

### C. EMERGENCY

An emergency constitutes a warrantless search of a building, vehicle, or person if the search is believed necessary to save a life or prevent injury or serious property damage.

The elements of the emergency aid doctrine are:

1. You must have reasonable grounds to believe that an emergency is at hand and an immediate need exists for assistance to protect life or property.
2. The search should not be motivated primarily for an intended arrest or seizure of evidence.
3. A "reasonable basis" approximating probable cause must be established for the search to be considered an emergency.

**REMEMBER:** The search must cease (Mincy v. Arizona) when the emergency is over. You may, however, apply for a warrant using the information obtained during the emergency and items found in your "plain view" while the emergency search was conducted are subject to seizure.

Two examples of warrantless searches are as follows:

- As the respondent to a scene, you notice blood on the outside of the house. Further evidence, such as a broken window, indicates that a serious crime has been committed. This evidence entitles you to conduct a warrantless entry in order to determine if a person (victim or burglar) is in need of medical attention. Items observed in your "plain view" while making the search are subject to seizure.
- A prompt warrantless search should be conducted of an area in which a homicide has occurred to determine if there are other victims or the killer is still on the premises. Since there is not a "murder exception" to the warrant requirement, the search must stop after determining that the killer is not on the premises and/or other individuals are not in need of aid. After obtaining a warrant, items that were in your "plain view" during the emergency search may be seized.

## EMERGENCY SELECTED CASES

**HOTRUM v State** (Gunshots and Yelling Justifies Warrantless Entry) bulletin no. 305. Troopers respond to a 911 call reporting gunshots and yelling coming from a residence. On arrival, they see vehicles in the driveway, the door to the arctic entryway open with a key in the dead bolt lock position and they can hear loud music coming from within the residence. They make repeated statements to the effect "state troopers is anybody there?" Because they are not sure what has happened at the home or whether someone might need assistance, they enter the home. Behind a door that is covered with a blanket, one of the troopers discovered forty-three marijuana plants. In the living room they discover a bed with two feet protruding from under a sheet. There is also a semi-automatic pistol lying on the floor next to the bed. They discover the loud music is coming from a stereo which they shut off. At this point the troopers believe that they are dealing with a homicide. They pull back the blankets and discover Hotrum who is sound asleep. When they wake him he tells the troopers that they have no right to be in his residence as that it is private property. Hotrum is subsequently charged with the possession of the marijuana. The court ruled that all of the evidence could be used against Hotrum because the entry to the residence was lawful under the emergency aid doctrine.

**Utah v STUART et al.** (Belief that an Occupant is Injured Justifies Warrantless Entry into Home) bulletin no. 308. At about 3:00 am, four police officers respond to a loud party call. When they arrived they could hear some sort of altercation occurring within the house that sounded like a fight. The noise seemed to be coming from the back of the house. The officers looked in the front window but were unable to see anything. The officers then went to the rear of the house where they observed several juveniles in the back yard drinking beer. They could also see that a fight was taking place in the kitchen. They observed a juvenile hit an adult. A police officer opened the screen door and announced his presence. No one responded to the announcement. The police then entered the kitchen and cried out "police" again. The fight stopped. Several adults were arrested and charged with contributing to the delinquency of minors and other charges. They argued that the police had no right to make a warrantless entry and that they had also violated the "knock-and-announce" provision of the Fourth Amendment. The court ruled that the warrantless entry was justified because the role of a peace officer includes preventing violence and restoring order. The manner of the entry was also reasonable because the officer had announced his presence prior to the entry.

**FINCH v State** (Warrantless Search of Hotel Room) bulletin no. 22. Police officers made a warrantless entry into a hotel room looking for a suspect, and seized evidence of an assault that had occurred earlier. The court ruled that an "emergency" did not exist, and a warrant should have been obtained. In this particular case, since two police officers were involved, the Court suggested that one officer should have remained at the scene while the other applied for a warrant, since there was not available evidence to indicate the suspect was actually in the hotel room.

**SCHULTZ v State** (Emergency Search of Burning Building) bulletin no. 23. Evidence collected and photographs taken by a fire marshal during a fire was upheld as an emergency and in plain view.

**Anchorage v COOK** (Emergency Search of Vehicle) bulletin no. 26. Police had a duty to determine the well being of individual found "slumped over" the wheel of a car and, upon doing so, inadvertently discovered the individual was intoxicated, so his arrest was valid.

**State v MYERS et al** (Search Incident to Legitimate Entry) bulletin no. 28. In early morning, during routine security check of buildings, police discover an unlocked door to a theater and, upon entry, found the manager and his associates using drugs.

**MINCY v Arizona** (Warrantless Search of Murder Scene) bulletin no. 31. Murder is not an exception to the warrant requirement. The police remained on the premises four days and seized over 300 pieces of evidence without obtaining a warrant. Although the initial entry and seizure of evidence was upheld as an emergency and "plain view," subsequent entries by other officers was ruled in error. A search warrant should have been obtained after the initial emergency situation ceased to exist.

**PAYTON v New York** (Warrantless Entry into Private Residence to Effect Arrest) bulletin no. 34. Police, without a warrant, made a forced entry into an apartment to effect an arrest. The defendant was not present at the time; however, in plain view was a shell casing. The shell casing was seized and subsequently introduced as evidence at the trial. The evidence (shell casing) was suppressed because of the warrantless entry.

State statutes cannot be enacted that enable police to violate the constitution. Twenty-five states (including Alaska) have enacted statutes that allow police to make a warrantless entry into a private residence based on probable cause. The U.S. Supreme Court ruled that these statutes were unconstitutional because they violated the Fourth Amendment. The court stated that the Fourth Amendment has drawn a firm line at the entrance to a house and that absent exigent circumstances, that threshold may not be reasonably crossed without a warrant.

