Chapter 3

Search and Seizure

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3-1 INTRODUCTION

Article First, Section 7 of the Connecticut Constitution and the Fourth Amendment to the United States Constitution prohibit "unreasonable searches and seizures" and require that any search warrant be supported by probable cause.[2] Both provisions are meant to "protect personal privacy and dignity against unwarranted intrusion by the State."[3] The Connecticut Supreme Court has recognized that, generally, in determining whether Article First, Section 7 has been violated, the court "employ[s] the same analytical framework" as it would apply for the Fourth Amendment but that, in some circumstances, Article First, Section 7 "provides greater protections than those afforded under the federal constitution."[4] An appellate court's review of an allegedly unconstitutional search or seizure will be more probing than that of other fact-intensive issues.[5]

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[2.] U.S. Const., amend. IV; Conn. Const., art. I, § 7.

[3.] *Schmerber v. California*, 384 U.S. 757, 767 (1966).

[4.] *State v. Kelly*, 313 Conn. 1, 15 (2014).

[5.] *State v. Edmonds*, 323 Conn. 34, 38-39 (2016).

3-1:1 Defining Search and Standing

3-1:1.1 Generally

Not every government intrusion is a search under the State and federal constitutions. Rather, a search occurs when a government agent intrudes onto private property for the purposes of obtaining information[6] or when a government agent intrudes upon an individual's reasonable expectation of privacy.[7]

Whether an individual has a reasonable expectation of privacy in the thing or place searched or, in other words, whether the defendant has "standing," is determined by a two-part test.[8] First, the individual must have a subjective expectation of privacy.[9] There is no rigid test for determining the subjective prong, but our courts should look for conduct demonstrating an intent to preserve something as private and free from knowing exposure to others.[10] Second, that expectation must be objectively reasonable, that is, one society is prepared to acknowledge.[11] An individual does not have a reasonable expectation of privacy in items exposed to the public.[12] On a motion to suppress, the defendant bears

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6. *Florida v. Jardines*, 133 S. Ct. 1409, 1414 (2013) (holding that search occurred when officer used drug-sniffing dog on front porch of home because police intruded onto defendant's property for purpose of obtaining information about whether drugs were in house); *State v. Kono*, 324 Conn. 80, 121 (2016) (holding that a canine sniff outside front door of condominium to detect illegal drugs constituted a search under Connecticut Constitution).

7. *United States v. Jacobsen*, 466 U.S. 109, 113 (1984) (holding that a "'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed"); *Katz v. United States*, 389 U.S. 347, 351 (1967); *Town of Bozrah v. Chmurynski*, 303 Conn. 676, 684 (2012).

8. *Smith v. Maryland*, 442 U.S. 735, 740 (1979) (citing *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring)); *State v. Boyd*, 295 Conn. 707, 718 (2010).

9. *See Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring) (stating that a subjective expectation of privacy is demonstrated by action taken to keep objects, activities, or statements private); *State v. Houghtaling*, 326 Conn. 330, 341-42 (2017), *cert. denied*, 138 S. Ct. 1593 (2018).

10. *State v. Houghtaling*, 326 Conn. 330, 343-44, 348 (2017), *cert. denied*, 138 S. Ct. 1593 (2018).

11. *Katz v. United States*, 389 U.S. 347, 361 (1967) (holding warrantless wiretap of defendant's private conversation was an illegal search because defendant had a reasonable expectation of privacy in his phone conversation); *Minnesota v. Olson*, 495 U.S. 91, 100 (1990) (overnight guests have objective expectation of privacy in friend's home); *State v. Boyd*, 295 Conn. 707, 717-19 (2010) (citing *State v. Hill*, 237 Conn. 81, 92 (1996); *State v. Gonzales*, 278 Conn. 341, 349 (2006); *State v. Mooney*, 218 Conn. 85, 96 (1991), and *State v. Sealy*, 208 Conn. 689, 693 (1988)).

12. *Katz v. United States*, 389 U.S. 347, 351 (1967) ("What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment

the burden of proving that he has this type of constitutionally protected interest before the state must prove the constitutionality of its actions.[13]

The Connecticut Constitution, like the federal constitution, does not recognize the automatic standing doctrine.[14] That is to say, under both the Fourth Amendment and Article First, Section 7, there is no standing for defendants merely by virtue of having "a possessory interest in the items seized."[15] The defendant must establish an expectation of privacy in the area searched.[16]

While courts sometimes merge the inquiries of what constitutes a search and whether the individual had a reasonable expectation of privacy, others separate the inquiries. For example, in *United States v. Paulino*,[17] the Second Circuit found that, during an otherwise lawful search, an officer's examination of a packet containing counterfeit bills under an automobile mat constituted an additional search. However, the court found no Fourth Amendment violation as to that search because the defendant, a passenger in the vehicle who had secreted the packet while the police were questioning the driver, did not have a reasonable expectation of privacy in the area searched.[18]

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protection."); *State v. Santiago*, 224 Conn. 494, 503-04 (1993) (defendant had no reasonable expectation of privacy standing on unobstructed front porch in public view); *State v. DeFusco*, 224 Conn. 627, 636-37 (1993) (no reasonable expectation of privacy in garbage left on curb outside home).

13. *State v. Szepanski*, 57 Conn. App. 484, 487-88 (2000). If the defendant establishes standing, then the state bears the burden of proving that an exception to the warrant requirement applied. *See State v. Szepanski*, 57 Conn. App. 484, 487-88 (2000) (citing *Mincey v. Arizona*, 437 U.S. 385, 390-91(1978)). *See also* section 3-6 of this chapter.

14. *State v. Davis*, 283 Conn. 280, 320 (2007) (defendant lacked standing to challenge legality of search of a family member's apartment).

15. *United States v. Salvucci*, 448 U.S. 85, 93 (1980); *see also State v. Davis*, 283 Conn. 280, 320 (2007).

16. *United States v. Salvucci*, 448 U.S. 85, 93 (1980); *State v. Davis*, 283 Conn. 280, 320 (2007).

17. *United States v. Paulino*, 850 F.2d 93, 96-98 (2d. Cir. 1988).

18. *United States v. Paulino*, 850 F.2d 93, 96-98 (2d. Cir. 1988). *See also State v. Kinch*, 168 Conn. App. 62, 73-74, *cert. denied*, 323 Conn. 930 (2016) (automobile passengers who neither claim nor demonstrate a possessory interest in the auto generally lack a reasonable expectation of privacy).

3-1:1.2 GPS Devices

In *United States v. Jones*,[19] the United States Supreme Court held that the government's installation of a GPS device on the defendant's vehicle was a search within the meaning of the Fourth Amendment and therefore required a warrant.[20] The Court emphasized the physical intrusion of the GPS on defendant's car.[21]

3-1:1.3 Sense-Enhancing Technology

The Supreme Court has also held that the use of "sense-enhancing technology" to gain information regarding the interior of a home is a search.[22] The Court emphasized not the physical intrusiveness of the search, but the private nature of the home and the expectation of privacy from technology not widely available to the public.[23]

3-1:1.4 Canine Sniff

In *United States v. Place*,[24] the United States Supreme Court held that a canine sniff at an airport baggage area is not a search because it is "so limited both in the manner in which the information is obtained and in the content of the information. . . ."[25] However, in *Florida v. Jardines*,[26] the Court decided that, when the police bring a drug-sniffing dog onto a homeowner's front porch, the action constitutes a search and a trespass.[27] Following this precedent, the Connecticut Supreme Court recently held that article first,

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19. *United States v. Jones*, 132 S. Ct. 945 (2012).

20. *United States v. Jones*, 132 S. Ct. 945, 949 (2012).

21. *United States v. Jones*, 132 S. Ct. 945, 951 (2012).

22. *Kyllo v. United States*, 533 U.S. 27, 40 (2001) (use of thermal imaging to detect use of halide lights to grow marijuana constituted search).

23. *Kyllo v. United States*, 533 U.S. 27, 34 (2001) ("We think that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical 'intrusion into a constitutionally protected area,' constitutes a search—at least where . . . the technology in question is not in general public use.") (internal citation omitted).

24. *United States v. Place*, 462 U.S. 696 (1983).

25. *United States v. Place*, 462 U.S. 696, 707 (1983).

26. *Florida v. Jardines*, 133 S. Ct. 1409 (2013).

27. *See also United States v. Thomas*, 757 F.2d 1359, 1367 (2d Cir. 1985) ("the defendant had a legitimate expectation that the contents of his closed apartment would remain private, [and] that they could not be 'sensed' from outside his door. Use of the trained dog impermissibly intruded on that legitimate expectation.").

§ 7 of the state constitution prohibits the police from conducting a warrantless canine sniff of the front door of a condominium in a multiunit condominium complex, and the common hallway adjacent thereto, for the purpose of detecting marijuana inside the condominium.[28]

Connecticut appellate courts have also examined the propriety of canine sniffs in the somewhat different context of movable property such as a vehicle or a container holding contraband.[29] Similarly, in *Illinois v. Caballes*,[30] the United States Supreme Court upheld a canine sniff for drugs in the trunk of a car during a traffic stop, on the basis that there is no privacy interest under the Fourth Amendment in contraband.

3-1:1.5 Curtilage

An expectation of privacy in a home extends to the curtilage, the area immediately surrounding the home.[31] Courts determine the limits of curtilage based on four factors: (1) the proximity of the area to the home, (2) whether the area is included within an enclosure surrounding the home, (3) the nature of the uses to which the area is put and (4) the steps taken by the resident to protect the area from outside observers.[32] Courts utilize the four factors to determine "whether the area harbors the intimate activity associated with the sanctity of a man's home and the privacies of life."[33]

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28. *State v. Kono*, 324 Conn. 80, 94 (2017).

29. *State v. Waz*, 240 Conn. 365, 383-84 (1997) ("Accordingly, we are satisfied that even if a canine sniff examination of a mail parcel in the possession of the United States Postal Service implicates our state constitutional prohibition against unreasonable searches, the use of the technique was permissible in this case because it was minimally, if at all, intrusive of the defendant's legitimate privacy rights, and the officer conducting the canine sniff had a reasonable and articulable suspicion that the parcel contained illegal drugs."); *State v. Torres*, 230 Conn. 372, 380-84 (1994) (even if canine sniff of vehicle constituted a search, it was justified by reasonable suspicion).

30. *Illinois v. Caballes*, 543 U.S. 405, 407-09 (2005).

