

## LAWS OF ARREST

### I. Introduction

- A. Types of Contacts
  - 1. Consensual
  - 2. Stops/Detention
  - 3. Arrest

### II. Consensual Contacts

- A. Definition – Face to face communication between peace officer and citizen where citizen is:
  - 1. Not obligated to cooperate or answer questions,
  - 2. Is free to leave, and
  - 3. Reasonably believes s/he is free to leave.

**Ex:** Casual conversation, asking directions, informing relatives of accidents/death, witness interviews.

**Key:** NO SEIZURE. Persons aren't halted, detained, or frisked. If they refuse to cooperate they must be permitted to leave.

**Note:** Asking for ID or personal info does not necessarily create detention, as long as overall circumstances would lead reasonable person to conclude person is free to go.

**Note:** Retaining ID during questioning/conversation may elevate encounter into a detention. Consequence for peace officer may be 236 PC, suppression of evidence, civil/criminal liability for violation of civil rights.

### III. Stops/Detentions

- A. Definition – Stop is temporary detention of person for investigative purposes based on reasonable suspicion.

**Key:** Occurs when peace officer uses authority to compel halt, remaining in one place, or performing act. Constitutes a SEIZURE.

- B. Purpose of Detention

To investigate actual or possible crime. It is valid if:

- 1. Officer is in place they have right to be;
- 2. Officer has reasonable suspicion that criminal activity has, is or might occur; and
- 3. Person in question is connected to the suspected criminal activity.

- C. Reasonable Suspicion Defined:

Suspicion based on SPECIFIC, ARTICULABLE FACTS or circumstances known to the officer that causes s/he to believe that a particular person was, is, or is about to be involved in criminal activity.

**Key:** Does not mean you have enough to arrest.

**Test:** The totality of the circumstances.

- D. Possible Factors Regarding Reasonable Suspicion

Resemblance to wanted person, suspicious circumstances, intoxication, furtive conduct, attempt to destroy evidence, flight with other suspicious circumstances. Other factors include: prior knowledge of suspect,

probation/parole status, facts about location, modus operandi consistent with casing, crime, information from informants.

**Key:** Race/Ethnicity not basis

**Key:** Running alone not justification (but look at TOC).

E. Length of Detention

**Rule:** Length of detention must be reasonable. Long enough to find out if there is, was, or going to be criminal activity that the detainee is involved in.

1. A warrant check may be run during detention, but the detention cannot be prolonged to complete check.
2. The courts analyze appropriate length of detention by looking to the type of investigation required at the (time) to resolve the officer's suspicions.

F. Scope of Detention

**Issue:** When does a detention become an arrest?

1. Detention and "movement" does not necessarily equal arrest. This will depend on degree of movement and amount of restraint.
2. Detention + Transportation = Arrest.
3. Detainee cannot be transported from location of stop without arrest occurring, unless:
  - a. consent
  - b. impractical to bring wit/vic to location (they're hurt)
  - c. there's PC for arrest
  - d. location of stop is dangerous (freeway)
  - e. officer safety.

G. Refusal to Cooperate with Officers

Refusal does not in and of itself create PC to arrest, but it may justify prolonging the detention.

H. Use of Force

**Rule:** Reasonable force may be used to effect cooperation and prevent flight. The key is to use the minimum amount to gain compliance.

**NOTE:** Handcuffing does not necessarily create arrest. Placing someone in a locked patrol car does not necessarily create arrest. But these steps probably trigger a need for Miranda.

**NOTE:** If detainee says "Arrest me or let me go" your appropriate response (if you're not done with the investigation) is "You are still detained for investigation."

I. Warrant Checks During Traffic Stops

**Rule:** Officer can run persons stopped for traffic offense for warrants even without suspicion. If check not completed the detention can't continue without permission.

J. Frisks

**Definition:** Limited protective search for weapons during detention.

**Scope:** Outer clothing (unless clothes are too bulky to allow determination re: weapon without looking inside. (ex. Bulky "Starter Jackets")

Required: Reasonable suspicion based on specific and articulable facts that suspect is armed with a concealed weapon.

**NOTE:** Inadvertent Discoveries: If in taking out an object suspected of being a weapon the officer discovers contraband, it is seizable (plain sight rule applies).

**NOTE:** Suspected Narcotics/Contraband: if officer IMMEDIATELY RECOGNIZES item as contraband during frisk, it can be seized when frisk is done (plain feel doctrine).

**NOTE:** If officer can't immediately recognize item as contraband, but suspects that it is, s/he can:

- 1) Leave it
- 2) Ask person if it's drugs (if "yes", PC exists to arrest)
- 3) Ask for consent to search person.

#### **IV. ARREST**

Definition: Taking of a person into custody in a case and in a manner prescribed by law. May be made by peace officer or by private person. May be made by actual restraint or by submission to custody,

##### **A. Probable Cause**

**Rule:** Arrests must be based on probable cause. PC is defined as a set of facts that would cause a person of ordinary care and prudence to honestly believe and strongly suspect that the person arrest(ed) is guilty of the crime he is being arrested for.

