**Constitutional Criminal Law and Procedure – Key Terms**

**1st Amendment** - Guarantees that the government will not abridge freedoms of the press, religion, and speech; the right to peacefully assemble; and the right to petition the government to remedy grievances.

**2nd Amendment** - Protects the right of citizens to keep and bear arms as well as form militias.

**4th Amendment** - An amendment to the United States Constitution that protects against unreasonable searches and seizures and mandates that warrants be based upon probable cause and that they define the scope of the search or seizure with particularity.

**5th Amendment** - An amendment added to the U.S. Constitution as part of the Bill of Rights that provides important protections from government actions, including a guarantee that no person will be required to answer for a capital crime unless first indicted by a grand jury; no one will suffer double jeopardy; no one must testify against himself or herself; no one will be deprived of life, liberty, or property without due process of law; and no property will be taken for public use without just compensation.

**6th Amendment** - Provides criminal defendants with numerous rights such as the right to a speedy and public trial, the right to cross-examine witnesses, the right to counsel, and the right to be informed of the nature and cause of action.

**8th Amendment** - Prohibits the imposition of excessive bail, excessive fines, or cruel and unusual punishments on criminal defendants.

**5th Amendment Due Process Clause** - Prohibits the federal government from depriving an individual of life, liberty, or property without due process of law. The purpose of this clause is to prevent abuse of government authority in legal proceedings. Due process also requires that the federal government use fair methods or procedures when its actions would deprive an individual of life, liberty, or property.

**6th Amendment Right to Counsel** - Right of a person accused of a crime to have the help of an attorney throughout any criminal prosecution.

**14th Amendment Due Process** **Clause** - The provision set forth at Amendment XIV, Section 1 of the United States Constitution prohibiting states from depriving any person of life, liberty, or property by means that are arbitrary or fundamentally unfair.

# 18 U.S.C. § 3144 - A federal statute allowing for the issuance of a warrant and arrest of a person if there is cause to believe he is a material witness in a criminal proceeding and that a subpoena will not be sufficient to secure his presence at trial.

# 42 U.S.C. § 1983 - Federal law that allows individuals to sue state officials for violating their constitutional rights while acting under “color” of state law.

**A Fortiori** – used to express a conclusion for which there is stronger evidence than for a previously accepted one.

**A Search Incident to Arrest** - An exception to the Fourth Amendment prohibition of unreasonable searches and seizures that allows a police officer making a lawful arrest to perform a search of a suspect or the area under the suspect’s control, without a warrant or probable cause.

**Administrative Search -** A search of property for public health and safety, rather than investigative, purposes.

**Affidavit** - A written statement of fact voluntarily provided by one who is under oath.

**Attenuate** - to reduce the force or severity, to lessen a relationship or connection between two objects

**Attenuation** - An exception to the exclusionary rule that admits evidence seized in violation of the Fourth Amendment if the chain between the police misconduct and the seizure was attenuated by the lack of flagrant impropriety or temporal proximity, or was interrupted by some intervening circumstance.

**Attenuation in Criminal Procedure** - the relationship between an illegal search and a confession may be sufficiently attenuated as to remove the confession from the protection afforded by the Fruit of the Poisonous Tree doctrine, thereby making it admissible as evidence in a criminal prosecution depending on the facts of the case.

**Bai**l – temporary release of a prisoner in exchange for security given for a person’s promised appearance at a later hearing

**Belton Search** - A search of the passenger area of a vehicle incidental to the arrest of an occupant performed to protect the officer and preserve evidence.

**Bill of Rights** - The first ten amendments to the U.S. Constitution.

**Burglary** - The crime of illegally breaking and entering a building with the purpose of committing a felony therein, often larceny.

**Case or Controversy Clause** - [US Constitution, Art. III, Sec. 2, cl. 1] States, in part, that federal courts are not permitted to hear cases where there is no actual dispute between adverse parties capable of judicial resolution.

**Comity** - The principle of respect and recognition that one political entity, such as a nation or state, accords to another, such as with respect to the operation of an entity’s laws within its territory.

**Competence** - The mental ability of a person to stand trial such that he can understand the charges against him and aid his lawyer in forming a defense.

**Constructive Possession** - The power to control an item without physical possession of it. Constructive possession can be used in criminal contexts, as when a person has power over an item and the intent to exercise control over it, or in civil cases, as when a buyer has received title to property but not yet physically occupied it.

