

# **Basic Course Workbook Series Student Materials**

**Learning Domain 15**

**Laws of Arrest**

**Version Three**

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

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## **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 worked with POST to develop this workbook. The Commission extends its heartfelt appreciation to the California law enforcement agencies who freely offered personnel who gave of their time to participate in the development of this training material.

This student workbook is part of the POST Basic Course Training System. The workbook component of this system provides self-study documents for every learning domain that makes up the basic course. Each workbook is intended to be a supplement to, not a substitute for, classroom instruction. Its objective is to improve learning and retention of information by a student attending the academy.

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

It is my hope that the collective wisdom and experience of all who contributed to this book helps you, the student, to successfully complete the academy course, to advance to the Field Training Officer program and to enjoy a safe and rewarding career as a peace officer serving the communities of California.

A handwritten signature in black ink, appearing to read "Hal Snow". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

HAL SNOW  
Interim Executive Director



# LD 15: Laws of Arrest

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# Preface

## Introduction

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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.

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### **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.

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### **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 Student Workbook

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## Introduction

This workbook provides an introduction to the training requirements for this Learning Domain. You may use the workbook in several ways: for initial learning, for test preparation, and for remedial training.

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## Workbook format

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

Step	Action
1	Begin by reading the: Preface and How to Use the Student Workbook, which provide an overview of how the workbook fits into the POST training program 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	Begin reading the text.
4	Complete the Workbook Learning Activities Section 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. The terms appear throughout the text and are bolded and underlined the first time they appear (e.g., <b><u>term</u></b> ).

---

# Chapter 1

## Constitutional Protections and the Role of a Peace Officer

### Overview

---

**Learning need** Peace officers must have an understanding of 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.

<b>After completing study of this chapter, the student will be able to...</b>	<b>E.O. Code</b>
<ul style="list-style-type: none"><li>recognize a peace officer's role 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"><li>Fourth Amendment,</li><li>Fifth Amendment,</li><li>Sixth Amendment, and</li><li>Fourteenth Amendment.</li></ul></li></ul>	15.01.EO2 15.01.EO3 15.01.EO4 15.01.EO5
<ul style="list-style-type: none"><li>recognize a peace officer's role in relation to the protections included under federal civil rights statutes.</li></ul>	15.01.EO6

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## Overview, Continued

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

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# Overview of the U.S. and California Constitutions

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## **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.

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## **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, insure 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.

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# Fourth Amendment

[15.01.EO2]

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## 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.

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# Fifth Amendment

[15.01.EO3]

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## **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.

---

# Sixth Amendment

[15.01.EO4]

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## **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, and
  - the assistance of counsel, during court proceedings.
- 

## **Meaning for peace officers**

The Sixth Amendment entitles a person to counsel (i.e., an attorney) once adversary judicial proceedings have commenced. Adversary 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. Once the Sixth Amendment right to counsel has attached and the person is represented by counsel, police are prohibited from initiating interrogation of the person about the charged crime, except in the presence of counsel.

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

---

# Fourteenth Amendment

[15.01.E05]

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## **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.

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## **Meaning to 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.

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# Civil Rights Statutes

[15.01.E06]

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## 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).

---

## 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.

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*Continued on next page*

## Civil Rights Statutes, Continued

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### 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.

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### Meaning for peace officers

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

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*Continued on next page*

## Civil Rights Statutes, Continued

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**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  
to 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.

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*Continued on next page*

## Civil Rights Statutes, Continued

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**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.

---

# Chapter Synopsis

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**Learning need** Peace officers must have an understanding of 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 [15.01.EO2]** If peace officers are not able to show probable cause, an arrest or search may be invalid, and the resulting evidence may be excluded.

---

**The Fifth Amendment [15.01.EO3]** Peace officers need to understand how the Miranda decision protects a person's right against self-incrimination.

---

**The Sixth Amendment [15.01.EO4]** Once this right attaches (indictment or first court appearance) and the person is represented by counsel, police are prohibited from initiating interrogation of the person about the charged crime, except in the presence of counsel.

---

**The Fourteenth Amendment [15.01.EO5]** The Fourteenth Amendment requires that peace officers must:

- apply the law equally to all people, and
- treat them the same regardless of race, creed, nationality, religious preference, or national origin.

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## Chapter Synopsis, Continued

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**Civil Rights  
Codes  
[15.01.E06]**

*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.

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# Workbook Learning Activities

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## 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 Amendment |

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

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*Continued on next page*

## Workbook Learning Activities, Continued

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**Activity  
Questions**  
(continued)

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?

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# Chapter 2

## Consensual Encounters

### Overview

---

**Learning need** Peace officers must recognize that a consensual encounter is a face-to-face contact with a private person, that they can not exert authority, and the person reasonably believes they can leave or not cooperate at any time.

---

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

<b>After completing study of this chapter, the student will be able to . . .</b>	<b>E.O. Code</b>
<ul style="list-style-type: none"><li>• recognize appropriate conduct during a consensual encounter.</li></ul>	15.02.EO2
<ul style="list-style-type: none"><li>• recognize conduct that may elevate a consensual encounter.</li></ul>	15.02.EO3
<ul style="list-style-type: none"><li>• recognize the consequences of elevating a consensual encounter.</li></ul>	15.02.EO4

---

**In this chapter** This chapter focuses on the characteristics of a consensual encounter.

<b>Topic</b>	<b>See Page</b>
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Elevating Consensual Encounters	2-4
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---

# Consensual Encounters

[15.02.EO2]

---

## Introduction

Peace officers come into daily contact with private 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 numbers of arrests are joined by new measures defined in terms of quality of life. These measures include reduction in alcohol-related traffic collisions, reduction of domestic abuse and homicide incidents, and reduction of 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 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.

