

## **A. ABANDONED PROPERTY**

Abandoned property is most commonly defined as property that the owner has voluntarily relinquished all right, title, claim, and possession to and does not intend to reclaim it or resume ownership, possession, or enjoyment.

Abandoned property consists of discarded objects such as weapons, drugs, vehicles, luggage, etc. which can be seized without a warrant. The item(s) seized must be discovered outside a dwelling (place of residence, hotel room, etc.) or curtilage (the area surrounding the dwelling such as yard or out buildings).

In order to seize abandoned property it must be voluntarily relinquished, not obtained as a result of subterfuge by the police officer. An example of involuntary relinquishment or illegal seizure would be items to be used as evidence (drugs, etc.) which were discarded by an individual who was detained without probable cause; i.e., an officer stops an individual without probable cause, the individual attempts to dispose of illegal items (drugs, etc.), the officer then retrieves the items, evidence will be suppressed.

During a surveillance operation involving a suspected criminal offender, the police will consider seizing the suspect's garbage. In order to properly seize garbage it must be placed in a receptacle outside the building and curtilage of the dwelling. The officer seizing the garbage must be in a place he has a lawful right to be and the garbage must be in his "plain view" (see Plain View Doctrine). The officer must establish that the owner of the garbage had no expectation of privacy.

ABANDONED PROPERTY  
SELECTED CASES

**LUPRO v State** (Search of Abandoned Vehicle) bulletin no. 29. After a "hit and run" fatality accident, the defendant abandoned his vehicle by pushing it into a ravine. The subsequent seizure several days later of trace evidence adhering to the vehicle was proper even though no warrant was obtained.

**State v SALIT** (Search of Abandoned Luggage and Hotel Room) bulletin no. 36. Carry on luggage left in sterile boarding area considered abandoned after all passengers boarded the plane. When a person "skips out" on his hotel bill, manager may enter and the discarded property is considered abandoned.

**ERICKSON v State** 507 P2d 508 (Alaska 1973) (no bulletin). Where good citizen who observes drugs inside a suitcase and is acquainted with the owner brings the suitcase to the police; the police must obtain a search warrant prior to opening. There is no evidence that the owner intended to abandon the suitcase nor is the identity of the owner at issue.

**SMITH v State** 510 P2d 793, (Alaska 1973) (no bulletin). When garbage is placed in a dumpster located outside an apartment building that accommodates garbage from the other apartments, the owner should not have a reasonable expectation of privacy in his/her discarded garbage. The dumpster in this case was located in the parking area outside the building and was routinely collected by the municipality. It was also in "plain view" of the officers. The evidence seized from the garbage was properly cited in the affidavit in support of a search warrant for the defendant's residence.

***A WORD OF CAUTION: The California Supreme Court ruled that the owner of the garbage which was seized by the police when it was placed in the rear of the truck by the garbage collector had a reasonable expectation of privacy in the garbage until it had been commingled with the rest of the garbage in the truck. Although the garbage container had been on a sidewalk it had originated from a private residence.***

**California v GREENWOOD and VAN HOUTEN** (Seizure of Garbage as Abandoned Property) bulletin no. 119. Garbage bags left on a public street "outside the curtilage of the home" are subject to a warrantless search and seizure. There is no expectation of privacy when trash is discarded in this manner.

**State v BELTZ** (No Expectation of Privacy Within Garbage Cans Placed Where Driveway Met the Road) bulletin no. 320. Police removed two trash bags from a garbage can located at the end of the driveway. The container had been placed there for normal pick-up. Police discovered evidence of a methamphetamine lab. Police later asked the garbage collector to segregate BELTZ's garbage from the rest of the garbage he had already collected and to furnish them with it. Based on the evidence found in the garbage, police obtained a warrant to search the BELTZ residence. The court ruled that BELTZ had no expectation of privacy in the garbage cans that were placed at the end of his driveway. Court further stated (citing GREENWOOD & SMITH above) that the fact that the trash collector furnished the garbage to the police didn't matter because the police could have obtained the garbage themselves.

**Michigan v CHESTERNUT** (Investigatory Seizure of a Person Absent Probable Cause) bulletin no. 123. Police are not required to have a "particularized and objective" basis for following (not pursuing) a person who runs from a patrol car on routine patrol as long as a reasonable person would feel he was free to leave (i.e. not seized). While following, the officers observed the defendant abandon property which they recovered and used as probable cause for an arrest.

**California v HODARI** (Investigatory Chase of Person Who Abandoned Drugs Before Arrest) bulletin no. 157. To constitute a seizure of a person, there must be either application of physical force or submission to a "show of authority." A police officer involved in a foot pursuit (not simply following) did not seize the suspect until he was tackled. Drugs abandoned during the chase, but before the seizure were not the fruit of a seizure.

**YOUNG v State** (Concealment of Evidence Does Not Constitute Abandonment – No Reasonable Suspicion to Justify Handcuffing for Investigative Detention) bulletin no. 268. Young was observed by a police officer at a motel that had a reputation for drug use. When he saw the officer, he walked away and then got on his knees and put something under a door. The officer handcuffed him and then recovered the objects, which turned out to be rocks of crack cocaine. The officer has no probable cause to seize the subject nor did the subject discard or “abandon” the property. Rather, he was concealing it from the officer.

**CARTER v State** (Guests Expectation Of Privacy In Hotel Room – Police Cannot “Evict” After Check-Out Time) bulletin no. 269. Carter rented a room from the Comfort Inn. The police had asked if they could search the room after Carter checked out. Motel manager gave permission. Normal checkout was 1:00 p.m. Police, without approval or request of manager, went to room after 1:00 p.m. told Carter he would have to leave. Evidence collected when Carter was removing his property was not “abandoned” or in “plain view.”