

## BUILDING OFFICIAL 2014 ENFORCEMENT REVIEW




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### DCJ HOUSING PROSECUTORS (current to 1/7/2014)



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## Performance Objectives

Students will be able to:

1. Understand that the duly empowered code official is a governmental official and, similarly to police, is bound to administer and enforce code in accordance with the U.S. Constitution and the applicable state constitution.
2. Know and understand the law generally concerning the authority and obligations of a code official to obtain code compliance through administration and enforcement.
3. Review the code official's right of entry onto private property as it relates to the Fourth Amendment, and the application procedure for an administrative search warrant.
4. Recognize the orders available for building officials and review when and how each are used in enforcement.
5. Explain general procedure for referring a case to civil and criminal court and what occurs during criminal prosecution.

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HOW ARE WE GOING TO MEET THE OBJECTIVES?



BY WHAT WE ARE GOING TO COVER:

- GOALS
- AUTHORITY
- RIGHT OF ENTRY/DENIAL OF ENTRY
- INSPECTION
- ABATEMENT PROCEDURE
- REFERRAL FOR CRIMINAL PROSECUTION
- PENDANCY OF CRIMINAL CASE
- CIVIL AND CRIMINAL COURT

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GOALS OF ENFORCEMENT



1. COMPLIANCE

Using the abatement process.

TIP FOR SUCCESS: Request a written plan of compliance; which should include proposed dates of completion for all work required by code.

2. CORRECT HUMAN BEHAVIOR

Introduce the importance of building and fire safety to landlords, tenants and the surrounding community.

3. IMPROVE COMMUNITY WELL BEING

Create safer and healthier communities by enforcement of required code standards.

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A real case study from Waterbury, 2011. The facts: A fire occurred in an attic apartment of a 4-family residence, with one fatality – the tenant in the unit. The victim died of smoke inhalation when his only exit was blocked by fire.

A joint investigation by CT local and state police, fire marshals and building officials determined that the building owner converted his 2-family into a 4-family apartment building without required permits or inspections. The attic apartment did not meet required building or fire safety code regulations including it lacked a secondary means of egress.

Charges were filed against the owner by the CT Chief State’s Attorney’s Office.

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## Owner pleads guilty to Manslaughter 2nd for Tenant's Death in Illegal Apartment

Courtesy of Waterbury Observer. Photographs By John Murray



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At a press conference held on October 19, 2012, Waterbury, CT Mayor O'Leary told the gathering that the city was sending out a loud message that it would not tolerate illegal housing.

Courtesy of Waterbury Observer. Photographs By John Murray



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### CGS 29-252 Purpose of the SBC.

- To regulate design, construction and use of buildings and structures to be erected.
- To regulate the alteration of buildings and structures already erected.
- To promote and ensure that buildings and structures are designed and constructed as to conserve energy and where practicable, facilitate the use of renewable energy resources.

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State Building Code includes...

- ..."any code, rule or regulation incorporated therein by reference". CGS 29-252(a).
- This includes the codes adopted by reference and incorporated in the 2005 CT Supplement to the CT State Building Code Sec. 29-252-1d.
- 2009 Amendments

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Also in CGS 29-252...

- (b) includes the appointment by the Governor of a State Building Inspector.
- (c) grants the State Building Inspector or his or her designee authority to issue official interpretations of the State Building Code upon request of any person, including interpretations on the applicability of the code.

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Also in CGS 29-252...

- (d) provides that the State Building Inspector shall review local building official decisions if he or she has reason to believe the official or local appeals board has misconstrued or misinterpreted any provision of the SBC.

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**Attorney General Confirms:**

- In Opinion No. 2005-032, Attorney General Richard Blumenthal wrote:
- “The State Building Inspector, as principal author of the State Building Code, may issue official interpretations of the Code or its particular provisions upon the request of any person. CGS 29-252(c). As discussed below,...

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- ...it is our opinion that the State Building Inspector also has the clear statutory authority to review the actions of a local building official to determine whether the local building official has misconstrued or misinterpreted the State Building Code and, if so, issue any orders the State Building Inspector deems to be appropriate.”

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**CGS 29-253**

**Applicability to municipalities.**

- (a) The SBC is applicable to all towns, cities and boroughs. Repeated in SBC 101.1.1
- (b) Does not prevent adoption of a local demolition ordinance for unsafe buildings. “Unsafe building” is defined as constituting a fire hazard or otherwise dangerous to human life or public welfare.

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**CGS 29-254a  
PENALTY.**

- Violation the CT State Building Code is a **crime**, categorized as a B Misdemeanor.  
See P.A. 12-80 for change from unclassified.
- Each violation is a separate offense punishable by not less than two hundred and not more than one thousand dollars or imprisonment of not more than six months or both.

