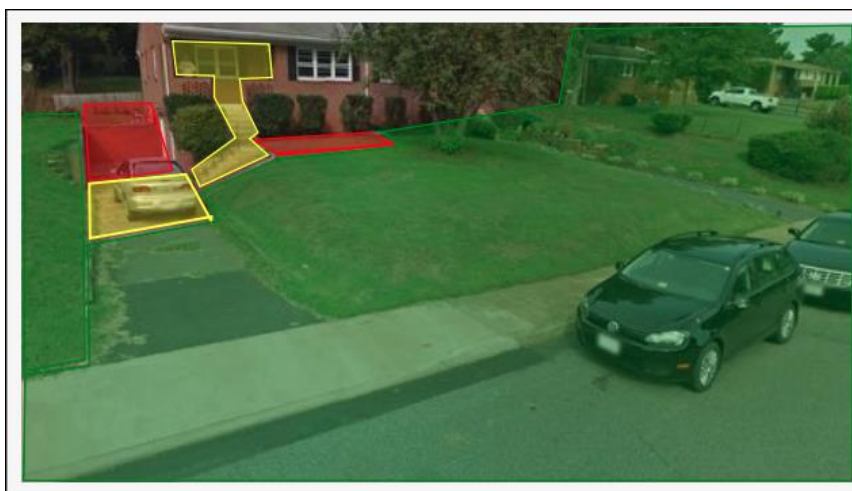
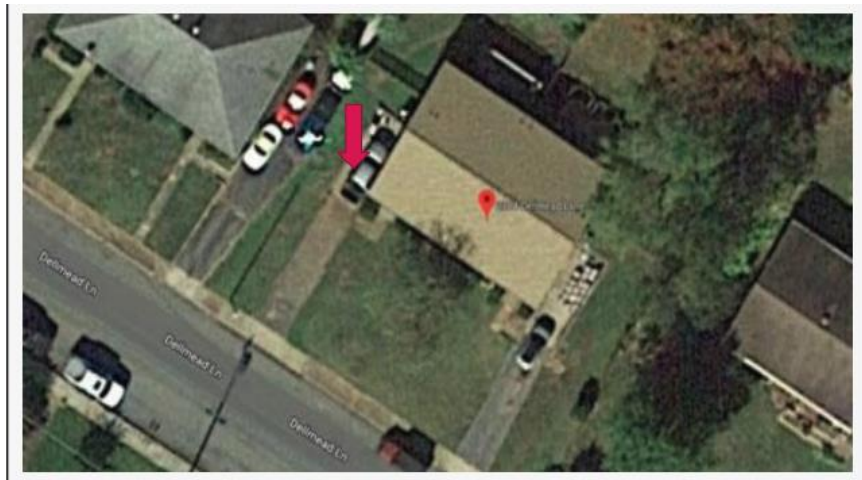
1. Inventories: Legal Rule – You may inventory a vehicle if you abide by your departments' policy and your primary reason you tow car is NOT for evidence.
2. Pro Tip – However, if you don't have discretion to tow then it really shouldn't matter "why" you did it.
3. Articulate one of these reasons:
 - Illegally Parked
 - Blocking Traffic
 - Risk of theft or vandalism
 - Required by policy or law
4. Courts keep an eye out for the following:
 - No community caretaking rationale articulated
 - Tow called after "thorough" inventory conducted
 - Tow not typically call for in same situations
 - Area searched not typical
 - Policy not followed

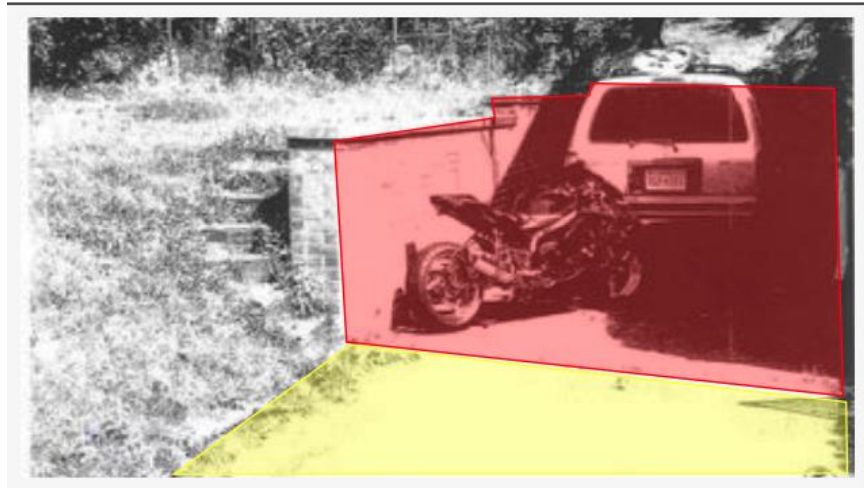
Review the following case samples with the class.

