

Entry To Arrest

*An intrusion by the state into the privacy of the home for any purpose is one of the most awesome incursions of police power into the life of the individual.*¹

There was a time when officers who had developed probable cause to arrest someone would simply drive over to his house and arrest him. If they needed to break in, no problem. In fact, this was standard police practice in most states for around two hundred years. Although it had its detractors, everyone agreed that it was efficient. In addition, it was good for the environment because there was no paperwork.

Nevertheless, the U.S. Supreme Court and the California Supreme Court ruled in *Payton v. New York* and *People v. Ramey* that these types of warrantless entries were illegal.² Instead, the courts established specific requirements that must be met whenever officers make a forcible entry into a home to arrest an occupant. Later, the Supreme Court announced even more stringent requirements—known as *Steagald* requirements—when officers want to look for the arrestee in the home of a third person, such as a friend or family member.

In this article we will cover all of these requirements, plus others that pertain to the manner in which officers enter and search for the arrestee.

Entering the Arrestee's Home

Pursuant to *Payton* and *Ramey*, officers may enter the suspect's home for the purpose of arresting him if (1) they have court authorization to enter, (2) they have sufficient reason to believe that the arrestee lived in the house, and (3) they reasonably believed

that the arrestee was currently inside. Before we discuss these requirements, however, it should be noted that they do not apply unless officers physically entered the residence (i.e., crossed the threshold) and unless they did so for the purpose of arresting a resident. For example, compliance is not required if officers entered the premises to conduct a probation search, make a controlled buy, or if they encountered the arrestee on his front porch or front yard.³ Furthermore, officers may ask or order the arrestee to exit, then arrest him as he steps outside.⁴ Thus, in *People v. Tillery* the court ruled that an arrest without court authorization was lawful when the officer arrested the suspect in the hallway of his apartment building after asking him to step out. Said the court, "Once he stepped outside, it was lawful for the officer to arrest him."⁵ For the same reason, compliance is not required if officers made the arrest while the arrestee was standing in his doorway. This is because a person who is standing in the doorway of a home is in a "public" place.⁶

Court authorization to enter

Legal grounds for entering the arrestee's home include the issuance of a probation or parole violation warrant,⁷ a grand jury indictment warrant,⁸ or a bench warrant for the arrestee's failure to appear.⁹ But the most common legal justifications are entries by means of conventional arrest warrant, a *Ramey* arrest warrant, and search warrants.

CONVENTIONAL ARREST WARRANTS: A conventional arrest warrant (also known as a "complaint warrant") is issued by a judge after prosecutors filed a complaint against the suspect for a felony or misde-

¹ *People v. Ramey* (1976) 16 Cal.3d 263, 275.

² See *Payton v. New York* (1980) (1980) 445 U.S. 573; *People v. Ramey* (1976) 16 Cal.3d 263.

³ See *Steagald v. United States* (1981) 451 U.S. 204, 221; *People v. Green* (1983) 146 Cal.App.3d 369, 377.

⁴ See *People v. Jackson* (1986) 187 Cal.App.3d 499, 505; *People v. Lujano* (2014) 229 Cal.App.4th 175, 183-84.

⁵ (1979) 99 Cal.App.3d 975, 979-80.

⁶ *United States v. Santana* (1976) 427 U.S. 38.

⁷ See Pen. Code §§ 1203.2(a) [probation], 3060(a) [parole]; *People v. Hunter* (2006) 140 Cal.App.4th 1147, 1153-54.

⁸ See Pen. Code § 945.

⁹ See Pen. Code §§ 853.8, 978.5, 983; *Allison v. County of Ventura* (1977) 68 Cal.App.3d 689, 701-702.

meanor.¹⁰ The subject of conventional arrest warrants is covered in the accompanying article, “Arrest Warrants” (Conventional Arrest Warrants).

RAMEY WARRANTS: A “Ramey” warrant is an arrest warrant that is issued by a judge *before* prosecutors filed a complaint. The subject of Ramey warrants is also covered in the accompanying article, “Arrest Warrants” (Ramey Warrants).

