

Exigent Responses

*“[T]he business of policemen and firemen is to act, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process.”*¹

Although the courts understand that police officers must act quickly when faced with an emergency, they also impose on officers the duty to act responsibly and in accordance with the law. In the context of exigent circumstances, this means that officers may do those things—but only those things—that are reasonably necessary to abate the emergency.²

For example, if all that is reasonably necessary is to cordon off the house, then a warrantless entry and search of the house would be unlawful. In the words of the Court of Appeal, “The nature of the exigency defines the scope of the search, and thus exigent circumstances may justify a warrantless entry and securing of premises but not justify a full scale search of the contents of the premises.”³

This does not mean that officers must somehow divine *the* best possible response to the exigent circumstances they confront. The law demands reasonableness and common sense, not perfection.⁴ Still, it is worth repeating that the existence of exigent circumstances does not constitute a judicial “green light” to do whatever comes to mind.⁵ The response must be measured and appropriate under the circumstances.⁶

¹ *Wayne v. U.S.* (D.C. Cir. 1963) 318 F.2d 205, 212 [conc. opn. Burger, C.J.].

² See *People v. Parra* (1973) 30 Cal.App.3d 729, 734 [“(O)fficial reaction to exigent circumstances is equal to the emergency which attracted concern in the first place.”]; *Mincey v. Arizona* (1978) 437 US 385, 393 [“(A) warrantless search must be strictly circumscribed by the exigencies which justify its initiation.”]; *Arizona v. Hicks* (1987) 480 US 321, 325; *People v. Hill* (1974) 12 Cal.3d 731, 755. **NOTE:** The same idea is sometimes expressed in terms of “balancing.” Specifically, the courts say they determine the permissible response to an exigent circumstance by balancing the intrusiveness of the response against the magnitude and certainty of the potential danger. See *Illinois v. McArthur* (2001) 531 US ___ [148 L.Ed.2d 838, 848]; *Maryland v. Buie* (1990) 494 US 325, 331; *United States v. Place* (1983) 462 US 696, 703; *Whren v. United States* (1996) 517 US 806, 818; *In re Elizabeth G.* (2001) 88 Cal.App.4th 496, 504; *People v. Bennett* (1998) 17 Cal.4th 373, 386; *People v. Wilson* (1997) 59 Cal.App.4th 1053, 1058.

³ *People v. Gentry* (1992) 7 Cal.App.4th 1255, 1261, fn.2.

⁴ See *Illinois v. Rodriguez* (1990) 497 US 177, 185-6; *Brinegar v. United States* (1949) 338 US 160, 176; *People v. Ortiz* (1995) 32 Cal.App.4th 286, 294 [“In the exigencies of the moment, the officers could not reasonably be expected to put fine weights on the scale in weighing the chances of securing the house or of losing their quarry.” Quoting 2 LaFave, *Search & Seizure* (2d ed. 1987) pp. 606-7.]; *County of Sacramento v. Lewis* (1998) 523 US 833, 853 [“(T)he police on an occasion calling for fast action have obligations that tend to tug against each other. Their duty is to restore and maintain lawful order, while not exacerbating disorder more than necessary to do their jobs. They are supposed to act decisively and to show restraint at the same moment, and their decisions have to be made in haste, under pressure, and frequently without the luxury of a second chance.”]; *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 924, fn.2; *People v. Macioce* (1987) 197 Cal.App.3d 262, 272; *People v. Higgins* (1994) 26 Cal.App.4th 247, 254, fn.6.

⁵ **NOTE:** Some courts have indicated that officers who are evaluating the seriousness of an emergency may be entitled to anticipate what amounts to a “worst case scenario.” See *People v. Bradford* (1972) 28 Cal.App.3d 695, 704 [“In testing the reasonableness of the search we might ask ourselves how the situation would have appeared if the fleeing gunman armed with a shotgun had shot and possibly killed other officers or citizens while the officers were explaining the matter

With this in mind, we will now examine the most common responses to emergency situations occurring inside a home or business, and the situations in which these responses have been deemed reasonable.

CORDONING OFF

In some emergencies, all that is really necessary is to cordon off the premises to make sure no one gets inside until a warrant is issued. Cordoning off is especially effective when officers need to protect evidence inside a house while waiting for a warrant, and they are sure no one is inside.

Because cordoning-off is a relatively nonintrusive response to an emergency, the only requirements are, (1) there must be *reasonable suspicion* to believe there was evidence inside, and (2) officers were diligent in seeking a warrant.⁷

Two things about these requirements should be noted. First, because cordoning constitutes merely a “seizure” of the premises, not a search, there is no need to prove there were exigent circumstances.⁸ For example, it would be immaterial that there was no threat that the evidence would be destroyed.

