TABLE OF CONTENTS
TRAINING GUIDES

TRAINING GUIDE 1

CALIFORNIA CONSTITUTION VS. PROPOSITION 8

THE CALIFORNIA CONSTITUTION:

The California Constitution begins with a Declaration of Rights, which reflects the same concerns as the Bill of Rights.

Proposition 8, as construed in Lance W., left California's "independent state grounds" in tact. In other words, the additional substantive **rights** that Californians are accorded under this state's Constitution still exist. However, exclusion of evidence, as a **remedy** for violation of those rights, was eliminated. As long as the evidence was obtained in compliance with the federal rules, i.e., as long as there was no violation of the Fourth, Sixth, or Fourteenth Amendments of the United States Constitution, the evidence is still admissible in court.

Proposition 115 attempted to streamline the criminal justice system in many different ways. One of these was to expressly eliminate "independent state grounds" altogether by precluding California courts from interpreting this state's Constitution so as to provide any additional or greater rights than are afforded in the United States Constitution. However, this particular portion of Proposition 115 was invalidated by the California Supreme Court as an improper "revision" of this state's Constitution in Raven.

Proposition 8

Prior to the passage of Proposition 8 (1982), evidence was excluded if it was obtained in violation of the federal or California Constitution, which the California Supreme Court for many years had interpreted as providing greater or broader rights to its citizens than the United States Constitution afforded.

Following Proposition 8, **federal** rules governed the admissibility of evidence. In other words, as long as the police did not violate the Fourth, Sixth, or Fourteenth Amendment of the United States Constitution when obtaining evidence, it was admissible in court.

The problem was, however, that Proposition 8 did not change California's substantive **rights** themselves (the "independent state grounds"), but rather only the **remedy**. The effect of Proposition 8 was simply that even if you obtained evidence in violation of the California Constitution, the evidence would still be admissible in court (not to be excluded), just as long as the United States Constitution has not been violated.

TRAINING GUIDE 2

TEMPORARY DETETIONS

Definition

A temporary "detention" or "stop" is an exertion of authority that is something less than a full-blown arrest, but more substantial than a simple "contact" or "consensual encounter."

Reasonable Suspicion

In order for an investigative stop or detention to be valid, you must have a "reasonable suspicion" that: (1) criminal activity may be afoot; and (2) the person you are about to detain is connected with that possible criminal activity.

Remember, even though the court will consider the "totality of the circumstances," you must have **specific facts** which you can articulate to a court. The court will then decide if these facts, together with your training and experience, were enough to make your suspicion **objectively** reasonable.

Many older cases held that in addition to the required **objective** facts indicating possible criminal activity, an officer also had to **subjectively** entertain such a suspicion. However, even though this "old law" still gets repeated from time to time, it shouldn't, because more recent cases have made it clear that an officer's subjective thinking is no longer relevant to a Fourth Amendment analysis.

Example: Officer saw two males loading a TV set into the trunk of their car at 7:30 p.m., when most nearby business were closed. There were no television shops nearby, and the neighborhood had been plagued by burglaries. When they saw the officers, the men looked "shocked," slammed the down the trunk lid, and walked swiftly toward a bar. They ignored the officers' requests to talk and had to be forcibly detained. The court ruled there were enough specific facts to make the detention valid.

- **Specific Factors**

  In deciding whether your suspicion was reasonable, the court will look at all the factors – the "totality of the circumstances."

- **Nighttime/High Crime Area**

Certain factors, such as "nighttime" and "high crime" or "high narcotics" area, will not suffice, alone to justify a detention. However, they are important and relevant, and in combination with one or more other suspicious factors, may justify a reasonable suspicion.

- **Race**

  Race is a factor, which you may or may not consider at all unless it is part of a description of a specific suspect you are looking for.

- **Flight**

  If you approach someone or a group and one or more of them walk or runs away, and you give chase, your act of chasing after the person does not constitute a detention. As the United States Supreme Court has made clear, there is no "seizure" until you have actually physically stopped the person, or he stops on his own and submits to your authority.

  Even if you yell "stop" or "freeze," display a weapon, or assert your authority in some other manner, Hodari D. makes it clear that there still cannot be a detention until and unless the suspect stops fleeing in response.

  The problem arises, therefore, when you **catch** the suspect, or when he stops in response to your actions or commands. For at that point, a detention has occurred, and it will be legal, as always, only if it is supported by reasonable suspicion.

  Thus, when combined with other factors, such as a high crime area and/or time of night, you often will have a valid basis to detain.

- **Your Experience**

  Don't overlook your experience. "The specialized knowledge of a police officer experienced in police narcotics work may render suspicious what would appear innocent to a layman."

- **Officer Safety**

  Officer safety, as a justification for certain police action, exists in many area of the law. It is perhaps best known as the basis for permitting a limited search for weapons, also known as a pat down or frisk.

In Terry itself, the U.S. Supreme Court held that the lawfulness of the detention of a person based on something less than probable cause came down to "whether a reasonably prudent man in the same circumstances would be warranted in the belief that his safety or that of others was in danger."

Later, in Summers, the Supreme Court repeated that courts must have balance the extent of the intrusion upon the individual against the interests of the government, and that "the interest in minimizing the risk of harm to the officers" is a significant factor.

The clearest example, however, is the case of Hannah, where the police were told that a male juvenile, for whom they had an arrest warrant, was in a certain apartment. Three officers went to the apartment and, entered after obtaining consent from the female who lived there to come in and look for the juvenile. Inside, they observed two males seated in the living room. While one officer "swept" the apartment looking for the juvenile, and while the second officer stood by the door, the third officer asked the two men "if they could just stay seated where they were at." He then asked them who they were, what their relationship was to the woman who answered the door, and why they were there. During this time, he noticed that one of the males (Hannah) had dilated pupils, and this soon led to Hannah's arrest.

In court, Hannah complained that he had been illegally detained. However, the Court of Appeal disagreed. It recognized that most of the other cases upholding the detention of person who are on the premises involved narcotics **search** warrants, a situation which is very dangerous to officers, whereas this case involved only an **arrest warrant**. Nevertheless, the court applied the same test, balancing the extent of the intrusion against the needs of the government. Here, because the detention was so minimal (no force, no pat down, brief duration, etc.), it was reasonable and therefore legal, since, viewed "from the perspective of the police officers who entered the apartment," the situation was still potentially dangerous for the officers (they were on unknown turf, did not know the floor plan, did not know the identity of the males or their relationship to the juveniles, etc.).

- **Drug Courier Profile**

The legality of detentions based on a "drug courier profile", meaning non-criminal factors about an individual, such as coming from Miami, looking nervous, using cash, not having luggage, etc., has traditionally caused difficulty for the courts. Courts have ruled, generally, that such a "profile" will not automatically justify a detention because, by itself, it does not rise to the level of "reasonable suspicion."

However, in Sokolow, the United States Supreme Court upheld an investigatory stop where: (1) the suspect paid $2,100 for two airplane tickets from a fat roll of

$20 bills; (2) he traveled under a name that did not match the name under which his telephone number was listed; (3) his original destination was Miami, a source city for illicit drugs; (4) he stayed in Miami for only 48 hours, even though a round trip flight from Honolulu to Miami takes 20 hours; (5) he appeared nervous during his trip; and (6) he and his companion checked none of their four pieces of luggage.

The court refused to place any **extra** weight on these circumstances simply because they fit the DEA's "drug courier profile." Instead, the court used the traditional "reasonable suspicion" test, based on the totality of the circumstances. It held only that the circumstances in this case, considered together, added up to a reasonable suspicion.

- **Information from others**

You can properly base a detention on information you receive from an eyewitness, victim, fellow police officer, dispatcher, or, if accurate, other "official channels," because the law generally considers such persons or sources to be automatically reliable.

Example: An officer personally saw and recognized an individual as someone whose name he had seen about a month earlier on a list of persons with outstanding arrest warrants. The officer called dispatch to seek confirmation. Meanwhile, he detained the suspect, and during the detention, lawfully recovered some cocaine. A few minutes later, the officer was informed that the warrant had been served two weeks earlier. *Held:* The detention was valid. The officer had reasonable suspicion originally, even though it later disappeared. In other words, a computer "hit" will provide enough to detain, but only confirmation will provide probable cause to arrest.

On the other hand, the United States Supreme Court has made it clear that the circumstances surrounding any anonymous tip can be **sufficient**, through **corroboration**, to justify an investigatory detention. In its holding, the court stressed that (1) "reasonable suspicion" is a lesser standard than "probable cause," both with regard to the quality and quantity of information supporting it, and also that (2) the totality of the circumstances must be assessed in every case.

Duty to Stop/Use Force to Stop Suspect

Whether you are detaining someone to; (1) investigate your reasonable suspicion, or (2) issue a "cite and release" citation, the suspect has an obligation to stop. A suspect has "no right to resist" a lawful detention. If the suspect doesn't stop, he has violated Penal Code section 148 (obstructing or delaying you in the performance of your duties), and you may use whatever physical force is necessary to make him stop.

Investigative Actions – Identification

Once you have stopped or detained the suspect, you may take whatever investigative actions are reasonable under the circumstances. Although it is wise to use the **least intrusive** means available to verify or dispel your suspicion, this is not a constitutional requirement.

However, you should be very careful about conducting your own **search** for identification, such as by reaching into a suspect's clothing, or looking through his wallet.

Although you may take whatever steps are reasonably necessary under the circumstances to ascertain the identity of a person you have lawfully detained (which requires "reasonable suspicion" of criminal activity), you should also be very wary about **arresting** someone for failing or refusing to identify himself. Such refusal probably does not constitute a violation of Penal Code 148 under state law, although no case has clearly so held.