SEARCH WARRANTS: Because search warrants authorizes officers to enter the listed premises, no further authorization is required to enter the premises and arrest an occupant. As the court observed in *People v. McCarter*, “[N]o Ramey violation as to [the arrestee] could have occurred under the present facts since the police had judicial authorization to enter her home via a validly issued and executed search warrant.”¹¹

Proving where the arrestee “lives”

In many cases it is difficult to determine exactly where an arrestee is currently “living” because, among other things, arrestees may be actively attempting to conceal their whereabouts,¹² and it is not uncommon for the arrestee’s friends and relatives to lie to officers about the location of his home. For these reasons, California courts require only

that officers have “reasonable suspicion”—not probable cause—as to where the arrestee is living.¹³ Although the federal courts are currently split between requiring reasonable suspicion and probable cause,¹⁴ officers will ordinarily have enough information about where the arrestee lives to satisfy both of these standards because they both may be based on direct and circumstantial evidence, and the information will be evaluated by applying common sense, not hypertechnical analysis.¹⁵

DIRECT EVIDENCE: Direct evidence as to where the arrestee is currently living is often based on information from officers who have staked out the residence. It may also be based on information from informants, neighbors, and property managers.¹⁶

CIRCUMSTANTIAL EVIDENCE: Officers will often be able to prove that the arrestee lives in a certain home by obtaining records that he listed it as his address on a rental agreement,¹⁷ motel registration card,¹⁸ utility billing records,¹⁹ telephone or internet records,²⁰ credit card application,²¹ employment application,²² post office records,²³ DMV records,²⁴ vehicle repair work order,²⁵ jail booking records,²⁶ bail bond application,²⁷ police or arrest report,²⁸ parole or probation records.²⁹

¹⁰ See *Payton v. New York* (1980) 445 U.S. 573, 602-603; Pen. Code § 1427, *In re Walters* (1975) 15 Cal.3d 738, 747; *U.S. v. Clayton* (8th Cir. 2000) 210 F.3d 841, 843 [“We agree with those courts that have held that this principle applies with equal force to misdemeanor warrant.” Citations omitted.].

¹¹ (1981) 117 Cal.App.3d 894, 908.

¹² See *U.S. v. Gay* (10th Cir. 2001) 240 F.3d 1222, 1227.

¹³ See *People v. Downey* (2011) 198 Cal.App.4th 652, 662. Also see *Valdez v. McPheters* (10th Cir. 1999) 172 F.3d 1220.

¹⁴ See *U.S. v. Grandberry* (9th Cir. 2013) 730 F.3d 968, 970; *U.S. v. Bohannon* (2nd Cir. 2016) 824 F.3d 242, 253.

¹⁵ See *U.S. v. Graham* (1st Cir. 2009) 553 F.3d 6, 14; *U.S. v. Gay* (10th Cir. 2001) 240 F.3d 1222, 1227.

¹⁶ See, for example, *People v. Gibson* (2001) 90 Cal.App.4th 371, 381; *U.S. v. Bervaldi* (11th Cir. 2000) 226 F.3d 1256.

¹⁷ See *U.S. v. Edmonds* (3rd Cir. 1995) 52 F.3d 1236, 1247-48; *U.S. v. Bennett* (11th Cir. 2009) 555 F.3d 962, 965.

¹⁸ See *People v. Fuller* (1983) 148 Cal.App.3d 257, 263; *U.S. v. Franklin* (9th Cir. 2010) 603 F.3d 652, 657.

¹⁹ See *People v. Downey* (2011) 198 Cal.App.4th 652, 659; *U.S. v. Denson* (10th Cir. 2014) 775 F.3d 1214, 1217-18.

²⁰ See *People v. Icenogle* (1977) 71 Cal.App.3d 576, 581; *U.S. v. Terry* (2nd Cir. 1983) 702 F.2d 299, 319.

²¹ See *U.S. v. Route* (5th Cir. 1997) 104 F.3d 59, 62, fn.1.

²² See *People v. Jacobs* (1987) 43 Cal.3d 472, 478.

²³ See *U.S. v. Route* (5th Cir. 1997) 104 F.3d 59, 61, fn.1; *U.S. v. Stinson* (D. Conn. 1994) 857 F.Supp. 1026, 1031.

²⁴ See *People v. Boyd* (1990) 224 Cal.App.3d 736, 740; *U.S. v. Ayers* (9th Cir. 1991) 924 F.2d 1468, 1480.

²⁵ See *U.S. v. Manley* (2nd Cir. 1980) 632 F.2d 978, 983.

²⁶ See *Washington v. Simpson* (8th Cir. 1986) 806 F.2d 192, 196; *U.S. v. Clayton* (8th Cir. 2000) 210 F.3d 841, 842-43.

²⁷ See *U.S. v. Barrera* (5th Cir. 2006) 464 F.3d 496, 504.

²⁸ See *People v. Ott* (1978) 84 Cal.App.3d 118, 126; *U.S. v. Ayers* (9th Cir. 1991) 924 F.2d 1468, 1479.

²⁹ See *People v. Kanos* (1971) 14 Cal.App.3d 642, 645, 648; *U.S. v. Mayer* (9th Cir. 2008) 530 F.3d 1099, 1104.