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 that they do not elevate a consensual encounter into a detention. Appropriate actions that peace officers can take during a consensual encounter are:

- gathering information (including identification and personal information),
  - interviewing witnesses at the scene of a crime or accident,
  - conversing casually, and
  - disseminating information.
- 

*Continued on next page*

## Consensual Encounters, Continued

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### Examples

- Example: 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.
- Example: 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.
- Example: 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-example: An officer ordered a potential witness not to leave the scene until after an interview was completed.
- 

### 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 or arresting them.

---

# Elevating Consensual Encounters

[15.02.EO3, 15.02.EO4]

---

## Introduction

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

---

## 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
Placing the peace officer or the officer's vehicle so as to prevent the person or car from leaving	Selecting an unobstructive position or location
Issuing orders or commands	Requesting consent; seeking voluntary cooperation
Using accusatory questioning or tone of voice	Using nonaccusing, helpful, inquisitive tone of voice; requesting compliance rather than ordering it
Conducting cursory/frisk searches without legal justification	Asking for consent to frisk
Demanding and/or keeping a person's identification	Requesting identification and returning it when finished or upon request

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*Continued on next page*

## Elevating Consensual Encounters, Continued

---

### Examples

Example: Officers saw two men walk away from 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 hadn't 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.

Example: 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 and held liable for a violation of civil rights,
  - be criminally prosecuted for false imprisonment, or
  - face agency disciplinary action.
-

# Chapter Synopsis

---

**Learning need** Peace officers must recognize that a consensual encounter is a face-to-face contact with a private person, that they can not exert authority, and the person reasonably believes they can leave or not cooperate at any time.

---

**Appropriate applications [15.02.EO2]** Peace officers must be vigilant when contacting the public to ensure that they do not elevate a consensual encounter into a detention.

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**Elevating consensual encounters [15.02.EO3]** Certain actions can elevate an encounter.

---

**Consequences of elevating consensual encounters [15.02.EO4]** Elevating a consensual encounter could have negative repercussions.

---

# Workbook Learning Activities

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## 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 do you think it is 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?
-

## Workbook Corrections

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Suggested corrections to this workbook can be made by going to the POST website at: [www.post.ca.gov](http://www.post.ca.gov)

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# Chapter 3

## Detentions

### Overview

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**Learning need** To execute the appropriate actions, 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.

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

<b>After completing study of this chapter, the student will be able to...</b>	<b>E.O. Code</b>
<ul style="list-style-type: none"><li>differentiate between a detention and a consensual encounter.</li></ul>	15.03.EO2
<ul style="list-style-type: none"><li>recognize reasonable suspicion.</li></ul>	15.03.EO3
<ul style="list-style-type: none"><li>recognize appropriate peace officer actions during a detention.</li></ul>	15.03.EO4
<ul style="list-style-type: none"><li>recognize the scope and conditions for warrantless searches and seizures during a detention.</li></ul>	15.03.EO5
<ul style="list-style-type: none"><li>recognize conditions where the use of force or physical restraint is appropriate during a detention.</li></ul>	15.03.EO6

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## Overview, Continued

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**In this chapter** This chapter focuses on detentions. Refer to the chart below for a specific topic.

<b>Topic</b>	<b>See Page</b>
Detentions	3-3
Reasonable Suspicion for a Detention	3-6
Appropriate Actions During a Detention	3-8
Searches and Seizures During a Detention	3-13
Use of Force/Physical Restraints During a Detention	3-16
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# Detentions

[15.03.EO2]

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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*.

NOTE: In the case of a routine traffic stop, only the *driver* is considered legally detained, not the passengers. Courts will not consider passengers to be detained, unless the officer exercised further authority over them, for example, by giving a command.

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## Detentions, Continued

### 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
<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. The officer started filling out a field identification card and ran a records check, making small talk until the results came back.</p>	<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>
<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?"</p>	<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, 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.</p>

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## Detentions, Continued

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### Examples

- Example: 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.
- Example: 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.
- Non-example: An officer always greeted store keepers and pedestrians as he walked along his beat. One person stopped and asked him questions about the recent arrest of a football player. The officer answered the questions and then continued his walk. This is an example of a consensual encounter rather than a detention.
-

# Reasonable Suspicion for a Detention

[15.03.EO3]

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## 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.

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## Definition

Reasonable suspicion: 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.

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## 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.

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## 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 (nonresponsive, nervous),
- 

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## Reasonable Suspicion for a Detention, Continued

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### Contributing factors (continued)

- time of day (unusualness),
  - location of the stop (near crime scene, known criminal activity in area), and
  - officer training and experience (modus operandi, expertise in certain area such as narcotics or gang activity).
- 

### Examples of reasonable suspicion

Example: 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.

Example: 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.

Non-example: A young man saw an officer's car coming down the street and began to run away. This alone would not provide reasonable suspicion to detain the man without additional suspicious circumstances.

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### 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 sources identity is known. A purely *anonymous* tip, however, will normally *not* provide a sufficient basis to detain.

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# Appropriate Actions During a Detention

[15.03.EO4]

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## **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.

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## **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.

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## **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, or
  - bringing the victim to the suspect for identification purposes.
- 

*Continued on next page*

## Appropriate Actions During a Detention, Continued

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### Examples

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.

Non-example: Based on *reasonable suspicion*, an officer detained a vehicle being driven by a possible rape suspect. After ordering the person out of the car, the officer searched the vehicle for the cap which the rapist had reportedly been wearing. The detention was legal, but the search was not. Without consent, *no* search is permitted during a detention except a cursory/frisk for *weapons* under certain circumstances.

