

# Minnesota Peace Officers Standards and Training (MN POST) Licensing Exam Study Guide



# **MINNESOTA POST EXAM STUDY GUIDE**

## **PREPARING FOR THE POST EXAM**

**This study guide is not intended to contain all study materials for the Minnesota POST examination.**

**Students should be familiar and versed in all topics outlined in “Learning Objectives for Professional Peace Officer Education.”**

**Students should also be familiar and versed in the Minnesota Criminal Code, Minnesota Juvenile Code and the Minnesota Traffic Code.**

**In addition, students should be prepared to answer critical thinking, scenario-based questions as part of their exam.**

**This Open Educational Resource (OER) was created through an OER Learning Circle at Minnesota West Community and Technical College and is dedicated to Michael Anderson, Duluth Police Department (Retired) Adjunct Instructor – Fon du Lac Tribal and Community College (Retired) who gave permission to use and edit the original study guides he tirelessly created.**

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# Use of Force

# Use of Force

## I. Definition of Force

A. Knowingly or purposefully commit an act that will cause, or is substantially certain to cause another to:

1. sustain harmful or offensive bodily contact, or
2. fear an immediate harmful or offensive bodily contact

## II. Statutory Rules Regarding Non-Deadly Force

A. Common Law and Minnesota State Statute [609.06](#) (Authorized Use of Force)

1. Any person, including any peace officer may utilize non-deadly force in SELF DEFENSE or in DEFENSE OF OTHERS

B. Minnesota State Statute [609.06](#) - Peace Officer Privilege

1. A peace officer may use reasonable non-deadly force upon or toward another without their consent in the following situations:
  - a. effecting a lawful arrest
  - b. executing a legal process
  - c. enforcing an order of the court
  - d. executing any other duty imposed upon the officer by law
2. Protects officers from civil and criminal liability when non-deadly force is used
  - a. when used at the proper time (II.B.1.a,b,c, or d above)
  - b. if it was reasonably necessary

C. State Statute [629.32](#)

1. Provides that a peace officer may not subject a person arrested to any more restraint (force) than is necessary

D. State Statute [629.33](#)

- 1 Authorizes force to accomplish an arrest only after the suspect is told he/she is under arrest
2. Informing someone they are under arrest is crucial

- a. without being told they're under arrest, the suspect has the right to self defense
- 3. Applies only to arrest situations

### III. Constitutional Standards Regarding Force

#### A. Objective Reasonableness Standard

- 1. 4<sup>th</sup> Amendment prohibits unreasonable searches and seizures
- 2. All uses of force by officers are seizures under the 4<sup>th</sup> Amendment
  - a. therefore, all uses of force are governed by the reasonableness standard of the 4<sup>th</sup> Amendment

#### B. When Force is Authorized

- 1. Police authority necessarily carries with it the authority to use or threaten to use force
- 2. Examples:
  - a. Arrests
  - b. **Terry** stops
  - c. Execution of Search Warrants

#### C. Interests at Stake

- 1. 4<sup>th</sup> Amendment reasonableness standard requires a balancing of interests
  - a. Defendant's interest in avoiding government inflicted pain or injury
  - b. Government's interest in capturing defendant or preventing escape
  - c. The officers' interests in protecting themselves against an immediate threat
  - d. Interest of society in having the officer provide protection against an immediate threat caused by the defendant

#### D. Amount of Force Authorized

- 1. Three Factor Analysis
  - a. Severity of the crime
  - b. Whether defendant poses an immediate threat to the safety of the officers or others
  - d. Whether the defendant is actively resisting arrest (fighting -aggressive) or attempting to evade arrest or capture (fleeing)
- 2. 1<sup>st</sup> Factor- Crime Severity
  - a. The greater the crime, the greater the government interest in capture

1. Therefore, the greater the amount of force will be deemed reasonable

### 3. 2<sup>nd</sup> & 3<sup>rd</sup> Factors

- a. Analysis focuses on:
  1. Defendant's behavior
  2. Officer's purpose in using force (Defense or Control)
- b. If defendant is a threat, force will be used for DEFENSE
- c. If defendant is fleeing, force will be used for CONTROL
- d. Defensive Situations (Defendant is a THREAT)
  1. Officers main focus is on the level of threat presented
  2. Crime severity is relevant in assessing threat level
  3. Courts treat threats differently from active resistance
- e. Control Situations (Defendant is UNCOOPERATIVE OR FLEEING)
  1. Level of allowable force
    - a. crime severity, AND
    - b. whether defendant is fleeing, or
    - c. level of non-threatening resistance offered
  2. Even a minimal use of force may be viewed as excessive where the defendant is merely being verbally abusive

### E. Standard - Reasonable Officer on the Scene

1. No bright line rule exists on the amount of force which may legally be used
2. Totality of the Circumstances Test
  - a. Fact specific
  - b. Factors
    1. information known to the officer at the time of use of force
    2. how a reasonable officer would interpret that information
    3. how the officer responded based on that information
    4. Issue - whether a reasonable officer on the scene would have thought the force used was reasonable



#### IV. The Bottom Line in Minnesota on the Use of Non- Deadly Force

##### A. “Reasonably Necessary Force”

1. Minnesota Supreme Court interpreted the **reasonableness** standard found in SS [609.06](#) as being read in conjunction with SS [629.32](#) (**necessary**)
2. Therefore, any use of non-deadly force by officers must be **reasonable and necessary**

##### B. Reasonableness v. Necessity

1. Designed to accomplish the same ultimate results
2. Creates a balancing test between the need for force and the amount of force used
3. Unfortunately, reasonableness and necessity define two different levels of proportionality of force
4. Level of force under REASONABLENESS standard is NOT whether the officers used the least amount of force to accomplish their objective, but whether officers chose a force option which was in the range of reasonable alternatives
5. **NECESSITY Standard**
  - a. Implies a much stricter test in balancing the need for force and the force used
  - b. **Officers need to use the least amount of force sufficient to accomplish their objective**

##### C. Minnesota TEST

1. Officers must use only such force as is reasonable and necessary to accomplish the result sought.

#### V. SS [609.065](#) Justifiable Taking of Life

- A. The intentional taking of the life of another is **not authorized** by section **609.06**, **except when necessary** in:
  - 1) Resisting or preventing an offense which the actor reasonably believes exposes the actor or another to **great bodily harm or death**, or
  - 2) Preventing the commission of a **felony** in the actor's place of abode.

#### VI. SS [609.066](#) Authorized Use of Deadly Force by Police Officers

##### A. Minnesota Statute [609.066](#), Sub 1 - Definition

1. “force which the actor uses with the purpose of causing, or which the actor should reasonably know **creates a substantial risk of causing death or great bodily harm....**”
2. “the intentional discharge of a firearm...in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force.”

#### B. When Deadly Force May be Used

1. Minnesota Statute [609.066](#), Sub 2 - “only when necessary”
2. **Deadly force becomes necessary when there is no reasonable option other than deadly force** available to protect the officer or another from death or great bodily harm, provided that the threat:
  - a. Can be articulated with **specificity** by the law enforcement officer;
  - b. Is reasonably likely to occur absent action by the law enforcement officer; and
  - c. Must be addressed through the use of deadly force without unreasonable delay; or

#### C. Sets of Conditions for Use of Deadly Force

1. At least **one of the two conditions** found in SS [609.066](#), Sub 2 **must be present**, along with the **necessity** of using deadly force.
2. Deadly force is not authorized just because one of the sets of conditions is met
3. Deadly force is not authorized merely because it is a necessity
4. Must have both
5. SS [609.066](#), Sub 2 - (**reasonable**) reasons for using deadly force
  - a. To protect the peace officer or another from apparent death or great bodily harm
  - b. To effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony and the officer reasonably believes that the person will cause death or great bodily harm to another person under the threat of the criteria in subdivision 2, clause (1), items (i) to (iii). ***\*\* In other words, there must be a threat to the officer or to another of death or great bodily harm, it must be articulated with specificity by the law enforcement officer, is reasonably likely to occur absent action taken by the law enforcement officer; and must be addressed through the use of deadly force without reasonable delay. \*\* (Changes became effective March 1, 2021).***
  - c. A peace officer shall not use deadly force against a person based on the danger the person poses to self if an objectively reasonable officer

would believe, based on the **totality of the circumstances** known to the officer at the time and without the benefit of hindsight, that the person does not pose a threat of death or great bodily harm to the peace officer or to another under the threat criteria in [609.066](#) subdivision 2, paragraph (a), clause (1), items (i) to (iii). (*Changes became effective March 1, 2021*).

# Force Continuum

## Deadly Force

- Baton/Flashlight to head area
- Firearm (Service Weapon or Shotgun)

## Intermediate Weapons

- Soft - Baton/Flashlight - joint locks
- Hard - Baton/Flashlight - blows below shoulders

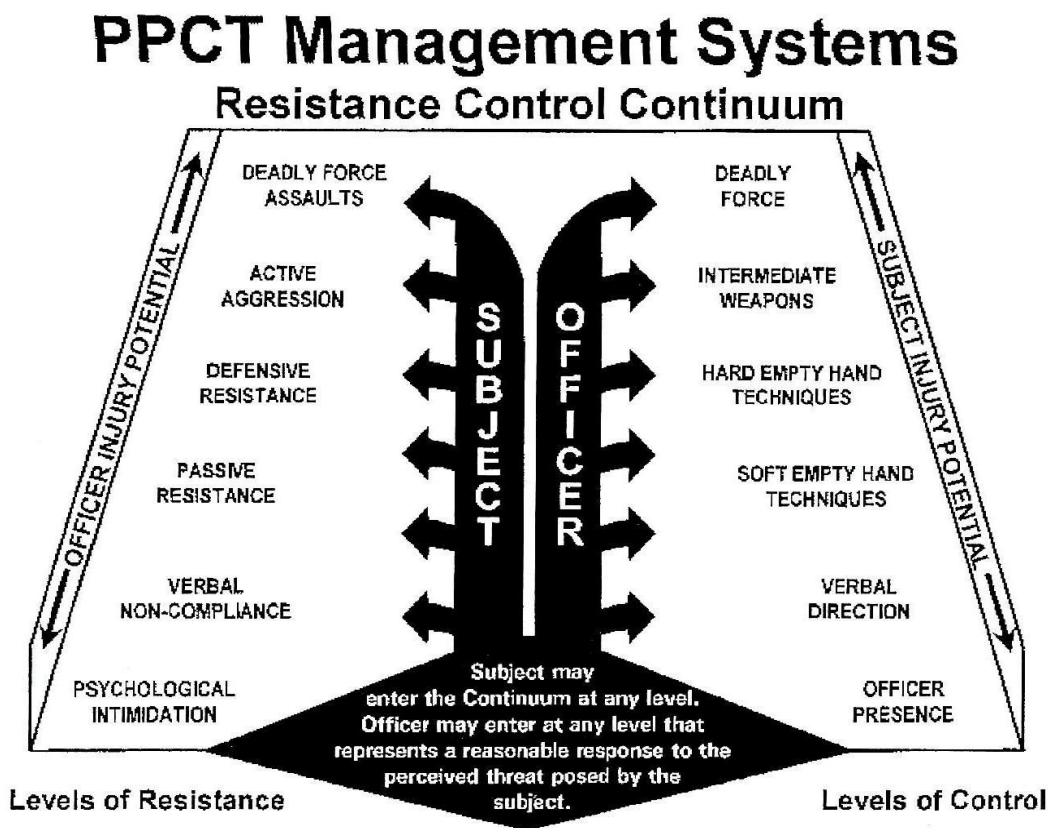
## Hard Empty Hand Techniques

## Aerosol Sprays

## Soft Empty Hand Techniques

## Verbal Techniques

## Police Presence



# Driving while Impaired

## **DWI - Driving While Impaired - Chapter 169A** (Effective August 1, 2015)

### **I. SS 169A.20 Driving While Impaired (DWI) (relevant evidence at .04 AC)**

- A. Subd. 1: drive, operate, or be in physical control of any motor vehicle, ***except for motorboats in operation and off-road recreational vehicles***, or
- B. Subd. 1a: drive, operate, or be in physical control of a motorboat in operation, or
- C. Subd. 1b: drive, operate, or be in physical control of a snowmobile or all-terrain vehicle, or
- D. Subd. 1c: drive, operate, or be in physical control of an off-highway motorcycle or off-road vehicle while:
  - 1. influence of alcohol.
  - 2. influence of controlled substance.
  - 3. knowingly under the influence of a hazardous substance.
  - 4. combination of two or more of (1), (2), or (3).
  - 5. A.C. is .08 or more at the time or within 2 hours.
  - 6. commercial motor vehicle and A.C. of .04 or more at the time or within 2 hours.
  - 7. body contains any amount of controlled substance listed in schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols.
- E. Subd. 2: Refusal to test.

### **II. SS 169A.24 1<sup>st</sup> Degree (Felony) Driving While Impaired (DWI)**

- A. Violates 169A.20, Sub. 1, 1a, 1b, 1c, or Sub. 2, and:
  - 1. commits the violation within ten years of the first of three or more qualified prior impaired driving incidents; or
  - 2. has previously been convicted of a felony under this section.
  - 3. has previously been convicted of a felony under:
    - i. Section 609.21, Sub. 1, clauses (2) – (6); or
    - ii. M.S. 2006, Section 609.21, clauses (2) – (6). Of Subds. 1, 2, 2a, 3 or 4

### **III. SS 169A.25 2<sup>nd</sup> Degree (Gross Misdemeanor) Driving While Impaired (DWI)**

- A. Violates 169A.20, Sub. 1, 1a, 1b, or 1c and two or more aggravating factors present when the violation occurred.
- B. Violates 169A.20, Sub. 2 and one or more aggravating factors present when the violation occurred.

### **IV. SS 169A.26 3<sup>rd</sup> Degree (Gross Misdemeanor) Driving While Impaired (DWI)**

- A. Violates 169A.20, Sub. 1, 1a, 1b, or 1c and one aggravating factor present when the violation occurred.
- B. Violates 169A.20, Sub. 2 (and no aggravating factors)

**V. SS 169A.27 4<sup>th</sup> Degree (Misdemeanor) Driving While Impaired (DWI)**

- A. Violates 169A.20, Sub. 1, 1a, 1b, or 1c (and no aggravating factors)

**VI. SS 169A.03, Subd. 3 (Definitions) Aggravating Factors**

- A. Each “Qualified Prior Impaired Driving Incident” within the ten years immediately preceding the current offense. “Qualified Prior Impaired Driving Incidents” include “Prior Impaired Driving Convictions” and “Prior Impaired Driving-related Losses of License” (Can not count both if arising from the same incident).
- B. AC .16 or more at the time, or within 2 hours, of the offense. (Effective August 1, 2015)
- C. Child Endangerment (Child <16 YOA in the vehicle and child is > 36 month younger than the offender).

**VII. SS 169A.31 Alcohol-Related School Bus or Head Start Bus Driving: “Zero Tolerance”**

- A. DWI Misdemeanor – physical evidence of any alcohol consumption while operating any class of school bus or Head Start bus.
- B. DWI Gross Misdemeanor – physical evidence of any alcohol consumption while operating any class of school bus or head start bus and one of the following:
  - 1. children under the age of 16 are in the vehicle and the child is more than 36 months younger than the violator, or
  - 4. qualified prior impaired driving incident within 10 years.

**VIII. SS 169A.33 Underage Drinking and Driving “Zero Tolerance”**

- A. If under 21, misdemeanor to drive or operate MV while consuming or after consuming alcohol (DWI – 169A.20, if applicable)
- B. License suspension on conviction
  - 1. First offense – 30 days.
  - 2. Subsequent offense – 180 days.

**IX. SS 169A.41 Preliminary Screening Test (PBT)**

- A. Officer may require Preliminary Screening Test where there is reason to suspect (articulable suspicion) the person has violated DWI law.
- B. The results of the PBT can be used in the following court actions:
  - 1. To prove that the test was properly required of a person under 169A.51
  - 2. In a civil action arising out of the operation of the motor vehicle
  - 3. In an action for license reinstatement under section 171.19
  - 4. Prosecution for a violation of 169A.20, Subd. 2 (Test Refusal)

5. Prosecution for underage driving after drinking “zero tolerance law” (169A.33) or minor consumption [340A.503, Subd.1(a)(2)]
6. Prosecution for violation of the “zero tolerance” law for school bus drivers (169A.31)
7. Prosecution for violation of the conditions of a limited license (171.30)
8. Prosecution for violation of a restriction on a driver’s license that prohibits the person from consuming any alcohol or controlled substance (171.09)

**X. SS 169A.40 Mandatory Hold for Court**

- A. Jail the offender and impose maximum bail or electronic alcohol monitoring if any one of the following:
  1. 1<sup>st</sup> Degree DWI violation.
  2. 2<sup>nd</sup> Degree DWI violation.
  3. 3<sup>rd</sup> Degree DWI violation by person under 19 years old.
  4. DWI violation with .20 AC or more at the time or within two hours.
  5. DWI violation with child < 16 years of age and child > 36 months younger than violator.
  6. DWI violation and driver has “CANCEL-IPS” driver’s license status.

**XI. SS 169A.51 Chemical Tests for Intoxication (Implied Consent Law)**

- A. Any person who drives, operates or is in physical control of a motor vehicle within this state **consents** to a chemical test of their blood, breath or urine.
- B. Requires a test where there is probable cause to believe the person has violated DWI law or SS 609.21 (criminal vehicular homicide and injury or operation) and one of the following exist:
  1. The person was lawfully arrested for DWI.
  2. The person was involved in a motor vehicle accident resulting in property damage, personal injury or death.
  3. The person refused a PBT.
  4. The PBT was administered and indicated an AC of .08 or more.
  5. The person was driving a commercial motor vehicle with the presence of alcohol.
- C. Implied Consent Advisory
  1. Driver required to submit to test.
  2. Crime to refuse.
  3. Right to attorney before testing.
  4. If injury or death, notify the driver the test will be taken with or without consent.
  5. No need that driver understands advisory.
  6. Unconscious driver – no need to give advisory – authorized medical personnel to take blood.
- D. May charge TEST REFUSAL only if: advisory is read; driver is given an opportunity to contact attorney; and refuses to test.



1. Failure of a person to provide two separate, adequate breath samples in the proper sequence constitutes a refusal.
2. If a blood (or urine) test is requested and refused, an alternative test must be offered (alternative can be breath)
- E. [169A.51](#), subd. 4: if controlled substance or hazardous substance is suspected, alternative to blood must be urine, and visa versa
- F. Can require blood or urine after breath test if controlled substance is suspected (re-invoke Implied Consent Advisory for controlled substances only)
- G. Must allow reasonable opportunity to seek advise of counsel before decision on testing.
  1. Provide telephone and telephone book.
  2. May call 3<sup>rd</sup> party for attorney's number.
  3. Officer must give driver a reasonable time to secure attorney.
  4. Officer must allow a reasonable time for consultation.
- H. Tests can be conducted by:
  1. Peace Officers, except Federal, BIA, and DNR.
  2. Intoxilyzer test must be given by a trained officer.
  3. Qualified medical person may draw blood.
  4. Any peace officer may administer urine test.
- I. Must allow person tested the opportunity to arrange for additional tests.
  1. Driver has an absolute right to additional tests.
  2. Driver must arrange.
  3. No time limit.
  4. Officer need not but may release driver for additional tests.
  5. Officer need not provide transportation to hospital.

## **XII. [SS 169A.60](#) Administrative Plate Impoundment**

- A. DWI (169A.20) or License Revocation for Test Failure or Refusal (169A.52) within 10 years of a qualified prior impaired driving incident.
- B. DWI (169A.20) or License Revocation for Test Failure or Refusal (169A.52) while having an A.C. of .20 or more at the time or within two hours.
- C. DWI (169A.20) or License Revocation for Test Failure or Refusal (169A.52) while having a child < 16 years of age in the vehicle if the child is > 36 months younger than the driver.
- D. A Commercial Motor Vehicle driver's license disqualification resulting from a violation of 169A.52 within 10 years of a qualified prior impaired driving incident.
- E. Violator is Cancel-IPS (drunk or sober)
  1. includes related offenses from other states.
  2. includes motor vehicle plates if the violator is on a recreational vehicle (snowmobile, ATV, or motorboat).
  3. issue notice of impoundment and temporary permit.
  4. SEIZE AND DESTROY plates of vehicle violator is currently driving, regardless of ownership.

## **XIII. [SS 169A.63](#) Vehicle Forfeiture**

- A. Vehicle is subject to forfeiture if one of the following exists:

1. 1<sup>st</sup> Degree DWI (Felony)
2. 2<sup>nd</sup> Degree DWI (Gross Misdemeanor)
3. DWI violation with Cancel-IPS.
4. DWI violation with a “B” card license restriction under 171.09 (which provides that the person may not use or consume any amount of alcohol or a controlled substance)

**XIV. [SS 171.24](#) Driving after Cancellation – IPS (Inimical to Public Safety)**

- A. Gross Misdemeanor to drive if Cancel-IPS (drunk or sober)
- B. Seize and destroy plates (169A.60)

**XV. [SS 609.2112](#) Criminal Vehicular Homicide**

**Subd. 1: Subdivision 1. Criminal vehicular homicide.** A person is guilty of criminal vehicular homicide if the person causes the death of a human being not constituting murder or manslaughter as a result of operating a motor vehicle: **(Felony - 10 years and/or \$20,000)**

- (1) in a grossly negligent manner
- (2) in a negligent manner while under the influence of:
  - (a) alcohol,
  - (b) a controlled substance or
  - (c) a combination of those elements
- (3) while having an alcohol concentration of 0.08 or more
- (4) while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving
- (5) in a negligent manner while knowingly under the influence of a hazardous substance
- (6) in a negligent manner while any amount of a controlled substance listed in schedule I or II, or its metabolite, other than marijuana or Tetrahydrocannabinols, is present in the person's body
- (7) where the driver who causes the accident leaves the scene of the accident in violation of section 169.09, subdivisions 1 or 6
- (8) where the driver had actual knowledge that a peace officer had previously issued a citation or warning that the M/V was defectively maintained, the driver had actual knowledge that the remedial action was not taken, the driver had reason to know that the defect created a present danger to others, and the injury or death was caused by the defective maintenance.

## **XVI. [SS 609.2113](#) Criminal Vehicular Operation; Bodily Harm**

Operates a motor vehicle in violation of any of 1-8 on page 4 (SS 609.2112) and causes Bodily Harm to another person, they can be charged as follows:

609.2113, Sub. 1 – **Criminal Vehicular Operation Resulting in Great Bodily Harm** – If the person causes great bodily harm to another, not constituting attempted murder or assault as a result of operating a motor vehicle (Felony – 5 years/\$10,000)

609.2113, Sub. 2 – **Criminal Vehicular Operation Resulting in Substantial Bodily Harm** - If the person causes substantial bodily harm to another as a result of operating a motor vehicle. (Felony – 3 years/\$10,000)

609.2113, Sub. 3 – **Criminal Vehicular Operation resulting in Bodily Harm** - If the person causes bodily harm to another as a result of operating a motor vehicle. (Gross Misdemeanor – not more than one year/\$3,000)

## **XVII. [SS 609.2114](#) Criminal Vehicular Operation; Unborn Child**

Operates a motor vehicle in violation of any of 1-8 on page 4 (SS 609.2112) and causes Death or Great Bodily Harm to an unborn child, they can be charged as follows:

609.2114, Sub. 1 – **Death to an Unborn Child** – A person is guilty of criminal vehicular operation resulting in death to an unborn child if the person causes the death of an unborn child as a result of operating a motor vehicle. (Felony – 10 year/\$20,000)

609.2114, Sub. 2 – **Injury to an Unborn Child (Great Bodily Harm)** – A person is guilty of criminal vehicular operation resulting in injury to an unborn child if the person causes great bodily harm to an unborn child subsequently born alive as a result of operating a motor vehicle. (Felony – 5 years/\$10,000)

## **XVIII. Physical Control**

- A. “Being in a position to exercise dominion and control over the vehicle”.
- B. In physical control of MV if: has the means to move the MV and is in close proximity to MV controls.

**XIX. SS 169A.52 & SS 169A.54 Driver's License Revocation - Time****A. Motor Vehicles**

1. Refusal to take test - one year.
2. 169A.20, subd. 1,2,3, or 4 – not less than 30 days.
3. AC of .08 or more or schedule I or II drugs - 90 days.
4. Current DWI offense and under 21 years old – 6 months.
5. Current DWI offense and prior impaired driving in past 10 years – not less than 180 days.
6. Current DWI offense and prior test refusal in the past 10 years – not less than 1 year.
7. Current DWI offense occurring within ten years of the first of two qualified prior impaired driving incidents – not less than 1 year.
8. Current DWI offense occurring within ten years of the first of three or more qualified prior impaired driving incidents – not less than 2 years.
9. AC of .20 or more – twice the period in (3), (4) or (5) above.

**B. Commercial Motor Vehicles**

1. Refusal to take test – disqualified from operating a Commercial Motor Vehicle for one year and license revocation for one year.
2. AC of .04 or more – penalty under (A - Motor Vehicle) and disqualified from operating a Commercial Motor Vehicle for one year.

**C. Procedure**

1. Officer takes driver's license – issues a 7-day temporary license.
2. Officer sends driver's license to the Commissioner of Public Safety or invalidates it without destroying identifying information.

**DWI Quick Reference Guide**

<b>Degree of DWI</b>	<b>Current Violation</b>	<b>Additional Factors</b>	<b>Seize</b>
<b>1<sup>st</sup> Degree (Felony)</b>	<b>169A.20, Sub 1, 1a, 1b, 1c, or Sub 2</b>	<b>3 or more qualified prior impaired driving incidents within 10 years</b>	<b>Driver's License, License Plates, Vehicle</b>
<b>1<sup>st</sup> Degree (Felony)</b>	<b>169A.20, Sub 1, 1a, 1b, 1c, or Sub 2</b>	<b>previous felony conviction under this section</b>	<b>Driver's License, License Plates, Vehicle</b>
<b>1<sup>st</sup> Degree (Felony)</b>	<b>169A.20, Sub 1, 1a, 1b, 1c, or Sub 2</b>	<b>previous felony conviction under MS 2012 of 609.21, Sub 1, clauses (2) – (6)</b>	<b>Driver's License, License Plates, Vehicle</b>
<b>1<sup>st</sup> Degree (Felony)</b>	<b>169A.20, Sub 1, 1a, 1b, 1c, or Sub 2</b>	<b>previous felony conviction under MS 2006, section 609.21, of clauses (2) to (6) of Subdivisions 1, 2, 2a, 3, or 4</b>	<b>Driver's License, License Plates, Vehicle</b>
<b>1<sup>st</sup> Degree (Felony)</b>	<b>169A.20, Sub 1, 1a, 1b, 1c, or Sub 2</b>	<b>previous felony conviction under clauses (2) to (6) of MS 609.2112, Sub 1, 609.2113, Sub 1, 2 or 3, or 609.2114, Sub 1 or 2</b>	<b>Driver's License, License Plates, Vehicle</b>
<b>2<sup>nd</sup> Degree (G.M.)</b>	<b>169A. 20, Sub 1, 1a, 1b, 1c</b>	<b>2 or more aggravating factors</b>	<b>Driver's License, License Plates, Vehicle</b>

2 <sup>nd</sup> Degree (G.M.)	169A.20, Sub 2 (Refusal)	1 or more aggravating factor	Driver's License, License Plates, Vehicle
3 <sup>rd</sup> Degree (G.M.)	169A.20, Sub 1, 1a, 1b, 1c	one aggravating factor	Driver's License, License Plates
3 <sup>rd</sup> Degree (G.M.)	169A.20, Sub 2 (Refusal)	(none)	Driver's License,
4 <sup>th</sup> Degree (Misd.)	169A.20, Sub 1, 1a, 1b, 1c	(none)	Driver's License

### Aggravating Factors:

- Each “Qualified Prior Impaired Driving Incident” within 10 years of this incident. A “Qualified Prior Impaired Driving Incident” includes “Prior Impaired Driving Convictions” and “Prior Impaired Driving-related Losses of License”. (Can not count both if arising from the same incident)
- Test (A.C.) of .16 or more, at the time, or within 2 hours of the offense.
- Child Endangerment (Child <16 years of age in the vehicle and child is > 36 month younger than the offender)

### Under 21 Alcohol Violations

<u>Consumption and Operation</u>		
Violation	Statute	Penalty
<b>Under 21 Consumption of Alcohol</b>		
• DWI, if applicable	<a href="#"><u>169A.20</u></a>	Misd./G.M./FE
• Unlawful to drive after consuming <u>any</u> amount of alcohol	<a href="#"><u>169A.33</u></a>	Misd.

<u>Alcohol - Related</u>		
Violation	Statute	Penalty
<b>Passenger Consumption of Alcohol</b>		
• Under 21 years of age	<a href="#"><u>340A.503:1a2</u></a>	Misd.
<b>Passenger Possession of Alcohol</b>		
• Under 21 years of age	<a href="#"><u>340A.503:3</u></a>	Misd.
<b>Open Container of Alcohol</b>	<a href="#"><u>169A.35:3</u></a>	Misd.
<b>Driver/Owner Allowing Open Bottle</b>	169A.35:4	Misd.

<u>Identification – Related</u>		
Violation	Statute	Penalty
<b>Name/DOB of another to Officer</b>	<a href="#"><u>171.22:8</u></a>	G.M.
<b>Use of another person's DL or MN I.D.</b>	<a href="#"><u>171.22:3</u></a>	G.M./Misd.

**Display of false/altered DL or MN I.D.**    [171.22:1](#)    Misd.

# Primary Incident Response

# Primary Incident Response (Crime Scene Protocol)

## I. Initiation of an Effective Investigation

### A. Quick patrol response

1. Essential in order to preserve evidence
2. Without this, loss or destruction of vital evidence may easily occur

### B. Everything at the crime scene is potential evidence

1. Note and preserve physical evidence, but do not touch or collect
2. Collect only witness accounts or suspect's volunteer statements (do not interview the suspect)

### C. Secure the Scene

1. Notify investigators

## II. The Crime Scene

### A. Primary crime scene

1. Where the body is found

### B. Secondary crime scenes

1. Points of escape or entry
2. Vehicles used
3. Where the body was moved from
4. Where the body was assaulted
5. Location of any physical evidence
6. Location of any scientific (trace) evidence
7. The suspect.

## III. Patrol Officers' Function

### A. Arrival

1. Record exact time of arrival
2. Notify Communications Center you are at the scene
3. Enter scene
  - a. Only one officer unless call is emergency call and suspects may still be there
  - b. Use only one entry/exit path
  - c. Document that path - all others entering should be directed to use that path.



4. Is the body alive or dead? Take appropriate action
  - a. If alive, allow medics to work
    1. Be sure to document if the scene is altered in any way, when done, purpose of altering the scene and the name of the person who altered it.
  - b. Record the names and rig number of the EMTs
  - c. If alive, but near death, attempt to obtain a dying declaration
  - d. Control the crime scene - you are in charge until relieved
  - e. If living victim is removed from the scene by ambulance, an officer should accompany in the ambulance to obtain a statement or dying declaration
    1. If victim's clothes are removed at the hospital, officer should accept and maintain custody of the evidence.
  - f. If dead, TAKE YOUR TIME. No need to rush.
  - g. If dead, deter EMTs from doing unnecessary activities that may alter the crime scene
  - h. If dead, allow only one EMT into the crime scene to confirm death
    1. EMT must use the entry/exit path already determined
    2. Document any disturbance the EMT makes to the crime scene.
  - i. Secure the scene until investigators arrive and or properly relieved
  - j. Take your time.
5. Suspect Present
  - a. Apprehend/disarm
  - b. Take suspect out of the crime scene
  - c. Note and document your observations of the suspect
    1. blood
    2. cuts/wounds
    3. nervous
    4. emotional/unemotional
    5. impaired - alcohol - drugs
    6. clothing
    7. anything unusual
  - d. Isolate suspect from witnesses
  - e. DO NOT let suspect wash hands or use bathroom
  - f. DO NOT allow suspect to engage in conversation from others
  - g. DO NOT interrogate
  - h. Assign an officer to stay with suspect until delivery (at scene or police station) to investigators

- i. Assigned officer should not speak with suspect but should document ANYTHING the suspect says, whether the officer believes it to be helpful or not
- 6. If suspect not at scene, but is known - or if you have other identifying information
  - a. Broadcast information for a probable cause arrest
  - b. Name & DOB or best description
  - c. Vehicle, address, weapons and anything else useful
- 7. Detain any and all witnesses
  - a. Don't be afraid to keep them
  - b. Obtain name, DOB, address, phone numbers, of all people present at the scene.

