

Basic Course Workbook Series



Learning Domain 15

Laws of Arrest

Version 5.0

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Basic Course Workbook Series
Student Materials
Learning Domain 15
Laws of Arrest
Version 5.0

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THE MISSION OF POST

The mission of the California Commission on Peace Officer Standards and Training is to continually enhance the professionalism of California law enforcement in serving its communities.

THE ACADEMY TRAINING MISSION

The primary mission of basic training is to prepare students mentally, morally, and physically to advance into a field training program, assume the responsibilities, and execute the duties of a peace officer in society.

FOREWORD

The California Commission on Peace Officer Standards and Training sincerely appreciates the efforts of the many curriculum consultants, academy instructors, directors and coordinators who contributed to the development of this workbook. We must also thank the California law enforcement agency executives who allowed their personnel to participate in the development of these training materials.

This student workbook is part of the POST Basic Course Training System. The workbook component of this system provides a self-study document for every learning domain in the Basic Course. Each workbook is intended to be a supplement to, not a substitute for, classroom instruction. The objective of the system is to improve academy student learning and information retention and ultimately contribute to you becoming a peace officer committed to safety, and to the communities you will serve.

The content of each workbook is organized into sequenced learning modules to meet requirements as prescribed both by California law and the POST Training and Testing Specifications for the Basic Course.

It is our hope that the collective wisdom and experience of all who contributed to this workbook will help you, the student, to successfully complete the Basic Course and to enjoy a safe and rewarding career as a peace officer.

MANUEL ALVAREZ, Jr.
Executive Director

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Student Workbooks

The student workbooks are part of the POST Basic Course Instructional System. This system is designed to provide students with a self-study document to be used in preparation for classroom training.

Regular Basic Course Training Requirement

Completion of the Regular Basic Course is required, prior to exercising peace officer powers, as recognized in the California Penal Code and where the POST-required standard is the POST Regular Basic Course.

Student Workbook Elements

The following elements are included in each workbook:

- Chapter contents, including a synopsis of key points,
- Supplementary material, and
- A glossary of terms used in this workbook.

HOW TO USE THE WORKBOOK

Introduction

This workbook provides an introduction to the training requirements for this Learning Domain. It is intended to be used in several ways: for initial learning, for test preparation, and for remedial training.

Workbook format

To use the workbook most effectively, follow the steps listed below.

Step	Action
1	Begin by reading the: Introduction and How to Use the Workbook, which provides an overview of how the workbook fits into the POST Basic Course Instructional System and how it should be used.
2	Refer to the Chapter Synopsis section at the end of each chapter to review the key points that support the chapter objectives.
3	Read the text.
4	Complete the Workbook Learning Activities at the end of each chapter. These activities reinforce the material taught in the chapter.
5	Refer to the Glossary section for a definition of important terms. When first referenced these terms will be bolded and underlined (e.g., <u>term</u>).

Chapter 1

Constitutional Protections and the Role of a Peace Officer

OVERVIEW

Learning Need

Peace officers must understand the amendments to the U.S. Constitution, and similar sections of the California Constitution that are related to the authority, liability, and responsibility they have in making arrests.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recognize a peace officer's responsibility in relation to the protections and rights included in the following amendments to the U.S. Constitution and related California Constitution sections:<ul style="list-style-type: none">Fourth AmendmentFifth AmendmentSixth AmendmentFourteenth Amendment	15.01.2 15.01.3 15.01.4 15.01.5
<ul style="list-style-type: none">Recognize a peace officer's responsibility in relation to the protections included under federal civil rightsStatutes	15.01.6

In This Chapter

This section focuses on the U.S. and California constitutional provisions that directly impact peace officers. Refer to the chart below for a specific topic.

Topic	See Page
Overview of the U.S. and California Constitutions	1-3
Fourth Amendment	1-4
Fifth Amendment	1- 6
Sixth Amendment	1-8
Fourteenth Amendment	1-10
Civil Rights Statutes	1-11
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OVERVIEW OF THE U.S. AND CALIFORNIA CONSTITUTIONS

Introduction

A Constitution is a written document which embodies the basic laws of a nation or state, defines the powers and duties of the government, and guarantees certain rights to the public.

Ethics

The authority to arrest and to deprive a person of freedom is one of the most serious and sensitive duties of a peace officer. Americans place high value on their personal freedom; they give the power of arrest to peace officers in full faith and consent with the understanding that it is to be used judiciously and under the strictest of limitations. The misuse of this authority undermines the relationship between peace officers and the community members they serve.

History of the Federal Constitution

The U.S. Constitution became effective in March 1789. The authors established this document to “form a more perfect Union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty.”

Amendments to the Constitution

The first session of Congress proposed 10 amendments to the Constitution. These amendments are called the “Bill of Rights.”

Since 1791, 17 additional amendments have been proposed by Congress and ratified by the voters.

California Constitution

In 1850, California became the 31st state to enter the Union, adopting its own Constitution in 1879.

All the laws passed by the voters in the state must comply with the California Constitution, which is organized into articles that represent different subject matter areas.

Officer Responsibility

During the performance of their duties, peace officers have a legal, moral and ethical responsibility to protect all of the rights afforded to a citizen by the United States and California Constitutions.

FOURTH AMENDMENT

Text

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.

Guaranteed Rights

The Fourth Amendment to the U.S. Constitution provides that people, houses, and effects (belongings) shall be secure from unreasonable searches and seizures and requires probable cause for the issuance of warrants.

Meaning For Peace Officers

The first part of the Fourth Amendment deals with the right of people to be free from unreasonable searches and seizures. The second part defines procedures officers must follow when obtaining a warrant.

Related Terms

Reasonable suspicion is the standard used to justify a detention. It exists when an officer has sufficient facts and information to make it reasonable to suspect that criminal activity may be occurring, and the person to be detained is connected to that activity.

Probable cause to arrest exists when the totality of the circumstances or "total atmosphere" of the case would cause a person of ordinary care and prudence to entertain an honest and strong suspicion that the person to be arrested is guilty of a crime.

A **search** occurs when an expectation of privacy that society is prepared to consider reasonable is infringed upon by the government.

A **seizure of a person** occurs when a peace officer physically applies force to a person or when a person voluntarily submits to the officer's authority.

A **seizure of property** occurs when there is some meaningful interference with an individual's possessory interest in that property by the government.

Officer Responsibility

Peace officers have a responsibility to protect the Fourth Amendments rights of all citizens as it applies to unreasonable searches and seizures.

FIFTH AMENDMENT

Text

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Guaranteed Rights

The Fifth Amendment of the U.S. Constitution provides that individuals cannot be compelled to be a witness against themselves in a criminal case, may not be tried for the same offense twice, or be deprived of life, liberty, or property without due process of law.

Meaning For Peace Officers

Peace officers need to understand the relationship between a person's right against self-incrimination and the Miranda decision.

NOTE: The Miranda right to counsel was established by the United States Supreme Court in 1966 protecting a subject's Fifth Amendment right against self-incrimination.

Officer Responsibility

Peace officers have a responsibility to protect the Fifth Amendment rights of citizens as they pertain to double jeopardy, being a witness against oneself, or depriving a person of life, liberty or property without due process.

Examples

An officer arrests a suspect for burglary. After the officer read the arrestee his Miranda rights, the arrestee waives his rights and agrees to answer questions. During questioning the arrestee confesses to the crime. If challenged in court the confession will not be suppressed because the officer obtained a knowing, voluntary waiver of the arrestee's 5th Amendment Right against self-incrimination before obtaining the confession.

An officer arrests a subject for burglary. The officer reads the arrestee his Miranda Rights before questioning. After hearing his rights, the arrestee invokes his 5th Amendment Right against self-incrimination by stating that he wants his attorney present before answering any questions. The officer continues to question the arrestee and eventually obtains a confession. The confession will be suppressed in court as a violation of the arrestees' 5th Amendment Rights.

An officer arrests a subject for burglary. Before reading the arrestee his Miranda Rights, the officer questions him about the crime and the arrestee confesses. The confession will be suppressed in court because the officer cannot show that the arrestee knowingly, voluntarily and intelligently waived his 5th Amendment Right against self-incrimination.

SIXTH AMENDMENT

Text

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Guaranteed Rights

The Sixth Amendment to the U.S. Constitution guarantees people accused of a crime the right to:

- A speedy trial
- Confront witnesses against them and obtain witnesses in their favor
- The assistance of counsel, during court proceedings

Meaning For Peace Officers

The Sixth Amendment entitles a person to counsel (i.e., an attorney) once adversarial judicial proceedings have commenced. Adversarial judicial proceedings are considered to have commenced when the person is either indicted by a grand jury, or makes his or her first court appearance, known as arraignment.

NOTE: This Sixth Amendment right to counsel is constitutional and was designed to help formally charged defendants defend themselves in court.

Officer Responsibility

Peace officers have a responsibility to protect the Sixth Amendments rights of people. The Sixth Amendment gives the right to a speedy trial, an opportunity to confront witnesses and the right to counsel during court proceedings.

Example

Following a grand jury indictment, officers went to Smith's house to serve an arrest warrant and "discuss his involvement in methamphetamine distribution." After being advised of his Miranda rights, including being advised of his right to counsel, Smith waived his rights. Smith made a series of incriminating statements before and after he was arrested. The officers did not violate Smith's 6th amendment rights because, even though he was represented by counsel, he voluntarily waived his 6th amendment rights.

FOURTEENTH AMENDMENT

Text

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Guaranteed Rights

Through its “due process and equal protection” clauses, the Fourteenth Amendment to the U.S. Constitution applies portions of the Bill of Rights to all states.

Meaning For Peace Officers

The Fourteenth Amendment requires peace officers to apply the law equally to all people regardless of race, creed, nationality, religious preference, or national origin.

NOTE: An illegal alien is entitled to equal protection under the 14th Amendment.

Officer Responsibility

Peace officers have a responsibility to protect the Fourteenth Amendment rights of all people in the United States. The Fourteenth Amendment requires peace officers to apply the law equally to all people.

CIVIL RIGHTS STATUTES

Introduction

There are several Federal statutes protecting people's constitutional rights from conspiracies and from abuse by law enforcement. Violation of these codes is a crime.

Text of *Section 1983*

U.S. Code, Title 42, Section 1983:

Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Summary of *Section 1983*

This statute permits a civil rights suit seeking monetary damages to be awarded to anyone who proves, in a court of law, that they were deprived of some legal right through governmental action, that is, by a person acting under color of law.

Under color of law means an action carried out as if under the authority of law but is actually done in violation of the law (e.g., peace officers or magistrates using their positions to act in an unlawful manner).

NOTE: Peace Officers could suffer monetary sanctions.

Meaning For Peace Officers

Peace officers are subject to this statute and can be held *personally liable* if, while acting under the color of law, they deprive or deny someone a legal right to which the person was entitled.

However, under this section, so long as an officer was acting within the scope of their duties and they reasonably believed their actions did not violate any federal statutory or constitutional rights, they may request qualified immunity. Qualified immunity protects the individual officer from being liable for damages resulting in actual constitutional violations.

Text of Section 241

U.S. Code, Title 18, Section 241:

Conspiracy against rights of citizens. If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; ... They shall be fined under this title or imprisoned not more than ten years, or both; ...

Summary of Section 241

This law makes it a federal crime, punishable by a fine or imprisonment up to 10 years, or both:

- If two or more persons
- Conspire to injure, oppress, threaten, or intimidate any person
- For doing anything that the person had a legal right to be doing
- Or because the person previously exercised any such legal right

NOTE: Conspiracy has different definitions under federal and state law.

Meaning For Peace Officers

Peace officers can be prosecuted *criminally* if they conspire with other persons to deprive individuals of their legal rights and be incarcerated.

Officer Responsibility

Peace officers have a responsibility and legal obligation to protect the Civil Rights of all people as those rights pertain to the Federal Civil Rights Statutes.

Text of Section 242

U.S. Code, Title 18, Section 242:

Deprivation of rights under color of law. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; ...

