


## The Fourth Amendment: Search & Seizure

### Lesson Transcript

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Cite this lesson 

One of our rights according to the Bill of Rights and the U.S. Constitution is the Fourth Amendment, and it protects citizens from illegal search and seizure of person or property with proper warrants stating probable cause.

### Fourth Amendment Rights

The **Fourth Amendment** is part of the Bill of Rights and the United States Constitution. This amendment protects citizens from illegal search and seizure of person or property without a warrant or probable cause. This simply means that the government cannot enter one's home, search one's belongings or take any possessions without the proper procedures taken. You see, citizens are afforded an expectation of privacy in their daily lives.

An **expectation of privacy** means a citizen expects privacy and the expected privacy is a universal norm, like keeping the contents of your wallet or your dresser drawers to yourself. The question of expected privacy comes into play when the very thing a citizen expects to be private is actually public. Let's set the record straight here.

If a person is pulled over by the police and it is noticed that there is a bag of marijuana and a handgun in **plain view**, there is no expectation of privacy. Because evidence is left in the open for anyone to see, it's considered incriminating on face value and requires no warrant.

It works the same way with a **stop and frisk**. In this instance, the police are authorized to administer a light pat-down of a suspect if there is **reasonable suspicion**, meaning they believe a crime either took place, is taking place, or is about to take place. The pat down can only be done over outer garments. It cannot be invasive in any way or require a suspect to remove any article of clothing.

Let's get back to the example of the motor vehicle stop. If the marijuana and handgun are hidden under the car seat and there is no justifiable reason to search the car, a search cannot be done. The driver of the car, albeit carrying on illegal activities, is owed privacy.

This is where **probable cause** comes into play. This means that the facts are apparent and obvious to a reasonable person, and if those facts are apparent, a search may be conducted. An example of an apparent fact might be marijuana smoke floating around the inside of the car. It doesn't even

need to be that obvious. The mere smell of marijuana or even a box of ammunition may be enough to prompt police to have a look-see.

Once probable cause has been determined, a **warrant** is issued. This is simply a writ ordering or allowing the police to take action by searching or seizing persons or property. This can be in the form of an **arrest warrant**, a document from a judge that states, upon probable cause, a person can be taken into custody. In other words, this means a person can be taken to jail!

A **search warrant** allows the police or investigators to search for a specific location for evidence. Without this, police cannot initiate a search of property. A case may help to explain this.

## ***Kyllo v. U.S.***

*Kyllo v. U.S.* demonstrates how the government violated the Fourth Amendment right against illegal search and seizure. The big question here is whether using surveillance used outside the home is considered unreasonable.

Let's break this down. The police suspected Kyllo's home was a marijuana grow-house. In order to obtain enough evidence to produce an arrest, the police would need proof that there was marijuana growing within the home.

Sometime in 1992, a National Guardsman pointed an infrared device at Kyllo's home. He also pointed it at the adjoining homes on either side. The device detected a higher rate of heat coming from Kyllo's home. This, along with other evidence like unusually high electric bills, gave way to the belief that there was marijuana growing in the home. This led to probable cause and a warrant was issued to search the home. As suspected, marijuana was found, and Kyllo was arrested, tried and convicted.

During the appeal, Kyllo defended himself using the Fourth Amendment right against illegal search and seizure, contending that the infrared device used to detect the possible marijuana plants was performed illegally. You see, normally, this type of technology is used by companies to detect heat loss from windows and doors or to test the insulation effectiveness in a home. It is not intended to be used as a surveillance tool.

The appellate court granted an appeal because there was sufficient evidence that Kyllo's Fourth Amendment rights had been violated. On appeal, Kyllo asked that the evidence collected during the illegal search be removed from the record, and he only be tried on evidence that was not in violation.

Unfortunately, the appellate court did not see it Kyllo's way, and the original trial court's decision stood. However, the important lesson in this case remains that the Fourth Amendment protects citizens from illegal search and seizure of person and property. Surveillance from outside the home used to determine if evidence remains inside the house is illegal and is considered unreasonable in the eyes of the court.

## Lesson Summary

To sum things up, the **Fourth Amendment** protects citizens from illegal search and seizure of property and person without a warrant or probable cause. Citizens are afforded an **expectation of privacy**, and this means a citizen expects privacy and the expected privacy is a universal norm.

If evidence is in **plain view**, or where a reasonable person can see it, there is no longer an expectation of privacy. This may warrant a **stop and frisk**, where the police may pat a person down over the outer layer of clothing. If nothing is in plain view, the police need **probable cause** to request a search. This means facts are apparent and obvious to a reasonable person.

Once police determine there is probable cause, they may request a **warrant**, or a writ ordering or allowing the police to take action. It can be an **arrest warrant**, or a document from a judge that states, upon probable cause, a person can be taken into custody. A **search warrant** allows police or investigators to search for a specific location for evidence.

Finally, it's important to note that as technology advances, the Fourth Amendment protection against unjustified search and seizure gets more complicated, and the courts must look at many factors to determine whether a violation occurred.

## Learning Outcome

After watching this lesson, you should be able to explain the Fourth Amendment of the U.S. Constitution and how it protects citizens from illegal search and seizure.

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## Worksheet: The Fourth Amendment: Search & Seizure

<https://study.com/academy/lesson/the-fourth-amendment-search-seizure.html>

**1. Milford passed a police officer. The officer noticed a strong smell of marijuana on him. What can the officer do?**

- Obtain a search warrant for Milford's home and car
- A stop and frisk
- Arrest Milford for use of marijuana
- Indict Milford on drug charges

**2. The police suspect that a few apartments in a complex are involved in prostitution. They are uncertain about which apartment it is, but would like to search all of them. Why would a search without a warrant be illegal?**

- Under the law, the police do not have the right to enter private property without the owner being present.
- Probable cause has not been proven.
- Nobody's life is in imminent harm.
- Prostitution is not considered a charge worthy of a non-warrant search.

**3. Identify which of the following cases is protected by the expectation of privacy:**

- A person smoking marijuana on the street with a police officer a few feet away from him.
- A police officer noticing that there is a cloud of smoke in your car, after which he demands to inspect the inside of your car for illegal substances.
- A police officer climbing the fire escape to take a look through your window and seeing that you have a gun on your bed for which he arrests you.
- A person exiting a gun store with an unregistered gun in his hand, which the police officer notices and asks for a license and permit.

**4. Once enough evidence is provided to a judge about the criminal activity of a suspect, what is issued?**

- Arrest warrant
- Seizure warrant
- Suspect warrant
- Criminal warrant

## 5. Why was the *Kyllo v. U.S.* case controversial?

- The police used hearsay as a basis for their warrant, which is why it was very controversial, but legal.
- The police obtained his confession by illegal means, which is why the case was dismissed.
- The police used an infrared device which was part of the cause for the warrant, thus making the case controversial but the court ruled there was no illegal search.
- The prosecution obtaining evidence from a search that was done without a warrant, thus leading to a precedent that under the Fourth Amendment you couldn't search a property without a warrant.