

Arrest and Search

Overview

In this lesson, students are introduced to laws that govern police officers as they conduct searches or make arrests.

First, students read and discuss a handout describing laws pertaining to arrest, requirements for a valid search, and exceptions to the warrant requirement. Then, in a paired writing activity, they take the role of teleplay writers and create scenarios illustrating legal arrests and searches.

Teacher Tips

While not required, this lesson would benefit from the participation of a lawyer or police officer as an outside resource person. If utilized, the outside resource could expand on the concepts presented and debrief the student-created arrest and search scenarios.

Objectives

Students will be able to:

- Identify the Fourth Amendment as a source of law governing arrests and searches.
- Identify and define probable cause as a requirement for arrests and most searches.
- Recognize various situations in which police officers do not need a warrant to make a search.
- Create a scenario illustrating one of the situations in which officers do not need a warrant to make a search.

Materials and Preparation

- Handout: **Arrests and Searches**—1 per student
- Handout: **Police Drama**—1 per student
- Handout: **Story Lines**—Cut 1 section for each pair of students.
- Handout: **Sample**—1 per student (optional)

Procedure

I. Focus Discussion—Privacy

A. Conduct a class discussion using the following questions:

- How would you feel if the principal made all students in the class empty their pockets, purses, and backpacks onto their desks and searched through all of the items? (Students might respond with anger, it's not fair, it would be embarrassing, etc.)
- Why would you feel that way? (Continue questioning until students identify the desire for privacy as a cause.)

B. Explain to students that our society puts a value on individual privacy and that we have rules and laws to protect it. Explain that is why police officers must follow certain rules about privacy even when they are dealing with people suspected of committing crimes.

II. Reading and Discussion—Arrests and Searches

A. Distribute and have students read **Arrests and Searches**.

B. Lead a class discussion on the reading using the following questions:

1. What does the Fourth Amendment say about arrests and searches? (It forbids unreasonable searches and seizure and requires probable cause for both.)

2. Why must police officers be careful about following the rules about arrests and searches? What can happen if they don't? (Judges can declare the arrest illegal and items seized from a search can be excluded from evidence.)
3. What is probable cause? Why is it important to both arrests and searches? (Probable cause is a strong belief based on evidence that a person is guilty of a crime or that items are connected to criminal activity. It is required to get a warrant or make searches and seizures.)
4. What is a search warrant? What must it contain? (It is a document provided by a judge that is based on probable cause and describes the place to be searched and the items to be seized.)
5. When don't police officers need to get a search warrant? What are some examples? (The recognized exceptions to the warrant requirement include consent, plain view, emergency, hot pursuit, stop-and-frisk, motor vehicle, and searches during arrest.)
6. What is the exclusionary rule? It is a good way to protect citizen rights? Why or why not? (The judge-made rule excludes evidence gathered in violation of the Fourth Amendment from use in criminal trials. Students should be encouraged to state and support their opinions about the rule.)

III. Writing Activity—Police Drama

- A. Divide the class into pairs of students. Distribute the **Police Drama** handout to each student. Then review the activity by explaining that working in pairs students will get a chance to use their creativity in applying what they have learned about arrests and search and seizure. Review the instructions and answer any questions.
- B. Distribute one section of the **Story Lines** handout to each pair of students. Explain that each pair must incorporate the assigned topic into their stories. As they develop their pieces, encourage students to refer to the **Arrests and Searches** handout.
- C. If desired, share Sample with the students for a guide in developing their stories.
- D. When students have completed the assignment, call on pairs one at a time to make a presentation of their story—one student taking the narrator part, the other the story line part. When each is finished, lead a brief discussion using the following questions:
 - Was this story realistic and accurate? Why or why not? (Students should be encouraged to state and support opinions.)
 - Would this story line make a good scene in “Police Drama”? Why or why not? (Students should be encouraged to critique the piece in terms of plot, setting, and characterization.)

Additional Activity

Consider having students further develop some of the characters and/or situations to create an actual script for “Police Drama.” Students could take the various roles and produce their own show with costumes, props, etc. If desirable and feasible, students can enact their script on video and share with other classes or police officers.

STANDARDS ADDRESSED

National Civics Standards

Standard 3: Understands the sources, purposes, and functions of law, and the importance of the rule of law for the protection of individual rights and the common good. **Middle School Benchmark 1:** Understands the difference between the “rule of law” and the “rule of men” (e.g., government decisions and actions made according to established laws vs. arbitrary action or decree).

