Unpacking the Convoluted History of the Automobile Exception

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"Indeed, its name alone should make all this clear enough: It is, after all, an exception for automobiles."[1]

What if I told you that a single committee undermined decades of United States Supreme Court precedent holding that the automobile exception did not apply to people? What if I told you that the American Law Institute proposed a model rule of criminal procedure while doubting its constitutionality? What if I told you that rule was adopted by only one state in the country? And what if I told you that state was Arkansas?

Rule 14.1 of the Arkansas Rules of Criminal Procedure ("Rule 14.1") permits a warrantless search of a person when a police officer: (1) "has reasonable cause to believe that a . . .

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The second Article of this three-piece series, published separately, will tell the middle of Rule 14.1's untold story. Part I of the second Article will offer the historical context for Section 260.3, including its historical backdrop, development and adoption. Part II will then offer the same for Rule 14.1. In doing so, the second Article will provide the historical context necessary to conclude that Arkansas's expansive approach to the automobile exception is unequivocally unconstitutional.

The third and final Article of this three-piece series, published separately, concludes the untold story of Rule 14.1. The third Article argues that Rule 14.1 is unconstitutional for two independent reasons. Part I will argue that Rule 14.1 is an unconstitutional expansion of the automobile exception, which deviates from United States Supreme Court precedent. Part II will then argue that Rule 14.1 is unconstitutional because it permits a warrantless search of a person without a firm constitutional basis. After making these arguments, the third Article will conclude that the answer to the forty-three-year old (and counting) question about Rule 14.1's constitutionality is as simple as Rule 14.1 is analogous.

1. Collins v. Virginia, 138 S. Ct. 1663, 1673 (2018).

vehicle . . . contains things subject to seizure;" (2) searches the suspected vehicle, but "does not find the things subject to seizure by his search;" (3) believes that "the things subject to seizure are of such a size and nature that they could be concealed on the person;" and (4) "has reason to suspect that one or more of the occupants of the vehicle may have the things subject to seizure so concealed."[2]

The untold story of Rule 14.1 is one of history and anomaly. Rule 14.1 derived entirely from Section 260.3 of the American Law Institute's ("ALI") Model Code of Pre-Arraignment Procedure (Section 260.3).[3] Although the ALI proposed Section 260.3 in 1975,[4] Arkansas is the *only* state in the country that maintains it as a statute or rule of criminal procedure.[5] The constitutionality of Section 260.3 was

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2. ARK. R. CRIM. P. 14.1. The full text of the rule provides:

> (a) An officer who has reasonable cause to believe that a moving or readily movable vehicle is or contains things subject to seizure may, without a search warrant, stop, detain, and search the vehicle and may seize things subject to seizure discovered in the course of the search where the vehicle is:
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> (i) on a public way or waters or other area open to the public;
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> (ii) in a private area unlawfully entered by the vehicle; or
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> (iii) in a private area lawfully entered by the vehicle, provided that exigent circumstances require immediate detention, search, and seizure to prevent destruction or removal of the things subject to seizure.
>
> (b) If the officer does not find the things subject to seizure by his search of the vehicle, and if:
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> (i) the things subject to seizure are of such a size and nature that they could be concealed on the person; and
>
> (ii) the officer has reason to suspect that one (1) or more of the occupants of the vehicle may have the things subject to seizure so concealed;
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> the officer may search the suspected occupants; provided that this subsection shall not apply to individuals traveling as passengers in a vehicle operating as a common carrier.
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> (c) This rule shall not be construed to limit the authority of an officer under Rules 2 and 3 hereof.

Id.

3. ARK. R. CRIM. P. Derivation Tbl. at xvii (ARK. CRIM. CODE REVISION COMM'N, Proposed Official Draft 1974).

4. Biography/History, in the Model Code of Pre-Arraignment Procedure Records, American Law Institute Archives, ALI.04.009, Biddle Law Library, University of Pennsylvania Law School, Philadelphia, PA.

5. As of 2019, Arkansas is the only state in the country, including the District of Columbia, that maintains Section 260.3 as a statute or rule of criminal procedure. ARK. R. CRIM. P. 14.1. The following sample of state criminal procedure statutes and criminal procedure rules—categorized by state and cited to the initial statutory provision or rule,

questioned by its own drafters.[6] Similarly, the drafters of Rule 14.1 questioned its constitutionality,[7] as did its subsequent commentators.[8] Arkansas courts,[9] and police officials,[10] have also periodically raised questions about the constitutionality of Rule 14.1. Despite those concerns, Rule 14.1 has gone

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respectively—is taken from the fifty-state survey provided in the Appendix, which illustrates that Rule 14.1 is the only criminal procedure rule or statute in the nation currently modeled after Section 260.3; for the full fifty-state survey, refer to the Appendix: **Alabama**: ALA. CODE §§ 15–5–1 to –19 (Westlaw through Act 2019–540); ALA. R. CRIM. P. 3.6–.13; **Alaska**: ALASKA STAT. ANN. §§ 12.35.010–.120 (West, Westlaw through 2019 legislation); ALASKA. R. CRIM. P. 37; **Arizona**: ARIZ. REV. STAT. ANN. §§ 13–3911 to –3925 (Westlaw through 2019 Legis. Sess.); ARIZ. R. CRIM. P. 1.1; **California**: CAL. PENAL CODE §§ 1523–1542.5 (West, Westlaw through 2019 Legis. Sess.); CAL. CRIM. R. 4.1; **Colorado**: COL. REV. STAT. ANN. §§ 16–3–103, 310 (West, Westlaw through 2019 Legis. Sess.); COLO. R. CRIM. P. R. 41; **Connecticut**: CONN. GEN. STAT. ANN. §§ 54–33a, –33m (West, Westlaw through 2019 Legis. Sess.); CONN. PRACTICE BOOK § 36–1; **Delaware**: DEL. CODE ANN. tit. 11, §§ 2301–2311 (West, Westlaw through 2019–2020 Sess.); DEL. CODE ANN. tit. 11, §§ 2322–2323 (West, Westlaw through 2019–2020 Sess.); DEL. SUPER. CT. CRIM. R. 41; **District of Columbia**: D.C. CODE ANN. § 23–524 (West, Westlaw through 2019); D.C. SUPER. CT. R. CRIM. P. 41; **Florida**: FLA. STAT. ANN. § 933.19 (West, Westlaw through 2019 Legis. Sess.); FLA. R. CRIM. P. 3.010; **Georgia**: GA. CODE ANN. § 17–5–1 (West, Westlaw through 2019 Sess.); GA. SUPER CT. R. 1; **Hawaii**: HAW. REV. STAT. ANN. § 803–31 to –38 (West, Westlaw through 2019 Act 286); HAWAII R. PENAL P. 41; **Idaho**: IDAHO CODE ANN. §§ 19–4401 to –4420 (West, Westlaw through 2019 Legis. Sess.); IDAHO CRIM. R. 41; **Illinois**: 725 ILL. COMP. STAT. ANN. 5/108–1 (West, Westlaw through P.A. 101–115); ILL SUP. CT. R. 1.