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**CGS 29-254: Amendments, variations and exemptions.**

- May be granted by the State Building Inspector where strict compliance entails practical difficulty or unnecessary hardship or otherwise adjudged unwarranted, provided that the intent of the law be observed and public welfare and safety be assured. These are published and online.
- Building official has **15 days** from receipt to forward application to the State Building Inspector with written comments.
- Decision of State Building Inspector appealable within 30 days to Codes and Standards.

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**Authority of Fire Marshals Unaffected**

- Nothing in the building section 1A of CGS chapter 541 limits the authority of the state or local fire marshal as provided in part II of that chapter. CGS 29-255.

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**Conflicts with CFSC?**

- **105.1.3 Connecticut State Fire Safety Code abatement.**  
Where conflicts exist between the requirements of this code and the requirements of Connecticut State Fire Safety Code abatement orders issued in writing by the local fire marshal with respect to existing buildings, the requirements of that portion of the **Connecticut State Fire Safety Code that regulates existing buildings shall take precedence.**  
**Exceptions:** New fire protection systems shall meet the requirements of Chapter 9 of this code, electrical work shall meet the requirements of the 2005 NFPA 70 National Electrical Code and structural and plumbing and mechanical work shall conform to the requirements of this code.

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**CGS 29-260**  
**Now, where you come in...**

- The controlling statute for all local building officials is CGS 29-260, which is titled: Municipal building official to administer code. Appointment. Dismissal.

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**CGS 29-260 ...**

- (a) States the municipal CEO shall appoint an officer to administer the code, known as the building official. Appointment is for a 4 year term and every 4 years thereafter.
- (b and c) Provide for dismissal of a building official who fails to perform his duties after due notice and hearing, with right of appeal.
- (d) Requires municipal ICC membership and fee payment.

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CGS 29-261  
Powers and duties.

- (b) The BO or ABO shall pass upon any question relative to the mode, manner of construction or materials to be used in the erection or alteration of buildings or structures, pursuant to the SBC and the rules and regulations of the Department of Public Safety.

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CGS 29-261  
Powers and duties, cont.

- (b, cont.) They shall require compliance with the provisions of the State Building Code, of all rules lawfully adopted and promulgated there under and of laws relating to the construction, alteration, repair, removal, demolition and integral equipment and location, use accessibility, occupancy and maintenance of buildings and structures, except as may be otherwise provided for.

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SBC 104.1

- Also authorizes and directs the BO to enforce the SBC.
- Gives authority to the BO to establish policies and procedures to clarify the application of its provisions and long as they are in compliance with the intent and purpose of the code.

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CGS 29-261  
Powers and duties, cont.

- (c) A BO may request proof of licensure at construction site of issued building permit.
- BO may notify the Commissioner of Consumer Protection of a license violation and issue an order for unlicensed person to **cease work** immediately.
- Order may be personally delivered or sent certified mail to permit holder. BO must be satisfied of compliance with licensing provisions before perform further work.

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CGS 29-261  
Powers and duties, cont.

- (d) The BO or ABO **shall have the right of entry** to such buildings and structures, except single family residences, for the proper performance of his duties between 9 am and 5 pm, except in case of emergency where he can enter anytime necessary in the interest of public safety.
- This power is repeated in **SBC 104.6**.

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CGS 29-261, cont.

- (e) requires that the BO **shall** immediately return the original plans and specifications of a single family dwelling or out-building immediately upon a written request of owner of the plans and specifications.

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**CGS 29-263**  
**Permit to construct or alter.**

- No building or structure shall be constructed or altered until **application** filed with the BO **and a permit** issued.
- Permit **shall** be issued or refused in whole or part within **30** days after application date.

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**SBC 105.3.1**  
**Action on application**

- Repeats the 30 day examination provision and adds that the **BO shall reject** the application in writing if it does not conform with the SBC and pertinent laws.
- Adds that the **BO shall issue** a permit as soon as practicable after the BO is satisfied the work conforms to **SBC and applicable laws, statutes regulations and ordinances.**

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**SBC 105.5**  
**Expiration of permit.**

- Permits become **invalid** if work is not commenced within 180 days after issuance, or if work is suspended or abandoned for 180 days after work commenced.
- The BO may grant one or more **extensions** of not less than 30 and not more than 180 days each if requested in writing and there is justifiable cause demonstrated.

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**SBC 105.5**  
Expiration of permit, cont.