31. *Town of Bozrah v. Chmurynski*, 303 Conn. 676, 684 (2012) (recognizing that the area immediately surrounding a private house is protected by the Fourth Amendment); *State v. Ryder*, 301 Conn. 810, 824 (2011).

32. *United States v. Dunn*, 480 U.S. 294, 301 (1987); *see also State v. DeFusco*, 224 Conn. 627, 639 (1993) (warrantless search of curbside garbage containers permissible under article first, § 7, because there is no reasonable expectation of privacy).

33. *State v. Ryder*, 301 Conn. 810, 822-23 (2011) (internal quotation marks and citation omitted).

3-1:1.6 Conversations

The Connecticut Supreme Court has held that the Fourth Amendment does not apply to a conversation recorded by wiretap with the consent of one of the parties.[34] The Court followed federal law in reasoning that "[i]f the conduct and revelations of an agent operating without electronic equipment do not invade the defendant's constitutionally justifiable expectations of privacy, neither does a simultaneous recording of the same conversations made by the agent or by others from transmissions received from the agent to whom the defendant is talking and whose trustworthiness the defendant necessarily risks."[35] Our Supreme Court then decided that this practice also does not violate Article First, Section 7, of the state constitution.[36] The Court relied on the same reasoning that "one contemplating illegal activities must realize and risk that his companions may be reporting to the police."[37]

3-1:2 Defining Seizure

Under Connecticut law, "what starts out as a consensual encounter becomes a seizure [of a person] if, on the basis of a show of authority by the police officer, a reasonable person in the defendant's position would have believed that he was not free to leave."[38] Connecticut courts have recognized that this definition of seizure is not coextensive with the federal standard set forth in *California v. Hodari D.*,[39] which defines seizure as requiring

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34. *State v. Grullon*, 212 Conn. 195, 207-08 (1989).

35. *State v. Grullon*, 212 Conn. 195, 207-08 (1989) (quoting *United States v. Caceres*, 440 U.S. 741, 751 (1979) (internal quotation marks omitted)).

36. *State v. Shok*, 318 Conn. 699, 706-20 (2015).

37. *State v. Shok*, 318 Conn. 699, 712 (2015) (quoting *United States v. White*, 401 U.S. 745, 752 (1971) (plurality opinion) (internal quotation marks omitted). *See* section 3-2:4 for state statutory law governing use of wiretaps.

38. *State v. Oquendo*, 223 Conn. 635, 647-53 (1992); *see State v. Ostroski*, 186 Conn. 287, 291-92 (defendant was seized within the meaning of the Connecticut Constitution when he was brought to state barracks, separated from wife and child, lacked access to car, and was not permitted to leave after requests to do so), *cert. denied*, 459 U.S. 878 (1982); *see also State v. Burroughs*, 288 Conn. 836, 846 (2008) (no seizure occurred because officer's mere presence did not constitute the requisite show of authority sufficient to cause a reasonable person in defendant's position to believe he was not free to leave. Officers did not activate their overhead flashing lights, shine spotlights or activate sirens, or direct any verbal commands to defendant).

39. *California v. Hodari D.*, 499 U.S. 621, 626 (1991).

"either physical force . . . or . . . submission to the assertion of authority."[40]

A seizure of property occurs if the government's intrusion results in the "meaningful interference with an individual's possessory interests in that property."[41]

3-2 SEARCH WARRANTS

3-2:1 Introduction

3-2:1.1 Statutory Requirements Generally

A search is presumed to be unreasonable when it is conducted without a warrant supported by probable cause.[42] The issuance of a warrant is governed by Connecticut General Statute § 54-33a, which explains that "property" "includes, but is not limited to, documents, books, papers, films, recordings, records, data and any other tangible thing."[43]

A warrant may issue upon a finding of probable cause that property is "(1) possessed, controlled, designed or intended for use or which is or has been used or which may be used as the means of committing any criminal offense; or (2) which was stolen or embezzled; or (3) which constitutes evidence of an offense, or which constitutes evidence that a particular person participated in the commission of an offense, is within or upon any place, thing or person."[44]

Before a warrant may issue, the complainant must swear to an affidavit establishing the grounds for issuing the warrant.[45] If the

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40. *California v. Hodari D.*, 499 U.S. 621, 626 (1991); *see State v. Oquendo,* 223 Conn. 635, 646-49 (1992).

41. *United States v. Jacobsen*, 466 U.S. 109, 113 (1984) (warrantless seizure of a trace amount of the cocaine for testing was constitutionally reasonable because of minimal interference with possessory interest); *State v. Jackson*, 304 Conn. 383, 394 (2012) ("A seizure of property occurs when there is some meaningful interference with an individual's possessory interests in that property.") (internal quotation marks and citation omitted).

42. *State v. Kelly*, 313 Conn. 1, 16 (2014) (citing *Katz v. United States*, 389 U.S. 347, 356 (1967)).

43. Conn. Gen. Stat. § 54-33a(a). As Connecticut does not maintain standing grand juries, state law enforcement officials often utilize search warrants in the manner that federal law enforcement agents utilize grand jury subpoenas.

44. Conn. Gen. Stat. § 54-33a(b); *see also* Conn. Gen. Stat. § 54-33a(c) (providing similar requirements for obtaining a tracking device).

45. Conn. Gen. Stat. § 54-33a(c).

magistrate, or, in Connecticut, the judge or judge trial referee, finds that probable cause exists, he or she "shall issue a warrant identifying the property and naming or describing the person, place or thing to be searched."[46] In executing a search warrant at a home, the police must follow the common law knock and announce rule.[47]

3-2:1.2 Anticipatory Warrants

In *United States v. Grubbs*,[48] the United States Supreme Court held that the use of anticipatory warrants did not violate the Fourth Amendment. Anticipatory warrants, unlike regular warrants, are issued upon an affidavit indicating that there is probable cause to believe evidence will be found when the search is conducted though it may not be at the premises at the time the warrant issues.[49] The magistrate must determine "(1) that it is now probable that (2) contraband, evidence of a crime, or a fugitive will be on the described premises (3) when the warrant *is executed*."[50] Anticipatory warrants generally require some "triggering condition" to occur before the warrant may issue.[51] Under Connecticut law, the use of anticipatory warrants is lawful.[52]

3-2:1.3 Warrants for Searches of Media

The issuance of search warrants for property of journalists or news organizations is governed by Connecticut General Statutes §§ 54-33i and j.[53] Section 54-33j provides, "[n]o search warrant . . . may be issued to search any place or seize anything in the possession, custody or control of any journalist or news organization unless such warrant is issued upon probable cause that such person or organization has committed or is committing the offense related

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46. Conn. Gen. Stat. § 54-33a(c).

47. *State v. Ruscoe*, 212 Conn. 223, 236-37 (1989), *cert. denied*, 493 U.S. 1084 (1990); *see also* section 1-1:7 infra.

48. *United States v. Grubbs*, 547 U.S. 90 (2006).

49. *United States v. Grubbs*, 547 U.S. 90, 95 (2006).

50. *United States v. Grubbs*, 547 U.S. 90, 94-95, 96-97 (2006) (emphasis added).

51. *United States v. Grubbs*, 547 U.S. 90, 94-95 (2006).

52. *State v. Eure*, No. CR060156405, 2007 Conn. Super. LEXIS 947, at *2 (Apr. 18, 2007) (anticipatory search warrant effective after individual signed for packages of marijuana).

53. Conn. Gen. Stat. § 54-33i (setting forth relevant definitions for "Journalist," "News organization," and "News"); Conn. Gen. Stat. § 54-33j.

to the property named in the warrant or such property constitutes contraband or an instrumentality of a crime."[54]

3-2:2 Probable Cause

3-2:2.1 General Rule

"Probable cause, broadly defined, [comprises] such facts as would reasonably persuade an impartial and reasonable mind not merely to suspect or conjecture, but to believe that criminal activity has occurred."[55] Probable cause to search exists if there is both probable cause to believe an item sought to be seized is connected with criminal activity and probable cause to believe that the item will be found in the place to be searched.[56]

In determining whether probable cause exists under either the Fourth Amendment or Article First, Section 7 of the Connecticut constitution, courts must consider the totality of the circumstances.[57] Probable cause may be drawn from a variety of sources including the personal observations of law enforcement officials,[58] information from reliable informants,[59] or weapons and contraband seized during lawful stops based on reasonable suspicion.[60]

The magistrate must consider and assess all of the information set forth in the warrant affidavit and "should make a practical, nontechnical decision" as to whether "there is a fair probability that contraband or evidence of a crime will be found in a particular

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54. Conn. Gen. Stat. § 54-33j (cited in *State v. Esarey*, 308 Conn. 819, 829 (2013)).

55. *State v. Grant*, 286 Conn. 499, 511 (2008) (internal quotation marks and citation omitted).

56. *See Steagald v. United States*, 451 U.S. 204, 213 (1981); *United States v. Klump*, 536 F.3d 113, 119-20 (2d Cir. 2008); *State v. Shields*, 308 Conn. 678, 689-92 (2013); *State v. Johnson*, 286 Conn. 427, 444 (2008); *State v. Trine*, 236 Conn. 216, 235-36 (1996).

57. *State v. Johnson*, 286 Conn. 427, 444-50 (citing *State v. Barton*, 219 Conn. 529, 544 (1991)), *cert. denied*, 555 U.S. 883 (2008).

58. *See Texas v. Brown*, 460 U.S. 730, 742-43 (1983) (plurality opinion); *United States v. Steppello*, 664 F.3d 359, 364-65 (2d Cir. 2011) (finding probable cause to arrest when officer recognized conversation between informant and defendant as consistent with coded drug transactions and informant provided accurate predictive and descriptive information about the transaction).

59. *See Draper v. United States*, 358 U.S. 307, 313 (1959); *State v. Ruscoe*, 212 Conn. 223, 230-31 (1989) (finding informant's tip sufficient to establish probable cause when informant provided accurate descriptive information that was corroborated by police).

60. *United States v. Sharpe*, 470 U.S. 675, 683 (1985).

place."[61] In "testing the amount of evidence that supports probable cause, it is not the personal knowledge of the arresting officer, but the collective knowledge of the law enforcement organization at the time of the arrest that must be considered."[62] A magistrate may not consider information obtained in a prior illegal search.[63]

3-2:2.2 Particularity

The Connecticut Constitution provides that "no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be."[64] Similarly, the Fourth Amendment to the United States Constitution requires that a warrant "particularly describ[e] the place to be searched, and the persons or things to be seized."[65]

A warrant must contain a "precise description of what is sought to be seized, so that the judicial officer can determine whether a valid law enforcement purpose would be served by the seizure of all items fitting the description."[66] Evidence seized pursuant to an overbroad warrant is admissible only if the evidence corresponds to those portions of the warrant that are sufficiently particularized, can be "meaningfully severed," and are more than "insignificant or tangential."[67]

3-2:2.3 Informants

When a search warrant affidavit is based on information provided to the police by confidential informants, rather than on personal knowledge or observations, the Connecticut and federal Constitutions require a "totality of the circumstances" analysis of

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61. *State v. Grant*, 286 Conn. 499, 511 (2008) (internal quotation marks and citation omitted).

