

Understanding Search and Seizure Law

Learn when the government can invade your privacy to hunt for evidence of a crime.

The Fourth Amendment to the U.S. Constitution places limits on the power of the police to make arrests, search people and their property, and seize objects and contraband (such as illegal drugs or weapons). These limits are the bedrock of search and seizure law. This article covers the basic issues that you should know, beginning with an overview of the Fourth Amendment itself.

The Fourth Amendment: Protecting Your Privacy

The Fourth Amendment to the U.S. Constitution reads as follows:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The search and seizure provisions of the Fourth Amendment are all about privacy. To honor this freedom, the Fourth Amendment protects against "unreasonable" searches and seizures by state or federal law enforcement authorities.

The flip side is that the Fourth Amendment does permit searches and seizures that are considered reasonable. In practice, this means that the police may override your privacy concerns and conduct a search of your home, barn, car, boat, office, personal or business documents, bank account records, trash barrel, or whatever, if:

- the police have probable cause to believe they can find evidence that you committed a crime, and a judge issues a search warrant, or
- the particular circumstances justify the search without a warrant first being issued.

When the Fourth Amendment Doesn't Protect You

The Fourth Amendment applies to a search only if a person has a "legitimate expectation of privacy" in the place or thing searched. If not, the Fourth Amendment offers no protection because there are, by definition, no privacy issues.

Courts use a two-part test (fashioned by the U.S. Supreme Court) to determine whether, at the time of the search, a defendant had a legitimate expectation of privacy in the place or things searched:

- Did the person actually expect some degree of privacy?
- Is the person's expectation objectively reasonable -- that is, one that society is willing to recognize?

For example, a person who uses a public restroom expects not to be spied upon (the person has an expectation of privacy) and most people -- including judges and juries -- would consider that expectation to be reasonable (there is an objective expectation of privacy as well). Therefore, the installation of a hidden video camera by the police in a public restroom will be considered a "search" and would be subject to the Fourth Amendment's requirement of reasonableness.

On the other hand, when the police look for and find a weapon on the front seat of a car, it is not considered a search under the Fourth Amendment because it is very unlikely that the person would think that the front seat of the car is a private place (an expectation of privacy is unlikely), and even if the person did, society is not willing to extend the protections of privacy to that particular location (no objective expectation of privacy).