

South Burlington Police

UNIVERSITY MALL

COMMUNITY ENGAGEMENT

MAY 2023

US Constitution – Bill of Rights

- ▶ **1st Amendment** - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the **freedom of speech, or of the press; or the right of the people peaceably to assemble,** and to petition the Government for a redress of grievances.
- ▶ **4th Amendment** - The **right of people** to be secure in their persons, houses, papers and effects, **against unreasonable searches and seizures, shall not be violated,** and no warrants shall be issued 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.
- ▶ **5th Amendment** - No person shall be held to answer for a capital or otherwise infamous crime...Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, **nor shall he be compelled in any criminal case to be a witness against himself,** nor be deprived of life, liberty, or property, **without due process of law...**

US Constitution – Bill of Rights

14th Amendment - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. ***No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the law.***

Rights of persons accused of crime; personal liberty; waiver of jury trial

That in all prosecutions for criminal offenses, a person hath a right to be heard by himself and his counsel; to demand the cause and nature of his accusation; to be confronted with witnesses; to call for evidence in his favor, and a *speedy public trial* by an impartial jury of the country; without the unanimous consent of which jury, he cannot be found guilty; *nor can he be compelled to give evidence against himself*; nor can any person be justly deprived of his liberty, except by the laws of the land, or the judgment of his peers; provided, nevertheless, in criminal prosecutions for offenses punishable by death or imprisonment in the state prison, the accused, with the consent of the prosecuting officer entered of record, may in open court or by writing signed by him and filed with the court, waive his right to a jury trial and submit the issue of his guilt to the determination and judgment of the court without a jury.

**Right to Speedy and Public Trial

**Rights against Government compelling testimony against themselves

Vermont Constitution

Article 11

That the people have a right to hold themselves, their houses, papers, and possessions, free from search or seizure; *and therefore warrants, without oath or affirmation first made, affording sufficient foundation for them, and whereby by any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his, her or their property, not particularly described, are contrary to that right, and ought not to be granted.*

***Rights relating to Search and Seizure*

Misdemeanor vs. Felony

- ▶ A crime punishable by incarceration of two years or less.

Misdemeanor \leq 2 years

- ▶ A crime punishable by incarceration of MORE than two years.

Felony $>$ 2 years

Law Enforcement Burdens of Proof

- ▶ Reasonable Suspicion
- ▶ Probable Cause
- ▶ *Beyond a Reasonable Doubt*



“REASONABLE SUSPICION”

- ▶ *“A particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal activity.”* (Black’s law Dictionary, 11th Edition)
- ▶ Fair, proper just, moderate, suitable under the circumstances.

Reasonable Suspicion

Is the Burden/Standard of Proof for...

- ▶ Investigative Detentions
- ▶ Pat Downs/Frisk
- ▶ Motor Vehicle Stops
- ▶ Certain Non Testimonial Orders

Probable Cause

- ▶ ***“A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime.”*** (Black’s Law Dictionary, 11th Edition).
- ▶ **Facts** and **circumstances** that would lead a reasonable and prudent person to believe that a crime has, is, or is about to be committed.
 - ▶ *“Sufficient probability, not certainty”*
 - ▶ About 51%

Probable Cause is the Burden/Standard of Proof for...

- ▶ Arrest
- ▶ Arrest Warrants
- ▶ Search Warrants
- ▶ Wire Warrants
- ▶ Tracking Warrants
- ▶ Electronic Stored Information Warrants
- ▶ Certain NTOs

BURDENS OF INFORMATION / LEVELS OF INTRUSION

Standard _____ Result

- ▶ Reasonable Suspicion.....
Detention
- ▶ Probable Cause.....Arrest
- ▶ Beyond a Reasonable
Doubt.....Conviction

RULE 3: WARRANTLESS ARRESTS

- ▶ Arrest without a warrant is a Seizure of the person.
- ▶ High level of intrusion - as such, **protected by the 4th Amendment/ Article 11.**
- ▶ As Vermont is the state of the “**least intrusive option,**” Rule 3 was established for taking people into custody...

Citation, Arrest & Continued Custody

- ▶ **Citation:** A written document that orders a person to appear in court at a designated date and time to answer to charges.
- ▶ **Arrest:** A seizure of the person for the purpose of processing into the system (i.e. Booking – fingerprints and photos)
- ▶ **Continued Custody:** Arraignment/Jail/Release on Conditions per Judge

Search and Seizure

- ▶ **US Constitution - 4th Amendment** – The right of people to be free from unreasonable search and seizure....no warrants shall issue without probable cause.
- ▶ **US Constitution - 14th Amendment** – No state shall deprive any person of life, liberty or property, without due process of law.
- ▶ **Vermont Constitution – Article 11** - That the people have a right to hold themselves, their houses, papers, and possessions, free from search or seizure.