Summary of Section 242

This law makes it a federal crime, punishable by a fine or imprisonment up to one year, or both:

- For any person, acting under color of any law
- To willfully deprive any person of any legal right
- Or to subject any person to a different punishment or penalty
- Based on that person's color, race, or citizenship status

Meaning For Peace Officers

Peace officers can be prosecuted *criminally* if they apply a law unevenly because of a person's color, race, or the fact that the person is an alien.

California Equivalent

Penal Code Section 422.6(a) is broader than *U.S. Code, Title 18, Section 242*. It does not limit the governmental agent to acting only under “color of law.” It includes additional categories of religion, ancestry, national origin, disability, gender, and sexual orientation that are protected from discrimination.

No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

Learning Need

Peace officers must understand the amendments to the U.S. Constitution, and similar sections of the California Constitution that are related to the authority, liability, and responsibility they have in making arrests.

The Fourth Amendment and Officer Responsibility [15.01.2]

If peace officers are not able to show probable cause, an arrest or search may be invalid, and the resulting evidence may be excluded.

During the performance of their duties, peace officers have a legal, moral and ethical responsibility to protect all of the rights afforded to a citizen by the United States and California Constitution.

The Fifth Amendment and Officer Responsibility [15.01.3]

Peace officers need to understand how the Miranda decision protects a person's right against self-incrimination

During the performance of their duties, peace officers have a legal, moral and ethical responsibility to protect all of the rights afforded to a citizen by the United States and California Constitution.

The Sixth Amendment and Officer Responsibility [15.01.4]

Once this right attaches (indictment or first court appearance) and the person is represented by counsel, peace officers are prohibited from initiating interrogation of the person about the charged crime, except in the presence of counsel.

During the performance of their duties, peace officers have a legal, moral and ethical responsibility to protect all of the rights afforded to a citizen by the United States and California Constitution.

The Fourteenth Amendment and Officer Responsibility [15.01.5]

The Fourteenth Amendment requires that peace officers must:

- Apply the law equally to all people
- Treat them the same regardless of race, creed, nationality, religious preference, or national origin

During the performance of their duties, peace officers have a legal, moral and ethical responsibility to protect all of the rights afforded to a citizen by the United States and California Constitution.

Civil Rights Codes and Officer Responsibility [15.01.6]

U.S. Code, Title 42, Section 1983, states that individuals acting under color of law who deprive someone of any legal right can be held civilly liable.

U.S. Code, Title 18, Section 241, makes it a federal crime for two or more persons to conspire to injure, oppress, threaten, or intimidate someone for doing something they have a legal right to do.

U.S. Code, Title 18, Section 242, makes it a federal crime to deprive a person, under color of law, of any legal right, or to punish a person differently, based on that person's color, race, or citizenship status.

Penal Code Section 422.6(a) is broader than *U.S. Code, Title 18, Section 242*. It adds categories of religion, ancestry, national origin, disability, gender, and sexual orientation to those protected from discrimination.

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity Questions

1. Match the provision to the correct Amendment of the U.S. Constitution.

_____	Freedom from unreasonable searches and seizures	A. Fourth Amendment
_____	A speedy trial and assistance of counsel	B. Fifth Amendment
_____	Equal treatment, regardless of race, creed, nationality, religious preference, or national origin	C. Sixth Amendment
		D. Fourteenth

2. Define a conspiracy according to *U.S. Code, Title 18, Section 241*, and give an example.

3. An anti-abortion protestor is quietly walking back and forth on the public sidewalk in front of a medical clinic. The protestor is handing out anti-abortion literature containing graphic images. The clinic owners call peace officers. What actions should officers take on the scene? What Constitutional amendment has particular meaning in this case, and what protections does it offer?
4. Describe the impact of the Fourth Amendment on peace officers' investigations.

5. Describe one way peace officers can help to ensure due process rights guaranteed by the Fourteenth Amendment.

Chapter 2

Consensual Encounters

OVERVIEW

Learning Need

Peace officers must recognize that a consensual encounter is a face-to-face contact with a person under circumstances which would cause a reasonable person to believe they are free to leave or otherwise not cooperate.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
• Recognize appropriate conduct during a consensual encounter	15.02.2
• Recognize conduct that may elevate a consensual encounter	15.02.3
• Recognize the consequences of elevating a consensual encounter	15.02.4

In This Chapter

This section focuses on the characteristics of a consensual encounter.

Topic	See Page
Consensual Encounters	2-2
Elevating Consensual Encounters	2-4
Chapter Synopsis	2-6
Workbook Learning Activities	2-7

CONSENSUAL ENCOUNTERS

Introduction

Peace officers come into daily contact with individuals for a variety of reasons. The peace officer must be able to communicate with those individuals to aid and collect information without violating the Fourth Amendment.

Policing In Our Communities

With the advent of community policing, traditional measures of success such as the number of arrests is combined with new measures defined in terms of quality of life. These measures include reduction in alcohol-related traffic collisions, domestic abuse, homicide incidents, and drug-related recidivism. Arrests are not an end product in law enforcement work. They are useful tools in helping to achieve quality of life goals.

Definition

A **consensual encounter** is a face-to-face contact with a person under circumstances which would cause a reasonable person to believe they are free to leave or otherwise not cooperate.

No legal justification is needed as long as officers are in a place they have a right to be.

Appropriate Applications

Peace officers must be vigilant when contacting the public to ensure their actions do not elevate a consensual encounter into a detention. Appropriate actions peace officers can take during a consensual encounter are:

- Requesting information (including identification and personal information)
- Interviewing witnesses at the scene of a crime or accident
- Conversing casually
- Disseminating information

Examples

A highway patrol officer arrived at the scene of an accident to assist another officer. The second officer interviewed the witnesses to the accident and took their statements.

Two peace officers were leaving a restaurant when an elderly couple approached them and asked for directions to the zoo. The officers gave them directions and then asked general questions about their visit to town.

A peace officer suspects an individual of possessing a controlled substance but does not have enough information to legally detain him. The officer approaches the person and asks if he would be willing to answer a few questions.

Non-Cooperation

If people refuse to cooperate during a consensual encounter, the peace officer may not require them to do so. People must be allowed to leave unless the officer has obtained or developed sufficient additional information which would justify detaining (reasonable suspicion) or arresting them (probable cause).

ELEVATING CONSENSUAL ENCOUNTERS

Introduction

Peace officers will ensure they do not violate a person's Fourth Amendment rights during a consensual encounter by elevating it into a detention or arrest without legal justification.

Elevating Actions

Certain actions may elevate a consensual encounter into a detention. Usually, peace officers can take alternate actions to avoid elevation.

Possible Elevating Actions	Alternate Actions
Using emergency lights	Using a spotlight rather than emergency lights
Selecting a position or placing the patrol vehicle so as to prevent the person or car from leaving	Selecting a position or location that does not obstruct the person or vehicle from freely leaving
Issuing orders or commands ("Stop!" or "Come here, now!")	Requesting consent; seeking voluntary cooperation; "Do you mind if we talk?"
Using accusatory questioning or tone of voice	Using non-accusing, helpful, inquisitive tone of voice; requesting compliance rather than ordering it
Conducting cursory/pat searches without legal justification	Asking for consent to pat search
Demanding and/or keeping a person's identification	Requesting identification and returning it when finished or upon request

Examples

Officers saw two men walk past each other in an alley in an area with a lot of drug-trafficking. They believed the men would have met each other if the officers had not been there. This "looked suspicious" to the officers, so they contacted one of the men and asked for identification. When he refused, they ordered him to stay and investigated further. Refusal to cooperate, by itself, is not reason enough to detain, so the detention was illegal.

Late one evening, an officer observed someone sitting alone in a parked car in the empty parking lot of a closed business. Wishing to investigate, the officer drove up to the parked car. He turned on his emergency lights to identify himself as a peace officer. Because the officer's red light means "Stop," this was an illegal detention.

Elevation Of Contact

Elevating a consensual encounter by improper behavior can have negative legal and professional repercussions.

The peace officer could:

- Violate the Fourth Amendment right against unreasonable searches and seizures, resulting in the suppression of evidence
- Be civilly prosecuted for a violation of civil rights
- Be criminally prosecuted for false imprisonment
- Face agency disciplinary action

Learning Need

Peace officers must recognize that a consensual encounter is a face-to-face contact with a person under circumstances which would cause a reasonable person to believe they are free to leave or otherwise not cooperate.

Appropriate Applications [15.02.2]

Peace officers must be vigilant when contacting the public to ensure they do not elevate a consensual encounter into a detention.

Elevating Consensual Encounters [15.02.3]

Certain actions can elevate a consensual encounter.

Consequences Of Elevating Consensual Encounters [15.02.4]

Elevating a consensual encounter could have legal negative repercussions.

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity Questions

1. A peace officer is interviewing witnesses at the scene of a drive-by shooting. What actions might the officer take to make sure these encounters remain consensual and do not elevate into detentions? What should the officer do if an eyewitness says she has to leave for an appointment?

2. What is the defining feature of a consensual encounter? Why is it important for an officer to be aware of the citizen's perspective of the encounter as well as his or her own?

3. Why must an officer guard against unintentionally elevating a consensual encounter into a detention? What actions do you think might easily cause such elevation?

Chapter 3

Detentions

OVERVIEW

Learning Need

Peace officers must recognize that a temporary detention is an assertion of authority that is less than an arrest but more substantial than a consensual encounter.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
• Differentiate between a detention and a consensual encounter	15.03.2
• Recognize reasonable suspicion	15.03.3
• Recognize appropriate peace officer actions during a detention	15.03.4
• Recognize the scope and conditions for warrantless searches and seizures during a detention	15.03.5
• Recognize conditions where the use of force or physical restraint is appropriate during a detention	15.03.6

In This Chapter

This section focuses on detentions. Refer to the chart below for a specific topic.

Topic	See Page
Detentions	3-3
Reasonable Suspicion for a Detention	3-6
Appropriate Actions During a Detention	3-9
Searches and Seizures During a Detention	3-13
Use of Force/Physical Restraints During a Detention	3-16
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Introduction

Peace officers may need to detain a person to investigate involvement in criminal activity. To be lawful, a detention must be based on *reasonable suspicion* that criminal activity has taken place, is taking place, or is about to take place, and that the person detained is connected to that activity.

Definition

A lawful **detention** requires *reasonable suspicion* of criminal activity.

A temporary detention or stop is an assertion of authority by a peace officer that would cause a reasonable person to believe they are *not free to leave*. Such a belief may result from physical restraint, unequivocal verbal commands, or other conduct by an officer.

A detention of a person is limited in scope, intensity, and duration. It is less than an *arrest* and more substantial than a *consensual encounter*.

Consensual Encounter vs Detention

Peace officers must be able to distinguish between a consensual encounter and a detention. The table below depicts some similarities and differences between a consensual encounter and a detention.

Consensual Encounter	Detention
An officer approached a man, known for selling drugs, in an alley and asked if they could talk. The officer proceeded to obtain general information from the man. The officer started filling out a field identification card and ran a records check, making small talk until the results came back.	<p>An officer approached a man, known for selling drugs, in an alley and asked if they could talk. The officer proceeded to obtain general information from the man and started filling out a field identification card. The man stated that he needed to leave, but the officer did not return his driver's license, continued to run a records check, and made small talk until the results came back.</p> <p>Because the officer kept the license, the man was not <i>free to leave</i>. The consensual encounter was elevated to a detention.</p>
Officers observed a man walking through a shopping center at 1:20 a.m. when all the stores were closed. They shined a spotlight on him, and one of the officers asked, "Is everything okay?"	Officers observed a man walking through a shopping center at 1:20 a.m. when all the stores were closed. They shined a spotlight on him, got out of their car, and one of the officers said, "Come over here. I want to talk to you." This "command" would make the suspect believe he was not free to leave. The initial contact would now be classified as a detention.