**NOTE:** Information can be direct evidence, circumstantial evidence, or information from informant.

##### **B. Elements of Lawful Arrest**

1. By Peace Officer or Private Person
2. Suspect is taken into Custody.
3. Made by actual restraint or submission to custody.
4. Reasonable force may be used to make arrest, prevent escape, or overcome resistance.

##### **C. Use of Force**

**Rule:** Reasonable force may be used. Reasonable force is defined as the minimum amount necessary to gain compliance/make arrest.

**NOTE:** Peace officer need not retreat or desist if suspect threatens or uses force.

##### **D. Resistance to UNLAWFUL Arrest**

1. Unlawful Arrests by Peace Officers
  - a. Private persons MAY NOT resist arrest by peace officer even if arrest is unlawful. Remedy is civil suit for false arrest, imprisonment, or violation of civil rights. Treated w/due process.

#### **V. ARREST AUTHORITY**

##### **A. Warrantless Misdemeanor Arrests**

1. Rule: To arrest a person without a warrant for a misdemeanor, officer must have the following:

- a. PC to believe
- b. Suspects committed misd., and

- c. Misdemeanor occurred in officer's presence.
- B. Warrantless Felony Arrests
  - 1. Officers can arrest on PC for felony whether or not felony occurred in officer's presence.

**NOTE:** Officer is protected from civil liability for false arrest as long as there was PC (even if wrong person or in fact crime had not occurred).

**Examples:** Arrest because of bulletin/arrest based on witness statements at crime scene.
  - 2. Time of Arrest for Felony

**Rule:** May be made at any time of the day or night on any day of the year.

    - a. Person has committed the misd. Offense in the officer's presence.

**Ex.** Officer taking a burg report at 2 a.m. in private residence. He sees 18 year old son slap his 19 y.o. friend in the face, causing redness. Can arrest for 240/242.
    - b. The arrest is made in a public place.

**Ex.** Officer makes a traffic stop on public street at 2:30 a.m. Finds out that passenger has 484 misd. Warrant (not authorized for night service). Can arrest on warrant because it's a public place.
    - c. Arrest is made while the person is in custody for another offense.

**Ex.** Officer arrests homicide suspect at 3 a.m. on probable cause. At the jail he discovers that suspect has a 666 PC misd. Warrant. Can book on that also,.
    - d. Arrest made pursuant to a misd. Arrest warrant authorizing night service.

**Ex.** Officers go to motel room @ 4 a.m. with night service authorized misd. warrant. Can arrest.

## VI. RESIDENTIAL ARRESTS

- A. **Rule:** Entry to make an arrest within a private residence generally requires a warrant (Ramey-Payton cases).
  - 1. Application

Rule applies to homes, hotel/motel rooms, occupied trailers, non-public parts of businesses; NOT to public places or commercial establishments open to public. To arrest someone in home, you need an arrest warrant.
  - 2. Exceptions:
    - a. Exigent Circumstances:
      - 1. Danger to self or others
      - 2. Hot pursuit

--Officer doesn't need to stop when suspect s/he's been chasing runs into a home.

--Officer can go in a home without warrant even if the officer had not seen suspect before entry, if there has been continuous and uninterrupted effort to locate the suspect and the offense was a dangerous felony.
    - 3. Reliable information/reasonable belief in imminent destruction of

evidence.

4. To prevent imminent escape.
5. To prevent danger of serious property damage.
6. If arrest attempted in public place, officer can pursue into home if suspect flees.

b. Consent (express or implied)

**NOTE:** Unauthorized entry into residence violates 4<sup>th</sup> Amend. (even with good PC).

**NOTE:** Tricking suspect outside is OK.

**NOTE:** Violation does not necessarily prevent prosecution, but can lead to suppression of Evidence or civil liability.

**B. Executing Warrant in Home Situation: Knock/Notice**

1. Knock/Notice is:

- a. Knock
- b. ID self or agency
- c. Stating purpose and authority
- d. Demand for entry
- e. Wait reasonable time

**PURPOSE:** Prevention of Violence

2. Applies to:

- a. Homes
- b. Non-public portions of businesses
- c. All entries of above with or without warrant
- d. Must be made at every closed door

3. Who May Enter Homes to Make Arrests:

- a. Peace Officers (misd. or felonies)
- b. Private Persons (felonies only)

4. Exceptions to Knock/Notice

Noncompliance excused if officer can show:

- a. Peril to officers or occupants
- b. A reasonable likelihood of the destruction of evidence
- c. Flight

**KEY:** Up to discretion of officer.

**VII. PRIVATE PERSON ARRESTS**

A. Diplomatic Immunity

B. Stale Misdemeanor Rule:

1. Not only must arrest for misdemeanor generally be based on offense having occurred in officer's presence, but officer must make arrest within reasonable time thereafter (interpreted as continuous fresh pursuit).
2. If not timely, officer should detain