**GALLMEYER v State** (Emergency Entry to Private Residence) bulletin no. 54. Police made warrantless entry into residence to arrest an individual who had threatened to shoot his wife and child.

**JOHNSON v State** (Warrantless Seizure of a Person From Private Residence) bulletin no. 66. Shortly after raping her, the suspect threatened the victim saying that he would "blow her away." Warrantless entry was upheld as emergency and protective.

**MURDOCK & ROBINSON v State** (Protective Search of Residence) bulletin no. 69. After being admitted to residence by defendant's live-in girlfriend, noises emitting from another room led to further investigation, which revealed the presence of defendants as well as weapons which had been used in a prior homicide. Court ruled entry was made with consent and subsequent search upheld as protective, and the inadvertent discovery of weapons were seizeable under the "plain view" doctrine.

**WARDEN v Hayden** 387 US 294 (no bulletin). Warrantless entry of private residence occurred five minutes after robbery. The entry was upheld due to the fact that it was made in an attempt to prevent the escape of the suspect. If a sought after person is discovered, the police are justified in extending the scope of their search to the remainder of the premises for the limited purpose of assuring that no hostile and possibly dangerous persons are hiding in other rooms. Upon making such a search, the doctrine of "plain view" applies and evidence observed is subject to seizure. These cases involve both the emergency and hot pursuit exceptions as well as the "plain view" doctrine.

**WAY v State** (Seizure, handcuffing and requiring identification for persons present while police search for fugitive; special handling for person know by officer to have previously had a weapon), bulletin no 290. Police have responded to an apartment where they have been informed that a fugitive is located. All of the occupants are removed from the apartment, taken outside, forced to lie on the ground where they are placed in handcuffs. When the police discover that the fugitive is no longer present they pat-down the persons on the ground and require them to identify themselves prior to releasing them. One of the officers recognizes WAY (see bulletin no. 288) from a traffic stop he had made the previous week. At that time WAY's van contained components for a methamphetamine lab and a loaded handgun. Based on this information the officer took WAY aside for special handling. The officer observed a syringe in WAY's pocket. The syringe had blood on the barrel. A pat-down lead to the discovery of cocaine on his person. The court ruled that based on the officer's knowledge of the previous event (the traffic stop) that WAY was associated with drugs and the weapon this special handling was permissible.

**Arizona v HICKS** (Probable Cause Required to Seize Evidence in Plain View Resulting from Emergency Entry) bulletin no. 110. During the course of an emergency search following a shooting, police seized expensive stereo components from a residence because they "looked out of place." Although it was later determined that the components had been stolen, the police lacked that specific knowledge (immediately apparent) at the time of seizure so the court suppressed the evidence.

**SATHER v State** (Investigative Seizure and Emergency Search of Vehicle) bulletin no. 135. When a driver is found slumped over the wheel of a car, the officer has a duty to perform an investigative seizure of the car and

an emergency entry to determine if the person needs medical attention. During the entry, the driver who was in plain view, was found to be intoxicated and that information was used toward probable cause for arrest.

**OZHUWAN v State** (Investigatory Seizure of Person Absent Reasonable Suspicion) bulletin no. 138. Even though a vehicle is parked in an area where criminal activity is known to occur, you must have reasonable suspicion that the particular vehicle is involved in or soon to be involved in such activity before performing an investigatory stop. When the investigatory stop is made solely to check on the welfare of the occupants, there still must be reasonable suspicion that the occupants might need assistance.

**WILLIAMS v State** (Emergency Entry into Private Residence) bulletin no. 165. A suspect called his former foster mother and said he thought he killed his girlfriend. She notified police about the call and further stated that she had recently seen WILLIAMS with an infant. Police checked several locations and saw "blood stains" in front of a suspect apartment. They heard music, but no one answered their knock. They entered and found a homicide victim. Police had a reasonable basis to conclude that immediate entry was required to protect life, and the entry was not motivated to seize evidence or make an arrest.

**HARRISON v State** (Warrantless Entry Into Private Residence Based on Emergency Aid Doctrine) bulletin no. 181. A trooper went to serve a warrant and noticed through a window someone "face down" on the kitchen table. Repeated knocking on the door did not elicit a response. The trooper entered the residence to check on the welfare of the person and noticed, in plain view, what she thought to be drugs on the same table. A warrant was obtained to seize the drugs and the person was subsequently arrested. The initial entry was based on an emergency and the drugs in plain view were used as a basis for obtaining a search warrant.

**McNEILL v State** (9-11 Domestic Violence Response) bulletin no. 235. Police remained on premises in response to a 911 call to investigate a domestic violence case. Police refused to leave until McNEILL "told them what was going on." McNEILL was subsequently arrested.

**State v BLANK** (Arrest Not Required To Get Blood Or Breath If Exigency Exists In Vehicle Accident Involving Death Or Serious Injury) bulletin no. 278. Troopers obtained a breath sample from BLANK shortly after she had been involved in a fatal hit and run. The court did not consider consent. The court did overrule the LAYLAND (AK 1975) case which had ruled that in order to take blood from a suspect, the suspect must be under arrest thereby making the seizure "incident to arrest." In overruling LAYLAND, the court said that so long as an exigency exists, the subject does not need to be under arrest. Three requirements must be satisfied: (1) probable cause to arrest; (2) delay necessary to obtain the warrant might result in the destruction of evidence; and (3) the blood (breath) draw was done in a reasonable manner. The court in this case also ruled that AS 28.35.031(g) was constitutional. That's the statute that allows for warrantless seizures of breath or blood from a person who has been involved in an accident that causes death or physical injury to another person.