Examples

An officer made a vehicle stop for weaving within the lane. The officer determined that the driver was weaving because she spilled coffee in her lap. This was a lawful detention based on reasonable suspicion of a reckless driving violation.

While assigned to night foot patrol, a uniformed officer observed a man walking by a closed jewelry store. The man walked back and forth, looking at all corners of the window, as well as at the alarm box on the wall. The officer had been informed that there had been several “smash-and-grab” burglaries in the area. The officer approached the man and asked for identification. The man started to walk away without answering. The officer stepped in front of the man to prevent him from leaving the area. This is a legal detention.

REASONABLE SUSPICION FOR A DETENTION

Introduction

Unlike a consensual encounter, peace officers must have a reason or factual basis they can articulate in order to lawfully detain a person. This basis is called reasonable suspicion.

Definition

Reasonable suspicion is when a peace officer has enough facts and circumstances present to make it reasonable to suspect that criminal activity is occurring, and the person detained is connected to that activity.

Reasonable suspicion of criminal activity must exist to make a detention lawful.

Basis For Reasonable Suspicion

Reasonable suspicion may be based on observation, personal training and experience, or information from eyewitnesses, victims, or other officers (totality of the circumstances).

Reasonable suspicion cannot be based on a hunch or instinct. If reasonable suspicion is not properly established in a court of law, the case against the defendant may be dismissed or any evidence seized may be excluded from trial.

Contributing Factors

Some factors that *contribute* to establishing reasonable suspicion are:

- Appearance or condition of a person (intoxicated, resemblance to wanted person)
- Actions (hiding objects, furtive movements, running from a crime scene)
- Driving behaviors
- Knowledge of the person's "history" (criminal record or conduct)
- Demeanor (non-responsive, nervous)
- Location of the stop (near crime scene, known criminal activity in area)
- Officer training and experience (modus operandi, expertise in certain area such as narcotics or gang activity)

NOTE: Flight by itself does not establish (reasonable suspicion) and cannot justify a detention.

Examples

An officer observed a man and woman standing on a corner in an area known for high drug activity. The woman appeared nervous, slyly looking in all directions. The woman reached into her pocket and gave the man a baggie in return for something; he then walked away. The officer is justified in detaining the man and woman on reasonable suspicion of drug-dealing.

An officer was driving when a car passed him. The car swerved and almost hit another car. The officer had reasonable suspicion to stop the driver for vehicle code violations.

Role Of a Reliable Source

Peace officers can use information from others to investigate possible criminal action and detain those involved in that action. Information which triggers investigative action does not need to come from a source of proven reliability. A tip may support a detention if the surrounding circumstances make the information believable or if the reliable source's identity is known. A purely anonymous tip will normally not provide a sufficient basis to detain although it can be if there is sufficient collaboration or other indications of reliability.

Additionally, if the tip provides information on a person who poses a grave or more immediate risk to the public, such as driving under the influence, the detention can be upheld.

APPROPRIATE ACTIONS DURING A DETENTION

Introduction

Though a detention is considered to be a “seizure of the person,” it does not intrude into a person’s liberty as much as an arrest. To ensure that peace officers do not make illegal arrests, they are restricted in what actions they may take during detentions.

Investigative Actions

Once officers have stopped or detained a person, they may take whatever investigative actions are reasonable under the circumstances to determine the person’s possible participation in a crime.

Common Actions

Common investigative actions include:

- Questioning the person about identity and conduct
- Contacting other individuals (e.g. Witnesses) to confirm explanations, verifying identification, or determining whether the person is wanted (warrant check)
- Checking premises, examining objects, or contacting neighbors or other individuals to determine whether a crime (e.g., burglary) actually occurred
- Bringing the victim to the suspect for identification purposes

Example

A peace officer detained a robbery suspect based on a broadcast description of the person and the area of the robbery. The officer contacted the store clerk to identify the person. The detention was legal even if the clerk says the person is not the one who robbed the store.

Length Of Detention

A detention must be temporary and last no longer than is necessary to resolve the reason for the stop. A detention legal at its beginning can become an illegal arrest if extended beyond what is reasonably necessary under the circumstances.

Often what officers see and hear during a detention (evasiveness, nervousness, conduct, property) will increase their suspicion, justify a longer detention, lead to investigation of a different offense, or possibly even provide probable cause for arrest.

If the person answers all questions about the suspicious circumstances satisfactorily, so that suspicion decreases or disappears, the person must be released.

Examples

A traffic stop, originally based on an excessively loud muffler, was properly prolonged to ascertain positive identification and vehicle ownership when the driver did not have a license, the car was not registered to any of the three male occupants, and the occupants gave conflicting answers to questions.

A peace officer detained a possible battery suspect. During the investigative process, a witness was brought to the location of the detained suspect and confirmed the individual was not the one who committed the crime. The officer must release the person since the initial reason for the detention had been satisfied and no other suspicious behavior was observed.

Transporting a Person During Detention

The person usually will be considered under arrest if transported, without consent, by a peace officer to a different location. Because of this, officers must be careful before transporting a detained person. Officers should not transport a person during a detention unless:

- The detainee gives permission
- It is impractical to bring the witness/victim to the detainee's location
- The conditions of the detention are dangerous to the person
- The conditions of the detention are dangerous to the officer(s)
- Independent probable cause exists to arrest the subject

Examples

An officer detained a person as a suspect in a battery. Because the badly beaten victim was still recovering in a nearby hospital, the officer may take the detainee to the hospital for the victim to view for identification purposes.

Two peace officers approached a group of men acting suspiciously on a corner known for drug activity. They asked the men for identification; one of the men was a known narcotics dealer. When the officers continued to question the known dealer, the other men began to get belligerent and verbally harassed the officers. The officers were justified in moving the detainee for their own safety.

Refusal To Answer Questions

A detainee is not obligated to answer any questions an officer may ask during a lawful detention. The refusal to answer questions alone does not provide probable cause for escalating a detention to an arrest.

NOTE: A person who flees from a lawful detention or intentionally gives misleading/incorrect answers may be arrested for violating *Penal Code Section 148(a)(1)* (resisting, delaying, or obstructing any officer), provided that the action delayed or obstructed the investigation. Not answering questions, however, is not a violation of law.

SEARCHES AND SEIZURES DURING A DETENTION

Introduction

Usually, searches are not permitted during a detention. If officers have a factual basis to suspect that the person is carrying a concealed weapon, dangerous instrument or an object that can be used as a weapon, the officers are justified in conducting a cursory/pat search to protect the officers from an assault.

Scope Of a Cursory/Pat Search

Cursory/pat searches are allowed to protect officers from an assault, but only if there are specific facts that cause the officers to feel endangered.

- The scope of such a search is limited only to:
 - A cursory or pat down search of the outer clothing
 - Locate possible weapons
 - A pat search is not a search for evidence or contraband

Once the officers realize an object is not a weapon, or an object that can be used as a weapon, the officers may not further manipulate the object; they must move on. Any additional feeling, grabbing, or manipulating of the item is outside the scope of a cursory/pat search for weapons and will be considered an illegal search.

Conditions

Peace officers must be able to articulate specific facts which caused them to reasonably believe the person might be carrying a weapon or dangerous instrument.

The following factors may support reasonable suspicion to believe the person may be carrying a weapon or pose a danger:

- Person's clothing (e.g., a bulge in clothing, or wearing a heavy coat on a hot night)
- Person's actions (e.g., trying to hide something or being overly nervous)

- Prior knowledge of person for carrying weapons or of violent behavior
- Isolated location so officers are unlikely to receive immediate aid if attacked
- Time of day (e.g., a dark, moonless night may increase likelihood that the officer may be attacked)
- Reason for detention (e.g., serious, violent, or armed offense)
- A similar cursory/pat search of a detainee's companion revealed a weapon
- Ratio of individuals to officers

Discovery

If officers discover an object during a cursory/pat search, which officers believe is a weapon, dangerous instrument, or hard object which could contain or be used as a weapon, the officers have a right to remove it from the person.

Discovered Item	Officer Action
Legal objects that could be used as a weapon (e.g., screwdriver, pocketknife).	The officer may remove it, keep it until the detention has concluded, then return it to the subject.
A container that is capable of containing a weapon or dangerous instrument.	The officer may remove and open the container.

NOTE: If contraband is discovered during the cursory/pat search, without any undue manipulation of the object, the officers should seize it, ask appropriate questions, place the person under arrest, and conduct a full custody search. This is known as the “plain feel” doctrine. As long as the officer has probable cause, usually based on their training and experience, that the object is contraband, they may lawfully seize the item.

Examples

A peace officer observed a person walking with a screwdriver in the area of a recent auto theft; the person matched a broadcast description which had been given. The dispatcher also indicated that the person was armed with a knife. The officer made contact with the person. The officer conducted a cursory search and retrieved an illegal firearm. Upon further questioning, the person was found not to be involved in the original incident but could be arrested for possession of an illegal firearm.

After seeing a bulge under an individual's shirt, the officer conducted a cursory search of the person. Unable to determine the nature of the bulge, the officer began to manipulate the bulge to determine if it was a weapon.

USE OF FORCE/PHYSICAL RESTRAINT DURING A DETENTION

Introduction

Sometimes officers may have to use force or physical restraints to detain a person. The reasonableness of the use of force will determine whether the detention is elevated to an arrest or remains a detention.

Use Of Force or Physical Restraints

If a person attempts to leave during a detention, officers may use reasonable force and/or physical restraints to compel the person to remain. The use of force does not necessarily elevate the detention to an arrest. Uncooperative individuals may be:

- Handcuffed, and/or
- Placed in a patrol vehicle

Any use of force during a detention must be in accordance with *Penal Code Section 835a*.

Examples

A lawfully detained person began to get nervous during questioning, looked around, and started to walk off; the officer ordered the person to stay. When the person continued to walk off, the officer went after him, grabbed him by the arm, escorted him to the squad car, and placed him in the back seat.

When a peace officer started checking whether the person she had detained had an outstanding warrant, the person turned and ran. The officer chased him and grabbed him. When he continued to struggle, the officer handcuffed him, walked him back to her car, and confirmed the outstanding warrant.

Learning Need

Peace officers must recognize that a temporary detention is an assertion of authority that is less than an arrest but more substantial than a consensual encounter.

Consensual Encounter vs Detention [15.03.2]

Peace officers must be able to distinguish between a consensual encounter and a detention.

Reasonable Suspicion [15.03.3]

When an officer has enough facts and circumstances are present to make it reasonable to suspect that criminal activity is occurring, and the person detained is connected to that activity.

Reasonable suspicion of criminal activity must exist to make a detention lawful.

Appropriate Actions During a Detention [15.01.4]

Peace officers can take certain investigative actions during a detention if they can be completed within a reasonably limited time.

Searches and Seizures During a Detention [15.03.5]

No searches are permitted during a detention unless peace officers reasonably suspect that the detained person may be carrying a concealed weapon or dangerous instrument.

Use Of Force or Physical Restraints During a Detention [15.03.6]

If a person attempts to leave during a detention, the officers may use reasonable force and/or physical restraints to compel the person to remain. Uncooperative individuals may be handcuffed, and/or be placed in a patrol vehicle.

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to appropriate text, you should be able to prepare a response.

Activity Questions

1. About 1:00 a.m. a peace officer detains a couple who have circled the same block in their car several times in an area known for drug sales. As the officer approaches the car, he notices the couple fumbling in the front seat. What actions may the officer take to protect himself? What type of searches are legal in this situation? If the officer finds an unidentifiable bulge during a cursory search, how should the officer proceed? If the officer is asked, after-the-fact, to justify his reasonable suspicion for detaining the couple, how might the officer respond?
2. Describe three actions a peace officer might take, aside from physically restraining a person that would define a contact as a detention.

3. Peace officers are called to the scene of a robbery by a silent alarm. En-route, they notice a man walking rapidly away from the scene and looking around nervously. They detain the man. What investigative actions can the officers properly take at this time?