On the other hand, on the federal side, the United Stated Supreme Court has made it clear that a detainee is not obligated to answer any questions you put to him during a lawful detention. In addition, the Ninth Circuit has written (in a civil rights case for damages) that "the use of Section 148 to arrest a person for refusing to identify herself during a lawful Terry stop violates the Fourth Amendment's proscription against unreasonable searches and seizures."

Note, however, that it **is** a violation of Penal Code section 148 for a suspect who has been arrested for a felony to fail to orally identify himself during a routine booking interview.

Force/Physical Restraints

Generally speaking, you should avoid using force and/or physical restraints, such as handcuffs or guns, during a detention situation whenever possible. These "indications of custody" may cause a court to view the detention as an arrest. "When the detention exceeds the boundaries of a permissible investigative stop, the detention becomes a de facto arrest requiring probable cause."

On the other hand, you can use whatever precautionary safety measures are reasonable under the circumstances. The use of force, handcuffs, etc., does not **necessarily** turn a detention into an arrest.

Moving Suspects

Be extremely careful about transporting a suspect during a detention. Avoid it unless it is truly necessary.

You may, of course, move a suspect a short distance for your protection, or to avoid embarrassment to the suspect. But **requiring** the suspect to accompany you to another location or interrogation room without a valid consent or compelling reason **may** turn your detention into an unreasonable arrest.

> Example: Officers went out, picked up suspect, took him downtown for questioning, and eventually obtained a confession. The officers contended that the suspect was just being "detained" for questioning, but the United States Supreme Court disagreed, ruling that the movement resulted in the **arrest** of the defendant. Confession suppressed.

Similarly, if an in-field identification or "show-up" is desired, you should bring the victim or witness to the scene of the detention if at all possible. As a **general** rule, the courts do not want you to transport the suspect to the victim.

Time Limitations

A detention must be temporary and last no longer than is necessary to carry out the purpose of the stop. "Time" is yet another factor you have to be careful about. A detention, which is legal at the beginning, will become invalid if you extend it beyond what is reasonably necessary under the circumstances. However, the reasonably needed time can sometimes be considerable.

- **Increased Suspicion**

  Many times what you see and hear after the initial detention (evasiveness, nervousness, conduct, property) will increase your suspicion and justify a longer, or possibly even an arrest.

- **Decreased Suspicion**

  On the other hand, if the suspect answers all questions about the suspicious circumstances satisfactorily, so that your suspicion decreases or disappears, you must let him go.

  Example: An officer made a traffic stop for erratic driving, but determined the suspect was not under the influence of alcohol or drugs. Nevertheless, the officer then asked for the suspect's driver's license. When it was produced and was in good order, the officer went on to ask for the registration. Observations, which the officer made as the suspect retrieved the registration from the glove compartment led to his arrest for possession of a concealed firearm. However, the court threw out the observation, noting that at the time it was made, the officer "had no legitimate reason for detaining the suspect further or for pursuing any further investigation of him."

Of course, it is possible for your original suspicion to dissipate, while suspicion about a different or unrelated offense arises. There is no problem in "switching offenses" this way, as long as the original detention isn't unlawfully prolonged **before** you suspicion about the second offense begins.

- **Field Interrogation Cards**

  Actually **detaining** someone (as opposed to obtaining their voluntary cooperation) for the purpose of obtaining information about them, or photographing them, is illegal unless you have a **specific** basis for believing the person is involved in criminal activity.

  Furthermore, extending a detention in order to fill out a field interrogation card may or may not be reasonable, depending (like everything else) on all the circumstances. Generally speaking, if there is something specific, which might connect the person to a crime, filing out a field interrogation card will be proper.

TRAINING GUIDE 3

GENERAL PROCEDURES TRAFFIC ENFORCEMENT

A. Introduction:

The objective of traffic enforcement is to protect life and property by reducing the accident rate. The officer's duty is to carry out the enforcement while creating a positive impression in the violator's mind as to the reason for the citation.

B. Demeanor

1. Make the decision to cite or admonish on the basis of facts and not on the violator's attitude.

2. Tell the violator what you intend to do. Do not keep him/her in suspense.

3. Keep the conversation to a minimum, explain the violation, and do not enter into a long discussion. Avoid arguments.

4. Disregard irritating comments.

5. Inform the violator of the citation process.

6. Assist the violator back into the flow of traffic, if necessary

C. Approach

1. The initial traffic stop and approach is very critical. Always be alert and look for the unexpected. Any traffic stop could turn into a life or death situation. To prepare yourself and have an additional advantage, attempt to pick the location of the traffic stop whenever possible.

2. Advise dispatch of the traffic stop, including vehicle license plate, location, etc., prior to the stop whenever possible.

3. Stop the vehicle one or two car lengths behind the stopped vehicle and three feet offset from the violator's vehicle. Be sure the unit doors are unlocked.

4. Exit the unit **immediately** to gain the position of advantage. Keep a very close watch on the occupants of the vehicle; look for suspicious activity, movements, or quick actions of persons inside the vehicle.

5. When two officers, one approaches the suspect vehicle, normally the driver, while the passenger officer stays nearer to the unit and with the passenger door open. This officer can also handle any necessary radio messages that may come in while acting as back up.

6. The officer approaching the suspect vehicle should have the weapon hand free. The holster should be unsnapped in case the weapon must be drawn quickly.

7. The approaching officer, while watching the occupants, visually inventories the vehicle and the interior, looking for dangerous or suspicious circumstances. The officer stops at the trailing, rear edge of the driver's door.

8. Contact the driver and respond in a positive manner. Your tone of voice, posture, and actions has a great bearing on the public's acceptance of law enforcement. Take into consideration the violator's degree of shock, fear, nervousness, etc.

9. Obtain driver's license, registration and proof of insurance. Return to the unit to run warrant checks and write citation from a position of advantage.

10. Remain aware of violator's actions and traffic hazards while writing citation. Fill all blanks with the appropriate information. When you are ready to return to the violator's vehicle, steps 5 through 8 should be repeated.

11. Issue the citation, explain the court date, and assist the violator back into traffic if necessary.

TRAINING GUIDE 4

MIRANDA

Miranda Warnings

The general rule is that you do **not** have to give Miranda warnings to someone you have detained (1) on reasonable suspicion, or (2) for a "cite and release" offense (even though technically this is an arrest), or (3) "inquiries," especially about identity made at the scene of a crime.

Indeed, Miranda warnings are never necessary unless you have **both** "custody" **and** "interrogation;" and a person who is being "detained", even though he is not free to leave, is not normally considered to be in "custody," which is defined as being under actual arrest or subject to equivalent physical restraints.

Example: Two officers, responding to the scene of reported early-morning burglary, spotted a lone male near the scene who partially matched broadcast descriptions of one of the suspects. They stopped him and asked him where he was coming from, and his answer was later used against him at trial. HELD: His answer was admissible, even though the officers had not advised the suspect of his Miranda rights, because he was only being detained and was not in "custody."

Example: Officer who made a suspected DUI vehicle stop and administered field sobriety tests, which the suspect failed, did not need to give Miranda warnings before inquiring about what the suspect had to drink.

On the other hand, if, **at the time of questioning**, the level of force you use on the suspect, regardless of whether such force is reasonable or unreasonable, is **equal** to what you would use during an actual arrest, then "custody" exists for Miranda purposes.

From the above, you should be able to see that a "seizure" (detention) under the **Fourth Amendment** is not necessarily the same as "custody" for the purpose of Miranda.

You should also realize that the amount of "probable cause" you have when dealing with a suspect has no bearing whatsoever on the question of when Miranda warnings are necessary, and the Miranda advisement are never necessary unless you are trying to obtain an admissible statement.

Miranda During Detentions

Obviously, you do not need to give Miranda warnings to someone who is talking to you of their own free will, i.e., during a "consensual encounter."

Likewise, it is normally true that you do not need to give Miranda warnings prior to questioning a suspect who is simply being **detained** (as opposed to arrest), even though a detainee is not free to leave.

Indeed, in Miranda itself, the United States Supreme Court stated that the warnings need not be given before "general on-the-scene questioning as to the facts surrounding a crime."

Example: Because "custody" was lacking, officer investigating possible child abuse did not need to give Miranda warnings to the mother of an injured and motionless child before asking how the injuries were sustained.

Example: There was no Miranda "custody" when officer asked preliminary questions of suspected drunk driver at scene of accident, despite "focus."

Example: There was no "custody" and therefore no requirement for CHP officer to give Miranda warnings to a driver who had been "detained" by a border patrol agent before asking some questions to determine if he was under the influence, even though the suspect had to wait just over an hour for the CHP officer to arrive. The suspect was not handcuffed or otherwise restrained during this time, he was detained in the public area of the customs office and there was nothing overbearing or compulsory about the demeanor or questioning of either the border agent or the CHP officer.

Example: An officer stopped Carter for unsafe turning. The officer notice that Carter's eyes were red and that his breath smelled of alcohol. The officer asked Carter, "How much have you had to drink tonight?" Carter replied, "I have had about six beers." Carter's statement was admissible because the question was not accusatory and Carter was being **detained** (not in custody).

Indeed, even during a DUI stop where the driver has already failed roadside sobriety tests, the United States Supreme Court has made it clear that you do **not** need to give Miranda warnings before inquiring about what the suspect has had to drink.

The reason you do not normally need to give Miranda warnings to a detainee or someone receiving a citation is because a detention, even though it is a "seizure" under the Fourth Amendment, does not amount to "custody" under Miranda. "Custody," as noted earlier, means that the suspect has been either (1) placed under actual arrest or (2) subjected to equivalent physical restraints.