6. *See, e.g.*, MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 cmt. at 208–09 (AM. LAW INST., Proposed Official Draft No. 1, 1972) ("[T]he [Supreme] Court has held pretty squarely to the contrary . . . ."); Am. Law Inst., *47th Annual Meeting*, 47 A.L.I. PROC. 161 (1970) ("The constitutional doubts of including [Section 260.3] are impressive.").

7. *See* ARK. R. CRIM. P. cmt. at 30 *(*ARK. CRIM. CODE REVISION COMM'N, Proposed Official Draft 1974) ("[Rule 14.1] . . . may raise constitutional questions.").

8. *See* ARK. R. CRIM. P. 1987 Unofficial Supplementary Cmt. at 907 ("[R]ecent decisions of the circuit courts of appeal have reiterated the *Di Re* Court's assumption that 'a person, by mere presence in a suspected car, does not lose immunities of search of his person to which he would otherwise be entitled.'").

9. *See, e.g.*, Brunson v. State, 327 Ark. 567, 574, 940 S.W.2d 440, 443 (1997) (interpreting *arguendo* Rule 14.1 as analogous with a search incident to a lawful arrest); Rowland v. State, 262 Ark. 783, 790, 561 S.W.2d 304, 309 (1978) ("It is well established that vehicle searches are often justified when searches of the person are not, because of the difference in the right to expectation of privacy.").

10. *See* CHARLES N. WILLIAMS ET AL., CRIMINAL PROCEDURE INST., SCH. OF LAW, UNIV. OF ARK., LAW ENFORCEMENT OFFICERS CRIMINAL PROCEDURE MANUAL 86 n.13 (2d prtg. 1977) ("The authority granted under [Rule 14.1] may be questionable as a result of the decision in United States v. Di Re, 332 U.S. 581 (1948)."); LESLIE RUTLEDGE, OFFICE OF ARK. ATTORNEY GEN., ARKANSAS LAW ENFORCEMENT POCKET MANUAL 31–32 (7th ed. 2015) (failing to include an individual's person within the scope of a lawful warrantless vehicle search).

unamended in Arkansas since being adopted in 1976.[11] Thus, after forty-three years, the unanswered question about Rule 14.1's constitutionality persists. Answering that question presents the opportunity to tell the story of Rule 14.1. That story has a beginning, middle, and end.

This Article is the first of a three-piece series that begins the untold story of Rule 14.1. Throughout that story lives a unifying and thematic argument, which is that Rule 14.1 is unconstitutional. Part I of this Article offers the Fourth Amendment principles relevant to this piece and the federal history of the automobile exception. Part II then provides the modern application of the automobile exception. In doing so, this Article lays the groundwork necessary for understanding with precision why Arkansas's approach to the automobile exception is unequivocally unconstitutional.

I. THE HISTORY

The Fourth Amendment to the United States Constitution guarantees the right to be secure from unreasonable searches and seizures conducted by government officials.[12] The Fourth Amendment provides in relevant part: "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 Warrants shall issue, but upon probable cause, . . . particularly

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11. *Compare* ARK. R. CRIM. P. 14.1 *(*ARK. CRIM. CODE REVISION COMM'N, Proposed Official Draft 1974*)*, *with* ARK. R. CRIM. P. 14.1 (current through August 1, 2019).

12. U.S. CONST. amend. IV. The full text of the Fourth Amendment 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 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.

U.S. CONST. amend. IV. In essentially the same language, Article 2 Section 15 of the Arkansas Constitution also guarantees the right to be free from unreasonable searches and seizures conducted by government officials. ARK. CONST. art. 2, § 15. The full text of Article 2 Section 15 provides:

> The right of the people of this State 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 person or thing to be seized.

ARK. CONST. art. 2, § 15.

describing the place to be searched . . .."[13] For Fourth Amendment purposes, a "search" occurs when any government action: (1) invades an expectation of privacy that society would find as reasonable;[14] or (2) physically intrudes into one of the constitutionally protected areas enumerated in the Fourth Amendment[15]—i.e., persons, houses, papers, or effects.[16] Because a vehicle is an "effect,"[17] any government intrusion into a vehicle is considered a search under the Fourth Amendment.[18]

A search is constitutional under the Fourth Amendment if it is "reasonable."[19] It is a "cardinal principle" that all searches conducted *without a warrant* are presumed to be unreasonable "subject only to a few specifically established and well-delineated exceptions."[20] Such exceptions include, among others,[21] the automobile exception,[22] search incident to a lawful arrest,[23] exigent circumstances,[24] custodial inventory searches,[25] plain view,[26] consent,[27] and stop and frisk.[28] In sum, "the most

13. U.S. CONST. amend. IV.

14. California v. Ciraolo, 476 U.S. 207, 211 (1986).

15. United States v. Jones, 565 U.S. 400, 407 (2012).

16. U.S. CONST. amend. IV.

17. *Jones*, 565 U.S. at 404.

18. *See* U.S. CONST. amend. IV.

19. Kentucky v. King, 563 U.S. 452, 459 (2011).

20. United States v. Ross, 456 U.S. 798, 825 (1982).

21. *See generally* Craig M. Bradley, *Two Models of the Fourth Amendment*, 83 MICH. L. REV. 1468, 1473–74 (1985) (providing a list of the exceptions to the warrant and/or probable requirement of the Fourth Amendment).

22. California v. Acevedo, 500 U.S. 565, 580 (1991) (holding that the automobile exception permits a warrantless search of a vehicle and the containers within it where there is probable cause to believe contraband or evidence is located).

23. United States v. Robinson, 414 U.S. 218, 235 (1973) (holding that a police officer may warrantlessly search the person of an arrestee as incident to a lawful arrest).