Second, only reasonable suspicion is required, not the higher standard of probable cause.⁹ This is important because officers often find themselves in uncertain situations in which they need a short time to figure out what’s going on and how to proceed. The “reasonable suspicion” standard accommodates this need because it allows officers to maintain the status quo for a short time while they decide how to proceed. As the California Supreme Court explained:

[I]f police officers have “reasonable suspicion” that contraband or evidence of a crime is present in a dwelling, we see no valid reason why the officers, while remaining outside the dwelling, may not, to prevent tampering or destruction of evidence, prohibit entry into the dwelling for a reasonable period of time, until they can determine through their investigations whether to seek a warrant.¹⁰

to a magistrate.”]; *People v. Cain* (1989) 216 Cal.App.3d 366, 377; *People v. Superior Court (Peebles)* (1970) 6 Cal.App.3d 379, 382. This might be a good way of looking at things if the “worst case” was a reasonable possibility, not fanciful speculation.

⁶ *Illinois v. McArthur* (2001) 531 US ___ [148 L.Ed.2d 838, 847 [the action should be “tailored” to the exigency].

⁷ See *People v. Bennett* (1998) 17 Cal.4th 373, 387-8. **PROSECUTORS NOTE:** Even if the cordoning off was ruled illegal, evidence discovered inside as the result of a valid search warrant should not be suppressed under the “independent source doctrine,” discussed below.

⁸ See *People v. Bennett* (1998) 17 Cal.4th 373, 385-6.

⁹ **NOTE:** While “reasonable suspicion” requires facts that reasonably indicate there is evidence inside, “probable cause” would require a “fair probability” of such. See *Alabama v. White* (1990) 496 US 325, 329-30; *United States v. Sokolow* (1989) 490 US 1, 7. COMPARE *Illinois v. Gates* (1983) 462 US 213.

¹⁰ *People v. Bennett* (1998) 17 Cal.4th 373, 387. **NOTE:** In *Bennett*, the defendant was under arrest at the time officers cordoned off his motel room. Consequently, his right of possession of the room was not affected. Taking note of this, the court (at p. 388) said it was not deciding the issue of whether reasonable suspicion was sufficient when the suspect is physically prevented from entering the premises. The court’s analysis of the issue, however, seems to indicate that the same standard would apply regardless of whether the suspect was prevented from entering. Furthermore, the U.S. Supreme Court described cordoning off as a “significantly less restrictive restraint” than an arrest or search. *Illinois v. McArthur* (2001) 531 US ___ [148 L. Ed. 2d 838, 848]. In any event, the court noted that even if the requirements for cordoning off were not met,

For example, in *Illinois v. McArthur*¹¹ officers responded to a domestic dispute at the McArthurs' house trailer. While talking with officers outside the trailer, Mrs. McArthur told them that her husband was presently inside and that he had just hidden some "dope" under the sofa. When Mr. McArthur stepped outside, the officers essentially cordoned off the trailer by prohibiting him from reentering until a warrant was issued two hours later.

The United States Supreme Court ruled the officers' actions were reasonable because, in addition to the fact they reasonably believed McArthur would destroy the drugs if he were allowed to remain in the trailer, the method they utilized to protect the evidence—cordoning off the trailer—was well-suited for the emergency. Said the Court:

[The officers] neither searched the trailer nor arrested McArthur before obtaining a warrant. Rather, they imposed a significantly less restrictive restraint, preventing McArthur only from entering the trailer unaccompanied. They left his home and his belongings intact—until a neutral Magistrate, finding probable cause, issued a warrant.

Similarly, in *People v. Bennett*¹² officers learned that a man who had just been arrested for murder was staying at a certain motel in Victorville. Believing there might be evidence of the crime in the motel, the officers essentially cordoned off the motel room when, at their request, the motel manager attached a "cuff" lock to the door and refused to permit Bennett's father to enter. In ruling this action was an appropriate and measured response to the exigency, the California Supreme Court pointed out that "the police 'secured' petitioner's motel room not by entering, which would have impaired petitioner's privacy interests, but by preventing others from entering. [T]his is a significant circumstance."

It should be noted that officers may start searching the premises when the warrant is *issued*; they need not wait until the warrant actually arrives.¹³ If, however, the affiant phones or radios officers on the scene that the warrant has been signed, he must make sure they are aware of the exact terms of the warrant; i.e., where they can search and what evidence they are authorized to search for and seize.¹⁴

PROTECTIVE SWEEPS

In many situations, officers cannot abate an emergency by simply cordoning off the house—they need to go inside and locate a *person*. Whether the person is in danger or whether he poses a threat to others or to evidence, officers must quickly find him. The procedure best suited to accomplish this is a "protective sweep."