#### B. Establish a Crime Scene

- 1. Largest area possible
  - a. Double perimeter
  - b. First perimeter is open to only those people who absolutely have to have access
  - c. Second perimeter is open to any officer legitimately on the scene
  - d. Secondary perimeter open for command and investigations to confer away from the public and media
- 2. Evaluate the primary crime scene
  - a. Body location
  - b. Natural barriers - fences, room, house, other enclosure
  - c. Presence of physical evidence
  - d. Statements of any witnesses
- 3. REMEMBER - there may be more than one crime scene
- 4. Enforce your previously established entry/exit route for ALL who enter
- 5. Secure first perimeter - secure second perimeter
  - a. ropes
  - b. barricades
  - c. squads
  - d. tape
  - e. post officers at both perimeters

#### C. Protect the Crime Scene

- 1. Unnecessary or unauthorized entry should not be allowed
- 2. Do not leave until relieved
- 3. The more people allowed into the crime scene, the more likely the scene will be contaminated and physical evidence will be lost, destroyed, moved, or altered
- 4. Do not smoke or let anyone else smoke
- 5. Do not use the telephone at the scene
- 6. Do not use the toilet

7. Do not run water
8. Do not touch anything unless unavoidable
9. Everything in the crime scene could be valuable evidence
10. Request additional units as needed to protect the scene
11. Do not talk to the media
12. Brief investigators and assist if requested
13. Do not take photos unless emergency
  - a. Weather conditions may alter the crime scene
14. Maintain a Crime Scene Control log
15. Record cars in area, people near scene, civilians arriving

D. Maintain a Crime Scene Control Log

1. You have already established two (2) crime scene areas
  - a. Primary - where incident occurred, body located, physical evidence will be recovered
  - b. Extended crime scene
    1. For officials conducting the investigation
    2. Away from the general public
2. EVERYONE who enters either crime scene MUST sign in
  - a. Includes Chief of Police, Lieutenants, firemen, medics, investigators, crime scene personnel
  - b. Sign in with name, date/time, assignment, and purpose for entering
  - c. Curiosity and general supervision are not acceptable purposes

# Gang Criteria

## **Criminal Gang Investigative Data System**

### **SS [299C.091](#)**

**Criminal activity** of the gang or individual plus the following ten factors are used to evaluate gang membership:

1. Admits gang membership or association
2. Is observed to associate on a regular basis with known gang members
3. Has tattoos indicating gang membership
4. Wears symbols of gang membership
5. Is in a photograph with known gang members and/or using gang-related hand signs.
6. Name is on a gang document, hit list, or gang-related graffiti
7. Is identified as a gang member by a reliable source
8. Arrested in the company of identified gang members or associates
9. Corresponds with known gang members or writes and/or receives correspondence about gang activities
10. Writes about gang on walls, books, paper, etc.

If an individual has been convicted or adjudicated of a **gross misdemeanor or felony** and police officers have observed and can document **three or more** of the above criteria, and if the person is **14 or older**, then the information about this person is kept in a Criminal Gang Investigative Data System, a database used by law enforcement officers throughout the state. If the individual has no contact with the police for **three years**, the information is removed.

## **SS 609.229 Crime Committed for Benefit of a Gang**

Sub. 1. Definition: “Criminal Gang” means any ongoing organization, association, or group of three or more persons whether formal or informal, that:

- 1) has, as one of its primary activities, the commission of one or more of the offenses of: murder (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>); assault (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>), burglary; kidnapping; false imprisonment; manslaughter (1<sup>st</sup>, 2<sup>nd</sup>); aggravated robbery; simple robbery; 1<sup>st</sup> degree or aggravated 1<sup>st</sup> degree witness tampering; criminal sexual conduct\*; escape from custody; arson (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>); drive-by shooting\*; harassment and stalking\*; possession or other unlawful use of a firearm\*; a felony violation of chapter 152 (drugs, controlled substances); or any attempt to commit any of these offenses.  
(\* only specific sections or subdivisions apply)
- 2) has a common name or common identifying sign or symbol; and
- 3) includes members who individually or collectively engage in or have engaged in a pattern of criminal activity

Sub 2. Crimes: A person who commits a crime for the benefit of, at the direction of, in association with, or motivated by involvement with a criminal gang, with the intent to promote, further, or assist in criminal conduct by gang members is guilty of a crime and may be sentenced as provided in sub. 3.

Sub 3. Penalty: If the crime committed in violation of Sub. 2 is a:

- (a) Felony – 5 years longer than statutory maximum for the crime.
- (a) Felony, and the victim of the crime is a child under the age of 18 years – 10 years longer than the statutory maximum for the crime.
- (b) Misdemeanor – enhanced to a Gross Misdemeanor.
- (c) Gross Misdemeanor – enhanced to a Felony (not more than 3 years and/or \$15,000)

Sub 4. Mandatory minimum sentence.

- (a) For felony convictions and sentences under Sub 3 (a) - not less than 1 year and one day
- (b) For convictions under Sub 4(a), not eligible for probation, parole, discharge, work release, or supervised released until that person has served their full term of imprisonment as provided by law.....

# Criminal Procedure Outline

# Criminal Procedure Outline

## Minnesota Rules of Criminal Procedure

### I. Grand Jury

#### A. Nature

1. Investigative body (**NOT** a Prosecuting body)
2. Determines whether there is sufficient evidence to warrant issuing charges

#### B. Makeup

1. 23 citizens
2. 16 for a quorum
3. 12 votes needed to indict

#### C. Action

1. Bill of Indictment (True Bill) - charges issued
2. No Bill - no charges issued

### II. Court Structure

#### A. Federal (When prosecuted under Federal Statutes)

1. Single level trial court - Federal District Court
2. Intermediate appellate courts (Circuit Courts of Appeal)
  - a. Appeal as a matter of right
3. U. S. Supreme Court
  - a. Appeal only with permission of the court (Writ of Certiorari)
  - b. Nine (9) members
  - c. Appointed by the President - confirmed by the U.S. Senate

#### B. Minnesota

1. Single level trial court - District Court
2. Intermediate appellate court - (Court of Appeals)
  - a. Appeal as a matter of right
3. Minnesota Supreme Court
  - a. Appeal only with permission of the court (Petition for Review)
  - b. Appointed by the Governor/Elected



- c. Seven (7) members

### III. ARREST THROUGH TRIAL

#### A. Arrest

1. 48 Hour Rule
  - a. Constitutional requirement (Federal) and Rule [4.03](#) of Minnesota Rules of Criminal Procedure
  - b. Requires a judge to make a *probable cause determination* no later than 48 hours after a person has been arrested without a warrant
  - c. Commences from time of arrest
2. 36 Hour Rule
  - a. Statutory requirement (State) – Rule [4.02](#) of Minnesota Rules of Criminal Procedure
  - b. Requires that a person arrested without a warrant be charged and brought before a judge no later than 36 hours after arrests
  - c. Does not include the day of the arrest, Sundays, or legal holidays

#### B. First Appearance

1. Complaint given to defendant
2. Advised of rights
3. Setting of bail

#### C. Omnibus Hearing

1. Court determines if probable cause exists to cause the defendant held for trial
2. Entry of guilty/not guilty plea
3. Court hears suppression motions attacking confessions, searches and seizures, identification, etc. (State v. Rasmussen)

#### D. Right to Speedy Trial

(Minnesota Court Rule [11.01](#) – Criminal Procedure)

(SS 611A.033 – Speedy Trial; Notice of Schedule Change)

1. Statutory Speedy Trial
  - a. Trial within 60 days of demand
  - b. Trial within 120 days of demand if good cause has been shown to go beyond 60 days
  - c. After 120 days and no trial, defendant still stands trial, but is relieved of the obligations of his bond
2. Constitutional Speedy Trial
  - a. Within a reasonable period of time
  - b. Barker v. Wingo - factors in determining whether constitutional speedy trial has been violated

1. length of the delay
2. who caused the delay
3. was the defense hurt by the delay
4. did the defendant demand a speedy trial

E. Jury Trial (Trial by Peers) or Court Trial (Trial by Judge)

1. **Not entitled to a Jury Trial in Petty Misdemeanor cases.**
2. Defendant may waive his/her constitutional right to a jury trial in Misdemeanor, Gross Misdemeanor or Felony cases.

F. Trial

1. Jury Selection
  - a. **Voir Dire Hearing** – Questioning prospective jurors to determine their suitability for jury service
  - b. Either side may challenge a juror for “**cause**” (bias, prejudice, etc.)
  - c. Each side may eliminate a prospective juror from service for any reason except race (**peremptory strike**)
  - d. State gets 3, defense gets 5
2. Opening Statements
3. States “Case in Chief”
4. Defendant’s Case
5. States “Rebuttal Case”
6. Closing Arguments
  - a. State, Defense, State’s rebuttal
7. Jury Instructions
  - a. Judge instructs the jury as to the law they need to apply to the facts they heard during trial
8. Jury Deliberation
9. Jury Verdict
10. Sentencing
11. Appeals process

# Glossary

# Glossary

## Actus Reus

- Actus – Statute, written law. Reus – Criminal. **A Criminal Act**

## Carnal Knowledge

- Act of a man in having sexual bodily connection with a woman. There is “Carnal Knowledge” if there is the slightest penetration of the sexual organ of the female by the sexual organ of the male.

## Constructive

- That which is inferred, implied, made out by legal interpretation; - the word “legal” being sometimes used in lieu of constructive.

## Corpus Delicti

- The body of a crime. The substantial fact that a crime has been committed. Established by proving the elements of a particular crime were committed.

## Culpable

- Blamable; censurable; involving the breach of a legal duty or the commission of any fault

## Habitation

- (Dwelling House) Occupancy rather than ownership being the test. It is not a “Dwelling House” before the first occupant has moved in or after it has been permanently abandoned; but other vacancies – including the prolonged absence of actual residence who intend to return (e.g., summer cottage) – do not effect its status as a dwelling house.

## Homicide

- The killing of one human creature by another human creature.

## Inchoate

- Unfinished, begun, but not completed.

## Intent

- Design, resolve, or determination with which person acts. Being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts.

## Larceny (Theft)

- Fraudulent taking and carrying away of a thing without claim of right, with intention of converting it to a use other than that of the owner, without his consent.

## Mala In Se

- Wrongs in themselves; acts morally wrong; offenses against conscience. (Require element of Mens Rea.)

## Mala Prohibita

- Acts which are made offenses by law. (Require no element of Mens Rea.)

## Malice

- In its' legal sense, it applies to a wrongful act done intentionally, without legal justification or excuse.

## Mens Rea

- A guilty mind; a guilty or wrongful purpose; Criminal Intent

## Misprision

- (of a felony) The offense of concealing a felony committed by another. Denotes knowledge not complicity.

## Motive

- Cause or reason that moves the will and induces action.

## Perpetrator

- Generally this term denotes the person who actually commits the crime.

## Premeditation

- To think of an act beforehand, to contrive and design, to plot or lay plans for the execution of a purpose.

### Prima Facie

- At first sight; on the first appearance; on the fact of it. A fact presumed to be true unless disproved by some evidence to the contrary. A litigating party is said to have a “prima facie case” when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it.

### Provocation

- The act of inciting another to do a particular deed. That which arouses, moves, calls forth, causes, or occasion. “Provocation” which will reduce killing to manslaughter must be of such character as will, in the mind of the average reasonable person, stir resentment likely to cause violence, obscure the reason, and lead to action from passion rather than judgment.

### Proximate Cause

- That which, in a natural and continuous sequence, unbroken by an efficient intervening cause, produced the injury, and without which the results would not have occurred.

### Scienter

- Term is frequently used to signify the defendant’s guilty knowledge.

### Stare Decisis

- To abide by, or adhere to, decided cases. Policy of courts to stand by precedent and not to disturb settled point.

### Strict Liability

- Liability without fault. Case is one of “strict liability” when neither care nor negligence, neither good nor bad faith, neither knowledge nor ignorance will save defendant.

### Tort

- A legal wrong committed upon the person or property of another, independent of contract.

# The Exclusionary Rule

## Weeks v. U.S. (1914)

## Mapp v. Ohio (1961)

# The Exclusionary Rule

## Exclusionary Rule

The Constitution of the United States and the Bill of Rights were ratified in 1789.

In *Weeks v. U.S.* (1914) the U.S. Supreme Court ruled that evidence acquired by the federal government through unlawful activity was excluded as evidence at a federal criminal trial. The court grounded its decision in the 4<sup>th</sup> Amendment.

In analyzing the reasons for the Exclusionary Rule, the Court put forth the following:

1. Deterrence of government officials from violating the rights of its citizens.
2. Maintenance of the integrity of the judicial system.

It was not until *Mapp V. Ohio* (1961) that the exclusionary rule was expanded to apply to state prosecutions as well. The mechanism the U. S. Supreme Court used to apply it to the States was the Due Process Clause of the 14<sup>th</sup> Amendment.

Since then, the Exclusionary Rule has been expanded, narrowed, discussed and explained. The Courts have finally decided that the Exclusionary Rule is not really found in the Constitution, but is a judge-made rule necessary to the two purposes put forth. It applies to violations of a defendant's rights under the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments.

### Narrowing of the Exclusionary Rule

Since *Mapp*, the courts have narrowed the scope of the exclusionary rule. The Exclusionary Rule was held to not be applicable in:

- Cases where the evidence would eventually be discovered (Inevitable Discovery)
- Cases where information also came from an independent source (Independent Source)
- Cases where the police operated in good faith reliance on a magistrate's determination of probable cause in a search warrant (Good Faith Exception)
- The impeachment of a testifying defendant
- Collateral proceedings
- Cases where the defendant did not have "standing".



## Expansion of the Exclusionary Rule

The exclusionary rule prohibited the use of the “Primary Evidence” obtained from the illegal government conduct and was then expanded to also prohibit the use of “Secondary Evidence” derived from the initial illegality.

This is known as the “fruit of the poisonous tree” doctrine.

The “fruit of the poisonous tree” doctrine arose out of the U.S. Supreme Court decision in the case of Silverthorne Lumber Co. v. United States (1920).

Applications:

1. Confession gained after an illegal arrest.
2. Evidence seized as a result of information from an illegally obtained confession.

## Standing

Recent federal and state cases dealing with the concept of standing include U.S. V. Salvucci and Rawlings v. Kentucky.

The concept of standing is:

If a defendant, under the totality of the circumstances, can show he/she had a reasonable or legitimate expectation of privacy in the place searched or the thing seized, that defendant has “standing to object”. If not, they do not have “standing”.

# The Exclusionary Rule

**ANY EVIDENCE\* UNCONSTITUTIONALLY OBTAINED\*\* CAN'T BE USED\*\*\***

<p>* Not only Primary Evidence, but also Secondary Evidence (i.e. Fruit of the Poisonous Tree) unless:</p> <ol style="list-style-type: none"> <li>1) Inevitable Discovery</li> <li>2) Independent Source</li> <li>3) Good Faith Exception</li> </ol>	<p>** The violated right must be the Defendant's right (the defendant must have "standing" in the case)</p>	<p>*** In a Criminal Trial (The State's "Case in Chief") but can be used for:</p> <ol style="list-style-type: none"> <li>1) Impeachment of Testimony</li> <li>2) In Collateral Proceedings (Civil Cases)</li> </ol>
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# Identification Procedures

# Identification Procedures

## NIJ Police Lineups

### Lineups-Legal Information Institute

#### Lineup

### MN Statute on Identification Process

#### **I. Types**

- A. Field Identification (Show-Up Lineup)
- B. Photographic displays (Photo Lineup)
- C. Lineup (Jailhouse Lineup)

#### **II. Requirements/Considerations**

- A. Is there the right to counsel at the procedure?
- B. Procedure may not be “Impermissibly suggestive”

#### **III. Field Identification (Show-up Lineups)**

- A. One-on-one identification of detained suspect within a short time after the crime was committed
- B. Allowed only:
  - 1. shortly after the crime was committed (within 2 hours)
  - 2. emergency situations (witness may die and is in the hospital)
- C. Each victim and witness should view the suspect separately
- D. Before formal proceedings commence - no right to counsel
- E. After formal proceedings commence - right to counsel

#### **IV. Photographic Display (Photo Lineup)**

- A. No right to counsel
- B. Cannot be impermissibly suggestive
- C. Pictures should not bear any markings which might indicate who the suspect is
- D. Minimum of 6 photos (other sources say 5-10 photos)
- E. Witnesses should view pictures apart from one another

## V. Lineup (Jailhouse Lineup)

- A. **Suspect has a right to counsel**
- B. Cannot be impermissibly suggestive
- C. Minimum of 6 persons (not more than 10 persons)
- D. Witnesses should view the lineup apart from one another
- E. **Suspect has no right to refuse to participate in the physical lineup**  
and should be told this as well
- F. If the suspect continues to refuse to “stand a lineup”, either use a photographic lineup or force the suspect to stand the lineup

## VI. Right to Counsel

- A. Never in photographic displays
- B. Sometimes lineups (Jailhouse lineups)
  - 1. Only after formal proceedings have started
    - a. issuance of criminal complaint
    - b. issuance of criminal complaint and warrant
    - c. grand jury indictment handed down
    - d. suspect makes 1<sup>st</sup> appearance in court
  - 2. Warrantless arrest on probable cause is not a formal proceeding
  - 3. When the right (to an attorney) attaches, it is only for the offense charged
- C. Suspect must be informed of their right to counsel and the fact that counsel will be appointed if indigent, when the right attaches
- D. If suspect wants a lawyer, police must delay the lineup for a reasonable time for the lawyer to arrive
- E. Suspect may waive (give up) the right to counsel
  - 1. Must be a voluntary and intelligent waiver
  - 2. Written waiver is recommended
- F. What can counsel do?
  - 1. Only there to observe and make suggestions
  - 2. Police are in charge - their investigation

## VII. Effect of Failure to advise of/or provide counsel when required

- A. Evidence of the identification procedure will be inadmissible
- B. An in-court identification will only be allowed if it is based upon an independent source

1. This rule attempts to prevent an in-court identification which is tainted by the inadmissible out of court identification
2. If the witness had an independent source, he/she may make an in-court identification. Factors:
  - a. Prior opportunity to observe the act
  - b. Distance/lighting conditions
  - c. Time between the act and the identification procedure
  - d. Failure to identify on a previous occasion
  - e. Any discrepancy between the description given police and the defendant's actual description
  - f. Witness' degree of attention

#### VIII. Non-suggestive Requirement

- A. Applies to all identification procedures
- B. Procedure may not be "impermissibly suggestive" - judged by the totality of the circumstances
- C. Police must do all they can to make certain the procedure is not overly suggestive
- D. Effects of impermissibly suggestive procedure
  1. Evidence of identification procedure will be inadmissible
  2. An in-court identification may be permitted if there is an independent source for the information

#### IX. Factors of concern when making certain a lineup is not impermissibly suggestive

- A. Clothing
  1. all in the lineup should be dressed similarly
- B. Remarks by officers to witnesses
  1. Just explain the procedure
  2. The less said the better
  3. Ask if they can identify anyone and from where if they can
  4. Officers should not give any hint that the correct person is in the lineup
  5. Identification of the correct person is serving justice
- C. What should the witness do?

1. Each should view the procedure separately so they do not influence each other
2. Witness remarks or reactions should not be in front of other witnesses

D. Race

1. All participants should be the same race

E. Number of people

1. The lineup should be 6 or more

F. Recitation of words required

1. It is appropriate to have the suspect as well as the other people standing the lineup recite certain words or perform certain tasks

G. Physical Characteristics

1. Should be as similar as possible
2. Hair color
3. Height and weight
4. Age
5. Other physical characteristics (facial hair, glasses, etc.)

X. Documentation of the Procedure

A. Reasons for maintaining good records of the procedure

1. Difficult for Defense Counsel to suggest the proceedings are unfair if officer can precisely reconstruct what happened
2. Officer looks more professional - and therefore is more credible
3. Good recordkeeping is fair to the defendant

B. Record of each Identification Procedure

1. Field Identification – If the suspect is positively identified
  - a. Arrest
  - b. Seize evidence
  - c. Photograph
2. Photographic Lineup
  - a. Have a copy of the lineup and have the witness initial the photograph in the copy indicating their selection. The officer should initial and mark the time and date of the selection.
  - b. Preserve the original photographic lineup for future court proceedings
3. Lineup (Physical Lineup) –
  - a. At a minimum, photograph the lineup.

- b. The lineup should also be videotaped and audio taped if the lineup persons are required to perform physically or verbally during the procedure

C. What to Record:

- 1. Time, location and who was there
- 2. Identify the people viewed by the witness
- 3. Attorney's objections or suggestions if an attorney is requested
- 4. Preserve statements made by everyone - police, attorney, victims and witnesses

XI. "Double-Blind" Line-ups.

- A. "The Innocence Project" suggests that officers use a "double-blind" photographic lineup, where neither the administrator of the line-up nor the eyewitness knows who the suspect is. This prevents the administrator from providing inadvertent or intentional verbal or nonverbal cues to influence the eyewitness to pick the suspect. Immediately following the lineup procedure, the eyewitness should provide a statement, in his or her own words, that articulates the **level of confidence** he or she has in the identification made.



# Interrogations and Confessions

Miranda v. Arizona (1966)

Minnesota v. Scales (1994)

## Interrogations and Confessions

### Miranda Warning

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.

### Waiver

After the warning and in order to secure a waiver, the following questions should be asked and an affirmative reply secured to each question.

1. Do you understand each of these rights I have explained to you?
2. Having these rights in mind, do you wish to talk to us now?

### I. QUESTIONS TO ANSWER IN EACH SITUATION WHERE A DEFENDANT GIVES A STATEMENT.

- A. Was the statement voluntary?
- B. Were warnings under MIRANDA required?
- C. Were the warnings given properly?
- D. Were the suspect's 5<sup>th</sup> (self-incrimination) and 6<sup>th</sup> (right to attorney) amendment rights freely and voluntarily waived?

### II. VOLUNTARINESS OF STATEMENT

#### A. Considerations

1. Was defendant abused
2. Was defendant threatened
3. Were any promises made to defendant
4. Was defendant provided with comforts such as food, drink, bathroom breaks
5. Was defendant denied communication privileges

### III. PENALTIES

- A. Statement will be inadmissible if Miranda was not complied with
- B. Statement will be admissible to impeach defendant if statement was otherwise voluntarily given

## IV. MIRANDA WARNINGS

### A. How to give them

1. Oral or written
2. Always best to read from rights advisory card
  - a. Card itself may be evidence at the suppression hearing
  - b. Makes certain the entire warning is given, and properly

### B. Advisory Contents

1. Right to remain silent
2. Anything said may be used against the suspect in court
3. Right to an attorney, prior to questioning
  - a. Important to indicate that the right to counsel is present before any questioning takes place
4. If suspect can not afford an attorney, he/she should be advised that one will be appointed for them (this should be given in all cases even though it may be apparent the suspect can afford counsel)

### C. Suspect must understand warning, BEFORE any questioning

1. If this is a problem, tailor the warning to the suspect's level of understanding
2. May need to use an interpreter

### D. When the Miranda rights advisory must be given

1. Give the MIRANDA Warning when you have CUSTODY & INTERROGATION
2. Warnings must be given before CUSTODIAL INTERROGATION
3. Factors in determining whether a suspect is in custody
  - a. Arrest - always custodial
  - b. Place of questioning (assuming suspect not arrested)
    1. Police station and police cars - not custodial if suspect is aware he/she is free to leave
    2. Jails - custodial
    3. Private residence - usually non-custodial
    4. Business places - usually non-custodial
    5. Automobiles - usually non-custodial
    6. Hospitals - usually non-custodial
    7. Crime scenes - general questioning prior to arrest are non-custodial

- c. Time of questioning
  - 1. More likely to be determined custodial if questioned at very early or late hours.
- d. Physical restraint
  - 1. Custody usually found
- e. Use of weapons
  - 1. Custody usually found, unless suspect is also armed
- f. Officer's statements and demeanor
  - 1. If officers display a friendly attitude, rather than being accusatory and confrontive, it is more likely that no custody will be found
- g. Form of questions
  - 1. Questions which are open ended and general are indicative of non-custody
  - 2. Questions which are leading and accusatory may be indicative of custody

#### E. Exceptions to the Miranda advisory requirement

- 1. When obtaining non-testimonial evidence
  - a. fingerprints
  - b. handwriting and voice exemplars
  - c. evidence from suspect's body
  - d. photographs
- 2. During booking procedure
- 3. During a **TERRY** stop and frisk
- 4. During a routine traffic stop
- 5. Statements to an undercover officer or non law enforcement agent

### V. VOLUNTEERED STATEMENTS

- A. Statements made which are volunteered by the suspect and not in response to any interrogation
  
- B. Statements which are during questioning, but are not responsive to the question asked

### VI. WAIVER OF MIRANDA RIGHTS

- A. Suspect must give up his rights voluntarily, not in response to any threats, coercion or promises
- B. Actions amounting to waiver
  - 1. Answering questions or talking after indicating that he/she understood the rights
  - 2. Signing written waiver form

## VII. NON-WAIVER OF MIRANDA RIGHTS

- A. Refusing to answer
- B. Suspect stating that suspect doesn't want to answer questions
- C. Suspect asking for attorney to be present
- D. Any indication suspect refuses to answer

## VIII. SUSPECT ASSERTS MIRANDA RIGHTS

- A. Interrogation must cease

## IX. RECORDING OF INTERROGATION

- A. State v. Scales ([Minnesota v. Scales – 1994](#))
- B. Required by Minnesota Supreme Court
- C. Must record the Miranda Advisory, Waiver, and Statements
- D. “..all custodial interrogations including information about (Miranda) rights, any waiver of those rights, and all questioning **SHALL** be electronically recorded **where feasible** and **MUST** be recorded when questioning occurs at a **place of detention**.”
- E. Penalty for violation may be suppression of the statements

## X. MULTIPLE INTERROGATIONS

### A. Suspect talks, but later ceases interrogation

1. Officer may resume the interrogation later - rights must be given again (Officer reinitiated)

### B. Suspect requests a lawyer - interrogation must stop or 14 days must have transpired.

1. Officers may not resume the interrogation unless the suspect's right to counsel has been scrupulously honored and the suspect reinitiates the conversation (Suspect reinitiated)
2. Exception – [Maryland v. Shatzer \(2010\)](#) – “14-day rule”.  
The U.S. Supreme Court established a new “14-day break in Miranda custody rule,” now permitting police to re-initiate custodial interrogation efforts with a suspect who previously invoked the right to counsel during Miranda warnings, but only after the suspect has been removed from Miranda custody for 14 days.

# Stop and Frisk

## Terry v. Ohio (1968)

## Stop and Frisk (Terry v. Ohio)

### I. STOP v. CONTACT

- A. 4<sup>th</sup> Amendment applies to “Stops”, not to “Contacts”
- B. Test: Would the individual think he/she is free to go? The deciding factors are:
  - 1. The officer’s conduct
  - 2. The officer’s actions
  - 3. The location of the situation
  - 4. The number of officers involved
- C. You need no reason to contact someone on the street
- D. Stop and Frisk rules do not apply to Contacts, only Stops

### II. STOP

- A. The 4<sup>th</sup> Amendment which prohibits “unreasonable searches and seizures” applies to stops. By making a stop, you have made a seizure
- B. Can stop when:
  - 1. Standard is “reasonable (articulable) suspicion”; less than probable cause
  - 2. Need specific facts that criminal activity is, was, or is about to take place
  - 3. Must be able to verbalize (articulate) the facts causing you to make the stop
  - 4. Considerations
    - a. Time of Day
    - b. Neighborhood - location
    - c. Suspect’s actions
    - d. Suspect’s appearance
    - e. Reliable informant information
    - f. Prior knowledge of suspect
    - g. Flight
    - h. Any other facts
- C. Length of Detention
  - 1. As short as possible, while diligently trying to develop probable cause to arrest
    - a. Courts will look at the diligence of the officer’s investigation



- b. Court have ruled that in certain types of investigations 1 - 2 hours is not unreasonable

#### D. Use of Force

- 1. Only if suspect resists the stop
  - a. Can then be charged with “Obstructing Legal Process or Arrest”
- 2. Must be reasonable force
- 3. Deadly force only if needed to protect you or another from death or great bodily harm.

#### E. Miranda Warning

- 1. Not needed during routine stop
- 2. Needed if the stop turns into a custody situation

### III. Frisk

#### A. Purpose

- 1. Only to protect officer

#### B. When

- 1. Officer must reasonably fear for safety
- 2. Officer must explain (articulate) what caused the fear
- 3. The explanation must meet the standard of “reasonable (articulable) suspicion”

#### C. Scope of the Frisk

- 1. Limited to pat-down of outer clothing
- 2. Feel for hard objects that may be used to harm the officer
- 3. Can’t enter pockets before frisk

### IV. Search after Frisk - Limited

#### A. Purpose

- 1. Only to seize weapons felt during the frisk

#### B. When

- 1. Must first feel hard object that could be a weapon
  - a. Most anything hard could be or could contain a weapon

#### C. Scope

- 1. Only enter clothing to seize an item that could be a weapon
- 2. Do not remove “soft” objects (See: VII Plain Feel-Plain Touch)

## V. Arrest Following Stop and Frisk

- A. Must have valid stop and/or valid frisk
- B. Must have acquired probable cause to arrest
  - 1. Checked identification and found an active arrest warrant
  - 2. Found a weapon during the frisk and made arrest
  - 3. Developed probable cause to arrest after the valid stop (detention)
- C. Miranda warning now required if any questioning is to take place
- D. Search incident to arrest can be conducted ([Chimel v. California – 1969](#))

## VI. Protective Sweep of Residence ([Maryland v. Buie- 1990](#))

- A. When arresting someone in their residence, officers may have a reasonable fear there may be other people on the premises which could cause them harm.
  - 1. Defendant had unknown accomplices in the crime
  - 2. Officers can articulate that others may be in the residence
- B. If so, officers may look through the residence, but only in those places where people with weapons could secrete themselves

## VII. Plain Feel (Plain Touch) ([Minnesota v. Dickerson - 1993](#))

- A. Frisk must be supported by reasonable (articulable) suspicion
- B. Frisk (pat-down) reveals a “soft object” on the person
- C. To remove the item and have it accepted by the court, the contraband must be “instantly recognizable” by feel (without manipulation).
- D. Instantly recognized because of the officer’s:
  - 1. Knowledge
  - 2. Experience

# Arrests with Warrant

## Arrests with Warrant

### I. Purpose of warrant

- A. Allows a “neutral and detached” magistrate (Judge) to make a probable cause determination
- B. The fact that an officer could have gotten a warrant does not invalidate a valid warrantless arrest
- C. No false arrest liability with warrant

### II. Probable Cause

- A. 4<sup>th</sup> Amendment - “no warrants shall issue, but upon probable cause, supported by oath or affirmation”.
- B. Definition of Probable Cause - “reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious person in believing the accused to be guilty
- C. Less than proof beyond a reasonable doubt but more than reasonable suspicion (the standard for a Terry Stop and Frisk)

### III. Warrant vs. Summons

- A. Petty Misdemeanors
  - 1. Summons must be issued
- B. Misdemeanors
  - 1. Summons must be issued unless:
    - a. Substantial likelihood defendant won’t respond
    - b. Defendant’s whereabouts not known, or
    - c. Arrest necessary to prevent bodily harm
- C. Gross Misdemeanors and felonies
  - 1. Summons or warrant
  - 2. Considerations
    - a. Nature and circumstances of offense
    - b. Defendant’s employment
    - c. Defendant’s family relationship
    - d. Defendant’s criminal record
    - e. Defendant’s past response to legal process
    - f. Defendant’s whereabouts reasonably discoverable
    - g. Necessary to prevent imminent harm

#### IV. Delivering Summons

- A. To defendant or someone at defendant's residence
- B. Mail to defendant's last known address
- C. File return of service form

#### V. Executing Arrest Warrant

- A. Felony & Gross Misdemeanor warrants
  - 1. Any time, any day, daytime or nighttime, anywhere in MN
- B. Misdemeanor warrants
  - 1. Not on Sundays, legal holidays, or between 10 p.m. and 8 a.m. unless:
    - a. "nightcapped" warrant
    - b. defendant found in a public place or on a public street or highway
  - 2. Don't have to have warrant in possession at time of arrest but must inform defendant of its existence and the nature of the charges

[MN SS 629.31](#)

#### VI. 36 Hour Rule and 48 Hour Rule

##### A. Arrest **with** warrant

- 1. 36 hour rule (Complaint and Arraignment – Rule 4.01) – “A defendant arrested under a warrant issued upon a complaint shall be taken before a court, judge or judicial officer as directed in the warrant.” (Bring before court at earliest convenience)
- 2. 48 hour rule (Probable Cause Determination) – A Judge has already made a probable cause determination when the warrant was signed

[Rule 4.01](#)

##### B. Arrest **without** warrant

- 1. 36 hour rule (Complaint and Arraignment – Rule 4.02, Sub. 5) - excludes the day of arrest, Sundays, and legal holidays [Rule 4.02](#)
- 2. 48 hour rule (Probable Cause Determination – Rule 4.03, Sub. 1) - Judge must make a probable cause determination within 48 hours from the time of arrest. [Rule 4.03](#)

## VII. No Knock Arrests

### A. Rule for all arrests - with or without an arrest warrant

1. Knock and announce authority
2. If no response, right to break open door or window to gain entry to make the arrest

### B. Exceptions

#### 1. Arrests with warrant

- A. Useless gesture
- B. Danger to yourself or others

#### 2. Arrests without warrant

##### A. Exigent circumstances

1. Protect Human Life or Prevent Serious Bodily Harm
2. Prevent the Imminent Destruction of Evidence
3. Arrest a Suspect (Danger of Escape)

## VIII. Hot Pursuit

### A. Felonies, Gross Misdemeanors, and Misdemeanors

1. Pursue any place in MN if you can arrest in that jurisdiction

### B. Felonies only

1. Fresh pursuit across Minnesota border

### C. May pursue from public to private place, knock not required

# Arrests without Warrant

# Warrantless Arrests

## I. Warrantless (Custodial) Misdemeanor & Gross Misdemeanor Arrests

### A. General Rule – A peace officer can only arrest for a misdemeanor or gross misdemeanor without a warrant if the offense was committed in the officer's presence.