- **Exception: The BO shall be permitted to specify not less than 30 nor more than 180 days for commencement of work under permits issued to abate an unsafe condition pursuant to SBC 115.**
- **Work performed under such permits shall be completed as expeditiously as possible.**

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**SBC Interpretation No. I-73-00**

- This interpretation states that failure to obtain a required permit is a violation of the SBC, which the BO would appropriately address by issuance both of a notice of violation and a stop work order.
- Penalties of SBC 118.2 for failure to comply with the stop work order would only apply if work continues without required permits after service of the order.

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**SBC Interpretation I-32-00**

- SBC Interpretation I-32-00 states that the work done without a permit prior to the stop work order is a violation of the SBC.
- The building official is within his right to pursue enforcement of a violation for work performed prior to issuance of the stop work order.

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**SBC Interpretation I-16-01**

- However, a BO cannot pursue a criminal prosecution without first serving a stop work order or a notice of violation.
- The SBC provides for prosecution of a building code violation in the event that the notice of violation is not complied with promptly.

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**SBC Interpretation I-16-01, cont.**

- In order for the person responsible for the violation to have an opportunity to correct the violation prior to prosecution, a notice of violation or stop work order **must** be issued.

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**CGS 29-263, cont.  
Review of plans**

- During the 30 day period, plans **shall** be reviewed for substantial compliance with the SBC.
- The local **fire marshal shall** where applicable also review the plans for compliance with the CT Fire Safety Code.

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**CGS 29-276c**  
**Architect or engineer sealed plans.**

- **Sec. 29-276c. Architect or engineer to seal plans and specifications, review implementation of design of certain buildings and issue statement of professional opinion re completed structure. Use groups.**  
 (a) Notwithstanding the provisions of chapter 390, if a proposed structure or addition is classified in any use group specified in subdivisions (1) to (3), inclusive, of subsection (b) of this section, the plans and specifications for such structure or addition shall be sealed by the licensed architect of record or professional engineer of record responsible for the design of the structure or addition. Such architect or engineer of record shall be retained and be responsible for the review of the implementation of the design of such structure or addition including the review of shop drawings and the observation of construction.

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**Architect or engineered plans, cont.**

- In the event such architect or engineer of record is unable to fulfill such review responsibilities, an additional architect or engineer shall be retained and the local building official shall be informed, in writing, of such retainer. If fabricated structural load-bearing members or assemblies are used in such construction, the licensed professional engineer responsible for the design of such members or assemblies shall be responsible for the implementation of said engineer's design by reviewing the fabrication process to ensure conformance with said engineer's design specifications and parameters.

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**Architect or engineered plans, cont.**

- **Sec. 29-276c(b)** Prior to the issuance of a certificate of occupancy for a proposed structure or addition classified in any use group specified in subdivisions (1) to (3), inclusive, of this subsection, the local building official shall require a statement signed by the architect of record or the professional engineer of record responsible for the design of the structure or addition or the additional architect or professional engineer retained pursuant to subsection (a) of this section, and by the general contractor involved in the construction of such structure or addition affirming their professional opinion that the completed structure or addition is in substantial compliance with the approved plans and specifications on file with such building official.

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CGS 29-263, cont.  
Who can be issued a permit?

- **Owner** of the affected premises or the owner's **authorized agent**.
- **SBC 105.3.3** further states that the permit application **shall** be made by the **owner in fee or authorized agent**. If made by authorized agent, agent must give an affidavit from owner in fee or applicant must sign a statement before the BO that he is authorized to make the application.

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Does a BO have to check a contractor's license?

- SBC Interpretation No. I-46-00 states that although the SBC has no requirement that a BO check a license, CGS 29-261 states generally that the BO **shall** require compliance with relating laws.

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Relating laws on contractors and permits

- **Home Improvement Contractors** can apply for a building permit if they display their name, business address and DCP registration number on the application for permit and displayed their Home Improvement Contractor certification to the BO. CGS 29-263.

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And...

- No BO shall issue a permit to a registered New Home Construction Contractor without the contractor presenting the certificate of registration and number. CGS 29-262.

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Contractor responsible for permit.

- Contractors who pull a permit shall cause work to be performed by a person who is licensed under the provisions of chapter 393. CGS 20-338a.

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Special rules on contractors and permits, cont.

- A licensed contractor or journeyman shall show licensing to any properly interested person upon request. CGS 20-341. BO is properly interested.

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29-263a Fire sprinkler system  
working drawing and licensure

- No BO shall accept or approve drawings or modifications of fire sprinkler installation, alteration or modification without proof of CT licensure as an automatic fire sprinkler layout technician or a professional engineer.

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CGS 29-264

- The State Building Inspector may approve plans to be utilized in more than one municipality for dwelling space of not more than two families upon application of builder.
- Local BO shall issue a building permit if plans bear the approval of the State Building Inspector and meet local ordinances.

