

# TABLE OF CONTENTS

---

<b>Chapter 1</b>	<b>INTRODUCTION</b>	<b>1</b>
§ 1.1	<b>CONSTITUTIONAL AUTHORITY (FEDERAL AND COLORADO)</b>	<b>2</b>
§ 1.2	<b>CHECKLIST FOR THE BUSY PRACTITIONER</b>	<b>3</b>
§ 1.3	<b>APPLICABILITY OF FOURTH AMENDMENT — EXAMPLES</b>	<b>4</b>
§ 1.3.1	Non-Coverage Of Place	4
§ 1.3.2	Thermal Imaging Device (Heat Leaving Premises; Bodies Moving Inside Home)	6
§ 1.3.3	Abandoned Property	6
§ 1.3.4	Information In Law Enforcement Database	8
§ 1.3.5	Government Versus Private Action	8
§ 1.3.6	Information From Utility And Phone Companies	10
§ 1.3.7	Knocking On Front Door Of Defendant’s Home	11
§ 1.3.8	Grand Jury Subpoenas Or Prosecutor’s Investigative Subpoenas	12
§ 1.3.9	Non-Coverage Of Person Of Defendant (Standing)	17
§ 1.4	<b>HAS THE FOURTH AMENDMENT BEEN VIOLATED?</b>	<b>24</b>
§ 1.4.1	Initial Intrusion	24
§ 1.4.2	Scope Of Search	25
§ 1.5	<b>TWO TYPES OF SEARCHES — WITH OR WITHOUT WARRANTS</b>	<b>26</b>
§ 1.5.1	Searches With Warrants	26
§ 1.5.2	Searches Without Warrants — Exceptions To The Need To Obtain A Search Warrant	27

---

<b>Chapter 2</b>	<b>SEARCHES WITH WARRANTS</b>	<b>29</b>
§ 2.1	<b>SEARCHES WITHOUT WARRANTS ARE PRESUMED UNREASONABLE</b>	<b>30</b>
§ 2.2	<b>STATUTORY MECHANICS OF OBTAINING A SEARCH WARRANT</b>	<b>30</b>
§ 2.2.1	—Obtaining A Warrant Under Colorado Law	30
§ 2.2.2	—Obtaining A Warrant Under Federal Law	35
§ 2.3	<b>PARTICULAR ISSUES</b>	<b>36</b>
§ 2.3.1	—Probable Cause	36
§ 2.3.2	—Anticipatory Search Warrants And Prospective Probable Cause	41
§ 2.3.3	—Confidentiality Of Informant Or Surveillance Location	43
§ 2.3.4	—Oath Or Affirmation	44
§ 2.3.5	—Warrants For Blood Draws Or Hospital Records Of BAC Level	45
§ 2.3.6	—Search Warrants For Surgical Invasions	48
§ 2.3.7	—X-Rays, Pumping Stomach, Inducing Vomiting, Or Giving Laxatives	50
§ 2.3.8	—Removing A Baggie of Drugs From Rectum Or Mouth	52
§ 2.3.9	—Knock And Announce Requirement And Exceptions	54
§ 2.3.10	—Significance Of Prior Refusal To Issue Warrant	58
§ 2.3.11	—Particularity Requirement — Places To Be Searched	59
§ 2.3.12	—Particularity Requirement — Things To Be Seized	60
§ 2.3.13	—Timeliness Of Execution	62
§ 2.3.14	—Receipt, Return, And Inventory Requirements	63
§ 2.3.15	—Nighttime Searches	64
§ 2.3.16	—Search Warrants Required For Electronic Location Information	65
§ 2.3.17	—Persons On Premises — Detention, Search, Or Arrest	65

*Table of Contents*

§ 2.3.18—Extent Of Search: Scope . . . . . 71

§ 2.3.19—Extent Of Search: Intensity . . . . . 72

§ 2.3.20—Seizure Of Evidence . . . . . 74

§ 2.3.21—Strip Or Body Cavity Searches . . . . . 75

§ 2.3.22—Search Warrant For Records Outside Jurisdiction . . . . . 78

§ 2.3.23—Exclusionary Rule And Good Faith Exception . . . . . 78

§ 2.3.24—Good Faith Generally Not Applicable To  
Warrantless Searches . . . . . 85

