

CRIMINAL PROCEDURE

I. FOURTH AMENDMENT SEARCH AND SEIZURE

*D's motion to exclude evidence of the police observation of drug in his residence will be based on the Fourth Amendment, which prohibits unreasonable searches and seizures. The Fourth Amendment applies to the states via the Fourteenth Amendment.

Whether a search and seizure is governed by the Fourth Amendment (Steps 1 and 2):

Step 1: Is there government conduct?

- (1) Public paid police who are on or off duty
- (2) Private citizens but only if acting at the direction of the police
- (3) Privately paid police but only if deputized with the power to arrest

Step 2: Did the search or seizure invade individual's reasonable expectation of privacy?

To have authority, or "standing" to challenge the lawfulness of a government search and seizure, an individual's personal privacy rights must be invaded, not those of a third party.

Whether a search and seizure that is governed by the Fourth Amendment satisfies constitutional requirements (Steps 3 through 6):

Step 3: Was the search authorized by a facially valid warrant?

- (1) Probable cause: a fair probability that contraband or evidence of crime will be found in the area searched.
- (2) Particularity: The search warrant must specify the place to be searched and the items to be seized.

Step 4: Does an officer's "good faith" save the defective search warrant?

An officer's "good faith" overcomes constitutional deficits in probable cause and particularity.

Step 5: Was the search warrant properly executed by the police?

- (1) Did the officers exceed the scope of warrant?
- (2) Did the police comply with the "Knock and Announce" rule? <Exception> futile, dangerous, inhibit

Step 6: Is the search valid under any of the 8 exceptions to the warrant requirement?

• ESCAPIST

(1) Exigent circumstances

- A. Evanescent Evidence,
- B. Hot pursuit of a fleeing felon:

(2) Search incident to arrest

- A. Need a **lawful** custodial arrest (arrest should be supported by probable cause).
- B. Justification: (i) **ensure the safety of the officer** or (ii) **to preserve evidence**.
- C. Timing: must be **contemporaneous in time and place with the arrest**.
- D. Scope: your body and within your **wingspan** – includes all containers and anything contained in your person

(3) Consent

Consent must be **voluntary and intelligent**.

“voluntary” means free from police coercion;

“intelligent” does not require the defendant to be informed of his right to refuse consent

(4) Automobile

Police officers need **probable cause** to believe that there is **contraband** or **evidence of crime** in the vehicle. This probable cause must arise before the search, but doesn't have to arise before the car is pulled over

Police can search the interior (passenger) cabin and trunk, and may open any package or luggage or other container, that may reasonably contain the item that you have probable cause to search for

(5) Plain View

A. Lawful access to the place from which the item can be plainly seen

B. Lawful access to the item itself

C. The criminality of the item seized must be immediately apparent

(6) Inventory Searches

Inventory searches are constitutional, **if the regulations governing them are reasonable in scope and the search itself complies with those regulations.**

Justifications for inventory search: 1) to safeguard the inventoree's property 2) to protect the officer from any risk to his or her safety 3) to guard against lost or stolen property claims against the police department

(7) Special Needs (“Special needs” of law enforcement, governmental employers and school officials justify dispensing with the warrant requirement.)

(8) Terry Stops and Frisks

Terry stop **Brief detention or seizure for the purpose of investigating suspicious conduct**

Specific and articulable facts that inform an officer to believe that criminal activity is present.

Terry frisk **A pat down of body and the outer-clothing for weapons**

Specific and articulable facts that suggest that the suspect is armed and dangerous.

Under the federal standard, if, during a *Terry* frisk, an officer finds **a weapon**, it can always be seized. If, instead, the officer finds something she recognizes as **contraband** without manipulating the object (e.g. a crack pipe), she can seize it as well.

The extent to which evidence gathered in, or derived from, a search and seizure that violates the Fourth Amendment is admissible in court (Steps 7 and 8).

Step 7: Can prosecutors use the evidence gathered in an unconstitutional search and seizure against the defendant in court?

Evidence, whether physical or testimonial, that is obtained in violation of a federal statutory or constitutional provision is inadmissible in court against the individual whose rights were violated.

Fourth Amendment limits on the exclusionary rule (違法収集証拠を使用できる4類型)

1. Case-in-chief vs. cross-examination:

2. Certain proceeding exempted:

3. “Knock and Announce” violations:

4. An officer's “reasonable” mistakes:

Step 8: Is any of the evidence introduced by the prosecution “Fruit of the Poisonous Tree,” and, if so, is the evidence admissible?

Evidence derived by exploiting prior unconstitutional conduct is “Fruit of the Poisonous Tree” and is inadmissible in the prosecutor's case-in-chief.

By showing a break in the causal link between the original illegality and the criminal evidence that is later discovered.

A. “Independent Source” doctrine: B. “Inevitable Discovery” doctrine: C. “Attenuation” doctrine:

II. WIRETAPPING AND EAVESDROPPING Four major requirements for a valid wiretap warrant:

P probable cause **P** person – must name the person’s expected to be overheard.

