

Fourth Amendment Overview for the Non-Litigator

2025 Texas City Attorneys Association

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Fourth Amendment Text:

“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.”

Fourth Amendment History

- Included in the Bill of Rights—December 15, 1791
- 230+ years later—courts must apply with technological and other advances and changes
- Purpose: “to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials”
 - *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 528 (1967)
- Fourth Amendment limitations apply to state action (only)

General Fourth Amendment Issues

- Exclusionary Rule—evidence obtained in violation of the Fourth Amendment is not admissible in a criminal prosecution
 - *Mapp v. Ohio*, 367 U.S. 643 (1961)
- Violations can provide civil liability under 42 U.S.C. § 1983
- Three main types of civil claims:
 - (1) state actor searched property or a person in violation of the Fourth Amendment;
 - (2) unlawful detention or arrest, including prolonged detention claims; and
 - (3) during a seizure, a state actor used excessive force.

Searches Under the Fourth Amendment

- General rule—requires a reasonable expectation of privacy
 - Home—expressly in the text; search or seizure in one’s home is presumptively unreasonable—*Payton v. New York*, 445 U.S. 573 (1980).
 - Curtilage included; “open fields” may not be
 - What about overnight guest in someone else’s home?
 - Yes—*Minnesota v. Olson*, 495 U.S. 91 (1990)
 - Two elements to consider:
 - (1) individual has a *subjective* expectation of privacy; and
 - (2) that expectation is *objectively* reasonable (reasonable person in the situation would find the expectation reasonable)

Examples

- Public Phone Booth—*Katz v. United States*, 389 U.S. 347 (1967)
 - FBI placed listening and recording device on the outside of the phone booth, capturing Katz's phone calls relating to illegal gambling operations. No physical intrusion required.
- Video Footage Filmed by Third Party—*U.S. v. Gaulten*, 73 F. 4th 390 (5th Cir. 2023)
 - A rapper (YoungBoy Never Broke Again) paid someone to follow him around and film. Footage seized after a 911 call reporting men with Uzis, which showed YoungBoy with a firearm—he wasn't supposed to have one.)
 - District court suppressed video finding expectation of privacy in video footage
 - Fifth Circuit reversed—no expectation in the footage as voluntarily turned over to third parties
- Cell Phone Data and Location Information—*Carpenter v. U.S.*, 585 U.S. 296 (2018)
 - 5-4 decision found legitimate expectation of privacy in the record of one's physical movements captured through cell-site location information (reversing Sixth Circuit)
- Privacy analysis not always required—*U.S. v. Jones*, 565 U.S. 400 (2012)

Warrants and Probable Cause

- Unless an exception applies, Fourth Amendment requires a warrant to search private property.
- Three requirements : (a) based on probable cause; (b) which is sworn to; and (c) the warrant particularly describes the place to be searched and the person or things to be seized
- Texas has its own warrant standards—Code of Criminal Procedure Art. 15 (arrest warrants) and Art. 18 (search warrants)
- Probable cause (layman's terms): a reasonable basis to believe a crime occurred; and (b) the person to be searched or arrested committed the crime OR evidence of the crime is at the location to be searched.
 - Must be based on specific and objective facts that can be articulated (not a hunch)

Probable Cause Standards

- “Incapable of precise definition or quantification into percentages” and “depends on the totality of the circumstances”
- A “practical and common-sensical standard,” requiring only a “probability or substantial chance of criminal activity”
- Likelihood that the individual committed the crime “need not reach [even] the fifty percent mark.”
 - *Espinal v. City of Houston*, 96 F.4th 741, 745 (5th Cir. 2024)

Warrantless Searches of Property

- *Per-se* unreasonable unless an exception applies:
- **Consent:** by owner or person in control; can be limited in scope; can be withdrawn anytime
- **Incident to arrest:** person and immediate surroundings following a lawful arrest
- **Inventory:** search and inventory property after being impounded or logged into custody after an arrest

Search Warrant Exceptions (cont.)

- **Plain view:** officer can seize something in plain view if the officer had a legal right to be where he was
 - Flashlights and binoculars?
 - Contort body or otherwise place himself in unusual position?
- **Common action:** “officers may generally take actions that ‘any private citizen might do,’” such as approach a home and knock on the door
 - Would not include going much farther beyond, or engaging in police conduct (taking a canine)
- **Police canines:** can sniff property and people in public places without warrant
 - No prolonged detention for canine to arrive

Search Warrant Exceptions (cont.)