62. *State v. Butler*, 296 Conn. 62, 72 (2010) (quoting *State v. Batts*, 281 Conn. 682, 698 (2007)).

63. *Murray v. United States*, 487 U.S. 533, 547-48 (1988); *United States v. Trzaska*, 111 F.3d 1019, 1026 (2d Cir. 1997) (despite prior illegal entry, second search of premises lawful because affidavit contained sufficient probable cause to support warrant after striking information gained from illegal search).

64. Conn. Const., art. I, § 7.

65. U.S. Const., amend. IV.

66. *State v. Browne*, 291 Conn. 720, 730-31 (2009) (quoting *United States v. Stefonek*, 179 F.3d 1030, 1033 (7th Cir. 1999), *cert. denied*, 528 U.S. 1162 (2000)); *see also Groh v. Ramirez*, 540 U.S. 551, 561 (2004).

67. *United States v. George*, 975 F.2d 72, 79-80 (2d Cir. 1992).

the probable cause requirement.[68] The magistrate must examine the affidavit to determine whether it sufficiently explains the factual basis of the informant's knowledge and the informant's reliability.[69] If an affidavit does not specifically state how the informant gained knowledge or why law enforcement finds the informant credible, the magistrate may also consider all the circumstances set forth in the affidavit to determine whether "other objective indicia of reliability reasonably establish that probable cause to search exists."[70] When a named informant provides information against his penal interest, indicating his participation in criminal activity on multiple occasions in the recent past and which activity is unrelated to the crime for which he is currently in custody, a judge can reasonably credit that information as reliable.[71] Greater specificity and predictive information is required when the informant is anonymous.[72]

3-2:3 *Franks v. Delaware*[73]

In determining whether probable cause exists, magistrates must not use statements that are either knowingly false or exhibit a

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68. *Illinois v. Gates*, 462 U.S. 213, 233 (1983) (abandoning the two-prong *Aguilar-Spinelli* test in favor of a "totality of the circumstances" approach and stating that "[t]he 'two-pronged test' directs analysis into two largely independent channels—the informant's 'veracity' or 'reliability' and his 'basis of knowledge.' There are persuasive arguments against according these two elements such independent status. Instead, they are better understood as relevant considerations in the totality-of-the-circumstances analysis that traditionally has guided probable-cause determinations: a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability."); *State v. Johnson*, 286 Conn. 427, 435 (citing *State v. Barton*, 219 Conn. 529, 545 (1991) (finding under the "totality of the circumstances," magistrate had a "substantial basis" for concluding that probable cause existed to support issuance of search warrant based on hearsay information)), *cert. denied*, 555 U.S. 883 (2008).

69. *State v. Barton*, 219 Conn. 529, 542-43 (1991); *State v. Clark*, 297 Conn. 1, 7-8 (2010) (finding confidential informant tip reliable when it provided police with specific description of defendant's vehicle, including make, color, and license plate state).

70. *State v. Barton*, 219 Conn. 529, 544 (1991).

71. *State v. Flores*, 319 Conn. 218, 233 (2015), *cert. denied,* 136 S. Ct. 1529 (2016).

72. *Florida v. J.L.*, 529 U.S. 266, 270 (2000) (holding anonymous tip needs to be reliable in its assertion of illegality, not just in its tendency to identify suspect, to justify stop and frisk); *State v. Hammond*, 257 Conn. 610, 617-22 (2001) (finding anonymous tip lacked predictive information when tip only provided partial physical description of suspects' clothes and officers had been unable to corroborate allegations of drug dealing during surveillance). For additional discussion of probable cause, particularly in the context of probable cause to arrest, *see* Chapter 1, section 1-1:5.

73. *Franks v. Delaware*, 438 U.S. 154 (1978).

reckless disregard for the truth.[74] When the defendant makes a substantial preliminary showing that a false statement was necessary to the finding of probable cause, a *Franks* hearing must be held at the defendant's request.[75] Additionally, a defendant can attack a warrant for an alleged omission if the defendant can show that the affiant "(1) omitted [information] with the intent to make, or in reckless disregard of whether it made, the affidavit misleading to the issuing judge, and (2) material to the determination of probable cause."[76]

3-2:4 Wiretaps and Electronic Surveillance

Connecticut General Statutes §§ 54-41a through 54-41m govern the use of wiretaps and electronic surveillance.[77] Definitions for relevant terms are set forth in § 54-41a.[78] Section 54-41b provides that "[t]he Chief State's Attorney or the state's attorney . . . may make application to a panel of judges for an order authorizing the interception of any wire communication by investigative officers having responsibility for the investigation of offenses as to which the application is made."[79]

Applications for orders authorizing the interception of a wire communication must be made in writing upon oath or affirmation to a panel of three Superior Court judges specifically designated by the Chief Justice of the Supreme Court from time to time and must include specific information as listed in Connecticut General Statutes § 54-41c.[80] The order will be issued upon a unanimous finding of probable cause by the panel of judges.[81] Orders authorizing the interception of wire communications shall

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74. *State v. Grant*, 286 Conn. 499, 519-20 (2008). For additional discussion of *Franks*, *see* Chapter 1.

75. *See Franks v. Delaware*, 438 U.S. 154, 155-56 (1978); *State v. Grant*, 286 Conn. 499, 519-20 (2008); *State v. Mordowanec*, 259 Conn. 94, 99 n.6 (2002).

76. *State v. Grant*, 286 Conn. 499, 520 (2008) (internal quotation marks and citation omitted).

77. *See also State v. McVeigh*, 224 Conn. 593, 610 (1993) (holding that a "[w]ire communication" includes a conversation over a cordless telephone); *State v. Thompson*, 191 Conn. 360 (1983) (affirming trial court's suppression of a wiretap conducted in violation of minimization requirement).

78. Conn. Gen. Stat. § 54-41a.

79. Conn. Gen. Stat. § 54-41b.

80. Conn. Gen. Stat. § 54-41c.

81. Conn. Gen. Stat. § 54-41d; *see also State v. Ross*, 194 Conn. 447, 460-62 (1984).

be accompanied by a written statement of the panel specifying the scope of the order.[82] Any order entered must be executed pursuant to the stated written terms.[83] Orders may be extended no more than three times.[84] Applications for extensions must be made in accordance with the provisions of Connecticut General Statutes § 54-41c.[85]

No wire communications shall be intercepted over facilities that are being used, or are about to be used, or leased to, listed in the name of, or commonly used by a licensed physician, attorney-at-law or practicing clergyman.[86] Further, privileged wire communications maintain their privileged character and any evidence derived from privileged wire communications shall not be used for any purpose.[87]

Instructions on the recording of interception along with the sealing, custody and destruction of such recordings are set forth in Connecticut General Statutes § 54-41i.[88] The sealing, custody, storage and destruction of applications and orders is governed by Connecticut General Statutes § 54-41j.[89] Service of notice of interception, inspection of intercepted communications, applications and orders and postponement of service is governed by Connecticut General Statutes § 54-41k.[90]

An intercepted communication is only admissible as evidence when "each aggrieved person, not less than thirty days before such trial, hearing or proceeding, has been served with a copy of the court order, and accompanying application, under which the interception was authorized."[91] The statute allows for broad challenges so that any aggrieved person may move to suppress the contents of an intercepted wire communication, or evidence derived therefrom, if the communication was illegally obtained.[92]

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82. Conn. Gen. Stat. § 54-41e.
83. Conn. Gen. Stat. § 54-41f.
84. Conn. Gen. Stat. § 54-41g.
85. Conn. Gen. Stat. § 54-41g.
86. Conn. Gen. Stat. § 54-41h.
87. Conn. Gen. Stat. § 54-41h.
88. Conn. Gen. Stat. § 54-41i.
89. Conn. Gen. Stat. § 54-41j.
90. Conn. Gen. Stat. § 54-41k (cited in *State v. Formica*, 3 Conn. App. 477, 480 (1985)).
91. Conn. Gen. Stat. § 54-41l.
92. Conn. Gen. Stat. § 54-41m.

3-3 WARRANTLESS SEARCHES AND SEIZURES

3-3:1 Investigatory Stops and Frisks

Federal and Connecticut law allow law enforcement officials to engage in brief detentions or stops of a person with no warrant or probable cause when three conditions are met: (1) the law enforcement official must have reasonable suspicion that a crime has occurred, is occurring, or is about to occur; (2) the purpose of the stop must be reasonable; and (3) the scope and character of the detention must be reasonable in light of its purpose.[93] Under *Terry v. Ohio*,[94] law enforcement, in the course of an investigatory stop, may conduct a limited pat-down, or frisk, of the suspect when the officer has reason to believe the suspect poses a danger.[95]

3-3:1.1 What is a Stop?

Under Connecticut Constitution article first, §§ 7 and 9, a person is seized or stopped when a government agent's attempt to restrain the person "by means of physical force or a show of authority" would cause "a reasonable person [to believe] that he was not free to leave."[96] "The inquiry is objective, focusing on a reasonable person's probable reaction to the officer's conduct."[97]

Not every encounter between a police officer and a citizen is a stop or an intrusion requiring an objective justification.[98] "There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets."[99]

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93. *State v. Cyrus*, 297 Conn. 829, 837 (2010); *see also Terry v. Ohio*, 392 U.S. 1, 28-31 (1968); *State v. Benton*, 304 Conn. 838, 844-53 (2012); *State v. Jenkins*, 298 Conn. 209, 234-48 (2010); *State v. Clark*, 297 Conn. 1, 9-15 (2010); *State v. Batts*, 281 Conn. 682, 690-91 (2007); *State v. Colon*, 272 Conn. 106, 149-50 (2004).

94. *Terry v. Ohio*, 392 U.S. 1, 29-30 (1968).

95. *Terry v. Ohio*, 392 U.S. 1, 29-30 (1968).

96. *State v. Oquendo*, 223 Conn. 635, 647 (1992) (internal quotation marks and citations omitted).

97. *State v. Burroughs*, 288 Conn. 836, 846 (2008) (internal quotation marks and citations omitted).

