

LEGAL ASPECTS OF CONFESSIONS

The simplified Westmoreland version

Texas Code of Criminal Procedure Article 38.22 as of September 1, 2017

Notwithstanding any other provision of this article, no oral, sign language, or written statement that is made by a person accused of an offense listed in Article 2.32(b) and made as a result of a custodial interrogation occurring in a place of detention, as that term is defined by Article 2.32, is admissible against the accused in a criminal proceeding unless:

- (1) an electronic recording was made of the statement, as required by Article 2.32(b); or
- (2) the attorney representing the state offers proof satisfactory to the court that good cause, as described by Article 2.32(d), existed that made electronic recording of the custodial interrogation infeasible.

**Texas Code of Criminal Procedure Article
2.32. ELECTRONIC RECORDING OF
CUSTODIAL INTERROGATIONS.**

(a) In this article:

(1) "Electronic recording" means an audiovisual electronic

recording, or an audio recording if an audiovisual electronic

recording is unavailable, that is authentic, accurate, and unaltered.

Art. 2.32 Continued

(2) "Law enforcement agency" means an agency of the state,
or of a county, municipality, or other political subdivision of this state, that employs peace officers who, in the routine performance of the officers' duties, conduct custodial interrogations of persons suspected of committing criminal offenses.

Art. 2.32 Continued

(3) "Place of detention" means a police station or other building that is a place of operation for a law enforcement agency, including a municipal police department or county sheriff's department, and is owned or operated by the law enforcement agency for the purpose of detaining persons in connection with the suspected violation of a penal law. The term does not include a courthouse.

Art. 2.32 Continued

a law enforcement agency shall make a complete and contemporaneous electronic recording of any custodial interrogation that occurs in a place of detention and is of a person suspected of committing or charged with the commission of an offense under:

- (1) Murder; (2) Capital Murder; (3) Kidnapping;
- (4) Aggravated Kidnapping; (5) Trafficking of Persons;
- (6) Continuous Trafficking of Persons; (7) Continuous Sexual Abuse of Young Child or Children;
- (8) Indecency with a Child; (9) Improper Relationship between Educator and Student);
- (10) Sexual Assault; (11) Aggravated Sexual Assault; or (12) Sexual Performance by a Child.

Art. 2.32 Continued

(c) For purposes of Subsection (b), an electronic recording of a custodial interrogation is complete only if the recording:

(1) begins at or before the time the person being interrogated enters the area of the place of detention in which the custodial interrogation will take place or receives a warning described by Section 2(a), Article 38.22, whichever is earlier; and

(2) continues until the time the interrogation ceases.

Art. 2.32 Continued

(d) For purposes of Subsection (b), good cause that makes electronic recording infeasible includes the following:

(1) the person being interrogated refused to respond or cooperate in a custodial interrogation at which an electronic recording was being made, provided that:

(A) a contemporaneous recording of the refusal was made; or

(B) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to

record the person's refusal but the person was unwilling to have the refusal recorded, and the peace officer or agent contemporaneously, in writing, documented the refusal;

Art. 2.32 Continued

- (2) the statement was not made as the result of a custodial interrogation, including a statement that was made spontaneously by the accused and not in response to a question by a peace officer;
- (3) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the interrogation but the recording equipment did not function, the officer or agent inadvertently operated the equipment incorrectly, or the equipment malfunctioned or stopped operating without the knowledge of the officer or agent;
- (4) exigent public safety concerns prevented or rendered infeasible the making of an electronic recording of the statement; or
- (5) the peace officer or agent of the law enforcement agency conducting the interrogation reasonably believed at the time the interrogation commenced that the person being interrogated was not taken into custody for or being interrogated concerning the commission of an offense listed in Subsection (b).

Miranda v. Arizona

384 U. S. 436 (1966)

5th Amendment

- ▣ **Custody + Interrogation = Miranda**
- ▣ **Non-custodial + Interrogation = No Miranda**
- ▣ **Custody + No Interrogation = No Miranda**
 - **So why not just Mirandize everybody?**
 - ▣ **If they do “invoke” when they are not in custody, they are NOT entitled to 5th Amendment protection. Why tell them they have a protection they don’t have?**
 - ▣ **If they do “invoke” when not in custody, you should not stop interviewing them until they get up and leave.**

What is Custody?