**Curtilage** - The area immediately surrounding a home.

**Custodial Interrogation** - Questioning by law enforcement authorities of a suspect in a criminal investigation under circumstances in which the suspect is not free to terminate the questioning and leave at will or under circumstances that lead the suspect to believe that he is not free to leave at will.

**Deadly Force** - Force that an actor uses with the purpose of causing, or which he knows to create a substantial risk of causing, death or serious bodily harm.

**Declaratory Relief** - Court-issued relief in the form of a declaration of the parties’ legal rights and/or obligations in a particular situation.

**De Minimis** - Something that is too minor to be considered.

**Detain -** Stopping or holding a person briefly without making a formal arrest.

**Double Jeopardy Clause** - A portion of the Fifth Amendment to the United States Constitution incorporated in the Bill of Rights that prohibits the government from trying a person more than once for the same offense.

**Drug Trafficking** - The illegal sale or other distribution of a prohibited or regulated substance.

**Embezzlement** - The fraudulent conversion of another’s property by a person who is in a position of trust, such as an agent or employee.

**Enemy Combatant** - A person who associates with forces that are engaged in hostilities against the United States or its allies. This includes any person who commits acts or provides aid to enemy forces.

**Exclusionary Rule** - A rule that excludes or suppresses evidence in a criminal proceeding where that evidence was obtained in violation of an individual’s constitutional rights.

**Executor/Executrix** - A person responsible for managing the estate and carrying out the instructions set out by the testator in his or her will, including probating the will and distributing the estate assets according to the terms of the will.

**Exigent Circumstances Doctrine** - An exception to the warrant requirement of the Fourth Amendment allowing police to make a warrantless entry, search, or seizure in circumstances that demand immediate action, such as a threat to human safety, the likely escape of a suspect, or the likely destruction of evidence.

**Facial** - Obvious or on the surface of something.

**Federalism** - The constitutional concept that certain governmental functions should be the responsibility of the individual states and certain functions should be the responsibility of the federal government.

**Freestanding Due Process** - The concept that substantive due-process rights offer a guarantee that exists independent of the guarantees with which due-process rights are typically associated and that expands to other areas, including postconviction rights.

**Fruit of the Poisonous Tree Doctrine** - Rule barring admission of any evidence found on the basis of illegally obtained evidence.

**Fundamental Principles of Rights** - Principles and rights that are so deeply rooted and ingrained in history and tradition as to be central to U.S. notions of liberty and justice.

**General Warrant** - An unconstitutional warrant authorizing a search or seizure without naming and describing the items or individuals to be searched and seized, in violation of the Fourth Amendment.

**Hot Pursuit Doctrine** - A subset of the exigent-circumstances exception to the warrant requirement that applies if an individual who has committed a serious crime (generally a dangerous felony) flees to evade capture and enters a home or other private place, requiring immediate law enforcement action to apprehend him. Officers may enter the premises without a warrant to search for and arrest the individual, but only while they are in immediate or continuous pursuit.

**Impound** - Possession and custody of an automobile or other property by police or a court.

**Incorporation** - A doctrine through which certain substantive protections of the Constitution are applicable to states.

**Incorporation by Reference** - The doctrine by which documents separate from a contract, but referred to therein, are incorporated into the contract and read together with the contract as an integrated document.

**Inculpatory** - evidence that tends to show a person’s involvement in an act, or evidence that can establish guilt. In criminal law, the prosecution has a duty to provide all evidence to the defense, whether it favors the prosecution or the defendant’s case.

**Inculpatory Evidence** - Evidence tending to prove a defendant’s guilt of a crime.

**Independent Source Doctrine** - Evidence can be admitted at trial when it was initially obtained illegally but later obtained lawfully and independently. Evidence that is discovered legally, pursuant to a valid warrant, can be admitted at trial even when the police initially entered the premises unlawfully.

**Indicia of Reliability** - Characteristics of an anonymous crime report that entitle law enforcement officers to treat the report as credible and imply the reasonableness of a subsequent search and seizure based on the report.

**Inevitable Discovery Doctrine** - Exception to the exclusionary rule allowing illegally obtained evidence to be admitted at trial if the evidence would certainly have been found without any constitutional or statutory violation.

**Injunctive Relief** - An equitable remedy whereby the court does not order damages but instead instructs a party to do something or refrain from doing something.

**Invasion of Privacy** - The wrongful intrusion into one’s personal life, solitude, or seclusion which may give rise to an action in tort and where damages are recoverable.

**Inventory Search** - A routine search performed by police before taking a person or property into custody, performed for administrative rather than investigative purposes.

**Involuntary Confession** - An admission of guilt by a criminal suspect that would not have been offered in the absence of coercion, inducement, or deceit.