24. *King*, 563 U.S. at 455 ("It is well established that 'exigent circumstances,' including the need to prevent the destruction of evidence, permit police officers to conduct an otherwise permissible search without first obtaining a warrant.").

25. Illinois v. Lafayette, 462 U.S. 640, 648 (1983) (holding "it is not 'unreasonable' for police, as part of the routine procedure incident to incarcerating an arrested person to search any container or article in his possession, in accordance with established inventory procedures."). The Supreme Court has also held that the inventory exception justifies a warrantless search of a vehicle. Colorado v. Bertine, 479 U.S. 367, 371 (1987) ("[I]nventory searches are now a well-defined exception to the warrant requirement of the Fourth Amendment.").

26. Horton v. California, 496 U.S. 128, 134 (1990) (explaining that a police officer may seize incriminating evidence in plain view when the officer: (1) observes the evidence from a lawful vantage point; (2) recognizes the incriminating nature of the evidence immediately; and (3) has lawful access to the evidence).

basic" Fourth Amendment rule in this area is that a warrantless search is unconstitutional if it does not fall within one of the "few specifically established and well-delineated exceptions" to the warrant requirement.[29]

The automobile exception was born on March 2, 1925, in the United States Supreme Court decision *Carroll v. United States*.[30] In *Carroll*, police officers observed two suspected bootleggers driving down a Michigan highway.[31] The officers subsequently stopped the vehicle in which the two men were riding, conducted a warrantless search of the vehicle, and found sixty-eight bottles of "intoxicating spirituous liquor."[32] At the outset, the Court's majority noted that there was a fundamental difference between a warrantless search of a vehicle and a building—specifically, one was mobile and one was not.[33] The Court reasoned that it would be "impossible" to secure a warrant to stop and search a vehicle before it and the contraband inside were beyond the reach of law enforcement.[34] Thus, the Court held that a police officer may warrantlessly search a vehicle if the officer has probable cause to believe that the vehicle's contents "offend against the law."[35] The Court concluded that the police officers in *Carroll* had probable cause to believe that the vehicle contained illegal liquor; therefore, the warrantless search was constitutional.[36]

Twenty-three years later, the Supreme Court considered the scope of the automobile exception in *United States v. Di Re*.[37] In *Di Re*, Michael Di Re was sitting inside a parked car with two men, one of whom was a police informant and the other was

27. Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) ("It is equally well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.").

28. Terry v. Ohio, 392 U.S. 1, 30 (1968) (holding that a police officer with reasonable suspicion to believe that a person is involved in criminal activity, may stop the person to investigate; and the officer may pat down the person's outer clothing for firearms *if* the officer has additional reasonable suspicion to believe that the person is armed and dangerous).

29. Coolidge v. New Hampshire, 403 U.S. 443, 454–55 (1971).

30. Carroll v. United States, 267 U.S. 132, 158–59 (1925).

31. *Id.* at 134–36.

32. *Id.*

33. *Id.* at 151.

34. *Id.* at 146.

35. *Carroll*, 267 U.S. at 158–59.

36. *Id.* at 162.

37. United States v. Di Re, 332 U.S. 581, 584 (1948).

suspected by police to be in possession of "counterfeit gasoline ration coupons."[38] Police officers made contact with the three men inside the vehicle and saw that the informant was holding two fake gasoline coupons.[39] Although the informant singled out the suspect, the officers "thoroughly searched" Di Re's person and found additional fraudulent coupons.[40]

The government argued that the automobile exception justified the warrantless search of Di Re's person because he was inside a vehicle and the contraband sought—the coupons—were small enough to be concealed on his person.[41] The Supreme Court, however, was unpersuaded.[42] In declining to expand the scope of the automobile exception to include warrantless searches of people, the Court wrote, "[w]e are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled."[43] Thus, the Court held that the warrantless search of Di Re's person was unconstitutional under the Fourth Amendment.[44]

In 1970, another novel question related to the automobile exception was presented to the Supreme Court in *Chambers v. Maroney*; specifically, *when* must a police officer search a car pursuant to the automobile exception.[45] In *Chambers*, police officers stopped a station wagon carrying four men suspected of robbing a gas station.[46] After arresting the men, the officers towed the station wagon back to the police station, searched it without a warrant, and found evidence of the robbery.[47] The Court reasoned that, assuming probable cause to search exists, the automobile exception permits a police officer to warrantlessly search a vehicle either: (1) immediately when it is seized; or (2) after it is seized and taken to a police station.[48] The Court explained that neither probable cause to search a

38. *Id.* at 583.
39. *Id.*
40. *Id.*
41. *Id.* at 584.
42. *Di Re*, 332 U.S. at 587.
43. *Id.* at 581.
44. *Id.*
45. Chambers v. Maroney, 399 U.S. 42, 43 (1970).
46. *Id.* at 44.
47. *Id.*
48. *Id.* at 52.

vehicle nor the vehicle's ready mobility ceases to exist simply because the vehicle is searched at a later than immediate time.[49] Thus, the Court held that the warrantless vehicle search in *Chambers* was constitutional.[50]

Carroll, *Di Re*, and *Chambers* each played critical roles in developing the automobile exception, but many questions remained unanswered.[51] For example, the Court in *Chambers* held that a vehicle could be searched so long as it retained its ready mobility, but the Court failed to define what the term "ready mobility" meant.[52] Additionally, in *Di Re*, the Supreme Court held that the automobile exception did not justify a warrantless search of a person, but it said nothing about a person's belongings or containers inside a vehicle.[53] Beginning in 1977, the latter issue—or what this Article calls "the container issue"—became a focal point of the Supreme Court's automobile exception jurisprudence.

In 1977, the Supreme Court first addressed the container issue in *United States v. Chadwick*.[54] In *Chadwick*, federal agents observed two men carry a double locked footlocker onto a train traveling from San Diego to Boston.[55] The agents observed that the locker appeared to be very heavy and was leaking talcum powder, which is often used to hide the smell of narcotics.[56] Once the two men arrived in Boston, they carried the locker off the train and placed it inside the trunk of a waiting vehicle.[57] At that point, the two men were arrested by federal

49. *Id.*

50. *Chambers*, 399 U.S. at 52.