It is possible, of course, for you to turn a detention into a situation where Miranda warnings would be required prior to questioning, by using force or restraints equivalent to a custodial arrest. For example, if, **at the time of questioning**, the suspect was handcuffed and "caged," or surrounded by numerous officers, or facing an officer whose gun was drawn and visible, a court would no doubt find that Miranda warnings were necessary.

As noted, however, there should be no problem unless these measures are occurring **at the time of questioning**. Thus, the mere fact that you drew your gun initially would not mean Miranda warnings were necessary before questioning, as long as the gun was returned to its holster prior to the interview.

TRAINING GUIDE 5

SEARCH OF PERSONS

Searches During Detentions (Pat downs/Frisks)

During a detention, you have no power to conduct a general, full, exploratory search of the suspect.

However, you may conduct a pat down or limited weapons search of someone you have detained, **but (1) only for weapons, (2) only of his/her outer clothing, and (3) only if you have specific facts which make you feel in danger.** "Standard procedure" isn't good enough. You must reasonably suspect that the person is armed or may be armed, although you do not need to be positive.

The courts are quite supportive of your safety. But at the very least you need a potentially dangerous situation to justify a pat down search. Dealing with a suspected dangerous felon is by definition enough cause. On the other hand, pat-searching someone **solely** because he is on parole has been ruled illegal.

Example: It was legal for an officer, responding to a "panhandler" complaint, to pat down the suspect where he saw a large bulge in the front waistband of the suspect's trousers. "Our courts have never held that an officer must wait until a suspect actually reaches for an apparent weapon before he is justified in taking the weapon. Such a holding would eviscerate the reason, officer safety, for a limited pat down during a Terry stop."

You may also conduct a limited search for weapons on a person you are going to transport in your police vehicle, even after a simple traffic violation. Remember, however, that if you have no duty to transport the person, for instance, if you are offering to give him a ride as a favor, then you must tell the individual that he has the right to refuse, and that if he accepts the ride, he will be subjected to a search for weapons.

However, once you realize or decide that an object is not a weapon, you must move on, because any additional feeling, grabbing, or manipulating of the item is outside the scope of a Terry pat down for weapons and will be considered an illegal search, resulting in the suppression of evidence.

In other words, you are entitled to seize any "non-threatening contraband" which you detect during a protective pat down search only if the search stays within the bounds marked by Terry, meaning that the contraband nature of the object becomes "immediately apparent" to you through your senses of sight, smell or touch, **while you are still in the process of searching for weapons.**

Lastly, it is always legal to conduct a search for contraband, if you have **probable cause** to believe it is on the person. This is because your probable cause also provides a basis to arrest, and the search is justified incident to that arrest, even though the search comes first.

Abandonment

Generally, evidence which a suspect discards before or during a lawful detention may be seized, examined, and is admissible in court.

Example: Two officers, wearing police raid jackets, were patrolling a high narcotic area in an unmarked vehicle when they saw an individual (the suspect) approach another male. The suspect then took his hand from his pocket, looked up, made momentary eye contact with the officers, and then took off running. One officer got out of the patrol car and followed (even "chased") the suspect on foot, but said nothing and took no other action until **after** the suspect discarded some cocaine. HELD: There was no detention at the time of the abandonment, so the cocaine was admissible.

Example: Several officers of a gang task force approached a large group of young people, who were wearing gang colors and in a public park, in order to monitor gang activity. One officer, per standard operating procedure, was carrying a 9mm semiautomatic rifle in the low ready position. Although some of the minors were holding cigarettes, the officers did not see any "exchanges" or drug activity. As the officers approached, the group dispersed, and the defendant tossed away a baggie of rock cocaine. The court upheld the police conduct. There was no real chase or pursuit until **after** the abandonment, and besides, a "detention requires some coercive governmental action, beyond the act of pursuit, sufficient to lead a reasonable person to believe he or she was not free to leave."

Of course, if the situation provides reasonable suspicion to justify a detention **before** any chase or pursuit begins, the pursuit makes no legal difference.

TRAINING GUIDE 6

ADMINISTRATIVE PER SE

The "Administrative Per Se Law" or "admin per se" refers to the procedure for the immediate suspension of a DUI suspect's driving privilege, at the scene, independent of court action. Under this law, a peace officer may, in specified situations involving driving under the influence (DUI), physically seize the driver's license, and immediately serve an Order of Suspension/Revocation/Temporary License Endorsement.

Note: "Admin per se" does not apply if the driver is suspected of driving under the influence of drugs only. Likewise, it does not apply to section 23140 VC violations, that is, persons under age 21 who drove with a BAC of .05 or more. However, this makes little practical difference, since the suspect will typically also be in violation of section 23152 and/or 23136 VC (the "zero tolerance" law), and "admin per se" does apply to each of those.

Note: This temporary license is valid only if the suspect's driving privilege is valid. However, according to DMV, you should give the driver the DS-360 form in every situation, even where he driver has no license in his possession, is licensed out of state, or has been suspended or revoked.

The initial documents relating to the arrest must be sent to DMV within 5 business days following the arrest. These include: (1) the arresting "Officer's Statement" (DS-367 form); (2) a copy of the Order of Suspension/Revocation/Temporary License Endorsement (the DS-360 form); (3) a copy of the citation if issued (Note: a release from custody document no longer must accompany the DS-360 form); (4) the driver's license; and (5) the breath test results, if a breath test was taken.

If the suspect took a blood or urine test, these results must also be sent to DMV, but you have 20 calendar days from the date of the arrest.

TRAINING GUIDE 7

SEARCH INCIDENT TO ARREST

After a lawful arrest, you may search the arrestee and the immediate area around him/her incident to the arrest. The reason for this is to permit you to find and seize weapons or crime-related evidence which the suspect might otherwise use or destroy.

The Area Which May Be Searched

The area, which may be searched incident to an arrest, is limited to that within the "immediate control" of the suspect. This generally means the area within "arms reach" of the arrestee, the nearby physical area from which he/she could possibly grab a weapon or destroy or conceal evidence. Obviously, it includes the arrestee's **person.**

- **The Federal Rule**

  Under the federal rule, the simple fact of a custodial arrest **always** justifies a **full** search of the arrestee's person. The search may include containers, open or closed, of any type, which are on the person. It also makes no difference what kind of crime the person has been arrested for as long as he/she is taken into **custody.**

  Example: Even a person **arrested** for a traffic violation (unlicensed driver, driving with suspended/revoked driver's license) justifies a full body search under the federal rule. So does a custodial arrest under 647 f PC, or a custodial arrest for "failing to produce satisfactory evidence of identification "under Vehicle Code section 40302 (a).

- **The California Rule**

  Historically, the California rule was much more restrictive when it came to this "incident to arrest" theory.

  Pre-Proposition 8 cases indicated that, incident to a custodial arrest, you were allowed to conduct a *limited* search of the person "(1) for instrumentalities used to commit the crime, the fruits of that crime, and other evidence thereof which will aid in the apprehension or conviction of the criminal; (2) for articles the possession of which is itself unlawful, such as contraband or goods known to be stolen; and (3) for weapons which can be used to assault the arresting officer or to effect an escape."

  This is still the rule for arrest, which are **non-custodial**, such as possession of less than one ounce of marijuana.

Example: After making a traffic stop, officers observed a partially smoked, hand rolled cigarette on the front console and placed the driver under arrest for possession of less than one ounce of marijuana. They then observed a small plastic bag sticking out of the driver's waistband, patted him down, felt what seemed to be rock cocaine in the bag, and retrieved it. HELD: Even if the marijuana possession was not going to result in a custodial arrest, the officers had the right, under Chimel, to conduct a limited search for contraband, incident to the non-custodial arrest, since the circumstances provided cause to believe he was carrying some.

However, when it comes to custodial arrests, these restrictions are gone. You can now follow the federal rule and conduct a full search, including closed containers, of any lawfully arrested individual at the time you take him or her into custody, simply because of the fact of the custodial arrest.

As noted above, however, it is **no longer necessary** to choose any of these alternatives since a custodial arrest, by itself and without any other consideration, permits a search of the arrestee's person and everything on it, including close, personal containers.

Finally, remember too that it has always been legal (and still is) to conduct a limited pat-down search for weapons when you are going to transport or travel in close proximity to the arrestee, no matter what the arrest is for, or anytime you have facts making it reasonable to be concerned for you safety.

TRANING GUIDE 8

1984 " STRIP SEARCH" LEGISLATION

So-called "strip search" legislation took effect in 1984. It affected numerous aspects of booking and searching at the jail. The highlights of this legislation are as follows:

Strip and Body Cavity Searches

Penal Code section 4030 places restrictions on searching persons arrested and held for minor offenses, and on transferring such persons into the general population.

You may conduct pat-down searches, metal detectors searches, and thorough clothing searches of such a person for concealed weapons and contraband before placing him/her in a booking cell.

However, you may **not** conduct a physical **body cavity search** of such a person without a search warrant.

If the misdemeanor or infraction involved weapons, controlled substances, or violence, you **are** permitted to conduct a strip search or **visual** body cavity search of such a person unless:

- You have reasonable suspicion that he/she is concealing a weapon or contraband, and that the search will reveal it.

- You have prior written authorization of the supervising officer on duty. This authorization must include specific facts on which your reasonable suspicion is based.

Note: "Strip search" is defined as any search which requires a person to **remove or arrange** some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia.

TRAINING GUIDE 10

SYMPTOMOLOGY

Heroin

A. Constricted pupils, 2.0mm or smaller, with little or no visible reaction to light.
B. Droopy eyelids, relaxed facial muscles, drowsiness (looks sleepy) "nodding off."
C. Puncture wounds (marks) made by injection with needle; or powder in nose. A fresh wound will be seen bleeding or "oozing a clear body fluid." The D.A. will not file charges if puncture wound is not located, unless you can show that the suspect is snorting it.
D. Presence of the drug in urine.

