

Exigent Circumstances & Consent Searches

Facilitator Guide

Session Overview

Introduction & Learning Objectives	05m
DISCUSSION – Exigent Circumstances	15m
DISCUSSION - Fresh or Hot Pursuit	20m
DISCUSSION – Consent Searches	10m
Break	10m
DISCUSSION - Consent Searches (cont.)	35m
DISCUSSION – Open View vs. Plain View	10m
Conclusion / Questions	05m
End of Session / Break	10m

Learning Objectives:

- List the 3 ways to make entry into a first party residence.
- Articulate who has the authority to provide consent for an entry and/or search.
- Name the 4 basic Exigent/Emergency Circumstances.
- Explain the 2 factors required for “fresh” or “hot” pursuit to be considered reasonable.
- List the “3 Rs” of a Ferrier warning.

Total Session Time: 2 hours

Main Topics of Session:

- *Exigent Circumstances*
- *Consent Searches*
- *Types of Contacts*
- *Plain & Open View*

Facilitators Needed: 1 (CP)

Location: Classroom

Materials Needed:

- *PowerPoint - Consent Searches*

Students Should Already Have:

- *N/A*



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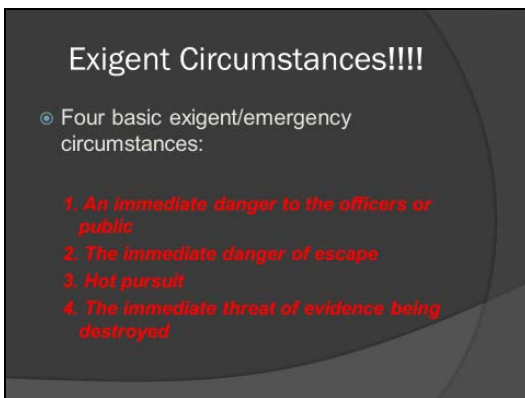
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SAY TO CLASS

This session will focus primarily on residences and people. Although there is some overlap when it comes to vehicle searches, those will be covered in greater detail in another session.

Arrests for warrants & PC usually occur when the suspect is at work, home or a 3rd party residence - knowing the importance of consent boundaries will protect those arrests in court.



Provide some personal examples



SAY TO CLASS

The key to articulating exigent circumstances is immediacy (i.e. there was no time to get a warrant). The officer must be able to emphasize that the seriousness of the crime necessitated entry prior to obtaining a search warrant.



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NOTE TO FACILITATOR

Explaining *exigent circumstances* takes research from the instructor. You can look up the most recent version using the legal updated on the CJTC web page in the LED section of Publications & Resources. This material is updated by the Attorney General's Office. Some suggestions for review:

- Santana v. United States (427 US 38 - 1976) - Hot Pursuit
- State v. Raines (55 Wn App 351) - Domestic Violence
- State v. Griffith (61 Wn App 317) - DUI - opposite ruling found in Altshuler v. Seattle (63 Wn App 389)
- State v. Bessette (105 Wn App 793) - officer in hot pursuit of MIP suspect did NOT have exigent circumstances to make a warrantless entry into third party residence when denied entry by homeowner.

Fresh or Hot Pursuit

- The courts have defined "Fresh" or "Hot" pursuit as: "...some sort of chase, though it need not be of an extended hue and cry in the public streets."
- RCW 10.89.050 states:
"Fresh pursuit...shall not necessarily imply instant pursuit, but pursuit without unreasonable delay"

Reference case laws -

REMEMBER...

Totality of the Circumstances!!

Fresh or Hot Pursuit

- The ultimate determination for the reasonableness of a fresh or hot pursuit will be judged upon the **totality of the circumstances** to include:
 - the seriousness of the offense
 - danger posed to the officer or public
- Be prepared to explain why you did not get a warrant!



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NOTE TO FACILITATOR

Using the following slides, facilitate a discussion regarding consent searches.

Consent Searches

- The consent search may be applied to persons, places, vehicles, containers, etc.
- When conducting a consent search, there is no standard of proof necessary (i.e.: reasonable suspicion, probable cause). However, be prepared to articulate why consent was requested.

Be prepared to explain why you asked...



SAY TO CLASS

Explain that although you can ask for consent to search anything at any point (and that consent can be denied without penalty to the person being asked), the officer should be able/prepared to articulate why he/she wanted to search an area, person, bag, vehicle, etc.

Case law varies on the standard of proof required for asking consent to search, so know your parameters. Do you want to be that officer whose case gets reviewed and ultimately results in a more limited scope of consent searches? If you are prepared to articulate why you asked for consent (i.e. reasonable suspicion or “probable cause to believe the items sought are connected with criminal activity and will be found in the place searched”), then you have already gone above and beyond what is required and will only make your case stronger in court.



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Consent Searches (continued)

- Three prong test to validate a *fully informed* consent:
 - consent must be *knowingly* made
 - consent must be *intelligently* made
 - consent must be *voluntary*
 - This may include Miranda and the right to refuse.
- The burden of proof for this validation lies with the State.
The standard is *clear and convincing evidence*, with no coercion, actual or implied.



BREAK

Consent Searches (continued)

- *Some things to consider:*
- The key to determining whether the consent was given voluntarily is the totality of the circumstances, considering all factors present to include:
 - age of the consentee (i.e.: youth)
 - intelligence of the consentee (i.e.: mentally incompetent/age/ill)
 - was the consentee advised of his rights prior to securing consent
 - was the consentee under arrest when asked



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Consent Searches (continued)

- *Who can consent to a search?*
 - The person(s) or sole owner who has exclusive possession of the premise
 - a party having equal use or possession may ordinarily give consent to the officers making the entry and/or search
 - beware of the exclusive use issue

Consent Searches (continued)

- parent - child
(yes) (depends)
- husband - wife
 - husband consents, wife not present - search is OK
 - husband consents, wife says no - no search allowed
 - husband consent, wife does not answer - no search allowed
- roommates:
 - common area - search is OK
 - exclusive areas - no search allowed
- Landlord (no) - tenant (yes)
 - you may still do a civil standby

Provide some examples or ask if the students can come up with some situations that might be questionable.

Consent Searches (continued)

- principal - student (IE: lockers)
 - School administrator must initiate based upon their policy and RCW.
 - Canine applications must not be directed.
- employer - employee
 - Is there exclusive control?
 - Is there joint control?
 - What is the expectation of privacy?
- a written or actual consent is always preferred to an implied consent
 - carry the proper forms with you at all times!

Can school resource officers act under school district authority for searches?

No - they are ALWAYS acting as law enforcement and police search rules apply.



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Consent Searches (continued)

- Special warnings to be provided for private residences;
- The 3 R's **Refuse, Restrict, Revoke**
 - right to *refuse* consent
 - right to *restrict* the areas searched
 - right to *revoke* consent at any time
- Ferrier warnings are required when searching a residence (not people) for evidence or contraband. However most prosecutors advise police to give Ferrier warnings for consent searches of vehicles also. (check with your local prosecutor)

OPEN

View

open to anyone

Plain



View

already legally inside a private/protected area

Determined by where
your feet are standing

NOT

where you are looking
with your eyes.

Questions???

Remember "*totality of circumstances*"



BREAK/END OF SESSION