Chapter 4

Arrests

OVERVIEW

Learning Need

Peace officers must know and comply with the statutory rules of arrest in order to properly exercise their authority and responsibility while avoiding liability when making arrests.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
• Recognize when there is probable cause to arrest	15.04.2
• Identify elements of a lawful arrest	15.04.3
• Differentiate between arrest and a detention	15.04.4
• Recognize information that must be given to an arrested person	15.04.5
• Recognize elements of a warrantless arrest for a misdemeanor	15.04.6
• Recognize elements of a warrantless arrest for a felony	15.04.7
• Recognize elements of a warrant arrest	15.04.8
• Recognize the requirements for entry into a dwelling to make an arrest	15.04.9

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none"> Recognize the authority for a private person arrest and the peace officer's duty in response to a private person arrest 	15.04.10
<ul style="list-style-type: none"> Recognize conditions under which the use of force or physical restraint is appropriate during an arrest 	15.04.11
<ul style="list-style-type: none"> Recognize the statutory requirements for the disposition of an arrested person 	15.04.12
<ul style="list-style-type: none"> Recognize the exception(s) to the powers to arrest 	15.04.13

In This Chapter

This section focuses on identifying and classifying statutory law related to the authority to arrest and release individuals. Refer to the chart below for a specific topic.

Topic	See Page
Probable Cause for Arrest	4-4
Elements of a Lawful Arrest	4-6
Information Given to an Arrestee	4-8
Warrantless Arrests for Misdemeanors and Felonies	4-10
Warrant Arrests	4-14
Entry Into a Dwelling to Make an Arrest	4-16
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Disposition of the Arrestee	4-22
Immunity and Statue of Limitations	4-26
Chapter Synopsis	4-28
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PROBABLE CAUSE FOR ARREST

Introduction

The Fourth Amendment of the U.S. Constitution requires probable cause to make arrests and/or conduct searches because searches or arrests conducted without probable cause infringe on a person's privacy.

Leadership

Peace officers must know the law and the proper methods of enforcement. They are aware of any available options regarding the decision to arrest and how to apply them.

Definitions

Arrest is taking a person into custody, in a case and in the manner authorized by law. (*Penal Code Section 834*) The arrest must be based on probable cause.

Probable cause for an arrest is a set of facts that would cause a person of ordinary care and prudence to entertain an honest and strong belief that the person to be arrested is guilty of a crime. Probable cause is required before an arrest is made and is based on the totality of the circumstances.

Facts required to establish probable cause may include, but are not limited to:

- Direct investigation or reports
- Circumstantial evidence
- Second-hand statements from reliable sources

Reasonable Suspicion vs Probable Cause

Probable cause is a higher standard of suspicion than reasonable suspicion. However, factors that contribute to establishing reasonable suspicion can also be used to establish probable cause, or it can escalate into probable cause.

Factors for Reasonable Suspicion	Probable Cause to Arrest
Possible influence of alcohol or drugs	Illegal level of intoxication
Actions/words/demeanor during detention	Self-incrimination, contraband
Erratic driving behaviors	DUI, contraband
Pat search for weapons	Possession of illegal weapons or contraband
Possible connection to burglary	Discovery of stolen property

Officer Training and Experience

Peace officers' expertise is part of the equation for determining probable cause. For officers versed in a specific field of law enforcement, an activity which might otherwise appear innocent may provide probable cause to a trained eye.

Example

An officer stopped Smith's car for a traffic violation and as he approaches the car, observes a cardboard box in the back seat. The box contained glass beakers and flasks with a white residue. The officer's training and experience enable him to recognize the contents of the box as items commonly used to manufacture methamphetamine and the officer makes an arrest.

ELEMENTS OF A LAWFUL ARREST

Introduction

An arrest is considered a *full seizure* of a person under the Fourth Amendment because it takes away a person's liberty. Federal and California law establishes the authority to arrest and the information that must be provided to a person being arrested.

Elements of a Lawful Arrest

The following chart lists the elements of a lawful arrest and the appropriate California Penal Code Sections.

Elements of a Lawful Arrest	Penal Code
An arrest may be made by a peace officer or private person.	834
The arrested person must be taken into custody, in a case and in the manner authorized by law.	834
An arrest may be made by actual restraint of the person, or by the person's submission to the officer's authority.	835
Reasonable force may be used to make an arrest, prevent escape, or overcome resistance.	835a

Difference Between an Arrest and a Detention

An arrest is the taking of a person into custody, in a case and in the manner authorized by law. *Custody* is the key word; it implies the person making the arrest has full control.

A detention or stop is an assertion of authority that would cause a reasonable person to believe they are not free to leave. A detention is limited in scope, intensity, and duration.

Peace Officer Authority to Arrest

Penal Code Section 836 establishes the legal basis for an arrest by peace officers. Officers may make an arrest:

- Pursuant to a warrant
- Without a warrant
 - Whenever they have probable cause to believe the person to be arrested has committed a public offense (felony or misdemeanor) in their presence
 - When the person arrested has committed a felony, although not in the officer's presence
 - Whenever they have probable cause to believe the person to be arrested has committed a felony, whether or not a felony has in fact been committed

In the Officer's Presence

In the officer's presence is liberally construed by the courts to include what is apparent to the officer's senses, such as hearing, sight, and smell.

Also, the officer can enhance his or her senses by using certain devices or objects, such as binoculars, a flashlight, a dog, a telephone, etc. However, the United States Supreme court has ruled the warrantless use of some thermal imaging devices constitutes a search.

INFORMATION GIVEN TO AN ARRESTEE

Information Required at Time of Arrest

California *Penal Code Section 841* requires that any person making an arrest must convey certain information to the individual arrested at the time of the arrest. The three things that must be explained are:

- intent
- cause
- authority

Item	Description
Intent	The arresting person must tell the individual that he or she is being arrested.
Cause	The arresting person must state the reason for the arrest (e.g., an outstanding warrant, or the name of the offense).
Authority	<ul style="list-style-type: none">• A non-uniformed officer must show identification.• A uniformed officer and/or marked car satisfies this requirement (no ID required).• A private person must state his or her authority to make the arrest.

NOTE: A peace officer arresting or detaining a foreign national for more than two hours must advise the individual that they have the right to contact their consulate (except as specified); and the officer's agency must notify the consulate of the arrest or detention. (*Penal Code Section 834(c)*)

Exceptions

There are two situations when the arresting person is not required to provide the individual with the intent, cause, and authority of the arrest. These are when the individual to be arrested is:

- Actually committing the offense
- Attempting to escape

Examples

Upon serving an arrest warrant, the uniformed officer stated the individual was under arrest for sexual assault. The officer did not need to state his authority since he was in uniform.

A store owner caught a young woman shoplifting perfume. He held her arm and stated under the authority of the California Penal Code he was making a private person's arrest for shoplifting.

WARRANTLESS ARRESTS FOR MISDEMEANORS AND FELONIES

Introduction

A warrantless arrest is a violation of the Fourth Amendment unless it is supported by probable cause. Peace officers must comply with numerous statutory requirements.

Conditions for Warrantless Felony Arrests

Peace officers may make a warrantless felony arrest whenever they have probable cause to believe the person to be arrested has:

- Committed a felony in the officer's presence (*Penal Code Section 836(a)(1)*)
- Committed a felony, although not in the officer's presence (*Penal Code Section 836(a)(2)*)
- Committed a felony, regardless of whether or not the felony was, in fact, committed (*Penal Code Section 836(a)(3)*)

Conditions for Warrantless Misdemeanor Arrests

Peace officers may make a warrantless misdemeanor arrest whenever they have probable cause to believe the person to be arrested committed the misdemeanor in their presence. (*Penal Code Section 836(a)(1)*)

The officer may make a warrantless arrest if there is probable cause even though a misdemeanor was not committed in the officers presence in the following circumstances:

- Committed by a juvenile (*Welfare and Institutions Code Section 625*)
- Any of the following seven violations:
 - Driving while under the influence (*Vehicle Code Sections 40300.5 and 40600*)
 - Carrying a loaded firearm on an individual's person or in a vehicle while in any **public place** or on any public street (*Penal Code Section 25850(a)*)
 - Violating a domestic protective or restraining order, when the officer was responding to a call alleging the same (*Penal Code Section 836(c)*)
(Mandatory arrest)
 - Committing an assault or battery on a spouse, cohabitant, or a parent of their child (*Penal Code Section 836(d)*)
 - Committing an assault or battery on school property while school is in session (*Penal Code Section 243.5*)
 - Committing an assault or battery against a working firefighter, emergency medical technician, or mobile intensive care paramedic (*Penal Code Section 836.1*)
 - Carrying a concealed firearm at an airport (*Penal Code Section 836(e)(1)(2)*)

Examples

An officer received a radio dispatch of drug activity in front of an apartment complex. The officer arrived within two minutes and, from a nearby alley, surreptitiously watched the people in front of the complex. When a backup unit came into view, the officer observed an individual watch it approach, then walk in the opposite direction, take a baggie of white powder and three hypodermic syringes from his person and hide them in a bush. The officer had probable cause for a warrantless misdemeanor arrest since the crime was committed in the officer's presence.

An officer responded to a domestic violence call and found a woman whose ex-boyfriend admitted hitting her. The woman did not want to press charges and was unwilling to make a citizen's arrest. The officer could make a valid arrest for misdemeanor domestic battery because of probable cause, and Penal Code Section 836(d) provides an exception to the "in your presence" requirement.

Time Of Arrest

Warrantless arrests for felonies may take place at any time of day or night on any day of the week. (*Penal Code Section 840*)

Warrantless arrests for misdemeanors or infractions must be made between the hours of 6 a.m. and 10 p.m. (*Penal Code Section 836*), unless the person:

- Commits the crime in the officer's presence
- Is arrested in a public place
- Is already in custody pursuant to another lawful arrest

NOTE: A public place is a location readily accessible to all those who wish to go there including law enforcement. A key consideration is whether a member of the public can access the place "without challenge." Thus, a property with a locked fence is not readily accessible. Other things, such as dogs, indicate the public is not welcome.

Exemption From Prosecution

Officers acting within agency policy and lawful scope of their authority are protected from prosecution for false arrest or imprisonment for both warrant and warrantless arrests (qualified immunity).

Introduction

Arrest warrants are generally required to arrest an individual inside their residence. Arrest warrants permit any officer to make the arrest, since probable cause has already been established. However, there may be exceptions depending on whether the warrant is for a felony or a misdemeanor.

Definition

An **arrest warrant** is a written order signed by a magistrate which directs and commands a peace officer to arrest the person named in the warrant for the offense named in the warrant.

In order to obtain an arrest warrant, the officer must establish probable cause. This is usually done through a sworn statement (affidavit) filed as part of the formal complaint process.

Arrest Warrant Contents

Arrest warrants are required by *Penal Code Section 815* to contain the following information:

- Name of the defendant
- Crime the defendant is suspected of committing
- Time the warrant is issued
- City or county where the warrant is issued
- Signature of the issuing authority with the title of office
- Name of the court or other issuing agency
- Amount of bail

Absent consent, exigencies, parole, or searchable probation, an arrest warrant is necessary to lawfully enter a dwelling to make an arrest.

Pre-Complaint Warrants

Penal Code Section 817 allows a peace officer to obtain an arrest warrant *before* a criminal complaint has been filed.

Pre-complaint warrants (also known as *Ramey* warrants) are an alternative to the complaint/warrant procedure. Pre-complaint warrants contain the same information as other arrest warrants and are also issued based on sworn statements (affidavits) establishing probable cause.

NOTE: It is recommended that peace officers consult with the jurisdiction's prosecuting attorney's office prior to pursuing a pre-complaint warrant.

