

### Fourth Amendment

4th Amendment	prohibits unreasonable searches and seizures
Government Conduct	Must show some government or police agency action
Standing	Defendant must have a reasonable expectation of privacy as to the places searched or items seized
Seizure of a Person	By means of physical force OR show of authority, a person's freedom of movement is restrained; under the totality of circumstances, would a reasonable person not feel free to leave
Search	Occurs when government conduct violates the defendant's reasonable expectation of privacy

### Seizure of a Person

Arrest	generally requires a warrant; Warrantless arrest allowed if an officer has probable cause to believe that a felony has been committed
Terry Stop and Frisk	Valid when an officer has reasonable suspicion that someone is engaged in criminal activity
Police Checkpoint	Valid if Done in a non-discriminatory manner; and There is an automobile-related reason for the checkpoint
Traffic Stop	Valid if the officer has reasonable suspicion or probable cause that a traffic law has been violated

### Search

Valid Search Warrant	A search conducted pursuant to a valid warrant is generally constitutional
Warrant Requirements	Be issued by a neutral magistrate; Be based upon probable cause; and Describe with particularity the places to be searched and the items to be seized
Execution of a Search Warrant	Knock and announce; Defective Warrant (good faith)
Exceptions to Warrant Requirement	ASCAPES
Automobile Exception	If police have probable cause to believe a vehicle contains evidence of a crime, can search any part of the car believed to have contraband
Stop and Frisk	Can stop a person based on reasonable suspicion that the person is engaged in a criminal activity; Frisk—officer can pat down the outer clothing of the defendant for officer safety (plain feel)
Terry "Automobile Frisk"	After valid stop if The officer has a reasonable belief there is a weapon in the car; and search is limited to those areas that may contain a weapon
Consent	Must be voluntary; cannot exceed scope

### Search (cont)

Administrative	School, DUI, etc. Must have a clear plan
Plain View	Police are lawfully present; and Incriminating nature of the item is immediately apparent
Exigent Circumstances	Hot pursuit of a fleeing felon, Danger of destruction of evidence, or Police or public safety
Search Incident to Arrest	May search arrestee within a reasonable scope after a lawful arrest. Defendant and wingspan. can search areas within reach or where others may be hiding.

### Exclusionary Rule

Rule	Excludes evidence obtained as a result of the government's violation of the 4th Amendment
Fruits of the Poisonous Tree	excludes other evidence obtained as a result of the violation
Exceptions	inevitable discovery, independent source doctrine, passage of time, good faith reliance

### 5th Amendment

Self Incrimination	no person shall be compelled in a criminal case to testify against himself; Applies to testimonial evidence coercively obtained by police
Miranda warnings	Right to remain silent and right to an attorney



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Not published yet.  
 Last updated 26th July, 2019.  
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### 5th Amendment (cont)

When give custody and interrogation  
Miranda warnings

Custody defendant reasonably believes he is not free to leave or is otherwise deprived of his freedom

Interrogation police expressly question defendant OR police words or actions are likely to elicit an incriminating response

Waiver of Miranda rights knowing and voluntary

Voluntary Statements After a defendant receives Miranda warnings and does not invoke the right to remain silent, the defendant might decide to make an uncoerced statement to police. Constitutes a waiver

Invoking Miranda Rights Right to counsel- unambiguously assert; Remain silent- unambiguously assert

Re-approaching the defendant After invoking rights, police may not re-approach the defendant later. Exception—if there is a break in custody for 14 days or more, police may re-approach the defendant, give fresh Miranda warnings, and attempt to get a waiver

Standing Defendant may only assert his own Miranda rights

Exclusion of Statements Voluntary- not protected

### 5th Amendment (cont)

Involuntary- inadmissible

Second Confession- May be admissible if initial confession was the result of a good faith mistake

Voluntary statement in violation of Miranda- admissible as impeachment but not substantive

Physical evidence- Any physical fruits of a voluntary confession can be admissible evidence

### 6th Amendment

Right to Counsel Automatically applies to all critical stages of prosecution after formal proceedings begin

Formal proceedings indictment or formal charges

Offense Specific does not prevent the police from questioning the defendant about other crimes that have not been formally charged

Waiver must be knowing and voluntary

### Line-Ups under Due Process

Line-ups Must not be conducted in a manner that is impermissibly suggestive or provides a substantial likelihood of misidentification

Photo array neither defendant or lawyer has right to be present

### Trial Considerations

Due process- Burden of Proof Prosecution must prove all elements of the crime beyond a reasonable doubt

Sentencing Any fact, other than a prior conviction, that is used to increase the sentence beyond the statutory maximum, must be charged and proved beyond a reasonable doubt

### Double Jeopardy

Provides protection against: Prosecution for the same offense after acquittal; Prosecution for the same offense after conviction; and Multiple punishments for the same offense

Same v. separate offenses test)—each crime must require proof of an element that the other does not to be considered a separate offense

Prohibits multiple prosecutions of greater and lesser-included offenses

Permissible to charge a defendant with a greater and lesser-included offense in the same action

### Grand Jury

evidence can consider illegally obtained evidence and hearsay

counsel witnesses do not have right to counsel

defendants no right to testify

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### Guilty Plea

guilty plea waiver of various rights to trial

validity must knowingly and intelligently waive rights

judge Informs the defendant of his rights and ensures the defendant understands those rights; Informs the defendant of the possible sentences; Informs the defendant of immigration consequences (the judge is not required to inform the defendant of all collateral consequences, such as difficulty getting student loans); Makes sure there is a factual basis for the plea; determines no use of force/coercion/ threats/ promises

### Speedy and Public Trial Rights

Speedy Trial SOL normally begins when crime occurs; Defendants can be injured by the passage of time between an alleged crime and their trial

Speedy Trial Claim Factors length of delay, reason for delay, whether defendant asserted his rights, risk of prejudice

Public Trial The Sixth Amendment and First Amendment, taken together, protect the rights of the defendant (Sixth) and the public (First) to attend public trials. Can close if substantial likelihood of prejudice

Confrontation Clause Right to confront witnesses against him

### Speedy and Public Trial Rights (cont)

Crawford Doctrine If statement is testimonial, inadmissible if declarant is unavailable and defendant had no prior opportunity to cross-examine

Bruton Doctrine Defendant's statement is always admissible even if doesn't testify at trial

### Cruel and Unusual Punishment

Length of Prison Sentences The Supreme Court has given the government free rein to authorize virtually any length sentence for virtually any crime

No life with our parole for crimes committed while juvenile

Capital punishment only available if victim of crime dies  
defendant must be 18+ when committed crime, mentally sound

Capital punishment safeguards including a bifurcated trial process, the opportunity to present mitigating evidence, and a process that sufficiently narrows the class of death-sentence eligible offenses.

Cruel or unusual punishment prohibited under 8th amendment; Courts have extended this protection to conditions of confinement

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