- ▣ Texas CCP 15.22 (Arrest is statutorily defined)
 - A person is *arrested* when he
 - ▣ has been actually placed under restraint, or
 - ▣ taken into custody
 - by an officer or person executing a warrant of arrest, or
 - by an officer or person arresting without a warrant.
 - A person who is arrested is clearly *in custody*
- ▣ A suspect is in *custody* for purposes of Miranda
 - when placed under *formal arrest*, or
 - when a reasonable innocent person in the suspect's position would have objectively understood the situation to constitute a restraint on freedom of movement *to the degree which the law associates with formal arrest.*" *United States v. Bengivenga*, 845 F.2d 593, 596 (5th Cir. 1988) (en banc).

5th Amendment

- ▣ **There is a big difference between a right “attaching” and “invoking” the right.**
 - **Attachment means the right is afforded to them to exercise, but it doesn't mean they have to exercise it.**
 - **Invoking means, for the purpose of the 5th Amendment:**
 - ▣ **They are in custody**
 - ▣ **They have been read Miranda rights by POLICE**
 - ▣ **They unambiguously say that want an attorney present, or**
 - ▣ **They unambiguously say they want to remain silent**
 - ▣ **Their invocation is valid for 14 days after a break in custody (meaning they are no longer in custody)**

Miranda v. Arizona

384 U. S. 436 (1966)

5th Amendment

- ▣ Requiring a suspect to participate in identification procedures such as giving handwriting or voice exemplars, fingerprints, DNA samples, hair samples, and dental impressions is not within the Miranda rule.
- ▣ Such physical or real evidence is *non-testimonial* and not protected by the Fifth Amendment self-incrimination clause.
- ▣ On the other hand, certain non-verbal conduct may be testimonial. For example, if the suspect nodded his head up and down in response to the question "did you kill the victim," the conduct is testimonial. It is the same as saying "yes I did" and Miranda would apply.

Miranda v. Arizona

384 U. S. 436 (1966)

5th Amendment

- ▣ The *Miranda* rule is not, however, absolute. An exception exists in cases of "public safety". This limited and case-specific exception allows certain unadvised statements (given without Miranda warnings) to be admissible into evidence at trial when they were elicited in circumstances where there was great danger to public safety.
- ▣ The public safety exception derives from *New York v. Quarles*, a case in which the Supreme Court considered the admissibility of a statement elicited by a police officer who apprehended a rape suspect who was thought to be carrying a firearm.
- ▣ The arrest took place in a crowded grocery store. When the officer arrested the suspect, he found an empty shoulder holster, handcuffed the suspect, and asked him where the gun was. The suspect nodded in the direction of the gun (which was near some empty cartons) and said, "The gun is over there".

Edwards v. Arizona

451 U.S. 477 (1981)

5th Amendment

- ▣ Suspect arrested January 19, 1976
- ▣ Police read suspect his Miranda rights
- ▣ Suspect invoked his right to attorney
- ▣ Police stopped their questioning.
- ▣ January 20th, police read *Miranda*, suspect waived rights – gave confession.
- ▣ No good! Once a defendant invokes his 5th Amendment right to attorney, interrogation must stop until an attorney is present.

Edwards v. Arizona

451 U.S. 477 (1981)

5th Amendment

- ▣ The *Edwards* rule “bar[s] *police-initiated* interrogation unless the accused has counsel with him at the time of questioning.”
- ▣ When counsel is requested, interrogation must cease, and police may not *re-initiate* interrogation without counsel present.