---

### 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.

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## Appropriate Actions During a Detention, Continued

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### Examples

- Example: 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.
- Example: A police officer detained a possible murder suspect. The officer confirmed the person's identity and alibi. The officer must release the person as the initial reason for the detention had been satisfied and no other suspicious behavior was observed.
- Non-example: An officer made a lawful traffic stop. He tried to run a routine vehicle check on the computer in the patrol car, but the computer was down. The officer advised his backup, who indicated she had no idea how long it would be before the computer was up and running again. It would be unreasonable to make the driver wait; the officer should cite the driver for the reason behind the stop and let him depart.
- 

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## Appropriate Actions During a Detention, Continued

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### 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, or
  - the conditions of the detention are dangerous to the officer(s).
- 

### Examples

Example: 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.

Example: 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.

Non-example: Two officers tried to question a robbery suspect. He gave them incomplete answers frustrating them. The officers put the man in their car and took him to the station to “talk to him further.” This transportation escalated the detention into an unlawful arrest.

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*Continued on next page*

## Appropriate Actions During a Detention, Continued

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### **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* (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.

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# Searches and Seizures During a Detention

[15.03.05]

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## **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 or dangerous instrument, the officers are justified in conducting a cursory/frisk search to protect the officers from an assault.

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## **Scope of a cursory/frisk**

Cursory/frisk 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 frisk of the outer clothing,
- locate possible weapons.

Once the officers realize an object is not 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/frisk search for weapons and will be considered an illegal search.

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## **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,
- 

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## Searches and Seizures During a Detention, Continued

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### Conditions (continued)

- 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/frisk of detainee's companion revealed a weapon, or ratio of individuals to officers.
- 

### Discovery

If officers discover an object during a cursory/frisk 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, pocket knife).	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 weapons frisk, the officers should seize it, ask appropriate questions, place the person under arrest, and conduct a full custody search.

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## Searches and Seizures During a Detention, Continued

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### Examples

The following examples illustrate approval actions when conducting a cursory/frisk search.

**Example:** 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 frisk 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.

**Example:** After seeing a bulge under an individual's shirt, the officer conducted a frisk 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.

**Non-example:** A highway patrol officer stopped a driver for 82 mph in a 55 mph zone at 2 a.m. on a Sunday night. The driver acted extremely nervous; he kept looking at his passenger and was sweating excessively on a cool night. The officer asked the driver to step out of the car and conducted a cursory search of the driver. This was not appropriate because there were insufficient facts to reasonably suspect the driver was armed.

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# Use of Force/Physical Restraint During a Detention

[15.03.06]

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## 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.

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## 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
  - be placed in a patrol vehicle.
- 

## Examples

The following examples illustrate a reasonable level of force or physical restraints which may be used during a lawful detention.

Example: 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.

Example: 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.

Non-example: Two patrol officers tried to get a detainee to stay in place. They handcuffed him and put him in a closet while they ran a warrant check. They may have violated the individual's rights by placing him in a closet.

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# Chapter Synopsis

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**Learning need** To execute the appropriate actions, 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.

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**Consensual encounter vs. detention**  
[15.03.EO2] Peace officers must be able to distinguish between a consensual encounter and a detention.

---

**Reasonable suspicion**  
[15.03.EO3] 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.EO4] Peace officers can take certain investigative actions during a detention if they can be completed within a reasonably limited time.

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**Searches and seizures during a detention**  
[15.03.EO5] 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.

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**Use of force or physical restraints during a detention**  
[15.03.EO6] 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.

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# 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, and to avoid potential liability when making arrests.

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

<b>After completing study of this chapter, the student will be able to . . .</b>	<b>E.O. Code</b>
• recognize when there is probable cause to arrest.	15.04.EO2
• identify elements of a lawful arrest.	15.04.EO3
• differentiate between arrest and a detention.	15.04.EO4
• recognize information that must be given to an arrested person.	15.04.EO5
• recognize elements of a warrantless arrest for a misdemeanor.	15.04.EO6
• recognize elements of a warrantless arrest for a felony.	15.04.EO7
• recognize elements of a warrant arrest.	15.04.EO8
• recognize the requirements for entry to make an arrest.	15.04.EO9
• recognize the authority for a private person arrest and the peace officer's duty in response to a private person arrest.	15.04.EO10
• recognize conditions under which the use of force or physical restraint is appropriate during an arrest.	15.04.EO11

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*Continued on next page*

## Overview, Continued

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### Learning objectives (continued)

After completing study of this chapter, the student will be able to . . .	E.O. Code
<ul style="list-style-type: none"><li>recognize the statutory requirements for the disposition of an arrested person.</li></ul>	15.04.EO12
<ul style="list-style-type: none"><li>recognize the exception to the powers to arrest.</li></ul>	15.04.EO13

---

### In this chapter

This chapter 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	4-3
Elements of a Lawful Arrest	4-6
Information to an Arrestee	4-8
Warrantless Arrests for Misdemeanors and Felonies	4-10
Warrant Arrests	4-14
Entry to Make an Arrest	4-17
Private Person Arrests	4-20
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Disposition of Arrestee	4-25
Immunity and Statue of Limitations	4-29
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# Probable Cause for Arrest

[15.04.EO2]

---

## Introduction

The Fourth Amendment of the U.S. Constitution requires probable cause to make arrests and conduct searches because these actions infringe on a person's privacy.

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## Leadership

Good peace officer leaders 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.