It should also be noted that an arrestee may be deemed to be living in two or more residences at the same time, or in residences owned by friends or relatives.³⁰ Nevertheless, an arrestee will not be deemed to be “living” in a home unless he regularly spent the night there—even if not every night. To put it another way, staying occasionally in a certain home does not constitute “living” in it.³¹

One other thing. Although conventional arrest warrants and *Ramey* warrants sometimes contain the arrestee’s last known address or the location of a place in which he might be staying, this does not constitute court authorization to enter that place. This is because, unlike an address that appears on a search warrant, an address listed on an arrest warrant is merely an aid to locating the arrestee and it is often based on hearsay and other information that may or may not be reliable.³²

ARRESTEE IS NOW INSIDE: Even if officers had reason to believe that the arrestee currently lived in a certain residence, they may not enter unless they also had “reason to believe” he was presently inside. As the Supreme Court explained, “[A]n arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives *when there is reason to believe the suspect is within.*”³³ What does “reason to believe” mean? In California, it means that officers had reasonable suspicion, which is a fairly low

standard of proof.³⁴ The federal courts are, however, split between requiring reasonable suspicion and probable cause.³⁵ Still, in most cases officers will have sufficient information about where the arrestee lives to satisfy the probable cause standard.³⁶

An officer’s determination that the arrestee is currently inside his home may be based on direct or circumstantial evidence, and a commonsense interpretation of the evidence. Consequently, the following circumstances are relevant:

ARRESTEE ANSWERED THE PHONE: The arrestee answered the phone shortly before officers entered.³⁷

ARRESTEE’S CELL PHONE WAS INSIDE: Officers obtained cell site data for the arrestee’s phone that showed that a call to or from that phone had recently been made to or from the residence.³⁸

ARRESTEE’S CAR WAS PARKED OUTSIDE: The arrestee’s car (or a car he had been using) was currently parked at or near the residence.³⁹ It is relevant that the hood over the engine compartment was relatively warm.⁴⁰

ARRESTEE LIVED ALONE, PLUS SIGNS OF ACTIVITY: Officers reasonably believed that the arrestee lived alone and there were indications that someone was inside; e.g., noises or sounds of TV or radio, lights on at night.⁴¹

SUSPICIOUS RESPONSE BY PERSON AT THE DOOR: The person who answered the door was evasive when asked if the suspect was inside.⁴²

³⁰ See *Case v. Kitsap County Sheriff’s Department* (9th Cir. 2001) 249 F.3d 921, 931 [arrestee lived at the house “at least part of the time”]; *U.S. v. Litteral* (9th Cir. 1990) 910 F.2d 547, 553 [suspect was a “co-resident”]; *U.S. v. Risse* (8th Cir. 1996) 83 F.3d 212, 217 [arrestee may “concurrently maintain a residence elsewhere as well”]; *U.S. v. Bennett* (11th Cir. 2009) 555 F.3d 962, 965 [“The fact that a suspect may live somewhere else from time to time does not categorically prevent a dwelling from being the suspect’s residence.”]; *Washington v. Simpson* (8th Cir. 1986) 806 F.2d 192, 196 [arrestee stayed in the residence two to four nights a week, she kept clothing and other personal belongings there].

³¹ See *U.S. v. Franklin* (9th Cir. 2010) 603 F.3d 652, 656; *Perez v. Simpson* (9th Cir. 1989) 884 F.2d 1136, 1141.

³² See *Wanger v. Bonner* (5th Cir. 1980) 621 F.2d 675, 682; *U.S. v. Lauter* (2nd Cir. 1995) 57 F.3d 212, 215.

³³ *Payton v. New York* (1980) 445 U.S. 573, 603. Emphasis added. Also see *People v. Alcorn* (1993) 15 Cal.App.4th 652.

³⁴ See *People v. Downey* (2011) 198 Cal.App.4th 652, 662.

³⁵ See *U.S. v. Grandberry* (9th Cir. 2013) 730 F.3d 968, 970; *U.S. v. Bohannon* (2nd Cir. 2016) 824 F.3d 242, 253.

³⁶ See *People v. Benton* (1978) 77 Cal.App.3d 322, 327 [officers lost sight of two fleeing armed robbers, then saw that the screen door of an apartment “had been ripped off its mount”]; *U.S. v. Barrera* (5th Cir. 2006) 464 F.3d 496, 501, fn.5.

³⁷ See *Maryland v. Buie* (1990) 494 U.S. 325, 328; *Case v. Kitsap County Sheriff’s Dept.* (9th Cir. 2001) 249 F.3d 921.