**Ipse Dixit** - Latin for "he said it himself," used to refer to a statement that has been asserted but not proven.

**Knock and Announce Principle** - The requirement that law enforcement officers knock and announce their identity and authority before entering a home to execute a warrant.

**Knock and Announce Rule** - When executing a warrant, and absent exigent circumstances, the police must knock, announce their presence, and wait a reasonable amount of time before they enter a home, giving the occupant of the home the opportunity to let the police enter without the use of force.

**Mail Fraud Statute** - A federal statute, 18 U.S.C. § 1341, making it illegal to use the mail to attempt to execute a scheme to defraud others.

**Mendenhall Test** - The test for determining whether a seizure has occurred under the Fourth Amendment is whether, in light of the surrounding circumstances, “a reasonable person would believe he was free to leave.”

**Miranda Warnings** - The notices of constitutional rights set forth in the opinion of the United States Supreme Court in *Miranda v. Arizona*, 384 U.S. 436(1966) that law enforcement authorities must provide to a suspect in a criminal investigation prior to initiation of a custodial interrogation. The suspect must be advised that the suspect has the right to remain silent, anything the suspect says may be used against the suspect, and the suspect has the right to an attorney.

**Nolo Contendere** - A plea of no contest in which the defendant neither admits nor denies the charges against him, but the immediate effect of the plea is the same as if the defendant had pleaded guilty.

**Open Fields Doctrine** - Rule articulated in *Hester v. United States*, 265 U.S. 57(1924), allowing the warrantless search of outdoor areas not included in the curtilage of a home.

**Parole** - The release of a prisoner from jail for the remainder of his sentence if certain conditions are met (e.g., regular meetings with a parole officer).

**Per Se Rule/Exception** - A rule that is applied uniformly without consideration of the specific situation or circumstance.

**Plain-view Doctrine** - An exception to the warrant requirement allowing the warrantless seizure of items if (1) it is immediately apparent that there is probable cause to believe an item is evidence of a crime, without the need for touching or further investigation, and (2) law enforcement officers are lawfully in a position to see and obtain the item.

**Possession with Intent to Distribute** - The crime of possessing illegal substances with the intention of giving or selling those substances to others.

***Preventive detention*** – the practice of incarcerating accused individuals before trial on the assumption that their release would not be in the best interest of society—specifically, that they would be likely to commit additional crimes if they were released.

**Privileges or Immunities Clause -** Provision in the Fourteenth Amendment that prohibits states from making or enforcing laws that infringe on the privileges or immunities of U.S. citizens.

**Probable Cause** - A reasonable basis, amounting to more than mere suspicion, to believe that a person has committed a crime or is about to commit a crime, or that evidence relevant to a crime exists in a particular location.

**Procedural Due Process** - The Due Process clause of the United States Constitution requires that the government give an individual notice and an opportunity to be heard before depriving that individual of his life, liberty, or property.

**Reasonable Suspicion** - Generally, a quantum of proof sufficient to justify an objectively reasonable person in suspecting, but not necessarily believing, that someone has committed, is committing, or is about to commit a crime. Reasonable suspicion is usually the lowest quantum of proof that the law will recognize for any purpose. It is sufficient to justify brief investigatory detentions, but not full-blown arrests, by the police.

**Release on Recognizance** – release on your promise that you will show up for court

**Remand** - Returning a case back to the previous court, such as the trial court or the state court, for some additional action.

**Respondeat Superior** - Latin for “let the superior answer,” the doctrine that an employer is responsible for an employee’s tortious acts committed within the scope of employment.

**Right to a Jury Trial** - A constitutional right to a jury trial exists under the Sixth Amendment, in federal and state criminal trials where a defendant faces punishment of greater than six months’ imprisonment, and under the Seventh Amendment, in federal civil cases where a plaintiff seeks money damages.

**Right to Counsel** - Sixth Amendment guarantee that a defendant is entitled to be represented by an attorney during a criminal prosecution.

**Search** - The official examination of a person or property in order to find evidence of crime.

**Search and Seizure** - A law enforcement officer's search of a suspect's premises or property, followed by a seizure of incriminating evidence found during the search.

**Search Incident to Arrest** - An exception to the Fourth Amendment prohibition of unreasonable searches and seizures that allows a police officer making a lawful arrest to perform a search of a suspect or the area under the suspect’s control, without a warrant or probable cause.

**Seizure** - An intentional detention through physical restraint or show of authority that impedes a person’s freedom of movement.