Common Core State Standards (ELA-Literacy)

Speaking and Listening Standards

SL.6-8.1: Engage effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grades 6-8 topics, texts, and issues, building on others’ ideas and expressing their own clearly.

SL.6-8.3: Delineate a speaker’s argument and specific claims, evaluating the soundness of the reasoning and the relevance and sufficiency of the evidence.

Reading in History /Social Studies

RH.6-8.1: Cite specific textual evidence to support analysis of primary and secondary sources.

RH.6-8.2: Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.

RH.6-8.4: Determine the meaning of words and phrases as they are used in a text, including vocabulary specific to domains related to history/social studies.

Writing in History/Social Studies

WHST.6-8.6: Use technology, including the Internet, to produce and publish writing and present the relationships between information and ideas clearly and efficiently.

WHST.6-8.9: Draw evidence from informational texts to support analysis, reflection, and research.

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Arrests and Searches

Making arrests and searching for evidence of crime are parts of police work. It may surprise you to know that both parts are controlled by the Fourth Amendment of the U.S. Constitution.

The amendment covers “searches and seizures.”

A seizure can be an arrest or the seizure of property. The amendment forbids unreasonable arrests and searches and requires that police officers have good reasons, and sometimes a formal warrant, before making them.

Breaking these rules can have serious consequences. An arrest may not be valid and a suspect could go free.

Evidence of a crime could be thrown out of court and conviction for a crime could be overturned.



Making an Arrest

An arrest means taking a suspect into custody to be held for trial. This does not mean the person is guilty or not guilty. That is decided by a judge or jury at a criminal trial. To put someone under arrest, an officer must actually restrain the suspect. This usually involves the use of handcuffs or placing the suspect in an enclosed space, such as the back of a police car.

A police officer may make an arrest with or without an arrest warrant. A police officer gets a warrant from a judge after filing a complaint. The complaint explains why the person is being arrested. It also shows that the police officer has **probable cause** for the arrest.

Probable cause means that the officer has strong reasons for believing that the suspect committed a crime. A police officer making an arrest without a warrant must have probable cause for believing the person arrested actually committed the crime.

It is against the law for a person to resist a lawful arrest. Actively resisting, fighting with an officer, or trying to run away can make things worse. It can also bring additional criminal charges against you. To avoid escalating the situation, it is always better to cooperate with an arresting officer, even if a mistake has been made. Charges based on an arrest without probable cause will be dismissed later. Officers who make an arrest without probable cause can potentially face being charged for making a false arrest afterwards.

An officer can stop and question a person, and sometimes even make a quick pat-down search for weapons, without actually making an arrest. To do so, the officer must have reasonable suspicion that the person may be involved in criminal activity.

Making Searches

Another part of police work involves making searches. Searches can turn up illegal goods, such as drugs, stolen property, weapons used in a crime, or other physical evidence.

All of these things can be used as evidence in a criminal trial.

But just as with arrests, an officer must follow certain rules when making a search or seizing evidence. According to the Fourth Amendment, searches and seizures cannot be “unreasonable.” Like arrests, they require probable cause.

As a general rule, police officers must get a warrant to search. To get one, officers must show that there is probable cause that the items being searched for are connected to a crime. For example, suppose officers have witnesses who claim they saw Peter break into several cars to steal stereos. They might take the information to a judge and ask for a warrant to search Peter’s house and garage for the stolen items. The warrant must describe what kinds of things are being searched for and exactly where the search will take place. The warrant also puts time limits on when the search can be conducted.

The U.S. Supreme Court has ruled that officers do not always need a warrant to make a search. In fact, today most searches take place without a warrant.

Even without a warrant, officers usually need probable cause to make a search. Here are some examples of when a warrant is not required.

Consent. A person agrees to let officers make a search. For example, an officer asks a person to search his car. If the person allows the search, no warrant is required. However, you also have the right to say “no” if asked by an officer for your consent to a search. You may be searched anyway, but the legality of the search can be decided later in court.)

Plain view. An item in plain view of officers or the public can be seized without a warrant. For example, the officers see a barrel of dangerous chemicals marked with a skull and crossbones in someone’s yard. They can seize the chemicals without getting a warrant.

