

## 4<sup>th</sup> Amendment search and seizure

### 4<sup>th</sup> amendment search standards

	Reasonable suspicion	Probable cause
<b>Standard</b>	Reasonable suspicion supported by articulable facts, based on the totality of the circumstances	Trustworthy facts or knowledge sufficient for a reasonable person to believe that the suspect has committed/is committing a crime, based on the totality of the circumstances
<b>Applicable to</b>	<ul style="list-style-type: none"> <li>• Stop and frisk (investigatory detentions)</li> <li>• Automobile stops “Terry stops”</li> </ul>	<ul style="list-style-type: none"> <li>• Arrests (if at home, arrest warrant reqd.)</li> <li>• Station house detention</li> <li>• Detention to obtain a search warrant</li> <li>• Search warrants for houses</li> <li>• Search incident to lawful arrest – PC for arrest</li> <li>• Automobile searches</li> </ul>

### Distinguishing between a search and a seizure

Seizure (when a reasonable person feels not free to leave or terminate encounter with government)	Search
<ul style="list-style-type: none"> <li>• Arrests (PC reqd. and warrant reqd. if home arrest).</li> <li>• Detention to obtain a search warrant (PC that suspect has hidden drugs in home)</li> <li>• Stop and frisk (stop part) (RS reqd.)</li> <li>• Automobile stops – detention element (RS that law has been violated)(violation of traffic law only, passenger compartment may be searched)</li> <li>• Police checkpoint/roadblocks for cars (1) neutral articulable standard required, (2) relating to a problem pertaining to automobiles and their mobility</li> <li>• Station house detention (PC reqd.)</li> </ul>	<ul style="list-style-type: none"> <li>• Search of houses: warrant normally required - exceptions include (1) search incident to constitutional arrest (PC required for arrest, limitations apply), (2) plain view, (3) consent, (4) hot pursuit, exigent circumstances, evanescent evidence and emergency aid.</li> <li>• Search of automobiles: PC required if searching whole vehicle. Passenger compartment can also be searched incident to lawful arrest. Plain view and consent exceptions also apply.</li> <li>• Body search: Stop and frisk (frisk part). Need RS that D armed and dangerous. Search of wingspan also allowed if incident to constitutional arrest (PC required for arrest).</li> </ul>

### Rules on car searches

1. The **passenger compartment of a car** can be searched **incidental to constitutional arrest** only if at the time of the search (A) The arrestee is unsecured and still may gain access to the interior of the vehicle or (B) The police reasonably believe that evidence of the offense for which the person was arrested may be found in the vehicle.
2. A **whole car** may be searched if the police have **probable cause** to believe that a vehicle contains fruits, instrumentalities or evidence of a crime.