C conversation – wiretap warrant must particularly describe the conversation can be overheard.

T time – wiretap warrant must be for a strictly limited time period.

IV. CONFESSIONS (Miranda) (*Joint Trialでは、一人に対してinadmissibleだと証拠申請×)

Right to Counsel under the **Sixth Amendment** (= right to confront witness <hearsay question>)

A defendant in a criminal case has the right to effective representation under the Sixth Amendment to the U.S. Constitution.

While an attorney ordinarily determine matters of strategy, such as which legal objections issues to raise, an attorney also has an affirmative obligation to raise all non-frivolous claims that can be supported by a good faith argument. Attorney must also follow his client’s instructions in matters that substantially affect the outcome of a case.

When the defendant is formally charged, not upon arrest.

It provides no protection for **uncounseled interrogation for other uncharged criminal activity.**

*cf. The Sixth Amendmentは、right to confront witnessも保証している。(＜Hearsay＞の問題。)

The Fifth Amendment - Miranda doctrine (implied rights grounded in the self-incrimination clause of the 5 th amendment.)

The Fifth Amendment prohibition against compelled self-incrimination is applicable to the state through the Fourteen Amendment.

The core *Miranda* warnings

a. right to remain silent

b. anything you say can and will be used against you

c. you have the right to an attorney

d. if you cannot afford one, you have the right to have an attorney appointed for you

When are *Miranda* warnings necessary?

a. Custody: A suspect is in custody, for *Miranda* purposes, if the atmosphere is characterized by **police domination and coercion** such that his or her **freedom of action is limited in a significant way.**

b. Interrogation: The Fifth Amendment *Miranda* doctrine defines interrogation as **any conduct the police knew or should have known was likely to elicit incriminating response.**

*”Custodial interrogation” occurs where police interrogate a suspect in custody and know or should know such questioning is likely to elicit an incriminating response. *The Supreme Court has held that a traffic detention does not entitle a detainee to *Miranda* warning, because a traffic stop is non-custodial in nature.

Valid *Miranda* waiver:

a. **“Knowing and Intelligent”**: The suspect understands **the nature of his rights and the consequences** of abandoning them.

b. **Voluntary**: A *Miranda* waiver is voluntary if it is **not the product of police coercion.**

Where a suspect first invokes his right to counsel, all questioning must cease until the accused is provided with counsel.

The Fourteen Amendment – Voluntariness

To be admissible, the Due Process Clause of the Fourteen Amendment requires that a confession be voluntary.

V. PRETRIAL IDENTIFICATION

*A witness' prior statement identifying person after perceiving him is nonhearsay. Under the FRE and the CEC.

A. **Line ups**: witness is asked to identify the perpetrator from a group. → 3-6 ppl

A line-up violates due process when the identification is unnecessary suggestive and there is a substantial likelihood of misidentification.

B. **Show ups**: one-on-one confrontation between the witness and the suspect. → one on one

A line-up violates due process when the identification is unnecessary suggestive and there is a substantial likelihood of misidentification.

C. **Photo arrays**: witness asked to pick out the perpetrator from a series of photos.

<Independent Source>: A witness may make in-court identification despite the existence of an illegal line-up if the in-court identification has an independent source.

(*Defendantがinsanityのdefenseを主張している場合、StateはPhysicianを用意する義務がある。)

IX. GUILTY PLEAS AND PLEA BARGAINING

The judge must advise a defendant personally of:

A. nature of the charge

B. maximum authorized sentence and any mandatory minimum

C. the defendant's right to plead not guilty and to proceed to trial

D. by pleading guilty, defendant is waiving trial and will proceed directly to sentencing.

X. PUNISHMENT (The Eighth Amendment)

A status that creates an automatic category for the imposition of the death penalty is unconstitutional.

No death penalty – (a)mentally retarded, (b)presently insane, (c)under 18 at the time the offence occurred.

XI. DOUBLE JEOPARDY

1. When does "jeopardy" attach?

A. **Jury trial: when the jury sworn**

B. **Bench trial: when the first witness sworn in**

C. **Guilty plea: when the court accepts the defendant's plea unconditionally**

5. The four exceptions to the double jeopardy rule that permit retrial:

A. **hung-jury** → jury can't reach verdict.

B. **mistrial for manifest necessity**

EXAMPLE: defendant needs to be hospitalized halfway through the trial

C. **retrial based on the successful appeal**

D. **breach of plea-bargaining by the defendant**

***Exclusion of Potential Jurors based on Race (the Sixth Amendment)**

A defendant has a right to have the jury selected from a representative cross-section of the community. A defendant can complain of an exclusion from the jury of a significant segment of the community, even if he is not a member. (e.g. Race, Opposition to the Death Penalty)

The Equal Protection Clause (the **Fourteenth Amendment**) forbids a prosecutor from using peremptory challenges to exclude potential jurors solely because of their race or gender.

***Use of Force to Effectuate Arrest by Police Officer**

A police officer may use deadly force to apprehend a feeling felon only when the felon threatens death or serious bodily harm and deadly force is necessary to prevent his escape.