

Table of Contents

CHAPTER 1. FOURTH AMENDMENT OVERVIEW

- § 1:1 The Fourth Amendment
- § 1:2 Interests protected by the Fourth Amendment
- § 1:3 Justified expectation of privacy
- § 1:4 —Actual (subjective) expectation of privacy
- § 1:5 —An expectation recognized by society as reasonable
- § 1:6 “Reasonableness” of government intrusions
- § 1:7 —“Probable cause” and “reasonable suspicion”
compared
- § 1:8 Reduced Fourth Amendment protection for students—
New Jersey v. T.L.O.
- § 1:9 Reduced Fourth Amendment protection for students:
New Jersey v. T.L.O.—*T.L.O.* holdings
- § 1:10 —Reduced protection based on class membership
- § 1:11 —Applicability: School officials
- § 1:12 Reduced Fourth Amendment protection for students—
Cell phones
- § 1:13 Constitutional rights of minors
- § 1:14 Students’ rights to privacy in their lockers
- § 1:15 Students’ rights to privacy in their persons and
belongings
- § 1:16 Students’ rights to privacy in their school records
- § 1:17 Related actions

CHAPTER 2. STUDENT SEARCHES UNDER THE FOURTH AMENDMENT

- § 2:1 What conduct amounts to a search under the Fourth
Amendment
- § 2:2 —The judicial inquiry
- § 2:3 —General guidelines for school officials
- § 2:4 Observing activity or items in open public view
- § 2:5 —Activity and items openly exposed to public detection
(open public view)
- § 2:6 —The difference between observing, handling, and
seizing
- § 2:7 —Required conditions for open public view observation
- § 2:8 —Enhancing natural senses
- § 2:9 Emergency intrusions
- § 2:10 —In general

SEARCHES AND SEIZURES IN PUBLIC SCHOOLS

- § 2:11 —Indications of an emergency and permitted conduct
- § 2:12 —Scope limits
- § 2:13 —Plain view
- § 2:14 “Special needs” searches
- § 2:15 Consent searches
- § 2:16 —In general
- § 2:17 —Valid consent
- § 2:18 —Coercive factors that may invalidate consent
- § 2:19 —Proper authority to consent
- § 2:20 —Scope limits
- § 2:21 —Withdrawal of consent
- § 2:22 —Plain view
- § 2:23 —Consent by students in particular
- § 2:24 Abandoned property
- § 2:25 —Abandonment requirements
- § 2:26 —Garbage and trash
- § 2:27 —Lost property
- § 2:28 Email and social media
- § 2:29 Probation subject to a valid search condition

CHAPTER 3. REASONABLE SUSPICION

- § 3:1 Defining the term
- § 3:2 —What is a reasonable suspicion?
- § 3:3 —What officials must suspect: The nexus between infraction, object, and place
- § 3:4 —Particularity as to the things sought and places searched
- § 3:5 —Factors that reasonably connect a particular student with a specific infraction: the student-infraction nexus
- § 3:6 —Factors related to the nexus between infraction, object, and place
- § 3:7 —Valid sources of information for a reasonable suspicion
- § 3:8 —Examples of reasonable suspicion based on the report of an eyewitness or informant
- § 3:9 —Other examples of reasonable suspicion
- § 3:10 —Reasonable suspicion defects
- § 3:11 —Examples where the court determined the evidence did not provide a reasonable suspicion
- § 3:12 Student vehicles
- § 3:13 —Governing principles
- § 3:14 —Standing to challenge vehicle searches
- § 3:15 —Open public view
- § 3:16 —Scope limits
- § 3:17 —Plain view

CHAPTER 4. CONDUCTING THE SEARCH

- § 4:1 Notice and announcement

TABLE OF CONTENTS

- § 4:2 Search strategy overview
- § 4:3 Procedures for a reasonable search
- § 4:4 —Scope limits
- § 4:5 —Intensity limits
- § 4:6 —Methods
- § 4:7 —Use of force
- § 4:8 —Search of the student’s person
- § 4:9 Strip and body cavity searches
- § 4:10 Plain view
- § 4:11 Duration limits
- § 4:12 Locker room searches

CHAPTER 5. INVESTIGATIVE STOPS

- § 5:1 Elements of an investigative stop
- § 5:2 —Reasonable suspicion requirement
- § 5:3 —Purpose and function of investigative stops
- § 5:4 —Factors that can lead school officials to reasonably suspect a particular student of specific illicit conduct—The student-infraction nexus
- § 5:5 —Conducting the investigative stop
- § 5:6 —Detention to investigate alleged child abuse
- § 5:7 Frisk of the student’s person for weapons—Purpose and general requirements
- § 5:8 —Reasonable suspicion requirement
- § 5:9 —Scope and intensity limits
- § 5:10 —Method: Frisk of the student’s person for weapons