51. In 1971, the Supreme Court retreated from the position it took in *Chambers* and held that the automobile exception did not justify three warrantless searches of a vehicle, all of which occurred after the vehicle came into police custody. Coolidge v. New Hampshire, 403 U.S. 443, 464 (1971). The Court reasoned that although probable cause to search the vehicle existed, "no exigent circumstances justified the police in proceeding without a warrant." *Id.* In 1985, however, the Court returned to the position it took in *Chambers* in *California v. Carney*. California v. Carney, 471 U.S. 386, 392 (1985). In *Carney*, the Court held that no separate exigency was required to search a vehicle pursuant to the automobile exception, "so long as the overriding standard of probable cause is met." *Id*.

52. *Chambers*, 399 U.S. at 52.

53. United States v. Di Re, 332 U.S. 581, 587 (1948).

54. United States v. Chadwick, 433 U.S. 1, 3 (1977), *abrogated by* California v. Acevedo, 500 U.S. 565 (1991).

55. *Id.*

56. *Id.*

57. *Id.* at 3–4.

agents, and a subsequent warrantless search of the footlocker revealed a large amount of marijuana.[58] The Court explained that the automobile exception could not justify the search because the agents believed the footlocker contained contraband—not the automobile itself—and no exigent circumstances justified the agents acting without a search warrant.[59] The Court reasoned that the footlocker's ready mobility terminated once it came into the exclusive control of the agents.[60] Accordingly, the Court held that the warrantless search in *Chadwick* was unconstitutional.[61]

The Supreme Court reaffirmed its decision in *Chadwick* just two years later in *Arkansas v. Sanders*.[62] In *Sanders*, police officers received a tip that Lonnie Sanders would arrive at the Little Rock, Arkansas, airport carrying a green suitcase filled with marijuana.[63] As predicted, officers observed Sanders arrive at the airport and get into a taxicab carrying a green suitcase.[64] Officers subsequently stopped the taxi, found the suitcase inside, and searched it without permission or a warrant.[65] The search revealed over nine pounds of marijuana.[66] Reaffirming its decision in *Chadwick*, the Court held that the automobile exception did not justify the warrantless search of the suitcase because its ready mobility terminated once it came within police custody.[67] Thus, the Court held that the warrantless search of the suitcase violated the Fourth Amendment.[68]

In 1982, the container issue returned to the Supreme Court with a factual twist in *United States v. Ross*.[69] In *Ross*, police officers learned from an informant that a man known as

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58. *Id.* at 4–5.

59. *Chadwick*, 433 U.S. at 15.

60. *Id.*

61. *Id.* at 15–16.

62. Arkansas v. Sanders, 442 U.S. 753, 763–64 (1979), *abrogated by* California v. Acevedo, 500 U.S. 565 (1991).

63. *Id.* at 755.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Sanders*, 442 U.S. at 763–64.

68. *Id.* at 766. The Supreme Court reaffirmed its decisions in *Chadwick* and *Sanders* in 1981 in *Robbins v. California*. Robbins v. California, 453 U.S. 420, 428 (1981), *overruled by* United States v. Ross, 456 U.S. 798 (1982). In *Robbins*, the Court held that a container found inside a vehicle, during a lawful search of that vehicle, could not be searched without a warrant. *Id.*

69. United States v. Ross, 456 U.S. 798, 800 (1982).

"Bandit"—later identified as Albert Ross—was selling drugs out of his car.[70] Officers subsequently located Ross driving the suspected mobile-dispensary, arrested him, and drove the car back to a police station to be searched for drugs.[71] Unaware with any specificity where the drugs were located, the officers warrantlessly searched the vehicle's trunk and found a brown paper sack and a red leather pouch.[72] The officers then warrantlessly searched both the paper sack and the pouch, finding heroin and a large amount of cash, respectively.[73]

Pause: did you catch what made the container search in *Ross* factually different from those in *Chadwick* and *Sanders*? In both *Chadwick* and *Sanders*, police officers suspected that a specific container inside a car—a footlocker and suitcase, respectively—contained contraband.[74] In *Ross*, however, the officers suspected contraband was inside a car, but did not know where exactly it was located within.[75] Based on that factual difference, the Supreme Court distinguished *Ross* from *Chadwick* and *Sanders* and held that "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search."[76] The Court reasoned that the scope of the automobile exception "is defined by the object of the search and the places in which there is probable cause to believe that it may be found."[77] As the Court illustrated, "[p]robable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab."[78] Since the officers in *Ross* had probable cause to believe the car contained contraband—without knowing exactly where it was located—the warrantless searches of the brown paper sack and the leather pouch were constitutional.[79]

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70. *Id.*
71. *Id.* at 801.
72. *Id.*
73. *Id.*
74. United States v. Chadwick, 433 U.S. 1, 3 (1977), *abrogated by* California v. Acevedo, 500 U.S. 565 (1991); Arkansas v. Sanders, 442 U.S. 753, 755 (1979), *abrogated by* California v. Acevedo, 500 U.S. 565 (1991).
75. *Ross*, 456 U.S. at 801.
76. *Id.* at 825.
77. *Id.* at 824.
78. *Id.*
79. *Id*.

Confused? So were lower courts and police officers.[80] In the wake of *Ross*, two lines of authority emerged that could not be completely reconciled with one another.[81] Under the *Carroll-Chambers-Ross* line of cases, a police officer with probable cause to believe that contraband was located inside a specific container within a vehicle could warrantlessly search the vehicle to find that container, but could not search the container without a warrant.[82] Under the *Chadwick-Sanders* line of cases, however, an officer with probable cause to believe that contraband was located inside a vehicle, without knowing exactly where the contraband would be found, could warrantlessly search every part of the vehicle and any container capable of concealing the object of the search.[83] Ironically, the more likely a police officer was to discover contraband in a container, the less authority the officer had to search the container.[84]

In 1985, the Supreme Court took a brief detour from the container issue to define the word 'vehicle' in *California v. Carney*.[85] In *Carney*, agents from the Drug Enforcement Agency learned that Charles Carney was trading marijuana to minors in exchange for sexual favors inside his motorhome.[86] At the agents' request, a police informant went to the motorhome and knocked on its door, at which point Carney stepped outside and the agents identified themselves.[87] Without a warrant or consent, the agents searched the motorhome and found marijuana, plastic bags, and a scale.[88]

Simply put, the question in *Carney* was whether the motorhome was a 'vehicle' for Fourth Amendment purposes that could be warrantlessly searched pursuant to the automobile exception.[89] To answer that question, the Court relied on five factors: (1) the location of the vehicle; (2) whether the vehicle is "readily mobile or instead, for instance, elevated on blocks;" (3)

