

NEW JERSEY  
CRIMINAL LAW  
AND  
MOTOR VEHICLE  
HANDBOOK

*With Related Statutes*

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2023 EDITION

(Includes enactments through the 220th  
Legislature (L. 2023, c. 36)

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**Note:** This is a general overview of the classical and current United States and New Jersey court decisions related to the Laws of Arrest, Search and Seizure, and Confession Law. As an overview, it should be used for a basic analysis of the general principles but not as a comprehensive presentation of the entire body of law. It is not to be used as a substitute for the opinion or advice of the appropriate legal counsel from the reader’s department. To the extent possible, the information is current. However, very recent statutory and case law developments may not be covered.

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“*Infra*”—Used in the same manner as *supra*, but instead of referring you “back,” it refers you “ahead.”

“*Accord*”—Used when two or more cases *clearly support* the proposition stated.

“*Cf.*”—Used to signal authority that supports a proposition different from the main proposition but sufficiently analogous to lend support.

Omitted words: The ellipsis, “\* \* \*” or “...” is used to indicate that unnecessary words have been omitted.

Bracketed material—[thus] consists of material added or changed by the author/editor.

# STATUTES

New Jersey statutes are cited as *N.J.S.* (New Jersey Statutes), a classification system for New Jersey laws. Other publishers may use the cite as *N.J.S.A.*, which is the West Publishing Company's rendition of New Jersey's laws in annotated form. Citation to *N.J.S.* is generally followed by the statutory title and then the section number, for example, *N.J.S.2C:12-1* represents the New Jersey statute in Title 2C, at section 12-1. Citations to the New Jersey Administrative Code provisions are generally to *N.J.A.C.*

Citations to current federal law appear as: 42 *U.S.C.* §1983, which means United States Code, title 42, section 1983.

# 1. CONSTITUTIONAL CRIMINAL PROCEDURE

## 1.1. Constitutional Analysis

The Bill of Rights in the federal Constitution, and corresponding provisions in each state's constitution, provide citizens with certain fundamental safeguards from intrusive governmental conduct. Particularly relevant to situations involving law enforcement officials are the Fourth, Fifth, Sixth and, to a lesser extent, the First and Fourteenth Amendments.

### 1.1.1. The Fourth Amendment

The Fourth Amendment to the federal Constitution safeguards the “right of the people to be secure in their persons, houses, papers, and effects,<sup>1</sup> against unreasonable searches and seizures[.]” Additionally, the Amendment commands that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” The “ultimate touchstone of the Fourth Amendment is ‘reasonableness.’”<sup>2</sup>

Similar to the Fourth Amendment, Article I, ¶7, of the **New Jersey Constitution** provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.”

### 1.1.2. The Fifth Amendment

The Fifth Amendment provides, in part, that no person shall be compelled to be a witness against oneself in a criminal case. The Supreme Court has also found that an integral part of an accused's right to be free from compelled incrimination is a judicially created right to have counsel present and a right to refuse to answer questions during a custodial interrogation, even though the Constitution does not specifically provide such a safeguard.

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<sup>1</sup> Note that the term “effects” is “less inclusive than “property” and is limited to personal rather than real property. *Oliver v. United States*, 466 U.S. 170, 177 n.7, 104 S. Ct. 1735, 80 L. Ed. 2d 214 (1984); see also *United States v. Jones*, 565 U.S. 400, 404, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012) (noting that there is no doubt a vehicle is considered an “effect” under the fourth amendment).

<sup>2</sup> *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943 (2006).