§ 2.3.25—Good Faith Exception Applies To Arrest Warrants . . . . . 87

§ 2.3.26—Search Warrant Based On Facts Learned Through  
Unlawful Police Activity . . . . . 88

§ 2.3.27—Who Searches . . . . . 88

§ 2.3.28—Practical Tips For Officers Regarding  
Conducting Searches . . . . . 88

§ 2.3.29—Do Not Let Press Accompany Police Into  
Someone’s Home For The Execution Of  
A Search Or Arrest Warrant . . . . . 88

§ 2.3.30—Computer Searches . . . . . 89

§ 2.3.31—Motions To Close Search Warrant File To Public . . . . . 91

---

**Chapter 3 WARRANTLESS SEARCHES . . . . . 93**

---

**§ 3.1 GENERAL RULE — WARRANTLESS SEARCH  
IS UNREASONABLE . . . . . 95**

**§ 3.2 SEARCH INCIDENT TO ARREST . . . . . 96**

§ 3.2.1—Search Incident To Unlawful Arrest . . . . . 97

§ 3.2.2—Scope Of Search Incident To Arrest . . . . . 99

**§ 3.3 PROBABLE CAUSE SEARCH OF  
MOTOR VEHICLES . . . . . 111**

§ 3.3.1—Probable Cause . . . . . 112

§ 3.3.2—Scope Of Search . . . . . 113

§ 3.3.3—Impounding For Later Search . . . . . 114

§ 3.3.4—Marijuana And Probable Cause . . . . . 115

<b>§ 3.4 CONTAINER EXCEPTION — SUITCASE EXCEPTION</b>	116
§ 3.4.1—Computer As Container	116
§ 3.4.2—Rule For Containers Put Into Cars	117
§ 3.4.3—Containers Placed In Mail, UPS, Etc.	118
<b>§ 3.5 EXIGENT CIRCUMSTANCES EXCEPTION</b>	118
§ 3.5.1—Exigent Circumstances In General	118
§ 3.5.2—Hot Pursuit	119
§ 3.5.3—Danger To Police Or Other Persons Or Evidence	121
§ 3.5.4—Preventing Injury (“Emergency Aid Exception”)	125
§ 3.5.5—Preventing Destruction Of Evidence Or Property Damage	129
§ 3.5.6—Blood Draw As Exigent Circumstances	133
§ 3.5.7—Preventing Burglary	137
§ 3.5.8—Preventing Escape	138
§ 3.5.9—Scope Of Search Under Exigent Circumstances	139
<b>§ 3.6 STOP AND FRISK AND SIMILAR LESSER INTRUSIONS</b>	140
§ 3.6.1—Reasonable Suspicion	140
§ 3.6.2—Scope Limitations	147
§ 3.6.3—Traffic Stops	153
§ 3.6.4—Anonymous Tips	159
§ 3.6.5—Conduct Indicating Street Drug Deal Justifies Investigative Stop	161
§ 3.6.6—Roadside Assistance To Motorist	161
§ 3.6.7— <i>Terry</i> Stop Based Upon “Wanted Flyer” Or Radio Dispatch	162
§ 3.6.8—Brief Seizure Of Object At <i>Terry</i> Stop	164
§ 3.6.9—Brief Detention May Result In Consent Being Given Or Probable Cause Being Acquired	165
§ 3.6.10—Drug Profile Stops	166
§ 3.6.11—Roadblocks/Checkpoints	166