In a sweep, also known as a "walk through," officers go quickly from room to room, looking only in those places in which a person may be found.¹⁵ For

any evidence discovered inside as the result of the execution of a search warrant would be admissible if the warrant was independent of the cordoning off. At pp. 389-92.

¹¹ (2001) 531 US ___ [148 L. Ed. 2d 838].

¹² (1998) 17 Cal.4th 373.

¹³ See *People v. Rodriguez-Fernandez* (1991) 235 Cal.App.3d 543, 533.

¹⁴ See *U.S. v. Dubrofsky* (9th Cir. 1978) 581 F.2d 208, 213.

¹⁵ See *Maryland v. Buie* (1990) 494 US 325, 327; *Mincey v. Arizona* (1978) 437 US 385, 392-5;

example, officers will visually inspect each room, look under the beds and inside closets. They will not, however, look into places in which a person could not be found, such as inside desk drawers.

Sweeps are usually all that is necessary when officers are in “hot” or “fresh” pursuit of a suspect,¹⁶ or when the house is the scene of a homicide or other violent crime,¹⁷ or if they reasonably believe there is someone inside who is in danger¹⁸ or who poses a threat to them or others¹⁹ or who is about to destroy evidence.²⁰ As the California Supreme Court observed in a destruction-of-evidence case:

If the exigent circumstances being responded to is the possibility that there may be other persons within the premises who might destroy evidence, then the logical first step is a “sweep” of those premises to see if in fact anyone else is present. If no one is found, then the exigency has ended and the police should then merely maintain control of the premises while a search warrant is obtained.²¹

When permitted

The requirements for conducting a protective sweep depend on whether officers entered the premises for the purpose of conducting a sweep, or whether they were already lawfully inside the house when the sweep was made.

IF OFFICERS WERE ALREADY INSIDE: If officers were lawfully inside the house pursuant to consent, an arrest warrant, or exigent circumstances, they may

Thompson v. Louisiana (1984) 469 US 17, 21; *People v. Boragno* (1991) 232 Cal.App.3d 378, 386; *People v. Macioce* (1987) 197 Cal.App.3d 262, 273-7; *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 923 [walk-through search of robbery scene].

¹⁶ *Warden v. Hayden* (1967) 387 US 294, 298-9. ALSO SEE *People v. Mack* (1980) 27 Cal.3d 145, 149-51.

¹⁷ *Mincey v. Arizona* (1978) 437 US 385, 392.

¹⁸ See *People v. Macioce* (1987) 197 Cal.App.3d 262, 272-3; *People v. Stamper* (1980) 106 Cal.App.3d 301, 306.

¹⁹ **Examples:** □ Officers were aware that a fugitive inside had a history of harboring and possessing a sawed-off shotgun. *People v. Brevet* (1980) 112 Cal.App.3d 65, 73. ALSO SEE *Guevara v. Superior Court* (1970) 7 Cal.App.3d 531, 535; *People v. Maier* (1991) 226 Cal.App.3d 1670, 1674-6. □ Officers reasonably believed a burglary was in progress. *People v. Duncan* (1986) 42 Cal.3d 91, 98. □ Upon arriving at a house in which the owner had gone “berserk” and assaulted a woman with a baseball bat, officers looked through the house for additional victims or suspects. *People v. Boragno* (1991) 232 Cal.App.3d 378, 386. ALSO SEE *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 924. COMPARE *People v. White* (1986) 183 Cal.App.3d 1199, 1209 [“wild speculation,” not reasonable belief, that the rapist was inside]. □ Officers who had arrested one or more people in a residence were aware of specific facts that made it reasonable to believe there were accomplices or others on the premises who posed a danger to officers. See *People v. Block* (1971) 6 Cal.3d 239, 245; *People v. Baldwin* (1976) 62 Cal.App.3d 727, 742-3; *Guidi v. Superior Court* (1973) 10 Cal.3d 1, 9; *People v. Schmel* (1975) 54 Cal.App.3d 46, 51-2; *People v. Jordan* (1976) 55 Cal.App.3d 965, 967-968. **COMPARE:** *Dillon v. Superior Court* (1972) 7 Cal.3d 305, 314.

²⁰ *People v. Seaton* (2001) 26 Cal.4th 598, 632 [officers in “fresh” pursuit of a murder suspect, arrested him at the doorway to his home; seconds before the arrest, officers heard sounds inside that caused them to reasonably believe that evidence was being destroyed].