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80. California v. Acevedo, 500 U.S. 565, 577 (1991).
81. *Id.*
82. *Id.* at 574.
83. *Id.* at 575.
84. *Id.*
85. California v. Carney, 471 U.S. 386, 390 (1985).
86. *Id.* at 388.
87. *Id.*
88. *Id.*
89. *See id.* at 387.

whether the vehicle is licensed; (4) whether the vehicle is "connected to utilities;" and (5) whether the vehicle has "convenient access to a public road."[90] Applying those factors, the Court concluded that Carney's motorhome was a vehicle for Fourth Amendment purposes, and, therefore, the automobile exception justified the warrantless search.[91]

In 1991, the Supreme Court returned to the container issue in *California v. Acevedo*.[92] In *Acevedo*, police officers observed Charles Acevedo leave an apartment, which was known to contain a large amount of marijuana, carrying a brown paper bag.[93] Officers then watched Acevedo place the paper bag in the trunk of a car before driving away.[94] "Fearing the loss of evidence," the officers stopped the car Acevedo was driving, opened the trunk and the brown paper bag inside, and found marijuana.[95]

The question in *Acevedo* was which line of automobile exception authority applied, *Carroll-Chambers-Ross* or *Chadwick-Sanders*?[96] After examining the two lines of authority, the Court's majority concluded that the *Chadwick-Sanders* rule was "the antithesis of a 'clear and unequivocal' guideline."[97] To establish a "rule to govern [all] automobile searches," the Court held that the interpretation of the automobile exception set forth in *Ross* applied "to all searches of

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90. *See Carney*, 471 U.S. at 394 n.3. Federal Courts of Appeal have since used the *Carney* factors to apply the automobile exception to houseboats. *E.g.*, United States v. Albers, 136 F.3d 670, 673 (9th Cir. 1998) (holding "that the vehicle exception applies to houseboats so long as *Carney*'s requirements are met"); United States v. Hill, 855 F.2d 664, 668 (10th Cir. 1988) (holding that a houseboat traveling on a large lake falls within the automobile exception by analogy to the Supreme Court's decision in *Carney*). Additionally, the Fourth Circuit has relied on *Carney* to uphold a warrantless search of a person's private sleeping compartment on a train. United States v. Whitehead, 849 F.2d 849, 854 (4th Cir. 1988), *abrogated by* Gozlon-Peretz v. United States, 498 U.S. 395 (1991).

91. *See Carney*, 471 U.S. at 394. The majority in *Carney* also explained the automobile exception has two underlying justifications: (1) a vehicle is "readily mobile by the turn of an ignition key, if not actually moving;" and (2) an individual has a "reduced expectation of privacy" in an automobile that stems from its highly regulated nature. *Id.* at 392–93.

92. California v. Acevedo, 500 U.S. 565, 566 (1991).

93. *Id.* at 567.

94. *Id.*

95. *Id.*

96. *See id.* at 573.

97. *Acevedo*, 500 U.S. at 577.

containers found in an automobile."[98] Stated differently, the Court held that a police officer may warrantlessly "search an automobile and the containers within it *where* they have probable cause to believe contraband or evidence is contained."[99] Since the officers in *Acevedo* had probable cause to believe the brown paper bag in the vehicle's trunk contained marijuana, the automobile exception justified both the warrantless search of the vehicle to find the bag and the warrantless search of the bag itself.[100]

As a quick digression, it is important to note that the Court's holding in *Acevedo* did not expand the scope of the automobile exception as established in *Ross*.[101] To illustrate, the *Acevedo* majority explained that the automobile exception justified the warrantless searches of the trunk and bag because the officers had probable cause to believe that the paper bag contained marijuana.[102] Hypothetically, had the police officers warrantlessly searched the entire passenger compartment, the automobile exception would *not* have justified the search because the officers only had probable cause to believe contraband was located in the paper bag in the trunk.[103] Before moving forward, consider one last example from the majority's opinion in *Ross*: "Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase."[104]

Acevedo may have established a "rule to govern all automobile searches,"[105] but one question related to the container issue remained unanswered: Does the automobile exception permit an officer to search containers that *belong to a passenger*?

In 1999, the Supreme Court set out to answer that very question in *Wyoming v. Houghton*.[106] In *Houghton*, a patrol

98. *Id.* at 579.
99. *Id.* at 580 (emphasis added).
100. *See id.*
101. *Id.*
102. *Acevedo*, 500 U.S. at 580.
103. *See id.*
104. United States v. Ross, 456 U.S. 798, 824 (1982).
105. *Acevedo*, 500 U.S. at 580.
106. Wyoming v. Houghton, 526 U.S. 295, 297 (1999).

officer stopped a vehicle carrying three occupants, one of whom was Sandra Houghton, after the driver committed a traffic violation.[107] The officer noticed a hypodermic syringe in the driver's shirt pocket and subsequently conducted a warrantless search of the vehicle.[108] During that search, the officer found a purse on the backseat, which Houghton claimed was hers.[109] The officer then searched Houghton's purse without a warrant and found methamphetamine and drug paraphernalia.[110] Expanding the scope of the automobile exception, the Court's majority held that a police officer with probable cause to search a vehicle could search "passengers' belongings found in the car that are capable of concealing the object of the search."[111] Since the officer had probable cause to search the vehicle, the automobile exception justified the warrantless search of Houghton's purse.[112]

With its decision in *Houghton*, the Supreme Court put the container issue in its rearview mirror—at least for the time being. But before moving to the final Supreme Court case of Part I, there is one additional aspect of *Houghton* that deserves discussion. Specifically, the *Houghton* Court reiterated the principle established in *Di Re* that the Fourth Amendment provides greater protection against warrantless searches of individuals' persons than it does against warrantless searches of vehicles and containers.[113] Stated differently, whereas an individual has a "considerably diminished" expectation of privacy in a vehicle and its contents, an individual has a "unique, significantly heightened" expectation of privacy in his or her person.[114] In his concurrence with the *Houghton* majority, Justice Breyer clarified the matter further:

> I would point out certain limitations upon the scope of the bright-line rule that the Court describes. Obviously, the rule applies *only to automobile searches*. Equally obviously, the rule applies *only to containers found within automobiles*.

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107. *Id.* at 297–98.
108. *Id.* at 298.
109. *Id.*
110. *Id.*
111. *Houghton*, 526 U.S. at 307.
112. *Id.*
113. *Id.* at 303.
114. *Id.* at 303–04.