*Table of Contents*

<b>§ 3.7</b>	<b>PLAIN VIEW DOCTRINE</b>	171
§ 3.7.1	—No Search, Just Seizure	171
§ 3.7.2	—Aided Plain View: Flashlights, Binoculars, Telescopes, Nightscopes, Etc.	176
§ 3.7.3	—Plain View: Officers In Airspace Looking Down Upon Defendant’s Property	183
§ 3.7.4	—“Plain Feel” Doctrine	184
§ 3.7.5	—Plain “Sniffs” And Drug Dogs	186
<b>§ 3.8</b>	<b>CONSENT AS EXCEPTION</b>	191
§ 3.8.1	—Totality Of The Circumstances Test	192
§ 3.8.2	—Consent Waives Need For Probable Cause	195
§ 3.8.3	—No Reasonable Suspicion Needed To Ask	196
§ 3.8.4	—Reasonable Suspicion Needed To Detain	197
§ 3.8.5	—Traffic Stops And Consent	198
§ 3.8.6	—Scope Of Search Is Determined By Objective Reasonableness	206
§ 3.8.7	—Limiting Consent To Search	207
§ 3.8.8	—Revoking Consent To Search	208
§ 3.8.9	—False Statements Or Misrepresentations By Officers	209
§ 3.8.10	—Cases Holding Consent Invalid	211
§ 3.8.11	—Cases Holding Consent Valid	212
§ 3.8.12	—Threat To Seek Search Warrant If Consent Not Given	213
§ 3.8.13	—Oral Consent Followed By Subsequent Refusal To Put Consent Into Writing	213
§ 3.8.14	—Knock And Talk Searches	214
§ 3.8.15	—Miranda Warnings Not Necessary	215
§ 3.8.16	—Consent To Search After Invocation Of Right To Remain Silent	216
§ 3.8.17	—Third-Party Authority Or Apparent Authority To Consent	217
<b>§ 3.9</b>	<b>INVENTORY SEARCHES</b>	224
§ 3.9.1	—Inventory Of Persons Taken Into Protective Custody	226
§ 3.9.2	—Inventory Of Purses And Containers	227

§ 3.10	<b>INEVITABLE DISCOVERY/INDEPENDENT SOURCE DOCTRINE</b>	227
§ 3.11	<b>ADMINISTRATIVE INSPECTIONS AND REGULATORY SEARCHES</b>	231
§ 3.11.1	—Inspection Of Housing	231
§ 3.11.2	—Inspections Of Businesses And Commercial Vehicles	232
§ 3.11.3	—Searches Of Prisoners	233
§ 3.11.4	—Searches Of Parolees Without Probable Cause	235
§ 3.11.5	—School Searches	235
<hr/>		
<b>Chapter 4</b>	<b>SUPPRESSION HEARINGS</b>	237
<hr/>		
§ 4.1	<b>MOTIONS TO SUPPRESS</b>	237
§ 4.2	<b>OTHER PROVISIONS GOVERNING MOTIONS TO SUPPRESS</b>	239
§ 4.2.1	—The Burden Of Going Forward	239
§ 4.2.2	—Claims Of False Statements	240
§ 4.2.3	—Testimony During A Hearing On A Motion To Suppress	241
§ 4.2.4	—Trial Court Rulings On Motions To Suppress	241
§ 4.2.5	—Appeals By The Prosecution	242
§ 4.2.6	—Preliminary Hearings	243
<hr/>		
<b>Chapter 5</b>	<b>APPLICABILITY OF EXCLUSIONARY RULE</b>	245
<hr/>		
§ 5.1	<b>CRIMINAL TRIALS</b>	245
§ 5.1.1	—Impeachment Of Defendant’s Testimony	245
§ 5.1.2	—Impeachment Of Other Defense Witnesses	248
§ 5.2	<b>PROBATION VIOLATION HEARING/ PAROLE HEARINGS</b>	249

*Table of Contents*

<b>§ 5.3 CIVIL TRIALS .....</b>	<b>250</b>
<b>§ 5.4 GRAND JURY PROCEEDINGS .....</b>	<b>252</b>
<b>§ 5.5 CONCLUSION .....</b>	<b>252</b>
<hr/>	
<b>SUBJECT INDEX .....</b>	<b>253</b>
<hr/>	