- A. Police found a car associated with a burglary two weeks prior. The car was not moved for two weeks, which violated a rarely used city ordinance, and was towed. Legal? Held: Court found the primary purpose was evidence not community caretaking.
- B. Cops had discretion to tow a vehicle under their policy. However, they testified that "something else was going on besides just a suspended license." The car was legally parked at the time and no community caretaking rationale was provided. Held: There was sufficient evidence this inventory was a pretext search for evidence.

- C. If police want to search a vehicle for evidence, but don't have PC or consent, and they have discretion to tow but wouldn't if not for this ulterior motive, what should they do? Answer: Let the car go!
5. Probable Cause Searches – Applies to all vehicles used in transportation.
- A. Step One – Probable Cause: Probable cause is all about mastering articulation. Write like you are talking to an uninformed person...explain why you knew what you knew.
 - B. Step Two – Not Within Curtilage: Show slides to the class and ask which vehicles are within curtilage.







- C. Step three – Apparently Mobile
- Would a reasonable person assume the vehicle was mobile.
 - Disabled Vehicles – They are searchable under the motor vehicle exception.
- D. Step Four – Don't Exceed Scope; Legal Rule – Generally, you conduct the search in the same manner as if you had a warrant.

“

The scope of a warrantless search based on probable cause is no narrower-and no broader-than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize.

U.S. v. Ross, 456 U.S. 798 (1982)

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However, in choosing to search without a warrant on their own assessment of probable cause, police officers of course lose the protection that a warrant would provide to them in an action for damages brought by an individual claiming that the search was unconstitutional.

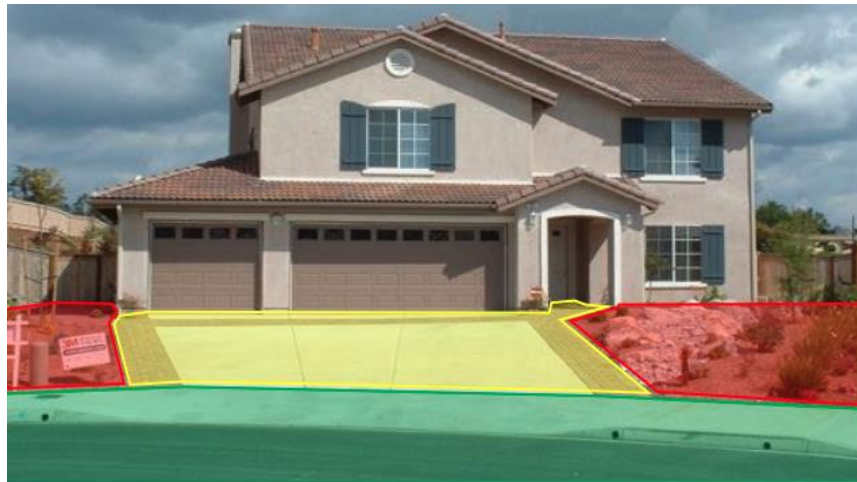
U.S. v. Ross, 456 U.S. 798 (1982)

6. Have the class watch “Traffic Stop: PC Search.” Ask the class Would a judge allow you to search the sunglass holder? Was this arrest-like custody?

Module Ten – Dealing with Homes

Time: 100

1. Curtilage is protected like the home itself. There are two reasons to be on curtilage, knock and talk or calls for service.
 - A. Curtilage Color Codes:
 - Red: Need exigency, emergency urgency
 - Yellow: Knock and talks and routine calls for service
 - Green: Open Fields




Review the following case samples with the class.