³⁸ See *U.S. v. Bohannon* (2nd Cir. 2016) 824 F.3d 242, 256.

³⁹ See *People v. Williams* (1989) 48 Cal.3d 1112, 1139; *People v. Icenogle* (1977) 71 Cal.App.3d 576, 581.

⁴⁰ See *U.S. v. Boyd* (8th Cir. 1999) 180 F.3d 967, 978.

⁴¹ See *U.S. v. Morehead* (10th Cir. 1992) 959 F.2d 1489, 1496-97; *U.S. v. Gay* (10th Cir. 2001) 240 F.3d 1222, 1227.

⁴² See *People v. Dyke* (1990) 224 Cal.App.3d 648, 659. Compare *People v. Jacobs* (1987) 43 Cal.3d 472, 479.

SUSPICIOUS RESPONSE TO KNOCKING: When officers knocked and announced, they heard sounds or saw activity inside that reasonably indicated an occupant was trying to hide, delay, or avoid them.⁴³

WORK SCHEDULE, HABITS: Officers entered at a time when the arrestee was usually at home based, for example, on his work schedule.⁴⁴

Two other things should be noted. First, although the failure of anyone to respond to the officers' knocking and announcement is an indication that no one is home, it is not conclusive proof.⁴⁵ Second, officers are not required to take an occupant's word that the arrestee is not at home. As the Ninth Circuit observed, "It is not an unheard-of phenomenon that one resident will tell police that another resident is not at home, when the other resident actually is hiding under a bed."⁴⁶

Exigent circumstances

As noted, the requirements for entering a home to arrest an occupant are excused if there were exigent circumstances. While there are many types of exigent circumstances, there are only four that are relevant to situations in which officers enter with the intent to arrest an occupant: hot pursuits, fresh pursuits, armed standoffs, and imminent destruction of evidence.⁴⁷

HOT PURSUITS: In the context of exigent circumstances, a so-called "hot" pursuit occurs when (1) officers had probable cause to arrest the suspect, (2)

the arrest was "set in motion" in a public place, and (3) the suspect responded by running into his home or other private place. When this happens, officers may pursue him inside.⁴⁸ The crime for which the suspect was wanted may be either a felony or misdemeanor.⁴⁹

FRESH PURSUITS: Unlike "hot" pursuits, "fresh" pursuits are not physical chases but, instead, are situations in which (1) officers are quickly responding to investigative leads as to the identity or location of a suspect; (2) the leads suddenly develop into probable cause to arrest, at which point; (3) the officers make a warrantless entry into the suspect's home or other structure for the purpose of making the arrest.⁵⁰

Although there are no formal requirements for determining what constitutes a "fresh" pursuit, the cases indicate that such an entry is permitted if the following four circumstances existed:

- (1) **SERIOUS FELONY:** The crime under investigation was a serious felony.
- (2) **DILIGENCE:** The officers were diligent in their attempt to apprehend the perpetrator.
- (3) **SUSPECT IS INSIDE:** The officers had "reason to believe" the perpetrator was presently inside the structure. (See "Arrestee is now inside," above.)
- (4) **CIRCUMSTANTIAL EVIDENCE OF FLIGHT:** Officers reasonably believed the perpetrator was in active flight or soon would be.⁵¹

⁴³ See *People v. Dyke* (1990) 224 Cal.App.3d 648, 659 [officers saw someone open the curtains then immediately close them, then they heard someone inside say "It's the fucking pigs."]; *U.S. v. Junkman* (8th Cir. 1998) 160 F.3d 1191, 1193 [after officers knocked and announced someone yelled "cops," then there was a "commotion in the room."].

⁴⁴ See *U.S. v. Diaz* (9th Cir. 2007) 491 F.3d 1074, 1078; *U.S. v. Magluta* (11th Cir. 1995) 44 F.3d 1530, 1535 ["officers may presume that a person is at home at certain times of the day—a presumption which can be rebutted by contrary evidence regarding the suspect's known schedule"].

⁴⁵ See *Case v. Kitsap Sheriff's Dept.* (9th Cir. 2001) 249 F.3d 921, 931; *U.S. v. Beck* (11th Cir. 1984) 729 F.2d 1329, 1332.

⁴⁶ *Motley v. Parks* (9th Cir. en banc 2005) 432 F.3d 1072, 1082.

⁴⁷ See *Steagald v. United States* (1981) 451 U.S. 204, 221-22; *People v. Bacigalupo* (1991) 1 Cal.4th 103, 122 ["The [arrest] warrant requirement is excused when exigent circumstances require prompt action by the police to prevent imminent danger to life or to forestall the imminent escape of a suspect or destruction of evidence."].