> And *it does not extend to the search of a person* found in that automobile.[115]

In sum, the Supreme Court in *Houghton* expanded the scope of the automobile exception to include passengers' belongings, but reiterated the principle that the automobile expectation does not justify a warrantless search of a person.[116]

Most recently, in 2018, the Supreme Court set another limitation on the scope of the automobile exception in *Collins v. Virginia*.[117] In *Collins*, a police officer attempted to stop a man driving a motorcycle, later identified as Ryan Collins, for committing a traffic violation, but Collins fled and escaped.[118] Officer David Rhodes later determined that the motorcycle, believed to be stolen, was parked in the driveway of Collins's girlfriend.[119] Officer Rhodes went to the home and observed what appeared to be the motorcycle underneath a tarp in the driveway.[120] Acting without a warrant, Officer Rhodes walked up the driveway, removed the tarp, and discovered the motorcycle.[121]

The issue in *Collins* was whether the automobile exception permits a warrantless search of a home or its curtilage.[122] The Court held, "it does not."[123] In holding that the warrantless search of the motorcycle violated the Fourth Amendment, the Court reaffirmed the principle that "the scope of the automobile exception extends no further than the automobile itself."[124] The Court explained that none of its prior decisions supported expanding the scope of the automobile exception to a constitutionally protected area outside of a vehicle.[125] To do so, the Court reasoned, would "undervalue the core Fourth

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115. *Id.* at 307–08 (Breyer, J., concurring) (emphasis added).

116. *See* WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 3.7(C) (4th. ed. 2018) ("*Di Re* was not overturned but only distinguished when the Court later confronted the related question of when a passenger's effects may be searched.").

117. Collins v. Virginia, 138 S. Ct. 1663, 1668 (2018).

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Collins*, 138 S. Ct. at 1668. As the majority explained in *Collins*, curtilage is defined as "the 'area immediately surrounding and associated with the home.'" *Id.* at 1666 (quoting Florida v. Jardines, 569 U.S. 1, 6 (2013)).

123. *Id.* at 1668.

124. *Id.* at 1671.

125. *Id.*

Amendment protection" and "'untether' the automobile exception 'from the justifications underlying it.'"[126] Thus, the warrantless search in *Collins* violated the Fourth Amendment.[127]

II. MODERN APPLICATION

Although the history of the automobile exception is long and often convoluted, its modern application can be understood by breaking it down into five simple components: (1) the justification requirement—i.e., the suspicion an officer needs to search; (2) the scope requirement—i.e., the areas an officer may search; (3) the timing requirement—i.e., when an officer may search; (4) the rationale—i.e., the reason behind the exception; and (5) the general rule—i.e., components one through four packaged together.[128] The remainder of this Article summarizes the modern application of each of those components.

Beginning with the justification requirement, a police officer must have probable cause to believe that a readily mobile vehicle contains contraband in order to search that vehicle without a warrant.[129] A police officer has probable cause to search a vehicle when the facts available to the officer "would 'warrant a [person] of reasonable caution in the belief' that contraband or evidence of a crime" is located inside the vehicle.[130] To be clear, any warrantless search of a vehicle based upon a standard less than "probable cause violates the Fourth Amendment."[131]

As for the scope requirement, a police officer may search any part of a vehicle, including the containers within, where the officer has probable cause to believe contraband or evidence of a

126. *Id.*

127. *Collins*, 138 S. Ct. at 1675.

128. All credit for this framework must go to the author's criminal procedure professor, Brian Gallini, who taught it both in his lectures and textbook. *See* BRIAN R. GALLINI, INVESTIGATIVE CRIMINAL PROCEDURE: INSIDE THIS CENTURY'S MOST (IN)FAMOUS CASES 547–48 (W. Acad. Publ'g ed., 1st ed. 2019) ("Consider organizing the law governing each investigative activity (or exception) by answering the same five questions for each one: (1) What is the general rule? (2) What are the specific justification requirements? (3) What are the scope requirements; (4) timing? (5) General Rationale?").

129. United States v. Ross, 456 U.S. 798, 806–08 (1982).

130. Florida v. Harris, 568 U.S. 237, 243 (2013).

131. Felders *ex rel.* Smedley v. Malcom, 755 F.3d 870, 879 (10th Cir. 2014).

crime will be found.[132] Stated differently, the scope of the automobile exception "is defined by the object of the search and the places in which there is probable cause to believe that it may be found."[133] The scope of the automobile exception does not, however, extend to warrantless searches of people,[134] or homes.[135]

The timing requirement permits a police officer to warrantlessly search a vehicle either: (1) immediately when the officer develops probable cause to search it; or (2) at a later time so long as the vehicle retains its ready mobility.[136] Relatedly, and component number four, the rationale underlying the automobile exception is twofold: (1) a vehicle is "readily mobile by the turn of an ignition key, if not actually moving;" and (2) individuals have a "reduced expectation of privacy" when traveling in a vehicle, which stems from its highly regulated nature.[137]

Packaging the previous four components together, the general rule of the automobile exception is as follows: A police officer may warrantlessly search any part of a readily mobile vehicle, and the containers within it, where the officer has probable cause to believe contraband is located, either immediately or at a later time assuming the vehicle retains its ready mobility,[138] but the officer may not search an occupant of the vehicle or a home.[139]

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132. Wyoming v. Houghton, 526 U.S. 295, 307 (1999) (expanding the scope of the automobile exception to include warrantless searches of passengers' belongings and containers within the vehicle); California v. Acevedo, 500 U.S. 565, 580 (1991) (holding that a police officer may warrantlessly search a vehicle and the containers therein where the officer has probable cause to believe contraband will be found).

133. *Ross*, 456 U.S. at 824.

134. United States v. Di Re, 332 U.S. 581, 587 (1948).

135. Collins v. Virginia, 138 S.Ct. 1663, 1668 (2018).

136. Chambers v. Maroney, 399 U.S. 42, 52 (1970).

137. California v. Carney, 471 U.S. 386, 392–93 (1985).

138. Wyoming v. Houghton, 526 U.S. 295, 307 (1999) (holding that the automobile exception justifies warrantless searches of passengers' belongings); California v. Acevedo, 500 U.S. 565, 580 (1991) (holding a police officer with probable cause is justified in warrantlessly searching any part of a vehicle and the containers within where the officer has probable cause to believe contraband will be found); *Chambers*, 399 U.S. at 52 (holding that the automobile exception justifies a warrantless search of a vehicle either immediately when probable cause to search is established or at a later time as long as the vehicle retains its ready mobility).

