

Laws of Arrest

LD-15

San Jose Police Department

Learning Domain 15
SJPD CSO Basic Course

“form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty.”

- ❑ The U.S. Constitution - 1789
 - ❑ The first session of Congress proposed 10 amendments to the Constitution called the “Bill of Rights”
 - ❑ California Constitution in - 1879.
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Amendments Relevant to Arrest Law

- Fourth – Search & Seizure
 - Fifth – Right Against Self Incrimination
 - Sixth – Right to Speedy Trial & Counsel
 - Fourteenth – Equal Treatment Under the Law.
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Fourth Amendment

[15.01.E02]

- 1.) The people are free from unreasonable searches and seizures
 - What things can be seized
 - 2.) Defines procedures officers must follow when obtaining a warrant
 - What kinds of warrants exist.
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Fourth Amendment

Relevant Concepts

- ❑ **Search:** When a reasonable expectation of privacy is infringed upon by the government
 - ❑ **Seizure of persons:** When a person is subdued by, or submits to, an LEO
 - ❑ **Reasonable suspicion:** The legal standard that justifies a detention
 - ❑ **Probable cause:** The legal standard that justifies an arrest.
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Fifth Amendment

[15.01.E03]

- 1.) Individuals cannot be compelled to be a witness against themselves in a criminal case (Miranda)
 - 2.) Persons may not be tried for the same offense twice (Double Jeopardy)
 - 3.) Persons may not be deprived of life, liberty, or property without due process of law (Due Process).
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Sixth Amendment

[15.01.E04]

- 1.) Right to a speedy trial
 - 2.) Right to confront witnesses against them and obtain witnesses in their favor
 - 3.) Right to assistance of counsel during court proceedings
 - The right to a lawyer applies at the first court proceeding, Upon Grand Jury indictment **or** when the suspect specifically requests a lawyer.
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Fourteenth Amendment

[15.01.E05]

- 1.) Applies portions of the Bill of Rights to all States
 - 2.) Requires peace officers to apply the law equally to all people regardless of race, creed, nationality, religious preference, national origin or citizenship status.
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Civil Rights Statutes

Federal & State

[15.01.E06]

- ❑ Officials (that's you) who deprive or deny someone a legal right by act or omission
 - ❑ While acting under the color of law
 - ❑ Can be held personally liable
-and/or-
Imprisoned.
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Under Color of the Law??

- ❑ An action carried out as if under the authority of law
 - ❑ But is actually done in violation of the law.
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Civil Rights Statutes

Federal & State

[15.01.E06]

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- ❑ U.S. Code, Title 42, Section 1983
 - You can be sued for monetary damages
 - ❑ U.S. Code, Title 18, Section 241
 - Fine/10 yrs prison to conspire (2 or more) to deprive rights
 - ❑ U.S. Code, Title 18, Section 242
 - Fine/1 yr prison if you act alone to deprive rights
 - ❑ Penal Code Section 422.6(a)
 - Establishes additional protected classes in California:
 - Religion
 - National Origin
 - Gender
 - Ancestry
 - Disability
 - Sexual Orientation.
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Chapter 2

Consensual Encounters

- What are they
 - How they can be elevated into an unlawful detention
 - What can happen to you or your case if you create an unlawful detention.
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Consensual Encounters

Defined

[15.02.E02]

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- ❑ 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 and otherwise not cooperate

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

Consensual Encounters

Examples

[15.02.E02]

- ❑ Casual conversations with the public
 - ❑ Passing out information
 - ❑ Interviewing witnesses
 - ❑ Gathering information
 - including identification and personal information, with the person's consent.
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Consensual Encounters

Elevations

[15.02.E03]

- ❑ Demanding compliance
 - Red emergency light
 - Giving orders or commands
 - ❑ Physically preventing departure
 - Blocking people in
 - Demanding Identification
 - ❑ Giving the impression a person may not leave
 - Accusatory wording or tone of voice
 - Conducting searches without legal justification.
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Consensual Encounters

Results of Unlawful Detentions [15.02.E04]

- ❑ Loss of Criminal Case
 - ❑ Civil Liability
 - ❑ Criminal Liability
 - ❑ Departmental Discipline.
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Detentions

- ❑ What is a detention
 - ❑ LEOs authority to detain
 - ❑ Conduct CSOs should avoid
 - ❑ Why CSOs don't conduct detentions.
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Detentions

Defined

- ❑ 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.
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Detentions

Limitations & Requirements

- ❑ Less than an *arrest* and more substantial than a *consensual encounter*
 - ❑ Requires Reasonable Suspicion
 - ❑ It is limited in scope, intensity, and duration.
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Detentions

Reasonable Suspicion Defined

- 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

NOTE: This is based on your training & experience.

Detentions

LEO Actions During Detentions

- ❑ Time is limited
 - ❑ Detainees are typically not transported
 - ❑ Investigate to prove/disprove criminality:
 - identifying detainees
 - check for warrants
 - searching detainees for evidence or weapons
 - showing detainees to witnesses.
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Detentions

CSOs & Detentions

- ❑ CSOs do **not** have the authority to detain:
 - By law
 - By Department Policy
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Detentions

CSOs & Detentions

- CSOs who make detentions may suffer:
 - suppression of evidence
 - be civilly prosecuted
 - be criminally prosecuted
 - face agency disciplinary action.
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Arrests

- ❑ What is an arrest
 - ❑ What is *Probable Cause* to arrest
 - ❑ Why CSOs need to understand PC
 - ❑ Legal authority to arrest
 - ❑ Why SJPD CSOs don't make arrests.
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Arrests

What is an Arrest

- ❑ It is not limited in scope or duration (unlike detentions)
 - ❑ It is a full seizure under the law
 - ❑ It involves *Custody/Submission*
 - ❑ Via cooperation or force.
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Arrests

Probable Cause

□ Justifies an arrest when:

- The totality of the circumstances
 - Would cause a person of ordinary care & prudence
 - To entertain an honest and strong belief that
 - The person to be arrested is guilty of a crime.
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Arrests

Why CSOs Need to Understand PC

- ❑ Probable Cause must be based on describable facts and observations (not hunches)
- ❑ The decision to arrest is based on PC
- ❑ PC is needed to get an arrest warrant

The ultimate goal of an initial investigation is to develop PC to arrest the perpetrator.

Arrests

Legal Authority to Arrest

- ❑ 834_{PC} – Anyone can arrest for a crime committed in their presence
 - ❑ 836_{PC} – LEOs may make arrests for:
 - ❑ any crime committed in their presence
 - ❑ some misdemeanors not committed in their presence
 - ❑ felonies not committed in their presence
 - ❑ pursuant to arrest warrants
 - ❑ CSOs are not LEOs.
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Arrests

Why SJPD CSOs Do Not Make Arrests

- ❑ The moment of arrest is inherently dangerous
- ❑ Arrests are not in the CSO job description:
 - ❑ You will not be equipped to make arrests
 - ❑ You will not be trained to make arrests
 - ❑ You will not be sent to calls that may involve an arrest.

Department policy discourages arrests by CSOs