98. *United States v. Mendenhall*, 446 U.S. 544, 553 (1980).

99. *Terry v. Ohio*, 392 U.S. 1, 34 (1968) (White, J., concurring). *See also Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177, 185 (2004) ("[i]n the ordinary course a police officer is free to ask a person for identification without implicating the Fourth Amendment.").

3-3:1.2 Reasonable Suspicion

Brief seizures or stops by law enforcement are lawful under both the Connecticut and federal constitutions so long as there is reasonable suspicion that an individual is engaged in criminal activity.[100] Reasonable suspicion exists when law enforcement have "specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion."[101]

Whether reasonable suspicion existed at the time of the search depends upon the "totality of the circumstances."[102] Several incidents of innocent activity taken together may meet the requirement.[103] Information from confidential or anonymous informants may also create reasonable suspicion subject to sufficient independent corroboration.[104] A suspect's presence in a high crime area, without more, does not justify an investigatory stop.[105] A suspect's flight from a crime scene upon seeing police presence, may, however justify a stop.[106] Race of a suspect alone cannot justify a stop.[107]

3-3:1.3 Scope and Purpose of the Stop

When a stop occurs, law enforcement officials may only act in ways reasonably related to the circumstances that originally justified the stop.[108] Officials may inquire as to a person's identity

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100. *United States v. Sokolow*, 490 U.S. 1, 7 (1989); *State v. Nash*, 278 Conn. 620, 632 (2006).

101. *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *see Ybarra v. Illinois*, 444 U.S. 85, 92-93 (1979); *State v. Oquendo*, 223 Conn. 635, 655 (1992) (no reasonable suspicion when officer based initial stop on a "hunch"); *State v. Lipscomb*, 258 Conn. 68, 75 (2001) (reasonable basis for investigative stop when police officers observed known prostitute enter defendant's vehicle).

102. *United States v. Cortez*, 449 U.S. 411, 417 (1981).

103. *United States v. Sokolow*, 490 U.S. 1, 3, 9 (1989) (finding reasonable suspicion where defendant's conduct matched several characteristics common to drug couriers including traveling to drug-source city, using alias, purchasing tickets with cash, not checking luggage, visible nervousness during trip and staying only 48 hours though round-trip flight was 20 hours, which considered together were inconsistent with innocent travel).

104. *See* section 3-2:2.3 on Informants.

105. *State v. Donahue*, 251 Conn. 636, 645, *cert. denied*, 531 U.S. 924 (1999) (reversing defendant's conviction because history of past criminal activity in locality did not justify police detention); *State v. Peterson*, 153 Conn. App. 358, 374 (2014) (remanding with direction to grant defendant's motion to suppress when only factor for stop was defendant's presence in drug trafficking area).

106. *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000); *State v. Benton*, 304 Conn. 838, 853 (2012) (suspect's attempted flight and nervous behavior justified stop).

107. *United States v. Brignoni-Ponce*, 422 U.S. 873, 885-86 (1975).

108. *United States v. Sharpe*, 470 U.S. 675, 682 (1985); *State v. Aillon*, 202 Conn. 385, 399-400 (1987) (*Terry* stop of defendant's vehicle reasonably related in scope to suspicion

and may request documentation to establish the identity.[109] Further, law enforcement may ask questions related to their suspicion.[110]

In a traffic stop, officers may engage in protective searches of the vehicle if they have a reasonable belief that the suspect poses a threat.[111] Further, in a lawful traffic stop no reasonable suspicion need exist for police to order an occupant out of the vehicle.[112] Roadside sobriety tests, although searches under the fourth amendment, may be justified by an officer's reasonable suspicion that the driver is intoxicated.[113] On the other hand, a valid stop for the purpose of investigating a traffic violation cannot be extended for the purpose of searching the car for narcotics.[114] "Authority for [a] seizure [based on a traffic violation] … ends when tasks tied to the traffic infraction are—or reasonably should have been—completed."[115]

If a suspect is held for longer than is necessary to effectuate the purpose of the stop, the stop becomes an arrest and must be supported by probable cause.[116] Whether a temporary stop has become an arrest is decided based on the factual circumstances surrounding the encounter.[117] Law enforcement officials are

when defendant's vehicle had been seen in the vicinity of the crime, which had only recently occurred, and defendant was not using headlights).

109. *State v. Mooney*, 218 Conn. 85, 128 (1991).

110. *Arizona v. Johnson*, 555 U.S. 323, 333 (2009).

111. *Michigan v. Long*, 463 U.S. 1032, 1051 (1983) (reasonable suspicion to search when police saw weapon in suspect's vehicle); *accord State v. Butler*, 296 Conn. 62, 69-75 (2010).

112. *Maryland v. Wilson*, 519 U.S. 408, 410 (1997) (no violation when officer ordered all passengers out of vehicle during lawful traffic stop).

113. *State v. Lamme*, 19 Conn. App. 594, 600-01 (1989), *aff'd*, 216 Conn. 172 (1990); *State v. Gracia*, 51 Conn. App. 4, 17-18 (1998).

114. *See Rodriguez v. United States*, 135 S. Ct. 1609 (2015) (traffic stop that concluded with issuance of warning to motorist could not be extended to conduct 'dog sniff' search of car in absence of reasonable suspicion justifying search for narcotics).

115. *Rodriguez v. United States*, 135 S. Ct. 1609 (2015).

116. *United States v. Brignoni-Ponce*, 422 U.S. 873, 880-81 (1975).

117. *United States v. Sharpe*, 470 U.S. 675, 685 (1985); *State v. Jenkins*, 298 Conn. 209, 232 (2010); *State v. Sward*, 124 Conn. App. 546, 553 (2010) ("Although a police officer cannot detain a motorist indefinitely, 'the Supreme Court has rejected attempts to impose a hard-and-fast time limit on *Terry* stops, in favor of a reasonableness inquiry where, [i]n assessing whether a detention is too long in duration to be justified as an investigative stop, [courts] consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. . . . A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing.'") (citation omitted).

not required to use the least restrictive means possible when effectuating a stop, but must act diligently to resolve their reasonable suspicion.[118] A longer detention may be reasonable in cases when the detainee's actions contributed to the lengthening of a stop.[119] Further, law enforcement may permissibly detain a suspect's companion incident to the lawful stop of the suspect if the officer reasonably believes the suspect poses a threat to his or her safety.[120]

3-3:1.4 Stop and Frisk

A police officer, in the course of an investigatory stop, may conduct a limited pat-down, or frisk, of a suspect's outer clothing otherwise known as a *Terry* stop.[121] Connecticut courts have emphasized the state's compelling interest in officer safety to justify the exception to the traditional probable cause and warrant requirement in a *Terry* stop.[122] An officer must have a reasonable belief that the suspect poses a threat to the officer's safety or the safety of others before conducting a frisk.[123] The frisk must be a search for weapons rather than evidence of a crime.[124]

3-3:2 Exigent Circumstances

Exigent circumstances are another exception to the warrant requirement.[125] Destruction of evidence and the "hot pursuit" of a suspect are commonly recognized exigencies. Courts must

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118. *United States v. Sharpe*, 470 U.S. 675, 687 (1985); *State v. Jenkins*, 298 Conn. 209, 235 (2010).

119. *United States v. Sharpe*, 470 U.S. 675, 687-88 (1985).

120. *State v. Kelly*, 313 Conn. 1, 20 (2014); *See* Case Comment, *Criminal Procedure- Fourth Amendment- Connecticut Supreme Court Upholds Suspicionless Street Stop of Suspect's Companion- State v. Kelly*, 95 A.3d 1081 (Conn. 2014), 128 Harv. L. Rev. 1003, 1007 (2014) (discussing the implications of *State v. Kelly* and noting that the Connecticut Supreme Court's approach in Kelly "reflect[s] a growing judicial tendency to look past the Fourth Amendment's warrant requirement . . . and apply instead the reasonableness balancing test.")

121. *Terry v. Ohio*, 392 U.S. 1, 27, 30 (1968).

122. *State v. Kelly*, 313 Conn. 1, 20 (2014).

123. *Terry v. Ohio*, 392 U.S. 1, 28 (1968); *State v. Jenkins*, 298 Conn. 209, 234 (2010).

124. *Terry v. Ohio*, 392 U.S. 1, 29-30 (1968).

125. *State v. Kendrick*, 314 Conn. 212, 227-28 (2014) ("[G]iven probable cause to arrest or search, exigent circumstances exist when, under the totality of the circumstances, the officer reasonably believed that immediate action was necessary to protect the safety of those present, or to prevent the flight of a suspect, or the destruction of evidence."); *see also United States v. Klump*, 536 F.3d 113, 118 (2d Cir. 2008).

consider the totality of the circumstances during the period immediately preceding the search in order to determine whether exigent circumstances existed before the warrantless search or seizure occurred.[126]

If the police reasonably believe that evidence is in imminent danger of being removed or destroyed they may conduct a warrantless search or seizure to preserve such evidence.[127] Courts often recognize exigencies with respect to drugs, which can be easily destroyed.[128]

Law enforcement may also secure a residence without a warrant to prevent the destruction or removal of evidence.[129] For example, the United States Supreme Court has held a restriction reasonable when (1) the police have probable cause to believe defendant's home contained evidence of a crime and contraband, (2) the police have a good reason to fear defendant would destroy evidence before they could return with a warrant, (3) the police make reasonable efforts to reconcile their law enforcement needs with demands of privacy, and (4) police impose restraint for limited period of time.[130]

If the police have probable cause to arrest a fleeing suspect, the exigency of hot pursuit may justify warrantless searches.[131] The Supreme Court has specified that the hot pursuit justification is

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126. *Kentucky v. King*, 131 S. Ct. 1849, 1858 (2011); *see also United States v. MacDonald*, 916 F.2d 766, 769-70 (2d Cir. 1990) (*en banc*) (among the factors a court must consider are: (1) the nature of the crime; (2) a belief that the suspect is armed; (3) probable cause that the suspect committed the crime; (4) likelihood suspect will be found in area to be searched; (5) whether suspect will escape; and (6) the peacefulness of the entry); *State v. Kendrick*, 314 Conn. 212, 237-38 (2014) (finding under totality of circumstances, officer's warrantless entry into bedroom justified when officers reasonably believed entry was necessary to protect the safety of others on premises).