1. Must simultaneously become aware of acts and realize they are an offense
2. Arrest must be made when offense committed or attempted

### B. Exceptions - Probable Cause Standard - No Time Limit

- Alcohol-related School Bus or Head Start Bus driving – [MS 169A.31](#)
- Boating while Intoxicated (If in accident resulting in death, personal injury, or property damage) - [MS 169A.20](#)
- Driving While Impaired (DWI) - [MS 169A.20](#)
- Flying Aircraft while Intoxicated – [MS 360.0752](#)
- Hunting while Intoxicated - [MS 97B.065](#)
- Snowmobiling or ATVing while Intoxicated - [MS 84.91](#)
- Carrying Pistol while Under the Influence – [MS 624.7142](#)
- Underage Drinking and Driving – [MS 169A.33](#)
- School Bus Violations - Illegal Approach to or Passing of School Bus (Misdemeanor or Gross Misdemeanor) [MS 169.444](#), subd. 1, 1a, 5
- Thefts (any Gross Misdemeanors) [MS 609.52](#)
- Theft in Business Establishment – Arrest by store owners or employee- [MS 629.366](#)
- Theft by Swindle (Misdemeanors and Gross Misdemeanors) [MS 609.52](#)
- Check Forgery (Gross Misdemeanor) \$250 or less
- Financial Transaction Card Fraud (Gross Misdemeanor)
- Harassment or Stalking (Gross Misdemeanors)
- Criminal Damage to Property (Gross Misdemeanors)
  1. Damage > \$500 but not more than \$1,000
  2. Damage < \$500 if motivated by bias
- Violation of a Domestic Abuse Order for Protection - [MS 518B.01](#), subd. 14(b)
- Violation of Harassment Restraining Order – [MS 609.748](#), subd. 6(e)
- Violation of No Contact Orders [MS 629.75](#)
- Second conviction for any of the following misdemeanors-level offenses:
  1. Prostitution [MS 609.324](#)
  2. Motor Vehicle Tampering [MS 609.546](#)
  3. Damage to Property [MS 609.595](#)
  4. Dangerous Weapons [MS 609.66](#)



5. Violation of local ordinances prohibiting the unlawful sale or possession of a controlled substance.

**B. Exception – Domestic Assault Cases - Probable Cause Standard – Offense committed within the previous 72 hours. (Exclusive of the day probable cause was established)**

1. Domestic Assault ([MS 609.2242](#); [MS 629.341](#))
  - A. Probable cause standard for arrest
  - B. Must have occurred within previous **72 hours – exclusive of the day probable cause was established**
  - C. Victim is “family or household members” [[MS 518B.01](#), subd. 2(b)], which includes:
    - ✓ spouses and former spouses,
    - ✓ parents and children,
    - ✓ persons related by blood,
    - ✓ persons who are presently residing together or who have resided together in the past,
    - ✓ persons who have a child in common, even though they may have never been married or lived together,
    - ✓ man and woman, if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time,
    - ✓ persons involved in a significant romantic or sexual relationship
  - D. If a, b, & c completed, warrantless arrest may be made, even at suspect’s residence
  - E. After arrest:
    - i. Suspect must be taken to police station or jail. A citation may not be issued at suspect’s home. Provides a “cooling off” period
    - ii. At station or jail, citation should be issued unless detention is necessary to protect another from bodily harm or substantial likelihood suspect will not appear on the citation.

**D. Exceptions - Probable Cause Standard - Offense committed within the previous 4 hours.**

1. Trespass on School Property - [MS 609.605](#), subd. 4(e)
2. Assaults (5<sup>th</sup> Degree) on School Property - [MS 629.343](#)
3. Failure to Yield to Emergency Vehicle – [MS 169.20](#), Subd. 5(c) (May arrest up to 4 hrs after the end of the Emergency)
4. Driving Through Column of School Children or Past a School Safety Patrol Member– [MS 169.21](#), Subd. 2(c)
5. Failure to Stop at RR Crossing – [MS 169.26](#), Subd 1(a)
6. Failure to Submit to Vehicle Weighing – [MS 169.85](#), Subd. 4
7. School Bus Stop Arm Violation – [MS 169.444](#), Subd. 5

**E. Arresting when in-presence requirement not satisfied**

1. Get a warrant
2. Have citizen make arrest if citizen witnessed misdemeanor

**II. Warrantless Felony Arrests**

**A. Committed or attempted in officer's presence**

1. Same as in-presence misdemeanor requirements

**B. Felony committed and probable cause to believe suspect committed it.** Probable cause should include:

1. Enough information that cautious person would believe accused probably guilty
2. Can be based on hearsay
3. Whole department standard
4. Informants
  - a. Named private citizen
    1. Reliability presumed
    2. Citizen can't be involved in the criminal activity
  - b. Undisclosed informant
    1. Informant must be credible
    2. Informant must be reliable
  - c. Anonymous informant
    1. Must verify (corroborate) information provided

**III. Citizen's Arrests ([MS 629.37](#))**

**A. Three instances when a citizen's arrest can be made:**

1. Any public offense attempted or committed in the citizen's presence
2. Person has in fact committed felony outside the citizen's presence
3. A felony has been committed and the citizen has probable cause to believe the suspect committed it
  - a. Citizen may have heard on the news that the person was wanted or a warrant had been issued for their arrest.

#### IV. When Arrest Can Be Made

##### A. Warrantless arrests

1. Misdemeanor and gross misdemeanors - any time if witnessed by the officer
2. Felonies - any time

#### V. Night Time Arrest Requirement ([M.S. 629.35](#))

1. Unless a person is being arrested while committing a crime or being pursued, the officer shall announce their authority and reason for arrest if arresting a person at night without a warrant

#### VI. Procedural Requirement

- A. **Complaint and Arraignment** - the 36-hour Rule ([Rule 4.02](#) of the Minnesota Rules of Criminal Procedure)
- B. **Probable Cause Determination** - the 48-hour Rule ([Rule 4.03](#) of the Minnesota Rules of Criminal Procedure)

## Searches Incident to Arrest

Chimel v. California (1969)

New York V. Belton (1981)

Maryland v. Buie (1990)

Arizona v. Gant (2009)

## Searches Incident to Arrest

### (*Chimel v. California* - 1969)

#### I. Theory

A. Protect officers

B. Prevent destruction of evidence

C. Once suspect arrested further intrusion of search minimal

#### II. Requirements for Valid Search Incident to Arrest

##### A. Valid (Legal) Arrest

1. May be made with or without a warrant
2. Arrest must always precede search
3. Always try to inform suspect “you are under arrest” before conducting search

##### B. Custodial arrest (must be an offense that could involving jailing)

1. If suspect is issued citation, no search incident to arrest is allowed.

##### C. Search must be limited to suspect’s person and area within their immediate control (“lunge area” – *Chimel v. California* – 1969)

1. Purpose of search: To protect officers and prevent evidence destruction
2. Includes area where suspect could lunge to grab weapon
3. Suspect may be handcuffed prior to search
4. May search other areas outside suspect’s control if:
  - a. Reasonable belief others on premises who could harm officers or destroy evidence. (“protective sweep” – *Maryland v. Buie* – 1990)
    1. May only look in areas where a person could hide.
  - b. Suspect requests to go to another area (*Chimel*)

## 5. Vehicle Searches (Incident to Arrest)

(*Chimel v. California*- 1969) (*New York v. Belton* – 1981)

- a. Entire passenger compartment, including all containers , locked or unlocked, may be searched if a suspect is arrested in a vehicle
- b. The containers include the glove compartment, console, luggage, clothing, bags, packages, boxes, etc.
- c. Closed trunk **may not be searched** incident to arrest
  - 1. Search of trunk may be done under:
    - a. Inventory search
    - b. CARROLL DOCTRINE (*Carroll v. U.S.* – 1925)
    - c. Instrumentality of offense
    - d. Consent
- d. Hatchback and interior of van qualify as passenger compartment

### D. *Arizona v. Gant* – 2009 (Blurring the Belton bright line)

- 1. U. S. Supreme Court decision which requires officers to demonstrate an actual and continuing threat to their safety posed by an arrestee, or a need to preserve evidence related to the crime of arrest from tampering by the arrestee, in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's occupants have been arrested and secured.

### E. Search must be contemporaneous to arrest

- 1. Area of arrest should be searched before subject removed
- 2. Search of person may be delayed if reason to do so

# Search Warrants

# Search Warrants

## I. Rationale

A. Allows a “neutral and detached” magistrate (judge) to decide if probable cause exists

### B. Advantages

1. It is a court order commanding you to search a particular place or person for particular items
2. Defendant later has the burden to prove the issuance of the search warrant was unreasonable
  - a. Searches with a warrant are deemed “reasonable”, therefore the defense has to argue their “unreasonableness”
  - b. Searches without a warrant are deemed “unreasonable”, therefore the prosecution has to argue their “reasonableness”

## II. General Rule

A. Get a search warrant unless you cannot

## III. Where to go

A. A judge in the county where the place to be searched is located

## IV. Who may execute warrant

- A. Peace officer from the county where the place to be searched is located
- B. At least one officer named in the affidavit must be present when the search is executed

## V. Execution of Search Warrant

- A. **Within 10 days of issuance**, otherwise must start over completely (establish *current* probable cause)
- B. **Cannot search persons not named in warrant unless person appears armed and dangerous or an exception to the search warrant requirement is present**
- C. Movements of those present may be restricted to prevent them from interfering with the execution of the warrant
- D. Items not named in the search warrant may not be seized unless discovered in the search and it is contraband or obviously related to criminal activity.
- E. **NIGHT TIME** search warrants (**warrants you want to execute after 8 pm but before 7 am**)
  1. Judge must specifically authorize



2. Search warrant APPLICATION must show the necessity of a night time execution of the warrant such that items named will be lost, destroyed, or removed if not granted

F. Knock and Announce required unless exigent circumstances arise

G. **NO KNOCK** entries

1. If exigent circumstances arise at scene
2. If the judge issuing the search warrant authorizes it
  - a. For protection of officers
  - b. Evidence may be destroyed if the officers announce their authority & purpose

## VI. What to do after execution

- A. Complete inventory, receipt for evidence seized and search warrant return
- B. Leave copy of receipt and search warrant itself (not the application or affidavit)
- C. File warrant with the court **within 10 days** of its issuance

## VII. Contents of Search Warrant Application

- A. Describe person and places to be searched with particularity
  1. Persons
    - a. Identify with reasonable certainty (Name, DOB, Description)
  2. Motor Vehicles
    - a. Vehicle make, model & year, license plate, and VIN if available
    - b. Include any distinctive markings like rust spots, dents, vinyl roof, color
  3. Places
    - a. Enough information so the premises can be identified with reasonable certainty
    - b. URBAN premises
      1. Color, size, type of building, style of building, size, presence of outbuildings
      2. Street address
    - c. RURAL premises
      1. Address
      2. Types of buildings together with the description of them
      3. Section, township
      4. Use landmarks to locate
    - d. Apartments
      1. Address, name of complex, location within the building, apartment number

## B. Items to be seized

1. Stolen goods
  - a. Name, model number, serial number, size
  - b. Any distinctive markings
  - c. If difficult to describe, like jewelry, attach a sketch or picture
2. Drugs
  - a. Boilerplate description is sufficient
  - b. e.g. “any and all narcotics and any and all paraphernalia, papers and records relating to the use, possession and sale of narcotics.
3. Items of identification, ownership or tenancy of the place to be searched
  - a. ALWAYS include this request in any search warrant application
  - b. Allows you to associate tenants with the crime
  - c. Allows you to search in places you otherwise might not be able to

## VIII. Contents of AFFIDAVIT in support of the Search Warrant

### A. Grounds for the warrant

1. Stolen or embezzled property
2. Contraband
3. Evidence of a crime
4. Possession of property is a crime

### B. Must state probable cause

1. Enough facts to leave a reasonable person to conclude the items sought will be on the premises (or person, or vehicle) to be searched

### C. Describe background of affiant

1. Length of time employed as peace officer
2. Title or area of specialization as it relates to the warrant
3. Affiant’s familiarity and knowledge of the crime for which the warrant is sought
4. Affiant’s training
5. Affiant’s familiarity and knowledge of paraphernalia or other items used or associated with the offense

### D. Past reliability of informant

1. If informant is a named citizen, reliability is presumed
2. Detail period of time affiant has known informant
3. Number of times informant has provided information and the type of information provided
4. Number of times information has been corroborated
5. Informant’s knowledge/expertise with the offense under investigation
6. Results obtained based on information previously supplied by informant
  - a. Number of persons arrested
  - b. Evidence recovered as a result of the information proved

- c. Information and facts corroborated by other means
  - d. Number of arrests and convictions obtained as a result of information from the informant
- E. Reliability of present information supplied by informant
  - 1. Describe where and when informant provided the recent information to affiant
  - 2. Detail contents of information received from informant
    - a. Age of information
    - b. How the information was obtained
      - 1. Personal observation
      - 2. Based on informant's communication with suspect
      - 3. Communication from another party (that person's credibility must then be shown)
- F. State reason for not naming confidential informant
  - 1. So the identity can be protected, thus allowing the informant to continue to provide information
  - 2. For the safety of the informant

## **SEARCH WARRANTS**

**626.04 PROPERTY; SEIZURE, KEEPING, AND DISPOSAL.**

**626.05 DEFINITIONS.**

**626.06 JURISDICTION TO ISSUE.**

**626.07 GROUNDS FOR ISSUANCE.**

**626.08 PROBABLE CAUSE.**

**626.085 SEARCH WARRANT REQUIRED FOR ELECTRONIC COMMUNICATION INFORMATION.**

**626.09 EXAMINATION OF PARTIES MAKING REQUEST.**

**626.10 AFFIDAVIT; CONTENT.**

**626.11 ISSUANCE OF WARRANT.**

**626.12 APPLICANTS; NAMES ON WARRANT.**

**626.13 SERVICE; PERSONS MAKING.**

**626.14 TIME OF SERVICE.**

**626.15 EXECUTION AND RETURN OF WARRANT; TIME.**

**626.16 DELIVERY OF COPY OF WARRANT AND RECEIPT.**

**626.17 RETURN AND INVENTORY.**

**626.18 SEARCH WARRANTS RELATING TO ELECTRONIC COMMUNICATION SERVICES AND REMOTE COMPUTING SERVICES.**

**626.19 USE OF UNMANNED AERIAL VEHICLES.**

# Consent Searches

## Consent Searches

### I. Theory

- A. Suspect waives their 4<sup>th</sup> Amendment rights
- B. No probable cause needed if consent is given

### II. Problems

- A. Suspect is alerted. If no consent is given, there is a possibility evidence will be destroyed before you can get a search warrant
- B. Consent may be withdrawn at any time
- C. Suspect may later claim that no consent was given

### III. Requirements for a Valid Consent

- A. Must be free and voluntary, not while under coercion or duress
  - 1. Voluntariness is determined by the totality of the circumstances
  - 2. Considerations:
    - a. Age, sophistication, intelligence, mental state of the person giving consent
    - b. Demeanor, statements, voice and actions of the officer requesting consent
- B. Person does NOT need to be told of their right to refuse
  - 1. It is, however, a consideration when the court determines whether the consent was freely and voluntarily given
- C. Consent must be clear and explicit
  - 1. Verbal
  - 2. Actions
    - a. Helps in searching for the items sought
    - b. Hands over keys
  - 3. Silence
    - a. Never consent - silence alone without action does not indicate consent
  - 4. Written Consent
    - a. Suspect can then not deny consent was given

D. The Person must Have Authority to Consent to the Search  
(The person must have “**Standing**” to consent to the search)

1. Test: Does the person have the right to occupy the premises?
2. **Who MAY consent?**
  - a. Owner or tenant
  - b. Husband or wife may consent for the other
  - c. Parent may consent to search of child’s room
  - d. Party host may consent to search of guest’s clothing
  - e. Joint owner or user
  - f. Employer may consent to search of employee’s workspace unless it is set aside for employee’s exclusive use
  - g. Roommate may consent to a search of shared parts of the apartment/house
3. **Who MAY NOT consent?**
  - a. Landlord for tenant
  - b. Employee may not consent to search of employer’s premises unless the employee has specific authority to consent

E. Duration of Consent

- a. Until all areas covered by the consent are searched or consent is withdrawn, whichever comes first

F. Withdrawal of Consent

- a. Officers must cease searching when consent is withdrawn
- b. Evidence discovered prior to withdrawal of consent may be seized and may be used as a basis to obtain a search warrant for the continued search of the premises

# Plain View



## Plain View

### I. Three Requirements

- A. Lawfully present - the officer must be lawfully in the position to view (or sense) the item to be seized
- B. The seized article must be readily found, observed or sensed
  - 1. Human senses include: vision, hearing, smell, taste, and touch
- C. The officer has probable cause to believe the item is related to criminal activity or that it is contraband

### II. Lawful Present

- A. Legal arrest
- B. Valid warrantless search (item viewed in building entered in hot pursuit)
- C. Investigation
- D. Exigent (Emergency) Circumstances
  - 1. Danger to life
  - 2. Danger of escape
  - 3. Danger of destruction of Evidence
- E. Investigatory Stop (Terry Stop)
- F. Execution of a Search Warrant

### III. Readily Discovered or Sensed (This includes the smell of marijuana)

- A. Item to be seized must be immediately recognized by the officer and contraband or evidence of a crime

### IV. The Officer must have Probable Cause that Item is Contraband or Evidence of a Crime

- A. Item must be reasonably related to a crime or criminal activity

# Hot Pursuit

## Hot Pursuit (Warden v. Hayden - 1967)

### I. Rationale

- A. It would be absurd for officers to halt a chase and get an arrest or search warrant if they are in hot pursuit

### II. Requirements

- A. Actual hot pursuit

### III. Scope

- A. Officers may enter premises and search for suspect in those areas where suspect could hide
- B. Search must stop when the suspect is found
- C. Any continued search or seizure after the suspect is found must be justified by another exception to the warrant requirement
  - 1. Protective Sweep (Maryland v. Buie)
  - 2. Plain View
  - 3. Search Incident to Lawful Arrest (Chimel v. California)
    - a. Search of Person
    - b. Search of immediate “lunge” area
  - 4. Consent

# Abandoned Property

## Abandoned Property

### I. Theory

A. Owner has no expectation of privacy in abandoned property

### II. Two Requirements

A. The property must be truly abandoned

#### 1. Considerations

a. Location item was discarded

1. Tenant leaving apartment
2. After checking out of hotel room
3. Hiding contraband under seat in police car
4. Walking away from briefcase at airport
5. Article thrown to ground when police approach
6. Things thrown from car during pursuit

b. Owner can not have an expectation of privacy in the place the item was discarded

B. Abandonment must not be caused by illegal police conduct

### III. Garbage

A. Abandoned once property is placed in position for collection, off of the “**curtilage**” of the property.

1. Garbage is not abandoned if it is still within the “curtilage” of the property

a. Curtilage definition: The grounds and buildings immediately surrounding a dwelling that are used for domestic purposes in connection with the dwelling

B. Officers must not trespass on the suspect’s property to seize abandoned garbage

### State v. Gould

[Cite as State v. Gould, 131 Ohio St.3d 179, 2012-Ohio-71.]

# Emergency/Exigent Circumstances

# Emergency/Exigent Circumstances

## Exigent Circumstances (MP3)

### Fourth Amendment: Exigent Circumstances

#### I. Rationale

- A. A warrantless entry/search may be justified when emergency (exigent) circumstances are present
- B. The individual's right to privacy gives way in exigent circumstances to the public's interest in immediately dealing with emergency situations.

#### II. Searches Necessary to **Protect Human Life or Prevent Serious Bodily Harm**

- A. Whether or not a genuine emergency situation exists is determined by the "totality of the circumstances"
- B. The emergency situation must exist at the time of the entry or search
- C. Scope of Search
  - 1. Permitted to search only to the extent necessary to eliminate the exigent circumstances
  - 2. May include searching the personal effects of an incapacitated person (look for medication or medical alert tag)
  - 3. Items seen in plain view may be seized if readily apparent they are evidence of a crime or contraband.

#### III. Searches Necessary to **Prevent the Imminent Destruction of Evidence**

- A. Officers must have probable cause that contraband or evidence of a crime are present
- B. Need to show that evidence would certainly be destroyed if time was taken to get a search warrant
- C. Officers can not create the exigent circumstance
- D. Scope of search limited to areas necessary to prevent the destruction
  - 1. May seize items in plain view if immediately apparent as evidence or contraband
  - 2. May justify the search of a person's body so evidence can't be destroyed
  - 3. Consider securing the area to prevent destruction and then requesting a search warrant

#### IV. Searches Necessary to **Arrest a Suspect (Danger of Escape)**

- A. Very rarely justified
- B. To protect others from harm and to place the suspect under arrest
  - 1. Hostage situations - standoff situations
- C. Factors the court may consider:
  - 1. whether a grave or violent offense is involved
  - 2. whether the suspect is reasonably believed to be armed and dangerous
  - 3. whether there is a strong probable cause connecting the suspect to the offense
  - 4. whether or not the officers have strong probable cause to believe the suspect is in the area searched
  - 5. whether or not the suspect is likely to escape if not apprehended immediately
  - 6. whether or not peaceful entry into the area was made by the officers

[Payton v New York](#)



# Motor Vehicle Searches (The Carroll Doctrine) Carroll v. U.S. (1925)

# Motor Vehicle Searches

## (The Carroll Doctrine)

### I. The Carroll Doctrine (Carroll v. U.S. 1925)

- A. If a motor vehicle is lawfully stopped, and officers have probable cause to believe it contains contraband or evidence of a crime, they may search it
- B. Motor Vehicle must be on the street, highway or a public place

### II. Motor Vehicle

- A. Any motor vehicle capable of being moved
  - 1. Includes cars, trucks, tractors, motorcycles, motorhomes, snowmobiles, ATVs, RTVs, boats, airplanes

### III. Lawful Stop Requirement

- A. Must have specific and articulable facts to lead officer to believe that criminal activity is occurring or about to occur
- B. Do not need these facts if car is stationary - this is only a “Contact”.

### IV. Probable Cause Requirement

- A. You have probable cause to search if under the totality of the circumstances there exists a fair probability the evidence or contraband will be found

### V. Scope of the Search

- A. Entire vehicle may be searched including entire passenger’s compartment, glove compartment, console, trunk, and any packages or containers (locked or unlocked) inside the vehicle
- B. Search limited by the nature of the item being sought (“Elephant in the Matchbox” theory)

# Motor Vehicle Inventory Searches

## Motor Vehicle Inventory Searches (South Dakota v. Opperman - 1976)

### I. Rationale

- A. Protect government from false claims of loss of property
- B. Protect owner's property

### II. Requirements

- A. Lawful impoundment (towing) of motor vehicle
  - 1. Reasonable and lawful impoundment include:
    - 1. Vehicle illegally stopped, parked, or abandoned
    - 2. Vehicle disabled in accident
    - 3. Recovered stolen vehicles
    - 4. Vehicle driven by arrestee at time of arrest
      - a) If legally parked after the traffic stop, the officer **cannot** impound and **inventory** ([Minnesota v. Rohde – 2014](#))
    - 5. Vehicle used as instrumentality of a felony or gross misdemeanor
- B. Suspect must be given opportunity to make arrangements for removal of vehicle, unless vehicle is evidence of a crime. (i.e. Hit and Run or Robbery) ([Minnesota v. Gauster – 2008](#))
- C. Law enforcement agency must develop standardized procedures that specify when a motor vehicle will be inventoried and the scope of the inventory search.
  - 1. Standardized procedures should be in written form, usually in the Department Manual

### III. Scope of Inventory Search

- A. Entire car, including engine, trunk & passenger compartments
- B. All packages and containers, either locked or unlocked.
  - 1. Can't damage containers to get them open for inventory, since rationale of inventory is to "protect owner's property".

# Body Searches

# Obtaining Evidence from Suspect's Body

## I. Intrusions Upon the Body

- A. No invasion into the body contemplated
- B. Only an arrest is required (Search Incident to Arrest)
- C. May seize
  - 1. Voice samples
  - 2. Fingerprints - Palmprints
  - 3. Handwriting exemplars
  - 4. Fingernail scrapings
  - 5. Photographs of suspect
  - 6. Inspections of body for scars, tattoos, injuries

## II. Intrusions Into the Body

- A. Arrest required
- B. Search Warrant usually required also
- C. Examples
  - 1. Blood samples (unless taken under implied consent)
  - 2. Urine samples (unless taken under implied consent)
  - 3. Saliva samples
- D. Exceptions to obtaining search warrant
  - 1. Exigent circumstances - evidence likely will be destroyed if search warrant is obtained
  - 2. Consent
  - 3. Emergency- intrusion necessary to save person's life

### III. Who May Conduct Seizure

#### A. Intrusions upon the body - usually officers

1. Is it reasonable for the officers to seize the evidence themselves

#### B. Intrusions into the body - authorized medical personnel

### IV. Amount of Intrusion Permitted

#### A. Reasonable force allowed

#### B. Choking not allowed

#### C. May include rectal and vaginal exams, inducing vomiting, or pumping of the stomach if it does not unreasonably violate the suspect's interests in privacy

1. Involves invoking a balancing test

# Constitutional Amendments



# **Amendments to the United States Constitution**

## **(Law Enforcement related)**

- I. Freedom of Religion, Speech, Press & Assembly**
- II. Right to Keep and Bear Arms**
- IV. Freedom from Unreasonable Searches and Seizures**
- V. Bars Self-Incrimination**  
**Bars Double Jeopardy**
- VI. Right to Counsel**  
**Right to a Speedy Trial**
- VII. Right to a Trial by Jury**
- VIII. No Excessive Bail**  
**No Cruel and Unusual Punishment**
- XIV. Due Process and Equal Protection**

**[Amendments](#)**

# Criminal Code Definitions

# Criminal Code Definitions

**CRIME** - conduct prohibited by statute for which the actor may be sentenced to imprisonment

**PETTY MISDEMEANOR** - an offense prohibited by statute, which does not constitute a crime. Punishable by a fine of up to \$300. (SS [609.0331](#) )

**MISDEMEANOR** - a crime punishable by imprisonment of up to 90 days or a fine of \$1,000 or both. (SS [609.033](#))

**GROSS MISDEMEANOR** - a crime punishable by imprisonment of up to one (1) year or a fine of \$3,000 or both. (SS [609.0341](#))

**FELONY** - a crime for which the sentence of imprisonment for more than one (1) year may be imposed.

**BODILY HARM** - Physical pain or injury, illness or any impairment of physical condition. (SS [609.02](#) . Sub. 7)

**DEMONSTRABLE BODILY HARM** – Not defined by statute. “Demonstrable” is defined as “capable of being demonstrated” (i.e. cuts, scratches, visible bruises or non-visible medically confirmed injuries)

**SUBSTANTIAL BODILY HARM** - Bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member. (SS [609.02](#), Sub. 7a)

**GREAT BODILY HARM** - Bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or

impairment of the function of any bodily member or organ or other serious bodily harm. (SS [609.02](#), Sub. 8)

**DANGEROUS WEAPON** (M.S. [609.02](#), Sub. 6)

- any firearm, whether loaded or unloaded
- any device designed as a weapon and capable of producing death or great bodily harm
- any combustible or flammable liquid
- other device or instrumentality that, in the manner it is used or is intended to be used, is calculated or likely to produce death or great bodily harm
- any fire that is used to produce death or great bodily harm

**FIREARM**

- A gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air

**PISTOL** (SS [624.712](#), Sub. 2)

- a weapon designed to be fired with a single hand and having an overall length of less than **26 inches**, or
- having a barrel or barrels of a length of **less than 18 inches** in the case of a **shotgun**, or a barrel length of **less than 16 inches** in the case of a **rifle**
- from which may be fired or ejected one or more solid projectiles by means of a cartridge or shell or by action of an explosive or igniting of flammable or explosive substances or
- for which the propelling force is a spring, elastic band, carbon dioxide, air or other gas or vapor

"Pistol" does not include a device firing or ejecting a shot measuring .18 of an inch, or less, in diameter and commonly known as a "BB gun," a scuba gun, a stud gun or nail gun used in the construction industry or children's pop guns or toys.

**POSSESSION, PERMISSIVE INFERENCE OF** - the presence of a firearm in a motor vehicle permits the fact finder to infer knowing possession of the firearm by the driver or person in control of the motor vehicle when the firearm is in the motor vehicle. (SS [609.672](#))

**KNIFE**

- Dirk, dagger, stiletto, switchblade, spring blade, push button knife, a folding knife with a blade in excess of 4 inches, a machete, a bayonet, or any fixed blade knife carried in a concealed manner or within reach of a person in a motor vehicle

**ASSAULT** (SS [609.02](#), Sub. 10)

- An act done with intent to cause fear in another of immediate bodily harm or death; or
- The intentional infliction of or attempt to inflict bodily harm upon another.

**JURISDICTION OF STATE** - A person may be convicted and sentenced in the state of Minnesota if the person:

- Commits an offense in whole or in part within this state, or
- Being outside the state, causes, aids or abets another to commit a crime within this state, or
- Being outside the state, intentionally causes a result within the state prohibited by the criminal laws of this state.

**AIDING AND ABETTING** - A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit the crime. (SS [609.05](#) – Liability for Crimes of Another)

**ATTEMPT** - With intent to commit a crime, does an act which is a substantial step toward, and more than mere preparation for, the commission of the crime. (SS [609.17](#))

**CONSPIRACY** - Agrees with another to commit a crime, and one of the parties does an overt act in furtherance of the conspiracy. (SS [609.175](#))

**PARK ZONE** (SS [152.01](#), Sub. 12a)

- an area designated as a public park by the federal government, the state, a local unit of government, a park district board or a park and recreation board in a first class city. Park zone includes the area within 300 feet or one city block, whichever distance is greater, of the park boundary.

**PUBLIC HOUSING ZONE** (SS [152.01](#), Sub. 19)

- any public housing project or development administered by a local housing agency, plus the area within 300 feet of the property's boundary, or one city block, whichever distance is greater.

**SCHOOL ZONE** (SS [152.01](#), Sub. 14a)

- any property owned, leased, or controlled by a school district or an organization operating a nonpublic school, as defined in section [123B.41](#), subdivision 9, where an elementary, middle, secondary school, secondary vocational center or other school providing educational services in grade one through grade 12 is located, or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided
- the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property
- the area within a school bus when that bus is being used to transport one or more elementary or secondary school students

# Criminal Sexual Conduct

# Criminal Sexual Conduct

## CSC Statutes Overview

### Overview of Criminal Sexual Conduct Crimes

M.S. [609.342](#) Criminal Sexual Conduct in the First Degree (Felony)

#### Subdivision 1. Crime described.

A person who engages in **sexual penetration** with **another person or** in **sexual contact** with a person under 13 years of age is guilty of criminal sexual conduct (as defined in MS 609.341, sub. 1, paragraph (c), in the first degree **if any of the following circumstances exist**:

- a) the complainant is under 13 years of age **and** the actor **is more than 36 months older** than the complainant (Neither mistake as to the complainant's age or consent to the act by the complainant is a defense);
- b) the complainant is at least 13 years of age but less than 16 years of age **and** the actor **is more than 48 months older** than the complainant **and** in a position of authority over the complainant (Neither mistake as to the complainant's age or consent to the act by the complainant is a defense);
- c) circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;
- d) the actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;
- e) the actor causes personal injury to the complainant and either of the following circumstances exist:
  - i. the actor uses force or coercion to accomplish sexual penetration, or
  - ii. the actor knows or has reason to know that complainant is mentally impaired, mentally incapacitated or physically helpless;
- f) the actor is aided or abetted by one or more accomplices within the meaning of M.S. 609.05 and either of the following circumstances exist:
  - i. an accomplice uses force or coercion to cause the complainant to submit; or
  - ii. an accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;
- g) the actor has a significant relationship to the complainant **and** the complainant was under 16 years of age at the time of the sexual penetration (Neither mistake as to the complainant's age or consent to the act by the complainant is a defense);
- h) the actor has a significant relationship with the complainant, the complainant is under 16 years of age at the time of the sexual penetration **and**:
  - i. the actor or an accomplice used force or coercion to accomplish the penetration;
  - ii. the complainant suffered personal injury; or,



- iii. the sexual abuse involved multiple acts committed over an extended period of time. (Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense)

M.S. [609.343](#) Criminal Sexual Conduct in the Second Degree (Felony)

**The elements (a) through (f) of Criminal Sexual Conduct in the Second Degree are exactly the same as for Criminal Sexual Conduct in the First Degree (above) except for this distinction:**

First Degree: "No person shall engage in sexual penetration with another" etc.

Second Degree: "A person who engages in sexual contact with another person is guilty of sexual conduct in the second degree if any of the following circumstances exists:

M.S. [609.344](#) Criminal Sexual Conduct in the Third Degree (Felony)

Subdivision 1. Crime Defined.