Obtaining a Pre-Complaint Warrant

The process for obtaining a pre-complaint warrant includes the following actions:

- The peace officer makes a written or oral statement of probable cause (affidavit)
- A magistrate evaluates the information in the affidavit to assess whether probable cause for arrest exists
- Upon the magistrates finding of probable cause, an arrest warrant is issued
- The subject named in the warrant is arrested
- A criminal complaint may subsequently be filed pursuant to *Penal Code Section 849*

Time Of Arrest

Warrant arrests for felonies may be made at any time of day or night on any day of the week. (*Penal Code Section 840*)

Warrant arrests for misdemeanors must be made between the hours of 6 a.m. and 10 p.m. unless the warrant is endorsed for nighttime service. (*Penal Code Section 840*)

ENTRY INTO A DWELLING TO MAKE AN ARREST

“Knock and Notice”

Before entering a private dwelling to make an arrest, an officer needs lawful access.

Simply because an officer can see an object in plain view from a lawful location *does not automatically* mean the officer may legally enter private property without a warrant to seize it, even if the object is obviously contraband or evidence of a crime.

Lawful access to private property is most commonly obtained when the:

- Officer’s entry is based on consent
- Officer’s entry is based on exigent circumstances, for example, a reasonable belief that the evidence will be destroyed if entry is delayed in order to obtain a warrant
- An officer has lawfully entered the area for some other purpose (e.g., to conduct a parole or probation search, or an administrative or regulatory search, etc.)

Knock and notice means that before entering a dwelling to make an arrest, with or without a warrant, officers must give notice to the person inside. (*Penal Code Section 844*). A private dwelling can be any place the person resides (not just houses or apartments) or areas of a business not open to the general public.

Knock and Notice Procedure

Peace officers must follow the prescribed procedure for knock and notice:

- Announce their presence
- Identify themselves as peace officers
- State their purpose
- Demand entry
- Wait a reasonable amount of time (based on circumstances)
- If necessary, forcibly enter premises

Knock and Notice Exceptions

Under certain circumstances, an officer may enter a dwelling without complying with knock and notice requirements. These circumstances are:

- At the scene the officer is given consent to enter
- When exigent circumstances exist

Exigent circumstances exist when there is:

- Hot pursuit
- An imminent threat
- To life (including the officer's)
- To property (e.g., smell of natural gas)
- Of the suspect's escape
- Of the destruction of evidence or contraband

Examples

An officer identified a car as stolen. When a man approached it, the officer recognized him as someone the officer had previously arrested for car theft. When the officer approached, the man ran into a private residence and slammed the door in the officer's face. The officer immediately pursued and followed him into the house. This is an example of hot pursuit, an exigent circumstance which excuses knock and notice.

Peace officers responded to a domestic violence call and found a woman on the floor covered with bruises and cuts. She told the officers her husband was drunk and had threatened to shoot her son. The officers drove to the son's apartment where the husband's car was found parked outside. They heard shouting and a physical altercation from within the apartment. They immediately entered the apartment. This is an example of exigent circumstances; the continued violent behavior and imminent threat to life excuses compliance with knock and notice requirements.

NOTE: If the person to be arrested is on parole or searchable probation, officers may enter, with or without a warrant, to make the arrest, although they would still need to comply with the knock and notice requirement.

PRIVATE PERSON ARRESTS

Introduction

A private person may arrest an individual for any public offense (felony, misdemeanor, or infraction) committed in their presence. In addition, a private person may arrest an individual if a felony actually has been committed and the arresting person has probable cause to believe the individual committed the felony.

Conditions

A private person is authorized to make both felony and misdemeanor arrests. (*Penal Code Sections 834 and 837*). The conditions under which private person arrests can be made are similar to peace officer arrests regarding the use of force and the information that must be supplied to the arrested person. (*Penal Code Section 841*)

Required Actions

According to *Penal Code Section 847*, when making a private person arrest, the person is, without unnecessary delay, required to:

- Take the person before a magistrate
- Deliver the arrested person to a peace officer

Private Searches and Seizures

The Fourth Amendment protects citizens from unreasonable searches and seizures by *government* personnel or their agents. The Fourth Amendment does not apply to a *private person*. Evidence obtained as a result of searches and seizures by a private person will not normally be suppressed.

NOTE: A private person can make warrantless *entries* only for felonies.

NOTE: Peace officers may not request or direct a private person to conduct a search in order to circumvent legal requirements or standards.

Examples

A peace officer arrived at the scene where two shopkeepers were confronting a young man whom they saw spray-painting their alley windows. The shopkeepers informed the man he was under arrest for vandalism. The peace officer then assisted in the physical apprehension of the young man and took custody of him.

A man saw a woman breaking into a car in a shopping mall parking lot. He confronted the woman and told her he wanted her to accompany him to the mall security station. The woman tried to run off; the man grabbed her, confiscated her belongings, and took her to the security office where she was handcuffed, and the police were called.

Officer Refusing to Receive or Arrest Person Charged with Offense

Penal Code Section 142(c) states: “This section shall not apply to arrests made pursuant to section 837, (arrests by private persons).”

Disposition

After an officer “receives” someone who has been arrested by a private person, the private person has no further say in the matter. The officer has three different ways to proceed, as indicated in the table below.

Option	Explanation
Release	<p>Release the person, unconditionally, if the officer is satisfied there are insufficient grounds for filing a criminal complaint. (<i>Penal Code Section 849(b)(1)</i>)</p> <p>NOTE: A release under this section must be documented with a signed certificate indicating the arrest will be deemed to have been a detention. (<i>Penal Code Sections 849(c)</i> and <i>851.6</i>)</p>
Issue a citation	<p>The officer can issue a citation (signed promise to appear) if the arrest was for a misdemeanor, if the arrestee does not demand to be taken before a magistrate, and none of the statutory reasons for denying release exist. (<i>Penal Code Section 853.6(i)</i>)</p> <p>NOTE: Depending on agency policy, the private person may be required to sign as the “arresting party.”</p>
Take the arrested person to a magistrate	<p>The officer can take the person “to the nearest or most accessible magistrate,” (<i>Penal Code Section 849(a)</i>), if one is available. Otherwise, the officer can take the person to jail for booking and either bail or arraignment and then file a criminal complaint.</p>

Exemption From Prosecution

An officer who “receives” an arrested person may not be held civilly liable for false arrest or imprisonment. (*Penal Code Section 836.5*)

USE OF FORCE/PHYSICAL RESTRAINT DURING AN ARREST

Introduction

Individuals are not permitted to resist arrest by peace officers because they can take legal and/or civil action for a false arrest. Some individuals do resist arrest, and peace officers may have to use physical restraints.

Penal Code Authority

Penal Code Section 835a authorizes peace officers to use force that is reasonable and necessary to make an arrest, prevent escape, or overcome resistance.

Examples

Two officers observed a robbery suspect flee the store. The officers chased him, wrestled with him for five minutes before subduing him, handcuffed him, and walked him back to their police car. This is reasonable force.

While being arrested for bank robbery, the individual tried to flee. The officer lightly touched him, causing the individual to lose his balance and fall; the individual broke his wrist during the fall. The amount of force applied by the officer was still considered within reason. It is the officer's conduct, not the injury itself, that must be considered.

DISPOSITION OF THE ARRESTEES

Introduction

Upon arresting a person, peace officers must follow statutory requirements to ensure the arrestee's rights are not violated. The nature of the offense and the presence or the absence of a warrant dictate how peace officers handle the arrestee.

Disposition of Arrestees

Statutes provide different means of handling or “disposing” of arrestees, depending on the nature of their offenses (infraction, misdemeanor, or felony) and the manner of arrest (warrant or warrantless).

Compliance With Warrant

If the arrest is made *pursuant to a warrant* (felony or misdemeanor), the arresting officer must proceed with the arrestee as commanded in the warrant. (*Penal Code Section 848*). For misdemeanors only, this may include cite and release or transport to jail. (*Penal Code Section 827.1*)

Infractions

A person arrested for an infraction is normally **cited** and released, although the arrestee must sign a written promise to appear. (*Penal Code Section 853.5*)

A person arrested for an infraction may be taken into custody if he or she fails to present satisfactory identification, refuses to sign the written promise to appear, or if any of the exceptions listed in *Penal Code Section 853.6* exist.

Warrantless misdemeanor arrests and release *Penal Code Section 853.6* requires, with some exception, that a person *arrested without a warrant for misdemeanor* offenses be cited and released in lieu of custody. Once arrestees sign a written promise to appear or post a bail bond, they are released.

Exceptions To Misdemeanor Cite and Release

Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this chapter unless one of the following is a reason for non-release, in which case the arresting officer may release the person, or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for non-release: (*Penal Code Section 853.6(i)*):

- The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others
- The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety
- The person was arrested under one or more of the circumstances listed in *Vehicle Code Sections 40302 and 40303*
- There was one or more outstanding arrest warrants for the person
- The person could not provide satisfactory evidence of personal identification
- The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested
- There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested
- The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear
- There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated
- The person was subject to *Penal Code Section 1270.1*

Domestic Violence/Abuse Exceptions

Officers are *required* to take the person before a magistrate, rather than cite and release, if the arrest:

- Is for a misdemeanor violation of a protective court order involving domestic violence as defined in *Penal Code Section 13700*
- Is pursuant to agency policy for responding to domestic violence calls per *Penal Code Section 13701*

Warrantless Arrest Releases

When an arrest is made without a warrant by peace officers or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before the magistrate (*Penal Code Section 849(a)*).

However, *Penal Code Section 849(b)* lists five circumstances in which an officer may release a person who was arrested without a warrant. Those five circumstances are as follows:

- There are insufficient grounds for criminal complaint
- The arrest was for intoxication only and no further proceedings are desirable
- The arrest was for being under the influence of a controlled substance or drug and the person is taken to a hospital for treatment and no further proceedings are desirable
- The arrest was for driving under the influence of alcohol or drugs and the person is taken to a hospital for medical treatment which prohibits immediate delivery before a magistrate
- The person arrested was taken to a medical facility for treatment and a mental health evaluation, and no further proceedings are desirable

Probable Cause Determination

Individuals arrested without a warrant must be given a *judicial* determination of probable cause within 48 hours after the arrest, including weekends and holidays (arraignment).

Phone Calls

After being booked, and within three hours of being arrested, an arrested adult must be allowed to make at least three completed phone calls. The calls are at no expense if completed to telephone numbers within the local calling area. Additionally, the arresting or booking officer must inquire, as soon as practicable but no later than three hours after arrest, as to whether the arrested person is a custodial parent with responsibility for a child. A custodial parent is entitled to make two additional completed phone calls for the purpose of arranging childcare. (*Penal Code Section 851.5*)

Juveniles shall, immediately after being taken to a place of confinement and, except where physically impossible, no later than one hour after being taken into custody, be advised of their right to make at least two telephone calls. (*Welfare and Institutions Code 627 (b)*)

Any officer who deprives an arrested person of the right to make telephone calls is guilty of a misdemeanor. (*Penal Code Section 851.5(i)*)

Visitation Privileges

After a person has been arrested, any attorney licensed to practice law in California, upon the request of the arrested person or the arrested person's relatives may visit any time of the day or night. Any officer who willfully refuses to allow an attorney to visit can be charged with a misdemeanor and "shall forfeit" \$500 to the aggrieved party. (*Penal Code Section 825(b)*)

A physician, surgeon, or an attorney who is employed by the arrested person in preparation for the defense is allowed to visit at any time. (*Penal Code Section 825.5*)

IMMUNITY AND STATUTE OF LIMITATIONS

Introduction

There are circumstances when a person has committed a crime and cannot be arrested. These exemptions are based on case law and statutory law.

Related Terms

Immunity is an exemption from a duty or penalty.

A **diplomatic agent** is an official appointed by a government to reside in a foreign country to represent the *political interests* of citizens of the appointing country.

A **consular officer** is an official appointed by a government to reside in a foreign country to represent the *commercial interests* of citizens of the appointing country.

The **consular service staff** are people who work for the consular officer in a foreign country.

NOTE: There are various levels of **diplomatic immunity** for foreign diplomats in the United States. Those with *full* diplomatic immunity may not be prosecuted for any crimes they commit. Those *without* full immunity may be arrested and prosecuted.