**Silver Platter Doctrine** – Under the silver platter doctrine, evidence of a federal crime seized by state police in the course of an illegal search while investigating a state crime could be turned over to federal authorities and used in a federal prosecution so long as the federal agents had not participated in the illegal search but had simply received the evidence on a “silver platter.”

**Simple Battery** - A battery includes any “offensive touching” without the requirement of pain or physical injury.

**Sine qua non –** Latin: “(cause) without which not” - an essential condition; a thing that is absolutely necessary.

**Sovereign Immunity** - The principle that a government may not be sued in its own courts without its consent.

**Special Needs Doctrine** - Exception to the Fourth Amendment allowing searches without a warrant or probable cause generally for purposes other than law enforcement, like administrative inspections or drug screenings.

**Subpoena** - A formal written document directing a party to appear in court or produce documents to another party or to the court.

**Subpoena Duces Tecum** - A court order for the production and inspection of documents or other items of physical evidence.

**Substantive Due Process -** Provides that the government may not deprive a person of certain fundamental liberties.

**Sui Generis** - A thing that is unique or in a class of its own.

**Suspension Clause** - A provision of Article I, Section 9 of the United States Constitution that states that the privilege of the writ of habeas corpus may not be suspended unless public safety requires it.

**Stare Decisis** - A legal principle under which legal precedents are adhered to and predictability is garnered.

**Tennessee Constitution Section 15** – all prisoners shall be bailable

**Terry Stop** - From *Terry v. Ohio*, 392 U.S. 1 (1968), a brief seizure by law enforcement that falls short of a traditional arrest. A *Terry* stop, or investigatory stop, is lawful if officers have a reasonable suspicion that a person is engaged in criminal activity. The stop must be limited to the amount of time reasonably necessary for officers to confirm or dispel the reasonable suspicion, and officers must use the least intrusive means to confirm or dispel the suspicion. The investigatory stop is often followed by an investigatory frisk, which is a brief patdown of the person's outer clothing in search of a deadly weapon, if the circumstances would justify a reasonable person to suspect that the person poses a danger to the officers or other people. The frisk must be strictly confined to what is necessary to discover a deadly weapon; officers may not search for contraband or other evidence of a crime.

**Testamentary Capacity** - The ability of a person executing a will to understand the nature of their actions in executing the will, the nature and contents of their estate, the natural objects of their bounty, and how these factors affect the distribution of their estate.

**Totality of the Circumstances -** A factual consideration of all factors surrounding an agreement, which will have some bearing upon the issue being decided.

**Totality of the Circumstances Test** - A standard that considers all of the relevant facts and circumstances, rather than a few specific factors.

**Warrant** - An order issued by a court directing an officer to undertake a certain act (e.g., arrest or search).

**Warrant Clause** - A portion of the Fourth Amendment to the United States Constitution, incorporated in the Bill of Rights, that prohibits the search of private property in the absence of a warrant supported by sworn statements and a finding of probable cause.

**Wire Fraud Statute** - A federal statute, 18 U.S.C. § 1343, making it illegal to defraud others by means of wire or other electronic communications in interstate or foreign commerce.

**Writ of Habeas Corpus** - Enables a detainee or prisoner to challenge the legality of his detention by the government.

**Writ of Prohibition -** An order of an appellate court directing the lower court to refrain from further action in a legal matter owing to a lack of jurisdiction or the existence of procedural error.

**MIDTERM**

**5th Amendment Privilege Against Self-Incrimination** - Constitutional protection that prevents the government from compelling a person to give testimony against himself.

**Appeal of Right -** The opportunity to seek review of a lower court decision without first gaining approval of the reviewing court.

**Collateral Review (or Attack)** - A proceeding initiated in order to challenge the integrity of a previous judgment.

**Discretionary Appeal** - Review of a lower court decision that requires approval of the reviewing court.

**Independent Source Doctrine** - Evidence can be admitted at trial when it was initially obtained illegally but later obtained lawfully and independently. Evidence that is discovered legally, pursuant to a valid warrant, can be admitted at trial even when the police initially entered the premises unlawfully.

**Structural** - Error An error in a criminal trial that affects the entire framework of a trial, not just the trial process, and requires automatic reversal with no harmless-error review. Examples include a biased judge or denying the right to counsel.

**Voir Dire** - French meaning “to speak the truth,” the process by which the judge or an attorney questions a potential juror to assess the person’s suitability for sitting on the jury. Voir dire also may be used to qualify a witness as an expert during trial, or to explore certain aspects of a witness’s testimony out of the jury’s presence.