



## Judges in the Classroom

### Search and Seizure in Washington Including in the Schools

#### **Source:**

Written by Margaret Fisher, Institute for Citizen Education in the Law, Seattle, WA, to complement the student edition of *Street Law* (8th ed.), and updated in 2019 by Judge Kathryn Loring for the Public Trust and Confidence Committee. Staff at the Washington State Administrative Office of the Courts (AOC) edited the lesson. For more information, contact AOC, Temple of Justice, 415 12<sup>th</sup> Ave SW, PO Box 41174, Olympia, WA 98504-1174. For an electronic copy of this lesson, or to view other lesson plans, visit Judges in the Classroom on the Washington Courts Web site at: [www.courts.wa.gov/education/](http://www.courts.wa.gov/education/).

#### **Objectives:**

1. Students will identify legal requirements of searches conducted with and without a warrant.
2. Students will identify the legal standard for conducting searches in public schools.

#### **Grade Level:**

Grades 9-12

#### **Time:**

One class period (approximately 50 minutes) if done without the optional activity.  
Two class periods, if the optional activity is conducted.

#### **Materials:**

One copy of Handout 1 (School Search Case Study) for each student.  
One copy of affidavit declaration, search warrant, and return on the warrant for each student or Handout 2, if the optional activity is conducted:

**Optional Activity:** Prior to class, the judge may obtain and make copies of a real life example of a declaration submitted to obtain a search warrant, the resulting search warrant, and the return on that search warrant. Alternatively, Handout 2 contains facts from a recent case.

*Note: This lesson assumes the teacher has already taught students the two constitutional sources of rights for search and seizure, identified the competing interests of privacy and law enforcement, and taught the state statute on school searches (RCW 28a.600.220). The judge may wish to review.*

**Procedures:**

1. **Begin the class by introducing yourself** and telling a little bit about what you do. Tell students that today's class will deal with search and seizure. You might also describe to students how your particular judicial responsibilities relate to search and seizure: authorizing warrants, ruling on motions to suppress, reviewing on appeal the admission of questioned evidence, etc.
2. **Tell students that both** the Fourth Amendment and the Washington State Constitution require that warrants issue "upon probable cause." Ask students what that means.

Explain that judicial officers considering whether or not to permit the search must have a sufficient amount of information before issuing a search warrant. If the information is not enough to amount to probable cause, the judicial officer must deny the request for a warrant. In addition, the place/item sought to be searched and information requested must be related to the criminal activity and must be described in the warrant with particularity. Report on any example in which you denied an officer's request for a warrant or ruled that a search done with or without a warrant was unconstitutional.

3. **Draw this line graph on the board to demonstrate probable cause.**

Scale that measures how much information and what kind of information.

0%					50+%	95%	100%
No Information	Hunch	Suspicion	Reasonable Grounds	Probable Cause	Preponderance of Evidence	Beyond Reasonable Doubt	Certainty

4. **Explain each entry on the chart.**

**No Information** means the officer doesn't know anything about the location of evidence linked to a crime.

**Hunch** means the officer has a gut feeling that something is not right, but the officer cannot point to any specific facts; it is something like intuition.

**Suspicion** means the officer knows a minor fact or knows some larger fact from an unknown or unreliable source that suggests evidence may be located somewhere. For instance, an officer stops a person on the street to ask a question, and the person quickly puts a hand in a pocket. Or, the officer may find a piece of paper on the street, which says that a particular person is selling drugs.

**Reasonable Grounds (also called Reasonable Belief and Reasonable Suspicion)** means the officer knows several minor facts, or a larger fact, or a large fact from a source of unknown reliability that points to a particular person engaging in some criminal activity. For example, a teacher standing outside a girls' lavatory smells cigarette smoke coming from the lavatory. The only two girls in the lavatory then leave together. The teacher has reasonable grounds, but not probable cause, to believe the girls have cigarettes in their purses (a violation of a school rule).

**Probable Cause** means an officer has enough evidence to lead a reasonable person to believe that the items searched for are connected with criminal activity and will be found in the place to be searched. For example, an increase of 200 to 300 percent in power consumption within a building is not enough alone to establish probable cause to believe that a drug-growing operation is under way inside. However, such an increase, with other suspicious facts including an anonymous phone call claiming that people at a certain place are growing drugs, is enough for probable cause and a search warrant.

**Preponderance of the Evidence** is the amount of evidence needed to be successful when suing in a civil case. It means that evidence must be "more likely than not," or more than 50 percent.