Statute of Limitations

Suspects for most crimes must be formally charged by a prosecuting attorney within a certain time limit called the **statute of limitation**, as shown in the chart below.

Crime	Statute of Limitation
Most misdemeanors	One year
Most felonies	Three years
Crimes punishable by death or life imprisonment	No limit
Sex crimes, crimes against children, and others	Can vary according to the crime

NOTE: Even though the statute of limitation has expired, this does not preclude the officer from conducting an investigation, notifying detectives, or seeking advice from a district attorney.

Learning Need

Peace officers must know and comply with the statutory rules of arrest in order to properly exercise their authority and responsibility while avoiding liability when making arrests.

Arrest, Detention and Probable Cause [15.04.2, 15.04.4]

An arrest is the taking of a person into custody, in a case and in the manner authorized by law.

Probable cause to arrest is a set of facts that would cause a person of ordinary care and prudence to entertain an honest and strong belief that the person to be arrested is guilty of a crime.

A detention or stop is an assertion of authority that would cause reasonable individuals to believe they are *not free to leave*. A detention is *limited* in scope, intensity, and duration. A detention is not an arrest.

Elements of a Lawful Arrest [15.04.3]

Penal Code Sections 834 and 835 authorize peace officers and private persons to make arrests. The elements of an arrest are:

- The arrested person must be taken into custody, for a crime and in the manner prescribed by law.
- An arrest may be made by actual restraint of the person or by the person's submission to the officer's authority.
- Reasonable force may be used to make an arrest, prevent escape, or overcome resistance.

Information That Must Be Given to Arrested Person [15.04.5]

Penal Code Section 841 requires that any person making an arrest must convey certain information to the person arrested at the time of the arrest. The three things that must be explained are, intent, cause, and authority.

Warrantless Arrests for Misdemeanors [15.04.6]

Peace officers may make warrantless arrests for certain misdemeanors.

Warrantless Arrests for Felonies [15.04.7]

Peace officers may make warrantless arrests for felonies.

Warrant Arrests [15.04.8]

An arrest warrant is a written order signed by a magistrate which directs and commands a peace officer to arrest the person named in the warrant for the offense named in the warrant.

Entry To Make Arrest [15.04.9]

Knock and notice means that before entering a dwelling to make an arrest, with or without a warrant, officers must give notice to the person inside. (*Penal Code Section 844*)

Private Person Arrests [15.04.10]

A private person may arrest an individual for any public offense that has been committed in the private persons presence.

Use of Force [15.04.11]

Penal Code Section 835(a) authorizes peace officers to use force that is reasonable and necessary to make an arrest, prevent his escape, or overcome resistance.

Disposition of Arrested Persons [15.04.12]

If the arrest is made pursuant to a warrant, the arresting officer must proceed with the arrestee as commanded in the warrant. (*Penal Code Section 848*)

Exceptions to the Power of Arrest [15.04.13]

There are circumstances when a person who has committed a crime and cannot be arrested.

Introduction

Activity Questions

1. Describe an instance in which a peace officer may enter a dwelling without knock and notice.
2. Name four circumstances under which an officer can make a warrantless arrest.

3. A person commits a misdemeanor trespass in an officer's presence. The person flees the scene, and the officer pursues, but loses track of the person after about five blocks. After about 15 minutes, the officer stops the search and continues on patrol. Later that evening, the officer spots the person. What action should the officer take and why?
4. What is the difference between probable cause and reasonable suspicion?
5. Uniformed peace officers on patrol spot a woman whom they recognize from a bulletin. The woman has an outstanding warrant for kidnapping. They approach and arrest the woman. Outline precisely what the officers should say to the woman at the time of arrest. How would this differ if the officers were out of uniform?

Chapter 5

Administration of the Miranda Warning

OVERVIEW

Learning Need

When conducting a custodial interrogation, peace officers must follow Miranda procedures to ensure that any answers they obtain will be admissible in court.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Identify the purpose of the Miranda warning(s)	15.05.1
<ul style="list-style-type: none">Recognize when Miranda warnings must be given	15.05.2
<ul style="list-style-type: none">Identify the proper administration of Miranda warnings	15.05.3
<ul style="list-style-type: none">Recognize the impact of invoking:<ul style="list-style-type: none">The right to remain silentThe right to counsel	15.05.4
<ul style="list-style-type: none">Recognize the types of Miranda waivers	15.05.5
<ul style="list-style-type: none">Recognize the exception(s) to the Miranda rule	15.05.6

In This Chapter

This section focuses on when and how to administer Miranda warnings. Refer to the chart below for a specific topic.

Topic	See Page
The Miranda Warning	5-3
When the Miranda Warning is Required	5-4
Waiving or Invoking Miranda Rights	5-8
Exception to the Miranda Rule	5-14
Chapter Synopsis	5-15
Workbook Learning Activities	5-17

THE MIRANDA WARNING

Purpose of Miranda Warning

The Fifth Amendment of the U.S. Constitution states that:

No person . . . shall be compelled in any criminal case to be a witness against himself.

In *Miranda vs. Arizona* (1966), the United States Supreme Court ruled that unless certain warnings are given to the suspect first, any statement made during custodial interrogation will be viewed as “compelled” because of the inherently coercive atmosphere that exists and that statement(s) would be inadmissible in a court room proceeding.

The Supreme Court set forth four advisements known as the **Miranda warning**, which a peace officer must give to a person at the start of custodial interrogation.

Miranda Warning

Minimally, the following advisements must be provided to a person subjected to custodial interrogations.

- You have the right to remain silent.
- Anything you say may be used against you in court.
- You have the right to an attorney before and during questioning.
- If you cannot afford an attorney, one will be appointed for you free of charge, before questioning, if you wish.

WHEN THE MIRANDA WARNING IS REQUIRED

Introduction

The Miranda warning and a valid waiver of those rights are required before any *custodial interrogation*. Custody and interrogation must *both* exist before the Miranda warning is necessary.

Custody

Custody means a formal arrest or its “functional equivalent.” It is *objectively* determined by the totality of circumstances. People are in custody for Miranda purposes when they have been:

- Actually placed under arrest
- Subjected to the kinds of restraints associated with a formal arrest (e.g., handcuffs, guns, lockups, etc.)

NOTE: Because there is no “custody” (actual arrest or equivalent restraints), the Miranda warning is not required before interrogating a person who has been detained, for example, during a routine traffic stop, even though the person is not free to leave.

Interrogation

Interrogation occurs when a peace officer:

- Engages in direct/express questioning of a person about a crime
- Uses words or conduct reasonably likely to elicit an incriminating response from a person

Not all questioning is considered an “interrogation.” For example, routine booking questions are not interrogation. Neither are casual comments by custodial officials.

Miranda Not Required

The Miranda warning is not required unless both *custody* and *interrogation* exist at the same time. In the absence of formal arrest or equivalent restraints, Miranda custody does not exist.

Without *interrogation*, peace officers are not required to give a person their Miranda rights, even if there is custody. Without *custody*, the officers need not give the Miranda warning, even if they are about to interrogate the person.

CUSTODY + INTERROGATION = NEED FOR THE MIRANDA WARNING

Examples

After announcing themselves as peace officers, two officers entered a person's room with their guns drawn. Because of the arrest-like restraints (drawn guns), the person was considered to be in Miranda custody. Before the officers may begin asking questions regarding the specific crime, they must give the person the Miranda warning.

A man sold a stolen car to his friend. Later, an officer arrested the man. After some remarks about what the man could expect in jail, the officer said to him, "That was sure a cold thing you did to your friend, selling him that hot car." This was interrogation because the officer's remark, though not strictly a question, was likely to elicit an incriminating response.

Volunteered Statements

Statements volunteered by a person, and *not as a direct result of interrogation by the peace officer*, are not affected by Miranda. Statements may be volunteered in any setting, such as:

- During a consensual encounter
- During a detention
- During an arrest
- During the booking process
- During forensic testing or transportation
- After the person has invoked the Miranda right(s)

Examples

Volunteered statements are admissible as evidence. For example:

- After a person asked for a lawyer, he said “I just want to say, off the record, I didn’t mean to kill that dude.”
- An arrestee tells the jailer: “Off the record, I’m guilty as sin.”

Privilege Against Self-incrimination

The Fifth Amendment privilege against self-incrimination applies to testimonial communication only.

This privilege is not violated by requiring the person to provide:

- Handwriting samples
- Voice samples for analysis
- Body fluids or other samples for analysis

In addition, this privilege is not violated if the person is asked to:

- Model articles of clothing
- Participate in a lineup
- Submit to routine fingerprinting
- Repeat a statement for voice identification

Consequences of Not Administering Miranda

Peace officers need to realize that if they fail to follow the Miranda procedures, any statement they may obtain during custodial interrogation may be inadmissible against the person at the criminal trial to prove guilt.

WAIVING OR INVOKING MIRANDA RIGHTS

Introduction

Once officers read the Miranda warning and have ensured that the person understands it, the person may either **waive** (give up) or **invoke** (assert) their Miranda rights. A person has two rights he or she can waive or invoke under Miranda: the right to remain silent and the right to have counsel present during interrogation.

Elements of Miranda

There are three elements in the Miranda process. They are:

- Advisement of the Miranda warning by the officer
- Understanding of the warning by the person
- Waiver or invocation of the Miranda rights (silence and counsel) by the person

The Miranda Process

The person must understand all four advisements of the Miranda warning. To determine this, the officer can ask the person about understanding after each advisement or ask one time after each advisement has been given. Once a person has acknowledged their understanding of the warning, they must go on to either waive (give up) their Miranda rights or invoke one or both of them.

Miranda Phase	Included in the Phase
Warning	<p>Includes informing a person of:</p> <ul style="list-style-type: none">• The right to remain silent,• The fact that any statement made may be used against them in court,• The right to have an attorney present before and during any questioning, and• The fact that an attorney will be provided if the person cannot afford one.

Miranda Phase	Included in the Phase
Understanding	A person must understand the meaning of each advisement.
Waiving or invoking rights	A person must knowingly and voluntarily either waive their rights to silence and counsel or must invoke one or both of these rights.

Waivers

Only if a valid waiver is obtained will answers to questioning be admissible in court. A waiver can be either expressed or implied but must always be *knowing and voluntary*.

Validity of Waiver

For a waiver to be knowing, the person must have fully comprehended the four advisements, that is, must understand the nature of the rights he is giving up and the consequences of waiving them. (“Knowing” and “intelligent” both have this same definition and express a single concept.)

For a waiver to be *voluntary*, it must be the result of a free and deliberate choice and *not* the result of coercion, i.e., any force, threats, or promises of leniency (whether express or implied), or any kind of tricks, cajoling, or “softening up” by the peace officers. If a waiver is ruled *involuntary*, any statements obtained afterward will not be admissible at trial to prove guilt.

Types of Waivers

A valid waiver of rights may be either expressed, implied, or conditional. The following chart explains the difference between these types of waivers.

Type of Waiver	Person's Action	Example
Expressed	Answers yes/no question about going forward with the questioning.	After giving advisements and ensuring understanding, the peace officer asks, "Can we talk about what happened?"
Implied	Acknowledges understanding the advisements and exhibits conduct indicating waiver of rights.	The peace officer starts asking questions and the person answers.
Conditional	Acknowledges understanding the advisements and is willing to go forward but places a limitation/ qualification on answering questions.	The person: <ul style="list-style-type: none">• Refuses to give a written statement,• Refuses to be tape recorded,• Answers some questions but not others,• Refuses to speak to one specific officer but not others, or• Refuses to answer questions until a specific amount of time has lapsed, but• Will go forward if this condition is met.

Examples

While talking to a murder suspect, after giving the Miranda warning, two sheriff's deputies told the suspect they wanted to help prevent him "from getting the death penalty." They also told him about a "hypothetical" case where the individual who had cooperated with the police got charged with manslaughter instead of murder. The suspect waived his rights and made a tape-recorded confession. The waiver was invalid since it resulted from improper coercion, threats, and promises of leniency.