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CGS 29-265  
Certificate of Occupancy

- (a) No building or structure erected or altered in a municipality after October 1, 1970 shall be occupied or used in whole or part until a certificate of occupancy has been issued by the BO, certifying that it or work performed by permit substantially conforms to the SBC.

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Zoning and Fire Approval required.

- No CO shall be issued for a building, use or structure subject to zoning regulations without the certification of the zoning official. SBC 110.1.1.
- No CO shall be issued for a building, use or structure subject to the CFSC without the certification of the local marshal. SBC 110.1.2.

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SBC 106.2.1  
Health approval required

- Approval of private sewage disposal systems by the local health director in writing shall be submitted to the BO prior to issuance of a building permit.

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What if...

...the owner of the property will not allow access for a final inspection for a certificate of occupancy?

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**SBC Interpretation I-11-03**

- “Assuming the work in question is within the dwelling unit and can only be inspected by entering the dwelling unit, it would be impossible for a BO to issue a CO for any construction that could not be inspected because the person in control the building denied entry to the BO for the purpose of performing the inspection.”

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**CGS 29-265, cont.**

- No requirement for removal, alteration or abandonment, or prevention of use or occupancy of any **single family** dwelling but within 6 years of the date of occupancy after substantial completion of construction of, alteration to or addition to such dwelling, or of a **building lawfully existing on October 1, 1945.**

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**CGS 29-265, cont.**

- The **use** of a building or premises **shall not** be deemed to be changed because of **temporary vacancy** or **change of ownership or tenancy.**
- **No BO shall** refuse to issue a CO for any single family not connected to electric utility if otherwise conforming with **local health codes** and equipped with an approved **alternative energy system.**

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**SBC 110.3**  
**Temporary occupancy.**

- **The BO may** issue a temporary CO before completion of all permitted work provided doing so would **not endanger life or public welfare.**
- Any such occupancy shall be discontinued within 30 days after completion of work unless a CO is issued by the BO.

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**CGS 29-265(a)**  
**Swimming pool permits**

- **No building permit shall** be issued for the construction or substantial alteration of a swimming pool at a residence occupied by, or being built for, one or more families unless a pool alarm is installed with the swimming pool.

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**CGS 29-393 Building inspectors;  
duties, right of entry.**

On receipt of information from the local fire marshal or from any other authentic source that any building in his jurisdiction, due to lack of exit facilities, fire, deterioration, catastrophe or other cause, is in such condition as to be a hazard to any person or persons, the building inspector shall immediately make an inspection by himself or by his assistant, and may make orders for additional exit facilities or the repair or alteration of the building if the same is susceptible to repair or both or for the removal of such building or any portion thereof if any such order is necessary in the interests of public safety. Any building inspector shall have the right of entry into all buildings for the performance of his duties between the hours of nine o'clock a.m. and five o'clock p.m., in the interests of public safety.

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### INSPECTION

Many code regulations carry an inspection requirement of the code official. It may be based either on a complaint, open permit or other legally authorized ground.

Where required, the building official must use legal and reasonable means to inspect, including seeking consent or inspecting from a public place.



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### INSPECTION:

- Must be completed by a duly authorized code official.
- Your notes should indicate date, time and who was present when the inspection was completed.
- Your notes should be specific regarding the type of violations, where the violation occurs and include any special conditions that are present.



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### Denial of Entry? Can't take no for an answer?

- In the event the code official is denied access, an **administrative search warrant** may be applied for seeking court ordered entry.
- In most cases you should communicate to the correct person the lawful grounds and request to inspect before you seek a warrant.
- Must be permitted by state law. Generally must be approved by a prosecutor before submitting to the judge. Does not interfere with entry rights in case of emergency.



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What does the U.S. Supreme Court say about it?



Camara v. Municipal Court,  
387 U.S. 523, (1967)

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### The United States Constitution



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### Fourth Amendment

- 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.

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Warrantless searches  
are presumed



UNREASONABLE

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### Suppression of Evidence

- Sanction for violation of the constitution
- Weeks – 1914- applied to federal officers
- 1960 – silver platter taken away



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### The Exclusionary Rule 1914-1961

- 1961 – Mapp v. Ohio
- Deter illegal police behavior
    - »Really only works with intentional or reckless misconduct
  - Enhance the imperative of judicial integrity ?

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**What's Protected?**

- Persons
- Houses
- Papers
- Effects-?????

