

Constitutional Right Against Unreasonable Stops, Searches and Seizures

The United States and California Constitutions prohibit unreasonable stops, searches and seizures by state officials, including police, based on the Fourth Amendment.¹ This constitutional right against being unreasonably stopped and/or searched by police also applies to people under the age of 18 in most circumstances.²

Basics about searches

While police must have some reason, or probable cause, to search you unless you are already detained or on probation, they may still ask you for permission to conduct a search. If you voluntarily consent (say yes) the police may subsequently use any incriminating findings against you. You should always politely say NO when any law enforcement officer asks for your permission to search you, your belongings, your car, or your house. You should not use physical resistance to prevent a search. They may conduct a search anyways, but you might later have an argument in court that you did not agree to the search. If a judge finds that the search was illegal, anything the officer found during the search cannot be used as evidence against you. That doesn't necessarily mean that the case will be dismissed, but it could be (depending on what evidence remains).

Pat-Downs

If a police officer temporarily stops you because they suspect you are involved in a criminal activity, the officer has the right to pat-down the outside of your clothing to make sure you do not have any weapons on you.³ If you have a weapon, the officer can take that item only. If possessing that weapon is a crime, the officer may arrest you and search you and your belongings (*see below for information on rights during a search*).⁴

Searches At School

While on school grounds, students have a lower level of protected privacy due to the higher concern for overall school safety.⁵ This means that the following are allowed in most cases, and do not require a warrant or a certain level of suspicion:

¹ U.S. CONST. amends. IV, XIV; CAL. CONST. art. I, §13; *see Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

² *In re Williams G.*, 40 Cal. 3d 550, 562 (1985).

³ *Terry v. Ohio*, 392 U.S. at 29-30.

⁴ *United States v. Robinson*, 414 U.S. 218, 236 (1973).

⁵ *See New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985) (relaxing the requirements that are required for public officials to conduct a search under typical public search circumstances in a school setting); *In re Randy G.*, 26 Cal. 4th 556, 656 (2001) (permitting school officials to exercise broad supervisory and disciplinary powers without worrying about constant constitutional review).

- Searches of lockers (unless your locker is considered personal property and your school does not have “reasonable suspicion” of finding something against the law).
- Use of metal detectors (unless you are singled out for inspection).
- Pat-downs of students and of bags.

The person who will carry out the search may be a school employee, or sometimes a police officer. Make sure to request for a female or male to do the pat down. School employees can’t conduct body cavity searches of any kind.⁶ School employees are also prohibited from removing or moving any clothing of a student that would allow them to see undergarments or private body parts.⁷ If you believe an illegal search was conducted, talk to your lawyer.

Searches at Your Home

If the police come to your home, you do not have to let them in unless they have a warrant.

Generally speaking, a police search is not valid unless the officer has a search warrant. A search warrant is when a judge has confirmed that it is legal for police to conduct the requested search. The judge then issues an order that specifies where and what time the police are authorized to search.

For example, a search warrant for the home of a suspected thief might authorize the search of “the kitchen, the bedroom, and the living room” of the suspect at “32 Brighton Avenue between the hours of 7 p.m. to 10 p.m.” A search warrant cannot be obtained without probable cause that criminal activity is occurring at the place to be searched, or that evidence of a crime might be found there.

***Advice for parents: Parents, any evidence found by police during a search you authorized can be used against your child. You can politely refuse police searching your home, your child’s room, or your child’s belongings, unless they have a search warrant. Only if your child has expressly given you authority to consent, or you have joint access to or control over the container that police want to search, do you have actual authority to consent to a police search.**⁸

Searches in Your Car

If you are pulled over for a minor traffic violation, such as going slightly over the speed limit or speeding, you may be subject to search and seizure.⁹ Here is what you should do:

⁶ Cal. Educ. Code § 49050.

⁷ *Id.*

⁸ *U.S. v. Ruiz*, 428 F.3d 877 (9th Cir. 2005).

⁹ *Whren v. U.S.*, 517 U.S. 806, 818 (1996).

1. Pull over to the side of the road where it is safe, and if you cannot immediately find a safe location, turn on your hazard lights so that the officer knows you are looking.
2. Once you have stopped, turn off your engine, turn on the internal light, open your window part way, and place your hands on the wheel. Do not get out of the car unless instructed to.
3. Provide your name, driver's license, and proof of insurance (nothing more).
4. Politely refuse consent to any search of your vehicle.

If the police have probable cause to believe your car contains evidence of a crime they can search the entire car, plus anything in your car that could possibly contain that evidence.

If you are a passenger in a vehicle:

- Both drivers and passengers have the right to remain silent.
- If you're a passenger, you can ask if you're free to leave. If the officer says yes, you may calmly and silently leave. If the officer says no, you have the right to remain silent and you should.

Searches during a detention

If an officer's request is made in a way that prevents you from leaving, leading you to reasonably believe that you must comply with the search, the interaction becomes a detention. Because a detention may be unlawful prior to the search, your defense lawyer should make sure that proper procedures were followed in conducting a search without a warrant and that you had truly consented on a voluntary basis to the search.¹⁰ If you feel your rights were violated, try to write down as much detail about what happened, or tell a lawyer as soon as you can. Only share this information with your lawyer. If there is audio or video recording of the encounter you had with the officer, your lawyer should definitely watch/listen to analyze how the search was conducted.

Searches After Being Taken into Custody

Once you are taken into custody, a police officer can search you fully, including the inside of your pockets, purses, and wallets.¹¹ Also, if you are arrested after being pulled over in a car, police may be able to search the passenger compartment of your car, as well as your trunk if it can be accessed from the inside of the car.¹²

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¹⁰ *In re Frank V.*, 233 Cal. App. 3d 1232, 1239 (Ct. App. 1991).

¹¹ *U.S. v. Robinson*, 414 U.S. at 235-36; see also *In re Demetrius A.*, 208 Cal. App. 3d 1245, 256 (Ct. App. 1989) (holding search of a juvenile after being taken into custody only to be transported home was lawful).

¹² *Thorton v. U.S.*, 541 U.S. 615, 623 (2004).