**A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exist:**

- a) **the complainant is under 13 years of age and the actor is no more than 36 months older than complainant (Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense);**
- b) **the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than complainant (In any such case if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense, which must be proven by a preponderance of the evidence, that the actor reasonable believes the complainant to be 16 years of age or older. If the actor in such a case is no more than 48 months, but more than 24 months older than the complainant, the actor may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense;**
- c) **the actor uses force or coercion to accomplish the penetration;**
- d) **the actor knows or has reason to know that complainant is mentally impaired, mentally incapacitated, or physically helpless;**
- e) **the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant (Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense);**
- f) **the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual penetration (Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense);**
- g) **the actor has a significant relationship to complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual penetration and:**
  - i. **the actor or an accomplice used force or coercion to accomplish the penetration;**
  - ii. **the complainant suffered personal injury, or,**
  - iii. **the sexual abuse involved multiple acts committed over an extended period of time.**

- h) **the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual penetration occurred:**
  - i. **during the psychotherapy session; or**
  - ii. **outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists (Consent by the complainant is not a defense).**
- i) **the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;**
- j) **the actor is a psychotherapist and complainant is a patient or former patient and the sexual penetration occurred by means of therapeutic deception (Consent by the complainant is not a defense);**
- k) **the actor accomplishes the sexual penetration by means of deception or false representation that the penetration is a bona fide medical purpose (Consent by the complainant is not a defense);**
- l) **the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and,**
  - i. **the sexual penetration occurred during the course of a meeting in which the complainant sought or received religious or spiritual advise, aid, or comfort from the actor in private, or**
  - ii. **the sexual contact occurred during a period of time which the complainant was meeting on an ongoing basis with the actor to seek or received religious or spiritual advise, aid, or comfort in private.**
- m) **the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense;**
- n) **the actor provides or is an agent of an entity that provides special transportation services, the complainant used the special transportation service, and the sexual penetration occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or**
- o) **the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual penetration occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant.**

M.S. [609.345](#) Criminal Sexual Conduct in the Fourth Degree (Felony)

#### **Subdivision 1. Crime defined.**

A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the fourth degree if any of the following circumstances exists:

- a) the complainant is under 13 years of age **and** the actor is **no more than 36 months older** than complainant (Neither mistake as to the complainant's age or consent to the act by the complainant is a defense. In the prosecution under this clause, the state is not required to prove that the sexual contact was coerced);
- b) the complainant is at least 13 but less than 16 years of age **and** the actor **is more than 48 months older** than complainant **or** in a position of authority over the complainant. Consent by the complainant to the act is not a defense. In any such case, if the actor is not more than 120 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistakes as to the complainant's age shall not be a defense;
- c) the actor uses force or coercion to accomplish the sexual contact;
- d) the actor knows or has reason to know that complainant is mentally impaired, mentally incapacitated or physically helpless;
- e) the complainant is at least 16 but less than 18 years of age **and** the actor is more than 48 months older than the complainant **and** in a position of authority over complainant (neither mistake as to the complainant's age nor consent to the act by the complainant is a defense);
- f) the actor has a significant relationship to the complainant **and** the complainant is at least 16 but under 18 years of age at the time of the sexual assault (neither mistake as to the complainant's age nor consent to the act by the complainant is a defense);
- g) the actor has a significant relationship to complainant, the complainant was at least 16 or under 18 years of age at the time of the sexual contact, **and**:
  - i. the actor or an accomplice used force or coercion to accomplish the contact;
  - ii. the complainant suffered personal injury; or,
  - iii. the sexual abuse involved multiple acts committed over an extended period of time. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.
- h) the actor is a psychotherapist **and** the complainant is a patient of the psychotherapist **and** the sexual contact occurred:
  - i. during the psychotherapy session, **or**,
  - ii. outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists. Consent by the complainant is not a defense;
- i) the actor is a psychotherapist **and** the complainant is a former patient of the psychotherapists **and** the former patient is emotionally dependent upon the psychotherapist;
- j) the actor is a psychotherapist **and** complainant is a patient or former patient **and** the sexual contact occurred by means of therapeutic deception (consent by the complainant is not a defense);
- k) the actor accomplishes the sexual contact by means of deception or false representation that the contact is for a bona fide medical purpose (consent by the complainant is not a defense);
- l) the actor is or purports to be a member of the clergy, the complainant is not married to the defendant, **and**:

- i. the sexual contact occurred during the course of a meeting in which the complainant sought or received religious or spiritual advise, aid, or comfort from the actor in private, **or**,
- ii. the sexual contact occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense.
- m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of the facility or under supervision of the correctional system. Consent by the complainant is not a defense.
- n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, the complainant is not married to the actor, and the sexual contact occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or
- o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual contact occurred during or immediately before or after the actor performed or was hired to perform on of those services for the complainant.

M.S. [609.3451](#) Criminal Sexual Conduct in the Fifth Degree  
(Gross Misdemeanor -Felony)

Subdivision 1. Crime defined.

**A person is guilty of criminal sexual conduct in the fifth degree :**

- (1) if the person engages in nonconsensual sexual contact; or**
- (2) the person engages in masturbation or lewd exhibition of the genitals in the presence of a minor under the age of 16, knowing or having reason to know the minor is present.**

**For purposes of this section, “Sexual contact” has the meaning given in section [609.341](#), sub. 11, paragraph (a), clauses (i) and (iv), but does not include the intentional touching of the clothing covering the immediate area of the buttocks. Sexual contact also includes the intentional removal or attempted removal of clothing covering the complainant’s intimate parts or undergarments, and the nonconsensual touching by the complainant of the actor’s intimate parts, effected by the actor, if the action is performed with sexual or aggressive intent.**

**MS 609.341 – Criminal Sexual Conduct Definitions**  
**(These definitions apply to MS 609.341 through MS 609.351)**

**Subd. 2. Actor.**

“Actor” means a person accused of criminal sexual conduct.

**Subd. 3. Force.**

"Force" means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

**Subd. 4. Consent.**

(a) "Consent" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act.

(b) A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.

(c) Corroboration of the victim's testimony is not required to show lack of consent.

**Subd. 5. Intimate parts.**

"Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.

**Subd. 6. Mentally impaired.**

"Mentally impaired" means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or to sexual penetration.

**Subd. 7. Mentally incapacitated.**

"Mentally incapacitated" means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person's agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.

**Subd. 8. Personal injury.**

"Personal injury" means bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish or pregnancy.

**Subd. 9. Physically helpless.**

"Physically helpless" means that a person is (a) asleep or not conscious, (b) unable to withhold consent or to withdraw consent because of a physical condition, or (c) unable to communicate non-consent and the condition is known or reasonably should have been known to the actor.

**Subd. 10. Position of authority.**

"Position of authority" includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act. For the purposes of subdivision 11, "position of authority" includes a psychotherapist.

**Subd. 11. Sexual contact.**

(a) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (a) to (f), and 609.345, subdivision 1, clauses (a) to (e), and (h) to (o), includes any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent:

- (i) the intentional touching by the actor of the complainant's intimate parts, or
- (ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts effected by a person in a position of authority, or by coercion, or by inducement if the complainant is under 13 years of age or mentally impaired, or
- (iii) the touching by another of the complainant's intimate parts effected by coercion or by a person in a position of authority, or
- (iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts, or
- (v) the intentional touching with seminal fluid or sperm by the actor of the complainant's body or the clothing covering the complainant's body.

(b) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (g) and (h), and 609.345, subdivision 1, clauses (f) and (g), includes any of the following acts committed with sexual or aggressive intent:

- (i) the intentional touching by the actor of the complainant's intimate parts;
- (ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts;
- (iii) the touching by another of the complainant's intimate parts;
- (iv) in any of the cases listed above, touching of the clothing covering the immediate area of the intimate parts; or

(v) the intentional touching with seminal fluid or sperm by the actor of the complainant's body or the clothing covering the complainant's body.

(c) "Sexual contact with a person under 13" means the intentional touching of the complainant's bare genitals or anal opening by the actor's bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant's bare genitals or anal opening of the actor's or another's bare genitals or anal opening with sexual or aggressive intent.

#### **Subd. 12. Sexual penetration.**

"Sexual penetration" means any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, whether or not emission of semen occurs:

- (1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or
- (2) any intrusion however slight into the genital or anal openings:
  - (i) of the complainant's body by any part of the actor's body or any object used by the actor for this purpose;
  - (ii) of the complainant's body by any part of the body of the complainant, by any part of the body of another person, or by any object used by the complainant or another person for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired; or
  - (iii) of the body of the actor or another person by any part of the body of the complainant or by any object used by the complainant for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired.

#### **Subd. 13. Complainant.**

"Complainant" means a person alleged to have been subjected to criminal sexual conduct, but need not be the person who signs the complaint.

#### **Subd. 14. Coercion.**

"Coercion" means the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant's will. Proof of coercion does not require proof of a specific act or threat.

#### **Subd. 15. Significant relationship.**

"Significant relationship" means a situation in which the actor is:



- (1) the complainant's parent, stepparent, or guardian;
- (2) any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or
- (3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse.

**Subd. 16. Patient.**

"Patient" means a person who seeks or obtains psychotherapeutic services.

**Subd. 17. Psychotherapist.**

"Psychotherapist" means a person who is or purports to be a physician, psychologist, nurse, chemical dependency counselor, social worker, marriage and family therapist, licensed professional counselor, or other mental health service provider; or any other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

**Subd. 18. Psychotherapy.**

"Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

**Subd. 19. Emotionally dependent.**

"Emotionally dependent" means that the nature of the former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the former patient is unable to withhold consent to sexual contact or sexual penetration by the psychotherapist.

**Subd. 20. Therapeutic deception.**

"Therapeutic deception" means a representation by a psychotherapist that sexual contact or sexual penetration by the psychotherapist is consistent with or part of the patient's treatment.

**Subd. 21. Special transportation.**

"Special transportation service" means motor vehicle transportation provided on a regular basis by a public or private entity or person that is intended exclusively or primarily to serve individuals who are vulnerable adults or disabled. Special transportation service includes, but is not limited to, service provided by buses, vans, taxis, and volunteers driving private automobiles.

**Subd. 22. Predatory crime.**

"Predatory crime" means a felony violation of section [609.185](#), [609.19](#), [609.195](#), [609.20](#), [609.205](#), [609.221](#), [609.222](#), [609.223](#), [609.24](#), [609.245](#), [609.25](#), [609.255](#), [609.498](#), [609.561](#), or [609.582, sub 1](#)



**Subd. 23. Secure treatment facility.** “Secure treatment Facility” has the meaning given in sections [253B.02, sub.18a](#), and [253D.02, sub. 13](#).

# Theft Related Statutes

## Theft - Related Statutes

### 609.52 Theft

**609.52 Sub. 2 (1) Theft** - intentionally “takes, uses, transfers, conceals or retains possession”

**609.52 Sub. 2(4) (Acts constituting Theft)** “by swindling, whether by artifice, trick, device, or any other means, obtains property or services from another person.”

**609.52, Sub. 2 (6) Theft – Lost Property** - “finds lost property and, knowing or having reasonable means of ascertaining the true owner, appropriates it to the finder’s use or to that of another not entitled thereto without first having made reasonable effort to find the owner and offer and surrender the property to the owner.”

**609.52 Sub. 3 Theft (Sentence)** includes the following sentences:

#### **Felony**

20 yr/\$100,000 – Over \$35,000, **or**

firearm

10 yr/\$20,000 - Over \$5,000, **or**

trade secret, **or**

explosive, incendiary device, **or**

controlled substance 1 or II (except Marijuana)

5 yr/\$10,000 - Over \$1,000 but not more than \$5,000, **or**

controlled substance III, IV or V, **or**

\$500 - \$1,000 with previous conviction in last 5 years, **or**

< \$1,000 **and**:

from the person of another, corpse, grave, coffin w/ corpse, **or**

record of the court, **or**

from a burning, abandoned or vacant building or area of destruction, **or**

property is public funds, **or**

property is a motor vehicle

#### **Gross Misdemeanor**

< 1 yr/\$3,000 - >\$500 but not more than \$1,000

**Misdemeanor**

90 days/\$1,000 - \$500 or less

May be aggregated within any 6 month period

**Statutory value** is based on:

- Price tag (if taken from store)
- Replacement cost, legitimate market value or reasonable estimates (if used)

**609.521 Possession of Shoplifting Gear** “Whoever has in possession any device, gear, or instrument specially designed to assist in shoplifting with intent to use the same to shoplift and thereby commit theft may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.

**609.527 Identity Theft** – “A person who transfers, possesses, or uses an identity that is not the person’s own, with the intent to commit, aid, or abet any unlawful activity, is guilty of identity theft...”

**609.53 Receiving Stolen Property.** “...any person who receives, possesses, transfers, buys or conceals any stolen property or property obtained by robbery, knowing or having reason to know the property was stolen or obtained by robbery.....”

**609.535 Issuance of Dishonored Checks** - Includes closed account and non-sufficient fund checks.

**609.625 Aggravated Forgery** – Make or alter a writing or object that is evidence of debt or property rights, official seal, public record, court order, bank records, etc.

**609.63 Forgery** – Forged identification, labels, stamps, membership cards, passes, making false records, destroying records

**609.631 Check Forgery; Offering a Forged Check (Sub. 3)** “A person who, with intent to defraud, offers, or possesses with intent to offer, a forged check, whether or not it is accepted, is guilty of offering a forged check...”

- Do not have to prove the person forged the signature
- Check does not have to be accepted

**609.82 Fraud in Obtaining Credit** – Obtains personal credit or credit for another from a bank, trust company, savings association, or credit union, by means of a ...false representation as to the person’s or another’s financial ability.

**609.821 Sub. 2 Financial Transaction Card Fraud – A “Financial Transaction Card”**

includes any instrument or device, whether known as a credit card, credit plate, charge plate, courtesy card, bank services card, banking card, check guarantee card, debit card, electronic benefit system (EBS) card, electronic benefit transfer (EBT) card, assistance transaction card, or by any other name.

**Crime:** Whoever, “without the consent of the cardholder, uses or attempts to use a card to obtain the property of another.”

# Burglary

## Burglary – M.S. [609.582](#)

### Subdivision 1 – **BURGLARY IN THE FIRST DEGREE – Occupied Dwelling, Dangerous Weapon, Assault** (Felony – up to 20 years/\$35,000)

No person shall enter a building without consent of the person in lawful possession with intent to commit a crime or commits a crime while in the building, either directly or as an accomplice if:

- a) The building is a dwelling and another person, not an accomplice, is present in it when the burglar enters or at any time while the burglar is in the building, or
- b) When entering or at any time while in the building the person possesses a dangerous weapon, or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or an explosive, or
- c) The burglar assaults a person within the building or on the building's appurtenant property.

### Subdivision 1a – **MANDATORY MINIMUM SENTENCE FOR BURGLARY OF OCCUPIED DWELLING.**

A person convicted of committing burglary of an occupied dwelling, as defined in sub. 1, clause (a), must be committed to the commissioner of corrections or county workhouse for not less than six months.

### Subdivision 2 – **BURGLARY IN THE SECOND DEGREE – Unoccupied Dwelling, Business, Tool**

(Felony – up to 10 years/\$20,000)

- (a) No person shall enter a building without consent of the person in lawful possession with intent to commit a crime or commits a crime while in the building, either directly or as an accomplice if:
  - (1) The building is a dwelling, or
  - (2) The portion of the building entered contains a banking business or other business of receiving securities or other valuable papers for deposit or safekeeping and the entry is with force or threat of force, or
  - (3) The portion of the building entered contains a pharmacy or other lawful business or practice in which controlled substances are routinely held or stored and the entry is forcible, or
  - (4) When entering or while in the building the burglar possesses a tool to gain access to money or property.
- (b) Whoever enters a government building, religious establishment, historic property, or school building without consent and with intent to commit (or does commit) a crime under [609.52](#) (Theft) or [609.595](#) (Damage to Property) commits Burglary in the Second Degree.

### Subdivision 3 – **BURGLARY IN THE THIRD DEGREE - Building** (Felony – up to 5 years/\$10,000)

No person shall enter a building without consent of the person in lawful possession:

- With intent to steal or commit any felony or gross misdemeanor while in the building, either directly or as an accomplice, or

- Steals or commits a felony or gross misdemeanor while in the building, either directly or as an accomplice.

Subdivision 4 – **BURGLARY IN THE FOURTH DEGREE - Building** (G.M. – up to 1 year/\$3,000)

No person shall enter a building without consent of the person in lawful possession:

- With intent to commit a misdemeanor other than to steal, either directly or as an accomplice.
- Commits a misdemeanor other than to steal while in the building, either directly or as an accomplice.

**Possession of Burglary or Theft Tools – M.S. [609.59](#)**

(Felony – up to 3 years/\$5,000)

No person shall have in their possession any device, explosive, or other instrumentality with intent to use or permit the use of the same to commit burglary or theft.

## Definitions

**Assault** (M.S. [609.02](#), sub. 10) “Assault” means:

- An act done with intent to cause fear in another of immediate bodily harm or death; or
- The intentional infliction of or attempt to inflict bodily harm upon another.

**Building** (M.S. [609.581](#), sub. 2) “Building” means:

- A structure suitable for affording shelter for human beings, including any appurtenant or connected structure (also includes detached garages).

**Dangerous weapon** (M.S. [609.02](#), sub. 6) “Dangerous Weapon” means:

- Any firearm, whether loaded or unloaded, or
- Any device designed as a weapon and capable of producing death or great bodily harm,
- Any combustible or flammable liquid, or
- Other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or
- Any fire that is used to produce death or great bodily harm.

**Flammable liquid** means any liquid having a flash point below 100 degrees Fahrenheit and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees Fahrenheit, but does not include intoxicating liquor as defined in Section 340A.101.

**Combustible liquid** is a liquid having a flash point at or above 100 degrees Fahrenheit.

**Dwelling** (M.S. [609.581](#), sub. 3) Dwelling means:

- A building used as a permanent or temporary residence.

**Enters a building without consent** (M.S. [609.581](#), subd.4) “Enters a building without consent” means:



- To enter a building without the consent of the person in lawful possession;
- To enter a building by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession; or
- To remain within a building without the consent of the person in lawful possession.

Whoever enters a building while open to the general public does so with consent except when consent was expressly withdrawn before entry.

# Damage to Property

## **DAMAGE TO PROPERTY – SS [609.595](#)**

**Subdivision 1 - Criminal damage to property in the first degree.** (Felony – 5 years/\$10,000)  
Whoever intentionally causes damage to physical property of another without the latter's consent if:

1. The damage to the property caused a reasonably foreseeable risk of bodily harm; or
2. The property damaged belongs to a common carrier and the damage impairs the service to the public rendered by the carrier; or
3. The damage reduces the value of the property by:
  - > \$1,000 measured by the cost of repair and replacement; or
4. The damage reduces the value of the property by:
  - > \$500 measured by the cost of repair and replacement and the defendant has been convicted within the preceding 3 years of an offense under this subdivision or sub. 2.

In any prosecution under clause (3), the value of any property damaged by the defendant in violation of that clause within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section.

**Subdivision 1a - Criminal damage to property in the second degree.** (Felony – Up to 1 year & 1 day/\$3,000)

(a) Whoever intentionally causes damage described in subdivision 2, paragraph (a), because of the property owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin.

(b) In any prosecution under paragraph (a), the value of property damaged by the defendant in violation of that paragraph within any six-month period may be aggregated and the defendant charged accordingly in applying this section.

**Subdivision 2 - Criminal damage to property in the third degree.** (G.M. – Up to a year/\$3,000)

(a) Except as otherwise provided in subdivision 1a, whoever intentionally causes damage to another person's physical property without the other person's consent if:

- The damage reduces the value of the property by > \$500 but not > \$1,000 as measured by the cost of repair and replacement.

(b) Whoever intentionally causes damage to another person's physical property without the other person's consent because of the property owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin if:

- The damage reduces the value of the property by not > \$500.

(c) In any prosecution under paragraph (a), the value of property damaged by the defendant in violation of that paragraph within any six-month period may be aggregated and the defendant charged accordingly in applying this section.

Subdivision 3 - **Criminal damage to property in the fourth degree.** (Misdemeanor – 90 days/\$1,000) Whoever intentionally causes damage described in subdivision 2 under any other circumstances.

# Arson – Fire Statutes

## **Arson - Fire Statutes**

**609.561      Arson in the First Degree**      (Felony – up to 20 years and/or \$20,000 or \$35,000)

**Sub 1 Fire or Explosive - Damages any building used as a dwelling or any accessory or attached building, whether inhabitants are present or not**

**Sub 2 Fire or Explosive - Damages any building not covered in Sub 1 and**  
**(a) another person, not an accomplice, is present**  
**(b) circumstances render the presence of someone reasonably possible**

**Sub 3 Fire or Explosive - Damages any building not covered in Sub 1 and a flammable material is used to start or accelerate the fire**

**609.562      Arson in the Second Degree**      (Felony – up to 10 years and/or \$20,000)

**Fire or Explosive - Damages any building not in 609.561 no matter what the value or any other real or personal property valued more than \$1,000.**

**609.563      Arson in the Third Degree**      (Felony – up to 5 years and/or \$10,000)

**Sub 1 Fire or Explosive - Damages real or personal property**

- (a) value of more than \$300 but less than \$1,000**
- (b) value of \$300 or more was unintentionally damaged but damage could reasonably have been foreseen**
- (c) property in (a) or (b) had aggregate value of \$300 or more**

**609.5631      Arson in the Fourth Degree**      (Gross Misdemeanor – up to 1 year and/or \$3,000)

**Fire or Explosive - Sets fire to or burns any personal property in a multiple unit residential building or public building, not covered by Arson 1, 2, or 3.**

**"Multiple unit residential building"** means a building containing two or more apartments.

**"Public building"** means a building such as a hotel, hospital, motel, dormitory, sanitarium, nursing home, theater, stadium, gymnasium, amusement park building, school or other building used for educational purposes, museum, restaurant, bar, correctional institution, place of worship, or other building of public assembly.

**609.5632      Arson in the Fifth Degree**      (Misdemeanor – up to 90 days and/or \$1,000)

**Fire or Explosives - Sets fire to or burns any real or personal property of value.**

**609.5633      Use of Ignition Devices; Petty Misdemeanor**      (Petty Misd. – up to \$300)

A student who uses an ignition device, including a butane or disposable lighter or matches, inside an educational building and under circumstances where there is an obvious risk of fire, and arson 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, or 4<sup>th</sup> was not committed, is guilty of a petty misdemeanor. This section does not apply if the student uses the device in a manner authorized by the school.

**609.5641      Wildfire Arson**

**Sub.1. Setting wildfires.**      (Felony – up to 5 years and/or \$10,000)

A person is guilty of a felony who intentionally sets a fire to burn out of control on land of another containing timber, underbrush, grass, or other vegetative combustible material.

**Sub. 2. Possession of flammables to set wildfires.**      (Gross Misd. – up to 1 year and/or \$3,000)

A person is guilty of a gross misdemeanor who possesses a flammable, explosive, or incendiary device, substance, or material with intent to use the device, substance, or material to violate subdivision 1.

**609.576      Negligent Fires Resulting in Injury or Property Damage**

**Sub. 1. Negligent fire resulting in injury or property damage.**

Whoever is grossly negligent in causing a fire to burn or get out of control thereby causing damage or injury to another, and as a result of this:

- (1) a human being is injured and great bodily harm incurred. (Felony – up to 5 years and/or \$10,000)
- (2) a human being is injured and bodily harm incurred.      (G.M. – up to 1 year and/or \$3,000)
- (3) property of another is injured – may be sentenced as follows:
  - (i) property damage < \$300      (Misdemeanor – up to 90 days and/or \$1,000)
  - (ii) property damage at least \$300 but < \$2,500      (G.M. – up to 1 year and/or \$3,000)

(iii) property damage \$2,000 or more.  
\$5,000)

(Felony – up to 3 years and/or

**Sub. 2. Dangerous smoking.**

A person is guilty of a misdemeanor if the person smokes in the presence of  
explosives or inflammable materials. (Misdemeanor – up to  
90 days and/or \$1,000)

If a person violates this subdivision and knows that doing so creates a risk of death or  
bodily harm or serious property damage. (Felony – not more than 5 years  
and/or \$10,000)



# Murder and Manslaughter Statutes

# Murder and Manslaughter

## **Murder in the First Degree** [\(MS 609.185\)](#)

**(Life Imprisonment)**

Whoever causes the death:

- of a human being with premeditation and intent
- of a human being while committing or attempting to commit Criminal Sexual Conduct in the 1<sup>st</sup> or 2<sup>nd</sup> Degree with force or violence, either upon or affecting the person or another
- of a human being with intent to effect the death of the person or another while committing or attempting to commit: Burglary, Aggravated Robbery, Kidnapping, 1<sup>st</sup> or 2<sup>nd</sup> Degree Arson, Drive-by Shooting, 1<sup>st</sup> Degree Tampering with a Witness, Escape from Custody, or any felony sale of a controlled substance in violation of Chapter 152
- of a peace officer, prosecuting attorney, judge, or a guard employed at a Minnesota state or local correctional facility, with intent to effect the death of that person or another, while the person is engaged in the performance of official duties
- of a minor (under 18) while committing child abuse when the perpetrator has engaged in a past pattern of child abuse upon the child and the death occurs under circumstances manifesting an extreme indifference to human life
- of a human being while committing domestic abuse and the perpetrator has engaged in a past pattern of domestic abuse upon the victim or another family or household member and the death occurs under circumstances manifesting an extreme indifference to human life; or
- causes the death of a human being while committing, conspiring to commit, or attempting to commit a felony crime to further terrorism and the death occurs under circumstances manifesting an extreme indifference to human life.

## **Murder in the Second Degree** [\(MS 609.19\)](#)

**(Up to 40 yrs)**

Whoever causes the death of a human being:

- with intent, but without premeditation
- with intent, while committing or attempting a drive-by shooting
- without intent, while committing or attempting a felony offense (other than 1<sup>st</sup> or 2<sup>nd</sup> Degree Criminal Sexual Conduct with force or violence or drive-by shooting)
- without intent, while intentionally inflicting or attempting to inflict bodily harm upon the victim when the perpetrator is restrained by an O.F.P. and the victim is designated to receive protection under the order.

## **Murder in the Third Degree** [\(MS 609.195\)](#)

**(Up to 25 yrs/\$40,000)**

- without intent, causes the death of another by perpetrating an act imminently dangerous to others and evincing a depraved mind without regard for human life.
- without intent, proximately causes the death of a human being by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a Schedule 1 or II controlled substance.

**Manslaughter in the First Degree** ([M S 609.20](#)) (Up to 15 yrs/\$30,000)

- intentionally cause the death of another person in the heat of passion provoked by such words or acts of another as would provoke a “person of ordinary self-control” under like circumstances, provided that the crying of a child does not constitute provocation.
- violates M.S. 609.224 (5<sup>th</sup> Degree Assault) and cause the death of another or causes the death of another in committing or attempting to commit a misdemeanor or gross misdemeanor offense with such force and violence that death of or great bodily harm to any person was reasonably foreseeable, and 1<sup>st</sup> or 2<sup>nd</sup> Degree Murder was not committed.
- Intentionally causes the death of another person because the actor is coerced by threats made by someone other than the actor’s coconspirator and which cause the actor reasonably to believe that the act performed is the only means of preventing imminent death to the actor or another.
- proximately causes the death of another, without intent to cause death by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a schedule III, IV, or V, controlled substance.
- causes the death of another in committing or attempting to commit a violation of section 609.377 (malicious punishment of a child), and 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> Degree Murder is not committed.

**Manslaughter in the Second Degree** ([MS 609.205](#)) (Up to 10 yrs/\$20,000)

Whoever causes the death of another:

- by the person’s culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another
- by shooting another with a firearm or other dangerous weapon as a result of negligently believing the other to be a deer or other animal
- by setting a spring gun, pit fall, deadfall, snare, or other like dangerous weapon or device
- by negligently or intentionally permitting any animal, known by the person to have vicious propensities or to have caused great or substantial bodily harm in the past, to run uncontrolled off the person’s premises, or negligently failing to keep it property confined
- by committing or attempting to commit a violation of section 609.378 (neglect or endangerment of a child), and 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> Degree Murder is not committed.

# Assault Statutes

# Assault

**609.221** Assault in the First Degree  
(20 years and/or \$30,000)

- **Inflicts great bodily harm. (Felony)**
- **Uses or attempts to use deadly force against a Peace Officer, Prosecuting Attorney, Judge, or Correctional Employee. (Felony)**

**609.222** Assault in the Second Degree

- **Dangerous weapon. (Felony)** (7 years and/or \$14,000)
- **Dangerous weapon & inflicts substantial bodily harm. (Felony)** (10 years and/or \$20,000)

**609.223** Assault in the Third Degree (5 years and/or \$10,000)

- **No dangerous weapon but inflicts substantial bodily harm. (Felony)**
- **Assaults a minor and has a past pattern of child abuse against the same child. (Felony)**
- **Inflicts bodily harm to head, eyes, or neck or multiple bruises to the body & victim is under four years old. (Felony)**

**609.2231** Assault in the Fourth Degree

- **Peace Officer (when working)**
  - **Assaults. (G.M.)**
  - **Assaults and inflicts demonstrable bodily harm. (Felony)**
  - **Throws or transfers bodily fluid or feces at or onto the officer. (Felony)**
- **Firefighter and Emergency Medical Personnel (municipal or volunteer fire department or emergency medical services personnel unit when working)**
  - **Assaults and inflicts demonstrable bodily harm. (Felony)**
- **Physician, Nurse, Health Care Provider (providing health care services at a hospital Emergency Room)**
  - **Assaults and inflicts demonstrable bodily harm. (Felony)**
- **Department of Natural Resources Employees (engaged in forest fire activities)**
  - **Assaults and inflicts demonstrable bodily harm. (G.M.)**
- **Correctional Employees; Prosecuting Attorneys; Judges or Probation Officers (when working)**
  - **Assaults and inflicts demonstrable bodily harm. (Felony)**
  - **Throws or transfers bodily fluid or feces at or onto the employee. (Felony)**
- **Secure Treatment Facility Personnel (when working)**
  - **Assaults and inflicts demonstrable bodily harm. (Felony)**

- **Throws or transfers bodily fluid or feces at or onto the person. (Felony)**
- **Assault Motivated by Bias**
  - **Assaults another because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin. (G.M)**
  - **Violates above within 5 years of a previous conviction of above. (Felony)**
- **School Official (teachers, school administrators, other school employees of a public or private school when working)**
  - **Assaults and inflicts demonstrable bodily harm. (G.M.)**
- **Public Employees with Mandated Duties (agricultural inspector, occupational safety and health investigator, child protection worker, public health nurse, animal control officer, or probation or parole officer when working)**
  - **Assaults and inflicts demonstrable bodily harm. (G.M.)**
- **Community Crime Prevention Group Members (when engaged in neighborhood patrol)**
  - **Assaults and inflicts demonstrable bodily harm. (G.M.)**
- **Vulnerable Adults (as defined in 609.232, sub.1)**
  - **Assaults and inflicts demonstrable bodily harm. (G.M.)**
- **Reserve Officer (as defined in section 626.84, sub.1, paragraph e, while working under the control of, or on behalf of a peace officer, law enforcement officer, or agency)**
  - **Assaults the officer (G.M.)**
- **Utility and Postal Service Employees and Contractors (when engaged in the performance of their official duties or fulfilling contractual obligations)**
  - **Assaults and inflicts demonstrable bodily harm. (G.M.)**
- **Transit Operators (public transit, light rail transit, special transportation, commuter rail – when working)**
  - **Assaults or throws or transfers bodily fluid or feces at or onto the employee. (G.M.)**

#### **609.2232 CONSECUTIVE SENTENCES FOR ASSAULTS COMMITTED BY STATE PRISON INMATES.**

If an inmate of a state correctional facility is convicted of violating section [609.221](#), [609.222](#), [609.223](#), [609.2231](#), or [609.224](#), while confined in the facility, the sentence imposed for the assault shall be executed and run consecutively to any unexpired portion of the offender's earlier sentence. The inmate is not entitled to credit against the sentence imposed for the assault for time served in confinement for the earlier sentence. The inmate shall serve the sentence for the assault in a state correctional facility even if the assault conviction was for a misdemeanor or gross misdemeanor.

#### **609.2233 FELONY ASSAULT MOTIVATED BY BIAS; INCREASED STATUTORY MAXIMUM SENTENCE.**

A person who violates section [609.221](#), [609.222](#), or [609.223](#) because of the victim's or another person's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section [363A.03](#), age, or national origin is subject to a statutory maximum penalty of 25 percent longer than the maximum penalty otherwise applicable.

**609.224** Assault in the Fifth Degree

- Misdemeanor
  1. Commits an act with intent to cause fear in another of immediate bodily harm or death.
  2. Intentionally inflicts or attempts to inflict bodily harm upon another.
- Gross Misdemeanor
  1. Commits either of the above misdemeanors against the same victim within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency.
  2. Commits either of the above misdemeanors within three years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency.
- Felony
  1. Commits either of the above misdemeanors against the same victim within ten years of the first of any combination of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency.
  2. Commits either of the above misdemeanors within three years of the first of any combination of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency.

**Assault Definition**

- An act done with intent to cause fear in another of immediate bodily harm or death; or
- The intentional infliction of or attempt to inflict bodily harm upon another.

