**9.17 Particular Rights—Fourth Amendment—Unreasonable Search—Exception to Warrant Requirement—Emergency Aid**

In general, a search of a [person] [residence] [vehicle] [property] is unreasonable under the Fourth Amendment if the search is not conducted pursuant to a search warrant. [A “search warrant” is a written order signed by a judge that permits a law enforcement officer to search a particular person, place, or thing.] Under an exception to this rule, a search warrant is not required and a search is reasonable if, under all of the circumstances:

1. the police officer[s] had objectively reasonable grounds at the time of the entry or the search to believe that there was an emergency at hand and there was an immediate need to protect others or themselves from serious harm; and

2. the search’s scope and manner were reasonable to meet the need.

In order to prove the search in this case was unreasonable, the plaintiff must prove by a preponderance of the evidence that this exception to the warrant requirement does not apply.

**Comment**

Use this instruction only in conjunction with the applicable elements instructions, Instructions 9.3–9.8.

The Supreme Court has consistently recognized an emergency aid exception to the warrant requirement, which allows law enforcement officers to “enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.” *United States v. Snipe*, 515 F.3d 947, 951 (9th Cir. 2008) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)); *see also Bonivert v. City of Clarkston*, 883 F.3d 865, 877 (9th Cir. 2018) (noting that “the emergency exception is ‘narrow’ and ‘rigorously guarded’”).

The emergency doctrine recognizes that police function as community caretakers in addition to their roles as criminal investigators and law enforcers. *Espinosa v. City & County of San Francisco*, 598 F.3d 528, 534 (9th Cir. 2010).

As the Ninth Circuit has clarified, this exception has two requirements: “(1) considering the totality of the circumstances, law enforcement had an objectively reasonable basis for concluding that there was an immediate need to protect others or themselves from serious harm; and (2) the search’s scope and manner were reasonable to meet the need.”  *Sheehan v. City & County of San Francisco*, 743 F.3d 1211, 1221 (9th Cir. 2014), *rev’d in part on other grounds*, 575 U.S. 600 (2015) (quoting *Snipe*, 515 F.3d at 952); *see also Hopkins v. Bonvicino*, 573 F.3d 752, 763-66 (9th Cir. 2009) (explaining difference between emergency and related exigency exceptions).

Whether officers rely on the emergency aid or exigent circumstances exception to the Fourth Amendment’s general warrant requirement, they are required to conduct the search or seizure in a reasonable manner, including use of reasonable force. *Sheehan*, 743 F.3d at 1222 (applying Supreme Court’s excessive force standard under Fourth Amendment to both emergency aid and exigency exceptions). To assess whether the force used was reasonable, *see* Instruction 9.25 (Particular Rights—Fourth Amendment—Unreasonable Seizure of Person—Excessive Force).

A plaintiff alleging a § 1983 claim based on an unreasonable search in violation

of the Fourth Amendment has the burden of proving at trial that an asserted exception to the warrant requirement did not apply. *Larez v. Holcomb*, 16 F.3d 1513, 1517-18 (9th Cir. 1994); *see* *Mueller v. Auker*, 700 F.3d 1180, 1193 (9th Cir. 2012) (placing burden on plaintiff to establish absence of imminent danger in claim of interference with parent-child relationship); *Pavao v. Pagay*, 307 F.3d 915, 919 (9th Cir. 2002) (reaffirming that plaintiff in § 1983 action “carries the ultimate burden of establishing each element of his or her claim, including lack of consent [to search]”).

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