⁴⁸ See *Steagald v. United States* (1981) 451 U.S. 204, 221-22; *People v. Bacigalupo* (1991) 1 Cal.4th 103, 122. *Stanton v. Sims* (2013) __ US __ [134 S.Ct. 3, 4]; *United States v. Santana* (1976) 427 U.S. 38, 43.

⁴⁹ See *People v. Lloyd* (1989) 216 Cal.App.3d 1425, 1430; *In re Lavoyne M.* (1990) 221 Cal.App.3d 154, 159.

⁵⁰ See *People v. Escudero* (1979) 23 Cal.3d 800, 808.

⁵¹ See *Minnesota v. Olson* (1990) 495 U.S. 91, 100; *People v. Escudero* (1979) 23 Cal.3d 800, 811; *People v. Manderscheid* (2002) 99 Cal.App.4th 355, 363-64.

For example, in *People v. Smith*, the defendant shot and killed two LAPD officers and a manhunt began immediately. After identifying Smith, officers made a warrantless entry into his home which, said the court, was lawful because it “was reasonable for the police to believe he might stop at his house before continuing his flight, to obtain clothes, money, or ammunition.”⁵²

ARMED STANDOFFS: An armed standoff is essentially a situation in which (1) officers have developed probable cause to arrest a suspect who is reasonably believed to be armed and dangerous; (2) the suspect is inside his home or other structure; (3) the suspect injured or threatened to injure himself or others; and (4) the suspect refused to surrender. If these circumstances existed, and so long as the officers were actively engaged in ending the standoff, a warrant is not required to enter the structure for the purpose of arresting him, even if there was time to obtain a warrant.⁵³

DESTRUCTION OF EVIDENCE: A common situation in which a warrantless entry to arrest is based on

exigent circumstances are those in which there is a plausible threat that incriminating evidence on the premises would be destroyed if officers waited until they could obtain a search or arrest warrant.⁵⁴ This exception to the warrant requirement applies if the following circumstances existed:

- (1) **EVIDENCE ON PREMISES:** Officers must have had probable cause to believe there was destructible evidence on the premises.⁵⁵
- (2) **JAILABLE CRIME:** While the crime under investigation need not be a felony or even “serious,”⁵⁶ it must carry a potential jail sentence.⁵⁷
- (3) **IMPENDING DESTRUCTION:** The officers must have had reason to believe that the suspect or someone else on the premises was about to destroy the evidence or undermine its value in court.⁵⁸ For example, it is usually reasonable for officers to believe that a suspect inside a residence containing destructible evidence will attempt to destroy the evidence if he thinks he is about to be arrested or that a search of the residence is imminent.⁵⁹

⁵² (1966) 63 Cal.2d 779, 797.

⁵³ *People v. Williams* (1989) 48 Cal.3d 1112, 1139.

⁵⁴ See *Fisher v. City of San Jose* (9th Cir. 2009) 558 F.3d 1069, 1071.

⁵⁵ See *Kentucky v. King* (2011) 563 U.S. 452, 460; *Missouri v. McNeely* (2013) __ US __ [133 S.Ct. 1552, 1559].

⁵⁶ See *People v. Thompson* (2006) 38 Cal.4th 811, 820-22; *People v. Torres* (2012) 205 Cal.App.4th 989, 994.

⁵⁷ See *Illinois v. McArthur* (2001) 531 U.S. 326, 331-32.

⁵⁸ See *People v. Torres* (2012) 205 Cal.App.4th 989, 995; *People v. Hua* (2008) 158 Cal.App.4th 1027, 1035-36.

⁵⁹ See *Illinois v. McArthur* (2001) 531 U.S. 326, 332; *People v. Bennett* (1998) 17 Cal.4th 373, 384; *People v. Camilleri* (1990) 220 Cal.App.3d 1199, 1209 [“Where the emergency is the imminent destruction of evidence, the government agents must have an objectively reasonable basis for believing there is someone inside the residence who has reason to destroy the evidence.”]. **NOTE:** The courts have sometimes indicated the following circumstances are relevant in determining the lawfulness of a warrantless entry to secure the premises: (1) the degree of urgency involved and the amount of time necessary to obtain a warrant; (2) reasonable belief that the contraband is about to be removed; (3) the possibility of danger to police officers guarding the site of the contraband while a search warrant is sought; (4) information indicating the possessors of the contraband are aware that the police are on their trail; and (5) the ready destructibility of the contraband and, in the case of drugs, the knowledge that efforts to dispose of narcotics and to escape are characteristic behavior of persons engaged in the narcotics traffic. *People v. Bennett* (1998) 17 Cal.4th 373, 385; *People v. Gentry* (1992) 7 Cal.App.4th 1255, 1261.