**Assault – Related Minnesota Statutes**

609.2241	Knowingly Transfer of Communicable Disease
609.2242	Domestic Assault
609.2245	Female Genital Mutilation
609.2247	Domestic Assault by Strangulation
609.226	Harm Caused by Dog
609.228	Great Bodily Harm Caused by Distribution of Drugs
<b>609.23</b>	<b>Mistreatment of Persons Confined</b>
<b>609.231</b>	<b>Mistreatment of Residents or Patients</b>
<b>609.2325</b>	<b>Criminal Abuse (Caregivers/Vulnerable Adults)</b>
<b>609.233</b>	<b>Criminal Neglect (Caregivers/Vulnerable Adults)</b>
<b>609.2335</b>	<b>Financial Exploitation of a Vulnerable Adult</b>
<b>609.596</b>	<b>Killing or Harming Public Safety Dog</b>
<b>609.597</b>	<b>Assaulting or Harming Police Horse; Penalties</b>
<b>609.713</b>	<b>Terroristic Treats</b>
<b>609.748</b>	<b>Harassment; restraining order</b>
<b>609.749</b>	<b>Harassment; stalking; penalties</b>

**Chapter 609 - Criminal Code**

# Minnesota Sentencing Guidelines



# Minnesota Sentencing Guidelines

## GRID

### I. Purpose

- A. Establish rational and consistent sentencing standards
- B. Reduce disparity
- C. Ensure proportional sanctions with relationship to the severity of offense and criminal history of the criminal
- D. Equity
  - 1. Similar defendants doing similar acts should receive similar sanctions
  - 2. Defendants substantially different from typical cases should receive different sanctions
- E. Neutral as to race, gender, social or economic status
- F. Development of a rational and consistent sentencing policy requires that the severity of the sanctions increase in direct proportion to increases in severity of criminal offenses and severity of CHS (Criminal History Score)
- G. Limitations of incarcerative sanctions to those most worthy of our resources
- H. Advisory - however - departures only with the existence of substantial and compelling circumstances

### II. Determining Presumptive Sentences

- A. Offense Severity
  - 1. Determined by the offense of conviction
  - 2. When convicted of two or more, severity level is determined by most severe offense of conviction
  - 3. 10 levels low (I) to high (X) 1<sup>st</sup> Degree Murder excluded
  - 4. Offenses in each level are deemed roughly equivalent in severity
  - 5. Exclusions from severity listing
    - a. mainly excluded because prosecutions are rarely initiated under them
    - b. when convicted of them, the judge assigns a severity level
- B. Criminal History
  - 1. Horizontal axis
  - 2. Comprised of
    - a. prior felony record
    - b. custody status at time of offense
    - c. prior misdemeanor and gross misdemeanor record
    - d. prior juvenile record
  - 3. Guidelines reduce emphasis given to criminal history in sentencing decisions

- a. under past judicial practices, CHS (Criminal History Score) was previously factor in sentencing decisions
4. Under guidelines, offense of convictions is primary factor, with CHS secondary
5. Previously there were:
  - a. no uniform standards as to what would be included in offender's criminal history
  - b. no weighing format for different types of offenses
  - c. no systematic process to check accuracy of the information in the criminal history
6. Guidelines provide uniform standards for inclusion and weighing of CHS
7. Sentencing hearing provides process to assure the accuracy of the information
8. Computation - defendant is assigned a particular weight for every extended jurisdiction juvenile conviction and for every felony conviction for which a felony sentence was imposed or stayed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing
  - a. If the current offense **is not** a specified sex offense, the weight assigned to each prior felony sentence is determined according to its severity level, as follows:
 

Severity Level I - II = ½ point;

Severity Level III - V = 1 point;

Severity Level VI - VIII = 1 ½ points;

Severity Level IX - XI = 2 points;

Murder 1st Degree = 2 points;

Severity Level A = 2 points;

Severity Level B – E = 1 ½ points;

Severity Level F – G = 1 point; and

Severity Level H = ½ point for first offense and 1 point for subsequent offenses.
  - b. If the current offense **is** a specified sex offense, the weight assigned to each prior felony sentence is determined according to its severity level, as follows:
 

Severity Level I - II = ½ point;

Severity Level III - V = 1 point;

Severity Level VI - VIII = 1 ½ points;

Severity Level IX - XI = 2 points;

Murder 1st Degree = 2 points;

Severity Level A = 3 points;

Severity Level B – C = 2 points;

Severity Level D – E = 1 ½ points;

Severity Level F – G = 1 point; and

Severity Level H = ½ point for first offense and 1 point for subsequent offenses.

- c. When a prior felony conviction resulted in a misdemeanor or gross misdemeanor sentence, should be counted as a misdemeanor or gross misdemeanor conviction for purposes of computing CHS
- d. Prior felonies not counted if more than 15 years has elapsed since date of discharge
- e. 3 months added to duration when custody status point + CHS of 6 without it
- 9. Single behavioral incident - 1 sentence
- 10. Stay of imposition - Stay of execution - discretionary with judge
- 11. Traffic offenses excluded
- 12. No additional penalty accrues for engaging in certain behavior with more than 6 points e.g., plead to S13 - CHS 6, commits another prior to sentencing - same sentence
- 13. Presumption X consecutive sentences for property offenses
- 14. CHS is secondary importance and the Commission believes that proportionality in sentencing is served sufficiently with the criminal history differentiations incorporated in the grid
- 15. Misdemeanors - 1 unit for each misdemeanor and GM conviction. Need 4 units for 1 point on CHS. Can't have more than 1 misdemeanor point
- 16. Juvenile - 1 point for every 2 offenses adjudicated that would have been felonies if committed by an adult - can't received more than 2 juvenile points
- 17. Out of state convictions and their designation as misdemeanors, GMs or felonies are governed by the Minnesota offense definitions

### C. Presumptive Sentences

- 1. Offense of conviction determines the appropriate severity level on the vertical axis
  - 2. CHS determines the appropriate location on the horizontal axis
  - 3. Presumptive fixed (parameter) sentence found at intersection
- Dispositions and Durations

4. Offenses within the grid are presumptive with respect to the duration of the sentence and whether imposition or execution of the felony sentence should be stayed
5. Line of demarcation
6. Exceptions to the line of demarcation
  - a. Criminal Vehicular Operation (Death)
  - b. Burglary 1 with prior burglary
  - c. Violation of Controlled Substance Law (VOCSL) 1-4 with prior
  - d. then get amount in box, but executed (or mandatory minimum, which ever is greater)
7. Every cell in the grid provides a fixed duration of sentence. No border boxes.
  - a. For cells below the solid line, guidelines provide both a presumptive prison sentence and a range of time for that sentence
  - b. Anything outside the range is a departure - regardless of whether executed or not

#### D. Departures

1. Sentences in grid presumed to be appropriate in every case
2. Shall utilize unless substantial and compelling circumstances
3. When departing, court should pronounce sentence proportional to the severity of the offense of convictions and extent of offender's prior criminal history
4. When departing, court must provide written reasons which specify the substantial and compelling nature of the circumstances.
5. Decisions with respect to disposition and duration are logically separate. Likewise, decisions to depart in either of those sectors are logically separate.
6. Judge who departs both dispositionally and durationally has departed twice and each requires a written reason
7. The aggravating and mitigating factors and the written reasons supporting the departure must be substantial and compelling to overcome the presumption in favor of the guideline sentence. The purpose of the sentencing guidelines cannot be achieved unless the presumptive sentences are applied with a high degree of regularity
8. Factors not to be used
  - a. Race
  - b. Sex
  - c. Employment factors, including
    1. occupation
    2. employment history
    3. employment at time of offense
    4. employment at time of sentencing
  - d. Social factors, including
    1. educational attainment

- 2. living arrangements
  - 3. length of residence
  - 4. marital status
- e. Exercise of constitutional rights by the defendant during the adjudication process
- 9. Factors which may be used
  - a. Mitigating factors (Allowing Downward Departure in Sentencing)
    - 1. Victim was aggressor
    - 2. Offender played a minor or passive role in the crime or participated under circumstances of coercion or duress
    - 3. Offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed (voluntary use of intoxicants does not fall within the purview of this factor)
    - 4. Offender's presumptive sentence is a commitment to the commissioner but not a mandatory minimum and either of the following exist:
      - a. Current offense is Severity Level 1 or II and defendant received all prior felony sentences in less than 3 court appearances, or
      - b. Current offense is Severity Level III or IV and defendant received all prior felony sentences in 1 court appearance
    - 5. Other substantial grounds
    - 6. Alternative placement for offender with serious and persistent mental illness ([See Minn. Stat. §609.1055](#))
  - b. Aggravating factors: (Allowing Upward Departure in Sentencing)
    - 1. Victim particularly vulnerable - age, infirmity, reduced mental or physical capacity - which should have been known by defendant
    - 2. Victim treated with particular cruelty
    - 3. Current conviction is for Criminal Sexual Conduct (C.S.C.) with injury and there is prior conviction for CSC with injury
    - 4. Major economic offense - Defendant involved in a series of illegal acts committed by other than physical means and by concealment or guile to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage. Presence of two (2) or more of the below list are aggravating factors:
      - a. Multiple victims or incidents per victim
      - b. Attempted or actually \$ loss substantially greater than the usual offense or substantially greater than the minimum loss specified by the statutes

- c. High degree of sophistication or planning or occurred over a lengthy period of time
  - d. Defendant used his or her position or status to facilitate the commission of the crime, including positions of trust, confidence, or fiduciary relationships
  - e. Defendant has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions
5. Major Controlled Substance offense – Defendant involved in an offense or series of offenses related to trafficking in C. S. under circumstances more onerous than the usual offense. Two (2) or more are needed to aggravate:
- a. At least 3 separate transactions where Controlled Substances were sold, transferred or possessed with intent
  - b. Attempted or actual sale or transfer of Controlled Substance in quantities substantially larger than for personal use
  - c. Manufacture of Controlled Substance for use by others
  - d. Defendant knowingly possesses a firearm during commission of offense
  - e. Circumstances reveal defendant occupied a high position in the drug hierarchy
  - f. Offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement
  - g. Defendant used his or her status or position to facilitate commission of the offense (pharmacist, M. D., or medical professional, dentist)
  - h. Defendant committed, for hire, a crime against the person
  - i. Pattern sex offender
  - j. Offender is a “dangerous offender who commits a third violent crime” ([See Minn. Stat. § 609.1095, subd. 2](#)).
  - k. Offender is a “career offender” ([See Minn. Stat. 609.1095, subd. 4](#)).
  - l. The offender committed the crime as part of a group of three or more persons who all actively participated in the crime.
  - m. The offender intentionally selects the victim or the property against which the offense is committed, in whole or in part, because of the victim’s, the property

owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability, age or national origin.

- n. The offender's use of another's identity without authorization to commit a crime. This aggravating factor may not be used when the use of another's identity is an element of the offense.
- o. The offense was committed in the presence of a child.
- p. The offense was committed in a location in which the victim had an expectation of privacy.

#### E. Mandatory Sentences

- 1. See: "Mandatory Sentences Reference Tables" at end of this Minnesota Sentencing Guidelines section

#### F. Concurrent/Consecutive

- 1. Consecutive may only be given as follows:
  - a. Prior felony sentence for Crimes Against Persons (CAPER) has not expired or been discharged and the current offense is a CAPER and is a commit, OR,
  - b. Multiple current CAPERS convictions and most severe is a commit
  - c. Escape
- 2. All other consecutive sentences are departures
- 3. Duration - "0" box. Purpose is to count CHS only one time in computation of consecutive sentences
- 4. Sentence most severe offense first
- 5. Requirement that crimes be against different people is designed to exclude consecutive sentences in 2 situations:
  - a. single behavioral incident
  - b. domestic/child abuse over same victim over long period of time

#### G. Convictions for Attempts, Conspiracies, & Other Sentence Modifiers

- 1. Locate correct box - divide by 2 (but not less than 1 yr, 1 day)
- 2. Except - conspiracy to commit VOCSL is a completed offense
- 3. Special box for Attempt/Conspiracy Murder 1<sup>st</sup> Degree

#### H. Exceed Statutory Maximum

- 1. When grid is more than statutory maximum, the sentence is statutory maximum
- 2. EXCEPTION: Subsequent sex offender

### III. Sentencing Details

#### A. Stay of Imposition v. Stay of Execution

#### B. Conditions of stayed sentences

1. No specific guidelines
2. Several penal objectives
  - a. retribution
  - b. rehabilitation
  - c. public protection
  - d. restitution
  - e. deterrence
  - f. public condemnation of criminal conduct
3. Urged to utilized least restrictive means
4. Any that are reasonable

#### C. Revocation of Stayed Sentences

1. should not be automatic
2. Commission urges use of more restrictive or onerous conditions, including confinement, prior to revocation
3. Commission looks at revocations as justified when
  - a. Defendant is convicted of new felony which is a commit
  - b. Despite use of expanded and more onerous conditions, defendant persists in violating

#### D. Jail Credit

1. Time spent as condition time is counted if sentence is ultimately executed
2. Pretrial confinement
3. Work release time is 12 hours for each 24 hour period
4. Good time subtracted first, then defendant given credit

#### E. Certified Juveniles

1. Sentence as per grid

#### F. Presentence Mental or Physical Exams - Sex Offenders

1. Sex offenders are given extra physical and mental examinations along with Pre-sentence Investigation (PSI)



# Juvenile Justice System

## Juvenile Justice System

### I. Historically

A. Juveniles treated the same as adults

B. First juvenile court in Illinois in 1899

1. Juvenile cases handled based on the “best interests of the child”

#### C. In re Gault (1967)

1. Due process rights extended to juveniles

### II. Definitions

A. Child/Juvenile/Minor

1. A person under 18 years of age

B. Delinquent child

1. A child (age 10 to 17) who has violated a state or local law which would be a crime if committed by an adult

C. Status Offense

1. Behavior of a child which is prohibited by law, but which would not be an offense if committed by an adult.

a. smoking, drinking, curfew, truancy

### III. Jurisdiction in Juvenile Cases

#### A. Delinquent child

1. **Minimum age of 10**

2. **Up to age 19 (offense committed between ages 10 and 17)**

#### B. **Extended Jurisdiction Juvenile (EJJ)**

1. **Provides jurisdiction until age 21**

2. **Applies to juvenile offenders over 14 who commit a felony level offense**

3. **Establishes dual jurisdiction over juvenile in both juvenile and adult courts**

### C. Certification

1. Process by which a juvenile **over 14 who commits a felony level offense** may be transferred from the jurisdiction of the juvenile court into the jurisdiction of the adult court
2. Court refers juvenile for adult prosecution if the court finds that keeping the case in juvenile court “does not serve the public safety”

## IV. Juvenile Placements

### A. After Arrest - Before Charges

1. Juvenile Detention Center - 36 hour rule applies
2. Shelter – 36 hour rule applies

### B. Prior to Trial

1. Home with parents or guardian
2. Home under house arrest or home detention
3. Shelter home
4. Juvenile Detention Center
5. No contact with victim
6. Attend all classes at school
7. Abstain from alcohol and drugs

### C. After Trial

1. Disposition (See V)

## V. Dispositions

### A. Procedure

1. Court considers probation officer’s report
2. Court considers facts
3. Court considers victim impact
  - a. Crime victim has a right to request restitution
  - b. Should be made in writing describing items lost, dollar amount and reason for restitution request

### B. Alternatives

1. Probation supervision
2. Out of home placement
3. Special care and treatment for juvenile
  - a. Woodland Hills
  - b. Northwoods Children’s Home
  - c. Red Wing (Commissioner of Corrections)
4. Money fine
5. Community Service/Work Crew

## 6. Restitution

### VI. Juvenile Records

#### A. Confidentiality

1. Most juvenile court records are kept confidential
2. Court must maintain the records until juvenile reaches age 28
3. Evidence of juvenile felony adjudication can be used in adult court later to increase penalties
4. May be released on court order

#### B. Release of Information Upon a Showing:

1. In the best interests of the child, or
2. In the interests of public safety, or
3. Necessary to the functioning of the juvenile court system
4. In the interests of the protection of the rights of a victim of a delinquent act

#### C. Records may not be released to any present or prospective employer of the child or the military services

### VII. Search and Seizure - Special Rules

#### A. Warrantless probable cause arrests on school property - includes school buses

1. 5<sup>th</sup> Degree Assault on School Property - may arrest on probable cause if it occurred within the previous 4 hours.

#### B. Searches of School Lockers and Students

1. Inspection of lockers may be conducted by school personnel at any time, for any reason (reasonable suspicion)
2. No consent necessary
3. No search warrant necessary
4. Personal possessions of students on their persons or within their lockers or vehicles on school property may be searched by **school personnel** when they have a **reasonable suspicion** that the search will uncover evidence of a violation of law or school rules ([\*New Jersey v. T.L.O. - 1985\*](#)) [Podcast](#)

### VIII. Firearms in School

#### A. Reporting requirement

1. School board mandated to have a policy requiring reporting any pupil who unlawfully brings a firearm to school

#### B. Expulsion

1. Minimum one (1) year expulsion if pupil brings a firearm (includes BB and Pellet Guns) to school

IX. Trespassing on School Property [\(SS 609.605, Sub 4\)](#)

A. Gross Misdemeanor for 3 or more persons to be in a school, unless one is:

1. A student
2. A parent
3. An employee
4. Has permission
5. Is attending a school event

X. Questioning juveniles

A. Miranda and audio recording required if questioning in custody

B. Courts have not absolutely required a parent to be present when questioning, but it is the “better practice” to have parents present

# Police Liability

Tennessee v. Garner

Graham v. Connor

Canton V. Harris

## Tennessee v. Garner

Tennessee v. Garner held that police officers could no longer use deadly physical force when apprehending fleeing felons. This was a Fourth Amendment case that overthrew several hundred years of policing doctrine for a number of reasons. **After Garner, the police may only use deadly physical force against an "immediate and imminent danger", not all fleeing felons.**

### Facts and procedural history

At about 10:45 p. m. on October 3, 1974, Memphis Police Officers Elton Hymon and Leslie Wright were dispatched to answer a burglary call. The neighbor, who had made the police call, told the officers upon their arrival at the scene that someone was breaking into the house next door. Officer Hymon went behind the house as his partner radioed back to the station. Hymon witnessed someone running across the yard. The fleeing suspect, Edward Garner, stopped at a six-foot high chain-link fence. Using his flashlight, Hymon could see Garner's face and hands, and was reasonably sure that Garner was unarmed. After Hymon ordered Garner to halt, Garner began to climb the fence. Believing that Garner would certainly flee if he made it over the fence, Hymon shot him. The bullet struck Garner in the back of the head, and he died shortly after an ambulance took him to a nearby hospital. Ten dollars and a purse from the burglarized house were found on his body.

Hymon acted according to a Tennessee state statute and official Memphis Police Department policy authorizing deadly force against a fleeing suspect. The statute provided that "if, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all the necessary means to affect the arrest."

Garner's father then brought suit in the United States District Court for the Western District of Tennessee under the Civil Rights Act of 1871, 42 U.S.C. § 1983, naming the City of Memphis, its mayor, the Memphis Police Department, its director, and Officer Hymon as defendants. The District Court found the statute, and Hymon's actions, to be constitutional. On appeal, the United States Court of Appeals for the Sixth Circuit reversed. The Court of Appeals held that the killing of a fleeing suspect is a "seizure"

for the purposes of the Fourth Amendment, and is therefore constitutional only when it is reasonable. The court then found that based on the facts in this case, the Tennessee statute failed to properly limit the use of deadly force by reference to the seriousness of the felony.

### Majority opinion

Justice White wrote for the majority, first agreeing with the Sixth Circuit's determination that apprehension by use of deadly force is a seizure, then framing the legal issue as whether the totality of the circumstances justified the seizure. In order to determine the constitutionality of a seizure, White reasoned, the court must weigh the nature of the intrusion of the suspect's Fourth Amendment rights against the government interests which justified the intrusion.

The use of deadly force against a subject is the most intrusive type of seizure possible, because it deprives the suspect of his life, and White held that the state failed to present evidence that its interest in shooting unarmed fleeing suspects outweighs the suspect's interest in his own survival.

White examined the common law rule on this matter and its rationale. At common law, it was perfectly legitimate for law enforcement personnel to kill a fleeing felon. At the time when this rule was first created, most felonies were punishable by death, and the difference between felonies and misdemeanors was relatively large. In modern American law, neither of these circumstances existed.

Furthermore, the common law rule developed at a time before modern firearms, and most law enforcement officers did not carry handguns. The context in which the common law rule evolved was no longer valid. White further noted that many jurisdictions had already done away with it, and that current research has that the use of deadly force contributes little to the deterrence of crime or the protection of the public.

On the basis of the facts found by the district court, Hyman had no reason to believe that Garner was armed or dangerous. White ordered the case to be remanded for determination of the liability of the other defendants.



## **Tennessee v. Garner**

**(1985) 471 U.S. 1,105S.Ct. 1694**  
**Use of Deadly Force to Stop Fleeing Felons**

### Effects of Tennessee v. Garner

1. Moved the use of force issues from Common Law to the 4<sup>th</sup> Amendment of the U. S. Constitution related to “Seizures”.
2. Created a national standard regarding the use of Deadly Force against fleeing felons.
3. Created the Reasonable Officer Standard.
  - a. Would another officer with like or similar training and experience.
  - b. Facing the same or similar circumstances.
  - c. Act in the same ways or use similar judgment.

### Components of Tennessee v. Garner

1. Only the facts know to the officer at the time of the use of deadly force may be used.
2. Type of crime involved – crime of violence or threat of violence.
3. Threat the criminal presents to present arresting officers should his capture be delayed.
4. Threat the criminal presents to future arresting officers if the suspect evades present attempts to capture.
5. Threat the criminal presents to the public should the suspect evade arrest.
6. Type of resistance offered by the suspect (perceived and projected).
7. A warning should be given if practical.

### Real Life Considerations of Tennessee v. Garner

1. Officer has probable cause to believe the suspect has committed a crime of violence and or threatened violence, and
2. The suspect is believed to be armed or presents a danger to present or future officers or to the public and there is a necessity to stop the suspect using deadly force in order to protect officers and the public.
3. A warning to stop should be given if practical.

## **GRAHAM v. CONNOR,**

**490 U.S. 386 (1989)**

Argued February 21, 1989

Decided May 15, 1989

Petitioner Graham, a diabetic, asked his friend, Berry, to drive him to a convenience store to purchase orange juice to counteract the onset of an insulin reaction. Upon entering the store and seeing the number of people ahead of him, Graham hurried out and asked Berry to drive him to a friend's house instead. Respondent Connor, a city police officer, became suspicious after seeing Graham hastily enter and leave the store, followed Berry's car, and made an investigative stop, ordering the pair to wait while he found out what had happened in the store. Respondent backup police officers arrived on the scene, handcuffed Graham, and ignored or rebuffed attempts to explain and treat Graham's condition. During the encounter, Graham sustained multiple injuries. He was released when Connor learned that nothing had happened in the store. Graham filed suit in the District Court under 42 U.S.C. 1983 against respondents, alleging that they had used excessive force in making the stop, in violation of "rights secured to him under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. 1983." The District Court granted respondents' motion for a directed verdict at the close of Graham's evidence, applying a four-factor test for determining when excessive use of force gives rise to a 1983 cause of action, which inquires, inter alia, whether the force was applied in a good-faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm. *Johnson v. Glick*, 481 F.2d 1028. The Court of Appeals affirmed, endorsing this test as generally applicable to all claims of constitutionally excessive force brought against government officials, rejecting Graham's argument that it was error to require him to prove that the allegedly excessive force was applied maliciously and sadistically to cause harm, and holding that a reasonable jury applying the *Johnson v. Glick* test to his evidence could not find that the force applied was constitutionally excessive.

### **Graham v. Connor**

490 U.S. 386 (1989)

#### Effects of *Graham v. Connor*

1. Created a national standard for use of force by Police Officers.
2. Moved all use of force issues to the 4<sup>th</sup> Amendment of the Constitution.

#### Components of Use of Force (*Graham v. Connor*)

1. Peace officers have the right to use force within the authority of an arrest.

2. Officers are often forced to make split-second judgments about the amount of force necessary in tense, uncertain and rapidly evolving circumstances.
3. Officers are not measured against the underlying motive or intent.
4. Officers must consider whether the suspect poses an immediate threat to the safety of the officers or others.
5. Officers must consider the severity of the crime at issue.
6. Officers must consider the active resistance by the suspect to the arrest or attempt to evade arrest.
7. Reasonableness must be judged by the perspective of the “Reasonable Officer” at the scene – a reasonable and well-trained officer.
8. Reasonableness is based on information known at the time by officers involved, NOT by 20/20 hindsight.

The Standard for use of force by Police Officers in America is “**Objective Reasonableness**”

Determining the “Objective Reasonableness” of any police use of force is **Fact Specific**:

1. Judged through the perspective of a (well-trained) reasonable officer.
2. Based on the totality of the facts known to the officer at the time force was used.
3. Based on what was known to the officer without regard to the officers underlying intent or motivation.
4. Based on the knowledge the officer acted properly under established law at the time – the “core transaction” was valid.

#### **Reasons to Use Force**

1. **Self Defense** – It is the right of every citizen to defend themselves against death or serious bodily harm.
2. **Defense of Another** – This is the sworn duty of every peace officer.
3. **Effect an Arrest** – The U.S. Supreme Court upheld in Graham that the use of force is inherent in the law enforcement mission.
4. **Overcome Resistance** – An officer may use reasonable force to overcome resistance of a suspect.
5. **Prevent an Escape** – An officer may use reasonable force to prevent the escape of a suspect.

#### **Excessive Force**

1. Force having no law enforcement purpose.
2. Force which continues past the suspects perceived level of resistance.
3. When resistance ends, excessive force begins. (Win, then quit)

#### **Duty to Intervene**

An officer may be guilty of “failure to intervene” or “failure to prevent” other officers from using excessive force, if they had reason to know:

1. Excessive force was being used.
2. Any citizen was unjustifiably arrested.

3. Any Constitutional violation had been committed by any law enforcement official.
4. The officer had an opportunity and ability to prevent the harm from occurring.

### **Required Intervention**

Officers are required by the position as a sworn officer to intervene in any force situation that they perceive as excessive. Intervention may take the form of:

- Strongly caution the other officer.
- Physically restrain the other officer.
- Immediately report the incident (without delay) to a supervisor.

### **Canton v. Harris** **(1989) 489 U.S. 378**

Canton v. Harris is a landmark case for law enforcement. It is among the rising areas of police liability. Since Canton v. Harris, there has been a substantial increase in “Failure to .....” lawsuits.

1. Negligent Hiring
2. Negligent Assignment
3. Negligent Retention
4. Negligent Entrustment
5. Failure to Direct
6. Failure to Supervise
7. Failure to Train

**Officers must be trained in the duties they can reasonably expect to encounter during their tour of duty.**

Failure of a department to properly train its personnel amounts to a “deliberate indifference”.

### **Ways to Prevent Liability**

- Act within your official scope of authority.
- Know the law of police liability.
- Keep abreast of the changing law of liability.
- Read and follow departmental rules and regulations.
- Keep and maintain adequate records and documentation on police operations.
- Seek the assistance of the county attorney or other counsel on liability matters.
- Implement and provide continuing training for police liability.
- Select officers with higher education, and recruit officers who adhere to and respect the rule of law.

- Maintain good community relations and advise citizens of drastic changes in police policy or operations.

### **Constitutional Violations**

#### Common to Police Work

- Use of Excessive Force
- Illegal Searches & Seizures
- Invasion of Privacy
- Failure to Protect
- Abandoning Citizens
- False Arrest or Imprisonment
- Failure to Provide Medical Assistance
- Unlawful Conversion of Property
- Roadblocks & Pursuits

# Policing History

# Policing History

## I. Ancient Times

- A. Code of Hammurabi. Hammurabi, king of Babylonia around 2100 B.C., developed a system of coded laws.
- B. Greek city-states had their own laws and judicial systems but no formal police forces.
  - 1. Plato said that laws were necessary to structuring the state (*polis*)
- C. Praetorian Guard. Augustus Caesar was the first Roman ruler to implement a police force. It consisted of cohorts (500-1,000 people) and stood vigils (watches).
  - 1. First served as bodyguards and fire fighters.
  - 2. Later given summary powers including corporal punishment.
- D. Justinian Code – 527 A.D. The first great codification of law in the western world occurred under the reign of Roman Emperor Justinian.

## II. Early England

- A. Alfred the Great established a system of policing in England.
- B. 1066 William (Duke of Normandy) invaded and conquered England
  - 1. King William created vice “comes” (judges) - forerunners of circuit judges
    - a. Largest group of citizens was the “shire” (county)
    - b. Police for the “shire” were the “reeve”.
    - c. “Shire Reeve” evolved into “Sheriff”.
- C. 1116, Henry I issued the *Leses Henrici*, which established:
  - 1. Offenses against the crown (acts against the state)
  - 2. Judicial districts
  - 3. Degrees of crimes (felonies & misdemeanors).
- D. Henry II formed juries of 12 men to hear cases - a departure from trial by ordeal.
- E. 1199 King John took the throne.
- F. 1215 King John was forced to sign the *Magna Carta*, giving civil & political rights to common people.
  - 1. Many of the liberties in the U.S. Constitution’s Bill of Rights can be traced to the *Magna Carta*.

### III. English Police Forces

- A. “Tithing System” - group of about 10 men and their families - some with responsibility of protection of the group.
- B. “Frank Pledge” - Document that mandated all men 14 and older to take turn standing watch in the tithing system.
- C. “Watch and Ward” - Personal protection day and night by having a person stand guard in a central location in the day and night.
- D. “Hue & Cry” - a loud outcry used in the pursuit of criminals
- E. 1750 Henry Fielding organized the Bow Street Runners.
- F. 1822 Sir Robert Peel became Home Secretary.
  - 1. 1829 Peel introduced the Metropolitan Police Act
    - a. Trained police, pay with tax dollars, law enforcement under government control.
    - b. Police called “Bobbies” in England and “Peelers” in Ireland after Robert Peel.

### IV. Early United States

- A. First U.S. Police Department was created in Boston (night watch - 1636)
- B. 1850’s - 1860’s American cities formed full-time organized police forces.
- C. 1883 - Pendleton Act - civil service protection to federal employees.

### V. Political Era of Policing. (1880-1920’s)

- A. Politicians controlled Police Departments.
- B. Political appointments to Police Departments.
- C. Bribery & corruption commonplace.

### VI. Reform Era (1930-1960’s)

- A. August Vollmer
  - 1. Oakland, California police chief.
  - 2. 1929 launched the American police reform movement.
- B. 1931 Wickersham Commission report.
  - 1. Emphasis on professionalism
    - a. education
    - b. training
    - c. recruitment of highly motivated officers
  - 2. Less politicized
  - 3. Police should be almost solely “crime fighters”. Less “service activities”.
  - 4. Centralize police functions
  - 5. Increased dependence on automobile and technology.
    - a. Alienated officers from the citizens.



## VII. Public & Community Relations (1960's - 1980's)

- A. Civil Rights Movement of the '60's - large riots - civil strife.
- B. Assassinations – John F. Kennedy ('63), Medgar Evers ('63), Malcolm X ('65), Martin Luther King ('68) & Robert “Bobby” Kennedy ('68)
- C. 1968 Omnibus Crime Control and Safe Streets Act passed.
- D. Attempt to decrease officer's alienation from community - improve relations between the police and the public.
- E. Community Relations Officers
- F. Community Oriented Policing (COP) and Problem oriented policing (POP) adopted in late 1980's.
- G. Crime Prevention Outreach
- H. Team Policing
  - 1. Police team in neighborhoods
    - a. Lack of stake in the neighborhood
    - b. Lack of cooperation from citizens

## VIII. Community Policing

- A. An outgrowth of history.
- B. Attempt to take the best part of the Political Era and the Reform Era and the '60's - '80's.
- C. Initial attempts were foot patrol units.
  - 1. Foot patrol merely a tactic
  - 2. Gradually evolved into a broader policing scope - the Community Policing philosophy.

# Community Policing

# Community Policing

## Community Policing Defined

### I. Evolution of Community Policing (CP)

A. First major reform in policing philosophy in half a decade.

B. Factors which set the stage for Community Policing.

1. Isolation of officers from the citizens.
2. Narrowing of the police function to reactive crime fighters.
3. Management approach which stressed efficiency over effectiveness.
4. Increased reliance on high technology over human interaction.
5. Political insulation of police administrations from public input.
6. Concerns about police violation of the rights of minorities.

C. Community Policing retains parts of the police reforms over the past century.

#### Evolving Strategy of Policing

1. From the Political Era
  - a. Puts officers back on the beat working directly with the citizens.
2. From the Reform Era
  - a. Recruitment of education & motivated officers
  - b. Professionalism
  - c. Continued commitment to upgrade training and education of officers through Training Units.
  - d. Use of new technologies to accomplish closer police/community contacts
  - e. Insulation of police from politics.
3. From the Community Relations and Crime Prevention Efforts.
  - a. Major efforts to improve relations between police and minorities.
  - b. School outreach (liaisons)
  - c. Efforts to act as liaison with other organizations and agencies.
  - d. Efforts to end police brutality.
4. From Team Policing
  - a. Fostering effective law enforcement
  - b. Dealing with trends of crime vs. Dealing with individual crimes one at a time.

### II. Community Policing - Ten Principles

See Trojanowicz, Robert & Bucqueroux, Bonnie (1990)

A. Community Policing: A Contemporary Perspective.

Cincinnati, OH: Anderson Publishing Co.

1. Philosophy
  - a. Public should have input into the police process
  - b. Public should provide participation and police support in return
  - c. Community problems of today demand police and citizens to find new ways to deal with neighborhood concerns
    1. Goes beyond focusing on individual criminal events.
2. Commitment to Community Empowerment
  - a. Entire police departments must work to put the philosophy of sharing their power into practice
  - b. Entire department should be geared toward creatively solving broad based community problems
  - c. Provides greater responsibility and authority in the department to the officer on the street
  - d. Sends a good message to the officer on the street - "We respect your judgment as a police professional".
  - e. Citizens must share the rights and responsibilities that go with solving community problems - not as vigilantes - but as partners with the police
3. Decentralized and Personalized Policing
  - a. Creation and development of a new breed of line officer
  - b. Officer on the street is a direct link between police and community
  - c. Must limit isolation of officer by taking them out of the squad car.
  - d. Need to maintain direct, regular personal contact with the people in the community.
  - e. Same officer/same neighborhood = "Our officer".
4. Immediate and Long-Term Proactive Problem Solving
  - a. Community policing officer has a broad role
  - b. Arrests, response to calls
  - c. Develop and monitor sweeping long term tactics involving all community (neighborhood) elements
  - d. Link to other public and private organization
5. Responsibility and Trust
  - a. New contract between citizens and police
    1. way of overcoming apathy
    2. way of restraining thoughts of vigilantism
  - b. Police can serve as a motivator
  - c. challenge citizens to accept responsibility for the community's life quality
  - d. Citizens will need to handle more minor problems without police involvement
  - e. Will free officer on the street to work with citizens to develop solution - long and short term - to the community's wider ranging problems
  - f. Encourage mutual accountability and respect
6. Expanding the Police Mandate

- a. Adds a proactive focus to normal reactive role of the police
  - b. Must retain ability to respond at once to crimes
  - c. CP broadens the role of the police
  - d. Can therefore have greater influence on effecting changes
7. Helping Those with Special Needs
- a. Develop ways to protect and enhance the lives of the vulnerable
8. Grass Roots Creativity and Support
- a. Use of new technology as a means to accomplish closer police/community ties
  - b. Cornerstone is knowledge that people, acting together, can achieve almost anything
9. Internal Power Change
- a. Must be fully integrated throughout police department
  - b. Change of the way police think
10. Building for the Future
- a. Providing decentralized, personalized police service
  - b. Citizens need to think of police as a resource in solving problems

# Domestic Abuse Related Statutes

# Domestic Abuse and Related Statutes

## Harassment and Violations of OFPs and No-Contact Orders

### I. Violation of an Order For Protection (OFP) – **Mandatory Arrest**

#### A. [SS [518B.01](#) Domestic Abuse Act, Subd. 14 (e)]

“A peace officer **shall** arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order for protection”

1. If the OFP (has not been previously served, and) is first served upon the person at a location that would violate the order, the person shall not be arrested without being given an opportunity to leave in the presence of the officers.
2. A person arrested for an OFP violation shall be held in custody for at least 36 hours, excluding the day of arrest, Sundays, and holidays, unless the person is released earlier by a judge or judicial officer.
3. A peace officer acting in good faith and exercising due care in making an arrest for an OFP violation is immune from civil liability that might result from the officer's actions.