²¹ *People v. Seaton* (2001) 26 Cal.4th 598, 632 [quoting from 3 LaFare, *Search and Seizure* (3d ed. 1996) § 6.5(b), p. 353]. ALSO SEE *Maryland v. Buie* (1990) 494 US 325, 327.

conduct a sweep if they have *reasonable suspicion* to believe the action is necessary; i.e., probable cause is not required.²²

OFFICERS ENTERED TO CONDUCT SWEEP: Because an entry into a home for the purpose of conducting a sweep is much more intrusive than conducting one after officers were already lawfully inside, it is permitted only if there was *probable cause* to believe the action was necessary.²³

Examples

The following are examples of situations in which protective sweeps were deemed justified:

“HOT” AND “FRESH” PURSUITS: Officers were in “hot” or “fresh” pursuit of a suspect who fled into the house.²⁴

HOMICIDE SCENES: Officers reasonably believed a homicide occurred on the premises; they conducted a sweep to look for other victims or the perpetrator.²⁵

ROBBERY SCENES: Upon arriving at the scene of a completed robbery in which a person inside was injured, officers conducted a protective sweep for additional victims because they didn’t know whether other people may have been harmed.²⁶ A search for the perpetrator would also be permitted if officers reasonably believed the perpetrator was still on the scene.²⁷

BURGLARY SCENES: Upon arriving at the scene of a burglary, officers entered and conducted a sweep to determine if the burglar was on the scene, and whether an occupant was injured.²⁸

DRUG LABS: Officers who reasonably believed an illegal drug lab was in operation on the premises and that it presented a serious and immediate threat to life or property, entered and conducted a sweep to eliminate the threat and to make sure there was no one on the premises who posed a threat to them while they were doing so.²⁹

²² See *Maryland v. Buie* (1990) 494 US 325, 334, fn.1.

²³ See *Maryland v. Buie* (1990) 494 US 325, 334, fn.1; *People v. Bennett* (1998) 17 Cal.4th 373, 386 [“(P)olice may not enter a dwelling to ‘secure’ the evidence therein without both probable cause and exigent circumstances.”].

²⁴ See *Warden v. Hayden* (1967) 387 US 294, 298-9; *People v. Mack* (1980) 27 Cal.3d 145, 149-51.

²⁵ See *Mincey v. Arizona* (1978) 437 US 385, 392 [“(W)hen the police come upon the scene of a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises.”]; *Thompson v. Louisiana* (1984) 469 US 17, 21-2; *People v. Boragno* (1991) 232 Cal.App.3d 378, 386; *People v. Keener* (1983) 148 Cal.App.3d 73, 77; *People v. Amaya* (1979) 93 Cal.App.3d 424, 428; *People v. Wharton* (1991) 53 Cal.3d 522, 578; *People v. Timms* (1986) 179 Cal.App.3d 86, 92. **ALSO SEE** *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 923-4 [such a search is permitted even if officers have no specific information there are additional victims].

²⁶ See *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 924 [“Although *Mincey v. Arizona* (1978) 437 US 385) involved the search of a homicide scene, comparable principles would govern a search of the scene of a robbery involving a wounded victim.”].

²⁷ See *People v. Superior Court (Haflich)* (1986) 180 Cal.App.3d 759, 769.

²⁸ See *People v. Aylwin* (1973) 31 Cal.App.3d 826, 833; *People v. Duncan* (1986) 42 Cal.3d 91, 98.

²⁹ See *People v. Abes* (1985) 174 Cal.App.3d 796, 808-9; *People v. Avalos* (1988) 203 Cal.App.3d 1517, 1523; *People v. Duncan* (1986) 42 Cal.3d 91, 105; *People v. Blackwell* (1983) 147 Cal.App.3d 646, 651; *Maryland v. Buie* (1990) 494 US 325, 333; *People v. Stegman* (1985) 164 Cal.App.3d 936, 945 [“Persons in the process of manufacturing illicit drugs may reasonably be expected to be

PERSON IN DANGER: Officers reasonably believed there was someone inside who was in immediate danger.³⁰

OFFICER SAFETY: Officers reasonably believed there was a person on the premises who posed an imminent threat to them.³¹

DESTRUCTION OF EVIDENCE: Officers reasonably believed there was someone on the premises who was about to destroy evidence of a crime.³²

Other “sweep” issues

SEIZING EVIDENCE IN PLAIN VIEW: If officers see evidence in plain view while they are conducting a sweep, they may seize it if they have probable cause to believe it is evidence of a crime.³³

AFTER THE SWEEP: There are two legal issues that may arise after the sweep is completed:

SEEK A SEARCH WARRANT? After a house is “swept” and is secured, officers will frequently seek a warrant to search the house for evidence. When writing an affidavit for such a warrant, officers need to know whether they can include information that was obtained while they were conducting the sweep.

This subject is discussed at the end of this article in the section entitled “Independent Source Rule.”