⁵⁹ See *Illinois v. McArthur* (2001) 531 U.S. 326, 332 [“[T]he police had good reason to fear that, unless restrained, McArthur would destroy the drugs before they could return with a warrant.”]; *Richards v. Wisconsin* (1997) 520 U.S. 385, 396 [“petitioner’s apparent recognition of the officers combined with the easily disposable nature of the drugs—justified the officers’ ultimate decision to enter without first announcing their presence and authority”]; *People v. Williams* (1989) 48 Cal.3d 1112; *People v. Camilleri* (1990) 220 Cal.App.3d 1199, 1209; *People v. Zepeda* (1980) 102 Cal.App.3d 1, 7 [“Once the Fuentes’ residence was searched and Fuentes and defendant were confronted at their place of work, police prudence dictated that the defendant’s residence be searched as immediately after as possible. If it were not done that night, defendant could easily have frustrated any later search.”]; *U.S. v. Franklin* (11th Cir. 2012) 694 F.3d 1, 8 [“There were at least two cars in the driveway and at least one other person in the residence who had already shown the willingness to help Franklin avoid arrest by not answering the door.”].

Consensual entry

Officers may, of course, enter a home without a warrant if they were invited to enter by the arrestee or another resident. In such cases, however, there are two additional requirements that must be met for the consent to be deemed effective:

- (1) **VOLUNTARY:** Consent must have been given voluntarily,⁶⁰ meaning it must have been given freely and not by means of an officer's threats, promises, pressure, or other form of coercion.⁶¹
- (2) **AUTHORITY TO CONSENT:** The officers must have reasonably believed that the consenting person had the authority to admit them.

But even if these two requirements are met, the entry will not be deemed consensual if officers intended to—and did—immediately arrest the suspect as they entered but did not reveal their intentions to the consenting person.⁶² This is because such consent would not have been “knowing and intelligent” and also because an immediate arrest would have been beyond the scope and intensity of the consent.⁶³

DETERMINING THE OFFICERS' INTENT: An intent to arrest will ordinarily be found if the officers had probable cause to arrest when they obtained consent, and they made the arrest immediately or very quickly after entering. An intent to arrest is especially likely to be found if the officers had claimed they just wanted to come inside and “talk” with the arrestee. As the Court of Appeal explained, “A right to enter for the purpose of talking with a suspect is

not consent to enter and effect an arrest.”⁶⁴ In other words, “A person may willingly consent to admit police officers for the purpose of discussion, with the opportunity, thus suggested, of explaining away any suspicions, but not be willing to permit a warrantless and nonemergent entry that affords him no right to explanation or justification.”⁶⁵

Accordingly, consent may be deemed knowing and intelligent if the court determined that, even though the officers intended to make the arrest, they had decided to do so only after they had talked to the arrestee and, after having given him the opportunity to confirm or dispel their suspicions, they concluded that probable cause continued to exist. This is an especially likely result if probable cause was not so indisputable that the officers would have disregarded the suspect's story.

CONSENT GIVEN TO UNDERCOVER OFFICERS: Suspects will frequently consent to an entry by undercover officers for the purpose of engaging in some sort of illegal activity, such as selling drugs. Although the officers will necessarily have misrepresented their identities and purpose, the suspect's consent to enter will be deemed valid because, as the courts see it, criminals who admit people into their homes for the purpose of committing or planning a crime are knowingly taking a chance that the people are undercover officers.⁶⁶

Furthermore, because it would be extremely dangerous for an undercover officer to arrest a suspect after developing probable cause (and it would be unthinkable that a police informant would make a

⁶⁰ See *Bumper v. North Carolina* (1968) 391 U.S. 543, 548; *Florida v. Royer* (1983) 460 U.S. 491, 497.

⁶¹ See *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 228; *Florida v. Bostick* (1991) 501 U.S. 429, 438.

⁶² Compare *People v. Villa* (1981) 125 Cal.App.3d 872, 878 [“the evidence disclosed the entry was for the purpose of investigating the earlier incident. There was no evidence of subterfuge at the time consent to enter was given.”].

⁶³ See *U.S. v. Strickland* (11th Cir. 1990) 902 F.2d 937, 941 [“[T]he scope of a permissible search is not limitless. Rather it is constrained by the bounds of reasonableness: what a police officer could reasonably interpret the consent to encompass.”].

⁶⁴ *In re Johnny V.* (1978) 85 Cal.App.2nd 120, 130. Also see *U.S. v. Johnson* (9th Cir. 1980) 626 F.2d 753 [agents immediately arrested the suspect after obtaining consent to “talk” with him].