### II. Violation of a Restraining Order (Order of Harassment) (SS [609.748](#)) – **Mandatory Arrests for Certain Violations**

#### A. A peace officer **shall** arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated the restraining order:

1. while possessing a dangerous weapon [SS [609.748](#), Subd. 6(4)]
2. with intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding [SS [609.748](#), Subd. 6(5)]

#### B. A peace officer **may** arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated the restraining order in any other way – **Detention mandatory.**

1. (SS [629.72](#) , Subd. 1a) “...an arresting officer **MAY NOT** issue a citation in lieu of arrest and detention to an individual charged with harassment, domestic abuse.....
2. An individual who is arrested on a charge of harassing any person (or) domestic abuse...**must be brought to the police station or county jail.**

### III. Violation of a Domestic Abuse No-Contact Order (SS [629.75](#)) – **Mandatory Arrest**

- A. A Domestic Abuse No Contact Order is an order issued by a court against a defendant in a criminal proceeding for:
  - 1. Domestic abuse;
  - 2. Harassment or stalking committed against a “family or household member”;
  - 3. Violation of an order for protection; or
  - 4. Violation of a prior domestic abuse no contact order charged under this subdivision.
- B. A person who knows of the existence of a domestic abuse no contact order issued against the person and violates the order is guilty of a misdemeanor.
- C. A person is guilty of a gross misdemeanor who knowingly violates this subdivision within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency.
- D. A peace officer **shall** arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated a domestic abuse no contact order.

IV. Domestic Abuse (SS [629.341](#), Sub. 1) (SS [609.2242](#)) - **Mandatory Detention but Discretionary Arrest**

- A. Police **may** arrest upon Probable Cause
- B. Must have occurred **within the preceding 72 hours – exclusive of the day probable cause was established.** (Effective Aug. 1, 2014)
- C. Must constitute “Domestic abuse”, which is: [(SS [518B.01](#) , Sub. 2(a)]
  - 1. Physical harm, bodily injury, or assault; or
  - 2. The infliction of fear of imminent physical harm, bodily injury, or assault; or
  - 3. Terroristic threats; criminal sexual conduct; or interference with an emergency call.
- D. Domestic abuse must be committed against a family or household member by a family or household member:
  - 1. "Family or household members" [(SS [518B.01](#), Subd. 2(b))] means:
    - a. Spouses and former spouses;
    - b. Parents and Children;
    - c. Persons related by blood;
    - d. Persons who are presently residing together or who have resided together in the past
    - e. Persons who have a child in common regardless of whether they have been married or have lived together at any time;
    - f. A man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and
    - g. Persons involved in a significant romantic or sexual relationship.
- E. Arrest may be made without a warrant even if at the residence of the suspect
- F. The peace officer **shall** tell the victim whether a shelter or other services are available in the community (SS [629.341](#), Subd. 4)
- G. The officer **shall** make a written police report of the alleged incident (SS [629.341](#), Subd. 5)



H. (SS [629.72](#), Subd. 1a) "...an arresting officer may not issue a citation in lieu of arrest and detention to an individual charged with harassment, domestic abuse.....

I. An individual who is arrested on a charge of harassing any person (or) domestic abuse...**must be brought to the police station or county jail**. The officer in charge of the police station or the county sheriff in charge of the jail shall issue a citation in lieu of continued detention unless it reasonably appears to the officer or sheriff that release of the person:

1. Poses a threat to the alleged victim or another family or household member,
2. Poses a threat to public safety, or
3. Involves a substantial likelihood the arrested person will fail to appear at subsequent proceedings

J. Arrest not mandatory

K. (SS [629.72](#), Subd. 6) The agency having custody of the arrested person or its designee must make a reasonable and good faith effort to inform orally the alleged victim if the person is released from custody.

1. If a citation is issued, or if defendant is released by judge or posts bail, the agency having custody must make a good faith attempt to notify the victim of:
  - a. Release conditions
  - b. Time of release
  - c. Date of defendant's next court appearance
  - d. Victim's right to be present
  - e. Location of the local battered women's shelter

## V. Discretionary Arrests

A. An officer answering a domestic abuse call **may** make an arrest in the following circumstances without a warrant:

1. Violation of a Restraining Order (Harassment - SS 609.748)
2. Probable cause a person has committed a felony
3. Probable cause a person has committed the gross misdemeanor crime of harassment/stalking
4. When any other gross misdemeanor or misdemeanor is committed in the officer's presence

## VI. Typical Domestic Abuse Offenses

- A. Assaults in the [1st](#), [2nd](#), [3rd](#), [4th](#) and [5th](#) Degrees (609.221 – 609.224)
- B. Assault on Unborn Child in the 1<sup>st</sup> Degree ([609.267](#))
- C. Burglary ([609.582](#))
- D. Domestic Assault ([609.2242](#))
- E. Domestic Assault by Strangulation ([609.2247](#))
- F. Interference with Emergency Call ([609.78](#))
- G. Terroristic Threats ([609.713](#))
- H. Harassment/Stalking ([609.749](#))

# Victim's Rights

## Victim's Rights

### I. Data

- A. Right to request law enforcement to withhold public access to data revealing the victim's identity. (SS [611A.021](#))
- B. Bars requiring a criminal sexual assault victim to take a polygraph as a condition to proceed with the investigation, charging, or prosecution of a Criminal Sexual Assault case. (SS [611A.26](#))

### II. Pre-Trial

- A. Right to be notified of prosecutor's decision not to prosecute the case. (SS [611A.0315](#))
- B. Right to be notified of bail hearing. (SS [629.72](#))
- C. Right to bring a supportive person to the pre-trial hearing. (SS [631.046](#), SS [260B.163](#))

### III. Plea Agreements

- A. Right to be notified of content of any plea bargain agreements. (SS [611A.03](#), SS [611A.00301](#))
- B. Right to attend plea agreement hearings. (SS [611A.03](#))
- C. Right to object orally or in writing to a plea agreement at the hearing (SS [611A.037](#))
- D. Right to provide input in a pre-trial diversion decision. (SS [611A.031](#))

### III. Trial

- A. Right to request prosecutor to request speedy trial (SS [611A.033](#))
- B. Right to be notified of any changes in the schedule of court proceedings to a victim who has been subpoenaed or requested to testify. (SS [611A.33](#))
- C. Right to have a secure waiting area during court. (SS [611A.034](#))
- D. Right to participate in prosecution.
- E. Right to have victims' or witnesses' date of birth, phone number, home and business address withheld in open court. (SS [611A.035](#))

### IV. Post Trial

- A. Right to attend the sentencing hearing.
- B. Right to the final disposition of the case. (SS [611A.039](#))
- C. Right to object to any proposed disposition or sentence. (SS [611A.03](#), SS [611A.0301](#), SS [611A.038](#))
- D. Right to inform court of impact of crime at the sentencing hearing. (SS [611A.037](#))
- E. Right to inform court at the sentencing hearing of social and economic impact of crime on persons and businesses in the community. (SS [611A.0301](#), SS [611A.038](#))

- F. Local police and prosecutors to release disposition of the case to the local Crime Prevention Group (SS [611A.0392](#))
- G. Right to request restitution at sentencing. (SS [611A.04](#))
- H. Victims may request the court to order the defendant to pay restitution. (SS [611A.045](#), SS [609.10](#), SS [609.125](#))
- I. Right to request a probation review hearing if defendant fails to pay restitution as ordered. (SS [611A.046](#))
- J. Victims may be eligible for financial assistance (reparations) from the state if they have suffered economic loss as a result of a violent crime. (SS 611A.51 – 611A.67) (Minnesota Crime Victim’s Reparations Act)
- K. Right to apply for financial assistance. (SS [611A.675](#))
- L. Right to receive notice of final disposition of the case, if the victim does not attend the sentencing. (SS [611A.039](#))

#### V. After Sentencing

- A. Notified of any pending appeals by the defendant, including the right to attend the oral argument or hearing. (SS [611A.0395](#))
- B. Notified of sentence modifications for the offender, including the date, time and location of the review. (SS [611A.039](#))
- C. Notified if the offender petitions for the conviction to be expunged. (SS 611A.0385, SS [611A.06](#))

#### VI. Release, Transfer, or Escape

- A. Notified of release of the offender from prison or custodial institution. (SS [611A.06](#))
- B. Notified of transfer of the offender from prison or custodial institution.
- C. Notified of escape of the offender from prison or custodial institution. (SS [611A.06](#))

#### VII. Protections

- A. Right to protection from harm.
- B. Tampering with a witness is a crime in Minnesota and should be reported (SS [609.498](#))
- C. Tampering with a witness while in possession of a weapon. (SS [609.11](#))
- D. Employers may not discipline or dismiss victims or witnesses who are called to testify in court. (SS [611A.036](#))
- E. Defendant may not profit by selling information about the crime to the media (“Son of Sam” law) (SS [611A.68](#))
- F. Victim has immunity from civil liability for offenders’ injuries. (SS [611A.08](#))

## V. Sexual Offenses

- A. Right to request the prosecutor to petition the court to require the defendant be tested for HIV. (SS [611A.19](#))
- B. Right to the results of the testing. (SS [611A.19](#))
- C. Right to receive notice of the risk of sexually transmitted diseases. (SS [611A.20](#))

# Report Writing

## Report Writing

### I. Contents

#### A. Who, What, When, Where, Why & How

1. Who                      Who is the witness  
                                  Who is the victim  
                                  Who is giving you the information
2. What                    What happened  
                                  In what order  
                                  What were the results  
                                  What is the relationship between the people
3. When                    When did the crime happen  
                                  When was it discovered/reported  
                                  When did the squads arrive  
                                  When did you do follow-up investigation
4. Where                  Where did it happen  
                                  Where is the suspect  
                                  Where was the evidence collected from
5. Why                     Why did the crime happen  
                                  Why did the suspect run away  
                                  Why did the victim delay reporting the crime
6. How                    Do you know any of the above answers
  - a. personal observation
  - b. witness statements
  - c. witness sees it, smells it, hears it, feels it

### II. Problems with some Police Reports

#### A. Police Jargon and “Shop-Talk”

1. Wrong – “The alleged male perpetrator proceeded to exit said vehicle.”
2. Right – “Johnson got out of the car.”

#### B. Unnatural Language

1. Wrong – “She related that she would communicate verbally with Reporting Officer.”

2. Right – “She said she would talk to me.”

C. Confusing

1. Wrong – “Three cars were reported stolen by the police department yesterday.”

2. Right – “The police department reported that three cars were stolen yesterday.”

D. Too Vague (or Too Wordy)

1. Wrong – “Jones assaulted Smith.”

2. Right – “Jones punched Smith in the mouth with his closed right fist.”

E. Conclusionary Words and Sentences

1. Wrong – “Smith was drunk.”

2. Right – “Smith’s breath smelled of alcohol and his speech was slurred.”

## II. Solutions

A. First Person

1. Wrong – “The undersigned officer located the gun.”

2. Right – “I located the gun.”

3. Use “I”, “me”, “my”, and “mine” when referring to yourself, never “reporting officer”, “undersigned officer”, or “this officer.”

B. Past Tense

1. Wrong - “Jones says he left the bar about midnight.”

2. Right – “Jones said he left the bar about midnight.”

C. Active Voice

1. Wrong – “The gun was found by Officer Johnson.”

2. Right – “Officer Johnson found the gun.”

D. Chronological Order

1. Reports should always report the investigation in order as it goes forward in time.

E. Proper Paragraph Usage

1. Use a new paragraph

a. For each person you talk to.

b. Each time you change locations.

c. Each time you change ideas.

F. Grammatically and Mechanically Correct

G. Written in Conversational English

H. Factual

1. Important to include all facts. They may not seem important now, but they may be important later.

F. Accurate

1. Make sure the report accurately records all of the facts.

G. Complete

1. Make sure everything you did in the investigation is recorded in the report.



# Testifying in Court

## Testifying in Court

### I. Clothing

- A. First impressions are often based upon dress
- B. Remember, your credibility is important to the success of the case. What you wear may help your credibility

### II. Reports

- A. Review your reports and other officer's reports on the case before coming to court
- B. Be completely familiar with the contents of your reports before taking the stand
- C. There is no one less persuasive than a professional police officer witness who constantly must refer to their report in order to testify

### III. Arrive at court early

- A. Ask the prosecutor if there are inadmissible areas you should avoid in your testimony
- B. Ask the prosecutor what the defense theory of the case will be

### IV. Tell the Truth

- A. Never offer false testimony
- B. Never try to hide mistakes by omitting facts. The prosecutor's job is to minimize the mistakes.

### V. Anxiety

- A. You may be nervous - that's all right
- B. Just concentrate on the questions - tell what you remember.

### VI. Answers you don't know

- A. There's a big difference in the meanings of:
  - 1. I don't know
  - 2. I don't know exactly
  - 3. I don't recall

### VII. Posture - Demeanor

- A. Sit up straight
- B. Don't fidget with your hands
- C. Look at the jury when answering questions

- D. Don't get angry
- E. Be polite to both the prosecution and the defense
- F. Don't verbally spar with the defense counsel

VIII. Defense areas of attack

- A. Inconsistencies between officers' reports
- B. Inconsistencies in your report
- C. Inconsistencies between your testimony and your report
- D. Things you "failed" to do in your investigation

# MINNESOTA POST REVIEW

**POST Review 1**  
**Criminal Justice Overview**

- 1. Which of these ideas is fundamental to the contemporary concept of criminal justice?**
  - a. the idea that the agencies of criminal justice are not isolated but are intertwined in a series of complex relationships**
  - b. the idea that the operations of the criminal justice system are controlled and sometimes co-opted by big business in America**
  - c. the idea that the criminal justice system is sometimes considered to be more criminal than just**
  - d. the idea that American criminal justice does not work**
  
- 2. The criminal justice system is made up of agencies which act as governmentally sanctioned instruments of what?**
  - a. due process**
  - b. social control**
  - c. internal affairs**
  - d. political bureaucracy**
  
- 3. What branch of government establishes criminal penalties for those who violate the law?**
  - a. the legislature - the U.S. Congress (Federal Statutes) or State Legislatures (State Statutes)**
  - b. the judiciary**
  - c. the executive**
  - d. the law enforcement**
  
- 4. In order to legally arrest someone an officer must satisfy what level of evidence?**
  - a. discretion**
  - b. a preponderance of evidence**
  - c. probable cause**
  - d. evidence sufficient beyond a reasonable doubt**

5. What is the standard of proof for adjudication of guilt in a criminal trial?
  - a. a preponderance of evidence
  - b. evidence of proof beyond a reasonable doubt
  - c. probable cause
  - d. a reasonable preponderance of probable evidence
6. What is an area of major concern for due process advocates?
  - a. the providing of fair and equitable treatment for the accused
  - b. the protection of victim's rights
  - c. the social inequity of urban slums
  - d. equitable public spending on rehabilitation programs
7. What are the best known and most widely cited source of criminal statistics?
  - a. the National Crime Victimization Surveys
  - b. the National Indicators of Drug Abuse
  - c. the Uniform Crime Reports (UCRs)
  - d. the Bureau of Justice Statistics
8. The Uniform Crime Reports (UCRs) are prepared by what agency?
  - a. the DEA (Drug Enforcement Agency)
  - b. the DOJ (Department of Justice)
  - c. the CIA (Central Intelligence Agency)
  - d. the FBI (Federal Bureau of Investigation)
9. The UCRs indicates that police clear slightly more than what percent of all reported crime?
  - a. 20 percent
  - b. 32 percent
  - c. 40 percent
  - d. 55 percent
10. What is the current overall arrest ratio for males to females?
  - a. 1:1
  - b. 3:1
  - c. 12:1
  - d. 19:1

11. According to the Domestic Assault Statutes (609.2242 and 518B.01) , who **IS NOT** considered to be a “Family or Household Member” of yours?
- a. Your former college dormitory roommate
  - b. Your aunt (your mother’s twin sister)
  - c. Your sister-in-law (your brother’s wife), who you’ve never lived with or had a sexual or romantic relationship with
  - d. Your current fiancée
12. The classical view of crime presumes that all people have what?
- a. free will
  - b. intelligence
  - c. determination
  - d. a drive to succeed
13. If people choose not to commit a crime because they fear legal punishment, then we can say that they were what?
- a. rehabilitated
  - b. incapacitated
  - c. adjudicated
  - d. deterred
14. Regional differences in the crime rate suggest that crime may be explained with what type of theory?
- a. biological
  - b. psychological
  - c. sociological
  - d. theological
15. The first great codification of law in the western world occurred under the reign of which Roman Emperor?
- a. Justinian (Justinian Code)
  - b. Hammurabi
  - c. Caesar
  - d. Nero

16. Why was English common law "common"?
- a. because it was not available to the commoners
  - b. because it was common to have the king rule on serious crimes in England
  - c. because it was the same throughout the country as a result of royal judges replacing local customs and practices with a national law that was common to the entire nation
  - d. because King Henry II decreed that all law apply equally to commoners and royalty alike
17. Regardless of its source, all criminal law in the United States must conform to the rules and dictates of what?
- a. the U.S. Supreme Court
  - b. the Office of the Presidency
  - c. the United States Senate
  - d. the U.S. Constitution
18. What is the corpus delicti?
- a. the body of the deceased in a homicide
  - b. the legal standard for determining sufficiency of evidence
  - c. the necessary legal elements that together constitute a crime (all of the statutory elements of the crime)
  - d. the term for those who represent the accused
19. The individual's state of mind or "intent to commit a crime" is formally referred to as what?
- a. insanity
  - b. mala in se
  - c. mens rea
  - d. actus reus
20. Insanity, intoxication and age are examples of what?
- a. legal defenses used to negate the required proof of mens rea
  - b. legal defenses that negate the required proof of actus reus
  - c. examples of defenses based on double jeopardy
  - d. legal defenses based on a presumption of conclusive incapacitation



21. Which amendment protects us from double jeopardy?
- a. the First
  - b. the Fourth
  - c. the Fifth
  - d. the Eighth
22. The RICO Act was passed by Congress to control what type of crime?
- a. domestic violence
  - b. organized crime (RICO stands for: Racketeer Influence and Corrupt Organizations)
  - c. drug sales
  - d. prostitution
23. In the pledge system, people were grouped in collectives of ten families known as what?
- a. tithings
  - b. shires
  - c. watches
  - d. reeves
24. The “pledge system” required that witnesses to a crime do what?
- a. call the police immediately
  - b. report the offense to the local nobleman or the king if near
  - c. raise the hue and cry
  - d. act as witnesses in a local court
25. The Bow Street Runners operated in what city?
- a. London
  - b. Nottingham
  - c. Glasgow
  - d. Liverpool
26. Who organized the Bow Street Runners?
- a. Sir Robert Peel
  - b. Jack Wild
  - c. Tom Jones
  - d. Henry Fielding

27. What English home secretary was responsible for guiding the enactment of the Metropolitan Police Act through Parliament?
- a. Sir Robert Peel
  - b. Sir Henry Fielding
  - c. Sir Arthur Conan Doyle
  - d. Sir James McDonald III
28. Which American city created the first formal U.S. police department?
- a. Boston
  - b. New York City
  - c. Philadelphia
  - d. Chicago
29. During the 1980s, the police role seemed to change from a sole emphasis on crime fighting to an awareness of the need for what?
- a. community involvement and the community policing concept
  - b. greater resource expenditure on combating the growing drug problem
  - c. increased ethical training
  - d. greater awareness of sociologically based theories of delinquency and their application in poverty stricken, urban environments
30. What Federal agency is responsible for security in federal courts and for providing transportation of federal prisoners?
- a. the U.S. Marshal's Office
  - b. the FBI
  - c. the Organized Crime and Racketeering Unit
  - d. the Secret Service
31. Which agency is the principal federal investigative agency?
- a. the Secret Service
  - b. the DEA
  - c. the FBI
  - d. the Customs Service

32. The Bureau of Investigation was reorganized into the Federal Bureau of Investigation under whose direction?
- a. William Parker
  - b. J. Edgar Hoover
  - c. Daryl Gates
  - d. Robert Peel
33. DNA profiling can identify suspects based on genetic material found in what?
- a. fingerprints
  - b. an exhaled breath
  - c. retinal scans
  - d. saliva or cells from any part of the body
34. Most police agencies are organized in what manner?
- a. in a cooperative, democratic manner
  - b. in a private business-like manner
  - c. in a militaristic, hierarchical manner
  - d. in a participatory, egalitarian manner
35. What conclusion was drawn from the Kansas City Preventive Patrol study?
- a. proactive patrolling increased crime rates and increased fear of crime
  - b. reactive patrolling increased crime rates but reduced fear of crime
  - c. normal police patrol reduced crime rates and reduced fear of crime
  - d. there was little variation between patrol activities in terms of crime rates and fear of crime
36. What are magnets for crime according to the broken windows model?
- a. drugs
  - b. guns
  - c. abandoned buildings
  - d. housing projects
37. Community policing links police effectiveness to what?
- a. productive interaction with the community being served
  - b. interrelationships between cooperative police agencies
  - c. efficient utilization of existing personnel
  - d. optimized usage of advanced technology

38. Which officers consider themselves as problem solvers and will probably make the best transition to a community policing style of policing?
- a. the crime fighter
  - b. the social agent
  - c. the law enforcer
  - d. the watchman
39. What percent of all sworn police officers are female?
- a. 1%
  - b. 13%
  - c. 26%
  - d. 45%
40. Who was the first American female police officer?
- a. Beverly Sills
  - b. Lois Lane
  - c. Alice Stebbins Wells
  - d. Connie Wayne Jones
41. What 1985 U.S. Supreme Court decision outlawed the fleeing felon law and set guidelines on police use of deadly force?
- a. *Williams v. New York*
  - b. *Connor v. Graham*
  - c. *Sherman v. California*
  - d. *Tennessee v. Garner*
42. Which of the following is a primary technique of investigation and is controlled by statute and constitutional case law?
- a. referral of an alcoholic to a hospital
  - b. resolving a family dispute
  - c. the interrogation of a suspect
  - d. traffic control for a funeral

43. Evidence gathered by the police is governed by the search and seizure requirements of what Amendment?
- the First
  - the Third
  - the Fourth – bars “unreasonable” searches and seizures
  - the Fifth
44. In order to obtain a search warrant the officer must (1) request a warrant from the court, (2) establish proper grounds for the warrant, and (3) what else?
- identify the informant from whom the information was obtained
  - describe the totality of circumstances on which the warrant is based
  - state the place to be searched and the property to be seized
  - present a two-pronged test of the admissibility of the evidence to be seized
45. The legality of a “search incident to arrest” depends almost entirely on what?
- the probable cause established after the arrest
  - the legality of the arrest – if the arrest is illegal, any evidence found in a search incident to the arrest would probably be “fruit of the poisonous tree”, and inadmissible in criminal court
  - the availability of a warrant or issuing magistrate
  - the intent of the arresting officer
46. A police officer who searches a suspect incident to a lawful arrest generally observes two rules. One rule is that the search is made at the time of the arrest and the other rule is what?
- that the officer inform the suspect of his or her right to refuse to consent to the search
  - the search be limited to that area within the suspect's immediate control (lunge area)
  - that the search be based on probable cause
  - that the suspect is advised of his or her Miranda rights
47. Which Court case allows the police officer to stop and frisk suspicious persons when there is reason to believe that they are armed and dangerous?
- Chimel v. California*
  - Mapp v. Ohio*
  - Terry v. Ohio*
  - California v. Hodari*

48. The *Minnesota v. Dickerson* decision established which doctrine?
- a. the plain-view doctrine
  - b. the plain-touch doctrine (lawful pat-down with discovery of “soft object” suspected to be drugs or contraband)
  - c. the plain-smell doctrine
  - d. the plain-hearing doctrine
49. Prior to the *Dickerson* decision, officers were only allowed to conduct a pat-down search in order to determine what?
- a. if the person was intoxicated
  - b. if the person had drugs in their possession
  - c. if the person was armed with a weapon
  - d. if the person was sexually aroused
50. What is the major legal issue in most consent searches?
- a. whether there existed sufficient probable cause to detain the suspect
  - b. whether the police can prove that the consent was given voluntarily
  - c. whether the suspect understood that they were under arrest at the time of determining consent
  - d. whether the search was limited to the area under the suspect's immediate control
51. Which amendment protects your right to be free from self-incrimination?
- a. the First Amendment
  - b. the Fourth Amendment
  - c. the Fifth Amendment
  - d. the Eighth Amendment
52. Which right is not afforded to the suspect in the Miranda warning?
- a. the right to remain silent
  - b. the right to confront witnesses with an attorney present
  - c. the right to make a statement
  - d. the right to have an attorney present

53. Which decision made the exclusionary rule applicable to the Federal court system?

- a. *Mapp v. Ohio*
- b. *Wolf v. Colorado*
- c. *Illinois v. Gates*
- d. *Weeks v. United States*

54. Which decision made the exclusionary rule binding in State courts?

- a. *Mapp v. Ohio*
- b. *Wolf v. Colorado*
- c. *Illinois v. Gates*
- d. *Weeks v. United States*

55. In Minnesota, what is the court of last resort generally called?

- a. the Minnesota Intermediate Court of Appeals
- b. the Minnesota Supreme Court
- c. the Minnesota Court of Ultimate Jurisdiction
- d. the Minnesota Last Chance Court

56. There are how many justices on the United States Supreme Court?

- a. 3
- b. 6
- c. 9
- d. 12

57. Who is chief justice of the U.S. Supreme Court?

- a. Clarence Thomas
- b. Sonia Sotomayor
- c. John Roberts
- d. Warren Burger

58. How long does a United States Supreme Court justice serve?

- a. for a maximum of ten years
- b. for a maximum of twenty-five years
- c. until they reach a mandatory retirement age of seventy-five
- d. for life

59. What technical device does the Supreme Court use to decide what cases it should hear?
- a. the writ of habeas corpus
  - b. the issuance of legalis
  - c. the writ of certiorari
  - d. the mandate of precedence
60. Which of the following occurs when criminal prosecution is postponed or eliminated in exchange for offender participation in a rehabilitation program?
- a. deferred sentencing
  - b. adjudicated sentencing
  - c. pretrial diversion
  - d. nolle prosequi
61. Who is the counterpart of the prosecuting attorney in the criminal process?
- a. the judge
  - b. the defendant
  - c. the defense attorney
  - d. the arresting officer
62. Which amendment is the basis for providing a defense lawyer (counsel) to the indigent (poor) offender?
- a. Fourth
  - b. Fifth
  - c. Sixth
  - d. Fourteenth
63. Which case established that procedural safeguards, including the right to counsel, must be followed at custodial interrogation to secure the privilege against self-incrimination?
- a. *Gideon v. Wainwright*
  - b. *Miranda v. Arizona*
  - c. *United States v. Wade*
  - d. *Coleman v. Alabama*



64. The formal written document identifying the criminal charge, the date and place where the crime occurred, and the circumstances of the arrest are known as what?
- a. the indictment
  - b. the presentment
  - c. the criminal complaint
  - d. the diversion
65. Who usually signs the misdemeanor criminal complaint?
- a. the prosecutor
  - b. the judge
  - c. the police officer
  - d. the defense attorney
66. Which type of court procedure is sometimes called a probable cause hearing?
- a. the grand jury indictment
  - b. the preliminary hearing
  - c. the arraignment
  - d. the bail hearing
67. Which of the following offenses is not a “Crime” in Minnesota, since the suspect can not be sentenced to incarceration (jail time)?
- a. Petty Misdemeanor
  - b. Misdemeanor
  - c. Gross Misdemeanor
  - d. Felony
68. What is the legal purpose of bail?
- a. to coerce the defendant into pleading guilty
  - b. to be used as a threat during plea negotiations
  - c. to ensure that the defendant returns for trial
  - d. to be used as a form of punishment
69. Who is responsible for requesting that a grand jury convene?
- a. the sentencing judge
  - b. the arresting officer
  - c. the prosecution
  - d. the defense attorney

70. What is the judge's function in the preliminary hearing?
- a. to determine if there is sufficient probable cause to believe that the defendant committed the alleged offense
  - b. to adjudicate the guilt or innocence of the defendant
  - c. to determine the bond amount necessary to insure the defendant's presence at the next stage in the criminal justice process
  - d. to set sentence
71. What is the general goal of pretrial diversion?
- a. to constructively bypass criminal prosecution by providing a reasonable alternative in the form of treatment, counseling, or employment programs
  - b. to alleviate jail overcrowding
  - c. to guarantee that the right to a speedy trial is protected for indigent defendants
  - d. to initiate rehabilitation programs at an early stage in the criminal justice process and to alleviate any potentially harmful effects of labeling
72. What is the Bill of Rights?
- a. the First Ten (10) Amendments to the United States Constitution
  - b. the Fifth and Fourteen Amendments that deal with due process
  - c. the Fifteenth Amendment that gave African Americans the right to vote
  - d. the Nineteenth Amendment that gave women the right to vote
73. Which amendment guarantees freedom of speech and freedom of the press?
- a. the First
  - b. the Second
  - c. the Third
  - d. the Seventh
74. The Dyer Act prohibits what?
- a. singing show tune songs in the shower
  - b. skipping school
  - c. interstate transportation of stolen motor vehicles
  - d. employment of children under 14 in "sweat shops"

75. The process of determining the appropriateness of jurors to sit on the jury is known as what?
- a. voir dire
  - b. venire
  - c. the jury array
  - d. the process of surrebuttal
76. Which of the following is true of peremptory strikes or challenges?
- a. they are unlimited in number
  - b. they require a stated reason for dismissal of a prospective juror
  - c. they are constitutionally compelled to have a basis in "content" questions
  - d. they are limited in number and can be used to excuse jurors for no particular reason
77. What is the evidentiary standard required for a criminal conviction?
- a. absolute certainty
  - b. probable cause
  - c. proof beyond a reasonable doubt
  - d. preponderance of evidence
78. What evidentiary standard is used in civil proceedings?
- a. probable cause
  - b. sufficient evidence
  - c. proof beyond a reasonable doubt
  - d. preponderance of evidence
79. What evidentiary standard is used for a lawful arrest or to be issued a search warrant?
- a. clear and convincing evidence
  - b. probable cause
  - c. preponderance of evidence
  - d. reasonable suspicion
80. What is the concept of "standing"?
- a. a person is able to balance on one leg for at least 5 seconds in a DWI arrest
  - b. a person has some "ownership" or right to privacy to an item or place to be searched – thus, they have "standing" to object or consent to the search.
  - c. where a defendant must take the stand and testify in court
  - d. a short street term meaning "understanding"

81. What has remained the primary mode of punishment for serious offenses in the United States since it was introduced early in the 19th century?
- a. capital punishment
  - b. incarceration
  - c. corporal punishment
  - d. fines and forfeiture
82. What type of sentence did the defendant receive if upon completion of the sentence for one crime he then begins serving time for the second or multiple crimes?
- a. the concurrent sentence
  - b. the consecutive sentence
  - c. the congruent sentence
  - d. the conditional sentence
83. The Minnesota Sentencing Guidelines computes sentencing scores based on the factors of offense seriousness (Severity Level or S.L.) and what else?
- a. injury to the victim
  - b. property loss incurred during the crime
  - c. age of the offender
  - d. offender's prior criminal record (Criminal History Score or C.H.S)
84. A nonpunitive form of sentencing for convicted criminal offenders, emphasizing maintenance in the community and treatment without institutionalization (incarceration) is a definition for what?
- a. probation
  - b. judicial reprieve
  - c. parole
  - d. recognizance
85. What happens when probation is revoked?
- a. the probation contract is terminated, and the original sentence imposed
  - b. the judgment is deferred until the defendant is rehabilitated
  - c. the suspended sentence is tripled and the defendant jailed
  - d. the probation contract is extended and a prison term is imposed

86. What is the primary purpose of the “Presentence Investigation” (P.S.I.)?
- a. to gather knowledge about the causal factors of the criminality
  - b. to gain information for judicial sentences after criminal conviction
  - c. to develop a rehabilitation treatment program
  - d. to classify the probationer in a risk-need assessment scheme
87. Community service is an example of what?
- a. forfeiture
  - b. shock incarceration
  - c. restitution
  - d. intensive probation supervision
88. By Minnesota State Statute, the maximum amount of fine for a County, City, Town or political subdivision ordinance violation must not exceed?
- a. \$300
  - b. \$500
  - c. \$1,000
  - d. \$3,000
89. Traditional halfway houses typically would house what type of offender?
- a. inmates being released into the community from a prison term
  - b. violent offenders
  - c. inmates who have undergone a shock incarceration
  - d. DWI offenders
90. Male incarceration rates increased by slightly more than 100 percent since 1980 while the female incarceration rate has done what during the same time?
- a. decreased by 50 percent
  - b. remained stable
  - c. increased by 100 percent
  - d. increased by 200 percent
91. What factor has reduced the amount of available judicial discretion that traditionally helped female defendants avoid prison sentences?
- a. mandatory and determinate sentencing statutes (Minnesota Sentencing Guidelines)
  - b. the women's liberation movement
  - c. the construction of new female institutions
  - d. the increasing number of female judges