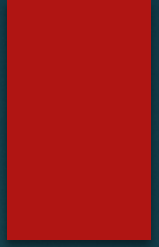
Search and Seizure

How can we recover stolen property?

- ▶ **Search Warrant** – Issued by a Judge upon an officer's description of probable cause, involves seizing property and requesting warrant for authority to search
- ▶ **Search Warrant Exceptions** –
 - ▶ Consent
 - ▶ Plain View
 - ▶ Many others.....

Vermont Bail Laws

13 VSA §7554



▶ **§ 7554. Release prior to trial**

(a) Release; conditions of release. *Any person charged with an offense, other than a person held without bail under section 7553 or 7553a of this title, shall at his or her appearance before a judicial officer be ordered released pending trial in accordance with this section.*

(1) The defendant *shall be ordered released* on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the judicial officer determines that such a release will not reasonably mitigate the risk of flight from prosecution as required.

Vermont Bail Laws

13 VSA §7554



▶ **§ 7553. Release in cases punishable by life imprisonment**

A person charged with an offense punishable by life imprisonment when the evidence of guilt is great may be held without bail. If the evidence of guilt is not great, the person shall be bailable in accordance with section 7554 of this title. (Added 1987, No. 102, § 1; amended 1993, No. 143 (Adj. Sess.), § 1.)

▶ **§ 7553a. Acts of violence; denial of release on bail**

A person charged with an offense that is a felony, an element of which involves an act of violence against another person, may be held without bail when the evidence of guilt is great and the court finds, based upon clear and convincing evidence, that the person's release poses a substantial threat of physical violence to any person and that no condition or combination of conditions of release will reasonably prevent the physical violence. (Added 1993, No. 143 (Adj. Sess.), § 2.)

Retail Theft

13 V.S.A. § 2575

- ▶ A person commits the offense of retail theft when the person, with intent of depriving a merchant wrongfully of the lawful possession of merchandise, money, or credit:
- ▶ (1) *takes and carries away or causes to be taken and carried away or aids and abets the carrying away* of, any merchandise from a retail mercantile establishment without paying the retail value of the merchandise.....
- ▶ Penalty – 13 VSA § 2577 - (a) A person convicted of the offense of retail theft of merchandise having *a retail value not in excess of \$900.00* shall be punished by a fine of not more than \$500.00 or imprisonment for not more than six months, or both.
– MISDEMEANOR
- ▶ (b) A person convicted of the offense of retail theft of merchandise having *a retail value in excess of \$900.00* shall be punished by a fine of not more than \$1,000.00 or imprisonment for not more than 10 years, or both - FELONY

Unlawful Trespass

13 V.S.A. § 3705

- ▶ **3705. Unlawful trespass**
- ▶ (a)(1) A person shall be imprisoned for *not more than three months or fined not more than \$500.00, or both*, if, without legal authority or the consent of the person in lawful possession, he or she enters or remains on any land or in any place as to which notice against trespass is given by:
 - ▶ (A) actual communication by the person in lawful possession or his or her agent or by a law enforcement officer acting on behalf of such person or his or her agent;
 - ▶ (B) signs or placards so designed and situated as to give reasonable notice

Disorderly Conduct

13 V.S.A. § 1026

- ▶ **§ 1026. Disorderly conduct**
- ▶ (a) A person is guilty of disorderly conduct if he or she, with intent to cause public inconvenience or annoyance, or recklessly creates a risk thereof:
 - ▶ (1) engages in fighting or in violent, tumultuous, or threatening behavior;
 - ▶ (2) makes unreasonable noise;
 - ▶ (3) in a public place, uses abusive or obscene language;
 - ▶ (4) without lawful authority, disturbs any lawful assembly or meeting of persons; or
 - ▶ (5) obstructs vehicular or pedestrian traffic.
- ▶ (b) A person who is convicted of disorderly conduct shall be imprisoned *for not more than 60 days* or fined not more than \$500.00, or both. A person who is convicted of a second or subsequent offense under this section shall be imprisoned *for not more than 120 days* or fined not more than \$1,000.00, or both. (Amended 1971, No. 222 (Adj. Sess.), § 5, eff. April 5, 1972; 2013, No. 150 (Adj. Sess.), § 3.)

Simple Assault

13 V.S.A. § 1023

- ▶ **§ 1023. Simple assault**
- ▶ (a) A person is guilty of simple assault if he or she:
 - ▶ (1) attempts to cause or purposely, knowingly, or recklessly causes bodily injury to another; or
 - ▶ (2) negligently causes bodily injury to another with a deadly weapon; or
 - ▶ (3) attempts by physical menace to put another in fear of imminent serious bodily injury.
- ▶ (b) A person who is convicted of simple assault shall be imprisoned for not more than one year or fined not more than \$1,000.00, or both, unless the offense is committed in a fight or scuffle entered into by mutual consent, in which case a person convicted of simple assault shall be imprisoned *not more than 60 days* or fined not more than \$500.00, or both. (Amended 1971, No. 222 (Adj. Sess.), § 2, eff. April 5, 1972; 1981, No. 223 (Adj. Sess.), § 23.)

