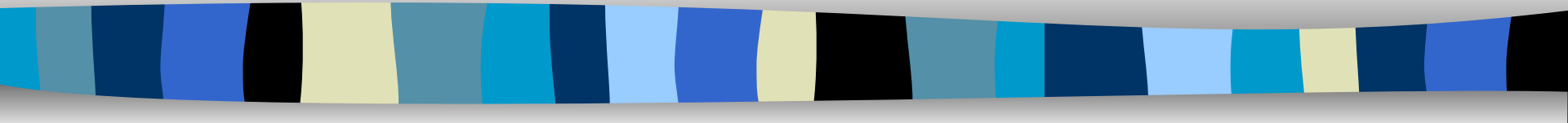


# Authority of the Police



## Unit 5

# I. Detaining a Suspect for Questioning

n Fourth Amendment applies to detention of suspect whether or not there is an arrest

n Concepts:

# A. Stop for questioning

n *Terry v. Ohio* (1968) detention of suspects without probable cause to arrest or consent of the suspect

n Must have **reasonable suspicion** that there is criminal activity afoot

- Based on a reasonable officer standard
- Need specific, articulable facts indicating criminal activity

# A. Stop for questioning (con't)

## n Request Identification

- May request identification when there is reasonable suspicion of criminal activity
- State must set specific standards for the types of identification that may be required

# A. Stop for questioning (con't)

## Summary: Constitutional Standard

### n Detention

n Standard: Reasonable suspicion criminal activity is afoot

- Must have specific facts. Consider:

- all surrounding circumstances
- reasonable officer's experience

n Purpose: Question suspects to determine if they are involved in criminal activity

n Duration: Brief detention — depends on facts

n Outcome: Arrest if probable cause exists at end of detention

- May arrest on outstanding warrants
- If no probable cause suspect must be released
- May retain notes for later investigations

# B.Pat down for weapons

n *Terry v. Ohio* (1968) allows a pat down for weapons *only if* there is reasonable suspicion that the suspect is armed

- **Not** automatic
- Search limited to pat down of outer clothing for weapons that could be used to harm the officer

# B.Pat down for weapons

## n *Terry v. Ohio* (con't)

—If officer feels something  
believed to be a weapon, the  
officer may retrieve it

n Plain View applies to all items  
discovered in this manner

n Plain Feel applies if officer is able  
to tell that item is contraband

# B.Pat down for weapons

## Summary: Search

- n Standard: Reasonable suspicion person detained is armed
  - Consider bulges in clothing that indicate concealed weapon
  - Consider type of crime under investigation
- n Purpose: Prevent injury to officer
- n Scope: Limited search for weapons
  - Pat down of outer clothing for weapons
  - May check items suspect is carrying if a weapon could be concealed in it
  - If officer feels something believed to be a weapon the officer may retrieve it



# B.Pat down for weapons

## Summary: Search (con't)

- n Objects other than weapons may be seized ***only if***:
  - Item felt like a weapon during patdown
  - Officer determined item was contraband by its distinctive feel before retrieving it
  - If suspect in a car at time of detention the passenger compartment of the car may be searched for weapons
- n Outcomes: Item seized is admissible in court if officer in good faith believed:
  - item felt like a weapon
  - item felt like contraband

# C. Search of vehicles

**n** *IF* there is reasonable suspicion that there are weapons in a vehicle when the occupant has been stopped on reasonable suspicion

- officer may search passenger compartment for weapons
- Same rule applies to traffic stops where no custodial arrest is made

# D.Fingerprinting

n May fingerprint suspect in the field during a *Terry* stop

n May NOT take suspect to station for fingerprinting

# E. Interrogation

n May briefly question suspect in the field

n May NOT transport suspect to station for interrogation without probable cause

# II. Arrest

n Restrictions on the power to arrest come from both common law and the Fourth Amendment

n Concepts:

# A. Probable cause to arrest

- n Probable cause exists where the facts and circumstances would warrant a person of reasonable caution to believe that an offense was or is being committed
- n Or the existence of circumstances which would lead a reasonably prudent man to believe in guilt of arrested party

# A. Probable cause to arrest

n Mere suspicion or belief, unsupported by facts or circumstances, is insufficient.

n PC justifying officer's arrest without warrant has been defined as situation where officer has more evidence favoring suspicion that person is guilty of crime than evidence against such suspicion, but there is some room for doubt.