92. What is a self-destructive act commonly committed by female inmates?
- a. “carving” or self-mutilation
  - b. addiction to contraband narcotics
  - c. total involvement in make-believe families
  - d. rejection of counseling and rehabilitation programs
93. The Minnesota v. Scales decision says officers
- a. must pay monthly union dues
  - b. give the Miranda Warning to everyone they talk to
  - c. SHALL electronically record all custodial interrogations including information about (Miranda) rights, any waiver of those rights, and all questioning where feasible and MUST be record when questioning occurs at a place of detention
  - d. need not record any interviews if they don’t have a recorder handy
94. What does the Latin phrase *parens patriae* refer to?
- a. the parental obligation of the wergild
  - b. the role of the king as the father of his country (Parent of the Nation)
  - c. the patriarchal nature of capitalism
  - d. the paternity of juvenile justice
95. What were the state juvenile institutions known as during the 1800s?
- a. penitentiaries
  - b. reform schools
  - c. goals
  - d. chancery homes
96. Juvenile courts exercise jurisdiction over delinquents and what other juvenile offender?
- a. the chancery offender
  - b. status offenders
  - c. stigmatized juveniles
  - d. abandoned children

97. The juvenile court ordinarily retains jurisdiction over a child until what?
- a. until the child completes the rehabilitation plan
  - b. until the child reaches the age of majority
  - c. until the child turns seventeen
  - d. until the child successfully petitions for waiver into adult court
98. What form of release is most often used in lieu of money bail for juveniles?
- a. release to parental custody
  - b. release on recognizance
  - c. release to a probation officer
  - d. release to a diversion program
99. What are the two major criteria for the wavier of juveniles into adult court?
- a. race and gender
  - b. age (at least 14 years old) and type of offense (felony)
  - c. pretrial detention and type of offense
  - d. disposition and age
100. The purpose of the Jacob Wetterling Law (1994- Crimes Against Children and Sexually Violent offender Registration Program) and “Megan’s Law” (1996) is what?
- a. they require all juveniles, regardless of age, who commit violent crimes be prosecuted in adult courts.
  - b. they require law enforcement to keep secret the location of known sexual offenders
  - c. they require law enforcement to disclose details relating to the identification and location of registered sex offenders – Public Notification about Registered Sex Offenders
  - d. they allow law enforcement to conduct searches without probable cause

**POST Review 2  
Juvenile Justice**

1. A “status offense” is what?
  - a. an act or conduct that is declared by statute to be an offense but only when committed by a juvenile. (Ex: truancy, possession of tobacco, underaged consumption)
  - b. disrespecting someone
  - c. belonging to a middle-class family
  - d. homicide and manslaughter
  
2. What percentage of juvenile offenses are “status offenses”?
  - a. 20
  - b. 40
  - c. 60
  - d. 90
  
3. Males continue to commit what crime at a higher rate than females?
  - a. smoking marijuana
  - b. murder
  - c. petty larceny
  - d. using a false ID
  
4. Which of the following groups fit the category of juvenile “status offenses”?
  - a. Murder and Manslaughter
  - b. Criminal Sexual Conduct 3<sup>rd</sup> degree and Criminal Sexual Conduct 4<sup>th</sup> degree
  - c. Possession of tobacco and truancy
  - d. Misdemeanor Theft
  
5. Who was Alice Stebbins Wells?
  - a. the first female juvenile court judge
  - b. the first female delinquent to be sterilized in the American eugenics programs of the 1920s
  - c. the first female police officer
  - d. the first female serial killer



6. When was the first female police officer (Alice Stebbins Wells) hired by the L.A.P.D.?
- a. 1880
  - b. 1900
  - c. 1910
  - d. 1925
7. Parents who themselves suffered abuse as children may tend to do what?
- a. abuse their own children (Intergenerational Cycle of Violence)
  - b. abuse other people's children
  - c. maintain consistent patterns of discipline
  - d. not abuse their own children because they remember their childhood
8. According to child psychologists, the child's primary source of influence and attention before age 8 is who?
- a. the parents
  - b. siblings
  - c. family friends and neighbors
  - d. peers
9. What percentage of the nation's largest cities report the presence of youth gangs involved in criminal activity?
- a. 35%
  - b. 50%
  - c. 75%
  - d. over 90%
10. A Hispanic stable slum area is often referred to as what?
- a. the barrio
  - b. the rifa
  - c. the klika
  - d. homes
11. Research shows that most youths join their first gang at what age?
- a. eight
  - b. nine
  - c. twelve
  - d. fourteen

12. A “Moniker” is:
- a. the reserved section at the rear of a Christian church
  - b. a nickname or street name of a gang member
  - c. a popular kitchen appliance
  - d. a popular novel written by a Buddhist monk
13. Gang formation involves a sense of what?
- a. moral outrage
  - b. territoriality
  - c. hero worship, similar to a cult
  - d. discrimination
14. Flashing gang signs in the presence of rivals is usually considered to be what?
- a. bad manners
  - b. a direct challenge to the other gang
  - c. a demonstration of colorism
  - d. something to distract onlookers and the police
15. What is the Crip and Blood colors?
- a. purple (Crip) and green (Blood)
  - b. pink (Crip) and yellow (Blood)
  - c. blue (Crip) and red (Blood)
  - d. teal (Crip) and chartreuse (Blood)
16. Researchers found that gang members were generally involved in the drug trade at what level?
- a. as chronic abusers
  - b. as interstate importers of large shipments
  - c. as street-level distributors of small amounts
  - d. as enforcers and protectors for organized large scale importers
17. Most gangs are what?
- a. racially heterogeneous
  - b. ethnically heterogeneous
  - c. racially exclusive
  - d. female

18. What drug control program is aimed at elementary school children and is designed to provide them with skills for resisting peer pressure to experiment with drugs?
- a. FEAR
  - b. PATHE
  - c. AIM
  - d. DARE
19. Which of the following is true of the DARE program?
- a. it targets junior high students
  - b. it targets high school seniors
  - c. it targets elementary school students
  - d. it targets convicted juvenile delinquents
20. The case of New Jersey v. T.L.O. involves searches of juveniles at what location?
- a. at school (students, lockers, possessions and vehicle, if parked on school property)
  - b. in their cars
  - c. at home
  - d. at the mall
21. The temporary care of children in physically restricted facilities pending court disposition or transfer to another agency is also known as what?
- a. detention
  - b. disposition
  - c. adjudication
  - d. intake
22. Receiving homes, group homes, and foster care homes are examples of what?
- a. secure detention facilities
  - b. diversion programs
  - c. shelter care programs
  - d. post-disposition facilities
23. Where is the detention of youths under 18 in adult jails most likely to occur?
- a. in large urban areas with high crime rates
  - b. in large urban areas with high violent crime rates
  - c. in suburban areas that rely on shelter care
  - d. in rural areas that lack Juvenile holding facilities, such as Juvenile Detention Centers

- 24. Which is true about detaining Juvenile Offenders at Secured Detention Facilities?**
- a. Up to 36 hours at a Juvenile Detention Facility or Shelter Care Facility, excluding Saturdays, Sundays and Holidays**
  - b. Up to 24 hours excluding Saturdays, Sundays and Holidays at an Adult Jail or Municipal Lockup**
  - c. Up to 6 hours in an Adult Jail or Municipal Lockup in a “Standard Metropolitan Statistical Area”**
  - d. Any of the above**
- 25. The juvenile justice system has historically always emphasized what goal?**
- a. the goal of justice**
  - b. the goal of deterrence**
  - c. the goal of incapacitation**
  - d. the goal of rehabilitation**
- 26. What is the most frequent disposition for status offenders?**
- a. placement in a secure facility**
  - b. dismissal of charges**
  - c. probation**
  - d. waiver to an adult court**
- 27. Who assumes responsibility for holding dispositional hearings and deciding on the treatment accorded to the child?**
- a. the juvenile prosecutor**
  - b. the juvenile court judge**
  - c. the defense attorney**
  - d. the juvenile's guardians**
- 28. What is the formal name for an attorney who is appointed by the court to promote and protect the interests of a child involved in a court proceeding?**
- a. a guardian ad litem**
  - b. an appointed private counsel**
  - c. a public defender**
  - d. a juvenile prosecutor**

29. How do Minnesota juvenile adjudication hearings differ from adult criminal trials?
- a. Minnesota juveniles are not afforded the right to appeal their cases
  - b. Minnesota does not entitle juveniles to jury trials
  - c. Minnesota does not provide indigent defense services to juveniles
  - d. Minnesota does not allow any plea bargaining in the juvenile court process
30. How are juvenile adjudication hearings different from adult criminal trials?
- a. juveniles are not afforded the constitutional protection against self-incrimination
  - b. juvenile trials are closed to the public
  - c. many states limit the defense attorney role in the juvenile adjudication hearing
  - d. juveniles are not afforded the right of appeal
31. Extended Jurisdiction Juvenile (EJJ) elements are what?
- a. provides jurisdiction over juveniles until the age of 21
  - b. applies to juvenile offenders over 14 who commit a felony level offense
  - c. establishes dual jurisdiction over the juvenile in both juvenile and adult court
  - d. all of the above
32. What was the most comprehensive Supreme Court case that reshaped the nature of the juvenile justice system by stating the basic due process requirements for juvenile court proceedings?
- a. In re Gault
  - b. In re Winship
  - c. Schall v. Martin
  - d. McKeiver v. Pennsylvania
33. What “Due Process” protections did the “In re Gaul” decision extend to juveniles?
- a. Representation by counsel, at state’s expense, if necessary
  - b. Notification of charges
  - c. Protection from self-incrimination and the right to confront and cross-examine witnesses
  - d. All of the above

34. What did the Court establish in the “In re Winship” decision?
- a. that the standard of proof in delinquency cases is “guilt beyond a reasonable doubt” – prior to Winship it was a lower standard of “preponderance of the evidence”
  - b. that clear and convincing evidence is sufficient to adjudicate delinquency
  - c. that a preponderance of evidence is required for a delinquency adjudication
  - d. that a juvenile must be afforded the right to counsel during waiver proceedings
35. What is “Juvenile Petition”?
- a. a document asking the Family Court to approve the adoption of a juvenile
  - b. a document filed in juvenile court alleging a juvenile is delinquent, a status offender, or dependent, or asking that the case be transferred to adult criminal court
  - c. a document that Juveniles bring door-to-door, petitioning for less homework
  - d. a document circulated by juveniles to lower the drinking age to 10
36. What is “adjudication” in juvenile cases?
- a. the process of referring a juvenile into adult court for prosecution
  - b. the dismissal of all charges prior to court
  - c. the decision by the juvenile court judge that the juvenile is delinquent, a status offender, or dependent, or the petition is not sustained.
  - d. the appeal of a juvenile conviction to a higher court
37. “Continuously Truant” means a child who is subject to compulsory instruction is absent for \_\_\_\_ days if the child is in elementary school or \_\_\_\_ or more class periods on \_\_\_\_ days if the child is in middle school, junior high school or high school without valid excuse within a single year for?
- a. 3
  - b. 7
  - c. 10
  - d. 12
38. What stage of the juvenile justice process follows adjudication?
- a. intake
  - b. pretrial
  - c. disposition
  - d. the petition

39. The probation department generally does what in the final section of the predisposition report?
- a. detail information on the child's background
  - b. recommend a disposition to the presiding judge
  - c. review the facts of the case
  - d. present a summary of the juvenile's feelings and attitudes on the case at hand
40. The oldest age of termination from juvenile correctional custody in any state is what?
- a. 18
  - b. 19
  - c. 21
  - d. 25
41. Who can ordinarily gain access to juvenile records?
- a. the press
  - b. the victim
  - c. the prospective employer
  - d. the military
42. What term denotes a status or process whereby the child is subject to rules that must be followed and conditions that must be met for the child to remain in the community?
- a. preventive detention
  - b. informal consent decree
  - c. probation
  - d. adjudication
43. What is probation?
- a. an informal consent decree between the probation officer and the delinquent
  - b. an intake procedure
  - c. a contract between the court and the juvenile
  - d. a writ of certainty between the intake officer and the adjudicated delinquent

44. The juvenile justice system, and particularly probation, was founded on what concept?
- a. deterrence
  - b. retribution
  - c. incapacitation
  - d. individual rehabilitation
45. What is the most widely used method of restitution in the United States?
- a. community service restitution
  - b. monetary restitution to a worthy charity
  - c. monetary restitution to the victim
  - d. victim service
46. What type of residential community treatment typically involves one or two juveniles who live with a family—usually a husband and wife who serve as surrogate parents?
- a. group homes
  - b. foster homes
  - c. boarding schools
  - d. rural programs
47. Almost eighty percent (80%) of all the residents in public and private facilities are what?
- a. Hispanic
  - b. under the age of 12
  - c. status offenders
  - d. male
48. In the past few years, the overall admissions of females has what?
- a. declined
  - b. zig-zagged
  - c. remained stable
  - d. increased



49. What type of Juvenile program focuses on increasing self-esteem and discipline through physical conditioning?
- a. milieu therapy
  - b. boot camps
  - c. individual counseling
  - d. guided group interaction
50. The right to treatment doctrine is often supported by arguments based on the due process clause of what Amendment?
- a. 1st
  - b. 4th
  - c. 8th
  - d. 14th

**POST Review 3**  
**Criminal Investigation**

- 1. A crime is any**
  - a. an act or omission forbidden by law, for which a person can be sentenced to prison**
  - b. illegal act observed by a police officer**
  - c. act forbidden by law**
  - d. omission forbidden by law**
  
- 2. Most statutes require the prosecution to prove**
  - a. at least one element of the crime**
  - b. all elements of the crime, commonly referred to as “corpus delicti”.**
  - c. at least half of the elements of the crime**
  - d. a majority of the elements of the crime**
  
- 3. Crimes and their penalties are established by what?**
  - a. statutes (Federal or State)**
  - b. ordinances (Local Government – County, City, Town, Township, etc.)**
  - c. both a and b**
  - d. neither a nor b**
  
- 4. Photographs should be taken in the following order**
  - a. specific area, general area, specific objects**
  - b. specific objects, general area, specific area**
  - c. general area, specific area, specific objects**
  - d. it depends on the crime scene**
  
- 5. An effective report is**
  - a. concise**
  - b. legible**
  - c. accurate**
  - d. all of the above**

6. The best time to take notes is
  - a. immediately
  - b. as soon after leaving the scene as possible
  - c. after all persons involved have been interviewed
  - d. when you are alone and there are no distractions
7. In a police report, a majority of statements in the report should be
  - a. inferences
  - b. opinions
  - c. facts
  - d. any of the preceding, depending on the type of incident reported
8. In a Police report, you should use a new paragraph each time you
  - a. change speakers
  - b. change locations
  - c. change ideas
  - d. all of the above
9. In a Police report, an example of “first person” is
  - a. I made the arrest
  - b. This officer made the arrest
  - c. The arrest was made by this officer
  - d. Reporting officer made the arrest
10. The precedent for a warrantless search of a moveable motor vehicle in a public place was established by
  - a. *Terry v. Ohio*
  - b. *Mapp v. Ohio*
  - c. *Adams v. Williams*
  - d. *Carroll v. United States*
11. “Plain View” evidence can be lawfully seized if officers
  - a. first secure a search warrant
  - b. discover it while conducting any legal search
  - c. have been tipped off by a reliable informant
  - d. are illegally in a position to view it, but don’t have any witness to them being there

12. The authority to frisk a person for weapons was established by which case?
- Weeks v. United States*
  - Mapp v. Ohio*
  - Terry v. Ohio*
  - Miranda v. Arizona*
13. If consent is given to search, the consent must be what?
- written
  - voluntary, and the person granting permission must have “standing” to consent
  - unlimited in scope
  - coerced
14. A “stop and frisk” search under *Terry v. Ohio* permits officers to
- pat down the outer clothing of a person for weapons
  - search the person for any evidence
  - conduct a strip search of the person
  - conduct a body cavity search of the person
15. The court ruling that evidence obtained in unreasonable searches and seizures would be inadmissible in criminal court is known as the what?
- Chimel* decision
  - Terry* decision
  - Carroll* decision
  - Exclusionary Rule
16. The two court decisions establishing the “Exclusionary Rule” are
- Chimel* and *Terry*
  - Carroll* and *Chambers*
  - Weeks* and *Mapp*
  - Hall* and *Oates*
17. An “exigent circumstance”, which justifies an immediate search, is when there is what?
- a risk of the subject’s escape
  - danger of violence or serious injury to officers or others
  - the probability that evidence will be destroyed
  - any of the above

18. The “plain feel” exception
- a. is from a Minnesota case – *Minnesota v. Dickerson* (1993)
  - b. addresses limitations for officers who, while conducting a lawful “stop and frisk”, feel a “soft object” they believe is contraband
  - c. allows the removal of the object if the officer, without manipulating the object, readily recognizes it as contraband
  - d. all of the above
19. The doctrine which established that illegally obtained evidence may still be used if it would, in all likelihood, have been detected legally anyway is called what?
- a. fruit of the poisonous tree doctrine
  - b. good faith doctrine
  - c. inevitable discovery doctrine
  - d. “elephant in a matchbox” doctrine
20. The doctrine which established that evidence obtained as a result of an earlier illegality must be excluded from a criminal trial is what?
- a. fruit of the poisonous tree doctrine (established by the *Silverthorne Lumber Company v. United States* case – 1920)
  - b. inevitable discovery doctrine
  - c. good faith doctrine
  - d. “elephant in a matchbox” doctrine
21. Curtilage refers to
- a. areas around a residence used by the public, including alleys and boulevards
  - b. only exterior portions of the residence, such as the front and back porch
  - c. the portion of a residence that is reserved for private use
  - d. the interior of a residence
22. A latent fingerprint should be photographed
- a. during the reactive processing
  - b. after it is developed and before lifting
  - c. after it is lifted
  - d. before it is developed

23. Maintaining the “chain of evidence” refers to
- a. accountability of the evidence from discovery through presentation in court
  - b. the strength of the evidence
  - c. the relationship of the evidence to the type of crime
  - d. the relationship of the evidence to the suspect
24. DNA profiling can be done on
- a. fingerprints only
  - b. blood only
  - c. cells from almost any part of the body
  - d. hair only
25. Physical evidence that clears one of blame is called what?
- a. exculpatory evidence
  - b. prima facie evidence
  - c. circumstantial evidence
  - d. corpus delicti evidence
26. Evidence established by law is called what?
- a. exculpatory evidence
  - b. prima facie evidence
  - c. circumstantial evidence
  - d. corpus delicti evidence
27. Evidence that merely tends to incriminate a person is called what?
- a. exculpatory evidence
  - b. prima facie evidence
  - c. circumstantial evidence
  - d. corpus delicti evidence
28. IAFIS stands for what?
- a. Integrated Automated Fingerprint Identification System
  - b. International Association of Fingerprint Inventory Systems
  - c. Identifying American Fingerprint Investigation Survey
  - d. Investigative Authorities’ Fingerprint Inventory Store

29. The ultimate goal of an interrogation is to
- a. gain a conviction
  - b. determine the truth
  - c. make an arrest and clear the case
  - d. get a confession to the crime, using whatever tactics necessary
30. When conducting an interview, you should
- a. interview all witnesses at once
  - b. interview the suspect first
  - c. interview the victim first
  - d. give the Miranda Warning to everyone you interview
31. The Miranda Warning is required
- a. in every interview and interrogation
  - b. when questioning anyone involved in or having knowledge about a crime
  - c. when a person is in custody and being questioned (Custodial Interrogation)
  - d. only when a person is in custody and being questioned about a felony crime
32. According to the Miranda Warning, the suspect has the following rights
- a. the right to remain silent, knowing that anything he/she says could be used against them in court
  - b. the right to an attorney and have that attorney with them during questioning
  - c. if they can't afford an attorney, one would be appointed for them prior to questioning
  - d. all of the above
33. A legal arrest can be made by
- a. a patrol officer
  - b. a sheriff's deputy
  - c. a private citizen
  - d. any of the above
34. Modus operandi means?
- a. method of operation
  - b. site of tactical operations
  - c. the specific crime scene location
  - d. method of investigation

35. Reasonable force in making an arrest is
- a. force used when no resistance is offered, to establish authority
  - b. force necessary to overcome resistance
  - c. any degree of force used, no matter what the resistance offered
  - d. whatever force the officer feels is necessary to incapacitate a suspect
36. Lineups, both photographic display and physical (Jailhouse) lineups, generally have?
- a. a minimum of two individuals but no more than four
  - b. three or four individuals
  - c. five (5) to ten (10) individuals, usually six
  - d. at least ten individuals
37. One required element of the crime of “robbery” is
- a. taking directly from a person
  - b. breaking and entering
  - c. taking from a residence
  - d. taking from a building or vehicle
38. In the crime of assault
- a. intent is not essential
  - b. intent must be proven
  - c. intent is not an element of the crime
  - d. intent can be disregarded
39. In a sexual assault case, it is best that the interviewer of the victim be
- a. a male police officer
  - b. a female police officer
  - c. a police officer with the proper training and attitude
  - d. a medical person
40. Sexual “penetration” refers to an intrusion into the victim’s
- a. anal opening
  - b. oral opening
  - c. genital opening
  - d. any of the above



41. A pedophile is one who is sexually attracted to
- a. animals
  - b. feet
  - c. young children
  - d. bicycles
42. Marrying another person, knowing that one or both are already married, is called
- a. incest
  - b. bigamy
  - c. sodomy
  - d. rape
43. Rigor mortis is
- a. a discoloration in the body after death
  - b. a drop of body temperature after death
  - c. a stiffening of portions of the body after death
  - d. the same as cadaveric spasm
44. The condition of rigor mortis
- a. is less present in the very young and the aged
  - b. usually starts in the head area
  - c. is an indicator of time of death
  - d. all of the above
45. A condition that can help to determine if a body has been moved after death is
- a. rigor mortis
  - b. lividity
  - c. algor mortis
  - d. pallor mortis
46. Serial murder is the killing of
- a. more than five victims with no breaks in between killings
  - b. more than seven victims with emotional breaks between killings
  - c. more than three victims with emotional breaks between killings
  - d. more than three victims with no breaks in between killings

47. The severity of a burglary charge is increased by
- a. if there is another person, not an accomplice, present during the burglary
  - b. committing an assault during the commission of the burglary
  - c. being in possession of a dangerous weapon, any article used or fashioned to be a dangerous weapon, or an explosive, during the burglary
  - d. any of the above
48. The Dyer Act makes it illegal to
- a. transport a female in a motor vehicle across state lines for purposes of prostitution
  - b. transport a stolen motor vehicle across state lines
  - c. sell an unregistered motorized boat
  - d. register a vehicle illegally in another state
49. The crime of Prostitution is a
- a. Uniform Crime Report Part 1 crime
  - b. Uniform Crime Report Part II crime
  - c. Uniform Crime Report Part III crime
  - d. Uniform Crime Report Part IV crime
50. Federal Controlled Substance laws generally categorize drugs (Controlled Substances) into?
- a. three schedules
  - b. four schedules
  - c. five schedules
  - d. six schedules
51. The most addicting and dangerous drugs are
- a. Schedule 1 drugs
  - b. Schedule II drugs
  - c. Schedule III drugs
  - d. Schedule V drugs
52. In Minnesota Chapter 152 Statutes, a “Small Amount of Marijuana” is defined as
- a. 42.5 grams or less
  - b. 50 grams or less
  - c. 60 grams or less
  - d. 70 grams or less

53. In Minnesota, possession of a “Small Amount of Marijuana” is a
- a. Petty Misdemeanor
  - b. Misdemeanor
  - c. Gross Misdemeanor
  - d. Felony
54. Possession of \_\_\_\_\_ grams of marijuana in a motor vehicle is a Misdemeanor
- a. more than 1.1 grams
  - b. more than 1.2 grams
  - c. more than 1.3 grams
  - d. more than 1.4 grams
55. Crack is a derivative of
- a. heroin
  - b. cocaine
  - c. marijuana
  - d. codeine
56. Which of the following statements is TRUE?
- a. Methamphetamine is a stimulant
  - b. Methaqualone is a depressant
  - c. Methadone is a narcotic, used as a drug for treatment of narcotic (opioid) addiction
  - d. all are TRUE
57. In criminal trials
- a. the defense presents its case first
  - b. the prosecution presents its case first
  - c. the prosecution and defense flip a coin to see who presents their case first
  - d. the Judge decides who will present their case first
58. Inadmissible statements include
- a. opinions of witnesses
  - b. privileged communications
  - c. hearsay
  - d. all of the above

59. The first procedure of a jury trial is
- jury selection
  - presentation of the prosecution
  - presentation of the defense
  - instructions to the jury by the Judge
60. While on the stand, witnesses generally can only testify to
- what they heard from other persons (hearsay)
  - what counsel has coached them to say
  - what they have personal knowledge of
  - their opinions
61. When officers testify, it is advisable for them to admit
- mistakes in prior testimony
  - when they do not understand a question
  - when they do not know an answer to a question being asked
  - all of the above
62. According to Minnesota “use of force” statutes, both non-deadly and deadly force used by police officers must be both
- Reasonable and Necessary
  - Full and Complete
  - Justifiable and Incidental
  - Absolute and Unequivocal
63. What level of force may an officer use to take a suspect into custody?
- officer’s discretion in all cases – from physical presence to deadly force
  - officers may use deadly force in all felony level offenses
  - force necessary to overcome resistance
  - officers may use excessive force after handcuffing, to show superiority

64. The “Resistance Control Theory” and the “Use of Force Plus One Theory” advocates what?
- a. that officers may use one level of force higher than the level of resistance used by the suspect
  - b. that officers may use one level of force lower than the level of resistance used by the suspect
  - c. that officers may never use Deadly Force
  - d. that officers must use weapons one caliber higher than those used against them
65. The shelf life of defensive sprays (CN, CS, OC) is
- a. two years
  - b. three years
  - c. four years
  - d. five years
66. Current handguns used by law enforcements agencies can best be described as?
- a. semi-automatic, relying on manual action to rechamber the next round
  - b. semi-automatic, relying on “recoil action” to rechamber the next round
  - c. fully automatic
  - d. six shot revolvers
67. The crime of Arson in the First Degree, by using fire or an explosive, can be charged if the offense includes what?
- a. Damage to a Dwelling (occupied or not occupied)
  - b. Damage to an Occupied Building
  - c. Damage to any building while utilizing a flammable material to start or accelerate the fire
  - d. Any of the above
68. If a person died of carbon monoxide poisoning, the color of the lividity (Livor Mortis) would be
- a. blue
  - b. black
  - c. pinkish or cherry red
  - d. yellow

- 69. If an officer responds to a violent crime, where the victim is an “innocent victim” and could possibly suffer “out of pocket” expenses from the crime, the officer must tell the victim of their rights to apply for reparations under the Minnesota Crime Victim’s Reparations Act**
- a. immediately**
  - b. within 2 days**
  - c. within 7 days**
  - d. within 30 days**
- 70. The 4<sup>th</sup> Amendment to the United States Constitution includes?**
- a. no arrests shall be made but upon issuance of an arrest warrant**
  - b. no warrant shall issue, but upon probable cause, supported by oath and affirmation**
  - c. no warrant shall issue, but upon reasonable suspicion**
  - d. no intoxicating liquor may be sold on Sundays**

**POST Review 4  
Community Policing**

- 1. Why has policing been such a male dominated vocation?**
  - a. women have always preferred to stay home and care for the children**
  - b. the smaller size of women severely limits the duties they can perform**
  - c. males have been the power holders in society**
  - d. women were believed too emotional for police work**
  
- 2. Which of the following is a factor that may contribute to police suicide?**
  - a. abuse of alcohol and drugs**
  - b. ready access to firearms**
  - c. depression**
  - d. all of the above**
  
- 3. Which of the following best describes the difference between extortion and bribery?**
  - a. extortion involves networks of officers**
  - b. extortion is initiated by the officer**
  - c. extortion involves only high-ranking officers**
  - d. extortion is initiated by the citizen**
  
- 4. What was the standard for governing the use of deadly force prior to *Tennessee v. Garner*?**
  - a. assumption of risk doctrine**
  - b. Hamilton doctrine**
  - c. fleeing felon doctrine**
  - d. excessive force doctrine**
  
- 5. Which of the following statements is FALSE concerning the concept of tort?**
  - a. they are heard in civil court**
  - b. they are violations of private interests**
  - c. they are punishable by imprisonment**
  - d. they have a lower burden of proof than crime**

6. Community Policing can best be described as a what?
- a. a philosophy
  - b. a thought
  - c. a pipe dream
  - d. a strict rule book
7. Broken Windows Theory advocates what?
- a. addressing low-level problems, such as vandalism, graffiti, prostitution, small time drug dealing, drunkenness, etc., before the area they are occurring in becomes blighted
  - b. breaking windows for pleasure
  - c. unemployed citizens should receive job training
  - d. free kittens
8. Which defense argues that at the time the act was committed, the officer could not have reasonably known that the act was unconstitutional or against the law?
- a. good faith
  - b. probable cause
  - c. contributory negligence
  - d. qualified immunity
9. How can officers and departments reduce the potential for liability?
- a. know the law of liability
  - b. read and follow department rules and regulations
  - c. keep adequate records
  - d. all of the above
10. Which of the following is a benefit of good police-community relations?
- a. greater cooperation and harmony
  - b. a decrease in the rate of crime
  - c. more people interested in policing careers
  - d. all of the above
11. You pull over a minority for speeding. He accuses you of racial profiling. What should you do?
- a. laugh at him
  - b. argue with him about why he wasn't stopped because of his race
  - c. calmly explain the reason for the stop
  - d. immediately call your supervisor to mediate the dispute



12. Which of the following is a core idea of community policing?
- a. broad police function
  - b. citizen input
  - c. listening to neighborhood concerns
  - d. all of the above
13. Which of the following is a key element in problem solving?
- a. problems must be defined
  - b. information concerning problems must be collected
  - c. police must search for solutions to the problems
  - d. all of the above
14. The patronage system:
- a. was a common practice in Federal jobs prior to the Pendleton Act of 1883
  - b. is also known as the “spoils system”
  - c. consists of giving out jobs for loyalty or selling jobs, rather than employment earned by merit or competitive testing, such as Civil Service Tests
  - d. all of the above
15. Efforts to enhance the police image are called what?
- a. human relations
  - b. community relations
  - c. public relations
  - d. police relations
16. The newest philosophy of policing is:
- a. traditional policing
  - b. reactive policing
  - c. community policing
  - d. responsive policing
17. The principle of collective responsibility for maintaining local law and order was established by the:
- a. tithing system
  - b. sprinkler system
  - c. spoils system
  - d. patronage system

18. The Broken Windows Theory includes which of the following?
- a. If small time drug dealing is allowed to exist, people think it's acceptable to deal drugs
  - b. If the neighborhood is allowed to let trash accumulate, people think it's acceptable to litter
  - c. If broken windows are not replaced, people think it's acceptable to break windows
  - d. all of the above
19. Police must maintain effective interactions with certain community organizations and institutions if they expect to maintain order. It is especially vital to interact with which of the following?
- a. schools in the community
  - b. the Department of Human Services
  - c. health care providers
  - d. all of the above
20. Civilian review boards:
- a. are intended to boost public confidence in the investigation of complaints against police
  - b. are most common in cities with populations under 10,000
  - c. are becoming less prevalent
  - d. have been determined to encourage police misconduct
21. Police officers are often opposed to civilian review boards because they believe what?
- a. only other officers understand the complexities of their jobs
  - b. civilians don't understand how and when force must be used
  - c. it is demeaning to be reviewed by an external (non-police) source
  - d. all of the above
22. There is an impression that police are focused solely on the kind of crime committed by:
- a. poor people
  - b. minorities
  - c. both a and b
  - d. neither a nor b

23. Most of an officer's work involves:
- a. high-speed pursuits
  - b. service to the community
  - c. shoot-outs
  - d. responding to terrorist attacks
24. The number one community relations problem the criminal justice system has is:
- a. use of force and police brutality issues
  - b. the widely held perception that all police officers are corrupt
  - c. serious language barriers
  - d. continuous hostile press coverage
25. The police image is affected by what?
- a. individual backgrounds
  - b. the media
  - c. personal experience
  - d. all of the above
26. Community Policing emphasizes:
- a. wider use of police discretion
  - b. tighter control over officers' use of discretion
  - c. the need for officers to strictly enforce all laws in every instance
  - d. not enforcing all laws, sometimes even those mandated by law to be enforced
27. The first step in community policing is:
- a. rapid response to incidents
  - b. grouping incidents that constitute persistent problems in your jurisdiction
  - c. staffing all squad cars with two officers
  - d. efficient handling of calls
28. Community policing means:
- a. working with the good guys and not just against the bad guys
  - b. solving problems using department resources rather than community resources
  - c. using reactive policing methods
  - d. having a more centralized department

29. Which of the following IS NOT one of the four stages of the SARA community policing model?
- a. scanning
  - b. analysis
  - c. reporting
  - d. assessment
30. Community policing focuses on:
- a. efficiency
  - b. effectiveness
  - c. officer fitness
  - d. using more bicycle patrols
31. Examples of discrimination may include:
- a. always giving warnings to females who violate traffic laws but issuing tickets to all males who commit the same violations
  - b. arresting a black man for driving while intoxicated
  - c. both a and b
  - d. neither a nor b
32. Very few people are as good at listening as they could and should be because of what?
- a. we spend most of our time talking
  - b. the speed of thought is much faster than the speed of speech
  - c. most people have an undiagnosed hearing deficit
  - d. all of the above
33. When interacting with most individuals with disabilities, it is important to:
- a. shout loudly
  - b. spend as little time with them as possible
  - c. determine what they can do without assistance so you can provide the appropriate assistance with things they have difficulty doing
  - d. none of the above
34. Loss of contact with reality, incoherent speech, extreme mood swings and delusions are symptoms of what?
- a. stress
  - b. a psychotic disorder
  - c. lack of sleep
  - d. epilepsy

35. Suicidal behavior is:
- a. always the result of untreated clinical depression
  - b. the most serious complication of clinical depression
  - c. a sure sign of mental illness
  - d. is something that Officer never have to deal with
36. Which of the following are part of the first step (SCAN) in the SARA Process?
- a. brainstorm a laundry list of community concerns
  - b. decide which concern fits the definition of a community “problem”
  - c. decide which one “problem” to prioritize that the group wishes to address
  - d. all of the above
37. According to “The Crime Triangle”, what are the three factors necessary for a crime to be committed?
- a. Weather, Location & Armament
  - b. Suspect, Vehicle & Description
  - c. Victim, Suspect & Location
  - d. Larry, Moe & Curly
38. Bias Motivated Crime means committing a crime because of the victim’s actual or perceived:
- a. vehicle
  - b. poor attitude
  - c. race, color, religion, sex, sexual orientation, disability, age, or national origin
  - d. political affiliation
39. The most common Bias/Hate crime is:
- a. burglary
  - b. physical assaults
  - c. sexual assaults
  - d. murder and manslaughter
40. What is the Americans With Disabilities Act (A.D.A.)?
- a. it is a law passed by the United States Congress in 1990
  - b. it was the United States’ first comprehensive civil rights law addressing the needs of people with disabilities
  - c. it prohibits discrimination in employment, public services, public accommodations, and telecommunications.
  - d. all of the above

**POST Review 5**  
**Criminal Evidence and Procedure**

**For each multiple-choice question choose the one answer that best answers the question.**

- 1. Which doctrine allows the Supreme Court to determine if a law violates the Constitution?**
  - a. Habeas Corpus**
  - b. Posse comitatus**
  - c. Actus Reus**
  - d. Judicial review**
  
- 2. Which two governments are most US citizens subject to?**
  - a. Executive and Judicial**
  - b. Executive and Legislative**
  - c. Judicial and Legislative**
  - d. Federal and State**
  
- 3. The only crime defined in the Constitution is**
  - a. attainder**
  - b. ex post facto**
  - c. forfeiture**
  - d. treason**
  
- 4. Which of the following IS NOT protected by the First Amendment?**
  - a. Advocating that a person become a communist.**
  - b. Speech to a crowd of students advocating that they burn the college dining hall.**
  - c. Wearing a swastika arm band.**
  - d. Speech to a crowd urging them to join the Ku Klux Klan.**

5. Amendment 4 prohibits " \_\_\_\_\_ " search and seizures.
- a. unlawful
  - b. surreptitious
  - c. unreasonable
  - d. unwarranted
6. The privilege against self-incrimination applies to compelling (forcing) a person to
- a. appear in a lineup.
  - b. furnish a blood sample which might match that of the perpetrator.
  - c. make a statement which indicates he/she might be guilty.
  - d. furnish his fingerprints for comparison with the perpetrator's.
7. A "due process" clause is found in which Constitutional Amendments?
- a. 2 & 4
  - b. 4 & 10
  - c. 5 & 14
  - d. 9 & 15
8. The primary duty of the Grand Jury is to
- a. prosecute.
  - b. indict.
  - c. determine if probable cause exists.
  - d. determine if evidence is admissible.
9. At a jury trial, who decides on admissibility of evidence?
- a. jury
  - b. defense
  - c. prosecutor
  - d. judge
10. If a defendant is incapable of understanding the proceedings against him due to mental disease or defect, he is
- a. not guilty by reason of insanity
  - b. insane
  - c. psychotic
  - d. incompetent to stand trial

11. To “voir dire” a prospective juror means to
- challenge for cause.
  - poll the jury.
  - determine if prejudice (impartiality) exists.
  - determine relevance.
12. The standard for finding a defendant guilty of a crime is
- reasonable doubt.
  - reasonable grounds to believe.
  - probable cause.
  - proof beyond a reasonable doubt.
  - absolute certainty.
13. The burden of proving guilt behind a reasonable doubt in US courts is the responsibility of
- the defendant.
  - the prosecutor.
  - the judge.
  - the jury.
14. The exclusionary rule
- requires that the state not prosecute a person if the police violate the accused's constitutional rights.
  - requires that admissible evidence be relevant and trustworthy.
  - currently applies only to federal courts and federal officers.
  - requires that if police unconstitutionally seize evidence, it cannot be used in a criminal prosecution against the person whose rights were violated.
15. The exclusionary rule
- requires the exclusion of tainted evidence, even if it is relevant.
  - requires that the state not prosecute an individual whose constitutional rights have been violated by police.
  - excludes testimony by a defendant whose constitutional rights have been violated by police.
  - excludes testimony from police who have violated a defendant's constitutional rights.