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## 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 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 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, or
  - secondhand statements from reliable sources.
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## Probable Cause for Arrest, Continued

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**Reasonable suspicion vs. probable cause**

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

<b>Factors for Reasonable Suspicion</b>	<b>Probable Cause to Arrest</b>
possible influence of alcohol or drugs	illegal level of intoxication
actions/words/demeanor during detention	self-incrimination, contraband
erratic driving behaviors	DUI, contraband
frisk for weapons	possession of illegal weapons or contraband
possible connection to burglary	discovery of stolen property

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## Probable Cause for Arrest, Continued

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### **Officer training and experience**

Peace officers' expertise are 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.

---

### **Examples**

Example: An individual was in a park where marijuana sales often took place. A stranger drove up and approached the individual. The officer observed the stranger give the individual money in return for two small, thin, white, unfiltered cigarettes, and then drive away. Because of the officer's experience in narcotics, the specifics of what he had seen exchange hands, and the location of the incident, there was probable cause to justify an arrest.

Example: Smith's purchase of 400 pounds of Freon under an assumed name (bringing his total to more than 2400 pounds in 15 months) and taking it to a remote location provided probable cause for a warrant to search for a clandestine methamphetamine manufacturing "lab."

Non- example: An officer seized "a large object about the size of a baseball wrapped in aluminum" from a detainee's pocket, thinking it contained narcotics. This seizure was illegal because there was no probable cause for the search; there was nothing distinctive about the object, such as its size, shape or the manner in which it was being carried, that would cause a reasonable person to associate it with narcotics.

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# Elements of a Lawful Arrest

[15.04.EO3, 15.04.EO4]

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## Introduction

An arrest is considered a *full seizure* of a person under the Fourth Amendment because it significantly intrudes into a person's liberty. There are specific California codes that establish 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 penal code sections.

Elements of a lawful arrest	Penal Code Section
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 that the person making the arrest has full control.

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

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## Elements of a Lawful Arrest, Continued

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### **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, or
  - without a warrant:
    - whenever they have probable cause to believe that 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 that 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.

---

# Information to an Arrestee

[15.04.EO5]

## 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, and
- 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"><li>- A nonuniformed officer must show identification.</li><li>- A uniformed officer and/or marked car satisfies this requirement (no ID required).</li><li>- A private person must state his or her authority to make the arrest.</li></ul>

## 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, or
- attempting to escape.

*Continued on next page*

## Information to an Arrestee, Continued

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### Exceptions (continued)

NOTE: A peace officer arresting or detaining a foreign national for more than two hours must advise the foreign national 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)*)

---

### Examples

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

Example: A store owner caught a young woman shoplifting perfume. He seized her arm and stated that under the authority of the California Penal Code he was making a private person's arrest for shoplifting. He fulfilled all three requirements.

---

# Warrantless Arrests for Misdemeanors and Felonies

[15.04.EO6, 15.04.EO7]

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## Introduction

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

---

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

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# Warrantless Arrests for Misdemeanors and Felonies,

Continued

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## Conditions for warrantless misdemeanor arrests

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

Though a misdemeanor was not committed in the officer's presence, the officer may make a warrantless arrest if there is probable cause that the misdemeanor was:

- committed by a juvenile (*Welfare and Institutions Code Section 625*), or
- 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 12031(a)(4)(A)*),
  - violating a domestic protective or restraining order, when the officer was responding to a call alleging same (*Penal Code Section 836(c)*), (Mandatory arrest)
  - committing assault or battery on a spouse, cohabitant, or a parent of their child (*Penal Code Section 836(d)*),
  - committing assault or battery on school property while school is in session (*Penal Code Section 243.5*),
  - committing assault or battery against a working firefighter, emergency medical technician, or mobile intensive care paramedic (*Penal Code Section 836.1*), or
  - carrying a concealed firearm at an airport. (*Penal Code Section 836(e)*)

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## Warrantless Arrests for Misdemeanors and Felonies,

Continued

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### Examples

Example: 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 felony arrest.

Example: An officer responded to a domestic violence call and found a bruised woman whose live-in 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 battery because of probable cause, and *Penal Code Section 836(c)* provides an exception to the "in your presence" requirement.

Non-example: An officer noticed a man at night in a parking lot ducking among the cars and looking into them through the driver's window. There had been several car burglaries recently reported in the same neighborhood. The officer would have reasonable suspicion to detain, but insufficient probable cause to arrest.

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*Continued on next page*

# Warrantless Arrests for Misdemeanors and Felonies,

Continued

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## **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, or
- is already in custody pursuant to another lawful arrest.

---

## **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.

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# Warrant Arrests

[15.04.EO8]

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## 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.

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## 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.

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## Arrest warrant contents

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

- name of the defendant,
- crime that 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, and
- amount of bail.

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

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## Precomplaint warrants

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

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*Continued on next page*

## Warrant Arrests, Continued

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### Precomplaint warrants (continued)

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

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### Obtaining a precomplaint warrant

The process for obtaining a precomplaint 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.
  - On finding probable cause, an arrest warrant is issued.
  - Subject named in the warrant is arrested.
  - Criminal complaint may subsequently be filed pursuant to *Penal Code Section 849*.
- 

### Affidavit of probable cause

The affidavit of probable cause for a precomplaint arrest warrant may take the form of a:

- sworn *written* statement,
  - sworn *oral* statement that is recorded, transcribed, certified, and filed in court, or
  - telephonic oath supported by a written declaration which, along with any supporting declarations and/or attachments, is faxed or e-mailed to the magistrate (becoming the "original"), signed, and then faxed or e-mailed back to the officer (becoming the "duplicate original").
- 

*Continued on next page*

## Warrant Arrests, Continued

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**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*)

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# Entry to Make an Arrest

[15.04.EO9]

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## “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.