127. *Kentucky v. King*, 131 S. Ct. 1849, 1857 (2011) (holding warrantless entry to prevent destruction of evidence reasonable); *Cupp v. Murphy*, 412 U.S. 291, 296 (1973) (warrantless taking of scrapings under defendant's fingertips was constitutionally permissible even though defendant was not under arrest because defendant was attempting to wipe his fingers clean and destroy evidence); *State v. Chesney*, 166 Conn. 630, 639-40 (1974) (taking of paraffin casts to check for gunshot residue did not violate Fourth Amendment).

128. *Kentucky v. King*, 131 S. Ct. 1849, 1857 (U.S. 2011).

129. *Illinois v. McArthur*, 531 U.S. 326, 329, 337 (2001) (holding restriction reasonable when after defendant's wife alerted officers to presence of marijuana one officer prevented defendant from re-entering premises while a second officer left to obtain warrant); *Fleming v. City of Bridgeport*, 284 Conn. 502, 521 (2007).

130. *Illinois v. McArthur*, 531 U.S. 326, 329, 337 (2001).

131. *Minnesota v. Olson*, 495 U.S. 91, 100 (1990).

only valid when there is an immediate and continuous pursuit of the suspect from the crime scene.[132]

The emergency doctrine is separate from the exigent circumstances exception and allows law enforcement to make a warrantless entry when they have "an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury."[133] Officers must have reason to believe that "life or limb is in immediate jeopardy and that the intrusion is reasonably necessary to alleviate the threat."[134]

3-3:3 Search Incident to Arrest

Incident to a lawful arrest, law enforcement may perform a warrantless search of both the arrestee's person and any items within the arrestee's immediate control.[135] In *United States v. Robinson*,[136] the Supreme Court held that, under the search incident to arrest exception, the officer was entitled to conduct not only a protective frisk for weapons, but also an extensive search of the suspect's person, despite the fact that the suspect was arrested for a minor driving offense. In *State v. Dukes*,[137] the Connecticut Supreme Court disagreed with *Robinson* and held that the Connecticut constitution imports a "reasonableness" requirement

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132. *United States v. Santana*, 427 U.S. 38, 42-43 (1976) (warrantless search of suspect justified by hot pursuit when suspect fled into house from porch after officers identified themselves as police); *State v. Santiago*, 224 Conn. 494, 498-99 (1993).

133. *State v. Fausel*, 295 Conn. 785, 794 (2010) (internal quotation marks and citation omitted); *see also State v. Kendrick*, 314 Conn. 212, 230-31 (2014); *State v. Blades*, 225 Conn. 609, 616 (1993).

134. *State v. Kendrick*, 314 Conn. 212, 230 (2014) (quoting *State v. Ryder*, 301 Conn. 810, 826 (2011)).

135. *State v. Jordan*, 314 Conn. 89, 100 (2014) (upholding trial court's determination that search of defendant's closet was lawful incident to his arrest when police reasonably believed a weapon may be in the closet and closet was within defendant's grabbing distance); *see also Chimel v. California*, 395 U.S. 752, 763 (1969) (holding that it was "reasonable for [an] arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape" and "to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction" and to search "the area into which an arrestee might reach in order to grab a weapon or evidentiary items" because a "gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested").

136. *United States v. Robinson*, 414 U.S. 218 (1973).

137. *State v. Dukes*, 209 Conn. 98, 120-21 (1988).

into the search incident to arrest exception.[138] Specifically, the court held, the propriety of a search incident to arrest "will depend upon what is reasonable to the officer at that time and permits the accomplishment of the purpose of neutralizing potentially available weapons."[139]

When the search incident to arrest concerns a recent occupant of a vehicle, the police may search the arrestee's vehicle under certain conditions.[140] Law enforcement may search the passenger compartment "when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle" or "when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search."[141] Further, the police may search any container within the suspect's reach only if the suspect is unsecured at the time of the search.[142] Thus, if the suspect (1) does not have access to the vehicle, or (2) there is not a "likelihood of discovering offense-related evidence" in the vehicle, law enforcement may not search the vehicle.[143]

The search incident to arrest exception to the warrant requirement does not extend to the search of digital information on a cell phone seized from an arrestee.[144] Law enforcement may,

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138. *State v. Dukes*, 209 Conn. 98, 120-21 (1988) ("Initially, we state that, to the extent that *Robinson* allows unlimited searches in contexts that extend beyond full custodial arrests, we disavow its holding concerning the level of protection to which individuals are entitled against unreasonable searches and seizures under article first, § 7, of the Connecticut constitution.").

139. *State v. Dukes*, 209 Conn. 98, 123 (1988).

140. *State v. Winfrey*, 302 Conn. 195, 211-12 (2011) (holding search of defendant's car after his arrest lawful because after law enforcement saw defendant swallow heroin probable cause existed to believe evidence of the crime would be found in the car); *State v. Wilson*, 111 Conn. App. 614, 625 (2008) (possession of salable quantities of narcotics on defendant's person upon leaving vehicle created probable cause to believe vehicle contained additional contraband).

141. *Arizona v. Gant*, 556 U.S. 332, 335, 343 (2009); *see also State v. Butler*, 296 Conn. 62, 71-72 (2010).

142. *Arizona v. Gant*, 556 U.S. 332, 343 (2009); *New York v. Belton*, 453 U.S. 454 (1981) (four suspects unsecured when removed from vehicle but not placed in squad car and not handcuffed and only one officer present).

143. *Arizona v. Gant*, 556 U.S. 332, 351 (2009) ("Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.").

144. *Riley v. California*, 134 S. Ct. 2473 (2014). For additional discussion of cell phone searches *see* section 3-3:9 on Searches of Digital Information.

however, search the physical aspects of the phone, such as the case of the cell phone.[145]

As incident to an in-home arrest, an officer may undertake a protective sweep of the area immediately adjoining the arrest if he "possesse[s] a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant[s] the officer in believing that the area swept harbored an individual posing a danger to the officer or others."[146] "The generalized possibility that an unknown, armed person may be lurking is not, however, an articulable fact sufficient to justify a protective sweep."[147]

3-3:4 Automobile Exception

Both Connecticut and federal law allow for warrantless search of an automobile so long as probable cause exists to believe it contains contraband or evidence of criminal activity.[148] "The justification for . . . [this] automobile exception is twofold: (1) the inherent mobility of an automobile creates exigent circumstances; and (2) the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office."[149]

> [A] warrantless search of an automobile may be deemed reasonable if it was: (1) made incident to a lawful arrest; (2) conducted when there was probable cause to believe that the car contained contraband or evidence pertaining to a crime; (3) based upon consent; or (4) conducted pursuant to an inventory of the car's contents incident to

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145. *Riley v. California*, 134 S. Ct. 2473, 2485 (2014).

146. *Maryland v. Buie*, 494 U.S. 325, 327 (1990) (internal quotation marks and citations omitted); *see also State v. Kendrick*, 314 Conn. 212, 229-30 (2014) (noting that protective sweep is proper when incident to arrest or when law enforcement is "present in a home under lawful process") (internal quotation marks and citation omitted).

147. *State v. Spencer*, 268 Conn. 575, 596 (2004).

148. *California. v. Carney*, 471 U.S. 386, 392-93 (1985); *United States v. Wilson*, 699 F.3d 235, 245-46 (2d Cir. 2012) (warrantless search of automobile valid because probable cause established by defendant driving vehicle registered to man arrested for drug possession, defendant admitted to lying about crossing border and defendant admitted he had drugs in his possession); *State v. Smith*, 257 Conn. 216, 228 (2001) (recognizing the automobile exception under both federal and Connecticut law).

149. *State v. Winfrey*, 302 Conn. 195, 203 (2011) (quoting *State v. Smith*, 257 Conn. 216, 228-29 (2001)).

> impounding the car."[150] The automobile exception extends to motor homes and portable campers.[151] Under the automobile exception, law enforcement may also search containers found in a vehicle if the police had probable cause to believe the vehicle contained contraband and that contraband fit into the container.[152]

Under a recent case, however, the automobile exception does not permit the warrantless entry of a the curtilage of a home—in this case the partially enclosed top portion of a driveway—in order to search a vehicle parked therein.[153]

Under Connecticut law, failure to wear seat belt is not probable cause for a vehicle search.[154]

3-3:5 Container Searches

Whether a search of a container occurs depends on whether there is a reasonable expectation of privacy in the interior of the container and its contents.[155] When an individual places an item in a closed, opaque container, that individual has a reasonable expectation of privacy in that container.[156] Law enforcement may not search such containers without a warrant unless some exception to the warrant requirement exists.[157] The law does not distinguish between types of containers so long as the contents of the container are not

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150. *State v. Winfrey*, 302 Conn. 195, 201 (2011) (citing *State v. Reddick*, 189 Conn. 461, 467 (1983)); *see also State v. Badgett*, 200 Conn. 412, 429, *cert. denied*, 479 U.S. 940 (1986).

151. *California. v. Carney*, 471 U.S. 386, 392-93 (1985).

152. *State v. Williams*, 311 Conn. 626, 639 (2014) ("[W]hen the police have probable cause to search [an] automobile under the automobile exception to the warrant requirement, they also [can] search any containers found in the vehicle that might hold the objects of their search.") (internal quotation marks and citation omitted); *State v. Dukes*, 209 Conn. 98, 104 (1988).

153. *Collins v. Virginia*, 138 S. Ct. 1663 (2018).

154. Conn. Gen. Stat. § 54-33m.

155. *State v. Boyd*, 295 Conn. 707, 719 (2010) ("[A]lthough the inquiry in determining whether there is a reasonable expectation of privacy involves an inquiry into the particular place invaded, when the search is of a [container] the principal "place" for fourth amendment purposes is the interior of the [container] and its contents.") (quoting *State v. Mooney*, 218 Conn. 85, 103-04 (1991)).

156. *State v. Mooney*, 218 Conn. 85, 97 n.10 (1991) (citing *Robbins v. California*, 453 U.S. 420, 426-27 (1981)).