A person, who was very drunk at the time he was informed of his rights and waived them, gave an incriminating statement to officers. The court could determine that the person did not have "the requisite free will and rational intellect" to knowingly waive his rights.

Invoking Miranda Rights

A person may invoke the right to silence or the right to counsel only at the time of, or during, police custodial interrogation. Unless custody and interrogation both exist at the same time, there are no Miranda rights to invoke.

However, if these conditions both exist and the person invokes either the right to silence or the right to counsel, Miranda requires that all *interrogation must* cease.

Some differences between these two rights exist concerning how they are invoked and whether the peace officer may later try to reinitiate interrogation.

NOTE: Miranda rights are personal to the person and may not be invoked by anyone else on his or her behalf, including an attorney or a parent.

Right to Remain Silent

The right to remain silent may be invoked by *any words or conduct* which reflect an unwillingness to discuss the case.

Once a person invokes the right to *silence*, Miranda requires that all interrogation must cease. However, there are circumstances where re-initiation by the peace officer may produce an admissible statement. These circumstances include:

- A period of time has gone by, *and*
- The officers have some new information, and/or
- The officers want to ask about a different crime.

In any such “try again” situation, there would have to be full re-advisement per Miranda and a valid waiver, with no pressure from the officer.

Right to Counsel

Unlike the right to silence, a person's invocation of the Miranda right to have an attorney present or to speak to an attorney can only be invoked by a *clear and express* request for an attorney.

Once the Miranda right to *counsel* has been asserted, all interrogation must cease. There are *no* circumstances, except for the actual presence of the attorney, where re-initiation by the officer is proper for as long as the person remains in custody. This is true even where officers from a different agency wish to interrogate the person about a different crime.

Examples

When an officer asked the person if, having the Miranda advisements in mind, he wanted to talk, the person said, "Not really." This amounted to an invocation of the person's right to *silence*.

When an officer gave a jailed person the Miranda warning, the person stated he wanted to talk to an attorney. Because the person had invoked his right to *counsel*, officers could not interrogate him to obtain an admissible statement without his lawyer being present.

When a Suspect Re-Initiates Questioning

Because Miranda rights are personal, *suspects* may change their mind. For example, suspects may re-initiate or express a desire to make a statement, even though they earlier invoked the right to silence or counsel. Under such circumstances, the officer should:

- Re-admonish the person with Miranda warnings
- Obtain a valid *express* waiver
- Then interrogate further
- Make a verbatim account of the re-initiation and any statement given

Documentation

Because of the different re-initiation rules, peace officers should always document whether a person has waived or invoked their right to *silence* or their right to *counsel*. This will protect other officers from inadvertently reinitiating contact with the person and possibly violating Miranda's requirements.

Juveniles in Custody

Miranda applies the same to minors as adults. The courts have found no difference in application. A juvenile does *not* have the right to have an adult present, and any request for one is not *automatically* either an invocation of the right to silence or the right to an attorney.

However, California has a statute (*Welfare and Institutions Code Section 625.6*) that requires an officer to give Miranda warnings "in any case where a juvenile is taken into temporary custody." This requirement exists even when the juvenile is not going to be interrogated. If the minor is not going to be interrogated, the statute does not require that the minor understands the warnings or any waiver of rights, but rather just the advisements.

A minor, 17 years of age or younger, shall consult with legal counsel in person, by telephone, or by video conference prior to a custodial interrogation. The consultation may not be waived (*Welfare and Institutions Code Section 625.6*).

EXCEPTION TO THE RULE OF MIRANDA

Introduction

There is one exception to the general Rule of Miranda when a person is in custody and about to be interrogated. It is known as the *public safety* or *emergency rescue* exception, and it is based on exigent circumstances.

Public Safety Exception

No Miranda warning is necessary, even though a person is in custody, if the officer who is about to ask incriminating questions (interrogate) is motivated by a concern for someone's safety.

The concern for safety can be for the victim, the defendant, some third person, the public at large, or the officer's own safety. Courts view this exception rather narrowly.

Examples

Miranda did not apply to a hostage situation where the person was holding a wounded hostage at gunpoint.

Miranda did not apply where an armed person, who had been apprehended inside a busy supermarket and had apparently discarded his gun somewhere in the store, was asked where the gun was located.

Learning Need

When conducting a custodial interrogation, peace officers must follow Miranda procedures to ensure that any answers they obtain will be admissible in court.

The Purpose of the Miranda Warning [15.05.1]

Compliance with Miranda allows any statement the person makes to be admitted against him at trial to prove guilt without violating the person's Fifth Amendment right against self-incrimination.

When Miranda Warning is Required [15.05.2]

If an officer is about to *interrogate* a person who is in custody, the officer must advise the person of the four Miranda advisements.

Administering the Miranda Warning [15.05.3]

Once the four Miranda advisements have been given and the person has acknowledged understanding them, the person may either waive or invoke the right to silence, the right to an attorney, or both.

Invoking Miranda Rights [15.05.4]

Under Miranda, a person may invoke the right to remain silent or the right to counsel only at the time of, or during, police custodial interrogation.

Waiving Miranda Rights [15.05.5]

For any statement made after a waiver to be admissible in court, the waiver must be knowing and voluntary.

Exception to the Miranda Rule [15.05.6]

A peace officer is not required to give the Miranda warning if there is imminent concern for the safety of a person or the public.

Introduction

Activity Questions

1. In connection with an arrest for robbery, at what point is an officer required to provide the Miranda warning? Describe an occurrence that might cause an exception to this requirement.
2. After being given the Miranda warning, a murder suspect invokes her right to remain silent. When, and under what circumstances, can peace officers try again to interrogate the person without violating Miranda? If the person invokes her right to an attorney after about 10 minutes of interrogation, under what circumstances can reinitiation of interrogation produce admissible evidence?

3. Describe two situations in which a waiver of the right to remain silent under Miranda would be considered invalid.

4. What is the basis for the Miranda warning? Why do they exist?

Chapter 6

Crime Scene Interviews and Investigative Interrogations

OVERVIEW

Learning Need

To develop admissible evidence while ensuring the constitutional rights of all individuals, peace officers must correctly follow standardized practices for conducting crime scene interviews and interrogations.

Learning Objectives

The following table identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Differentiate between an interview and interrogation	15.06.1
<ul style="list-style-type: none">Identify the purpose of an interrogation	15.06.2
<ul style="list-style-type: none">Differentiate between an admission and a confession	15.06.3
<ul style="list-style-type: none">Identify the conditions in which a confession or admission may be inadmissible in a court	15.06.4

In This Chapter

This section focuses on gathering evidence from individuals at a crime scene such as witnesses or the person who may have committed the crime. Refer to the table below for a specific topic.

Topic	See Page
Crime Scene Interviews	6-3
Investigative Interrogations	6-10
Chapter Synopsis	6-16
Workbook Learning Activities	6-17

CRIME SCENE INTERVIEWS

Introduction

Statements made by victims, witnesses, or suspects at a crime scene can be critical in tying together the facts of a crime. Crime elements may be revealed by the statements of victims, witnesses, or the suspects themselves.

Definition

An **interview** is the process of gathering information from a person who has knowledge of the facts that an officer will need to conduct an investigation.

Purpose

Interviews are conducted at the scene of a crime in order to obtain and document information needed to:

- Determine if a crime has taken place
- Identify and locate victims and witnesses
- Identify possible suspects
- Generate a crime broadcast to dispatch

Interviews vs Interrogations

It is important for officers conducting interviews at a crime scene to recognize the differences between an interview and an interrogation. The following table illustrates a number of such differences.

Interviews	Interrogations
The process of questioning non-suspects such as victims or witnesses (who typically are willing to cooperate).	<ul style="list-style-type: none">• The process of questioning <i>suspects</i> (who often may be <i>unwilling</i> to provide information to investigating officers).• Questions or conduct reasonably likely to elicit an incriminating response.
Should take place at the crime scene.	<ul style="list-style-type: none">• More than likely takes place as part of a follow-up investigation.

Preparation

Before beginning any crime scene interview, officers should properly prepare themselves and the individual(s) to be interviewed.

Actions	Guidelines
Be physically and mentally prepared.	<ul style="list-style-type: none">• Become well acquainted with the circumstances surrounding the crime.• Determine the number, role, and priority of the people who should be interviewed (i.e., victim, witness, suspect, etc.).• Develop an interview plan of questions that should be asked to establish the facts of the incident (i.e., who, what, when, where, why, how).• Organize equipment that will be needed to document the interviewee's statements (e.g., notebook and pencil, tape recorder with charged batteries and blank cassettes).
Separate the involved parties.	<ul style="list-style-type: none">• If possible, move the person, with his or her consent, to a location where there will be no interruptions or distractions.• Focus the person's attention on speaking with the officer rather than on interacting with others.
Establish rapport.	<ul style="list-style-type: none">• Rapport is developed between two parties and must be sustained throughout the contact.• Rapport is enhanced when the interviewer displays honesty, empathy, and autonomy.• Tell the interviewee why the interview is being conducted.• Describe the interview process that will be followed.• Assure the person that by using this process, the officer will be able to gather that person's statement accurately.• Be courteous, considerate, and patient.

Active Listening

Initially, the officer's focus should be strictly on the other person listening (not taking notes) to what that individual has to say.

Actions	Guidelines
Define roles and expectations	<ul style="list-style-type: none">• Explain reason for the interview• Encourage interviewee to:<ul style="list-style-type: none">- Actively participate- Provide only what they know, no guessing• Volunteer information• Do not edit thoughts
Ask open-ended questions.	<ul style="list-style-type: none">• Allow the person to speak freely.• Have the person describe the incident just as that person understands it, using that person's own words.• Tell, Explain, Describe. (e.g., "Tell me what you saw, explain how it made you feel, describe the suspect in as much detail as you can...")
Keep the person focused.	<ul style="list-style-type: none">• If the person should begin to wander from the specific topic, guide the person back to the subject (e.g., "You mentioned that..." "Let's go back to...").• Maintain eye contact and use nonverbal gestures (e.g., nodding the head) to encourage the person.
Listen carefully to what is being said.	<ul style="list-style-type: none">• Be particularly attentive to the essentials of the incident as described by that person including, but not limited to, the:<ul style="list-style-type: none">- role of the person being interviewed (victim, witness, etc.)- type of crime, if any, that has been committed- time of the occurrence- exact location of the person during the crime or incident

Ask Questions and Take Notes

When the person has finished speaking initially, the interviewing officer can begin to question the individual and capture information on paper as part of that officer's field notes.

Actions	Guidelines
Obtain identification information.	<ul style="list-style-type: none">• Confirm the person's role in the event or incident (e.g., victim, witness, possible suspect, etc.).• Note the person's:<ul style="list-style-type: none">- complete name- address and phone number (home and work)- any other information necessary for identification purposes
Ask the interviewee to repeat that person's account of what happened.	<ul style="list-style-type: none">• Write down information in short statements.• If a statement is particularly important, have the person repeat it until it is captured entirely in field notes.
Ask additional questions.	<ul style="list-style-type: none">• Obtain descriptions of property, suspects, etc.• Ask the individual if that person would like to add any additional information.

Recording the Interview

Some officers may choose to use a digital recorder, in-car camera, or body camera while conducting an interview. Officers should be aware that this may inhibit the person from talking freely. Electronic equipment can also malfunction, leaving the officer with little or no information.

Even if an officer is recording the interview, that officer should also take thorough and complete notes of the interview.

Verify Information

Officers should review the individual's statements with the interviewee and allow the interviewee to clarify points, if necessary.