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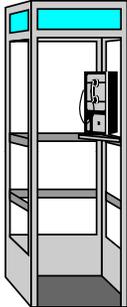
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**Katz**

- Subjective expectation of privacy
- Society recognizes as objectively reasonable



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**Overnight Guest**



- Minnesota v. Olson
- An Overnight Guest has A Reasonable Expectation of Privacy

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### Reasonable Expectation of Privacy

- Apartment wall – State v. Benton  
Thin walls give less privacy
- Containers – state v. Mooney (3/19/91)
  - Box under bridge
  - Homeless
  - Heightened deference to containers




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### Reasonable Expectation of Privacy

- Common porch area – no privacy
- Even tenants wouldn't have a reasonable expectation of privacy
- Non-tenant can't claim reasonable expectation of privacy

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### Abandoned Property

- State v. Sivri
  - Car left in bad neighborhood
  - Plates removed
  - Defendant fled city
  - Question is expectation of privacy, not title
- Garbage (greenwood and Defusco)
  - Curb
  - Accessible to scavengers, public




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### Fourth Amendment Doesn't Protect

Open Fields

Abandoned Property

Private Party Searches



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### Private Party Searches

- Fourth amendment is directed at government action, not private citizen's
- If private party acts as agent of police, the fourth amendment applies

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### Curtilage

- From the French
- The castle lands



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### Curtilage or Open Field

1. Distance from the house
2. Fenced in area around the house
3. **Associated with the intimate activities of the house**
4. No privacy fences



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### Curtilage

- Vehicles in fenced back yard could not be ticketed
  - Close to house
  - 6 foot fence with “keep out”
  - Fence shut: no view from street
- Vehicles in front on open driveway could be ticketed
  - Diminished expectation of privacy
    - State v. Brucuglio



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### Standing



- Defendant’s own right to privacy must be invaded
- Can’t complain about violation of someone else’s rights

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### INSPECTION PROCESS ENFORCEMENT

- State v. Burke ( 1990, CT App. Court) Admin. search warrant upheld for fire inspection. Cites Camara v. Municipal Court, (1967, U.S. Supreme Court):

“Probable cause to issue a warrant to inspect for safety code violation exists if reasonable legislative or administrative standards for conducting an area inspection are satisfied.”

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### INSPECTION PROCESS ENFORCEMENT

An administrative search warrant is similar to a search and seizure warrant except no seizure takes place and there is no requirement to show probable cause that a violation exists. All that there is to be demonstrated to a judge is that the official has a lawful right to inspect and that the premises is within your jurisdiction.

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### Review of warrant

- Prosecutor must review all administrative search warrants before submitted to a judge.




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## Staleness

May be a Shorter Time than the 10 Day  
Maximum to Execute a Warrant



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## PARTICULARITY - Place

- Address
- Apartment number
- Description of property



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## Exceptions to Warrant Requirement

- Plain view
- Consent
- Terry
- Search incident
- Exigency
- Carroll
- Care taker
- Inventory



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### Consent

- Voluntary
- Not the result of duress or coercion
- Saying yes freely
- More than mere acquiescence
- Burden of proof on State



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### Factors to Show Consent

- Age
- Intelligence
- Education
- Lack of advice on constitutional rights
- Prolonged or repeated questioning
- Length of detention, if any
- Physical punishment or deprivation



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### Consent Considerations

- Consent can be withdrawn at any time
- Consent can be limited
- Consent can't be forced – as threat to get warrant



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**Third Party Consent**

- Mutual or joint use
- Common authority
- Sharing assumes the risk sharer will consent
- United States v. Matlock



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**Third Party Consent**

- Not from Landlord (even with a right of entry clause in the lease)
- Not from a non-resident owner



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**Third Party Consent**

Not from a Hotel clerk



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### Exigency

- Emergency doctrine – danger to life
- Escape
- Destruction of evidence
  - State v. Guertin

**911**

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### Emergency Doctrine

- State v. Klauss – shotgun pumped
- Reasonable belief a person needs immediate aid
- Not probable cause standard
- Imminent and substantial threat



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### Plain View

- Right to be there
- Probable cause to believe evidence



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“No” is not a bad word.  
“Why?” is a fair question.

[http://www.youtube.com/watch?v=Mv\\_RIOCBPNs&feature=player\\_detailpage](http://www.youtube.com/watch?v=Mv_RIOCBPNs&feature=player_detailpage)

Be prepared to answer questions about your authority in a respectful and professional manner.

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### PHOTOS



- Remember to take notes for the photos: who took the photos, what they depict and the address that you are taking the photos of along with the date/time of the picture.

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### About your files:



- General rule: If you write it, be prepared to have it reviewed. State laws must be consulted for applicable disclosure laws.
- Freedom of Information laws generally require disclosure of your files, however some items may be closed as confidential. Prior to disclosure, seek the opinion of the local prosecutor on disclosure of records or documents in or subject to a criminal investigation or pending case.

