

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be Violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Exclusionary Rule

Not derived from the Constitution, but a judge-made **enforcement mechanism** for the 4th, 5th, and 6th Amendments.

Evidence obtained in violation of the Constitution is inadmissible, as well as all **"fruit of the poisonous tree"**: evidence obtained from exploitation of the illegally obtained evidence.

Exceptions:

1. Evidence obtained from independent source
2. An intervening act of defendant's free will
3. Inevitable discovery

RULE INAPPLICABLE to grand juries, civil proceedings, internal agency rules, or parole revocation proceedings.

RULE INVALID when police act in good faith reliance on case law, facially valid statute, or clerical error.

RULE INVALID when good faith reliance on defective warrant UNLESS: unreas. lack of probable cause, warrant defective on face, affiant lied to magistrate, or magistrate "wholly abandoned her judicial role."

Some evidence may still be used for impeachment, and some Miranda-violation "fruit" may be used.

HARMLESS ERROR: To avoid conviction being overturned on appeal, gov't must prove harmless beyond reas. doubt

Search & Seizure

Arrest & Detention

An **arrest** is a seizure of a person and must be reasonable under the Fourth Amendment.

A **seizure** occurs when a reasonable person would believe she is not free to leave.

Arrests are reasonable when based on **probable cause**.

Warrants are a safeguard of reasonableness. Generally only required for home arrests.

Detentions (**stop & frisk**): Reasonable suspicion, supported by articulable facts, of crime (detention) and weapon (search). Limited scope, but may discover additional probable cause.

Automobiles: Generally need reasonable suspicion, but roadblocks allowed when neutral standard is used and gov't has another interest such as highway safety.

Search

The 4th Amendment applies only to **government conduct**.

Applies only to places or things in which one has a **reasonable expectation of privacy**.

A search is reasonable if pursuant to **valid warrant**: neutral magistrate, probable cause, reasonably precise description.

Warrantless searches are valid when: (1) incident to lawful arrest; (2) automobile search; (3) Plain View Doctrine; (4) consent; (5) Stop & frisk; (6) hot pursuit & evanescent evidence

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

SELF-INCRIMINATION

Taking the 5th

No natural person can be forced incriminate self.

Crim. def. has a right to not take stand; not be asked/ no pros. comment

Any other time: must take stand & invoke priv.

Does not apply to phys. evid. or docs. Eliminated by immunity or waiver.

Miranda Rights

Incriminating statements inadmissible unless before gov't interrog., def. warned: (1) right to remain silent; (2) statements used against her in court; (3) right to attorney; (4) attorney appointed if def. can't afford.

Applies only if one knows gov't agent is asking.

Waiver must be knowing, voluntary, intelligent.

If def. invokes silence, later unrelated questions OK.

If counsel right invoked, no questions w/o counsel.

Public safety exception: ("Hey, where's the gun?")

Exception: admitted to impeach defendant's testim.

Grand Jury

Right to a grand jury: Not incorp. But eastern states use grand juries regularly instead of information by prosecutor.

Rights during grand jury proceeding: No Miranda, no counsel, no confrontation, no right to introduce evidence, no notice of status as possible defendant. No exclusionary rule for illegal evidence or hearsay. No prob. cause.

Fifth Amendment: def. must appear if called but may exercise 5th. No racial exclusions from jury.



Double Jeopardy

No retrial for same offense once jeopardy attaches (jury or 1st wit. sworn). Jeopardy bars retrial for lesser included. Jeopardy on lesser bars greater unless battery victim dies =murder.

Exceptions: State may retry if hung jury; mistrial not due to prosecutor; or def. successful appeal of conviction (unless based on insuff. evid.). Also if def. breaches plea bargain.

Not same offense if crime has a separate element. Even if same offense, multiple punishments OK if legislative intent. Criminal & civil do not bar each other.

Does NOT APPLY to separate sovereigns: Fed & state or 2 states can pros. same offense.



Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Right to Counsel

Gov't cannot question defendant after charging w/o counsel present, unless waived.
Right to have counsel present at any post-charge lineup or showup.
If no counsel at trial, reversal required.
Other times: harmless error test.
Right to represent self at trial, not on appeal. Must knowingly/intellig. waive right.
Right to effective counsel.
Right during sentencing; not during parole/probation unless new sentence.

Speedy Trial

Totality of circumstances. Only once def. has been arrested or charged. Can be waived.

Jury Trial

Only serious offenses (6+mo. jail)
Number: as low as 6, but must be more than 6 if not unanimous.
Guilty pleas & plea bargains: def. must understand waiver of trial right.
Guilty plea does not waive 4th Amend. civil claim for illegal search.

Public Trial

Defendant has right to public trial.
Pretrial suppression hearings presumed public, but may be closed to protect an interest.
Public and press access to trial itself also protected by 1st Amend.

Confront Witnesses

Not absolute: e.g. to prevent trauma to child victim; remove disruptive defendant; defendant leaves courtroom of own accord.
Co-defendant's confession barred unless: cross-exam; portions re def. eliminated; or to rebut coercion claim.
Hearsay: prior testimony only if there was opportun. to cross-exam
No right at sentencing unless new facts proved or death penalty case.

Compulsory Process to Obtain Witnesses

Criminal def. has subpoena power.



Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Cruel & Unusual Punishment

A grossly disproportionate sentence is cruel and unusual. Includes death penalty for rape of adult or for felony murder unless unless defendant was major participant & had reckless disregard for life.
Death penalty not cruel and unusual in itself, but statutes must give judge/jury reas. discretion, full info re def., guidance, & allow for mitigating facts. State appeals courts need not compare similar cases re death penalty.
Cruel & unusual to execute person who is insane at time of execution; mentally retarded person; or under 18 at time of offense.
"Status crimes" are cruel & unusual: E.g. statute prohibiting being a drug addict. Denying prisoner medical care is C&U.

Excessive Bail: No incorp. But arbitrary denial violates due process.

Excessive Fines: Applies to criminal forfeitures



Amendment XIV.

Section 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. ...

Due Process

No "shocking" search (e.g. surgery); no involun. confessions
Lineups: No unnecess. sugges. w/ substan. likelihood of mis-ID.
Prosecutor must disclose material exculpatory evidence.
Prisoners: Rights abridged OK if reas. related to penolog. int.
Juveniles: Have right to: counsel; confrontation; not testify;
proof beyond reasonable doubt. No right to trial by jury.
Forfeiture: May be quasi-criminal action. Pre-seizure notice not necess. but need notice/hearing before final.

Equal Protection

No jury challenges on race.
Indigents: No continued jail for nonpayment of court fees.
Indigents: counsel for 1st appeal as of right; or appeal of guilty/nolo.

Trial Rights

Jury must weigh evidence.
Right to not wear prison garb or visible shackles.
Prosecution can't unfairly influence jury.
Prosecution burden: beyond reasonable doubt.
Incompetency bars trial.