Actions	Guidelines
Review information with the person.	<ul style="list-style-type: none">• Repeat specific information to verify that the information is accurate and complete.• Give the person an opportunity to add facts as necessary.
Ask for confirmation.	<ul style="list-style-type: none">• Have the person confirm important details such as:<ul style="list-style-type: none">- direct quotes- time relationships- information regarding weapons- physical descriptions
Make modifications or corrections as necessary.	<ul style="list-style-type: none">• Information may have been initially recorded incorrectly because the officer:<ul style="list-style-type: none">- misunderstood the interviewee's statement- inadvertently wrote something down incorrectly- may have incorrectly characterized the interviewee's statement
Verify changes.	<ul style="list-style-type: none">• Once any changes have been made, the information that has been added or modified should be verified.

Close the Interview

At the end of each interview, the interviewing officers should thank the individual for that person's time and cooperation. Officers may also choose to explain any further actions that may be taken during the investigative process.

When possible, officers should introduce victims and witnesses to any investigators who will be conducting a follow up investigation.

NOTE: For additional information regarding field interviews, note taking, and report writing, refer to LD 18: *Investigative Report Writing*.

Additional Sources of Information

During the investigation of a crime, it is imperative that the investigating officer gather as much relevant information as possible. To supplement crime scene interviews or when conducting a follow-up investigation, additional information may be obtained from:

- Physical evidence
- Public and private records and other documents
- Surveillance footage
- Social media postings
- Informants

INVESTIGATIVE INTERROGATIONS

Introduction

An interrogation means any questioning or conduct that is reasonably likely to elicit (produce) an incriminating response from a suspect (i.e., perpetrator or accomplice). Although, it is possible to “interrogate” a suspect at the scene *before* the suspect has been arrested, handcuffed, or otherwise placed in “custody,” interrogation more commonly takes place *after* the suspect has been taken into custody, typically as part of a follow-up investigation. When a suspect is both in “custody” and about to undergo “interrogation,” then Miranda comes into play.

Miranda

In the 1966 case of *Miranda v. Arizona*, the U. S. Supreme Court set forth a series of “procedural safeguards,” now known as Miranda admonishments.

Before in-custody suspects are *interrogated*, they must be *informed* of, and waive their rights to:

- remain silent
- the presence of an attorney before and during questioning

Custodial Interrogation of Juveniles

“During a custodial interrogation of a person 17 years of age or younger relating to the commission of a misdemeanor or felony, a law enforcement officer shall not employ threats, physical harm, deception, or psychologically manipulative interrogation tactics. (*California Welfare and Institutions Code § 625.7*).”

Exceptions: Does not apply if both of the following criteria are met:

- The officer reasonably believed the information sought is necessary to protect life or property from an imminent threat.
- The officer’s questions are limited and reasonably necessary to obtain information related to the imminent threat.

Purposes

An interrogation serves a number of different purposes:

- Truth seeking
- Motivating subjects to provide accurate information
- Identifying individuals involved in a crime
- Corroborating the facts of a crime
- Obtaining information that could lead to the recovery of evidence or property

Confession vs Admission

A peace officer who conducts an interrogation must have a clear understanding of the difference between a **confession** and an **admission**.

A(n)...	involves acknowledging...
Confession	The commission of all of the elements of a crime.
Admission	Certain facts that tend to incriminate the individual but fall short of a confession.

Inadmissible Statements

A confession is the most compelling evidence of a suspect's guilt. However, a confession or admission that violates the person's constitutional protections and statutory requirements can be ruled inadmissible as evidence and greatly jeopardizes the state's position.

The U.S. Supreme Court has upheld the inadmissibility of statements (i.e., confessions, admissions) that were obtained in violation of the following four amendments to the U.S. Constitution.

Amendment	Rights and Freedoms	A confession or admission may be <i>inadmissible</i> in a court of law if the...
Fourth	Freedom from unreasonable <i>searches or seizures</i>	Arrest and statement were the result of an illegal search and seizure, such as an improper entry, unreasonable detention, etc.
Fifth	Freedom from <i>self-incrimination</i>	Statement was obtained during custodial interrogation carried out in violation of any Miranda requirements, such as without a complete advisement of rights, or without a valid waiver of rights.
Sixth	Right to <i>counsel</i>	Statement was obtained in violation of charged defendant's right to be assisted by counsel, such as by initiating interrogation about the charged crime outside the presence of defense counsel of a defendant who has already been to court and obtained a lawyer to represent him or her.
Fourteenth	Right to <i>due process</i> and <i>equal protection</i> of the law	Statement was involuntary, i.e., was coerced by the government as the result of: <ul style="list-style-type: none">• Physical force or threats• Express or implied threats• Express or implied promises of leniency• Overbearing psychological pressure

NOTE: *Maryland v. Shatzer* was a case where the United States Supreme Court ruled that peace officers could re- initiate questioning of a charged defendant who initially invoked their Fifth Amendment rights only after the defendant has been released from custody for a period of 14 days or more since they last requested an attorney, so long as the defendant waives Miranda.

Preparation

Prior to conducting an interrogation, officers should take the time to prepare themselves and form a strategy for obtaining incriminating information.

In the course of this preparation, officers should:

- Read all case reports so as to be thoroughly familiar with the:
 - Crime scene
 - Evidence collected
 - Earlier statements
- Learn as much as possible about the individual to be interrogated
- Decide on an interrogation technique to begin with (understanding that other techniques may be used during the interrogation as well)
- Prepare a list of key questions that refer to the:
 - Elements of the specific crime
 - Actions taken by the individual
 - Intent and motive for those actions
- Identify facts (what we definitely know), information (what we have not verified), and inferences (what we think we know based on the facts and information)
- To avoid confirmation bias and decrease the probability of tunnel vision, officers should always consider alternative explanations to the inferences they have drawn

Location

To control all outside influences on the individual to be questioned, the interrogation should take place in a room that is:

- Soundproof
- Isolated from any other activity
- Well lit (but not with glaring lights)
- Furnished with a minimum of furniture and no distracting decorations
- Secure and protected from interruptions
- Connected to outside areas by a buzzer or intercom system

Obtaining a Statement

The goal of an interrogation is to obtain as much information as possible. The interviewer should seek to engage the subject ethically and professionally and to seek the truth about events to provide the best evidence in the interests of justice

The role of the interviewer is not simply to extract a confession

Nonverbal or behavioral cues are not reliable indicators of deception. Cues to deception should be found in the details of the account of the event rather than in signs of anxiety or nonverbal behaviors.

Some cues that may indicate the person is telling the truth include:

- a. Inclusion of quotations
- b. Complications
- c. Verifiable details
- d. Spontaneous corrections
- e. Use of core vs. peripheral details
- f. Structured vs. unstructured recall

Questioning Strategy

Open ended questions are more productive in eliciting information. Types of non-productive questions include questions that are:

- Leading or suggestive
- Compound
- Multiple choice
- Opinion statement
- Force choice

Open ended questions should start broadly focused and narrow as they the interview proceeds (funneling).

Coercion

Coercion should never be used during an interrogation.

Coercion may include:

- Falsely telling a suspect that members of his/her family will be held accountable if he/she does not confess to a crime.

Involuntary Confessions

An **involuntary confession** or statement is one that results from the use of coercion and therefore *is not admissible in court for any purpose*. Unlike statements obtained in violation of Miranda, an involuntary confession may not be used as evidence to impeach witnesses or in any other way against the accused individual.

Learning Need

To develop admissible evidence while ensuring the constitutional rights of all individuals, peace officers must correctly follow standardized practices for conducting crime scene interviews and interrogations.

Interviews vs Interrogations [15.06.1]

Interviewing is the process of questioning non-suspects such as victims or witnesses (who typically are willing to cooperate).

Interrogation is the process of questioning suspects who often may be *unwilling* to provide information to investigating officers.

Purpose of Interrogation [15.06.2]

An interrogation serves a number of different purposes.

Confession vs Admission [15.06.3]

A peace officer who conducts an interrogation must have a clear understanding of the difference between a confession and an admission.

Inadmissible Statements [15.06.4]

A confession or admission may be *inadmissible* in a court of law if the arrest was the result of an illegal search or seizure. If the statement was obtained in violation of any of Miranda's requirements (when applicable). If the statement was obtained in violation of the charged defendant's right to be assisted by counsel. If the individual was coerced into making involuntary statements.

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity Questions

1. Give two examples describing circumstances in which an officer's questioning of a person would not be considered interrogation.
2. Give an example of a tactic that would be considered coercive. Explain why that tactic would be considered unacceptable and would violate the person's Fourteenth Amendment rights.

3. Predictable dialogue. You are an officer interrogating a suspect in a burglary case. List some questions the subject might have for you and what your response(s) should be.

4. You are an officer who has responded to a call involving a residential burglary. The homeowner tells you that his son's computer, the family's television, and three pieces of his wife's jewelry are missing. List possible questions you might ask the homeowner during the initial portion of your crime scene interview.

Glossary

Introduction

The key vocabulary terms for LD 15: Laws of Arrest are listed below with the definitions as they apply to this workbook.

Admission

Certain facts that tend to incriminate the individual, but fall short of a confession

Arrest

Taking a person into custody, in a case and in the manner authorized by law

Arrest Warrant

A written order signed by a magistrate, directed to and commanding a peace officer to arrest the person named in the warrant for the offense cited on the warrant

Cited

A person is given a written notice to appear in court; it contains the time and place where the person shall appear in court

Coercion

The use of force, threats, or psychological pressure used to deprive a suspect of free choice or refusal to answer

Confession

The commission of all the elements of a crime

Consensual Encounter

A face-to-face contact between a private individual and a peace officer under circumstances that would cause a reasonable person to believe that they are free to leave or otherwise not cooperate

Consular Officer

An official appointed by a government to reside in a foreign country to represent the *commercial interests* of citizens of the appointing country

Consular Service Staff

The consular service staff work for the consular officer in a foreign country

Custody

A formal arrest or its “functional equivalent”

Detention

An assertion of authority that would cause reasonable people to believe they are *not free to leave* or otherwise disregard the police and go about their business; a detention is *limited* in scope, intensity, and duration

Diplomatic Agent

An official appointed by a government to reside in a foreign country to represent the *political interests* of citizens of the appointing country

Diplomatic Immunity

Those with *full* diplomatic immunity may not be prosecuted for the crimes they commit; those *without* full immunity may be arrested and prosecuted

Immunity

Exemption from a duty or penalty

Interrogation

Direct/express questioning by a peace officer of a person about a crime, or statements or actions by an officer that are reasonably likely to elicit an incriminating response or the process of gathering information from a person who has knowledge of the facts that an officer will need to conduct an investigation

Interview

The process of gathering information from a person who has knowledge of the facts

Invoke

To assert a right, constitutional or otherwise

Involuntary Confession

A statement that results from the use of coercion

Knock and Notice

A requirement that before entering a dwelling to make an arrest, with or without a warrant, peace officers must give notice to the person inside through certain actions

Miranda Warning

The four advisements which an officer must give a person at the start of custodial interrogation

Pre-Complaint Warrant

Arrest warrant obtained before a complaint has been filed; sometimes referred to as Ramey warrant

Probable Cause

A set of facts that would cause a person of ordinary care and prudence to entertain an honest and strong suspicion that the person to be arrested is guilty of a crime

Public Place

A public place is a location readily accessible to all those who wish to go there, including law enforcement. A key consideration is whether a member of the public can access the place “without challenge.” Thus, a property with a locked fence is not readily accessible. Other things, such as, dogs in a yard show public is not welcome

Reasonable Suspicion

Enough facts and information to make it reasonable to suspect that criminal activity is occurring, and the person detained is connected to that activity; reasonable suspicion is required to justify a detention

Search

Governmental infringement or intrusion upon an expectation of privacy that society is prepared to consider reasonable

Seizure Of a Person

A peace officer’s physical application of force, or a person’s voluntary submission to a peace officer’s authority

Seizure Of Property

Some meaningful interference by the government with an individual's possessory interest in that property

Statute Of Limitation

The time limit within which suspects for most crimes must be arrested

Under Color of Law

An action that is carried out as if under the authority of the law, but that is actually done in violation of law

Waive

To give up a right, constitutional or otherwise