And, also seek the opinion of municipal or local counsel on all other disclosure concerns.

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# COMMUNICATION



“The single biggest problem in communication is the illusion that it has taken place.”  
[George Bernard Shaw](#)

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# ABATEMENT:



## • CITING THE OWNER:

- The identity of the owner should be found on the municipal land records **NOT** the assessor’s card.
- Get a certified copy of the deed for you file as proof ownership.
- Owners should be listed with full name on order.
- Please be aware that if the owner is a business, estate, corporation or partnership different information is required.

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# EXAMPLE OF ABATEMENT ORDERS: NEW CT SBC BUILDING ORDER SET

Find at - <http://www.ct.gov/dcs/cwp/view.asp?a=4447&q=522242>

- 113 Notice of Violation and Order to Abate
- 114 Stop Work Order
- 115 Notice of Unsafe Structure
- 116 Notice of Imminent Harm, Order to Vacate and Posting of Unsafe Structure
- Notice of Referral for Criminal Prosecution

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SBC 113  
Violations

- SBC 113.1 states it shall be unlawful for any person firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of the SBC.

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SBC 113.1  
Notice of violation

- Authorizes the BO to serve notice of violation or order on the person responsible for violation of the code, or of a permit or certificate issued under the code.
- Such order **shall** direct the discontinuance of the illegal action or condition and the abatement of the violation.



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SBC 113.2.1  
Written notice

- The notice of violation **shall be in writing and shall be given** to the owner of the property involved, or to the owner's agent or to the person doing the work.



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**113.3**  
**Prosecution of violation.**

- If the notice is not complied with promptly, the **BO is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law** as well as the appropriate proceeding in **equity** to restrain, correct or abate such violation or to require the removal or termination of the unlawful occupancy or of the order or direction made pursuant thereto.

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**SBC 114**  
**Stop work order.**

- The BO is authorized to issue a **stop work order** whenever the BO finds any work regulated this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe.
- **Stop Work Order template now available for use in DPS approved format.**

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**SBC 114.2**  
**Issuance of stop work order.**

- The order **shall be in writing and shall be given** to the owner, owner's agent or the person doing the work.




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**SBC 115: Unsafe structures and equipment**



- Unsafe Structure Order template now available for use in DPS approved format.
- The BO shall deem structures or equipment an unsafe condition which are or become:
  - Unsafe
  - Insanitary
  - Deficient because of inadequate means of egress, inadequate light and ventilation

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**SBC 115: Unsafe structures and equipment, cont.**

- Can constitute a fire hazard



- Or are otherwise dangerous to human life or public welfare
- Or that involve illegal or improper occupancy or inadequate maintenance.

The BO shall cause a report to be filed on an unsafe condition. SBC 115.2

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**SBC 115: Unsafe structures and equipment, cont.**

- The unsafe structure shall be taken down and removed or made safe, as the BO deems necessary.
- A vacant structure that is not secured against entry shall be deemed unsafe. Enforcement of this provision can be a tremendous help to community safety.




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**SBC 115.3**  
**Notice of Unsafe Structure.**

- If an unsafe condition is found, the **BO shall serve** on the owner, agent or person in control of the structure a written notice that describes the condition and specifies the abatement required, or demolition within a stipulated time.
- Requires the person notified declare immediately to the BO acceptance or rejection of the terms of the order.



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**SBC 115.4**  
**Method of service**

- The unsafe structure or equipment order is deemed properly served if delivered to owner personally, sent certified or registered mail at last known address return receipt requested, or any other manner prescribed by law.



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**Delivery:**

- Although proof of delivery is not specifically required by the SBC, prosecution of a violation requires that the state prove the person knowingly violated the provision of the code.
- Proof of delivery is required to prove knowing violation of the order.



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Proof of Service:



- Service is an *essential element* that we must prove in a criminal prosecution. It must be proved with documentation.
- Service must be in accordance with the code provision. If not particularly proscribed, service can be by other provable method.

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SBC 115.6.1  
Authority to seal equipment.

- The BO or his authorized representative shall in case of emergency have the authority to seal out of service immediately any unsafe equipment or device regulated by the SBC.
- The BO or his representative shall plainly identify it as out of service and indicate the reason.

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SBC 116  
Emergency measures



- Imminent danger of failure or collapse of a building or structure or any part thereof which endangers human life, or
- Has fallen and human life is endangered by the occupation.
- BO is authorized and empowered to order and require the occupants vacate forthwith.

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**SBC 116**  
Emergency measures, cont.