- B. To find a visitor knocking on the door is routine (even if sometimes unwelcome); to spot that same visitor exploring the front path with a metal detector or marching his bloodhound into the garden before saying hello and asking permission would inspire most of us to call the police.
 - C. What about a knock and talk at 4am or knocking several times? Answer: Citing *Florida v. Jardines*; "An implicit social license sets the boundaries of what acts officers may engage in within the curtilage of the home, absent exigent circumstances."
 - D. Ask the class if looking under a garage door that is only open about 12 inches is permitted. Answer: No, the officer would have to get down on his hands and knees and putting his head down almost to the ground is not considered an act a reasonable member of society would engage in.
 - E. Takeaway: If you are conducting a knock and talk, act like a reasonably polite citizen, otherwise you may violate the Fourth Amendment.
2. Warrantless Entries: Legal Rule – The home is the most protected area under the constitution. Articulate C.R.E.W.


before entering a home. Entering a home without consent or a warrant requires some form of exigency, emergency, or urgency.

- A. The arrest must begin outside the home. Keep in mind the severity of the crime does not create hot pursuit.

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“ [B]y retreating into a private place, her house, defendant could not thwart an otherwise proper arrest that had been set in motion in a public place, the threshold of her house; and that since there was a need for the police to act quickly to prevent the destruction of narcotics evidence, there was a true “hot pursuit,” and therefore the warrantless entry by the police into the house to make the arrest was justified, as was the ensuing search incident thereto.

United States v. Santana, 427 U.S. 38 (1976)

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“ The flight of a suspected misdemeanor does not always justify a warrantless entry into a home. An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency. On many occasions, the officer will have good reason to enter—to prevent imminent harms of violence, destruction of evidence, or escape from the home. But when the officer has time to get a warrant, he must do so—even though the misdemeanor fled.

- Lange v. California, 2021 -

- B. Watch video “Hot Pursuit.” Ask the class: Was this a legitimate hot pursuit and should cops make a forced entry?
- 3. Emergency Aid Exception: Legal Rule – Community caretaking does not apply to homes. It’s the emergency aid exception.
Review the following case samples with the class.
 - A. To utilize the Emergency Aid Exception one of two situations must apply. Objective reason that an

emergency exists, or areas searched have nexus to emergency.

Review the following case samples with the class.

- B. The police reasonably believed that an armed robbery victim was in a hotel room and made entry. While inside they saw plain view evidence. Held: Entry lawful under emergency aid exception and plain view evidence, not suppressed.
 - C. Police responded to a 911 hang-up. The husband refused entry and had bloody knuckles. Admitted he was married but was hostile and uncooperative. Held: Entry lawful under emergency aid exception.
4. Freezing a Home: Legal Rule – Freezing a home in anticipation must be justified – it is not automatic.
- A. There are three types of home freezes: Prohibiting Entry, Maintain Status Quo and Entry & Exclude.
 - B. Prohibiting Entry: Legal Rule – You may prevent entry if you have reason to believe that evidence would be destroyed or removed before the warrant arrives.

If an occupant requests entry to get personal property, use good judgement. Don't deny necessities like medicines, baby care products, and so forth. Still, you can shadow him and search the items before removal.

Review the following case samples with the class.

Police seized the residence for 26.5 hours while they interviewed witnesses and drafted a "meticulous" search warrant. Police refused to accompany defendant to retrieve medicines. Held: Unreasonable seizure

A wife died from an apparent overdose. No evidence of criminal conduct was observed but the detective froze the home as a "best practice." Held: Officers need at least R.S. to freeze a home.

- C. Maintain Status Quo: Legal Rule – If you're already lawfully inside a home and are going to get a warrant for evidence that may be easily destroyed, you can remain inside until the warrant arrives.

While inside the home, don't search or photograph anything. Wait for the warrant.

Review the following case samples with the class.

Police developed P.C. while inside the apartment and ended up freezing it for seven hours. Officers told occupants they were free to leave if they wished. Held: Seizure upheld because there was no evidence police were not diligent.

Wife called police for a civil standby. While she was grabbing her belongs, she ratted out her husband for having drugs under the couch. Police then remained inside until warrant arrived. Held: Lawful since the evidence would have been destroyed if police left.

- D. Entry & Exclude – Entry for destruction of evidence:
- You have "clear" P.C. evidence is inside the home.
 - Need SW to search for evidence.
 - You have reason to believe someone is home.
 - You have P.C. that the evidence will be destroyed in the meantime.