Cocaine

A. Symptoms are very similar to amphetamine usage.
B. Dilated pupils over 6.5 mm.
C. Redness in the nose and cocaine powder in the nose, caused by snorting the cocaine.
D. Pulse over 110 per minute, respirations fast, blood pressure high, excessive sweat.
E. Presence of coke in the urine. The D.A. will not file an influence case unless you get a urine sample that comes back positive for coke.
F. They may look hyperactive, or may look drowsy if taken in large quantity.
G. They also often get paranoid; everyone is a "Narc" or is after them.

Phencyclidines (PCP)

A. Nystagmus – eyes bounce horizontally and vertically, check for bouncing part way through its arc, not just at the endpoint. Indicate in your report something to the effect of "horizontal nystagmus was noted ½ way through it's arc" etc…
B. Blank stare, loss of memory of time, place, or person, unconscious or in a stupor.
C. Muscle rigidity, speech difficulties, loss of pain sensations
D. Hallucinations or bizarre or violent behavior; mute, agitated, drooling.
E. Pupil size may very greatly from person to person.
F. May be in seizures, or have an accelerated heart rate.
G. Odor of PCP on breath.
H. Get urine test for PCP.
I. Inability to walk a straight line.

Barbiturates – Quaaludes, Valium, Librium

A. Symptoms are similar to a person under the influence of alcohol

B. Will have horizontal nystagmus
C. Slurred speech, staggering, stumbling, stuporous state
D. May be unconscious…(a favorite drug for suicides)
E. Take a blood test to determine presence of barbs in system. Urine is not acceptable to test for the presence of barbs in the system.

LSD

A. Not often seen in this area
B. Dilated pupils, rapid heart rate, rise in body temperature
C. Decreased muscle coordination
D. Fine tremors in fingers and hands
E. Often bizarre behavior similar to PCP
F. No test available to detect LSD currently.

TRAINING GUIDE 9

PHYSICAL EVIDENCE GUIDELINES FOR LINE OFFICERS

The following guidelines are provided as just that-- guideline for the field officer. There may be many other methods of handling the crime scene evidence. If a better method is available, use it!

MAJOR CRIME SCENES

Rules for the First Officer on Scene:

The extent of any preliminary measures to be taken must be in proportion to the type of crime, the location of the crime scene, and the availability of personnel. The order of priorities govern your action should be as follows.

1. Rendering necessary aid and/or the immediate apprehension of the suspects.

2. Location/detention of witnesses to obtain suspect description and statements of events.

3. Protection of the crime scene and preservation of evidence.

Errors committed in safeguarding the crime scene can **never** be corrected. If steps 1 and 2 are not applicable, then the protection of the crime scene becomes the officer's number one priority.

In major crime scenes, there are usually sufficient number of officers present to permit a division of labor to accomplish all three tasks simultaneously.

Indoor Scenes

When first entering major crime scene, make immediate note of the following:

1. Time

2. Entrances and exits: Doors-open, closed, locked, type of lock, force entry? Windows- open, closed, locked, forced entry?

3. Lights- on, off

4. Odors- cigars, cigarettes, perfume, alcohol, gas, unusual odors

5. Names of persons on the scene, including other officers, fire personnel, ambulance crews, etc.

In a homicide scene, secure the scene! Allow **no one** to enter until the arrival of the homicide detectives who will take over the crime scene. In addition, there may be crime lab personnel or a photo detail.

In any indoor scene, observe the following precautions:

1. Do not touch inside door knobs, doors, or door frames

2. Do not move anything

3. Do not smoke. Do not use the telephone, toilet, sink, ashtrays, or anything else that does not relate to victim aid.

4. Beware of where you step and what you touch. A good rule is to keep you hands behind your back when examining the crime scene.

Outdoor Scenes

In addition to the general considerations mentioned above, some special precautions are applicable to outdoor scenes.

1. Establish and protect large perimeter, especially at parks.

2. If footprint evidence is present, inform all officers present and protect those areas.

3. Try to determine the suspect's route of approach and escape. Investigate those areas for possible evidence, discarded clothing, weapons, etc. If evidence is found at some distance from the main scene, it should be protected as a secondary crime scene.

FIREARMS EVIDENCE

In most cases, firearms or casings found at a crime scene should be left undisturbed for the detectives, crime lab (if responding), and photos. If there is a real danger that evidence may be disturbed or damaged before the arrival of the detectives, lab, or before photos may be taken, such evidence may be removed to a safe place after carefully noting and marking it's exact position and being extremely careful not to add to or destroy latent fingerprints or other evidence on the weapon or casing.

DO NOT, UNDER ANY CIRCUMSTANCES WHEN THE CRIME LAB IS RESPONDING SHOULD A WEAPON BE UNLOADED, CYLINDER OPENED, SLIDE BE PULLED BACK, OR CLIP REMOVED.

If the crime lab is not responding, and the weapon is to be held for evidence, it should be unloaded with the utmost care only after notes are made of the original position of the cylinder, ammunition, safety, and hammer. The other alternative is to box the weapon in packing so that it does not move around and clearly mark the box in all areas that a loaded weapon is inside.

NEVER PLACE ANYTHING INTO THE BARREL OF A FIREARM

AUTOS

Vehicles involved with a homicide or other major crimes are to be treated as a major crime scene. Do not touch or search these vehicles. The investigative units will arrange tows. Maintain a protective perimeter around the scene.

In all other cases when the vehicle is to be towed to the tow yard with a hold for prints, the following precautions should be followed:

1. Do not add your own fingerprints or those of the tow operator to the auto. Use gloves or a cloth on the outside handles, gearshifts, and brake releases, being careful to touch objects only on their edges. Caution the tow operator that the vehicle is to be dusted for prints.

2. Do not search the auto unless absolutely necessary.

3. Record all actions taken in the report so that the detectives will know what was done and by whom.

SUICIDES AND SUSPICIOUS DEATHS

Determinations in these cases are routinely made by the Coroner's Office through their deputies at the scene; however, it is necessary and proper for the experienced officer at the scene to make his/her own observations. Factors to take into consideration are:

1. Credibility of witnesses

2. Conditions of the scene: Notes left, doors locked from the inside, position of the weapon, wounds, etc.

3. History of the victim- mental state, etc.

In all cases of suicide or suspicious deaths, the field supervisor should be notified. The field supervisor will then notify the detectives, if necessary. If the crime lab is to respond, the scene should be preserved until they arrive. The Coroner's Office should be advised

BURGLARIES

Residential Burglaries

Burglaries are responsible for a majority of the investigative time of both the detectives and field personnel. Many cases can be cleared by identification of shoe prints, footprints, pry marks, other types of physical evidence, especially latent fingerprints.

The officer should be alert to the following sources of evidence:

1. Points of entry (POE). The most productive source of physical evidence in burglaries is at the point of entry, especially if through a window or where glass has been broken. Care should be taken in examining the POE. Do not lean on the windowsill or against the window frame or grab the door itself.

2. Care should be taken in cases of broken glass. A careful examination of all pieces of glass should be made, especially pieces that had to be picked out of the molding. These pieces of glass should be dusted for prints or preserved so that the detectives or crime lab may do the examination. Each piece should be handled by the edges only; a piece with possible blood sample on it should be marked and placed in the refrigerator as soon as possible.

If a suspect is arrested shortly after a glass break burglary, outer items of clothing that may have collected tiny bits of glass should be booked into evidence for lab examination. Each item should be wrapped separately. Wool and knit garments and pants cuffs hold glass particles the best. Check the bottom of the suspect's shoes for embedded glass.

Not only is the mere presence of glass fragments important in future prosecution of the case, but also it is sometimes possible for the lab to determine if a particular fragment came from a particular window pane.

3. Tool marks. Matching a particular tool to the mark it leaves is accomplished by a microscopic comparison of striations. The best tool marks are left in metal surfaces, for example, a screwdriver mark on a striker plate or plier marks on a doorknob. Whenever possible, the object containing the mark should be placed into evidence.

4. Paint transfers. Even when tool marks are not clear enough to be identified through striation comparisons, it is possible that the paint from the door or window may have bee transferred to the tool. If the tool is recovered in the possession of the suspect, the working end of the tool should be carefully wrapped so that these often microscopic-size paint

chips are not lost. At the same time, a sample of the paint from around the tool mark on the door or window should be collected and packaged in a separate envelope.

Ransack Burglaries

Very often, burglars leave a residence in such a mess that it is impossible for the victim to live there without clean up. The experienced officer should be able to pick out those items that may yield usable latent fingerprints and set them aside to be dusted for prints. Look for items with hard surfaces; for example, glass, metal, plastic, painted enamel, or glossy cardboard objects. Handle these objects carefully by their edges so you do not add your own fingerprints. Handle larger objects such as stereo receivers by their unpainted wood surfaces. Suspect's prints on large appliances are usually found on the bottom of the appliance.

Commercial Burglaries

Ordinarily, the same rules apply to businesses as they do to residences. Usually the officer can survey the situation, set aside, and recover the evidence that is present.

Additional Loss

If the victim cannot provide you with a full and accurate description of what has been taken, give the victim the case number and instruct him or her how to complete a supplemental property report. After completion of the supplemental property report, have the victim mail it or bring it by the station. DO NOT TELL THE VICTIM TO CALL IT IN BY PHONE. Also instruct the victim to telephone the investigator if he/she has any additional suspect information. Encourage the victim to be as detailed as possible by having him include diagrams, sketches or photos of unique jewelry or other stolen property, and serial numbers whenever possible.