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*Continued on next page*

## Entry to Make an Arrest, Continued

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### **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), and
  - if necessary, forcibly enter premises.
- 

### **Knock and notice exceptions**

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

- at the scene the officer is given consent to enter, or
- when exigent circumstances exist.

Exigent circumstances exist when there is 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.
- 

*Continued on next page*

## Entry to Make an Arrest, Continued

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### Examples

Example: 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.

Example: 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 then shots from the apartment. They immediately entered the apartment. This is an example of exigent circumstances; the continued violent behavior and imminent threat to life excuse compliance with knock and notice.

Non-example: The officers arrived at a residence. The front door was open, and they could hear voices. The officers entered the residence and arrested the person in his living room. There was no reason to enter without knocking and announcing. Just because the officer had a warrant and the door was open did not create an exception.

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.

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# Private Person Arrests

[15.04.EO10]

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## Introduction

A private person may arrest an individual for any public offense (felony, misdemeanor, or infraction) that has been 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 that the individual committed the felony.

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## Conditions

The 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.

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## 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, or
  - 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, *not a private person*. Therefore, 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.

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*Continued on next page*

## Private Person Arrests, Continued

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### Examples

Example: 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 that he was under arrest for vandalism. The peace officer then assisted in the physical apprehension of the young man and took custody of him.

Example: A man saw a woman breaking into a car in a shopping mall parking lot. He confronted the woman and told her that 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.

Non-example: A woman saw a man shoplifting. When her friend came out of the dressing room, she told her friend what she had seen. Her friend said that the man should not get away with shoplifting, and attempted a private person arrest. The arrest was not valid because the misdemeanor did not take place in the friend's presence.

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*Continued on next page*

## Private Person Arrests, Continued

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### Receiving a private person arrestee

*Penal Code Section 142* states: “Any peace officer who has the authority to receive or arrest a person charged with a criminal offense and willfully refuses to receive or arrest that person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both that fine and imprisonment.”

*Penal Code Section 142* does not apply to arrests made pursuant to *Penal Code Section 837*.

---

### 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	Release the person, unconditionally, if the officer is satisfied that there are insufficient grounds for filing a criminal complaint. ( <i>Penal Code Section 849(b)(1)</i> )  NOTE: A release under this section must be documented with a signed certificate indicating that the arrest will be deemed to have been a detention. ( <i>Penal Code Sections 849(c)</i> and <i>851.6</i> )

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*Continued on next page*

## Private Person Arrests, Continued

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**Disposition**  
(continued)

Option	Explanation
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*)

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# Use of Force/Physical Restraint During an Arrest

[15.04.EO11]

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## 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.

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## 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.

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## Examples

Example: 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.

Example: 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.

Non-example: An officer was driving on the interstate when she saw a car listed as stolen; it had been used in a homicide of a peace officer. The officer turned on her emergency lights and got the driver to pull over. When the driver did not respond to the officer's command to exit the car, the officer opened the door, grabbed the driver, pulled him from the car, and hit him repeatedly with her baton. This is a use of excessive force.

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# Disposition of Arrestees

[15.04.EO12]

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## Introduction

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

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## 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).

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## 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 posted proper bail, they are released.

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*Continued on next page*

## Disposition of Arrestees, Continued

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### Exceptions to misdemeanor cite and release

The conditions under which peace officers would not release a person arrested without a warrant for a misdemeanor are (*Penal Code Section 853.6(i)*):

- immediate release might jeopardize prosecution,
  - there is a likelihood that the offense(s) might continue or resume, placing people or property in imminent danger,
  - the person is dangerously intoxicated, needs medical care, or is unable to care for himself or herself,
  - the person has outstanding warrants or has violated a protective order,
  - the person could not provide satisfactory evidence of personal identification,
  - the person demands to be taken before a magistrate or refuses to sign a notice to appear,
  - the person was arrested for driving under the influence (*Vehicle Code Section 23152*) or for any of the offenses listed in *Vehicle Code Sections 40302(a)* and *40303*,
  - the officers have reason to believe the person will not appear at the time and place specified in the notice, in which case the officers must specifically state the reason for this belief.
- 

### 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*.
- 

*Continued on next page*

## Disposition of Arrestees, Continued

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### **Warrantless arrest releases**

When officers arrest a person *without a warrant* for a felony or misdemeanor and the person is not otherwise released, the officers must take the person “to the nearest or most accessible magistrate” (*Penal Code Section 849(a)*), if one is available. Otherwise, the officers must take the person to jail for booking and either bail or arraignment and the filing of a criminal complaint.

However, *Penal Code Section 849(b)* lists three situations where an officer may release a person who was arrested without a warrant. Those situations exist:

- when there are insufficient grounds for criminal complaint.
  - when the person was arrested for intoxication only and no further proceedings are desirable.
  - when the person was arrested only for being under the influence of a controlled substance or drug, is delivered to a treatment facility or hospital, 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.

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*Continued on next page*

## Disposition of Arrestees, Continued

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### 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. (*Penal Code Section 851.5*)

*Juveniles* are allowed at least two phone calls immediately on being taken into custody (*Welfare and Institutions Code 627*). The opportunity to use the telephone should be provided as soon as practical.

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

---

### 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*)

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# Immunity and Statute of Limitations

[15.04.EO13]

---

## Introductions

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.

---

## Stale misdemeanor

A **stale misdemeanor** exists when an adult commits a misdemeanor in another person's presence (including a peace officer) and the person fails to arrest the adult within a reasonable time thereafter.

