

# **TRIBAL POLICE SEARCH AND SEIZURE: QUICK REFERENCE GUIDE**

*This is meant to be a brief overview of search and seizure law for tribal governments. It is not specific legal advice and is subject to changes in state and federal law. Consider consulting with an attorney before enacting a new search and seizure policy for your tribal government.*

## **What law governs searches done under TRIBAL law?**

**1.** The Indian Civil Rights Act states that "(n)o Indian tribe in exercising powers of self-government shall ... violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures." 25 U.S.C. § 1302(2).

The language of the ICRA parallels the Fourth Amendment guarantee to "the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

**2.** Tribal code: may offer *more* protection than ICRA, but may not offer *less* protection.

## **What is "UNREASONABLE"?**

The general rule is that warrantless searches are unreasonable.

Exceptions to this rule include:

- Evidence in plain view
- Search incident to lawful arrest
- Airport search for weapons
- Consent to search

## **What Rights Do People Have To Not Be Searched?**

- Privacy
- Freedom from intrusive government
- Right to travel freely in U.S. borders
- Tribal rights

## **What is a Tribal Search Warrant?**

A search warrant is a *written* order, signed by a *tribal judicial officer*, directed to a *tribal law enforcement officer* ordering him or her to conduct a search and seize items or property specified in the warrant. A warrant shall describe *in detail* the property or place to be searched and shall describe the items to be seized.

A warrant must be based on *probable cause* that the search will lead to evidence of a crime, and must be based on a written and sworn statement of reliable information.

## **Whose belongings can be searched with a warrant, or under an exception?**

- Tribal members
- Individuals who gives consent
- Untested: individuals on tribal property

## **What should tribal police do with seized evidence?**

- Follow your code
- May retain for evidence for tribal court or turn over to state/federal law enforcement
- Contraband may be destroyed (alcohol, illegal drugs) – use witnesses
- For non-contraband, give notice and hold a hearing

## **Can evidence seized in violation of the ICRA be used in state or federal court for criminal prosecution?**

- Probably not. Courts usually use the same standard for reviewing searches under the ICRA and the Fourth Amendment.

## **Can tribal police use a “roadblock”?**

- Yes for tribal members.
- For non-members: may only determine whether person is Indian or non-Indian or detain offenders to deliver to state authorities

*Bressi v. Ford*, 575 F.3d 891, 896-897 (9th Cir. Ariz. 2009)

## **What Risks do Tribes Take on When Conducting Search and Seizure?**

- Federal court lawsuit
- Tribal court lawsuit
- State transportation dollars for airports, roads
- Federal grant funds
- Concerns of tribal members, transient workers, teachers, health care providers

## **What Are Best Practices for Search and Seizure?**

- Specific rules and policies for tribal police
- Have tribal code explain tribal interest in search and seizure  
(*For example: “In our village, alcohol is responsible for 95% of criminal cases and 75% of all child abuse and neglect cases. The health of our next generation and survival as a nation depend on ridding the village of alcohol.”*)
- Consistent application of law (all people treated the same)
- Focus on tribal members
- Have tribal court forum for complaints about search and seizure

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