STAY INSIDE OR CORDON? Another issue that may arise after a sweep is whether officers should cordon off the premises or whether they can remain inside while waiting for a warrant. The U.S. Supreme Court has indicated that it doesn’t really matter.³⁴ What *does* matter is that they do not begin searching until the warrant is issued or “exploit” their presence inside.³⁵

armed and willing to use arms to prevent apprehension. An officer is not required to rush blindly into a potential illicit drug laboratory and possibly encounter armed individuals guarding the enterprise, with no regard for his own safety . . .”]. **NOTE:** Although *Buie* involved a protective sweep resulting from an in-home arrest, its rationale would clearly apply when officers are lawfully inside premises that are being used to manufacture illegal drugs. See *People v. Simpson* (1998) 65 Cal.App.4th 854, 862.

³⁰ See *People v. Macioce* (1987) 197 Cal.App.3d 262, 272-3; *People v. Stamper* (1980) 106 Cal.App.3d 301, 306; *People v. Boragno* (1991) 232 Ca.App.3d 378, 386. ALSO SEE *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 924. COMPARE *People v. White* (1986) 183 Cal.App.3d 1199, 1209 [“wild speculation,” not reasonable belief, that the rapist was inside].

³¹ See *Maryland v. Buie* (1990) 494 US 325, 334; *People v. Block* (1971) 6 Cal.3d 239, 245; *People v. Baldwin* (1976) 62 Cal.App.3d 727, 742-3; *Guidi v. Superior Court* (1973) 10 Cal.3d 1, 9; *People v. Schmel* (1975) 54 Cal.App.3d 46, 51-2; *People v. Jordan* (1976) 55 Cal.App.3d 965, 967-968. COMPARE: *Dillon v. Superior Court* (1972) 7 Cal.3d 305, 314.

³² See *People v. Seaton* (2001) 26 Cal.4th 598, 632 [“If the exigent circumstances being responded to is the possibility that there may be other persons within the premises who might destroy evidence, then the logical first step is a ‘sweep’ of those premises to see if in fact anyone else is present.”].

³³ See *Maryland v. Buie* (1990) 494 US 325; *Arizona v. Hicks* (1987) 480 US 321, 326. **NOTE:** If officers do not enter the premises but, instead, temporarily secure it from the outside, they need only reasonable suspicion—not probable cause—to believe that contraband or other evidence is on the premises; *People v. Bennett* (1998) 17 Cal.4th 373, 386-8.

³⁴ See *Segura v. United States* (1984) 468 US 796, 811.

³⁵ See *Segura v. United States* (1984) 468 US 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.”].

WHEN SEARCH MAY BEGIN: Although it is preferable that officers wait until the warrant arrives, the search may begin when the warrant is *issued*.³⁶

SEARCHES

If it is reasonably necessary to conduct a search of the premises to abate an emergency, officers may do so. But, as a practical matter, a full search is seldom necessary because most emergencies can usually be abated by conducting a sweep or cordoning off the premises until a warrant is issued.³⁷

For example, in *Arizona v. Hicks*³⁸ a bullet was fired through the floor of Hicks' apartment injuring a person on the floor below. Officers immediately entered Hicks' apartment "to search for the shooter, for other victims, and for weapons." Inside, one of the officers saw some expensive stereo equipment that, because it seemed out of place in the run-down apartment, he believed might have been stolen. The officer then picked up some of the equipment in order to record the serial numbers. A records check revealed the equipment had been taken in a robbery.

The U.S. Supreme Court ruled that although the officer's entry in the apartment was lawful, his act of picking up the stereo equipment constituted a "search." And because the search was not reasonably necessary to abate the emergency, it could not be justified on grounds of exigent circumstances.

Still, there are situations in which a search will be justified. For example, in *People v. Macioce*³⁹ San Jose police were dispatched to the apartment of a Mr. and Mrs. Macioce who had been reported missing by friends. As the officers conducted a sweep of the apartment, they found Mr. Macioce's body on the kitchen floor. They also saw blood in other rooms and indications of a struggle, but no sign of Mrs. Macioce. A detective who arrived at the scene testified he didn't know whether Mrs. Macioce had been abducted, killed, or whether she was the killer. In any event, he ordered a full search of the apartment for "things to lead us to her location and possibly rescue her from any harm." As it turned out, Mrs. Macioce was the killer, and the search resulted in the discovery of evidence against her.

The court ruled the search was reasonably necessary to abate the emergency because the officers "had every reason to believe that the wife was in serious trouble. . . . They had to get the checking account to find out the name on the account, contact friends and acquaintances that might be listed under various papers."