Review the following case samples with the class.

Large package containing heroin was delivered to house and officer was sent to secure a SW. In the meantime, the suspect left and police followed. The suspect tried to shake the tail and drove back towards house and was stopped. While being arrested he yelled to neighbor to call his brother. Held: Exigency existed to enter and secure the residence.

5. Knock and Announce: Legal Rule – Knock and announce means you announce your authority and purpose.

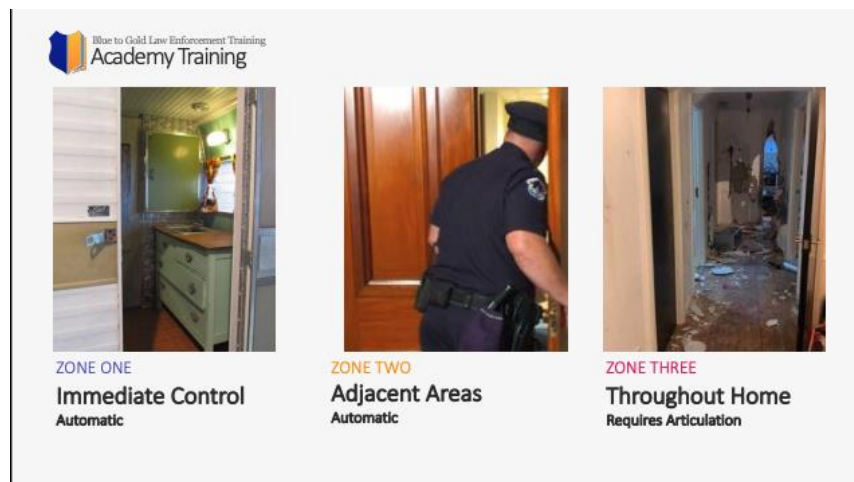
There are three reasons to knock and announce:

- Decreases potential for violence
- Protects privacy
- Provides occupant an opportunity to prevent property damage

A. How long to wait after the knock?

- Reasonable time – no bright-line rule
- Affirmative refusal means Immediate entry
- More than a few seconds required
- 20 seconds for drugs typical
- Motel room is different than mansion
- Drugs different than piano

6. Protective Sweeps: Legal Rule – There are three types of protective sweeps you may conduct during an in-home arrest.



A. Have the class watch the video: Hot Pursuit: El Paso. Ask the class the following questions:

- Legitimate hot pursuit?
- What protective sweeps may be conducted and where?
- What about re-entry?
- Re-entry permitted if “necessary and continuous?”

7. Plain View – Must include all the following:

Plain View Seizure:

01.

You are lawfully present

02.

You didn't manipulate the evidence

03.

You had lawful access

Remember, Plain View including smell and hearing is nothing more than right to be, right to see.

Review the following case samples with the class.

- A. Police had an arrest warrant, went to the motel room to arrest suspect. She opened the door and started to step outside. Police forced the door open and saw drugs on the bed. Legal search? No, the drugs were not in plain view and the suspect could have been arrested outside the motel room.
- B. You are driving by a house with its garage door open and you see a stolen ATV inside. Can you seize it? You see suspect in driveway. Can you make a consensual encounter and/or arrest? What if suspect is in backyard? You cannot seize it would consent, exigency, or a warrant.

Module Eleven – Misc. Issues

Time 45

- 1. If a suspect tries to swallow drugs, do not place your hands around their throat. Use good judgement, monitor and call medical.
- 2. Identification Procedures: Legal Rule - Photo Identifications (e.g. "six packs") are generally permissible if they are not unduly suggestive. Unlike line-ups, counsel is not required.

- A. Unduly Suggestive – Were methods unduly suggestive, if yes what is the substantial likelihood of irreparable misidentification?
 - B. Factors in determining unduly suggestive photos:
 - Recurrence of one photo
 - Showing few/one photo
 - Jail data imprinted on photo
 - Emphasizing suspect's photo
 - Dramatic differences between suspect and peers
 - Do not include an information with photos
3. Blood Draws: Legal Rule – If an arrested DUI driver refuses to breath or bleed, you will need to obtain a warrant to draw blood.

Module Twelve – Takeaways

Time 10

1. Every search and seizure require C.R.E.W.
2. All home entries require exigency
3. Comply with social graces during knock and talks

Total time: 480