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Illegal Search and Seizure FAQs

Here are the most commonly asked questions regarding your rights when police search you, your home or your car.

At what point are police considered "searching" during an investigation?

In general, a court will ask two questions to conclude whether a police investigation turned into a search. First, the court will ask if the person whose home or property were being investigated/searched expected a degree of privacy. Next, the court will ask if that expectation of privacy was reasonable. This question is answered in the light of society, meaning the question revolves around whether society would recognize some sort of privacy in the matter in question.

For an investigation to turn into a search, a court must conclude that the investigation impinged or intruded upon a person's "legitimate expectation of privacy." This is found when the answer to the above two questions is yes. If either question can be answered in the negative, meaning that the person being search either did not have something to keep private, or if the expectation of privacy was not reasonable, then there was no search.

Is my private property really that private?

Property that is within your house or on your property is generally considered to be private. If the police have to enter onto your property in order to get a look at the evidence or other property that they wish to use in court, they generally have to have a search warrant to do so. However, there are certain situations, like stopping suspects from destroying evidence, in which police can search and seize your property in your home without a warrant. This is because the situation itself demands prompt action by the police.

So, now that we have the general rule, what does this mean for you? In most situations, law enforcement officers are allowed to take photographs from the air above your home, or can eavesdrop on your conversations in order to get enough information to get a warrant. When listening to conversations, however, police cannot use hi-tech equipment in either of these circumstances without rendering the eavesdropping an illegal search and seizure.

Generally speaking, the more sophisticated the listening or photography equipment is, the more likely it will be that the police will be required to obtain a warrant before conducting their search. If you consent to an officer searching your home, however, you waive any right to challenge a warrantless search later on. Additionally, if an officer is on your property for a legitimate reason (perhaps pursuing a felon), any contraband that is in plain sight of the officer is fair game to be seized, even without a search warrant.

The police told me they have a search warrant, what is it and what did they need to do to get it?

A search warrant is a judicial order issued by a judge or magistrate that gives permission and authorizes the police or other law enforcement agency to conduct a search of a location or person and to seize any evidence of a criminal offense. The search warrant is addressed to the person to be searched or to the person who owns the premises to be searched and informs the addressee that the judge issuing the warrant has found it reasonably likely that certain evidence may be found there.

Generally speaking, police officers or other law enforcement agencies must apply for a search warrant before conducting a search of the person or premise in issue. If any search is conducted in the absence of a search warrant, it is presumed to be unreasonable and will likely be ruled an illegal search and seizure. If a challenge to such a search is made, the police or parties conducting the search will have to explain and justify their reasons for conducting a search, as well as explain why a warrant was not issued before the search.

The police must normally make a minimum showing to the judge issuing the search warrant in order for the judge to make the decision to grant the order. Police have to show the judge that:

- Probable cause exists that a crime has occurred, and

- Evidence or contraband linked to that crime will more than likely be found in a certain location on the property or person at issue.

In order to make this showing to the judge, police will need to give information that is either based upon their own observations or the observations of others, including informants. If the police rely solely upon the observations of others, including informants, when applying for a search warrant, however, the police must be able to prove to the judge that the information is reliable. This could mean anything from police corroboration of the secondhand observations, or the past, reliable history of observations from a named informant.

What powers do police get when they have a search warrant?

A search warrant gives the police the legal authority to enter a premise without permission of the owner to search for the evidence listed in the warrant in the places authorized by the warrant. For example, if the search warrant allows the police to search the bathroom of a home for illegal drugs, then the police should confine their search to the bathroom.

There are certain exceptions to this search warrant rule which routinely allow police to conduct a wider-spanning search than allowed by the search warrant, however. In general, police can search beyond the scope of the search warrant in order to ensure their own safety as well as the safety of others. In addition, police can search widely to stop the destruction of evidence, look for evidence beyond the scope of the original search warrant because their initial search revealed that there may be additional evidence in other locations on the property, or to find more evidence based upon what is in plain view.

Some examples may clarify these points. If the police have obtained a warrant to search the garage of a house, they may walk through the home in order to get to the garage to conduct their search. If, on the way to the garage to look for drugs, the police hear toilets flushing upstairs, the police may broaden their search in order to check the bathrooms for illegal drugs that are likely being flushed down the drain. Or, a search of a dining room may be expanded to the kitchen if police hear a gun being loaded by the refrigerator.

Lastly, and it should be emphasized, the police can seize evidence that is in plain view if the police are there for a legitimate reason. For example, if, on their way to search the garage, the police see four bags of marijuana sitting on the coffee table, the police can seize the drugs.

Are search warrants required for every search?

As you may have guessed from reading above, the answer to this question is no not every search is an illegal search and seizure in the absence of a warrant. Here are some of the main examples in which police or other law enforcement agencies do not need a search warrant to conduct a search:

- **Consent.** If the police show up at your door and ask you if they can come inside to search for drugs and you consent to the search, then the police do not need a warrant.
- **Emergency.** If the police's search is in an emergency situation, then they may not need a search warrant. For example, if the police are pursuing an armed suspect that has disappeared into a small neighborhood, they may not need a search warrant to search any of the homes there because the suspect is putting the residents at risk.
- **Searches incident to arrest.** After a person has been arrested by the police, the law enforcement officers may conduct a search of the person and his immediate surroundings for weapons that may be dangerous to the officers or others.
- **Plain view.** Police do not need a search warrant to seize evidence that is in plain view of a place where the police are legally authorized to be.

My landlord/roommate gave the police permission to search my belongings - was this an illegal search and seizure?

Generally speaking, the person in charge of an area has the power to give permission to the police to search the area. So, if you share an apartment with a roommate, your roommate probably has the power to give permission to the police to search common areas in the apartment, like the living room or the kitchen, but not your personal bedroom.

Likewise, your landlord cannot give permission to the police to search any part of your apartment, except places like a communal common area, like a washer/dryer room in an apartment building. However, you should keep in mind that it is not an illegal search and seizure if the police search your apartment without any permission if they feel that the search is an emergency.

During a traffic stop, can the police search my car and frisk me?

In general, the police are allowed to search and frisk you if they have a reasonable suspicion that you are armed during a traffic stop. This is not an illegal search and seizure. In addition to frisking for weapons, the police can also pat you down for contraband material, like drugs. A recent Supreme Court ruling altered the laws that allow a police officer to search a car after a traffic stop. The Court ruled that a search of the passenger compartment of a car is only allowed if either:

- The driver/arrestee is within reaching distance of the passenger compartment at the time of the search (meaning that the police cannot search your car if you are arrested in the back of the squad car), or

- It is reasonable to believe the vehicle contains evidence of the offense of arrest (meaning the police cannot search your car for weapons unless they arrested you for a violent crime or illegal weapon possession).

My car was towed and impounded, can the police search it?

In short, yes. If the police have towed and impounded your car, they have the authority to search your vehicle. This search can be as comprehensive as the police wish and will most likely include opening any locked compartments or boxes found within your car. It does not matter what your car was towed and impounded for, it could be for something as simple as a parking violation or as serious as auto-theft. Regardless, the police can search your car if it has been impounded.

Police cannot tow and impound your car for the sole purpose of searching it, however. Police are required to follow strict procedures when it comes to these types of searches.

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