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1) When is a police investigation considered a search?

A police investigation constitutes a search if it intrudes on a person's "legitimate expectation of privacy." Courts ask two questions to determine whether a person had a legitimate expectation of privacy in the place or things searched:

Did the person expect some degree of privacy?

Is the person's expectation reasonable -- that is, one that society is willing to recognize?

If the answer to either of the above questions is "no," then the investigation is not a "search."

2) How private is your house or other dwelling?

Privacy concerns are at their highest when police officers seek to enter into a person's home. This means that except in emergency (called "exigent" in criminal law) circumstances, police officers must obtain search or arrest warrants before entering suspects' dwellings.

Example: Police officers are in hot pursuit of an armed robbery suspect. If the suspect runs into a dwelling, the police can follow and arrest the suspect.

Example: A police officer walking by an apartment house hears loud screaming coming from one of the apartments. In order to prevent injuries, the officer can use force if necessary to enter the dwelling without having to obtain a warrant first.

In order to gather information to support an application for a search warrant, law enforcement officers are allowed to take aerial photographs or come close enough to overhear conversations. However, they probably cannot use sophisticated equipment to discover what is on your property or to eavesdrop on your conversations (unless, of course, they already have obtained a warrant or qualify for one of the warrant exceptions).

3) What is a search warrant and what does it take to get one?

A search warrant is a kind of permission slip, signed by a judge, that allows the police to enter private property to look for particular items. It is addressed to the owner of the property, and tells the owner that a judge has decided that it is reasonably likely that certain contraband, or evidence of criminal activities, will be found in specified locations on the property.

As a general rule, the police are supposed to apply for a warrant before conducting a search of private property; any search that is conducted without a warrant is presumed to be unreasonable. This means that the police officers will later have to justify the search - and why a warrant wasn't obtained first -- if the defendant challenges it in court.

A judge will issue a search warrant if the police provide enough information to show that:

it is more likely than not that a crime has taken place, and items connected to the crime are likely to be found in a specified location on the property.

The police usually provide information that is (1) based either on the officers' own observations, or (2) based on the secondhand observations of an informant.

If providing secondhand information, the police generally must convince the judge that it is "reliable." Usually, this means that the information is corroborated by police observation. For example, a citizen's tip that someone regularly delivers drugs to a certain location would be corroborated if an officer observes the person's routine.

However, corroboration of secondhand information is not necessary in every case. Sometimes a judge will issue a warrant if the source of the information is known to the police and has provided trustworthy information in the past.

4) What are the police allowed to do after they obtain a search warrant?

Once the police have a search warrant, they are entitled to enter the designated property to search for the items listed on the warrant. Legally, the search is supposed to be confined to the specific areas described in the warrant. For example, if the search warrant includes only the living room, the search should not

extend into the kitchen, bathroom or bedroom.

But there are exceptions to this limitation which are frequently used to justify broader searches. For example, the police may search beyond the terms of the warrant in order to:

- ensure their safety and the safety of others
- prevent the destruction of evidence
- discover more about possible evidence or contraband that is in plain view elsewhere on the property, or
- hunt for evidence or contraband that, as a result of their initial search, they believe exists in another location on the property.

For instance, although a warrant might be issued for the search of a house, the sound of a shotgun being loaded in the backyard would justify expanding the search to the yard in order to protect the officers; similarly, a search limited to the ground floor might legitimately expand to the upstairs if the police, searching for illegal drugs, hear toilets being flushed above. And the police can always seize evidence or illegal items if they are in plain view or are discovered while the officers are searching for the items listed in the warrant.

5) Do the police always need a warrant to conduct a search?

No. In many situations, police may legally conduct a search without first obtaining a warrant. Here are some of the main exceptions Consent searches. If the police ask your permission to search your person, your home, your car, or other property, and you agree, the search is considered consensual, and no warrant is necessary. (The police do not have to warn you that you have a right not to consent.)

Searches made in connection with an arrest. When a person is placed under arrest, the police may search the person and the immediate surroundings for evidence and weapons that might be used to harm the officer.

Emergency exception. The police don't need a warrant if they have a reasonable fear that their safety, or that of the public, is in imminent danger.

The plain view doctrine. A police officer does not need to obtain a warrant to search and seize contraband that is "in plain view."

6) Can my roommate -- or my landlord -- give the police permission to search my apartment?

The police may search your apartment if the person in charge of the premises gives permission. If you and your roommate share common areas (such as the kitchen and living room), your roommate can authorize a search of those areas. But your roommate cannot give permission to search your separate bedroom.

Similarly, your landlord cannot give permission to search your apartment. However, if the police can point to circumstances that would justify immediate entry -- such as the sound of a ferocious fight or the smell of burning marijuana -- they may enter without permission from anyone.

7) If a police officer pulls me over, can she frisk me or search my car?

Yes, if the officer has a reasonable suspicion you are armed and dangerous, she can frisk (pat down) you when you are pulled over for a traffic violation. Similarly, if the officer reasonably suspects that you are involved in criminal activity she can also perform a pat down. Assuming the police have probable cause -- a reasonable basis or justification to believe that you or your passengers are involved in criminal activity -- they can search your car and objects belonging to passengers.

8) If my car is towed and impounded, can the police search it?

Yes. If your car is impounded, the police are allowed to conduct a thorough search of it, including its trunk and any closed containers that they find inside. This is true even if your car was towed after you parked it illegally or if the police recover your car after it is stolen.

The police are required, however, to follow fair and standardized procedures when they search your car, and may not stop you and impound your car simply to perform a search.