- The notice **shall** read: "This structure is unsafe and its occupancy has been prohibited by the building official."
- The notice **shall** be posted at each entrance of the building or structure.
- Entry after posting is unlawful without BO permission which may be granted for purposes of required repair or demolition.

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**SBC 116**  
Emergency measures, cont.



- SBC 116.2 **Temporary safeguards.**  
When in the opinion of the BO there is imminent danger to human life due to an unsafe condition, the BO **shall** cause the necessary work to be done to render such building or structure temporarily safe, whether or not the legal procedure described in Section 115 has been instituted.

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**SBC 116.4**  
Emergency work.

- When imminent danger or an unsafe condition requiring immediate action exists and the owner cannot be located or refuses or is unable to expeditiously render the premises safe, the BO **shall** order the employment of necessary labor and materials as expeditiously as possible to make the premises temporarily safe up to and including demolition.

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### CONDEMNATION:

- When it has been determined the building is no longer safe to occupy a condemnation order is issued, the Uniform Relocation Act applies.
- The occupants relocation costs **MAY** recouped but as permitted under state law.
- May be ordered where necessary to protect life safety in cases of emergency.




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### SBC 116.5

#### Costs of emergency work.

- The costs incurred in performance of emergency repairs of demolition under the order of the BO shall be paid by the treasury of the town, city or borough.
- The legal counsel for the town, city or borough shall institute appropriate action against the owner to recover.




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### BE CAREFUL IN ADDRESSING THE ORDER

- First obtain the owner name from the deed for the property. Mirror the deed.
- If abating an occupant or other person, be careful to obtain the proper names from a reliable source.
- If a corporation, LLC or general partnership, check the exact name with proper filing authority in your state.




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### ADDRESSING THE ORDER

Mirror the deed...

- PERSONS: example - If deed states the grantees (owners) are John Owner and Lilly Owner, order should have both full names.

John Owner  
 Lilly Owner  
 123 Owner's Court  
 No Name, CT 06000\*



\*One order is generally sufficient for multiple owners only if owners live at same address. Check with your local prosecutor for these matters.

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### ADDRESSING THE ORDER

- ESTATES:
  - The deed may contain the name of a person who is deceased, or their estate.
  - Check with the Probate Court to determine the person responsible for the estate of the deceased owner. (i.e. Executor or an heir).
  - Get certified copy of appointment document.
  - Cite responsible person for the estate.
  - Consider circumstances

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### CORPORATE AND PARTNERSHIP OWNERS

- CORPORATIONS (Corp.s and Inc.s)
- LIMITED LIABILITY CORPORATIONS (LLCs)
- PARTNERSHIPS
- LIMITED LIABILITY PARTNERSHIPS (LLPs)
  - DOMESTIC (Registered in your state)
  - FOREIGN (Registered outside of your state)



GENERALLY CORPORATIONS DOING BUSINESS IN A STATE MUST BE REGISTERED WITH THAT JURISDICTION'S SECRETARY OF STATE.

STATE LAWS VARY ON LIABILITY OF OFFICERS SO CHECK WITH YOUR LOCAL JURISDICTION

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### CORPORATIONS, THEIR AGENTS AND CRIMINAL LIABILITY

- Corporations and their agents may be held liable for their acts including failure to comply with an order of a code official.
- Example: Connecticut General Statute Sec. 53a-11. Criminal liability of an individual for conduct in name or behalf of corporation or limited liability company. A person shall be criminally liable for conduct constituting an offense which such person performs or causes to be performed in the name of or in behalf of a corporation or limited liability company to the same extent as if such conduct were performed in such person's own name or behalf.

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### ADDRESSING THE ORDER

Mirror the deed...

- CORPORATE OWNER (Ex.)
  - Deed says XYZ, Inc. is the owner.
  - Enter XYZ, Inc. in your search.
  - Identify the principal of the corporation = the PRESIDENT of the corporation.
  - Obtain residence address for service, if available.
  - Print copy of your search page or keep document for your file.

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### ADDRESSING THE ORDER

Mirror the deed...

- LIMITED LIABILITY CORPORATIONS
  - Deed says XYZ, LLC.
  - Enter XYZ, LLC in your search.
  - Identify the principal of the LLC = the MEMBER or Managing Member of the LLC.
  - Obtain residence address for service.
  - Print copy of your search page or keep document for your file.

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ADDRESSING THE ORDER

Mirror the deed...

- CORPORATION (ex.)
  - LLC ( ex.)
- |                     |                     |
|---------------------|---------------------|
| I. V. League, Pres. | I.V. League, Member |
| XYZ, Corp.          | XYZ, LLC            |
| 123 Big House Ave.  | 123 Big House Ave.  |
| No Name, Your State | No Name, Your State |
| 00000               | 00000               |

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CIVIL AND CRIMINAL COURT

*WHAT IS THE DIFFERENCE?*




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What is Civil Enforcement?