157. *See* sections 3-3:3 and 3-3:4 on Search Incident to Arrest and the Automobile Exception for examples of lawful warrantless container searches.

exposed to the public.[158] If the police have reasonable suspicion that evidence of criminal activity or contraband is located in a movable container, the police may secure the container to prevent its loss or destruction or perform a canine sniff.[159]

3-3:6 Inventory Searches

Article First, Section 7 of the Connecticut Constitution requires police to obtain a warrant to search an automobile after it has been impounded by police.[160] In contrast, the United States Supreme Court has held that police may conduct a warrantless search of an impounded vehicle if the owner's diminished expectation of privacy is outweighed by the government's interest in satisfying one of three purposes: (1) to "serve to protect an owner's property while it is in the custody of the police," (2) "to insure against claims of lost, stolen, or vandalized property," and (3) "to guard the police from danger."[161] Inventory searches must be conducted pursuant to standardized criteria and procedures.[162]

3-3:7 Consent Searches

3-3:7.1 Voluntariness

Law enforcement may conduct a search without a warrant or probable cause based on an individual's consent so long as that consent is voluntary and came from someone authorized to give it.[163]

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158. *State v. Mooney*, 218 Conn. 85, 102 (1991) ("[I]t is the contents . . . of . . . closed containers in which a reasonable expectation of privacy may inhere, not the visible exterior or location of the containers."); *see also State v. Boyd*, 295 Conn. 707, 719 (2010) ("[I]n determining whether the defendant has a reasonable expectation of privacy in his cell phone, we focus on the contents of the cell phone, not on the cell phone itself or its visible exterior.").

159. *United States v. Place*, 462 U.S. 696, 701 (1983).

160. *State v. Miller*, 227 Conn. 363, 385 (1993) (declining to extend the automobile exception to validate warrantless search of an automobile that had been impounded at a police station).

161. *Colorado v. Bertine*, 479 U.S. 367, 372 (1987).

162. *South Dakota v. Opperman*, 428 U.S. 364, 375-76 (1976).

163. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973) ("We hold only that when the subject of a search is not in custody and the State attempts to justify a search on the basis of his consent, the Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact voluntarily given and not the result of duress or coercion, express or implied"); *State v. Jenkins*, 298 Conn. 209, 249 (2010) ("A warrantless search is not unreasonable under either the fourth amendment to the constitution of the United States or article first, § 7, of the constitution of Connecticut if a person with authority to do so has

"[M]ere acquiescence to a claim of lawful authority is not enough," rather, "[t]he question whether consent to a search has in fact been freely and voluntarily given, or was the product of coercion, express or implied . . . is a question of fact to be determined from the totality of all the circumstances."[164] Under Connecticut law, law enforcement must inform a suspect that refusal to consent will not automatically result in a warrant.[165] Finally, if an individual consents to a search in reliance upon a faulty warrant, that consent is invalid.[166] When consent is given after an illegal search of seizure, that consent is generally considered involuntary.[167] Consent may be withdrawn at any time.[168]

Age, educational background, and physical and mental conditions are all relevant in determining voluntariness.[169] Additionally, "while the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent."[170] Furthermore, that consent to search is given while a defendant is being detained does not make it per se involuntary.[171]

3-3:7.2 Scope

The scope of the search is limited by the scope of the consent given.[172] The consent given is measured by what a reasonable person

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freely consented to the search. . . .") (quoting *State v. Azukas*, 278 Conn. 267, 275 (2006)); *see also United States v. Elliott*, 50 F.3d 180, 186 (2d Cir. 1995); *State v. Nowell*, 262 Conn. 686, 699 (2003) ("It is . . . well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search [or seizure] that is conducted pursuant to consent.") (internal quotation marks and citation omitted).

164. *State v. Jenkins*, 298 Conn. 209, 249-50 (2010) (quoting *State v. Azukas*, 278 Conn. 267, 275 (2006)); *see also United States v. Wilson*, 11 F. 3d 346, 351 (2d Cir. 1993); *State v. Brunetti*, 279 Conn. 39, 69 (2006).

165. *See State v. Martinez*, 49 Conn. App. 738, 745 (holding that police statement that if person did not give consent they would apply for a warrant was not inherently coercive), *cert. denied*, 247 Conn. 934 (1998).

166. *Bumper v. North Carolina*, 391 U.S. 543, 549 (1968).

167. *Bumper v. North Carolina*, 391 U.S. 543, 548-49 (1968).

168. *State v. Reagan*, 209 Conn. 1, 14 (1988).

169. *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973).

170. *State v. Jenkins*, 298 Conn. 209, 251 (2010) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 249 (1973)).

171. *State v. Jenkins*, 298 Conn. 209, 251 (2010).

172. *State v. Jenkins*, 298 Conn. 209, 255 (2010) (citing *Florida v. Jimeno*, 500 U.S. 248 (1991)).

would have understood based upon the interactions between the officer and the consenting party.[173]

3-3:7.3 Third-Party Consent

A third party may consent to a search if that party has common authority, such as through joint access.[174] While "'an invited guest residing even temporarily in a private residence . . . may [have] a reasonable expectation of privacy in the premises . . . the [owner] clearly [has] the authority to consent' to the police entry into his home."[175] Under federal precedent, landlords generally do not have common authority over apartments they lease, but do have common authority over common areas.[176]

A parent may consent to a police search of a home that is effective against a child if the child is residing in the home with the parents.[177] To overcome this authority, the child must establish "sufficiently exclusive possession of the room to render the parent's consent ineffective."[178]

If an inhabitant of a dwelling is physically present and objects to the search, there is no valid consent regardless of the permission of a fellow occupant.[179] In *Georgia v. Randolph*, the defendant "unequivocally refused" to allow the search of his home.[180] After his wife consented, the police entered the home and found drug paraphernalia in plain view, and based on that evidence, the police obtained a warrant to search the rest of the home.[181] The Court

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173. *State v. Jenkins*, 298 Conn. 209, 255-59 (2010); *see also Florida v. Jimeno*, 500 U.S. 248, 250-51 (1991) (objectively reasonable for officer to assume consent to search car for narcotics included consent to search of containers in car).

174. *See, e.g., State v. Azukas*, 278 Conn. 267, 277 (2006); *State v. Jones*, 193 Conn. 70, 79-80 (1984); *State v. Zindros*, 189 Conn. 228, 243 (1983) (citing *United States v. Matlock*, 415 U.S. 164, 171 (1974)); *see also United States v. Davis*, 967 F.2d 84, 87 (2d Cir. 1992) (third-party consent requires (1) access, and (2) either (a) common authority over area, or (b) a substantial interest in the area, or (c) permission to gain access).

175. *State v. Azukas*, 278 Conn. 267, 277 (2006) (quoting *State v. Edwards*, 214 Conn. 57, 74-75 (1990)).

176. *See Chapman v. United States*, 365 U.S. 610, 616-18 (1961); *United States v. Kellerman*, 431 F.2d 319, 324 (2d Cir. 1970).

177. *State v. Azukas*, 278 Conn. 267, 278 (2006).

178. *State v. Azukas*, 278 Conn. 267, 278 (2006) (internal quotation marks and citation omitted).

179. *Georgia v. Randolph*, 547 U.S. 103 (2006).

180. *Georgia v. Randolph*, 547 U.S. 103, 107 (2006).

181. *Georgia v. Randolph*, 547 U.S. 103, 107 (2006).

held that evidence obtained in execution of that warrant was fruit of an invalid consent search because the defendant was present and objecting at the time of the first entry.[182] After an occupant is lawfully removed from the premises, the co-occupant of his home may consent to a search of the home, even after the occupant's express objection prior to his removal.[183]

3-3:7.4 Apparent Authority

A warrantless entry by police pursuant to the "apparent authority" of another is valid under Connecticut law in limited circumstances.[184] The police must have a reasonable belief that the consenting third party has common authority over the premises.[185] The reasonableness of the belief is measured by an objective standard and the police must make appropriate inquiry given the factual circumstances.[186]

3-3:8 Plain View

3-3:8.1 General Rule

An individual does not have a reasonable expectation of privacy in what he or she knowingly exposes to the public.[187] Thus, the police may, during a lawful search, seize objects that are obviously

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182. *Georgia v. Randolph*, 547 U.S. 103, 106 (2006).

183. *Fernandez v. California* 134 S. Ct. 1126, 1130, 1133-34 (2014).

184. *State v. Azukas*, 278 Conn. 267, 275 (2006) (holding warrantless search of defendant's bedroom lawful because girlfriend's father owned home and consented to search).

185. *State v. Buie*, 312 Conn. 574, 581-82 (2014) (defendant's girlfriend's apparent consent valid; police reasonably believed girlfriend possessed common authority over the premises because girlfriend told police she lived there and kept personal items in apartment); *see also Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990).

186. *State v. Buie*, 312 Conn. 574, 582-83 (2014).

187. *Katz v. United States*, 389 U.S. 347, 351 (1967) ("What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection."); *State v. Pittman*, 209 Conn. 596, 602 (1989) (defendant did not have reasonable expectation of privacy in his wife's car after giving his only set of car keys to hostile sister-in-law); *but see State v. Jackson*, 304 Conn. 383, 408 (2012) (holding that "when the police have lawfully seized for safekeeping an item that the owner has left in the open, not by choice but by necessity, and the police know who the owner is, the owner of the item has not relinquished any expectation that the item's hidden information will remain private"); *State v. Joyce*, 229 Conn. 10, 15 (1994) (warrantless chemical analysis of defendant's clothing from scene of crime violated Connecticut constitution).

incriminatory and in "plain view" without a warrant.[188] As a general rule, the warrantless seizure of contraband that is in plain view is justified if 1) the initial intrusion is lawful, and 2) the police had probable cause to believe that the items seized were contraband or stolen goods.[189] In addition, the incriminating character of the evidence seized must be immediately apparent and police may not disturb or further investigate an item to discern its evidentiary value without probable cause.[190] Inadvertence is not required if the items seized fall under the category of contraband, stolen property or objects dangerous in themselves.[191]

3-3:8.2 Plain Touch

In *Minnesota v. Dickerson*, the United States Supreme Court expanded the plain view doctrine to include plain touch.[192] Connecticut courts have also recognized the plain touch doctrine and have upheld seizures of incriminatory evidence when officers have immediately recognized an item as contraband based only on touch.[193]

3-3:9 Lawful Temporary Seizure Later Supported by Probable Cause

When the police have lawfully seized personal property without a warrant on a temporary basis for a noninvestigatory purpose, such as seizing a knife for safekeeping, and then, while the item is still in their possession, develop probable cause to believe that

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188. *See Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971); *State v. Eady,* 249 Conn. 431, 436-37 (1999); *see also State v. Ryder*, 301 Conn. 810, 826 (2011) ("The police may seize any evidence that is in plain view during the course of the search pursuant to [their] legitimate emergency activities.").

189. *State v. Eady,* 249 Conn. 431, 436-37 (1999).

190. *Horton v. California*, 496 U.S. 128, 136 (1990) (weapons discovered during course of lawful search for stolen property lawfully seized under plain view doctrine); *Arizona v. Hicks,* 480 U.S. 321, 334-35 (1987) (plain view doctrine did not apply to warrantless search held unlawful when officer moved stereo to see serial numbers); *see also Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993); *United States v. Gamble*, 388 F.3d 74, 77 (2d Cir. 2004); *State v. Brown*, 279 Conn. 493, 522 n.9 (2006).

