

Warrantless searches research paper example

[Law](#), [Evidence](#)



The fundamental concept of the criminal justice system is to identify the conduct that can harm individuals and the community and for the state to provide an appropriate measure to prevent, control and punish criminal acts (Purpura, 1997). There are various branches in the criminal justice systems that are involved in the effective implementation of the law and to punish the offenders. Five system components of the criminal justice systems are identified namely the law enforcement, prosecution, defense attorneys, courts and corrections with each playing an important role in the systematic implementation of the criminal justice system both in the state and federal levels. The due process is the fundamental requirement in the implementation of the criminal law which is embodied in the Fourth Amendment of the US Constitution that states “ The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” (United States Courts, n. d.). This constitutional provision is construed to be a guarantee against the unreasonable search and seizure that the police authorities may undertake in connection with the implementation of the criminal law in the community. It provides protection to the people against the arbitrary performance of duties of the law enforcement agencies who may abuse their power in the exercise of their duties in the implementation of the criminal justice system in the community which may become intrusive to another constitutional guarantee provided to the people on protecting privacy. The guarantee offered by the Fourth Amendment against a

warrantless search and seizure is not absolute, however. There are also recognized constitutional limitations in the application of the prohibition against a warrantless search.

As a general rule, the law enforcement authorities are not allowed to infringe upon the right to privacy of the people concerning their own persons, houses, papers and effects without the appropriate search warrant that they must secure from the court with a lawful jurisdiction over the person or place to be searched. A probable cause must be duly established in order for the application for a search warrant may be granted by the court. In the landmark case of *Mapp v Ohio* (1961), the court ruled that anything that are seized without a warrant will be considered inadmissible in court on the ground of unlawful search (United States Courts, n. d.). However, the court imposes certain exceptions where a warrantless search may be upheld by the court as lawful without violating the Fourth Amendment. These circumstances usually involve exempting cases such as when a person was searched as incidental to his arrest; when the search without a warrant is conducted in the exigency of the situation such as preventing the destruction of evidence; when searching automobiles; when the warrantless search was done with the consent of the person being searched; under the stop and frisk doctrine; and in the performance of regulatory searches and inspections (Cole and Smith, 2008).

The above named circumstances justifies the conduct of a warrantless search however they may only be performed under certain conditions. A warrantless search incidental to an arrest for instance is only allowed within the area under the control of the suspect. Thus, a police officer may search

an arrested suspect within his pockets and other parts of the body to check for any weapons that the suspect may use against him in defense. A police officer is no longer authorized by law to conduct a search on areas not within the immediate control of the arrested individuals such as searching other rooms where the suspect was not found which are beyond the lawful exercise of a warrantless arrest. The exigent circumstances involving the danger of destroying evidence is also protected by the mantle of a lawful warrantless search. Cole, Smith and DeJong (2013) pointed out that the presence of exigent conditions will provide the authorities to enter a private home even without a warrant. This should be done however in response of an emergency situation such as to prevent the destruction of evidence, prevent further injuries and to render emergency aid. An automobile search without a warrant is justified only when the same is conducted incidental to an arrest. The law enforcers are precluded from conducting an automobile search when an arrest is not lawfully performed. Thus, it is only when the occupant of a vehicle is arrested that the law enforcers may search the automobile without a warrant but it is only limited to searching the glove compartment and luggages and other things found in the car. It is also a requirement of the law that the arrest should be valid in order to to make the search without a warrant on vehicles incidental to an arrest justified. It is also important to point out however that with the consent of the driver who is not under arrest, the police authorities may search the vehicle even without a warrant. The same principle applies when the warrantless search is performed in private homes with the owner's consent. The stop and frisk doctrine is applied in circumstances where the police has a reasonable belief

that a person is suspected to be committing a felony and the police wants to conduct a temporary detention of the person by stopping him to investigate and frisk or search his body for a concealed weapon. The “ stop” doctrine allows the officer, under a reasonable suspicion that the suspect is involved in a criminal activity, to stop a person to investigate. This is contemplated as a temporary detention which the law allows an officer to seize the person without requiring a probable cause, only a reasonable suspicion to be present under the circumstances. The “ frisk” doctrine is considered to be a protective frisk where the officer is allowed to perform a limited search such as patting for any concealed weapon on the suspect’s body during his temporary detention. Any weapons seized may be used against the suspect as evidence in court under this circumstance. Lastly, a warrantless search is allowed in cases of performing regulatory inspections and searches. This usually involves businesses that are heavily regulated by the government such as pawnshops which are monitored by the state for fencing (selling of stolen goods) and auto junk yards that might be selling stolen auto parts. The inspection may be performed at random without informing the business owner of the conduct of the search. This also involves other establishments that are subjected to an unusual and special license to do business (Meiner, Ringleb and Edwards, 2012). The warrantless search made on airports, malls, bureau of customs and immigrations for instance are also examples of warrantless search within the highly regulated businesses.

The use of warrantless searches may be abused by the police officers thus an exclusionary clause is attached under the Fourth Amendment of the Constitution that provides any evidence gathered or seized due to an

unlawful and warrantless search will be excluded as evidence in court. Only evidences obtained from the above mentioned cases where the warrantless searches may be performed validly and lawfully may be admissible as evidence on a criminal trial. The protection of the Fourth Amendment against warrantless searches extends to a person, his property (including business), papers and effects. It can be inferred from the due process clause of the Fourth Amendment in the criminal justice system involving warrantless searches that while the protection against an illegal search is guaranteed by the constitution, the same is not an absolute right that may be invoked at all times. The state also provides exceptions in order to balance the interest of justice in the efficient implementation and administration of criminal law with protected rights of individuals on their privacy.

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