CHAPTER 6. SEIZURE

- § 6:1 Seizures incident to lawful student searches
- § 6:2 —What is a seizure?
- § 6:3 —What may be seized?
- § 6:4 —Inventory, receipt, custodial, and reporting requirements
- § 6:5 Plain view seizures
- § 6:6 —Prior valid intrusion
- § 6:7 —Inadvertent discovery
- § 6:8 —Incriminating character of the evidence is immediately apparent
- § 6:9 Open public view seizures
- § 6:10 —Requirements for an open public view seizure
- § 6:11 —Restrictions and limitations
- § 6:12 —Relation to student searches
- § 6:13 “Plain feel” seizures
- § 6:14 Seizure of a student
- § 6:15 —By those other than school officials
- § 6:16 Seizure of student—Students with special needs

- § 6:17 —Arrest by police
- § 6:18 Confiscation of cell phone by school officials

CHAPTER 7. EXCLUSION OF ILLEGALLY OBTAINED EVIDENCE

- § 7:1 Exclusionary rule
- § 7:2 —Application
- § 7:3 — —The student’s burden of proof in seeking to suppress evidence
- § 7:4 — —The school officials’ burden of proof in refuting a claim of illegality

CHAPTER 8. SPECIAL PROCEDURES FOR VERY SERIOUS INFRACTIONS

- § 8:1 In general

CHAPTER 9. CIVIL LIABILITY FOR ILLEGAL SEARCHES OR SEIZURES

- § 9:1 Liability generally
- § 9:2 Liability under 42 U.S.C.A. Section 1983
- § 9:3 —Elements of 42 U.S.C.A. Section 1983—Deprivation of rights, privileges, or immunities
- § 9:4 — —Under the “color of law”
- § 9:5 — —“Person”
- § 9:6 —Failure to train
- § 9:7 —Immunity from suit
- § 9:8 — —Medical care
- § 9:9 —Defenses
- § 9:10 —Remedies
- § 9:11 —Attorney fees
- § 9:12 State tort liability generally
- § 9:13 Causes of action
- § 9:14 —Infliction of emotional distress
- § 9:15 —False imprisonment
- § 9:16 —Battery
- § 9:17 —Excessive force
- § 9:18 —Invasion of privacy
- § 9:19 —Breach of fiduciary duty
- § 9:20 —Duty to protect students from assault
- § 9:21 Immunity for states, municipalities, schools and educators
- § 9:22 Tort liability
- § 9:23 Damages
- § 9:24 Attorney fees
- § 9:25 Avoiding civil liability

TABLE OF CONTENTS

CHAPTER 10. PROVIDING SECURITY FOR PUBLIC SCHOOLS

- § 10:1 Introduction
- § 10:2 School Resource Officers
- § 10:3 Police officers
- § 10:4 The New York City approach
- § 10:5 Private security guards
- § 10:6 Metal detectors
- § 10:7 Surveillance cameras
- § 10:8 Handcuffs
- § 10:9 Other methods for security

CHAPTER 11. SAMPLE FORMS

- § 11:1 Student search and seizure incident report form
- § 11:2 Item identification tag

CHAPTER 12. SEARCHES FOR DRUGS BY URINALYSIS

- § 12:1 Supreme Court approval of suspicionless drug testing
- § 12:2 Urinalysis is a “search” within the meaning of the Fourth Amendment
- § 12:3 Legal standards for assessing the constitutionality of urinalysis search
- § 12:4 Breathalyzer searches of students
- § 12:5 What should school districts do now?

CHAPTER 13. RANDOM/DRAGNET SEARCHES IN PUBLIC SCHOOLS

- § 13:1 Introduction: Our traditional abhorrence of random/dragnet searches
- § 13:2 Suspicionless searches in schools
- § 13:3 —Metal detectors
- § 13:4 —Canine-sniff searches: overview
- § 13:5 —Canine-sniffs of a student’s person or immediate possessions
- § 13:6 —Canine sniffs of student lockers
- § 13:7 —Canine sniffs of student automobiles
- § 13:8 —Generalized searches based on locations
- § 13:9 —Generalized searches prior to field trips
- § 13:10 Off-campus searches and seizures

CHAPTER 14. THE DUTY TO PROVIDE A SAFE SCHOOL ENVIRONMENT

- § 14:1 Introduction

SEARCHES AND SEIZURES IN PUBLIC SCHOOLS

- § 14:2 Standards adopted in the states
- § 14:3 School tort liability
- § 14:4 —State causes of action—Common law negligence
- § 14:5 —Federal causes of action—Section 1983
- § 14:6 — — —“Special relationship”
- § 14:7 — — —“State-created danger”
- § 14:8 — — — —Suicide
- § 14:9 — —Title IX
- § 14:10 — — —Student-on-student harassment
- § 14:11 — — —Violations by school employees
- § 14:12 — — —Harassment of third parties
- § 14:13 — — —*S.C. v. Metropolitan Government of Nashville*
- § 14:14 — —Title VI
- § 14:15 —Conclusion

Table of Laws and Rules

Table of Cases

Index