There is also authority to support a warrantless search of a home for documents or other evidence that might help officers locate a fleeing felon if, (1) officers were lawfully inside the house; (2) the crime was very serious; (3) officers reasonably believed the perpetrator recently left the scene and was in active flight, and (4) officers reasonably believed there were documents or other

³⁶ See *People v. Rodriguez-Fernandez* (1991) 235 Cal.App.3d 543, 533.

³⁷ See *Arizona v. Hicks* (1987) 480 US 321.

³⁸ (1987) 480 US 321.

³⁹ (1987) 197 Cal.App.3d 262.

evidence on the premises that would lead to the identification or apprehension of the perpetrator.⁴⁰

MAKE SAFE

If the exigency consists of a dangerous condition, such as a fire or the presence of explosives or dangerous chemicals, officers may, of course, do those things that are reasonably necessary to eliminate the immediate threat. This may include seeking assistance from other officers or emergency personnel to confirm or dispel the officer's concern, or to determine how best to proceed.⁴¹

In addition, officers may—depending on the circumstances—take additional action to make sure the emergency is truly over and the premises are safe.

FIRES: In the case of structure fires, the United States Supreme Court has ruled that the emergency does not end with the “dousing of the last flame.”⁴² This is because it is usually necessary to determine the cause of the fire—and it is necessary to do so as quickly as possible. As the Court observed:

Fire officials are charged not only with extinguishing fires, but with finding their causes. Prompt determination of the fire's origin may be necessary to prevent its recurrence, as through the detection of continuing dangers such as faulty wiring or a defective furnace.

Immediate investigation may also be necessary to preserve evidence from intentional or accidental destruction.⁴³

Consequently, fire and police officials who are investigating the cause of a structure fire may remain in and about the structure for a reasonable time as necessary to conduct their investigation.⁴⁴

EXPLOSIVES: The emergency created by the existence of bombs and other explosives in a house, like the emergency created by a structure fire, ends only when the danger is neutralized.⁴⁵

DANGEROUS CHEMICALS: The emergency created by the existence of dangerous chemicals, including those in clandestine drug labs, ends only when

⁴⁰ See *People v. Amaya* (1979) 93 Cal.App.3d 424; *People v. Justin* (1983) 140 Cal.App.3d 729, 736.

⁴¹ See *People v. Duncan* (1986) 42 Cal.3d 91, 99-100.

⁴² *Michigan v. Tyler* (1978) 436 US 499, 510. ALSO SEE *People v. Glance* (1989) 209 Cal.App.3d 836, 845; *People v. Avalos* (1988) 203 Cal.App.3d 1517, 1523; *People v. Remiro* (1979) 89 Cal.App.3d 809, 830.

⁴³ *Michigan v. Tyler* (1978) 436 US 499, 510.

⁴⁴ See *Michigan v. Tyler* (1978) 436 US 499, 509; *Michigan v. Clifford* (1984) 464 US 287, 297; *People v. Glance* (1989) 209 Cal.App.3d 836, 842; *People v. Avalos* (1988) 203 Cal.App.3d 1517; *People v. Remiro* (1979) 89 Cal.App.3d 809, 830. **NOTE:** In determining what constitutes a “reasonable” time for conducting a warrantless investigation and search, the courts will consider, among other things, the following circumstances: the size of the fire-damaged building (see *Michigan v. Tyler* (1978) 436 US 499, 510, fn.6 [“A fire in a single-family dwelling that clearly is extinguished at some identifiable time presents fewer complexities than those likely to attend a fire that spreads through a large apartment complex or that engulfs numerous buildings.”]), conditions that made the investigation more time-consuming, such as heavy smoke conditions and poor lighting (see *Michigan v. Tyler* (1978) 436 US 499, 511; *Cleaver v. Superior Court* (1979) 24 Cal.3d 297), whether there were any other exigent circumstances such as the existence of explosives or volatile chemicals on the premises (see *People v. Avalos* (1988) 203 Cal.App.3d 1517, 1523; *People v. Remiro* (1979) 89 Cal.App.3d 809).

⁴⁵ See *People v. Remiro* (1979) 89 Cal.App.3d 809, 830-1.

suspects inside the house have been arrested and the imminent danger of fire and explosion was eliminated.⁴⁶

SEIZING EVIDENCE

After making an emergency entry, officers may seize drugs, illegal weapons, and other evidence in plain view if, (1) the evidence was observed while officers were taking action that was reasonably necessary to abate the emergency, and (2) they had probable cause to believe it was evidence of a crime or would help them apprehend a fugitive.⁴⁷

For example, if officers entered a house in “hot” or “fresh” pursuit of an armed robber, they could immediately seize discarded clothing that is similar to the clothing used by the robber.⁴⁸ Note that evidence may be seized even if it is unrelated to the crime for which officers entered.⁴⁹

VACATING THE PREMISES

Officers who have lawfully entered a home because of exigent circumstances may remain until the emergency is over. After that, they must either vacate the premises or, if the decision is made to seek a warrant, secure the premises pending issuance or rejection of the warrant.