A *reasonable time thereafter* normally means the person must have been in continuous fresh pursuit of the individual until the arrest is made. If no arrest is made during that time, the individual can no longer be arrested without an arrest warrant.

If an officer sees an individual after that time, the officer may detain the individual and gather information for a warrant. A private person can make a complaint to a peace officer which may result in a warrant.

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*Continued on next page*

## Immunity and Statute of Limitations, Continued

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### Examples

Example: An officer saw a young man painting graffiti on the side of a building. The man saw the officer and ran. The officer pursued the man, but lost him after a few blocks. Two days later, the officer saw the man again. The officer may not arrest him but can detain him for warrant information.

Example: A man got into an argument with his neighbor, and the neighbor shoved him. The following day, the man thought about the incident and decided to arrest his neighbor. At this point, the man can file a complaint against his neighbor, but he cannot arrest him.

Non-example: An officer saw a man shoplift some clothes. The officer pursued the man and lost sight of him. She continued searching for the man and found him again seven minutes later; she arrested him. This is not a stale misdemeanor as the officer was in pursuit the entire time.

---

### Statute of limitations

Suspects for most crimes must be arrested within a certain time limit called **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.

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# Chapter Synopsis

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**Learning need** Peace officers must know and comply with the statutory rules of arrest in order to properly exercise their authority and responsibility, and to avoid potential liability when making arrests.

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**Arrest, detention, and probable cause**  
[15.04.EO2, 15.04.EO4]

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.

---

**Elements of a lawful arrest**  
[15.04.EO3]

*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, in a case and in the manner authorized 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.EO5]

*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.

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*Continued on next page*

## Chapter Synopsis, Continued

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**Warrantless arrests for misdemeanors**  
[15.04.EO6]

Peace officers may make warrantless arrests for certain misdemeanors.

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**Warrantless arrests for felonies**  
[15.04.EO7]

Peace officers may make warrantless arrests for felonies.

---

**Warrant arrests**  
[15.04.EO8]

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.

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**Entry to make arrest**  
[15.04.EO9]

*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.EO10]

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

---

**Use of force**  
[15.04.EO11]

*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.

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*Continued on next page*

## Chapter Synopsis, Continued

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**Disposition  
of arrested  
persons**  
[15.04.EO12]

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*)

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**Exceptions  
to the  
power  
of arrest**  
[15.04.EO13]

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

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# Workbook Learning Activities

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## **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.

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## **Activity questions**

1. A peace officer is approached by two people holding an 18-year-old male by the arms. They tell the officer that they saw the male spray painting graffiti on the side of their apartment building and they made a private person's arrest. They then turn the male over to the officer. What options does the peace officer have? What should the officer's first response be?

2. Describe an instance in which a peace officer may enter a dwelling without knock and notice.

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*Continued on next page*





# Chapter 5

## Administration of the Miranda Warning

### Overview

---

**Learning need** When interrogating a suspect who is in custody, peace officers must follow Miranda procedures to ensure that any answers they obtain will be admissible in court.

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

<b>After completing study of this chapter, the student will be able to . . .</b>	<b>E.O. Code</b>
• identify the purpose of the Miranda warning.	15.05.EO1
• recognize when Miranda warnings must be given.	15.05.EO2
• identify the proper administration of Miranda warnings.	15.05.EO3
• recognize the impact of invoking either the right to remain silent or the right to counsel.	15.05.EO4
• recognize the types of Miranda waivers.	15.05.EO5
• recognize the exception to the Miranda rule.	15.05.EO6

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*Continued on next page*

## Overview, Continued

---

**In this chapter** This chapter focuses on when and how to administer Miranda warnings. Refer to the chart below for a specific topic.

<b>Topic</b>	<b>See Page</b>
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	5-15
Chapter Synopsis	5-16
Workbook Learning Activities	5-17

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# The Miranda Warning

[15.05.EO1]

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## Purpose of Miranda warnings

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 warnings

The following version of the Miranda warning has been approved by POST as the official statewide standard:

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

---

# When the Miranda Warning is Required

[15.05.EO2]

---

## 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, or
- 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, or
- says something or performs some action that is reasonably likely to elicit an incriminating response from a person.

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

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## When the Miranda Warning is Required, Continued

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### **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**

Example: 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.

Example: A man sold a stolen car to his friend. Later, an officer arrested the man, read him his Miranda rights, and the person invoked. Moments later, 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.

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## When the Miranda Warning is Required, Continued

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### Examples (continued)

Non-example: When an officer placed the person under arrest, the person asked, “What are you arresting me for?” The officer answered, “Possession of methamphetamine for sale.” The man responded, “All the meth is just for my personal use.” The statement is admissible because advising a person what he is under arrest for does not amount to interrogation.

Non-example: If a person comes to the police station voluntarily and is believably advised that he or she is free to leave and not answer questions, the person is not in custody and may be interrogated without the Miranda warning.

---

### 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, or
  - 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.”
- 

*Continued on next page*

## When the Miranda Warning is Required, Continued

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### **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, or
- 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, or
  - 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 will be inadmissible against the person at the criminal trial to prove guilt.

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# Waiving or Invoking Miranda Rights

[15.05.EO3, 15.05.EO4, 15.05.EO5]

---

## Introduction

Once officers read the Miranda warning and have ensured that the person understands it, the person must 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, and
  - 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	Includes informing a person of: <ul style="list-style-type: none"><li>- the right to remain silent,</li><li>- the fact that any statement made may be used against them in court,</li><li>- the right to have an attorney present before and during any questioning, and</li><li>- the fact that an attorney will be provided if the person cannot afford one.</li></ul>

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*Continued on next page*

## Waiving or Invoking Miranda Rights, Continued

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### The Miranda process (continued)

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.