Edwards v. Arizona

451 U.S. 477 (1981)

5th Amendment

- ▣ **Because the 5th Amendment protection is NOT offense specific...**
 - **If a suspect invokes his 5th Amendment right to police while in *custodial* interrogation, no other police agency could initiate an interview with the suspect, even if it is about a different crime**
 - **Before you interview a suspect who is already in custody for a crime, you need to determine if he previously invoked his 5th Amendment right to an attorney since he was placed in custody:**
 - ▣ **For any offense you plan to interview him about**
 - ▣ **For any other offense another agency may have been investigating**
 - ▣ **To any law enforcement officer (regardless of agency) from the time of his arrest**

Minnick v. Mississippi

498 US 146 (1990)

5th Amendment

- ▣ **Two suspects break out of county jail**
- ▣ **Burglarize home for weapons and murder victims when they return home**
- ▣ **One suspect arrested in California, FBI agents read *Miranda*, suspect begins to confess**
- ▣ **Suspect invokes right to atty and says, “Come back Monday when I have a lawyer” and he would finish the story.**
- ▣ **Suspect then consults with his attorney**

Minnick v. Mississippi

498 US 146 (1990)

5th Amendment

- ▣ 3 days later, Mississippi Deputy Sheriff arrives, reads *Miranda*, suspect waives and confesses
- ▣ Under *Edwards* rule, US Sup. Ct. rules the confession is not valid because interrogation must stop after suspect invokes his 5th Amendment right for attorney without a lawyer present
- ▣ *Minnick* rule, “We decide that the Fifth Amendment protection of *Edwards* is not terminated or suspended by consultation with counsel.”

6TH

AMENDMENT

6TH AMENDMENT

- **The 6th Amendment attaches at the initiation of adversarial proceedings.** *Pecina v. State*, 361 S.W.3d 68; 2012 Tex. Crim. App, cert. denied
- **In Texas, that occurs**
 - **when a pre-indictment arrest leads to 15.17 CCP preliminary hearing within 48 hours of a defendant's arrest.** *Rothgery v Gillespie County*, 554 U.S. 191 (2008);
Or after indictment.
- **It is offense specific (protects only for the crime he was arraigned or indicted for)** *Texas v. Cobb* - 532 U.S. 162 (2001)
- **Does not expire for all practical purposes (right to attorney is Constitutionally guaranteed through the 1st appeal).** *United States v. Wade*, 388 U.S. 218, 227-28, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967)

6TH AMENDMENT

- Like the 5th Amendment, it must be waived before police interview since it applies in or out of custody
Brewer v. Williams, 430 U.S. 387 (1977)
- Custody is not the issue in the 6th Amendment. Initiation of adversarial proceedings is the issue.
- For those who have invoked their 6th Amendment protection, this prohibits law enforcement from using evidence gained without a waiver, such as
 - controlled conversations
 - surreptitious recordings gained by agents of the State *Massiah v. United States, 377 U.S. 201, S. Ct. 1199 (1964)*

Montejo v Louisiana

U.S. Sup. Ct., 556 U.S. 778 (2009)

6th Amendment

- ▣ **At prelim hearing, Montejo was formally charged with Murder *and appointed counsel***
- ▣ **Later that day, police read Miranda and he agrees to go on a trip with police to locate murder weapon**
- ▣ **While in police car, Montejo writes inculpatory letter of apology to victim's widow**
- ▣ **Montejo returns and meets his court appointed attorney**
- ▣ ***Michigan v Jackson* (1986) says police cannot re-initiate after appointment of counsel.**

Montejo v Louisiana

U.S. Sup. Ct., 556 U.S. 778 (2009)

6th Amendment

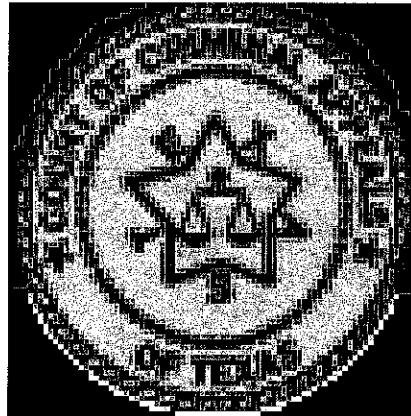
- ▣ U.S. Sup. Ct. says 5th Amendment right to attorney attaches at reading of *Miranda* during police custodial interrogation.
- ▣ But the 6th Amendment right to attorney attaches at arraignment, like in *Montejo's* case.
- ▣ *Montejo* was appointed and represented by counsel when the police questioned him.
- ▣ *Montejo* NEVER *invoked* his 5th / 6th Amendment rights *to police* so the protections of *Miranda*, *Edwards*, and *Minnick* do not apply.