ROBBERY

Residential

Follow the same procedures with physical evidence as you would in a residential burglary. If the victims have been tied up, were the binding materials brought in by the suspects or were the materials from the scene? If foreign to the scene, they should be collected and booked. Do not untie knots and use extreme care if tape was used not to destroy any prints that may be on the sticky surface.

Business

Quickly determine which objects have been handled or touched. Preserve those items.

When entering or leaving the scene, try not to add your fingerprints to the door.

Because cash registers are handled so extensively during the normal course of business, they do not often yield good latent prints, however, if a latent print can be found, its value in court is enormous. Experience has shown that the best chance for latent prints exists on a cash tray that has been handled or lifted from the register. If such is the case, the tray can usually be set aside to be dusted later, and business can continue. The counter in a store or bank is also a good place to dust for prints as a suspect often places his/her hands on the counter. The area must be dusted as soon as possible to avoid destruction and to allow business to continue.

Street

Street robberies are difficult to solve because contact between the victim and the suspect is minimal; however, purses, wallets, and their contents do provide some opportunity for obtaining latent fingerprints if handled by the suspects. If these items are found, they may be printed by the officer at the scene.

Commercial Vehicles

Areas touched or handled by the suspect should be dusted for prints and the area checked for possible items left by the suspect.

Banks

The FBI and the Department investigate these crimes. All evidence should be located as quickly as possible and protected. If a note was used, protect it from any further handling. Close the teller's window until the counter can be dusted for prints.

IF YOU ARE UNSURE YOU CAN LIFT A FINGERPRINT, SECURE THE AREA UNTIL THE ARRIVAL OF DETECTIVES, EVIDENCE TECHNICIANS OR CRIME LAB.

RAPE AND SEXUAL ASSAULTS

Due to their violent and intimate nature the fact that the assailant rarely will use gloves throughout, and that most occur inside a residence or auto, these

crimes consistently yield valuable evidence that will aid in apprehending and convicting the suspect.

Precautions, which are observed with any other major crime scene, should be exercised by the officers on the scene of a sexual assault. Once it has been determined that the crime was committed and the suspect's description is put out, plans should be made to preserve and investigate the crime scene.

If it all possible, the victim should be at the crime scene to describe what occurred and to assist the officer in reconstructing the crime. This will enable the officer to visualize the incident and locate possible evidence.

AUTO THEFT AND AUTO TAMPERING

Because of the volume of auto thefts occurring annually, it is almost impossible for the detectives to print every vehicle. The exception is when there is a possible suspect or when there is information that may lead to the arrest of a suspect. If a suspect is apprehended in a vehicle or is observed in the vehicle by the officer, fingerprints are unnecessary.

When possible, the officer may dust the vehicle for prints, concentrating on the following areas: door handles, gear shifts, rear view mirrors, glove box and so forth.

A vehicle may also be held for prints and "HOLD FOR PRINTS" must be clearly stated on the recovery report and a copy of the report must be forwarded to the Evidence Technicians so they are aware a vehicle needs to be dusted for prints.

FIREARMS IDENTIFICATION EVIDENCE

Firearms identification evidence may include one or more of the following types of laboratory examination:

1. Microscopic examination of expended bullets and casings to determine whether or not a particular weapon fired them.

2. Latent fingerprints examination to establish possession.

3. Operability examination to determine whether or not the weapon is functioning properly.

4. Restoration of obliterated serial numbers.

Firearms identification is involved in the following types of cases:

1. Crimes against person
2. Determination if a particular firearm was used in the commission of a crime.

3. Determination of the possible type or make of firearm used in a crime from expended bullets and/or casings found at the scene.

Firearms identification is not usually involved in cases where a firearm is booked only as personal safekeeping or recovered stolen property unless the officer has reason to believe that a laboratory examination may be required.

Firearms identification evidence includes the firearm, expended bullets and casings, and confiscated live ammunition. The rules apply to firearms identification evidence.

Handling and Transport

Firearms identification evidence shall not be touched or moved except by the crime lab personnel unless:

1. The evidence presents a real and immediate danger to persons present at the scene.

2. The evidence cannot be adequately secured where it lays.

3. Detectives or crime lab personnel are not available or are not responding to the scene.

Officers should be prepared to justify in writing their reasons for disturbing firearms identification evidence.

If for one of the above reasons the firearm must be moved and the officer intends to submit the weapon for fingerprints, it shall be carried by the trigger guard or by the rough portion of the grips—no where else!

A weapon to be fingerprinted shall not be unloaded, marked, or placed in any evidence bag until it is examined by crime lab personnel. If the lab is not responding, extreme care should be used in unloading the weapon, or the weapon should be boxed and marked to advise of the loaded weapon.

Marking and Recording

Firearms identification evidence shall be marked permanently by inscribing the officer's initial or ID number directly on the evidence after it has been fingerprinted, if required.

1. Handguns and shoulder weapons: Using a sharp instrument, scratch an identifying mark on the inner portion of the metal frame. If a firearm has a serial number on it, it does not need to be marked.
2. Expended cartridge casings: Mark upper portion near or inside the open end.

3. Expended bullets: Mark the base. Never mark the sides of the bullet that contain the rifling marks.

4. Live ammunition: Seal in an envelope or container. Mark the outside, not the side of the ammunition.

Note: If the detectives or crime lab personnel take possession of the evidence at the scene or personally receive the evidence from the officer, the officer is then relieved of the responsibility of marking the evidence.

Powder Pattern Analysis

Through an examination of powder residues that are fired from the muzzle of a gun, the crime lab can often determine the distance the shooter was from the target. This evidence is often used to tell whether or not the weapon was fired in self-defense or to help differentiate suicide from homicide. The test can be performed on the outer clothing, skin, or nearly any surface. Because powder particles are very small and can drop off the surface if not properly preserved, it is necessary that all items to be examined be handled most carefully. In non-fatal gunshot cases where the victim has been taken to a hospital, the following procedures should be followed:

1. Take into evidence any item of victim's clothing containing bullet holes.

2. After air-drying, bag each item of evidence clothing separately. Be very careful not to fold the clothing across the gunshot or bloody area.

3. If you have any questions, contact the crime lab or Evidence Technicians for advice or assistance.

Trace Analysis or Neutron Activation Analysis

In some instances the Detectives or the crime lab can determine whether or not a person recently fired a weapon by analyzing the amount of gunshot residue on the suspect's hands. Detectives or the crime lab under the following conditions takes the samples for this test:

1. The test must be conducted on the suspect within several hours of the shooting.

2. The test cannot be performed when .22-caliber ammunition has been used.

3. The test will be conducted only in crimes involving homicide or great bodily injury.

If the above conditions are met, the officer should contact the detectives or crime lab immediately and do the following to protect the evidence:

1. Do not tell the suspect that his hands are going to be tested or allow the suspect to use the bathroom or wash his hands.

2. If necessary, handcuff the suspect to a bench using two pairs of cuffs to keep hands apart.

TRAINING GUIDE 11

VEHICLE SEARCHES

Searches Incident to Arrest

An "arrest" occurs when you take someone into custody, either by the use of physical restraints or by the arrestee's submission to your authority.

When you make a lawful arrest of the driver or **any other occupant** of a vehicle, you are entitled to search both the person you arrested and the "passenger compartment" of the vehicle incident to that arrest.

- Vehicles

  The federal "bright blue line" rule, which governs the admissibility of evidence in California, is relatively straightforward. When you make a custodial arrest of the occupant of a vehicle, you may search the passenger compartment of the vehicle, including the glove compartment, **and including any containers you find, whether open or closed.**

  Belton itself stated that a search incident to an arrest may properly encompass "any containers found within the passenger compartment, "including closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing and the like."

  In other words, no matter what the arrest is for, as long as you are physically taking the driver or occupant into custody, you may search the passenger compartment and everything and anything in it. It makes no difference that the arrestee is already out of the vehicle and is, as practical matter, not able to reach inside anymore. However, the search is limited to the passenger compartment only, and may not include the vehicle's trunk.

  Note however, that the search must be done contemporaneously after the arrest, which means the search must be done at the same location and at approximately the same time, although either may precede the other slightly. However, if the search takes place before the arrest, even momentarily, it will **not be legal unless** you already had probable cause to arrest at the time of the search.

  Although the Belton rule appears very straightforward, there is a potential problem concerning containers in the passenger compartment, which do not belong to the person who has been arrested and taken into custody.

There are two California Supreme Court of Appeal cases, which have dealt with this issue (both from the First District of San Francisco), and both **upheld** searching a container, which was not the property of the arrestee.
The most recent such case is Mitchell. In Mitchell, a Napa deputy stopped a vehicle with an unlighted taillight. The driver (husband) was arrested for driving with a suspended license, and the officer searched the vehicle's passenger compartment, including the passenger's (wife) purse, which, was on the floorboard in front of the passenger seat. The purse contained methamphetamine.

The Court of Appeal refused to make police get into "fact-specific inquiries" about the precise nature and ownership of containers in the passenger compartment. Rather, the court stuck to a broad but simple application to Belton's "bright blue line" rule: "We hold that a search incident to the arrest of an occupant of a vehicle extends to the passenger compartment of the vehicle and containers therein, including those possessed by non-arrested occupants."

Note: The issue of whether it was even proper for the deputy to be searching Mitchell's vehicle "incident to his arrest"—given that the offense was a misdemeanor for a vehicle code violation (14601 CVC) was not addressed by the Court of Appeal because it was not raised before a timely manner. Normally, the Belton rule (which permits a search of the passenger compartment) is said to apply only when there has been a lawful **custodial arrest**, and "custody," for the purpose of this rule, probably means, "physically taken into custody. This rule **does not apply** to the technical arrest which is involved in a cite and release situation.