Emergency. The police may search to prevent injuries or death. For example, acting on a phone tip, officers might search a house for a drug lab using explosive materials.

Hot pursuit. If the police are chasing a suspect of a crime who runs into a house, they do not have to stop and get a warrant. They can force their way into the house to make an arrest.



Exigent Circumstances. Obtaining a warrant can be done relatively quickly, but sometimes police might reasonably believe that evidence will be destroyed or that people will be harmed in the time it would take them to get a warrant. These situations are called *exigent circumstances*. In these situations, police may search without a warrant.

Motor Vehicles. The police may search a car without a warrant if they have probable cause to believe that it contains illegal materials such as drugs or stolen goods.

Searches During Arrest. Police may search an arrested person and the immediate area around him or her for weapons and for officer safety. If the arrested person is in a vehicle, police may search the passenger compartments within the vehicle (such as the glove box).

The Exclusionary Rule

If police officers seize evidence in violation of the Fourth Amendment of the U.S. Constitution, there can be serious consequences. This is because of a judge-made rule called the **exclusionary rule**.

This rule holds that if evidence is taken in violation of the Fourth Amendment, it cannot be used as evidence in a criminal trial. For example, imagine that Jamie stole a watch and hid it in his house. The police enter the house when a warrant is required but do not obtain one, and then they find the watch. Even if Jamie stole the watch, he might go free because the evidence of the watch cannot be used against him.

Some people think the exclusionary rule is unfair, because a guilty person can go free because of it. They believe there are other ways to make sure police follow the rules, such as filing lawsuits against officers who act unlawfully. Others believe the exclusionary rule is the best way to protect citizens' rights. They believe that police officers will be deterred from violating the Fourth Amendment if the officers know that evidence they seize cannot be used in court. While this debate goes on, the exclusionary rule is still the law of the land.

Writing & Discussion

1. What does the Fourth Amendment say about arrests and searches?
2. Why must police officers be careful about following the rules about arrests and searches? What can happen if they don't?
3. What is probable cause? Why is it important to both arrests and searches?
4. What is a search warrant? What must it contain?
5. When don't police officers need to get a search warrant? What are some examples?
6. What is the exclusionary rule? Is it a good way to protect citizens' rights?

Police Drama

Imagine that you have been hired as script writers for a hit, new television show called “Police Drama.” The show tells about the everyday lives of two police officers on the streets. It is your job to create a one-page story line for an episode. To write your story line, follow these steps:



Step 1. Write a one paragraph introduction for a narrator. The introduction should describe the two police characters, where they work, and what assignment they have. This might be investigating a burglary, patrolling traffic, or working on a drug bust.

Step 2. Create a story line about the situation you are assigned. Describe the police characters making a legal search and an arrest without a warrant. Be sure to describe how the officers got probable cause to arrest or make the search.

Step 3. Write a one-paragraph ending for the narrator telling why the arrest and search was valid or not.

Step 4. When you have completed the writing, prepare to present your story to the class. One of you will read the narrator parts and one will read the story-line part.

Story Lines

A. A story about police officers making a consent search.

B. A story about police officers making a plain view search.

C. A story about police officers making an emergency search.

D. A story about police officers making a hot pursuit search.

E. A story about police officers making a stop-and-frisk search.

F. A story about police officers making a motor vehicle search.

G. A story about police officers making a search during an arrest.

SAMPLE



Narrator: Casey and Sam were police officers assigned to traffic patrol in Big City. They worked the night shift. One holiday, the desk sergeant told them to be extra alert for drunk drivers.

Story Line: Casey and Sam were patrolling the strip. Suddenly, they saw a car weaving in and out of traffic and going too fast. They turned on their red lights and pulled the car over. Inside was a driver and one passenger. Sam took a spot standing to the rear of the car; Casey approached the driver’s door. As Casey approached, she smelled marijuana smoke. Casey instructed the driver to exit the car. Sam searched the area around the front seat of the car and found a small container of marijuana stuck into an area next to the driver’s seat.

Narrator. The officers had probable cause to stop the car because it was speeding. They had probable cause to detain the driver because they smelled marijuana. They had the right to search the car without a warrant because of the motor vehicle exception. They had the right to search the driver without a warrant because they were arresting him for suspicion of DWI. The officers had probable cause to arrest the driver for suspicion of DWI and carrying a concealed weapon.