5TH & 6TH AMENDMENTS

Clarifying the Confusion?

Texas Court of Criminal Appeals

Pecina v State (2012)



361 S.W.3d 68; 2012 Tex. Crim. App, US Sup. Ct. denied certiorari

Maryland v Shatzer

U.S. Sup. Ct., No. 08-680 (2010)

5th Amendment

- ▣ Inmate in prison for sexual abuse
- ▣ In 2003, police question inmate about a new sexual abuse case. Inmate invokes and refuses to talk to police.
- ▣ Does inmate invoke his 5th or 6th Amendment right to an attorney, or both?
 - Answer: Supreme Courts says he invoked the 5th Amendment – goes against historical custodial precedent
- ▣ Police end interview.
- ▣ 2006, *police re-initiate* after they develop new evidence, suspect waives rights and confesses to the new sexual abuse case.
- ▣ *Case law (Edwards) at that time* said police must stop! *Case law (Minnick) at that time* said police cannot re-initiate. What happens?

Maryland v Shatzer

U.S. Sup. Ct., No. 08-680 (2010)

5th Amendment

- ▣ U.S. Sup. Ct. says it is good to go because there was a break in custody of 3 years
- ▣ The court differentiates being “incarcerated” and being in “custody by police for interrogation”
 - U.S. v Melancon (2011) 5th Circuit Ct. of App. follows by distinguishing *police custody* from *incarceration* – *No custody (for purposes of Miranda) if they were free to leave the interrogation and return to prison population.*
- ▣ U.S. Sup. Ct. establishes a 14 day rule
 - 14 days "provides plenty of time for the suspect to get reacclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his *prior* custody."
 - Police can re-initiate after a 14 day “break in custody by police” after 5th Amendment invocation of right to atty

Pecina v State

361 S.W.3d 68; 2012 Tex. Crim. App, certiorari denied

6th Amendment

- ▣ **Arlington paramedics respond to stabbing**
- ▣ **Wife stabbed 55 times**
- ▣ **Suspect stabbed once (self-inflicted)**
- ▣ **Paramedics take suspect to hospital and he is arrested by police for murder**
- ▣ **Police get judge to arraign (CCP 15.17)**
- ▣ **Suspect tells judge he wants attorney but wants to talk to police outside waiting for him**
- ▣ **Judge leaves, police Mirandize, get confession.**

Pecina v State

361 S.W.3d 68; 2012 Tex. Crim. App, certiorari denied

6th Amendment

- ▣ In 2007, Fort Worth Court of Appeals hears this case and ruled:
 - Defendant “initiated” contact with police by telling judge he wanted to talk to police
 - Defendant’s actions with judge “waived” his rights.
- ▣ In 2008, Texas Court of Criminal Appeals reversed:
 - Under *Michigan v Jackson*, the defendant invoked his 6th Amendment right to counsel when arraigned at the hospital.
 - Telling judge he still wanted to talk to police was insufficient to “re-initiate” contact with police.
 - Sent back to Fort Worth Court of Appeals.
- ▣ In 2009, U.S. Sup. Ct. overturns *Michigan v Jackson* in *Montejo v Louisiana (6th Amendment Right to Attorney)*
- ▣ In 2010, Ft. Worth App. Ct. throws out confession as directed by Texas Court of Criminal Appeals.
- ▣ In 2012, Texas Court of Criminal Appeals takes case up again and reverses, saying confession is good after all *post-Montejo*