Counterfeiting

13 V.S.A. § 1804

- ▶ **§ 1804. Counterfeiting paper money**
- ▶ A person who falsely makes, alters, forges, or counterfeits, or procures to be made, altered, forged, or counterfeited, or aids or assists in making, altering, forging, or counterfeiting, a note, or imitation of, or purporting to be a note issued by the United States, used as currency, or a bank bill or promissory note, or imitation of, or purporting to be a bank bill or promissory note, issued by a banking company incorporated by the Congress of the United States or by the legislature of a state of the United States or of another country, with intent to injure or defraud a person; and a person who utters, passes, or gives in payment, or offers to pass or give in payment, or procures to be offered, passed, or given in payment, or has in his or her possession with intent to offer, pass, or give in payment, such altered, forged, counterfeited, or imitated note, bank bill, or promissory note, knowing the same to be altered, forged, counterfeited, or imitated, shall be *imprisoned not more than 14 years* and fined not more than \$1,000.00, or both. (Amended 1971, No. 199 (Adj. Sess.), § 15; 1981, No. 223 (Adj. Sess.), § 23.

Detention Authority

- ▶ **§ 2573. Definitions**
- ▶ As used in this chapter:
- ▶ (1) “Retail value” means the merchant’s indicated price of the merchandise at the time of the theft.
- ▶ (2) “Merchandise” means any items of tangible personal property displayed, held, stored, or offered for sale.
- ▶ (3) *“Merchant” means an owner or manager of any retail mercantile establishment, or any person or persons in a supervisory capacity or security officer authorized in writing by the owner or manager to make requests or detentions under this subchapter.*
- ▶ (4) “Premises of a retail mercantile establishment” includes the retail mercantile establishment, any common use areas in shopping centers, and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of the retail mercantile establishment.
- ▶ (5) *“Reasonable force” means only that minimum amount of force necessary to detain the person who the merchant has reasonable cause to believe has committed the offense of retail theft.*
- ▶ (6) “Retail mercantile establishment” means any place where merchandise is displayed or offered for sale to the public, including storage areas on the premises of such an establishment. (Added 1977, No. 227 (Adj. Sess.), § 1, eff. April 17, 1978; 1993, No. 165 (Adj. Sess.), § 2.)

Detention Authority

▶ § 2576. Detention

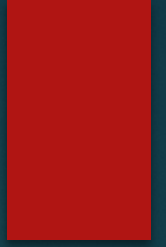
- ▶ (a) *Any merchant* who has reasonable cause to believe that a person has committed or attempted to commit retail theft may detain the person on or in the immediate vicinity of the premises of a retail mercantile establishment, affording the person the opportunity to be detained in a place out of public view if available, in a reasonable manner that may include the use of reasonable force and for a reasonable length of time for any of the following purposes:
 - ▶ (1) to request and verify identification;
 - ▶ (2) to make reasonable inquiry as to whether the person has in his or her possession unpurchased merchandise and, if unpurchased, to recover the merchandise;
 - ▶ (3) to inform a law enforcement officer of the detention of the person and surrender that person to the custody of a law enforcement officer; and
 - ▶ (4) in the case of a minor, to inform a law enforcement officer, and, if known or determined, the parent or parents, guardian, or other person having supervision of the minor of his or her detention and to surrender custody of the minor to the law enforcement officer, parent, guardian, or other person.
- ▶ (b) Any person detained under subdivision (a)(3) or (4) of this section shall, if a telephone is available, have the right to make one local telephone call of reasonable duration. The merchant shall advise the person detained of this right. (Added 1977, No. 227 (Adj. Sess.), § 1, eff. April 17, 1978.)

Other Resources:

- ▶ **Community Outreach** – Rachel Lawler – Can assist with people experiencing mental health issues or crises, provide access to many other resources – via SBPD Dispatch 802-846-4111
- ▶ **Chittenden County State's Attorneys Victim Advocates** – Can provide assistance with cases in prosecution - 802-863-2865
- ▶ **South Burlington Community Justice Center** – Restorative Justice panels, Victim Impact Services – Josef Lavanway – 802-846-4215

Thanks for listening!

Questions?



- ▶ Chief Shawn Burke
- ▶ Patrol Lieutenant Chris Bataille
- ▶ Day Shift Sergeant Matthew Plunkett
- ▶ Day Shift Sergeant Mike DeFiore