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*Continued on next page*

## Waiving or Invoking Miranda Rights, Continued

### 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"> <li>- refuses to give a written statement,</li> <li>- refuses to be tape recorded,</li> <li>- answers some questions but not others,</li> <li>- refuses to speak to one specific officer but not others, or</li> <li>- refuses to answer questions until a specific amount of time has lapsed</li> <li>- but will go forward if this condition is met.</li> </ul>

*Continued on next page*

## Waiving or Invoking Miranda Rights, Continued

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### Examples

Example: 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.

Example: A 13-year-old minor, who was *very* drunk at the time he was informed of his rights and waived them, gave an incriminating statement to police officers. The court determined that the juvenile 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.

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## Waiving or Invoking Miranda Rights, Continued

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### **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 reinitiation 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 readvisement per Miranda and a valid waiver, with no pressure from the officer.

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### **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 reinitiation 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.

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*Continued on next page*

## Waiving or Invoking Miranda Rights, Continued

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### Examples

- Example: 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*.
- Example: 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.
- Non-example: Officers arrested a person and started to advise him per Miranda, but they stopped because he continued to struggle and resist. The person asked, "Did you say I could have a lawyer?" He was told, "Yes, if he wanted one." However, the person did not respond further and the police did not try to interrogate him at that time. Officers approached him again later, readvised him per Miranda, and obtained a waiver and incriminating statements. The person's statement was admissible because his earlier question did *not* amount to an invocation of his right to counsel.
- Non-example: An officer went to interview a possible suspect at his home. The person said he would not answer any questions without a lawyer present. The person has stated a condition, but he has not invoked his Miranda right to counsel because, without custody (actual arrest or equivalent restraints), this right does not exist. Miranda rights may not be invoked "anticipatorily," i.e., in advance of actual custodial interrogation.
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*Continued on next page*

## Waiving or Invoking Miranda Rights, Continued

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### When a suspect reinitiates questioning

Because Miranda rights are personal, *suspects* may change their mind. For example, suspects may reinitiate 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:

- readmonish the person with Miranda warnings,
  - obtain a valid *express* waiver,
  - then interrogate further, and
  - make a verbatim account of the reinitiation and any statement given.
- 

### Documentation

Because of the different reinitiation 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.

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### 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*) 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 the minor's understanding of the warnings or any waiver of rights, but rather just the advisements.

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# Exception to the Rule of Miranda

[15.05.EO6]

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## 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.

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## 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.

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## Examples

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

Example: 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.

Non-example: Miranda would apply where an officer placed a suspected dope-dealer under formal arrest and then asked the person where he kept his supply of narcotics

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## Chapter Synopsis

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**Learning need** When interrogating a suspect who is in custody, peace officers must follow Miranda procedures to ensure that any answers they obtain will be admissible in court.

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**The purpose of the Miranda warning [15.05.EO1]** 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.

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**When Miranda warning is required [15.05.EO2]** If an officer is about to *interrogate* a person who is in custody, the officer must advise the person of the four Miranda advisements.

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**Administering the Miranda warning [15.05.EO3]** 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.

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**Invoking Miranda rights [15.05.EO4]** 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.

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**Waiving Miranda rights [15.05.EO5]** For any statement made after a waiver to be admissible in court, the waiver must be knowing and voluntary.

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**Exception to the Miranda rule [15.05.EO6]** 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.

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## Workbook Learning Activities, Continued

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**Activity  
questions**  
(continued)

3. 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?

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*Continued on next page*

## Workbook Learning Activities, Continued

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**Activity  
questions**  
(continued)

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

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

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*Continued on next page*

## **Workbook Learning Activities, Continued**

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**Student notes**

## Chapter 6

# Crime Scene Interviews and Investigative Interrogations

### Overview

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

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

<b>After completing study of this chapter, the student will be able to...</b>	<b>E.O. Code</b>
• differentiate between an interview and interrogation.	15.06.EO1
• identify the purpose of an interrogation.	15.06.EO2
• differentiate between an admission and a confession.	15.06.EO3
• identify the conditions in which a confession or admission may be inadmissible in a court of law.	15.06.EO4

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## Overview, Continued

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**In this chapter** This chapter 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.

<b>Topic</b>	<b>See Page</b>
Crime Scene Interviews	6-3
Investigative Interrogations	6-9
Chapter Synopsis	6-14
Workbook Learning Activities	6-15

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# Crime Scene Interviews

[15.06.EO1]

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**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.

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**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, and
  - 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.

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

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## Crime Scene Interviews, Continued

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### 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"> <li>• Become well acquainted with the circumstances surrounding the crime.</li> <li>• Determine the number, role, and priority of the people who should be interviewed (i.e., victim, witness, suspect, etc.).</li> <li>• 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).</li> <li>• 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).</li> </ul>
Separate the involved parties.	<ul style="list-style-type: none"> <li>• If possible, move the person, with his or her consent, to a location where there will be no interruptions or distractions.</li> <li>• Focus the person's attention on speaking with the officer rather than on interacting with others.</li> </ul>
Establish rapport.	<ul style="list-style-type: none"> <li>• Tell the interviewee why the interview is being conducted.</li> <li>• Describe the interview process that will be followed.</li> <li>• Assure the person that by using this process, the officer will be able to gather that person's statement accurately.</li> <li>• Be courteous, considerate, and patient.</li> <li>• Control the interview by remaining calm and polite.</li> </ul>

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## Crime Scene Interviews, Continued