**Beyond a Reasonable Doubt** is the highest amount of proof; it is required to convict a person of a criminal charge.

**Certainty** means that there is not even an unreasonable doubt as to its truth.

5. **Optional Activity:** Hand out copies of a declaration you brought, or use Handout 2 based on *State v. Keodara*, 191 Wn. App. 305 (2015). Have students work in pairs to review the facts and to decide whether or not to grant the search warrant. Inform students of the outcome. In *Keodara*, the Court of Appeals held that general statements by the police officer about what certain groups of persons "tend to" do or store on their phone without any evidence linking Keodara's use of his phone to any illicit activity was insufficient to support probable cause to search the phone – there must be more than the mere possibility of finding records of criminal activity. In addition, the court held the items requested were not sufficiently particular and had no association with any criminal activity and for which there was no probable cause whatsoever, as there was no limit as to the subject matter of the texts, photos, etc., and no limit to items close in time to the incident at issue.
6. **Remind students of the rule** that searches with a warrant are presumed to be reasonable (and therefore legal), while searches without a warrant are presumed to be unreasonable (and therefore illegal) unless they fall within a specific exception to the search warrant requirement.
7. **Tell students there are many exceptions** to the search warrant requirement in Washington State. This class will focus on school searches, which is one of the exceptions. Explain that schools are considered a special environment in search and seizure law. School officials have an interest in maintaining order and discipline in the school and on school grounds. Students can be searched with less than probable cause; they can be searched when officials have a reasonable suspicion that a student has violated a school rule or law, and that the scope of the search is reasonable.

To determine whether student searches are reasonable, the Washington Supreme Court announced these criteria in *Kuehn v. Renton School District*, 103 Wn.2d 594 (1985): the child's age, history, and school record; the prevalence and seriousness of the problem in the school to which the search is directed; the need to make the search without delay; and the reliability of the information used to justify the search.

Write these criteria on the board or put them on docu-camera.

*There must be reasonable suspicion directed to each student who is searched.*

- Ask the students a hypothetical question to demonstrate: what if the school has a “closed campus” policy and a policy that any student seen in the parking lot without permission or an excuse during school hours is subject to search. If this policy is based on a concern about the presence of drugs at school, is that enough? Answer: No. *State v. B.A.S.*, 103 Wn. App. 549 (2000). Student searched pursuant to such policy and found marijuana in the student’s pocket. Court of Appeals concluded that the criteria for search had not been satisfied – there was no indication that the student habitually broke school rules, that he had brought contraband onto school property before, that he was having difficulty in school, that there was reason to believe he had drugs on him, etc.

The Washington State Supreme Court has granted greater privacy rights to students under the Washington State Constitution than the U.S. Supreme Court has granted students under the Fourth Amendment. *York v. Wahkiakum School District No. 200*, 178 P.3d 995 (2008) made it unconstitutional under the State Constitution to conduct a random drug test of all student athletes. The U.S. Supreme Court had approved a random drug search policy of student athletes in *Vernonia v. Acton*, 115 S.Ct. 2386 (1995), and a random drug search policy of students engaged in competitive extra-curricular activities in *Board of Education of Independent School District No. 92*, 536 U.S. 822 (2002).

8. **Pass out Handout 1** and have students read individually. Divide the class into small groups of no more than five students. Refer to each small group as a different circuit court (e.g., First Circuit Court, Second Circuit Court, etc.). Ask the "judges" in each court to decide how they would rule in this case study and why. Give students five minutes to decide (increase time if students are not finished in five minutes). Tell students to elect a chief judge to report their decision and reasons to the class. Ask students if they understand the assignment.
9. **Debrief the class** by having each circuit court give its ruling without giving reasons at first. Write their responses on the board using this chart:

	Vice-Principal	Student
First Circuit	X	
Second Circuit		X
	etc.	

10. **Refer to the chart** and ask one of the circuits that ruled that the vice-principal's search was constitutional to give **only one** reason why the search was constitutional. Then, ask a circuit that ruled the student's rights were violated by the search to give **one reason** why. Make sure that each circuit has a chance to provide at least one reason why it ruled as it did.

In the unlikely event that all students vote the same way, ask students to think like lawyers and provide the arguments to support the other view. Allow up to 15 minutes for

group responses and discussion.