Although the point at which an emergency ends depends on the facts of each case, the following examples may be helpful.

SHOOTING INSIDE A RESIDENCE: The emergency ended when the victim was transported to the hospital and officers had searched the premises and determined there were no additional victims or suspects on the scene.⁵⁰

MURDER INSIDE A RESIDENCE: The emergency associated with a murder in a residence does not terminate until officers have conducted a protective sweep and the victim’s body has been removed.⁵¹

BARRICADED SUSPECT: The emergency ended when the suspect was arrested and officers determined there were no victims or other suspects on the premises.⁵²

BURGLARY: The emergency ended when officers arrested the burglar and determined there were no other suspects on the premises, and the occupants of the premises had not been harmed.⁵³

⁴⁶ See *People v. Avalos* (1988) 203 Cal.App.3d 1517, 1523; *People v. Duncan* (1986) 42 Cal.3d 91, 105; *People v. Blackwell* (1983) 147 Cal.App.3d 646, 653; *People v. Abes* (1985) 174 Cal.App.3d 796, 807-9; *People v. Patterson* (1979) 94 Cal.App.3d 456, 465; *People v. Stegman* (1985) 164 Cal.App.3d 936, 944. COMPARE *People v. Baird* (1985) 168 Cal.App.3d 237, 244-5.

⁴⁷ See *Warden v. Hayden* (1967) 387 US 294, 307; *Arizona v. Hicks* (1987) 480 US 321, 326-9; *People v. Amaya* (1979) 93 Cal.App.3d 424, 429-320; *People v. Hill* (1974) 12 Cal.3d 294, 307; *Mincey v. Arizona* (1978) 437 US 385, 393; *Thompson v. Louisiana* (1984) 469 US 17, 22; *People v. Bradley* (1982) 132 Cal.App.3d 737, 746; *People v. Macioce* (1987) 197 Cal.App.3d 262, 276; *People v. Keener* (1983) 148 Cal.App.3d 73, 78.

⁴⁸ See *Warden v. Hayden* (1967) 387 US 294, 307.

⁴⁹ See *People v. Duncan* (1986) 42 Cal.3d 91, 99; *Arizona v. Hicks* (1987) 480 US 321, 325-6; *People v. Clark* (1968) 262 Cal.App.2d 471.

⁵⁰ See *People v. Boragno* (1991) 232 Cal.App.3d 378, 386.

⁵¹ See *People v. Amaya* (1979) 93 Cal.App.3d 424, 430-2; *People v. Boragno* (1991) 232 Cal.App.3d 378, 392.

⁵² See *People v. Keener* (1983) 148 Cal.App.3d 73, 77.

DRUG LAB: The emergency ended when the suspects were arrested and the danger of fire and explosion had been eliminated.⁵⁴

EMERGENCY IS OVER: REENTRIES

After the emergency is over officers must vacate the premises within a reasonable time, and they may not reenter unless they have a search warrant or consent. In the words of the Court of Appeal, “An exigent circumstance may justify a search without a warrant. However, after the emergency has passed, the defendant regains his right to privacy, and contraband discovered on a second entry will be suppressed.”⁵⁵

REENTRY TO SEIZE EVIDENCE: Although officers must vacate the premises after the emergency has ended, they may reenter for the limited purpose of seizing evidence that was observed in plain view if exigent circumstances made it impossible or impractical to seize the evidence when it was first observed.⁵⁶

For example, in *People v. Superior Court (Quinn)*⁵⁷ an officer entered a residence in “hot pursuit” of a fleeing suspect. While looking for the suspect, the officer saw drugs which he did not seize because the suspect was still at large. Immediately after arresting the suspect and removing him from the premises, the officer reentered and retrieved the drugs. Although the emergency was over when the officer reentered, the reentry was ruled lawful. Said the court, “[The officer] did not trench upon any constitutionally protected interest by returning for the single purpose of retrieving contraband he had observed moments before in the bedroom but had not then been in a position to seize.”

THE “INDEPENDENT SOURCE” RULE

In many cases, officers believe that exigent circumstances will justify a warrantless sweep or search but they are not sure. This can present a dilemma because they seemingly have only two choices: (1) don’t enter the house and risk the destruction of evidence or worse, or (2) enter the house and risk the suppression of any evidence discovered inside.

Fortunately, there is a third choice that allows officers to enter and virtually eliminate the risk of suppression. This third choice is based on the so-called “independent source rule.”