139. *Collins*, 138 S.Ct. at 1668 (holding the automobile exception does not justify a warrantless search of a home or its curtilage); *Di Re*, 332 U.S. at 587 (holding the automobile exception does not justify a warrantless search of a person).

III. CONCLUSION

At this point, we now understand the fundamental principles of the Fourth Amendment's automobile exception. For review, the Fourth Amendment protects a person's right to be free from "unreasonable searches and seizures."[140] A warrantless search is only reasonable if it is justified by one of the "specifically established and well-delineated exceptions" to the warrant requirement.[141] First recognized by the Supreme Court in 1925,[142] the automobile exception justifies a warrantless search of a vehicle and its containers where there is probable cause to believe contraband is located.[143] In the nine decades since, the Court has never expanded the scope of the automobile exception to justify a warrantless search of a person.[144] To the contrary, the Supreme Court has reiterated time and again that the Fourth Amendment provides enhanced protection against warrantless searches of individuals' persons.[145] Simply put, the automobile exception "does not declare a field day for the police . . . ."[146]

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140. Cupp v. Murphy, 412 U.S. 291, 294 (1973).

141. Coolidge v. New Hampshire, 403 U.S. 443, 454–55 (1971).

142. Carroll v. United States, 267 U.S. 132, 158–59 (1925).

143. *Acevedo*, 500 U.S. at 580.

144. State v. Funkhouser, 782 A.2d 387, 397 (Md. Ct. Spec. App. 2001) ("There has never been a[n automobile exception] search of a person.").

145. *See, e.g.*, Wyoming v. Houghton, 526 U.S. 295, 303–04 (1999) (explaining that there is a "unique [and] significantly heightened" expectation of privacy in one's person, which is distinguishable from the "considerably diminished" expectation of privacy one has in the contents of a vehicle); New York v. Class, 475 U.S. 106, 112 (1986) ("A citizen does not surrender all the protections of the Fourth Amendment by entering an automobile."); Ybarra v. Illinois, 444 U.S. 85, 91 (1979) (explaining that an individual's person cannot be warrantlessly searched simply because there exists probable cause to search the area where the individual happens to be); Terry v. Ohio, 392 U.S. 1, 24–25 (1968) ("Even a limited search of the outer clothing for weapons constitutes a severe, though brief, intrusion upon cherished personal security"); United States v. Di Re, 332 U.S. 581, 587 (1948) ("We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled."); Union Pac. Ry. Co. v. Botsford, 141 U.S. 250, 251 (1891) ("No right is held more sacred, or is more carefully guarded, by common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.").

146. Almeida-Sanchez v. United States, 413 U.S. 266, 269 (1973).

This Article provides just the foundation—the Supreme Court precedent—necessary to understand the full backdrop against which Arkansas adopted Rule 14.1.[147] But what if I told you that the Supreme Court did not pave the only road forward? What if I told you that the American Law Institute paved its own road? What if I told you that Arkansas took the one less traveled by? What if I told you that made all the difference?[148]

147. "If you don't know where you are going any road will get you there." Lewis Carroll, *Alice in Wonderland*, GOODREADS, [https://perma.cc/A8WK-GY4R] (last visited Sept. 17, 2019).

148. This conclusion is loosely based off Robert Frost's *The Road Not Taken*. *See* Robert Frost, *The Road Not Taken*, POETS.ORG, [https://perma.cc/HF6V-C892] (last visited Sept. 17, 2019).

APPENDIX

Arkansas Rule of Criminal Procedure 14.1: An Anomaly Nationwide

State	Statutes of Criminal Procedure	Rules of Criminal Procedure
Alabama	ALA. CODE §§ 15–5–1 to –19 (Westlaw through Act 2019–540)	ALA. R. CRIM. P. 3.6–.13
Alaska	ALASKA STAT. ANN. §§ 12.35.010–.120 (West, Westlaw through 2019 legislation)	ALASKA. R. CRIM. P. 37
Arizona	ARIZ. REV. STAT. ANN. §§ 13–3911 to –3925 (Westlaw through 2019 Legis. Sess.)	ARIZ. R. CRIM. P. 1.1
Arkansas	ARK. CODE ANN. §§ 16–80 to –104 (West, Westlaw through 2019 Legis. Sess.)	ARK. R. CRIM. P. 14.1
California	CAL. PENAL CODE §§ 1523–1542.5 (West, Westlaw through 2019 Legis. Sess.)	CAL. CRIM. R. 4.1
Colorado	COL. REV. STAT. ANN. §§ 16–3–103, 310 (West, Westlaw through 2019 Legis. Sess.)	COLO. R. CRIM. P. R. 41
Connecticut	CONN. GEN. STAT. ANN. §§ 54–33a, –33m (West, Westlaw through 2019 Legis. Sess.)	CONN. PRACTICE BOOK § 36–1
Delaware	DEL. CODE ANN. tit. 11, §§ 2301–2311 (West, Westlaw through 2019–2020 Sess.); DEL. CODE ANN. tit. 11, §§ 2322–2323 (West, Westlaw	DEL. SUPER. CT. CRIM. R. 41

	through 2019–2020 Sess.)	
District of Columbia	D.C. CODE ANN. § 23–524 (West, Westlaw through 2019)	D.C. SUPER. CT. R. CRIM. P. 41
Florida	FLA. STAT. ANN. § 933.19 (West, Westlaw through 2019 Legis. Sess.)	FLA. R. CRIM. P. 3.010
Georgia	GA. CODE ANN. § 17–5–1 (West, Westlaw through 2019 Sess.)	GA. SUPER CT. R. 1
Hawaii	HAW. REV. STAT. ANN. § 803–31 to –38 (West, Westlaw through 2019 Act 286)	HAWAII R. PENAL P. 41
Idaho	IDAHO CODE ANN. §§ 19–4401 to –4420 (West, Westlaw through 2019 Legis. Sess.)	IDAHO CRIM. R. 41
Illinois	725 ILL. COMP. STAT. ANN. 5/108–1 (West, Westlaw through P.A. 101–115)	ILL SUP. CT. R. 1
Indiana	IND. CODE ANN. § 35–33–5–1 to –15 (West, Westlaw through 2019 Legis. Sess.)	IND. R. CRIM. P. 1
Iowa	IOWA CODE ANN. §§ 801.1–.15 (West, Westlaw through 2019 Legis. Sess.)	IOWA R. CRIM. P. 2.1, 2.12
Kansas	KAN. STAT. ANN. §§ 22–2502 to –2530 (West, Westlaw through 2019 Legis. Sess.)	N/A*
Kentucky	KY. REV. STAT. ANN. § 431.005 (West, Westlaw through 2019 Legis. Sess.)	KY. R. CRIM. P. 13.10