The other case, which came from the same appellate court and reached the same result, is Prance, although Prance had better facts for concluding the passenger was also involved in the criminal offense. Even so, Prance was a 2-1 decision in which the dissenting judge found the majority opinion to be dangerous and insupportable extension of Belton and despaired the huge loss of privacy that any "innocent" passenger might now suffer.

Searches Based on Probable Cause – The "Automobile Exception"

- Parts of the Vehicle

Under both federal and California case law, you may conduct a warrantless search of any part of a car (e.g., passenger compartment, trunk, hood, glove compartment) which you have lawfully stopped on the road as long as you have probable cause to believe the object you are looking for may be located in that portion of the vehicle. In other words, you may search the passenger compartment, the glove compartment, under the hood, or even in a locked trunk compartment, as long as what you are looking for might reasonably be located in that part of the vehicle. You don't need any additional dangerous circumstances

or exigencies beyond the mobility that is inherent in a vehicle, which could be moved.

Note: This "automobile exception" applies not only to any vehicle, which is mobile, but also to any vehicle that **reasonably** appears mobile, even if in fact it is not.

The key to understanding this "automobile exception" is to realize that it is based on **probable cause** and that "probable cause" **means exactly the same thing that it does in a search warrant context, namely, enough facts, knowledge, training, etc.,** to provide a "fair probability" that the object you are looking for will be found in the place (portion of the car) you want to search.

In other words, if you are ever wondering whether you can search a certain portion of the vehicle without a search warrant, just ask yourself whether you have enough information to get a warrant if you went before a magistrate. If you honestly believe you could get a warrant (and the court agrees with you), then it is legal for you to go ahead and search that part of the vehicle without a warrant.

- Close containers

Under both federal and California law, this "probable cause" or "automobile exception" also applies to closed, personal containers inside the vehicle.

Remember, however, that you need **probable cause**.

There used to be a major exception to the Ross "probable cause" rule. If you had pre-existing probable cause to believe that a **specific container** in a vehicle contained contraband, as opposed to having probable cause that the contraband was **somewhere** in the vehicle, then you had to get a warrant before you could legally search the container. Remember, however, that in such a situation, you might lack probable cause to search other portions of the vehicle. You may only search those areas and/or containers where you have probable cause to believe contraband or evidence is located.

- Motor Homes

The "automobile exception" applies to a motor home as well, at least when it (1) is being used on the highways, or (2) is capable of such use and is found stationary in a place not regularly used for residential purposes.

- Contemporaneousness

Under the probable cause "automobile exception," it is not necessary that the warrantless search of a vehicle take place on the roadside at the time of the stop.

Instead, you can tow the car away and search it at a later time, "even after it has been impounded and is in police custody."

Vehicle Inventories

- Definition and Rule

Historically, California had a problem with going into close personal containers as part of a vehicle inventory. The preferred method was simply to remove the object (such as a suitcase) for safekeeping and lock up the car. And, of course, there is nothing wrong with continuing to have this as a departmental policy.

There are two important conditions, however, which are necessary before you can enjoy the almost limitless scope of the Bertine decision:

1. Your decision to impound and/or inventory must be made in **good faith** for **inventory reason**, not as a pretext to search for evidence or contraband or to examine personal belongings, such as a diary or a cassette tape; and

2. You must be following the **standardized procedures** of your department or agency.

It is even permissible for the standardized procedure to leave some discretion in the hands of a field officer about whether to open a given container, as long as he/she doesn't have too much latitude. As stated by the United States Supreme Court:

"While policies of opening all containers or of opening no containers are unquestionably permissible, it would be equally permissible, for example, to allow the opening of closed containers whose contents officers determine they are unable to ascertain from examining the container's exteriors. The allowance of the exercise of judgment based on concerns related to the purposes of an inventory search does not violate the Fourth Amendment." However, it should be noted that the Supreme Court was sharply divided on this question of officer discretion (many of the Justices did not want the officer to have any discretion). Therefore, there is no doubt that the less discretion the officer in the field has, the safer legal ground the policy (and thus the inventory) will be.

Example: A Florida Highway Patrol trooper stopped Wells for speeding, then arrested him for DUI and took him into custody. During a subsequent inventory search of the impounded car, a locked suitcase in the vehicle's trunk was forced open, revealing a garbage bag full of marijuana. The court found the discovery to be illegal since the Florida Highway Patrol had **no** policy whatsoever concerning whether or what types of containers should be opened. The absence of policy left the officer with so much discretion that he could turn the supposed inventory into

a "purposeful and general means of discovering evidence of crime," i.e., "a general rummaging in order to discover incriminating evidence."

Nevertheless, there is one California case, Green, which upheld (2-1) an impound and inventory even where the department had no policy beyond the vehicle code itself. The majority simply ruled that because the car had been properly impounded under Vehicle Code section 22651 (p), the "search" that followed was reasonable, noting that the contraband was found on the front seat and that there was no evidence that the inventory was a "ruse" to search for evidence of a crime. Despite Green, however, some sort of a standardized policy is still a good idea, if not a requirement.

Example: Officer's discretionary decision to impound and tow was valid, despite absence of written manual or guidelines, where it complied with verbal training and statutory guidelines and was done to ensure the security of the van. Additionally, once the officer opened the rear door of the van and observed weapons, he also had probable cause to **search** the rest of the vehicle.

Remember, the key to all this is the court's underlying concern about whether you were acting out of good faith inventory considerations when you decide to impound a vehicle and/or to conduct an inventory, or whether you were abusing the concept in order to conduct a general search for incriminating evidence.

On the other hand, as long as you are not deviating from standard practice in conducting the inventory, and as long as you actions are truly motivated, at least in part, by the purpose of conducting an inventory, it will be upheld in court, even though you also have a "second" or investigatory motive." The presence of an investigatory motive does not invalidate the inventory search."

- Other Considerations

  An inventory may be conducted only after the vehicle has come into lawful police custody. Typically, this occurs after the driver has been cited, arrested, or the vehicle has been in a traffic accident.

  If the vehicle is going to be inventoried, but the driver or other occupant requests possession of some object, such as a tote bag or jacket, you may pat the object down for weapons for your own safety before handing it over. As for inventorying the object, not all courts agree. However, at least one case holds that an inventory is proper since the object was inside the vehicle at the time it was impounded, at least where the inventory is carried out in good faith for that purpose (as opposed to a pretext to search), and where it is consistent with your department's standard policy.

- Repossessed Vehicles

If a licensed repossession agency has already repossessed a vehicle and completed the statutorily required inventory, you may examine and seize, without a warrant, inventoried items of personal property which you have reason to believe connect the suspect with the crime you are investigating.

TRAINING GUIDE 12

TEMPORARY RESTRAINING ORDERS

In critical situations where "instant relief" is appropriate, a court may issue a temporary restraining order (TRO) at the same time it issues the Order to Show Cause (OCS). Such a restraining order is called "temporary" because it stays in effect only until the evidentiary hearing with the defendant takes place. Such a hearing must be scheduled promptly, usually within a week or two. (Civil Code Procedure, section 527).

You should realize that an Order to Show Cause (OCS) becomes a temporary restraining order (TRO) if the judge has authorized it and the appropriate box on the form has been checked. In other words, if the relief the plaintiff wants is granted, temporarily, pending the hearing, at the same time the OCS is issued, then the document becomes a combination OSC and TRO.

TRAINING GUIDE 13

LANDLORD AND TENANT DISPUTES

The police officers' role as a keeper of the peace requires dealing with areas of human conflict, including the handling of landlord – tenant disputes. Although the traditional practice of the police has been to regard landlord – tenant conflicts as a civil only, such disputes involve a misdemeanor violation of the penal code or result in some form of violence. It is important for police officers to be aware of both the practical and the legal issues involved in the typical landlord – tenant disputes in order to prevent these escalating into violent confrontations. An officer who understands the basic criminal law in this area can be effective in mediating landlord - tenant disputes without the occurrence of violence or the necessity for arrests.

PENAL CODE VILATIONS IN LANDLORD – TENANT DISPUTES

Effective handling of landlord – tenant disputes requires an understanding of applicable Penal Code Provisions.

UNLAWFUL CONDUCT BY THE LANDLORD

1. Tenant Lockout

   When a tenant is behind in his rent, a landlord will very often change the tenant's door lock in order to prevent the tenant's further use of the dwelling until the rent is paid. This lock out procedure is a misdemeanor prohibited by 418 PC.

2. Seizure of Tenant's Property

   It is illegal for a landlord to seize a tenant's possessions as payment for past due rent. A seizure also results when the landlord has locked the tenant out of the dwelling, since the tenant's possessions are thereby locked in. The seizure of a tenant's property is a misdemeanor prohibited by 418 PC. Generally, a landlord may not take possession of the tenant's property unless a court order is obtained which clearly gives permission.

3. Removal of Windows or Doors

   If the landlord removes the doors or windows of the tenant's dwelling in an attempt to evict the tenant, or in any way destroys the tenant's property, the landlord may by guilty of 594 PC. Even though the landlord may be destroying his own property, the courts have held that since a tenant has a property interest in the premises, any such acts of destruction by the landlord constitutes 594 PC against the tenant.

4. Termination of Services

   Interference with the tenant's ability to obtain services such as gas, electricity, and water is also a common practice of a landlord who desires to get rid of an uncooperative tenant. The landlord may be liable in a civil action.

5. Trespass

   The landlord may enter an apartment or rental dwelling without the tenant's consent only in the following situations:

   a. In an Emergency
   b. To make necessary repairs or agreed upon repairs or to show an apartment to a prospective tenant, purchasers, workmen or contractors, or mortgage holders.
   c. When the tenant has moved out.
   d. When a court order authorizing entry is in effect.