- 11. Let students know** that in this case, *State v. Slattery*, 56 Wn. App. 820, 787 P.2d 932, review denied, 791 P.2d 534 (1990), the Court of Appeals ruled that under the school search exception to the warrant requirement, this search was legal. The court determined that the search was reasonable, based on an analysis of two factors: whether it was justified at the start of the search and whether the search was reasonably related in scope to the circumstances that justified the interference in the first place.
- 12. Review the standard** for school searches and compare it to the standard of probable cause required to obtain a search warrant for searches of a person's home. Ask students to justify this difference if they can.
- 13. Ask students if the same standard for school searches would apply to NON-students** on school property? Answer: It depends. The Washington Court of Appeals recently refused to create a bright line to say that the standard for school searches NEVER applied to non-students (*State v. A.S.*, 6 Wn.2d. 264 (2018)). However, because the search was of a non-student, the school did not have the information necessary to satisfy the criteria for search and there was no imminent threat or emergency. But see *United States v. Aguilera*, 287 F. Supp.2d 1204 (E.D. Cal. 2003), where the federal court upheld search of non-students on school property after a parent sitting in her car outside the school observed a group of young men pass by and one of them lift his shirt above his waist to reveal a weapon tucked in his shorts. The court there concluded that the visitors presented a credible threat of physical harm to students on campus and that the search was reasonable given the concern for gun violence.
- 14. Ask students if it matters whether the school officials are conducting the search or a police officer** serving as a school resource officer (in full police uniform) were conducting the search? Answer: It may. In *State v. Meneese*, 174 Wn.2d 937 (2012), the Washington Supreme Court held that that school exception to the warrant requirement did not apply where a uniformed police officer also serving as a school resource officer had already placed a student under arrest for observing him in possession of marijuana and then searched his padlocked backpack without his permission while waiting for back-up. The Court concluded that the rationale for the school search exception – the school's interest in maintaining discipline in the classroom and on school grounds, which requires swift action – did not apply where the officer had no authority to discipline and had already arrested the student.
- 15. Conclude with a comment** on the tension between efficient police work and privacy of the individual. The teacher may follow up on this lesson by teaching additional exceptions to the search warrant requirement from Street Law.

## HANDOUT 1

### School Search Case Study

A junior contacted the high school vice-principal to report that another junior student, Michael Slattery, was selling marijuana in the school parking lot. The vice-principal had received reports that Slattery was involved with drugs before from a senior who had provided the vice-principal with reliable information about illegal activities of other students in the past.

The vice-principal then called Slattery into his office and asked him to empty his pockets. Slattery was carrying \$230 cash in small bills and a piece of paper with a telephone pager number on it. The vice-principal knew that drug dealers often use pagers. The vice-principal called school security who searched Slattery's locker but found nothing.

When the vice-principal told Slattery they would have to search his car, which was parked in the school lot, Slattery refused. After speaking to Slattery's mother by phone, Slattery turned over the keys. The school officials found a pager and a notebook inside the car. The notebook had names with dollar amounts written next to the names. They opened the locked trunk of the car and found a locked briefcase. Slattery first said he didn't know who owned the briefcase; then he said a friend owned it and that he did not know the combination. The school security officers pried it open and discovered 80.2 grams of marijuana. Police were called and Slattery was arrested.

**Slattery claims that the searches of his pockets, locker, car, and locked briefcase were unconstitutional. Decide if each of the searches were constitutional and give your reasons.**

## HANDOUT 2

### Search Warrant Example

17-year-old Say Keodara was involved in a fatal shooting at a bus stop. He was arrested for an unrelated incident and the police seized his cell phone. The police officer sought a search warrant to search the cell phone for any evidence related to the crimes of unlawful possession of firearms or possession of narcotics with intent to deliver, including:

- Stored phone contact numbers;
- All call history logs;
- All text messages;
- All photographs;
- All videos;
- All chat logs; and
- All voicemail messages.

In support of the request for the search warrant, the police officer submitted a declaration alleging:

I am the current Gang Information Officer for the Renton Police Department and a member of the South King County Violent Gang Initiative Task Force. I have served in those roles since 2011. I previously was employed by the Department of Defense as a detective where I investigated gangs. I have attended and instructed gang training since 2002 for a total of over 500 hours. I have interviewed over 400 gang members and identified over 100 gang members residing in Renton over the last five years.

Based on my training and experience, I know that it is common for gang members to take pictures of themselves where they pose with firearms. Gang members also take pictures of themselves prior to and after they have committed gang related crimes. Criminals also often text each other or their buyers photographs of the drugs intended to be sold. Gang members will often take pictures of themselves or fellow gang members with their cell phones which show them using drugs.

I believe there is evidence of gang affiliation contained within the cell phone because the shooting was gang involved.

**Question: Is there probable cause to grant the search warrant requested?**