Louisiana	LA. STAT. ANN. § 15:41–:43 (Westlaw through 2019 Legis. Sess.)	LA. CODE CRIM. PROC. ANN. art. 161–167
Maine	ME. REV. STAT. ANN. tit. 15, § 55 (Westlaw through 2019 legislation)	ME. U. CRIM. P. R. 41–41C
Maryland	MD. CODE ANN., CRIM. PROC. § 1–203 (West, Westlaw through 2019 Legis. Sess.); MD. CODE ANN., CRIM. PROC. § 12–204 to –205 (West, Westlaw through 2019 Legis. Sess.)	MD. RULES, R. 4–601
Massachusetts	MASS. GEN. LAWS. ANN. ch. 276, §§ 1–4 (West, Westlaw through 2019 Sess.)	MASS. R. CRIM. P. 1
Michigan	MICH. COMP. LAWS ANN. § 760.1 (West, Westlaw through P.A. 2019, No. 57)	MICH. CT. R. 6.001
Minnesota	MINN. STAT. ANN. §§ 626.04–.18 (West, Westlaw through 2019 legislation); MINN. STAT. ANN. §§ 626.21–.22 (West, Westlaw through 2019 legislation)	MINN. R. CRIM. P. 36.01–.08; MINN. R. CRIM. P. 37.01–.02
Mississippi	MISS. CODE ANN. § 99–15–11 (West, Westlaw through 2019 legislation); MISS. CODE ANN. § 99–27–21 (West, Westlaw through 2019 legislation)	MISS. R. CRIM. P. 4.1–4.4
Missouri	MO. ANN. STAT. §§ 542.266–.440 (West, Westlaw through 2019 Legis. Sess.)	MO. R. CRIM. P. 34.01
Montana	MONT. CODE ANN. §§ 46–5–101 to –403 (West, Westlaw through 2019 Sess.)	N/A*

Nebraska	NEB. REV. STAT. ANN. §§ 29–812 to –829 (West, Westlaw through 2019 Legis. Sess.)	N/A*
Nevada	NEV. REV. STAT. ANN. §§ 179.015–.115 (West, Westlaw through 2019 Legis. Sess.)	N/A*
New Hampshire	N.H. REV. STAT. ANN. §§ 595–A:1 to –A:9 (Westlaw through 2019 Legis. Sess.)	N.H. R. CRIM. P. 1
New Jersey	N.J. STAT. ANN. § 2A:152–1 (West, Westlaw through L. 2019, C. 266 and J.R. No. 22)	NJ. CT. R. CR. R. 3:5–8
New Mexico	N.M. STAT. ANN. § 31–1–1 (West, Westlaw through 2019 Legis. Sess.)	N.M. DIST. CT. R. CRIM. P. 5–211
New York	N.Y. CRIM. PROC. LAW §§ 690.05–.55 (McKinney, Westlaw through L. 2019)	N.Y. CT. RULES, § 200.1
North Carolina	N.C. GEN. STAT. ANN. §§ 15A–221 to –259 (West, Westlaw through S.L. 2018–145)	N/A*
North Dakota	N.D. CENT. CODE ANN. §§ 29–29v01 to –22 (West, Westlaw through 2019 legislation)	N.D. R. CRIM. P. 41
Ohio	OHIO REV. CODE ANN. § 2933.21–.31 (West, Westlaw through Files 1 to 14 2019–2020)	OHIO R. CRIM. P. 41
Oklahoma	OKLA. STAT. ANN. tit. 22, § 1221–1241 (West, Westlaw through 2019 legislation)	N/A*
Oregon	OR. REV. STAT ANN. §§ 133.525–.703 (West, Westlaw through 2019 legislation)	OR. UNIF. TR. CT. R. 1.010

Pennsylvania	42 PA. STAT. AND CONS. STAT. ANN. § 8702 (West, Westlaw through 2019 Act 75)	PA. R. CRIM. P. 200–212
Rhode Island	12 R.I. GEN. LAWS ANN. § 12–5–1 to –10 (West, Westlaw through 2019 Legis. Sess.)	R.I. SUPER. CT. R. CRIM. P. 41
South Carolina	S.C. CODE ANN. § 17–13–140 to –170 (Westlaw through 2019 legislation)	S.C. R. CRIM. P. 1
South Dakota	S.D. CODIFIED LAWS § 23A–35–1 to –14 (Westlaw through 2019 Sess.)	N/A*
Tennessee	TENN. CODE ANN. § 40–6–101 to –110 (West, Westlaw through 2019 Legis. Sess.)	TENN. R. CRIM. P. 41
Texas	TEX. CODE CRIM. PROC. ANN. art. 1.06 (West, Westlaw through 2019 Legis. Sess.)	N/A*
Utah	UTAH CODE ANN. § 77–23–201 (West, Westlaw through 2019 Sess.); UTAH CODE ANN. § 77–23–301 (West, Westlaw through 2019 Sess.)	UTAH R. CRIM. P. 40
Vermont	VT. STAT. ANN. tit. 13, § 4701–4701 (West, Westlaw through 2019–2020 Legis. Sess.)	VT. R. CRIM. P. 41
Virginia	VA. CODE ANN. § 19.2–53 (West, Westlaw through 2019 Legis. Sess.); VA. CODE ANN. § 19.2–59 (West, Westlaw through 2019 Legis. Sess.)	VA. R. SUP. CT. 3A:1
Washington	WASH. REV. CODE ANN. § 10.79.040 (West, Westlaw through 2019 Legis. Sess.)	WASH. SUPER. CT. CRIM. R. 2.3

West Virginia	W. VA. CODE ANN. § 62–1A–10 (West, Westlaw through 2019 Legis. Sess.)	W. VA. R. CRIM. P. 41
Wisconsin	WIS. STAT. ANN. § 968.10–.17 (West, Westlaw through 2019 Act 5)	N/A*
Wyoming	WYO. STAT. ANN. § 7–7–101 to –105 (West, Westlaw through 2019 Sess.)	WYO. R. CRIM. P. 41

* Indicates those states without statewide rules of criminal procedure.