

Warrant Requirement

- As a general principle, all government searches or seizures must be pursuant to a valid warrant.
- Elements of a valid warrant:
 - Must be issued by a neutral judge or magistrate in the jurisdiction where the warrant is to be executed
 - Can not be a relative of the officer seeking the warrant or someone affiliated with the government or police department
 - Must be based on “probable cause” which means evidence that a crime was committed and that fruits or evidence of that crime is in the place to be searched; this is more than “mere suspicion” but less than preponderance of the evidence and certainly less than beyond a reasonable doubt.

More Elements of a Valid Warrant

- Must be based on live sworn testimony or affidavit as to the facts supporting the probable cause. Hearsay told over by a police officer will suffice for this purpose
- Must be precise on its face in terms of what it is authorizing; it must lay out the scope of what can be searched and what is being looked for.

Example – Warrant Requirement

- Good warrants:
 - “To search the property at 11 Main St. for evidence related to the murder of John Doe”
 - “To search the 1999 blue Toyota Corolla owned by Jane Smith for illegal narcotics”
- Bad Warrant:
 - “To search the state of Texas for evidence of crimes committed by Mark Smith”

The scope of allowable search will be limited to whatever is laid out in the warrant!

Exceptions to the Warrant Requirement - 1

1) Search incident to a lawful arrest

- includes the “wingspan” of a person (to check for weapons etc.)
- “wingspan” includes the interior of a car in which the person is sitting, but not the trunk (NOT the same as the “automobile exception”)

2) Plain View

- Police officer must be in the place legitimately
- Does not allow officer to move private objects to get a plain view
- includes view from airspace and view through wire fence

3) Consent

- May be given by anyone with “apparent” authority to give consent
- Cannot be obtained through trick or fraud

The image features a white background with a pattern of light blue, semi-transparent circles of various sizes scattered across it. The top and bottom edges of the image are framed by a solid dark blue border.

QUIZ TIME!

Exceptions to the Warrant Requirement - 2

4) Stop and Frisk (Terry stop)

- Must be based on “reasonable suspicion”
- Can only conduct a “pat down” for weapons, not a full search and cannot do a pat down for other contraband
- If the pat down causes the officer to find other contraband, that’s okay but an officer can’t pull contraband out of a pocket unless it felt like a weapon

5) Automobile Exception

- Applies to any vehicle; applies because they are so mobile and there may not be time to get a warrant
- Allows police to search a vehicle without first getting a warrant
- Must be based on full probable cause
- Includes the trunk!

6) Exigent circumstances/ Hot Pursuit

- Is not limited to the defendant’s property!