- **Exigent Circumstances:**
 - Emergency assistance to an injured occupant or to protect someone from imminent injury
 - Building on fire
 - “Hot pursuit” of a felon. Misdemeanor is determined on a case-by-case basis per *Lange v. California*, 594 U.S. 295 (2021)
 - Prevent the imminent destruction of evidence or the imminent escape of a suspect
- “Community Caretaking Function” exception?
 - *Caniglia v. Strom*, 593 U.S. 194, 196 (2021)

VEHICLE SEARCHES WITHOUT A WARRANT

- Reduced right to privacy—*Carroll v. U.S.*, 267 U.S. 132 (1925)
 - Impractical to attempt to get a warrant for a vehicle that can be driven and the effectiveness of a warrant avoided
- Must have probable cause that contraband exists in the vehicle. And the initial stop of the vehicle must be based on at least reasonable suspicion.
- Search of vehicle incident to arrest just because the person was inside?
 - No, unless officer has reasonable basis to believe the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest—*Arizona v. Gant*, 556 U.S. 332 (2009)
- “Vehicle exception” does not apply to vehicle parked in driveway within the curtilage of a home—*Collins v. Virginia*, 584 U.S. 586 (2018)

“Seizure” of Persons Without a Warrant

- Any interaction that constitutes a “seizure” triggers the Fourth Amendment and its reasonableness standard
- “A seizure occurs when an officer ‘*objectively* manifests an intent to restrain’ the liberty of an individual through either use of physical force or a show of authority.” *U.S. v. Wright*, 57 4th 524 (5th Cir. 2023)
- If no physical force, two step evaluation:
 - (1) did the officer make sufficient showing of authority? (would a reasonable person have believe that he was not free to leave)
 - (2) did the individual submit to the show of authority?

“Seizure” of Persons Without a Warrant

- Two types of seizures:
 - Investigatory detentions—require reasonable suspicion
 - Arrests—require probable cause
- Determination is made at the time of the detention or arrest—information learned thereafter cannot support the suspicion or probable cause

DETAINMENTS—”*TERRY* STOPS”

- Officer can make a warrantless, temporary seizure to investigate whether a crime occurred or is about to occur, provided:
 - Officer must have “reasonable suspicion supported by articulable facts that criminal activity may be afoot”
 - Fact intensive test, “judged against an objective standard”
- Reasonable suspicion not required for an officer to *request* anyone to answer questions
- Prolonged Detentions: the detention cannot last longer than necessary to confirm or dispel the officer’s suspicion—beyond that is an unlawful seizure!
- Officer can conduct a frisk/pat-down of the person as part of a *Terry* stop
 - Can only consist of a pat down for weapons (not a search for drugs or other contraband)
 - Should be able to articulate reasonable suspicion that the person may be armed or otherwise to support a safety concern

WARRANTLESS ARRESTS

- Officer can make a warrantless arrest for:
 - For any offense committed in the officer's presence
 - This includes misdemeanor offenses, even if the offense is punishable by a fine only—*Atwater v. City of Lago Vista*, 532 U.S. 318 (2001)
 - For any felony, even outside of the officer's presence, if probable cause exists
- Misdemeanors not in the officer's presence?
 - *Atwater* left the question open
 - Supreme Court declined certiorari on February 24, 2025 in a case that presented the issue
 - *Gonzalez v. U.S.*, 604 U.S. --- (2025)—Justice Sotomayor noted that the common law included some “in-presence” requirement for misdemeanor offenses, and the Court should soon examine this issue to determine if the Fourth Amendment incorporates that common law requirement

WARRANTLESS ARRESTS—TEXAS LAW

- Code of Criminal Procedure Article 14
- Officer can arrest for any offense committed in his presence (with three exceptions)
 - Three exceptions: speeding, use of wireless communication device, and open container—TEX. TRANS. CODE § 543.004
- Otherwise, Article 14.03 sets out a list of offenses for which an officer can make a warrantless arrest without the offense being committed in the officer's presence

EXCESSIVE FORCE

- Physical force = seizure = Fourth Amendment reasonableness standard
- Three elements:
 - (a) an injury—must be more than de minimis, but low threshold ;
 - (b) that resulted “directly and only” from the use of force that was excessive to the need; and
 - (c) force used was objectively unreasonable
- Objective reasonableness—balances amount of force used against the need.
 - Objective evaluation from the perspective of a reasonable officer on the scene—not 20/20 hindsight
 - Three “*Graham* factors”: (a) severity of crime; (b) whether suspect posed immediate threat to safety of officer or others; and (c) whether suspect is actively resisting arrest or attempting to flee

DEFENSES TO FOURTH AMENDMENT CLAIMS

- Individual as defendant—qualified immunity
- Municipality as defendant:
 - No respondeat superior liability; “almost never liable for an isolated unconstitutional act on the part of an employee”
 - “It is far more difficult for [a] plaintiff to establish municipal liability...than to establish individual liability.”
 - City itself must be the wrongdoer: (a) official policy (or custom), of which (2) a policy maker can be charged with actual or constructive knowledge, and (3) a connotational violation whose moving force is that policy (or custom)