- INJUNCTIONS
- CIVIL ENFORCEMENT ORDERS
- RELOCATION
- CIVIL PENALTIES
- LIENS




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### Injunctions:

- Town Attorney/Corporation Counsel.
- This process will bring the property owners to court, for you and the town to ask the court to order the property owners to abate a violation.
- Be aware the Judge may not rule in your favor.




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### PROSECUTION OF CODE VIOLATIONS

As a Building Official, in most states you do not have authority to arrest any person. However, you do have authority to request an Arrest by Warrant by application to a proper authority.



- Requires application to judge which includes
- Your name, capacity, responsibilities and your jurisdiction.
  - Authority to inspect, inspection dates, and findings.
  - Identification of the proper person and how that person was determined, i.e. proof of ownership.
  - Notice and order issues, to whom and how the orders were issued showing due process.

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### ARREST BY WARRANT, cont.:

- Proof that the orders were received by the responsible person via marshal, certified mail return receipt requested or other provable method.
- Re-inspection date and findings.
- List of the violations and the code sections that are violated.
- Summary/Concluding paragraph.
- *Must be signed and sworn under penalty of perjury and submitted to the Prosecutor or to Office of the District Attorney as provided by local jurisdiction.*

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### Arrest

- Submitting an application for the arrest of an individual is very serious. Make sure this is the appropriate action to take.  
You are asking for the initiation of a criminal case that may result in the deprivation of the rights of another individual.



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### What happens at court?

- Property owner will come to court.
- Remember, just because the owner comes to court, it does not mean compliance will be immediate.



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### CRIMINAL PROSECUTION:

- FIRST COURT DATE:
  - RIGHT TO COUNSEL.
  - REVIEW CHARGES AND PENALITIES.
  - REFER THEM TO YOU FOR A PLAN FOR COMPLIANCE.
  - IDENTIFY A TIME FRAME FOR COMPLIANCE AND WITH THE COURT'S PERMISSION GIVE A CONTINUANCE DATE FOR THAT COMPLIANCE.



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- While the case is pending we will ask for inspections to be completed.
- Sometimes, we will ask for written updates so that we have current information in our files.
- If ADDITIONAL violations are found on a re-inspection, abate the additional violations and notify the State's Attorney IMMEDIATELY!!!!!!

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### TRIAL

- If the case goes to trial, you are the prosecutor's main witness.



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### Disposition:

- This is a fancy way of saying how we end the case.



- Cases generally will not be disposed of until there is full compliance or a plan for compliance.

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### How do we end the case?

In Connecticut, we can end the case with a:

- NOLLE
- ACCELERATED REHABILITATION
- SUSPENDED SENTENCE
  - CONDITIONAL DISCHARGE
  - PROBATION
- JAIL



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### Factors in creating the Disposition

- Seriousness of the violations.
- Number of the violations.
- Owner/Occupants' criminal history and other safety code violations.
- Number of people present in the property.
- Time frame in which compliance has been reached.



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### SPECIAL CONDITIONS OF PROBATION OR ACCELERATED REHABILITATION

- Plan for abatement.
- Cooperate with code officials.
- All properties must be code compliant.
- Attending appropriate classes depending on the types of violations.
- Community Service.
- Charitable Contribution.



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### Remember...

- Code issues do not arise just between 9:00 – 5:00, when everyone who could help you are in their offices.
- You need to have a plan for when this circumstance happens, who to contact, their emergency numbers, what the chain of supervision shall be and who makes the final determination.
- **WHY? BECAUSE IT WILL HAPPEN!!!!**




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### Referrals:

Everyone is busy, become familiar with and utilize the other agencies in your town to accomplish the goal.

- Building
- Police
- Health
- Housing
- Planning and Zoning
- Animal control
- Legal




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### Other concerns:

- Always be mindful of where you are.
- Various conditions/violations that you find may not be a result of purposeful disregard of your order. For example, there are mental health conditions that are a factor in some of the conditions you will find. For example, collapsing house with excessive combustibles which may be a result of hoarding, a mental health disorder.




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**UNLESS AUTHORIZED BY LAW,**

**NEVER, NEVER, NEVER...**



- Tell anyone you will have them arrested.
- Tell anyone you will get an arrest warrant.
- Tell anyone you will get a search warrant.
- Tell anyone that you must be allowed on the property.
- Tell anyone what the prosecutor may or may not do with the case.
- Excuse someone from a court date.
- Tell them that you will get their case dropped.

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**CONTACT INFORMATION:**

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Thank you.




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