Under the “independent source rule,” evidence will not be suppressed as the result of an entry—even an illegal entry—if the evidence was subsequently seized

⁵³ See *People v. Bradley* (1982) 132 Cal.App.3d 737. **COMPARE:** *People v. Justin* (1983) 140 Cal.App.3d 729, 740 [evidence observed during reentry was admissible because defendant invited officers inside where they saw drugs in plain view; defendant had no reasonable expectation of privacy].

⁵⁴ See *People v. Blackwell* (1983) 147 Cal.App.3d 646, 653; *People v. Abes* (1985) 174 Cal.App.3d 796, 807-9.

⁵⁵ *People v. Bradley* (1982) 132 Cal.App.3d 737, 744.

⁵⁶ See *People v. Justin* (1983) 140 Cal.App.3d 729, 736; *People v. Bradley* (1982) 132 Cal.App.3d 737, 746.

⁵⁷ (1978) 83 Cal.App.3d 609. **ALSO SEE:** *People v. Ngaue* (1992) 8 Cal.App.4th 896, 904-5; *People v. McDowell* (1988) 46 Cal.3d 551, 564; *Cleaver v. Superior Court* (1979) 24 Cal.3d 297; *People v. Keener* (1983) 148 Cal.App.3d 73; *People v. Blackwell* (1983) 147 Cal.App.3d 646.

during the execution of a lawful warrant that was truly independent of the warrantless entry.⁵⁸

So, then, how can officers prove that a warrant to search a house was independent of a previous entry into the house? It's not that difficult.

First, the search warrant affidavit should not contain any information obtained during the entry.⁵⁹

Second, officers must be able to prove their decision to seek a warrant was not influenced by anything they saw while inside the residence.⁶⁰ This requirement might be satisfied, for example, if the crime was so serious and the existence of probable cause so clear that it was a foregone conclusion that a warrant would be sought.⁶¹ It might also be satisfied if the affiant had actually started writing the affidavit or was en route to the police station to start writing when the entry was made, or if officers met before entering and decided to seek a warrant after securing the premises.⁶²

⁵⁸ See *Murray v. United States* (1988) 487 US 533, 537; *People v. Koch* (1989) 209 Cal.App.3d 770, 786. **NOTE:** It has been suggested that the seizure of evidence pursuant a warrant is not really independent of a prior entry if the officers' entry and securing of the house would have prevented the suspect, his accomplices, or friends from going in and destroying the evidence before a warrant could be issued. The U.S. Supreme Court disposed of such an argument—which is said “defies both logic and common sense”—when it pointed out there is no constitutional right to destroy evidence. See *Segura v. United States* (1984) 468 US 796, 816; *People v. Bennett* (1998) 17 Cal.4th 373, 391.

⁵⁹ See *Segura v. United States* (1984) 468 US 796, 814; *People v. Weiss* (1999) 20 Cal.4th 1073, 1077, 1081; *People v. Bennett* (1998) 17 Cal.4th 373, 390; *People v. Freeman* (1990) 219 Cal.App.3d 894, 906. **NOTES:** The failure to include in the affidavit information obtained during the warrantless entry is not a material omission if the information supported the existence of probable cause and did not detract from it. See *People v. Gesner* (1988) 202 Cal.App.3d 581, 591. If information obtained during the warrantless entry was included in the affidavit, the affidavit will still be deemed independent of the entry if probable cause for the search remained after the information was deleted. See *People v. Koch* (1989) 209 Cal.App.3d 770, 774, 784; *People v. Gesner* (1988) 202 Cal.App.3d 581, 589-90; *U.S. v. Salas* (9th Cir. 1989) 879 F.2d 530, 539.

⁶⁰ See *Murray v. United States* (1988) 487 US 533, 542; *People v. Koch* (1989) 209 Cal.App.3d 770, 787-8; *People v. Weiss* (1999) 20 Cal.4th 1073, 1077. **NOTE:** The prosecution is not required to prove the magistrate's decision to issue the warrant was not affected by the illegally-obtained information in the affidavit. See *People v. Weiss* (1999) 20 Cal.4th 1073, 1077-82.

⁶¹ See *People v. Bennett* (1998) 17 Cal.4th 373, 391 [“We consider it highly unlikely that the police would not have sought a warrant, if one was necessary, to search the room of a suspect just arrested for murder.”].

⁶² See *People v. Freeman* (1990) 219 Cal.App.3d 894, 906 [“The undisputed testimony that the officers had decided to obtain a warrant prior to any arguably illegal conduct . . . ”]; *U.S. v. Salas* (9th Cir. 1989) 879 F.2d 530, 538 [Officer: “We decided to go to the room and secure the other person from the room so the room would be secure while we were obtaining our search warrant.”].