Note: Section (a) provides for entry at any time if an emergency, such as smoke, leaking water, etc., exists.

Section (b) means during normal business hours and with reasonable notice to the tenant.

Any section in a lease, which denies tenants the right to possession or allows unreasonable entry by a landlord, is null and void.

WHAT CAN THE OFFICER DO?

Even though a landlord may have proper legal grounds for evicting the tenant, it is unlawful for him/her to use any of the aforementioned methods in an attempt to force the tenant to vacate the premises. Rather, he/she must bring civil suit, called "Unlawful Detainer" action, to have the tenant legally evicted. In the usual case, an officer will respond to call from an angry tenant who has been locked out of the premises. When the officer arrives on the scene, he may be faced with a potentially violent confrontation between the landlord and the tenant.

Often, an officer will just inform the parties that the dispute is a civil matter and then leave. If the officer understands basic legal principles, however, he can often resolve the dispute by informing the parties of their legal rights and obligations.

If the officer responds to a tenant's complaint that the landlord has (1) locked him/her out, (2) seized his/her property, (3) removed the doors or windows, (4) interfered with the use of utilities, or (5) unreasonably trespassed on the premises, the officer can often successfully resolve the dispute by:

1 Informing the landlord he/she has probably committed a misdemeanor violation.
2 Briefly explaining to the landlord that if he/she has the legal grounds for evicting the tenant he/she should bring an unlawful detainer against the tenant.

Very often the landlord is aware the conduct is unlawful. A simple explanation by the officer that the landlord's self-help measures are unlawful will often be enough to mollify him/her. If however, the landlord is uncooperative (i.e., refuses to replace the doors and windows), the officer can explain that criminal proceedings can be initiated by the tenant. This tactic usually ensures cooperation.

If a police officer has knowledge of the relevant civil law that may be used in typical landlord – tenant dispute, he/she will be better equipped to handle the immediate problems and suggest a permanent solution. For Example, if a landlord has locked a tenant out for non-payment of rent, the officer could briefly explain to the landlord how legal eviction of the tenant can be accomplished. Simply telling the landlord that lockouts are unlawful might get the tenant back into the apartment again, but that alone will not resolve the landlord's problem.

EVICTION

The best legal way for a landlord to evict a tenant is by bringing an unlawful detainer action to court. There are several steps in this proceeding:

1. Notice

   If the tenant has violated any conditions of the lease or rental agreement, the landlord must give the tenant a three day notice to either correct the problem or move prior to bringing action in court to evict him/her. This means that if the tenant who is behind in the rent pays the total rent within the three-day period, the landlord cannot have him/her evicted.

The landlord must give a copy of the written notice to every adult to whom the premises were rented. In addition, the landlord must serve the tenant with a legally correct notice. The forms are available in most stationary stores.

In addition, a landlord has the right to terminate a month- to- month tenancy for almost any reason even if the tenant has not violated any provision of the agreement. To do this, the landlord must first serve the tenant with a written notice instructing him to vacate in 30 days if the tenant lived on the premises for under one year, and 60 days notice if the tenant has lived on the premises for more than one year. If the tenant fails to move with the specified days, the landlord must then bring an unlawful detainer action against the tenant.

SERVICE OF NOTICE

1. A 30 or 60 day notice must be served in one of the following ways:

    a. Handed to the tenant personally.
    b. Handed to an adult on the premises and a copy sent to the tenant by mail
    c. If no one is home, the notice may be posted in a conspicuous place and a copy sent by mail

Note: Service of a notice by the landlord is not sufficient for legal eviction. See Unlawful Detainer.

2. Unlawful Detainer

    If the tenant has been properly served with a three, thirty or sixty day notice and does not comply with it, the landlord can bring court action to evict him. The landlord initiates this action by filing an "Unlawful Detainer" complaint with the small claims court.

    a. Small Claims Court

    A landlord can bring an unlawful detainer action in small claims court and obtain a judgment in back rent when:

    1. The tenant is behind rent
    2. The property is residential
    3. The tenancy is for no longer than month-to-month

No attorneys are allowed in small claims court, so each party must represent himself.

    b. The superior court (formerly municipal court) can evict a tenant and give a monetary judgment.

Unlike small claims court, which can hear an unlawful detainer action only when the tenant is behind in rent, the superior court can hear evictions based upon:

1. Any violation of the lease or rental agreement, including nonpayment of rent;
2. A month-to-month tenancy where 30 or 60 days notice has already been given.

While superior court proceedings are more expensive because attorneys are necessary, an unlawful detainer action brought by this court is quicker. An eviction may take place as little as 10 days in superior court, whereas in small claims court it may take more than seven or eight weeks f the tenant stays until the last possible moment. If a landlord wants to bring his/her own action in small claims court, the clerk's officer will assist him through the process.

WHO WINS WHAT

In Superior Court: If a landlord wins the unlawful detainer action, he/she will be able to:

1. Get an eviction order so the sheriff can move the tenant off the property.
2. Get a judgment for unpaid rent. In addition, a landlord may be able to recover up to three times the amount of the unpaid rent if the tenant intentionally, and in bad faith refuses to pay the rent. A landlord can also recover the court costs, and often, even his attorney cost.

In Small Claims Court: If the landlord wins the unlawful detainer action, he can recover a judgment for back rent. The tenant may file an appeal with the superior court and have the action retried in superior court. During the time of appeal, the small claims judgment cannot be acted upon. Thus, a tenant may remain on the premises during the course of the appeal. For this reason, many landlords bring their unlawful detainer actions into superior court.

If the tenant wins the case, the landlord cannot appeal. The tenant may remain on the premises, and the only way for the landlord to evict him/her is by bringing a new unlawful detainer action based on other grounds.

LANDLORD OBLIGATIONS: Landlords have a general legal obligation to keep the premises they rent in a condition fit for human occupancy and to repair all defects that make the premises uninhabitable. This means the landlord must provide an apartment that has:

1. A structure that is weatherproof, waterproof and rodent proof.
2. One working toilet, bathtub, and bathroom sink.
3. A working plumbing system.
4. One working kitchen sink.
5. Safe electrical wiring.
6. Adequate garbage and trash storage and removal facilities.

The landlord cannot waive these requirements by placing the burden to repair these facilities on the tenant as part of the conditions of the lease.

TRAINING GUIDE 14

PREMISES/RESIDENTIAL SEARCHES

Plain View

Under the general rule, when you see something in "plain view" (or "plain sight") from a place you have a right to be, no "search" has taken place in any constitutional sense because the person has no reasonable expectation of privacy as to items which are in plain view. You may seize any object that is in plain view, as long as:

- You have a lawful right to be in the place from which you are viewing the object;
- The incriminating character of the object is immediately apparent, i.e., you have probable cause to believe it is a crime related; and
- You have a lawful right of access to the location of the object.

In other words, simply because you see an object in plain view, even contraband, **does not automatically** mean that you may legally enter without a warrant to seize it. You will need consent or exigent circumstances.

Note: There is no requirement that you discovered the object "inadvertently."

Exigencies/Emergencies

You may enter a premise without a warrant or consent if there are exigent circumstances. An exigency is an emergency situation requiring swift action to prevent:

- Imminent danger to life, or
- Serious damage to property, or
- Imminent escape of a suspect, or
- The destruction of evidence

Thus, while your entry may be for the more common purpose of seizing or arresting someone, it may also be for the totally unrelated motive of protecting persons (including you) or property against some imminent peril.

REMEMBER, HOWEVER, THAT YOU CAN NOT CREATE YOUR OWN EXIGENCY…

Forcible Entry of Premises/"Knock and Notice"

If certain "knock and notice" requirements are met, you may legally break in or force you way into a premises (usually a home) to make an arrest (Penal Code 844) or execute a search warrant.

A "forcible" entry may be as violent as breaking down a door or as non-violent as walking through a closed, unlocked door. Because of the purposes behind the "knock and notice" requirements, they apply even when you enter premises through an open door.

Consent

Generally, the Fourth Amendment prohibits the warrantless entry of private persons, either to make an arrest or to conduct a search.

However, to be valid, the consent must be:

- Voluntary, i.e., not "coerced" by force, threats, tricks, promises, or the exertion of authority.
- Obtained from a person with authority, or "apparent" authority, to give consent.

In addition, even with a valid consent, the search you conduct will be invalid if it exceeds the scope (limits) of the consent given.

- Scope of Consent

  The places where you may search are limited entirely by the "scope" of the consent given. It is your responsibility to insure that the consenter gave consent the areas where you are looking.

Searches Incident to Arrest

When a person is lawfully arrested in a home or other building, a limited right exists to conduct a warrantless search not only of his person, but also of the area within his "immediate control" ("arms length", "lunging distance"). Chimel.

Rather, courts seem to weigh the following factors in deciding whether this type of search was legal: (1) whether the area searched under the arrestee's custody and control at the time he/she was arrested; (2) whether the police were searching for weapons or evidence of the crime; (3) whether the search took place very soon after the arrest; and (4) whether the arrestee, although in custody, was still nearby.

Searches With a Warrant versus Searches Without a Warrant

- Legal Requirement

  Unless justified by an exception (consent, incident to arrest, emergency, vehicle) a search of private property may lawfully be conducted **only** if authorized by a search warrant. This warrant requirement also applies to commercial property, except for any portion open to the public.

- Benefits of Obtaining a Search Warrant

  Searches pursuant to a search warrant are **presumed** lawful; the burden is on the defendant to prove illegality.