Pecina v State

361 S.W.3d 68; 2012 Tex. Crim. App, certiorari denied

6th Amendment

- ▣ **The 5th Amendment right is for “interrogation counsel”; The 6th Amendment right is for “trial counsel”**
- ▣ **The 5th Amendment right to “interrogation counsel” can only attach when**
 - **A suspect is in police custody for interrogation**
 - **POLICE read Miranda**
- ▣ **The defendant can only invoke his 5th or 6th right for counsel present in interrogation to the police.**

Pecina v State

361 S.W.3d 68; 2012 Tex. Crim. App, certiorari denied

6th Amendment

- ▣ **The 6th Amendment right for “trial counsel” attaches at arraignment for adversarial proceedings in the court process. It is for adversarial proceedings. This could include a post-arraignment police interrogation.**
- ▣ **The 6th Amendment right for “trial counsel” does not concern police interrogations unless invoked to police.**
 - **It is irrelevant what happens at a 15.17 hearing**
 - **If he asks judge for an attorney, he is exercising his 6th Amendment right for trial counsel – that has NOTHING to do with having a lawyer present in an interrogation**
 - **If an attorney is actually appointed, HE must still invoke HIS right to the POLICE (neither the judge nor his attorney can invoke that right for him)**

Pecina v State

361 S.W.3d 68; 2012 Tex. Crim. App, certiorari denied

5th & 6th Amendments

▣ 5th Amendment

- **Interrogative Counsel**
- **Applies in custody**
- **Attaches when Miranda read by POLICE**
- **Suspect must unambiguously invoke his right to POLICE**

▣ 6th Amendment

- **Trial Counsel**
- **Applies when formally charged**
- **Attaches at 15.17 or indictment**
- **Invoked and waived in same way as the 5th Amendment is**

5th Amendment

- ▣ **Applies to custodial interrogation only**
- ▣ **If invoked, police cannot re-initiate until 14 days after break of custody**
- ▣ **Not offense specific**

6th Amendment

- ▣ **Applies in or out of custody**
- ▣ **If invoked, police can re-initiate non-custodial questioning**
- ▣ **Offense specific**

Dancy v. State

728 S.W.2d 772, 778 (Tex.Crim.App.), cert. denied, 484 U.S. 975, 108 S.Ct. 485, 98 L.Ed.2d 484 (1987)

- ▣ **A Texas Tech student in Lubbock was killed by blunt force trauma to the neck. A letter jacket with a “C” (Coronado) was left at the scene along with a comb.**
- ▣ **The letter jacket was broadcast on the news.**
- ▣ **Defendant called police reporting his jacket as stolen. Defendant was questioned as a witness *and then became a suspect*, at which time the officer requested he come to the station and the defendant "readily assented."**
- ▣ **In a suppression hearing, the record reflects:**
- ▣ **"Q: And that time, if you had gone to Maurice Dancy's door, and he had refused to go with you, would you have used force at that time? I am not talking about shooting him, I am talking about force enough to accomplish taking him downtown?"**
- ▣ **"A Yes, Ma'am, I believe we would."**

Dancy v. State

728 S.W.2d 772, 778 (Tex.Crim.App.), cert. denied, 484 U.S. 975, 108 S.Ct. 485, 98 L.Ed.2d 484 (1987)

- ▣ **Appellant went voluntarily to the police station thereafter. He was not arrested, handcuffed or forced, nor was he interrogated on the way to the station.**
- ▣ **The testimony of police as to *what might have happened if appellant had refused to come with him rather than voluntarily giving information about the jacket and consenting to come to the police station* was testimony as to a hypothetical situation, and has little bearing on the question of whether the police conduct *objectively viewed*, restrained appellant's liberty by the showing of force or authority.**

5th & 6th Amendment

- ▣ Prosecutors can't talk to people represented by attorneys (ABA ethics violation); the prosecutor may feel it is unethical for *him/her* to even tell you to interview a suspect appointed an attorney post-arraignment.