⁶⁵ *People v. Superior Court (Kenner)* (1977) 73 Cal.App.3d 65, 69.

⁶⁶ See *U.S. v. Bramble* (9th Cir. 1997) 103 F.3d 1475, 1478 [“It is well-settled that undercover agents may misrepresent their identity to obtain consent to entry.”]; *Toubus v. Superior Court* (1981) 114 Cal.App.3d 378, 383 [“*Payton* and *Ramey* are inapplicable where an agent is invited by a suspect to enter.”].

citizens arrest), the courts developed a rule—commonly known as “consent once removed”—by which backup officers may, under certain circumstances, forcibly enter the premises to make the arrest.⁶⁷ While the term “consent once removed” might suggest that the suspect’s act of consenting to an entry by an undercover officer is somehow conferred on the arresting officers,⁶⁸ in reality it is based on the theory of exigent circumstances; specifically, the likelihood of harm to the undercover officer if his cover was blown while he was inside, or maybe even if suspect became suspicious.⁶⁹ It is also sometimes based on the theory that a suspect who invites someone into his home for the purpose of committing a crime has assumed the “incremental risk” that the person is an undercover officer, and that other officers would immediately enter to arrest him if and when probable cause had developed.⁷⁰

Entering a Third Person’s Home

Until now, we have been discussing the requirements for entering the arrestee’s home. Oftentimes, however, officers will have reason to believe that the arrestee is temporarily staying elsewhere, such as in the home of a friend or relative. Although officers may enter a third party’s home to arrest a guest or visitor if they obtained consent from the third party or if there were exigent circumstances, they may not enter merely because they had a conventional arrest warrant or *Ramey* warrant. Instead, they must have

had a hybrid warrant that is both a warrant to search the premises for the arrestee and a warrant to arrest him. These hybrid warrants are known as *Steagald* warrants.⁷¹

STEAGALD WARRANT REQUIREMENTS: To obtain a *Steagald* warrant, officers must establish, by means of an affidavit, that (1) there is probable cause to arrest the subject of the warrant, (2) there is probable cause to believe he was inside the residence when the warrant was issued, and (3) there is probable cause to believe he would still be inside when the warrant was executed.

ALTERNATIVES TO STEAGALD WARRANTS: *Steagald* warrants are often impractical because it can be difficult to prove that the arrestee will remain in the residence until the warrant was issued and executed. For this reason, the U.S. Supreme Court advised officers that they may have other options; specifically, (1) delay the arrest until the arrestee is inside his own residence, in which case only a conventional or *Ramey* arrest warrant is required; or (2) wait until the arrestee leaves the third party’s house or is otherwise in a public place, in which case neither an arrest warrant nor a *Steagald* warrant is required.⁷²

Post-Entry Procedure

The post-entry procedure will naturally vary depending on the circumstances of each case. For example, if the entry was consensual, officers may

⁶⁷ See *Pearson v. Callahan* (2009) 555 U.S. 223, 244 [“consent once removed” doctrine “had been considered by three Federal Courts of Appeals and two State Supreme Courts,” and that it “had been accepted by every one of those courts”].

⁶⁸ See *U.S. v. Rivera* (7th Cir. 2016) 817 F.3d 339, 341.

⁶⁹ See *U.S. v. Rivera* (7th Cir. 2016) 817 F.3d 339, 342.

⁷⁰ *U.S. v. Paul* (7th Cir. 1986) 808 F.2d 645, 648. Also see *Toubus v. Superior Court* (1981) 114 Cal.App.3d 378, 384 [“The officers who came in to make the arrest acted to assist their fellow officers who were lawfully inside the apartment and who had probable cause to make an arrest for a felony then being committed in their presence; that the officers chose to seek the help of their colleagues in accomplishing the arrest in their presence is not improper.”]; *U.S. v. Bramble* (9th Cir. 1997) 103 F.3d 1475, 1478 [“We seriously doubt that the entry of additional officers would further diminish the consenter’s expectation of privacy, and, in the instant case, any remaining expectation of privacy was outweighed by the legitimate concern for the safety of the officers inside.”]; *U.S. v. Yoon* (6th Cir. 2005) 398 F.3d 802, 809-10 (conc. opn. of Kennedy, J.) [“[Consent once removed] is based upon the theory that, because an undercover agent or informant who establishes probable cause to arrest the suspect may in fact arrest him then and there, he should be entitled to call in the agents with whom he is working to assist in the arrest”].

⁷¹ See *Steagald v. United States* (1981) 451 U.S. 204.