  Note: The opposite can also be true. This is why it's good to practice to ask for **consent** to search, even when you have a warrant. But **ask before** you show the warrant.

- The "Good Faith" Exception – Leon

  Under the "good faith" exception to the exclusionary rule created by the Supreme Court in Leon, evidence you obtain with a warrant (search or arrest) that you reasonably believe is valid will be admissible in court even if the warrant is later found to be invalid.

  However, this exception will **not apply**, i.e., the evidence will be suppressed if: (1) the issuing magistrate was misled by information you knew or should have known was false, (2) the magistrate completely abandoned his neutral and detached role, (3) a well-trained officer would reasonably have known the affidavit failed to establish probable cause, or (4) the warrant was so deficient on its face that the executing officer could not reasonably presume it to be valid.

  The most common challenge comes under No. 3, namely, whether an objective and reasonable officer should have "known" that the affidavit failed to establish probable cause. Since the affidavit has to be pretty bad to meet this standard, the Leon "good faith" exception works to "save" many otherwise doubtful cases.

TRAINING GUIDE 15

ELDER ABUSE

Other Assault and Battery Statutes (Penal Code)

368 PC: Elder and dependent adult abuse – felony or misdemeanor

Reporting Elder Abuse

Note: Our agency may also be receiving reports concerning physical and mental abuse of "elders" (residents of this state who are 65 years of age or older) and/or "dependent adults (residents between the ages of 18 and 64 who have restricting physical or mental limitations). The requirements concerning these types of reports and our agency's response appear in the Welfare and Institution Code (commencing at section).

TRAINING GUIDE 16

PERMIT INVESTIGATIONS

The El Monte Municipal Code requires certain businesses to obtain permits to operate within the city. The purpose of these permits is control and acknowledgment of the business action.

General Rules

A. When a permit is required, the permit must be issued to the activity-taking place. Making the application is not sufficient; the permit investigation often involves other agencies, which supply the technical knowledge necessary in many cases. Until this process is complete and the license is issued, the patrol officer has no way of ascertaining if the applicant will legally qualify for the applied license.

B. When the permit expires, the activity must cease. In order to stay in effect (renewal or extension), a permit must be supplemented by updating documents or renewal.

C. The activity specified on the permit is controlled by the respective code sections or conditions placed on the license. Conditions stipulated to during the permit process may restrict or expand the use of the license.

   Operating beyond the stipulation is equivalent to operating without a license. For example, if a license stipulates activity between certain hours, even though the code allows operation of longer hours, the operator is in violation of not having a permit for the extended hours in question. This is because the Police Department (Chief of Police) and City Council are allowed to place certain conditions/restrictions on a license. This is usually the result of a compromise between the applicant and protesters to the issuance of the license.

D. Permits are not transferable from person to person or location to location.

E. Permits must be conspicuously displayed.

F. Officers must be allowed on licensed premises to conduct investigations.

G. The following are some of the more common permits an officer will come into contact with:

   1. Bars or taverns
   2. Billiards or pool halls
   3. Dance halls
   4. Entertainment permits

5. Loudspeakers or amplified sound permits
6. Massage establishments
7. Mechanical or other amusement centers.

H. Enforcement:

When problem areas develop, it is necessary to document the situation. This can be done with the use of Incident Reports, Crime Reports, or Interoffice Memos that clearly explain each incident or problem detail. Include names and addresses of complainants and/or witnesses.

It has been demonstrated over and over again that illegal activities that the present problems to the general community are directly or indirectly associated with licensing of some sort. Effective enforcement and documentation of the necessary information will help to eliminate the problem.

TRAINING GUIDE 17

MENTAL ILLNESS CASES

Authority

A. 5150 WIC – REASONABLE CAUSE

   With reasonable cause, when a police officer believes that a person is a danger to himself or to others, or is gravely disabled as a result of a mental disorder, the officer may take such a person to a mental health center for a determination of whether such person should be detained for a 72-hour treatment and evaluation. A person is considered gravely disabled when he/she is unable to provide for the basic personal needs of food, clothing, and shelter as a result of a mental disorder.

B. Severe mental illness is defined as psychosis, which is usually detected by sudden change in behavior or gradual deterioration of personality.

Sever Mental Illness Symptoms

A. Change in attitude towards friends and/or relatives
B. Radical change in personal habits.
C. Absentmindedness.
D. Radical change in work activity
E. Argumentative and uncooperative.
F. Hostility and distrust.
G. Disorganized thinking.
H. Morbid interest in self-destructive weapons.
I. Hallucinations and/or delusions.

Handling Disturbed Persons

Never rush blindly into the situation. Take time to look over the situation, ask questions, and find out all you can about the sick person. Call for assistance. Delay of time will often serve a double purpose. If the mentally ill person is excited, the passage of time will permit the person to calm down, and while waiting for additional assistance, a plan of action can be formulated. How will the person be removed? Who will enter the room? Are the escape routes from the house properly covered? Keep calm and wait.

A. Use as little force as possible.
B. Ignore verbal abuse.
C. Avoid excitement.
D. Do not deceive.
E. Refrain and calm down.

Always bear in mind that the help you give to the mentally ill person is just as vital as giving first aid to an injured person.

Detentions

A. A person to be detained should be transported directly to a mental health center. In this area, Charter Oak Hospital.
B. Transportation should be in a police vehicle with a screen.
C. The officer requesting admission of a mentally ill person must complete the required state form, which is available at the facility, and a copy should be used as our report. The state form must be completed in black ink. Forms completed in pencil will not be accepted. Use of correction fluid is also not allowed and not excepted.
D. No weapons are allowed in the psychiatric wards.

Police Holds

A. Mental health centers do not have the type of detention facilities to hold persons charged with serious crimes.

    1. You may cite a person out if the citation policy applies.
    2. You may release a person (849 PC) to obtain the necessary treatment.
    3. Contact the L.A.Co. Sheriff's Dept. to ascertain if they have the proper holding facility or transportation to Metro Hospital in Norwalk.

TRAINING GUIDE 18

RAMEY

When a complaint has been filed indicating that the named defendant has committed a specified offense, the court, if satisfied that the offense has been committed and there are reasonable grounds to believe the defendant has committed the offense, must then issue a warrant for the defendant's arrests (Penal Code sections 813-814, and 1427).

Since 1989, Penal Code section 813 has also permitted a magistrate to issue a summons, instead of an arrest warrant, if the prosecutor requests one. A summons tells the defendant when and where to show up for booking, and is in substantially the same as an arrest warrant. If the defendant fails to appear, a bench warrant is issued. The statute also sets out situations where the prosecutor is not permitted to ask for summons, for instance, when the offense involves violence, firearms, or resisting arrest, the defendant has outstanding arrest warrants or is likely not to appear as directed. Penal Code 816 a authorizes any peace officer (or authorized process server) to serve this type of "summons," by delivering one copy to the defendant and filing duplicate copy with the magistrate before whom the defendant is to appear.

Jurisdiction using "Ramey" warrants have found numerous advantages in the procedure including:

- Burden of Proof. If an officer arrests a defendant based on his assessment of probable cause without first obtaining a "Ramey" arrest warrant, the *People* bear the burden of proving the legality of the arrest at any subsequent suppression hearing. However, if the officer obtains a "Ramey" arrest warrant, the burden is shifted to the defendant to prove that the warrant was inadequate. Furthermore, thanks to Leon's "good faith" exception, use of a "Ramey" warrant may also preclude the defense from being able to attack the adequacy of probable cause.

- Efficiency: Obtaining a "Ramey" warrant can save a significant amount of court time. For example, the few hours it may take to prepare a "Ramey" warrant may save the many hours required to defend suppression motions and other challenges to warrantless arrests.

- Confidentiality: If a "Ramey" warrant is issued, it is less likely that the defense will be able to discover the identity of a confidential informant.

- Aid in Apprehension: Obtaining a "Ramey" warrant helps persuade other jurisdictions to look for the person named in the warrant. A "Ramey" warrant may be entered in CLETS/WPS either as a "permanent" warrant or as a "temporary warrant."

NOTE: A "temporary" want will stay in the WPS for 48-72 hours, depending when it was entered. It will automatically be purged unless it is modified to a "permanent" want. In order to become a "permanent" want, the record in WPS must have a warrant number or case number in the warrant – number field. Do not enter a warrant into the system unless our agency is prepared to bear the cost of going to interview the suspect, or of bringing him/her back to your jurisdiction, if and when he/she is arrested. Also, as either the arresting agency or the entering jurisdiction, you should make an effort to ensure that the warrant has been deleted from the system after the suspect has been arrested.

- Case Strategy: Obtaining a "Ramey" warrant prior to arrest sets up the case for further wants. It provides a basis for future search warrants and arrest warrants for co-defendants. The probable cause contained the "Ramey" warrant is merely updated in person or telephonically.

- Bail Setting: A "Ramey" warrant can specify the amount of bail. After the arrest, the burden shifts to the defense to show why the bail should be reduced.

The procedures for obtaining a pre-complaint arrest warrant, or "Ramey" warrant, is spelled out in Penal Code 817, which took effect in 1996. This statute includes a suggested form for a "warrant of probable cause for arrest" and provides that such a warrant (1) shall not begin the complaint process, (2) has the same service authority and time limitations as a post-complaint arrest warrant, and (3) shall issue if, and only if, the magistrate is satisfied, based on a declaration of probable cause made by a peace officer, that there is probable cause that the described offense has been committed and the described defendant committed it.

Note: The "probable cause" necessary to support an arrest warrant is akin to the probable cause necessary to support a search warrant. The Leon "good faith" exception applies to arrest warrants as well as search warrants. And an arrest warrant can be attacked for "errors and omissions" in the same manner as a search warrant.