# Totality of the Circumstances Test

- n May rely on own observations and facts obtained from others
- n Consider motivation to lie, inherent probability of event occurring as described, etc.



# B. Felony arrest

n Peace officers are usually authorized to arrest if there is probable cause that a felony was committed and the person to be arrested committed it

# C. Misdemeanor Arrest

n Traditional rule gives peace officers the authority to arrest when there is probable cause that a misdemeanor was committed *only if* the crime occurred in the officer's presence

n NOT IN GEORGIA

# D. Warrant is Required by the 4th Amendment

- n Arrest warrant is required to enter the suspect's home to arrest him/her
- n Search warrant is required to enter a 3<sup>rd</sup> person's home to make an arrest
- n "Knock notice" procedures must be followed when entering a dwelling

# “Knock notice” procedures:

n Knock or otherwise draw attention to his/her presence

n Announce purpose of the visit

n Wait long enough for a cooperative person to respond

n Enter — may use force if necessary

# E. Search Incident to Arrest

- n When a custodial arrest is made the officer may conduct a thorough search of:
  - the person arrested and
  - the area under his/her immediate control (“arms reach” or “wingspan” rule)

# E. Search Incident to Arrest

- n Must be done immediately (“contemporaneous”) after the arrest

- n Items seized do not have to be related to the crime the person was arrested for committing

# E. Search Incident to Arrest

n When person arrested was in car at time of arrest

May thoroughly search the entire passenger compartment

# E. Search Incident to Arrest

- n “Protective Sweep” may be conducted
  - Includes area immediately surrounding the location where the arrest was made
  - Quick search for people who may be hiding; only look where a person could be concealed
  - Need reasonable suspicion to extend search to more distant locations



# F. Booking

- n Booking occurs when a person enters the jail or holding facility
  - At time of arrest
  - Each time person arrives to serve “week-ends” or other intermittent sentence
  - When returning to jail after work furlough or other leave

# F. Booking

n Thorough search of person is permitted including strip search, body cavity search

- Thorough search of any items (including closed containers) in the possession of person being booked is permitted
- ***Miranda*** does not apply to brief questioning regarding names, person to notify in emergency, etc.
  - Extended questions requires ***Miranda*** warnings

# Arrest Summary

- n All arrests must be based on probable cause
  - Probable cause is defined as sufficient facts to convince a reasonable person that it is more likely than not that a crime was committed and the suspect committed it

# Arrest Summary

n Arrest warrants are required ***only if***:

- Officers enter suspect's home without consent to make the arrest in non-emergency situations
- Search warrant is required if officers wish to enter ***another person's*** home without consent to arrest the suspect
- State law may require arrest warrant in situations not mandated by Fourth Amendment
  - Misdemeanor arrest for offenses not committed in the officer's presence requires a warrant in most states

# Arrest Summary

## Search incident to legal custodial arrest

n Person arrested and area under his/her immediate control

Search must be done at time and place of arrest

- Thorough search permitted

- Officer does not have to believe the person is armed or has evidence in his/her possession

- Items found are admissible even if they do not relate to the crime that the person was arrested for committing

- If person was in car at time of arrest the entire passenger compartment may be thoroughly searched

# Arrest Summary

Booking Searches - Anytime a person is booked into the jail facility

n Search of Person - Thorough search of person — including:

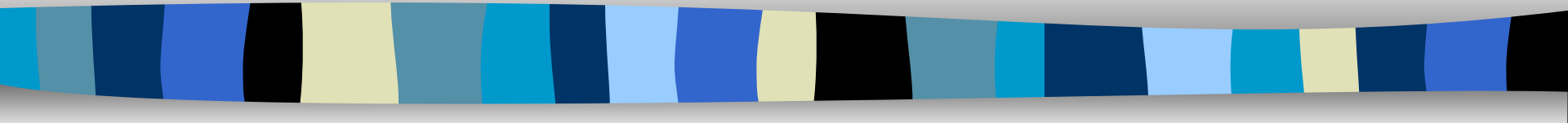
Strip search and body cavity search

- May be limited on misdemeanors

n Search of Property

- Thorough search of anything in the person's possession
- May search closed containers

# Authority of the Police



## Chapter Two