EYEWITNESS IDENTIFICATION OF SUSPECTS

Types of Identification

- Show Ups
- Photo Arrays
- Line Ups

Show Ups

- In person viewing of individual in attempt to verify identity as offender
- Most Common method of identification utilized by Patrol Deputies

Guidelines for “SHOW UPS”

- Time and Location should be close to crime occurrence
- Generally accepted time period is TWO HOURS (2, II, Dos, Two) from time of crime
- Avoid use of restraints if can be safely accomplished
- Do NOT re-introduce suspect to crime scene/location for this purpose (re-locate witness to neutral location or suspect location)

More SHOW UP Guidelines

- Have witness provide detailed description prior to Show Up
- Instructions to witness and Show UP procedure should be recorded (Audio/Video)
- Provide instructions to witness on recording
- Accurately Document all points above within report

More Points on Show Ups

- If circumstances preclude following the guidelines then DOCUMENT why not!
- If Multiple Witnesses, do not BURN them all on a Show UP – This prevents later identification by stronger means such as Photo-Array or Line Up
- If available a non-involved Deputy should make the presentation
- Avoid any feedback during presentation (No statements such as “good” “right” “Nawww” “really” “yes”)
- Ask for confidence level of Identification – “How certain are you this is the subject you saw.....?)

Show UP Instructions for Witness

- **In a moment, I am going to show you a person who may or may not be the person who committed the crime.**
- **You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator. The investigation will continue whether or not you make an identification.**
- **Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.**
- **Do you understand the procedure and the instructions I have given you?**

Fourth Amendment

“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.”

History of the 4th

- Introduced in Congress by James Madison in 1789
- Included within Bill of Rights
- Ratified in 1792 and Bill of Rights announced by Thomas Jefferson

(IT IS NOT A NEW IDEA)

Basic Principal

- Citizens have the right to be free from warrantless searches (Persons – Property)
- Searches must be predicated on issuance of Oath and PROBABLE CAUSE must be established

Frequently Asked Questions?

- Can Peace Officers ever conduct a search without issuance of a Search Warrant?
 - YES
- What gives Peace Officers to search without a Warrant?
 - Courts as based on Case Law

Warrantless Search Exceptions

- P
- E
- C
- A
- S
- H
- I
- S

- O
- A
- A
- P

Plain View

- Any item that an officer has probable cause to believe is associated with criminal activity that he sees in plain view can be seized without a warrant.
- PLAIN VIEW - Applies to all senses, if you can see it, hear it, taste it, smell it or feel it then it is within plain view as long as you have legal right to be where you are.

Exigent Circumstances

- 'Those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.'
- Typically the courts want this to be for life saving or officer / third party safety reasons and not to obtain evidence. But if someone is **ACTIVELY** destroying evidence in your presence then stop them.

Consent

- Express permission for the Officer to conduct a search given by a person who has care, custody and control of the place/thing to be searched.
 - Must Be VOLUNTARY
 - Can not be COERCED
- Can I threaten to get a Search Warrant if consent not given?
 - NO! (That has been deemed as coerced)
- Can they give consent if in custody?
 - Yes, but the Officer will need to show consent was voluntary and care, custody and control is maintained by person providing consent.
 - If co-owners are both /all present and at least one of the co-owners says no to a consent search than the answer is no. No matter how many of the co-owners said yes.
 - (Note: if a co-owner is not present to say no and another co-owner gives consent then you are good to conduct your search)

Vehicle Searches (Automobiles)

- A warrantless search of a vehicle stopped in transit can be searched without a warrant if the officer has **probable cause** to believe the vehicle is transporting contraband or evidence.

Does this apply to only cars?

No - Plains, Trains, Motor Vehicles or other form of conveyances are included

What if I tow it to Storage Lot to search car after I make the stop?

If you had Probable Cause to search vehicle at road-side, this Probable Cause continues to exist and warrantless search exception continues to apply (Chambers v. Maroney)

Search Incident to Arrest

- A search incident to arrest is the thorough search of the suspect and his immediate area conducted contemporaneous to the arrest. The purpose of this search is to look for means to escape, prevent the destruction of evidence, and to secure any weapons.
- Under current case law, you can only search for evidence related to the crime the person is being arrested for. But you can seize all unrelated contraband found during your search. Just keep in mind if the arrest is for a suspended DL you likely will NOT be able to search the passenger compartment of a car pursuant to THIS exception.