⁷² See *Steagald v. United States* (1981) 451 U.S. 204, 221, fn.14 [“[I]n most situations the police may avoid altogether the need to obtain a search warrant simply by waiting for a suspect to leave the third party’s home”].

do only those things that they reasonably believed the consenting person authorized them to do. On the other hand, if the entry was based on the issuance of a conventional, *Ramey*, or *Steagald* warrant, or if it was based on exigent circumstances, officers have much more freedom so long as they confine their activities to those things that were reasonably necessary to take the arrestee into custody and protect their safety.

SEARCH FOR ARRESTEE: If it is necessary to search the premises for the arrestee, officers must restrict their search to places in which a person might be hiding.⁷³ This is because a more intensive search is unnecessary when the officers' only objective is to locate people, as opposed to evidence.

PROTECTIVE SWEEPS: A protective sweep or "walk through" consists of a quick and cursory tour of a home or other structure for the purpose of locating anyone on the premises who is reasonably believed to pose a threat to the officers or others.⁷⁴ For this reason, protective sweeps are permitted only if officers were aware of facts that reasonably indicated (1) there was a person on the premises (other than the arrestee) who had not made his presence known, and (2) that person presented an imminent threat.

Accordingly, protective sweeps may not be conducted as a matter of routine or departmental

policy. Nor may they be conducted on grounds that the officers did not know whether a threat existed and, therefore, they could not rule out that possibility.⁷⁵

SEARCH INCIDENT TO ARREST: If the suspect was arrested, officers may search him and the area that was within his immediate control *at the time of search*.⁷⁶ Even if the arrestee lacked immediate access, officers may inspect areas and things that were (1) "immediately adjoining the place of arrest," and (2) large enough to conceal a hiding person.⁷⁷ The subject of searches incident to arrest is covered in the accompanying article "Arrests" (Searches Incident to Arrest).

ACCOMPANY ARRESTEE: If officers permit the arrestee to go into any other rooms (e.g., to obtain a jacket) they may accompany him.⁷⁸

SEIZE EVIDENCE IN PLAIN VIEW: While inside the residence, officers may seize an item if they had probable cause to believe it was, in fact, evidence of a crime.⁷⁹

REMAIN PENDING SEARCH WARRANT: If officers decided to seek a search warrant after having entered the premises, they may secure the location for a reasonable amount of time pending issuance of the warrant.⁸⁰ They may not, however, conduct a search or otherwise "exploit their presence" inside.⁸¹ POV

⁷³ See *Maryland v. Buie* (1990) 494 U.S. 325, 330 ["[U]ntil the point of Buie's arrest the police had the right, based on the authority of the arrest warrant, to search anywhere in the house that Buie might have been found"]; *U.S. v. Richards* (7th Cir. 1991) 937 F.2d 1287, 1292 [the officer "moved briefly through two bedrooms, the bathroom and kitchen"].

⁷⁴ See *Maryland v. Buie* (1990) 494 U.S. 325, 327 ["A 'protective sweep' is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding."]; *U.S. v. Arch* (7th Cir. 1993) 7 F.3d 1300, 1304 ["the officers did not dawdle in each room looking for clues, but proceeded quickly"].

⁷⁵ See *Dillon v. Superior Court* (1972) 7 Cal.3d 305, 314 [while there is always "the possibility" that someone else is on the premises, a mere possibility is insufficient].

⁷⁶ See *Arizona v. Gant* (2009) 556 U.S. 332.

⁷⁷ See *Maryland v. Buie* (1990) 494 U.S. 325, 333.

⁷⁸ See *Washington v. Chrisman* (1982) 455 U.S. 1, 7; *U.S. v. Roberts* (5th Cir. 2010) 612 F.3d 306, 310-11.

⁷⁹ See *Minnesota v. Dickerson* (1993) 508 U.S. 366, 375; *People v. Clark* (1989) 212 Cal.App.3d 1233, 1238; *Arizona v. Hicks* (1987) 480 U.S. 321, 326-28; *People v. Stokes* (1990) 224 Cal.App.3d 715; *People v. Holt* (1989) 212 Cal.App.3d 1200, 1204; *U.S. v. Banks* (8th Cir. 2008) 514 F.3d 769, 773] ["The third requirement, that the incriminating character of an item be immediately apparent is satisfied when police have probable cause to associate the property with criminal activity."].

⁸⁰ See *Illinois v. McArthur* (2001) 531 U.S. 326, 331-32.

⁸¹ *Segura v. United States* (1984) 468 U.S. 796, 812 ["There is no evidence that the agents in any way exploited their presence in the apartment; they simply awaited issuance of the warrant."].