191. *State v. Eady*, 249 Conn. 431, 437 n.7 (1999).

192. *Minnesota v. Dickerson*, 508 U.S. 366, 379 (1993) (in light of state court's findings that the officer determined lump in suspect's pocket was contraband *after* squeezing and sliding the outside of defendant's pocket, the Supreme Court held that the police overstepped the bounds of the strictly circumscribed search for weapons allowed in *Terry*).

193. *State v. Trine*, 236 Conn. 216, 228 (1996) (no violation of Connecticut constitution when illegal nature of item immediately apparent upon weapons frisk).

the item is evidence of a crime, they are not required to obtain a warrant to retain the item as evidence.[194] The seizure is analogous to one undertaken under the plain view doctrine. [195]

3-4 MISCELLANEOUS WARRANTLESS AND STATUTORY SEARCHES

3-4:1 Searches Involving Technical Devices or Digital Information

Starting with *United States v. Knotts,*[196] the United States Supreme Court has decided a series of cases involving technical devices or digital information. In *Knotts,* the Court found that police use of a radio transmitter to track the movement on public roads of a suspect's car was not a Fourth Amendment search or seizure because "[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another."[197] The Court limited *Knotts* in *United States v. Karo,*[198] in which the Court disapproved of the warrantless tracking by radio transmitter of a defendant's movements transmitted by a beeper inside a private home. The Court condemned the government's use of information that it could not obtain "by observation from outside the curtilage of the house."[199]

The technology in question in *Kyllo v. United States*[200] was heat imaging, which allowed the police to see that a wall of the suspect's home was emitting abnormally high amounts of heat, thus suggesting a marijuana grow operation. The Court found that the use of sense-enhancing technology not in general public use was a search under the Fourth Amendment.[201] The Supreme

194. *State v. Jones*, 320 Conn. 22, 60-71 (2015).

195. *State v. Jones*, 320 Conn. 22, 65-68 (2015).

196. *United States v. Knotts*, 460 U.S. 276 (1983).

197. *United States v. Knotts,* 460 U.S. 276, 281 (1983). The radio transmitter tracked a signal from a beeper placed in a container with the container owner's consent. The suspect did not challenge the fact that the container ended up in the car. *See United States v. Jones*, 132 S. Ct. 945, 952 (2012); *United States v. Knotts*, 460 U.S. 276, 278-79 (1983).

198. *United States v. Karo*, 468 U.S. 705 (1984).

199. *United States v. Karo* 468 U.S. 705, 715 (1984).

200. *Kyllo v. United States*, 533 U.S. 27 (2001).

201. *Kyllo v. United States*, 533 U.S. 27, 34 (2001).

Court stated: "[w]hile the technology used in the present case was relatively crude, the rule we adopt must take account of more sophisticated systems that are already in use or in development."[202] Then, in *United States v. Jones,*[203] the Court employed a different rationale and concluded that the attachment of a GPS device to a suspect's vehicle was an unlawful trespass to property and therefore constituted a search that must satisfy the Fourth Amendment.[204]

In 2014, in *Riley v. California,*[205] the Supreme Court held that the warrantless search incident to arrest of a cell phone's contents and digital data violated the Fourth Amendment.[206] The Court explained that under the Fourth Amendment's reasonableness test the two rationales underlying the search incident to arrest exceptions (officer safety and destruction of evidence) do not outweigh the intrusiveness of the warrantless search of digital information in a cell phone.[207] Further, the Court emphasized the great deal of personal, intimate information found in an individual's cell phone.[208]

Under General Statutes section 54-47aa, a court may issue an "ex parte order" to a telecommunications carrier to disclose call-identifying information or to a provider of electronic communication service or remote computing service to disclose basic subscriber information.[209] The court shall grant such an order if the law enforcement applicant shows a "reasonable and articulable suspicion that a crime has been or is being committed or that exigent circumstances exist and such call-identifying or basic subscriber information is relevant and material to an

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202. *Kyllo v. United States*, 533 U.S. 27, 36 (2001).

203. *United States v. Jones*, 132 S. Ct. 945 (2012).

204. The Court stated that *Katz* was not the exclusive test of whether a search took place and that whether a trespass or physical intrusion occurred was an additional test. *United States v. Jones*, 132 S. Ct. 945, 953-54 (2012).

205. *Riley v. California*, 134 S. Ct. 2473 (2014).

206. *Riley v. California*, 134 S. Ct. 2473, 2485 (2014).

207. *Riley v. California*, 134 S. Ct. 2473, 2484-92 (2014).

208. *Riley v. California*, 134 S. Ct. 2473, 2491 (2014) ("Indeed, a cell phone search would typically expose to the government far more than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form—unless the phone is.").

209. Conn. Gen. Stat. § 54-47aa.

ongoing investigation."[210] However, if law enforcement seeks the "content of such subscriber's or customer's communications" or "geo-location data," which is defined in part as "information concerning the location of an electronic device," it must show "probable cause to believe that a crime has been committed or is being committed ... ."[211] A recent United States Supreme Court case establishes that the showing of probable cause for geo-location data, even when obtained from a third-party wireless carrier, is constitutionally mandated.[212]

Similarly, if the law enforcement officer seeks to "install or otherwise use" a "cell site simulator device" to obtain geo-location data, as opposed to obtaining this information from a telecommunications carrier, the officer must, pursuant to a 2017 amendment to the statute, obtain an ex parte order on a showing of probable cause.[213] If the officer has exigent circumstances and a factual basis, the officer may use a cell site simulator device for up to 48 hours before obtaining an ex parte order.[214]

3-4:2 Strip Searches

Connecticut General Statutes §§ 54-33k through l set forth the procedure to be followed for strip searches. Section 54-33k defines a strip search as "having an arrested person remove or arrange some or all of his or her clothing or, if an arrested person refuses to remove or arrange his or her clothing, having a peace officer or employee of the police department remove or arrange the clothing of the arrested person so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments

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210. Conn. Gen. Stat. § 54-47aa(b).

211. Conn. Gen. Stat. § 54-47aa(b). "Geo-location data" includes information obtained by a "cellular telephone surveillance device," or a "cell site simulator device," which is sometimes known as a "Sting Ray." Public Acts 2017, No. 17-221, § 2 (codified in Conn. Gen. Stat. § 54-47aa(6) (Rev. to 2018 Supp.)). *See State v. Edwards*, 325 Conn. 97, 118-33 (2017) (evidence of the location of a cell phone derived from cell phone tower analysis requires expert testimony and a hearing pursuant to *State v. Porter*, 241 Conn. 57 (1997)).

212. *Carpenter v. United States*, 138 S. Ct. 2206 (2018).

213. Public Acts 2017, No. 17-221, § 2 (codified in Conn. Gen. Stat. § 54-47aa) (c)(1) (Rev. to 2018 Supp.)).

214. Public Acts 2017, No. 17-221, § 2 (codified in Conn. Gen. Stat. § 54-47aa)(c) (2) (Rev. to 2018 Supp.)).

used to clothe said anatomical parts of the body."[215] A strip search cannot be performed if a person is arrested for a motor vehicle violation or a misdemeanor, "unless there is reasonable belief that the individual is concealing a weapon, a controlled substance or contraband."[216] A search warrant is required for any search of a body cavity other than the mouth.[217] The warrant "authorizing a body cavity search shall specify that the search is required to be performed under sanitary conditions and conducted either by or under the supervision of a person licensed to practice medicine. . . ."[218] The statute also requires the strip search to be performed by a person of the same sex as the arrested person in a location that cannot be observed by persons not conducting the search or "absolutely necessary to conduct the search."[219] Finally, "[a]ny peace officer or employee of a police department conducting a strip search shall (1) obtain the written permission of the police chief or an agent thereof designated for the purposes of authorizing a strip search in accordance with this section and section 54-33k and (2) prepare a report of the strip search."[220]

3-4:3 Special Needs Searches

3-4:3.1 Generally

Searches that achieve a government "special need" and that are generally conducted by public officials other than police are another exception to the warrant and probable cause requirements. Normal law enforcement needs are insufficient to justify a warrantless "special-needs" search,[221] but some "special law enforcement concerns will sometimes justify [such searches] without individualized suspicion."[222]

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215. Conn. Gen. Stat. § 54-33k; *see also State v. Robinson*, 105 Conn. App. 179, 199 (2008) (proper strip search conducted under § 54-33k).

216. Conn. Gen. Stat. § 54-33l(a).

217. Conn. Gen. Stat. § 54-33l(b).

218. Conn. Gen. Stat. § 54-33l(b).

219. Conn. Gen. Stat. § 54-33l(c).

220. Conn. Gen. Stat. § 54-33l(d).

221. *State v. Russo*, 259 Conn. 436, 472 n.43 (2002) ("[T]he claimed justification for breaching the individual's otherwise reasonable expectation of privacy under a special needs rationale is a special need to do so that is beyond the needs of ordinary law enforcement.").

222. *Illinois v. Lidster*, 540 U.S. 419, 424 (2004).

3-4:3.2 Drug and Alcohol Testing

One such recognized "special need" upheld by the United States Supreme Court is suspicionless drug testing of government employees and public school students. Government employees' privacy interests are outweighed by public safety, justifying testing.[223]

3-4:3.3 Traffic Check Points

The use of routine traffic check points by law enforcement is another example of a permissible special-needs, warrantless search.[224]

3-4:3.4 Searches in Public Schools

Similarly, public school students have a reduced expectation of privacy.[225] Intrusive searches, however, require particularized suspicion of wrongdoing.[226] Connecticut General Statute section 54-33n governs the search of school lockers and property. It provides:

> All local and regional boards of education and all private elementary and secondary schools may authorize the search by school or law enforcement officials of lockers and other school property available for use by students for the presence of weapons, contraband or the fruits of a crime if (1) the search is justified at its inception and (2) the search as actually conducted is reasonably related

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223. *United States v. Lifshitz*, 369 F.3d 173, 183 (2d Cir. 2004).

224. *See Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 455 (1990) (intrusion on motorists stopped for approximately 25 seconds at sobriety checkpoints reasonable in light of state interests, despite lack of individualized suspicion); *State v. Longo*, 243 Conn. 732, 734 (1998) (example of use of routine automobile check point in Connecticut).

225. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 650-51, 664-65 (1995) (finding school's warrantless drug testing of athletes reasonable when results used only for school purposes and not provided to law enforcement); *United States v. Lifshitz*, 369 F.3d 173, 183 (2d Cir. 2004).

226. *Safford Unified Sch. Dist. v. Redding*, 557 U.S. 364, 371 (2009) (search of student's backpack reasonable when school officials suspected wrongdoing, but strip search of student unreasonably intrusive); *New Jersey v. T.L.O*, 469 U.S. 325, 342, 345-46 (1985) (probable cause not required for search of purse because teacher's report that student had been smoking in bathroom provided reasonable suspicion to believe purse contained evidence).

> in scope to the circumstances which justified the interference in the first place.[227]

The statute also states that a search is justified at its inception "when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."[228] Further, the statute explains that "[a] search is reasonably related in scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction."[229]

3-4:3.5 DNA Samples

In *Maryland v. King*,[230] the United States Supreme Court held that "[w]hen officers make an arrest supported by probable cause to hold for a serious offense and they bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment."[231] Connecticut General Statute section 54-102g authorizes law enforcement to take a DNA sample from anyone arrested or convicted of a serious felony to maintain in a DNA bank.[232] The statute has been interpreted as constitutionally permitting law enforcement to use reasonable force to obtain a DNA sample.[233]

3-4:3.6 Blood Samples

There is no per se exigency that justifies a warrantless blood test of a drunk-driving suspect.[234] The Fourth Amendment requires law enforcement to obtain a warrant before taking a blood sample.[235]

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227. Conn. Gen. Stat. § 54-33n (cited in *Burbank v. Canton Bd. of Educ.*, CV094043192S, 2009 Conn. Super. LEXIS 2524, at *12 (Conn. Super. Sept. 14, 2009)).

228. Conn. Gen. Stat. § 54-33n.

229. Conn. Gen. Stat. § 54-33n.

230. *Maryland v. King*, 133 S. Ct. 1958 (2013).

231. *Maryland v. King*, 133 S. Ct. 1958, 1980 (2013).

232. Conn. Gen. Stat. § 54-102g.

233. *State v. Drakes*, 321 Conn. 857, 865-66 (2016); *State v. Banks*, 321 Conn. 821, 844-48 (2016).

234. *Missouri v. McNeely*, 133 S. Ct. 1552 (U.S. 2013).

235. *Missouri v. McNeely*, 133 S. Ct. 1552, 1561 (U.S. 2013).

Under Connecticut case law, a search warrant for a blood sample supported by probable cause satisfies the requirements of the Fourth Amendment.[236]

3-4:3.7 Administrative Search Warrants

General Statutes § 19a-220 authorizes the issuance of an administrative search warrant for suspected violations of local ordinances pertaining to the protection of public health when a property owner or occupant refuses to obey an order of inspection given by a director or board of health.[237] The standard of probable cause for a search of a particular dwelling or building under this statute is not the "diluted probable cause standard" for routine, area-wide administrative searches and inspections set forth in *Camara v. Municipal Court*.[238] Rather, the standard is more akin to the "traditional standard of probable cause used in criminal cases" and requires "reasonably trustworthy information … sufficient to cause a reasonable person to believe that conditions constituting a violation of ... ordinances are present on the subject property."[239] Application of this standard in an ex parte setting satisfies the state constitution.[240]

3-5 EXCLUSIONARY RULE

3-5:1 Good Faith Exception

A good faith exception to the warrant requirement does not exist under Connecticut law.[241] Consequently, evidence obtained as a result of a search based on a faulty warrant must ordinarily be suppressed regardless of an officer's good faith belief that the search was lawful.[242] The Connecticut Supreme Court has also rejected a good faith exception to the exclusionary rule in

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236. *State v. Grant*, 286 Conn. 499, 513 (2008).

237. *State v. Saturno*, 322 Conn. 80, 91-95 (2016).

238. *Camara v. Mun. Court*, 387 U.S. 523 (1967).

239. *State v. Saturno*, 322 Conn. 80, 97-98 (2016) (quoting *Bozrah v. Chmurynski*, 303 Conn. 676, 687-88 (2012)). *See also Bozrah v. Chmurynski*, 303 Conn. 676, 687-88 (2012) (zoning inspections).

240. *See State v. Saturno*, 322 Conn. 80, 101-13 (2016).

241. *State v. Marsala*, 216 Conn. 150 (1990); *cf. United States v. Leon*, 468 U.S. 897 (1984) (good faith exception under federal law).

242. *State v. Marsala*, 216 Conn. 150 (1990).

the warrantless context and held that all "evidence derived from an unlawful warrantless entry into the home [must] be excluded unless the taint of the illegal entry is attenuated by the passage of time or intervening circumstances."[243] Exceptions to the general suppression requirement are discussed below.

3-5:2 Fruit of the Poisonous Tree

The exclusionary rule applies not only to primary evidence obtained as a result of an illegal search or seizure, but also to "evidence later discovered and found to be derivative of an illegality."[244] Connecticut courts have held that "[i]t is axiomatic that [u]nder the exclusionary rule, evidence must be suppressed if it is found to be the fruit of prior police illegality."[245] However, the evidence might be admissible under the inevitable discovery rule, independent source doctrine, or new crimes exception, which are discussed below.

3-5:3 Inevitable Discovery Rule

Under Connecticut and federal law, if evidence is illegally secured in violation of the defendant's constitutional rights, it need not be suppressed if the state demonstrates by a preponderance of the evidence that the evidence would have been inevitably discovered by lawful means and that the lawful means were being actively pursued prior to the occurrence of the constitutional violation.[246] The inevitable discovery rule assumes that if law enforcement had conducted the search lawfully, the evidence at issue would have been discovered.[247]

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243. *State v. Geisler*, 222 Conn. 672, 690 (1992). In contrast, under the federal exclusionary rule, statements obtained as a result of an illegal warrantless home arrest need not be suppressed if there was probable cause for the arrest. *See State v. Liam M.*, 176 Conn. App. 807, 820-21, *cert. denied*, 327 Conn. 978 (2017) (citing *New York v. Harris*, 495 U.S. 14, 20-21 (1990)).

244. *Segura v. United States*, 468 U.S. 796, 804 (1984).

245. *State v. Boyd*, 295 Conn. 707, 717 (2010) (quoting *State v. Santos*, 267 Conn. 495, 511 (2004)).

246. *Nix v. Williams*, 467 U.S. 431 (1984); *State v. Cobb*, 251 Conn. 285, 337-39 (1999), *cert. denied*, 531 U.S. 841 (2000); *State v. Badgett*, 200 Conn. 412, 433 (1986).

247. *State v. Cobb*, 251 Conn. 285, 337-39 (1999) (citing *Murray v. United States*, 487 U.S. 533, 539 (1988)), *cert. denied*, 531 U.S. 841 (2000). *See also Skakel v. Comm'r of Correction*, 325 Conn. 426, 526 (2017) (government can use a subpoena issued prior to alleged unlawful police activity to establish the inevitable discovery exception).

3-5:4 Independent Source Doctrine

Similarly, under Connecticut and federal law, the exclusionary rule does not apply "where the government learned of the evidence from an independent source."[248] In order for the independent source doctrine to apply, two criteria must be met. First, "the warrant must be supported by probable cause derived from sources independent of the illegal entry," and second, "the decision to seek the warrant may not be prompted by information gleaned from the illegal conduct."[249]

3-5:5 New Crimes Exception

The new crimes exception to the exclusionary rule provides that courts should not exclude evidence of a new crime committed in the presence of police even though the police presence stems from a prior, illegal search or seizure.[250] Our courts have applied this exception in cases of assault on a public safety officer or interfering with an officer following an allegedly illegal entry into a home or other private property.[251]

3-6 MOTIONS TO SUPPRESS

The procedures for a motion to suppress the results of a search or seizure are found in Practice Book §§ 41-12 through 17, which generally track the language of General Statutes § 54-33f. These provisions, which are procedural only,[252] are discussed fully in Chapter 2, § 2-4:4.

The only unique aspect in the search and seizure context is the burden of proof. As mentioned, on a motion to suppress the defendant bears the burden of proving that he has standing or a reasonable expectation of privacy in the thing or place searched.[253]

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248. *State v. Cobb*, 251 Conn. 285, 333 (1999) (internal quotation marks and citation omitted), *cert. denied*, 531 U.S. 841 (2000).

249. *State v. Cobb*, 251 Conn. 285, 333 (1999) (internal quotation marks and citation omitted), *cert. denied*, 531 U.S. 841 (2000).

250. *See State v. Brocuglio*, 264 Conn. 778, 785-94 (2003).

251. *See State v. Golodner*, 305 Conn. 330, 337-50 (2012); *State v. Brocuglio*, 264 Conn. 778 (2003); *State v. Jay*, 124 Conn. App. 294, 300-10 (2010), *cert. denied*, 299 Conn. 927 (2011).

252. *State v. Marsala*, 216 Conn. 150, 155-59 (1990).

253. *State v. Szepanski*, 57 Conn. App. 484, 487-88 (2000). *See* section 3-1:1.1 of this chapter.

Under the rule of *Simmons v. United States*,[254] a defendant's testimony to establish standing at a suppression hearing is not admissible at trial to establish guilt.[255]

Once standing is established, the state bears the burden of proving that an exception to the warrant requirement applied,[256] while the defendant has the burden of proving the invalidity of a search pursuant to a warrant.[257] Consequently, the defendant has the burden of proof in a challenge under *Franks v. Delaware.*[258]

3-7 RETURN OF SEIZED PROPERTY

The return of seized property at the conclusion of a criminal case is governed by detailed procedures found in General Statutes § 54-36a et seq. It is not necessary for the state to initiate civil in rem forfeiture proceedings under General Statutes § 54-33g for the court to dispose of property seized as part of a criminal case.[259]

254. *Simmons v. United States*, 390 U.S. 377, 394 (1968).

255. *State v. Davis*, 283 Conn. 280, 322 (2007).

256. *State v. Eady*, 249 Conn. 431, 436, *cert. denied*, 528 U.S. 1030 (1999).

257. *See generally State v. Mariano*, 152 Conn. 85, 91 (1964), *cert. denied*, 380 U.S. 943 (1965).

258. *Franks v. Delaware*, 438 U.S. 154 (1978). *See State v. Glenn*, 47 Conn. App. 706, 708 (1998), *aff'd on other grounds*, 251 Conn. 567 (1999).

259. *State v. Garcia*, 108 Conn. 533, 550-55, *cert. denied*, 289 Conn 916 (2008).