Can this search be extended to an arrested person's entire home or entire vehicle?

No, but this may be able to be accomplished under purview of another warrantless search exception depending on circumstances.

Hot Pursuit

- Search of area and/or structure while in pursuit of a fleeing FELON can be conducted should the Officer have reason to believe the lack of action would pose harm to self, others or escape of suspect.
- Sounds Familiar – Same premise as Exigent Circumstance
 - 'Those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.'

Inventory (Custodial Search)

- Search of a person's property after he has been arrested and submitted for detention.
- This type of search would also apply to other scenarios such as inventorying a vehicle about to be towed that was involved in a wreck where the owner or driver is not present due to being transported to a hospital.
- This type of search is an administrative search done for the purpose of inventorying and securing the personal effects for safekeeping.
- Applies to arrested subject's VEHICLE also!
- This is an administrative function of policy whether it be personal or departmental policy. Must perform this function as matter of routine to establish policy.

Stop and Frisk

- A cursory “pat search” of the exterior clothing based on the Officer’s articulable Reasonable Suspicion that the subject may be armed and a crime has or may be committed.
- Terry v Ohio (Thank Officer McFadden, the good street cop in Cleveland for this exception)
- Whatever you feel, see, hear, smell or taste falls under PLAIN VIEW exception. Under the Plain View / “Plain Feel” exception it must be “IMMEDIATELY APPARENT” that the item was contraband. If its not already clear, the key words are “IMMEDIATELY APPARENT”, you can not for example manipulate the item for a few seconds until it finally dawns on you that its crack cocaine.

Open Field Doctrine

- Open fields encompass any open, undeveloped property that is not intimately used for dwelling (including curtilage) or business. Case Law reflects no warrant is required for such a search upon “suspicion.”
- Item of note: in Texas, the police (everybody but Feds) CANNOT commit criminal trespass (or any other criminal offense) to obtain evidence.

Abandoned Property

- Abandoned property is any property in which the owner relinquishes possession. When the property is abandoned, the owner no longer has any expectation of privacy over that property as protected by the Fourth Amendment.
- Abandoned property that is rendered accessible to other members of the public is equally accessible to the police. When a suspect flees from the police and throws down a bag of illegal drugs, the drugs were abandoned. A resident that removes trash from the curtilage of the residence and places it by the curb no longer has a privacy interest in it

Note: The abandonment cannot be as a result of improper police conduct. Such as a temporary detention or attempted temporary detention without at least reasonable suspicion. In summary, an officer can not use his/her authority to separate a person from their property, then search this property.

Administrative Searches

- Similar to the inventory search in that they are a conducted as result of established procedure. These searches are conducted for a non-evidence gathering purpose.
- Searches of subjects entering a Courthouse or Airport are examples of Administrative Searches. There are requisites that must be met prior to conducting an Administrative Search, such as showing the purpose is of “substantial” government interest.

Probation Search

- This exception exists and is founded on the ideal that a probationer waives some of their 4th Amendment protections as a condition of their acceptance of being placed on probation in place of incarceration.
- The actual probationary documents would need to be reviewed within your jurisdiction to verify this exception applies.
- As matter of practice this type of search should be conducted in the company of a probation officer or those working DIRECTLY with the probation officer.

Overview of Warrantless Search Exceptions

- Authority obtained via Case Law
- Several Exceptions can and often do apply
- Officer must be able to articulate and document the circumstances that warrant the warrantless search
- Officer must be legally present
- All senses can be used and apply to what you SEE, HEAR, SMELL, FEEL AND TASTE (taste rarely would be used – Hopefully!)

PECASHIS OAAP

- Plain view
- Exigent Circumstance
- Consent
- Auto exception
- Search incident to arrest
- Hot Pursuit
- Inventory
- Stop and Frisk

- Open Field
- Abandoned property
- Administrative
- Probationary search