16. The case which first applied the exclusionary rule is
- Wolf v. Colorado
  - Mapp v. Ohio
  - Weeks v. US
  - Silverthorn Lumber Co v. US
17. The case which require the exclusionary rule be used in state courts is
- Wolf v. Colorado
  - Mapp v. Ohio
  - Weeks v. US
  - Wong Sun v. US
18. The exclusionary rule is
- a constitutional right.
  - implied by the due process clause.
  - implied by the equal protection clause.
  - a rule devised by the Court.
19. Evidence which develops or comes to light from the exploitation of other evidence is
- circumstantial evidence.
  - direct evidence.
  - secondary evidence.
  - indirect evidence.
20. The “fruit of the poisonous tree doctrine” DOES NOT APPLY to evidence resulting from
- unconstitutional searches.
  - illegal arrests.
  - illegal identification procedures.
  - violations of Miranda procedures.
21. Tainted evidence may be admissible if the evidence was also obtained through a means separate from the primary constitutional violation. This is called
- the attenuation exception.
  - the independent source exception.
  - the inevitable discovery exception.
  - the good faith exception.

22. Tainted evidence may be admissible if the evidence would ultimately have been discovered by lawful means as a result of predictable and routine behavior of a law enforcement agency. This is called the
- a. fruit of the poisonous tree doctrine
  - b. good faith exception.
  - c. inevitable discovery exception.
  - d. attenuation exception.
  - e. independent source exception.
23. When a police officer, acting in honest belief that she has an apparently valid search warrant, executes the warrant and seizes evidence, the evidence may still be admissible even though the warrant is later determined to be invalid due to the magistrate's error. This is an expression of the
- a. derivative evidence rule.
  - b. inevitable discovery doctrine.
  - c. attenuation exception.
  - d. good faith exception.
24. To invoke the exclusionary rule to challenge the admissibility of evidence, the defendant must have "standing". This means that
- a. the defendant must be competent to stand trial.
  - b. the defendant must be sane.
  - c. the defendant must be on trial.
  - d. the defendant's right to privacy must have been violated.
25. A formal arrest occurs when a person is
- a. detained, however briefly, for any reason.
  - b. taken into custody to answer for a criminal charge.
  - c. stopped and frisked.
  - d. questioned on the street
26. A law enforcement officer observes an individual walking in a residential neighborhood at night with a crowbar and flashlight. The officer briefly detains the person to ask a few questions to determine what the individual is doing. This is
- a. a formal arrest.
  - b. an investigative stop.
  - c. an informal arrest.
  - d. a seizure tantamount to arrest.

27. Which of the following is properly based on reasonable suspicion rather than probable cause?
- a. arrest
  - b. seizure tantamount to arrest
  - c. informal arrest
  - d. Terry stop
28. Which of the following issues arrest warrants?
- a. a magistrate (judge).
  - b. a prosecuting attorney.
  - c. a bailiff.
  - d. a sheriff.
29. Drug enforcement agents in Miami airport observe an individual who is traveling from Bogota, Columbia, under an assumed name and appears nervous, and paid cash for his ticket with \$20 bills. The agents approach him, identify themselves, ask him for identification, request to see his ticket, ask him why he is sweating profusely and ask if he minds accompanying them to the police room. To this point the agents have conducted
- a. an investigative stop.
  - b. a seizure tantamount to arrest.
  - c. a formal arrest.
  - d. no seizure for Fourth Amendment purposes.
30. A summons can be served
- a. only by handing it to the person named.
  - b. by handing it to the person named or by leaving it at his dwelling.
  - c. by handing it to the person named, leaving it at his dwelling, or by leaving it with a responsible person at the defendant's dwelling.
  - d. by handing it to the person named, leaving it at his dwelling, leaving it with a responsible person at the defendant's dwelling or by mailing it to his dwelling.
31. An Arrest Warrant may be executed
- a. Anywhere within the United States
  - b. Anywhere within the State of issuance
  - c. Anywhere within the County of issuance
  - d. Anywhere within the Township of issuance.

32. A person named on a warrant may be arrested
- a. only by the officer who applied for the warrant.
  - b. only by the law enforcement agency of the officer who applied for the warrant.
  - c. only by an officer of the State wherein the warrant was issued.
  - d. by any police officer
33. A county sheriff's deputy outside his county, not in hot pursuit, has
- a. only the arrest authority of the ordinary citizen.
  - b. the same authority to arrest as within his county if he is on duty.
  - c. the same authority to arrest as within his county even if he is off duty.
  - d. the same authority to arrest as a bondsman.
34. Probable cause must be based on
- a. hearsay
  - b. facts
  - c. reasonable suspicion
  - d. proof beyond a reasonable doubt
35. If officers have probable cause to believe that evidence of criminal activity is located in a dwelling, they may
- a. enter and station officers inside the dwelling pending arrival of a warrant.
  - b. station officers outside the dwelling pending arrival of a warrant.
  - c. prevent the removal of items from the dwelling.
  - d. all of the above
36. The execution of a search warrant must normally be
- a. terminated when all of the items named in the warrant are found.
  - b. terminated when it gets dark
  - c. done in the presence of the occupants.
  - d. as soon the owner tells them to stop
37. Officers executing a search warrant for a particularly described premises may not
- a. search other buildings which may be on that land.
  - b. search vehicles which may be parked on that land.
  - c. search people on the premises without further justification
  - d. search the open fields around the land.

38. After knocking and announcing their presence and purpose and waiting a few moments, officers executing a search warrant for stolen property hear no sound. The officers
- a. may break in without further process, while announcing their “authority and purpose”.
  - b. must wait for a supervisor.
  - c. must make a further investigation to insure no one is home.
  - d. must return when someone is home.
39. Officers about to execute a search warrant for narcotics in a dwelling
- a. may break in without notice.
  - b. may enter thru unlocked windows or doors then announce their presence.
  - c. may disregard knock and announce since the warrant is for narcotics.
  - d. must follow knock and announce requirements, unless the warrant has an “unannounced entry/no-knock provision” signed by the issuing Judge.
40. A grade school principal wants to conduct a search of the locker of a 6th grade student who was expelled for selling marijuana on the school grounds. The principal is advised by a guidance counselor that other students say that they have seen marijuana in his locker. To lawfully open the locker, the principal needs
- a. to obtain a criminal search warrant.
  - b. to obtain an administrative search warrant.
  - c. to obtain permission from the parents.
  - d. no further justification. (See: New Jersey v. T.L.O.)
41. Probable cause is
- a. suspicion of criminal activity.
  - b. proof beyond a reasonable doubt of criminal activity.
  - c. proof by a preponderance of the evidence of criminal activity.
  - d. the fair probability of criminal activity.
42. Lying to a police officer
- a. may not be considered as a factor in determining probable cause.
  - b. is, by itself, sufficient to amount to probable cause.
  - c. may be considered in combination with other factors in concluding probable cause.
  - d. is prima facie evidence of guilt.

43. If the officer swears in the affidavit that the informant is an ordinary citizen, and provides some details to that effect,
- a. the basis of knowledge prong is considered fulfilled.
  - b. the information is not considered stale.
  - c. the informant is considered reliable and credible.
  - d. the informant is considered credible if he has a good track record.
44. If an officer approaches a citizen in a public place and in a non-hostile manner asks if the citizen is willing to answer some questions, this is
- a. an investigative stop
  - b. a stop and frisk
  - c. a seizure tantamount to arrest
  - d. not a 4th Amendment seizure – it is “voluntary conversation”
45. To satisfy the Fourth Amendment, an investigative stop must be based on
- a. mere suspicion.
  - b. reasonable (articulable) suspicion.
  - c. probable cause.
  - d. proof beyond a reasonable doubt.
46. An investigative stop is
- a. the same as search tantamount to arrest.
  - b. the same as a formal arrest.
  - c. more limited in scope and duration than an arrest.
  - d. broader in scope and duration than an arrest.
47. For an officer to justify an investigative stop of a citizen, the officer
- a. must have many years of police experience.
  - b. must have articulable facts to support his/her suspicions.
  - c. must have a gut feeling or hunch
  - d. needs to be on-duty.
48. The justification for a frisk during a stop is
- a. reasonable suspicion the suspect is the perpetrator
  - b. probable cause the suspect is the perpetrator.
  - c. reasonable suspicion the suspect is armed or presents a danger.
  - d. probable cause the suspect is armed or presents a danger.

49. An officer has made a justifiable investigative stop and has justification for a frisk. The officer may pat the outer clothing of the citizen and
- a. if the officer feels an object which reasonably could be a weapon he/she may reach in for it.
  - b. if the officer feels any hard object, he may reach in for it.
  - c. if the officer feels anything which could be evidence, he may reach in for it.
  - d. if the officer feels afraid, he may reach into the clothing.
50. An officer made a justifiable investigative stop and has justification to frisk. The officer pats the coat of the person and feels a soft object which the officer squeezes several times and manipulates with his fingers. The officer thinks it may be a bag of marijuana.
- a. The officer may retrieve it, as justified by the frisk.
  - b. The officer may retrieve it, as justified by plain view.
  - c. The officer may retrieve it because it could be a weapon.
  - d. According to *Minnesota v. Dickerson*, the officer must leave the object alone, but the item may be seized if it is 1) search incident to a lawful arrest (i.e. *Chimel v. California*) or, 2) consent.
51. If, in the course of a lawful frisk, an officer observes or feels an object whose incriminating nature is immediately apparent, but which is not a weapon, the officer
- a. must ignore the object.
  - b. must leave the object but could go obtain a warrant.
  - c. must leave the object but would lack probable cause for a warrant.
  - d. may seize the object as evidence.
52. The police have reasonable suspicion that an airline passenger's luggage contains contraband, the police may
- a. not seize the luggage without probable cause.
  - b. briefly seize the luggage to let it be sniffed by a narcotics detection dog which is readily available.
  - c. seize the luggage for as long as 90 minutes to take it to a distant location where a narcotics detection dog is available.
  - d. seize the luggage as long as they wish, even for several days, if they let the traveler proceed.

53. The significant change which *Chimel v. California* made in search incident to arrest practices was expressed when the Court stated that there was ample justification for a search of the arrestee's person and the
- a. area within his constructive possession
  - b. arrestee's clothing.
  - c. area within his immediate control.
  - d. passenger compartment of his vehicle.
54. In *Chimel v. California* the Court ruled that an officer may search the person arrested and, without additional justification,
- a. anyone with the arrestee.
  - b. anything owned by the arrestee.
  - c. anywhere within the arrestee's residence.
  - d. anything within the arrestee's "lunge area."
55. A police officer has made a custodial arrest of a person for a traffic offense. The officer may search the
- a. arrestee only for evidence of the offense.
  - b. arrestee only for weapons and evidence of the offense.
  - c. arrestee's clothing but nothing the arrestee is carrying.
  - d. arrestee's clothing, wallet and anything in the arrestee's pockets.
56. A police officer has arrested a man for assault. The arrestee is carrying a backpack. During an immediate search of the person incident to the arrest
- a. the officer may search the backpack only with a warrant.
  - b. the officer may search the backpack without a warrant but only if the officer has additional justification that the backpack contains a weapon.
  - c. The officer may search the backpack without a warrant or additional justification.
  - d. The officer may not search the backpack.
57. Uniformed police are approaching a woman with intent to arrest her after observing her sell drugs unlawfully. She sees them approaching and places a zippered leather pouch on the ground between her legs. One officer seizes the pouch.
- a. The officer may open the pouch only with a warrant.
  - b. The officer may open the pouch immediately but only if the officer feels what he believes to be a weapon in it.
  - c. The officer may open the pouch immediately if he has additional reasonable suspicion that it contains unlawful drugs.
  - d. The officer may open the pouch immediately without additional justification.



58. If officers make an arrest within a premises (residence), they may make a “protective sweep” of other rooms within the premises
- a. without further justification.
  - b. with articulable facts on which to base reasonable suspicion that others may be present.
  - c. with probable cause that others may be present.
  - d. never.
59. Officers are making a protective sweep after an arrest, and open the door of a bedroom. They may
- a. only look from the doorway and then they must leave the room
  - b. enter the room but not open any closets or drawers.
  - c. enter the room, open closets and look under the bed but not open any drawers.
  - d. enter the room, open closets and look under the bed and open drawers.
60. Incident to arrest within a premises, police officers
- a. may conduct a limited search of the building, looking for people who present a danger to them, provided the officers have a reasonable suspicion others may be present and dangerous.
  - b. may conduct a limited search of the building, looking for people who present a danger to them and looking for further evidence of the original crime.
  - c. may conduct a protective sweep of the building, seeking also evidence of any new crimes.
  - d. may not conduct a further search of the building without a warrant.
61. In a protective sweep police are looking for
- a. weapons
  - b. means of escape
  - c. people
  - d. evidence

62. Officers want to have a suspect's stomach pumped immediately following an arrest in which they saw the suspect swallow several cocaine-filled balloons.
- a. The officers may have this done without further justification provided it is done by medical personnel in a medically approved manner.
  - b. The officers may not have the suspect's stomach pumped without a court order.
  - c. The officers may not have the suspect's stomach pumped without a search warrant.
  - d. The officers may not have the suspect's stomach pumped without her consent.
63. An officer observes a woman he is about to arrest put the drugs into her mouth. The officer may
- a. use whatever force is necessary to obtain the drugs.
  - b. use a safe choke hold to force the suspect to spit out the drugs.
  - c. use a strong punch in the stomach to force the suspect to spit out the drugs.
  - d. not use any force to obtain the drugs.
64. For a consent search to be valid, the consent must
- a. have been based on probable cause.
  - b. be voluntary.
  - c. have been based on reasonable suspicion.
  - d. be volunteered.
65. A robbery has occurred. A witness says that the robber was wearing a sleeveless, tank-top shirt and had a peculiar scar on his shoulder. A day later police arrest a suspect for the robbery and at the police station, the officers want the suspect to strip off his long sleeve shirt so they can observe and photograph the scar for evidence. The suspect refuses.
- a. The officers may have the shirt forcibly removed but must have medical personnel do it.
  - b. The officers may themselves forcibly remove the shirt but only if the suspect's lawyer is present.
  - c. The officers may themselves forcibly remove the shirt from the suspect without further process or justification.
  - d. The officers must obtain a search warrant to remove the shirt.

66. When the prosecuting attorney attempts to introduce into court evidence obtained as a result of a consent search, the court requires
- that the defense prove beyond a reasonable doubt that the consent was involuntary.
  - that the defense prove that there is probable cause to doubt that the consent was involuntary.
  - that the prosecutor prove beyond a reasonable doubt that the consent was voluntary.
  - that the prosecutor prove by clear and convincing evidence that the consent was voluntary.
67. In saying that the courts use a totality of circumstances test to determine voluntariness, we mean that the courts should consider
- all the words and actions of police.
  - all the words and actions of the suspect.
  - the previous court rulings.
  - both A and B.
68. To establish that consent was valid, the prosecutor must show
- only that the consenter had authority (standing).
  - that the consenter had authority (standing) and gave consent voluntarily.
  - that the consenter had authority and gave consent voluntarily and was informed by police of his right to refuse consent.
  - that the consenter had at least a college diploma
69. An officer who has lawfully detained an individual on an investigative stop asks for consent to look into the detainee's briefcase. The detainee does not answer verbally but sets the numbers on the combination lock, thumbs open the latch and hands the briefcase to the officer. A reviewing court is likely to find that the search was
- invalid because the detainee failed to give verbal consent.
  - invalid because the officer failed to warn the detainee that he could refuse consent.
  - invalid because the suspect was in custody.
  - valid because the consenter's actions indicate voluntariness.
70. If a person consents to a search, he
- may not withdraw the consent during the search.
  - may not limit the consent.
  - may limit the consent beforehand but not once the search has begun.
  - may withdraw the consent at anytime.

71. A high school principal summons police to be present when the locker of one of the students is opened. The student was suspended for stealing from other students and the principal wants to see if there is any stolen property in the locker. The officer should advise the principal
- a. to get permission from the student before opening it.
  - b. to get consent from the student's parents.
  - c. to open the locker immediately no consent is needed.
  - d. to open the locker only if the principal has probable cause.
72. Campus police at a college have facts leading them to believe that a college student has marijuana in her shared dorm room. She is not present when they go to her room but the roommate is there. The officers
- a. may search the shared portions of the room with the roommate's permission but need the suspect's permission to search her bed.
  - b. may search the all portions of the room with the roommate's permission including the suspect's bed.
  - c. may not search any portion of the room until the suspect gives permission.
  - d. may search anywhere in the room because they need no one's permission.
73. An officer has made a lawful arrest for fraudulent checks at the arrestee's residence. During a protective sweep the officer opens a door in the hallway next to the exit and observes a marijuana plant, grow-light and plant food in the closet. The officer may
- a. not seize the items under the plain view doctrine.
  - b. may seize the items under the plain view doctrine.
  - c. may seize the items but only when the suspect is brought within reach of the closet.
  - d. may not seize the items since a protective sweep is for people only.
74. Officers executing a lawful search warrant for stolen guns discover contraband fireworks in the suspect's gun cabinet while searching for the guns. The officers
- a. may not seize the fireworks since they are not on the warrant.
  - b. may seize the fireworks under the plain view doctrine because the officers have a right to be where they are at the time.
  - c. may not seize the fireworks under plain view because the officers have no right to invade the privacy of the cabinet.
  - d. may seize the fireworks under plain view doctrine because the fireworks are dangerous to the public.

75. United Parcel Service notifies the police that a broken box in one of their shipments was leaking what appeared to be marijuana. Police arrive at the manager's office to find that the box is now completely open and marijuana is present within it. The evidence
- a. is admissible under the plain view doctrine.
  - b. is inadmissible because the officers had time to get a warrant.
  - c. is inadmissible because the manager violated the sender's privacy.
  - d. is admissible only if the officers now go get a warrant.
76. United Parcel Service has called police after discovering a broken carton containing marijuana. Police arrive, see the marijuana in the still open carton, and arrange for the manager to reseal the carton and telephone the addressee to come to the UPS office to claim it. A person soon arrives to claim the carton. The clerk hands him the carton whereupon police arrest him immediately. To have a lawful seizure the officers
- a. must get a warrant to reopen the carton.
  - b. must have a trained dog react to the carton before reopening it.
  - c. may immediately reopen the carton.
  - d. must have the arrestee reopen it.
77. The facts amounting to probable cause justifying an officer's warrantless stop and search of a vehicle under the automobile exception
- a. may be less than would justify a search warrant due to the vehicle's mobility.
  - b. must be more than would justify a search warrant.
  - c. must be at least as much as would justify a search warrant.
  - d. must be based on the subjective good faith of the officer.
78. The *Carroll* doctrine holds that a warrantless search of \_\_\_\_\_ is reasonable under the Fourth Amendment if the searching officer has \_\_\_\_\_ that the vehicle contains evidence or contraband.
- a. premises, confidence
  - b. a vehicle, confidence
  - c. a movable vehicle, probable cause
  - d. a vehicle, suspicion

79. Courts have created exceptions to the warrant requirement for motor vehicles because of their:
- a. mobility and greater expectation of privacy.
  - b. mobility and lesser expectation of privacy.
  - c. periodic inspections and lesser expectation of privacy.
  - d. windows and greater expectation of privacy.
80. Officers driving behind a car observe the driver weaving across the double yellow line and apparently drinking from a can of beer. The officers are about to stop the driver when he turns into his driveway and parks the car in his garage. The officers
- a. are too late to take any action.
  - b. are too late to make a *Carroll* search but may arrest the driver.
  - c. need a warrant or consent to search the vehicle.
  - d. may make a *Carroll* search of the vehicle and arrest the driver.
81. If an officer has probable cause that a movable vehicle contains somewhere within it a seizable item, the officer may search
- a. the entire vehicle and any unlocked containers within it.
  - b. the entire vehicle and any containers, locked or unlocked, which are capable in size of holding the seizable object.
  - c. the passenger compartment and unlocked glove compartment only.
  - d. the passenger compartment and trunk but no containers.
82. When inventorying an officer may look into
- a. any location where valuables are likely to be.
  - b. any location where valuables or evidence are likely to be.
  - c. the passenger compartment only.
  - d. the passenger compartment and the trunk.
83. Curtilage means
- a. the area around a dwelling but not the dwelling.
  - b. the open fields.
  - c. the open fields and the area around them.
  - d. the dwelling and the area close around it.

84. The 4th Amendment's protection does not extend to abandoned property
- a. because abandonment ends all right to privacy in the property.
  - b. if the abandonment occurs on private property.
  - c. if the officer lacks probable cause.
  - d. because the property will be in plain view.
85. A suspect rented a hotel room, stating that he intended to stay one night. He did not pay his bill, return to the hotel or communicate with the hotel until after his arrest two weeks later. Police found the suspect's suitcase in the hotel room and searched it. The court ruled that
- a. the baggage was unlawfully searched because luggage has an inherent privacy.
  - b. the baggage was lawfully searched because it was abandoned by the suspect.
  - c. the baggage was unlawfully searched because the hotel manager had no right to consent to police entering the room.
  - d. the baggage was lawfully searched as part of the booking process.
86. A declaration, oral or written, which establishes the author's guilt of all elements of a crime is a(n)
- a. statement.
  - b. confession.
  - c. admission.
  - d. affidavit.
87. Some state courts rule that a confession which is produced by \_\_\_\_\_ is still admissible so long as the means employed are not calculated to produce an untrue statement.
- a. incommunicado interrogation
  - b. deprivation of food or sleep
  - c. threats of violence
  - d. trickery or deception

88. A police officer asked a burglary suspect if he would come to the police station. When the suspect arrived, the officer took him to a closed office and informed him he was not under arrest. The officer informed the person that he was suspected of burglary and falsely stated that his fingerprints had been found at the scene. The suspect confessed after only five minutes. He was allowed to leave after about one-half hour.
- a. There was custody because the interrogation occurred in a police station.
  - b. There was custody because the suspect was lied to.
  - c. There was no custody because the suspect was not significantly deprived of his freedom.
  - d. There was no custody because the suspect voluntarily came to the station.
89. Custody for *Miranda* purposes occurs if
- a. a suspect thinks she is under arrest.
  - b. an officer thinks the suspect is under arrest.
  - c. an officer tells the suspect she is under arrest.
  - d. a suspect asks if she is under arrest.
90. If a suspect in custody indicates that he wishes to remain silent or that he wants an attorney, police
- a. may gently try to persuade him to change his mind.
  - b. must cease all interrogation.
  - c. are allowed to continue questioning off the record.
  - d. may continue questioning if it is about a different crime.
91. Within a half-hour after a robbery the police bring the victim to a suspect they have stopped in the vicinity. The most specific term for this procedure is a
- a. lineup.
  - b. showup.
  - c. confrontation.
  - d. pretrial identification.
92. The next day after a robbery the police bring the victim to the station to view a group of a half-dozen people in hopes the victim can identify the perpetrator. The most specific term for this procedure is a
- a. lineup.
  - b. showup.
  - c. confrontation.
  - d. pretrial identification.



93. The next day after a robbery the police bring the hospitalized victim a series of photos of people whose descriptions match roughly that given by the victim. The most specific term for this procedure is:
- a. photographic showup.
  - b. photographic lineup.
  - c. photographic confrontation.
  - d. photographic identification.
94. If police require a person in custody to appear in a lineup over his objection, there is
- a. no violation of any rights.
  - b. a violation of 4th Amendment right to privacy.
  - c. a violation of 5th Amendment privilege against self-incrimination.
  - d. both B and C.
95. An officer conducting a lineup should allow the defense attorney at the lineup to do all but which of the following:
- a. take notes
  - b. observe all the proceedings
  - c. control any part of the proceedings
  - d. tape record the proceedings
96. Persons in a lineup may
- a. be required to wear certain clothing.
  - b. never be viewed through a one-way mirror.
  - c. refuse to utter the words used by the perpetrator.
  - d. be of obviously different races.
97. Persons in a lineup may
- a. refuse to wear the clothing worn by the perpetrator.
  - b. be required to utter the words used by the perpetrator.
  - c. be of obviously different races.
  - d. refuse to be photographed.

98. An officer, outside a known crack house, has made a lawful stop and is making a lawful frisk. The officer felt no weapons but did feel a small lump in the suspect's jacket. The officer squeezed the object, slid it around and felt it from various angles with both hands. Believing it to be crack cocaine in a cellophane bag, the officer retrieved it and it was in fact crack. Under the plain touch variation on the plain view doctrine, the officer's actions
- a. were lawful because the officer had a right to be in the place at that time.
  - b. were lawful because the officer had probable cause that the item was contraband.
  - c. were not lawful because the incriminating nature of the item was not immediately apparent, without manipulation, to the officer. (Dickerson v. Minnesota)
  - d. were not lawful because the object was not in plain sight at the time of the frisk.
99. An officer, in the vicinity of a recent burglary in which the rear door was forced open with a screwdriver, has made a lawful stop and is making a lawful frisk. The officer felt a long, hard object in the sleeve of the suspect's jacket. The officer believing it could be a knife, squeezed it and could tell from its contour that it was a screwdriver. The officer then retrieved the item which was in fact a screwdriver. Under the plain touch variation on the plain view doctrine the officer's seizure
- a. was lawful because the incriminating nature of the item was immediately apparent to the officer.
  - b. was lawful because the officer's discovery was inadvertent.
  - c. was unlawful because the incriminating nature of the item was not immediately apparent to the officer.
  - d. was unlawful because the officer had no right to be in the place that he was.
100. In which proceeding does only the prosecution (not the defense) present evidence?
- a. arraignment
  - b. grand jury
  - c. preliminary hearing
  - d. trial

POST Review 1  
Criminal Justice Overview  
Answer Sheet

1. A	21. C	41. D	61. C	81. B
2. B	22. B	42. C	62. C	82. B
3. A	23. A	43. C	63. B	83. D
4. C	24. C	44. C	64. C	84. A
5. B	25. A	45. B	65. C	85. A
6. A	26. D	46. B	66. C	86. B
7. C	27. A	47. C	67. A	87. C
8. D	28. A	48. B	68. C	88. C
9. A	29. A	49. C	69. C	89. A
10. B	30. A	50. B	70. A	90. D
11. C	31. C	51. C	71. A	91. A
12. A	32. B	52. B	72. A	92. A
13. D	33. D	53. D	73. A	93. C
14. C	34. C	54. A	74. C	94. B
15. A	35. D	55. B	75. A	95. B
16. C	36. C	56. C	76. D	96. B
17. D	37. A	57. C	77. C	97. B
18. C	38. B	58. D	78. D	98. A
19. C	39. B	59. C	79. B	99. B
20. A	40. C	60. C	80. B	100. C

POST Review 2  
Juvenile Justice  
Answer Sheet

1. A	11. C	21. A	31. D	41. D
2. D	12. B	22. C	32. A	42. C
3. B	13. B	23. D	33. D	43. C
4. C	14. B	24. D	34. A	44. D
5. C	15. C	25. D	35. B	45. C
6. C	16. C	26. C	36. C	46. B
7. A	17. C	27. B	37. A	47. D
8. A	18. D	28. A	38. C	48. D
9. D	19. C	29. B	39. B	49. B
10. A	20. A	30. B	40. C	50. D

POST Review 3  
Criminal Investigation  
Answer Sheet

1. A	16. C	31. C	46. C	61. D
2. B	17. D	32. D	47. D	62. A
3. C	18. D	33. D	48. B	63. C
4. C	19. C	34. A	49. B	64. A
5. D	20. A	35. B	50. C	65. C
6. A	21. C	36. C	51. A	66. B
7. C	22. B	37. A	52. A	67. D
8. D	23. A	38. B	53. A	68. C
9. A	24. C	39. C	54. D	69. A
10. D	25. A	40. D	55. B	70. B
11. B	26. B	41. C	56. D	
12. C	27. C	42. B	57. B	
13. B	28. A	43. C	58. D	
14. A	29. B	44. D	59. A	
15. D	30. C	45. B	60. C	

POST Review 4  
Community Policing  
Answer Sheet

1. C	9. D	17. A	25. D	33. C
2. D	10. D	18. D	26. A	34. B
3. B	11. C	19. D	27. B	35. B
4. C	12. D	20. A	28. A	36. D
5. C	13. D	21. D	29. C	37. C
6. A	14. D	22. C	30. B	38. C
7. A	15. C	23. B	31. A	39. B
8. A	16. C	24. A	32. A	40. D

POST Review 5  
Criminal Evidence and Procedure  
Answer Sheet

1. D	21. B	41. D	61. C	81. B
2. D	22. C	42. C	62. A	82. A
3. D	23. D	43. C	63. B	83. D
4. B	24. D	44. D	64. B	84. A
5. C	25. B	45. B	65. C	85. B
6. C	26. B	46. C	66. D	86. B
7. C	27. D	47. B	67. D	87. D
8. C	28. A	48. C	68. B	88. C
9. D	29. A	49. A	69. D	89. C
10. D	30. D	50. D	70. D	90. B
11. C	31. B	51. D	71. C	91. B
12. D	32. D	52. B	72. A	92. A
13. B	33. A	53. C	73. B	93. B
14. D	34. B	54. D	74. B	94. A
15. A	35. D	55. D	75. A	95. C
16. C	36. A	56. C	76. C	96. A
17. B	37. C	57. D	77. C	97. B
18. D	38. A	58. B	78. C	98. C
19. C	39. D	59. C	79. B	99. A
20. D	40. D	60. A	80. D	100. B