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### Listening attentively

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

<b>Actions</b>	<b>Guidelines</b>
Ask the person to recount what has happened.	<ul style="list-style-type: none"><li>• Allow the person to speak freely.</li><li>• Have the person describe the incident just as that person understands it, using that person's own words.</li></ul>
Keep the person focused.	<ul style="list-style-type: none"><li>• 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...").</li><li>• Maintain eye contact and use nonverbal gestures (e.g., nodding the head) to encourage the person.</li></ul>
Listen carefully to what is being said.	<ul style="list-style-type: none"><li>• 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"><li>- role of the person being interviewed (victim, witness, etc.),</li><li>- type of crime, if any, that has been committed,</li><li>- time of the occurrence, and</li><li>- exact location of the person during the crime or incident.</li></ul></li></ul>

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*Continued on next page*

## Crime Scene Interviews, Continued

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

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*Continued on next page*

## Crime Scene Interviews, Continued

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### **Recording the interview**

Some officers may choose to use a small tape recorder 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.

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

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## Crime Scene Interviews, Continued

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### **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.

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, and
  - informants.
-

# Investigative Interrogations

[15.06.EO2, 15.06.EO3, 15.06.EO4]

---

## 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.

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## 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 suspects who are in *custody* may be *interrogated*, they must be *informed of*, and *waive* their rights to:

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

## Purposes

An interrogation serves a number of different purposes:

- obtaining an admission or confession,
  - identifying individuals involved in a crime,
  - establishing a person’s guilt,
  - corroborating the facts of a crime, and
  - obtaining information that could lead to the recovery of evidence or property.
- 

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## Investigative Interrogations, Continued

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### 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	<ul style="list-style-type: none"> <li>the commission of all of the elements of a crime.</li> </ul>
Admission	<ul style="list-style-type: none"> <li>certain facts that tend to incriminate the individual, but fall short of a confession.</li> </ul>

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### 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 jeopardize 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>	<ul style="list-style-type: none"> <li>arrest and statement was the result of an illegal search and seizure, such as an improper entry, unreasonable detention, etc.</li> </ul>
Fifth	Freedom from <i>self-incrimination</i>	<ul style="list-style-type: none"> <li>statement was obtained during custodial interrogation carried out in violation of any of Miranda's requirements, such as without a complete advisement of rights, or without a valid waiver of rights.</li> </ul>

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*Continued on next page*

## Investigative Interrogations, Continued

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### Inadmissible statements (continued)

Sixth	Right to <i>counsel</i>	<ul style="list-style-type: none"> <li>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.</li> </ul>
Fourteenth	Right to <i>due process</i> and <i>equal protection</i> of the law	<ul style="list-style-type: none"> <li>Statement was involuntary, i.e., was coerced by the government as the result of:               <ul style="list-style-type: none"> <li>- physical force or threats,</li> <li>- express or implied threats,</li> <li>- express or implied promises of leniency, or</li> <li>- overbearing psychological pressure.</li> </ul> </li> </ul>

---

### 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, and
    - earlier statements,
  - learn as much as possible about the individual to be interrogated,
- 

*Continued on next page*

## Investigative Interrogations, Continued

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### Preparation (continued)

- decide on an interrogation technique to begin with (understanding that other techniques may be used during the interrogation as well), and
  - prepare a list of key questions that refer to the:
    - elements of the specific crime,
    - actions taken by the individual, and
    - intent and motive for those actions.
- 

### 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, and
- 

### Obtaining a statement

The goal of an interrogation is to obtain an incriminating statement from the suspect.

When the interrogating officers detect that the suspect is ready to talk openly and honestly, the officers should continue with the technique being applied along with additional tactics to bring the interrogation to a successful conclusion.

The interrogating officers may:

- increase the intensity of the questioning,
- sum up all lies or contradictions already expressed by the suspect, or
- move closer to the suspect to gain his or her confidence.

Most importantly though, interrogating officers should never indicate in any way that their attitude has been anything but sincere, no matter which techniques have been employed.

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## Investigative Interrogations, Continued

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### Use of subterfuge

**Subterfuge** is the use of deception or falsehoods as an evasive tactic when interrogating a suspect. In contrast, **coercion** is the use of force (mental or physical), threats, or overbearing psychological pressure to deprive a suspect's free choice to admit, deny, or refuse to answer.

The use of subterfuge by an officer during an interrogation is permissible as long as it would not cause an innocent person to confess.

Subterfuge may include:

- falsely telling a suspect that he or she had been positively identified by a witness does not force the suspect to make a false confession. The use of subterfuge may play on a suspect's individual's fear and sense of guilt to the point of the suspect making a willing admission or confession.

Coercion may include:

- falsely telling a suspect that members of his family will be held accountable if he 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, involuntary confession may not be used as evidence to impeach witnesses or in any other way against the accused individual.

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# Chapter Synopsis

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

---

**Interviews vs. interrogations [15.06.EO1]** Interviewing is the process of questioning nonsuspects 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.

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**Purpose of interrogation [15.06.EO2]** An interrogation serves a number of different purposes.

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**Confession vs. admission [15.06.EO3]** 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.EO4]** 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.

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## Workbook Learning Activities, Continued

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**Activity questions**  
(continued)

3. Complete the following table showing the similarities and differences between a crime scene interview and an investigative interrogation.

	<b>Crime Scene Interviews</b>	<b>Investigative Interrogations</b>
<b>Mechanics of the interview process</b>		
<b>Location and physical environment</b>		
<b>Officer actions/style</b>		
<b>Types of questions asked</b>		

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## **Workbook Learning Activities, Continued**

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**Student notes**

# Glossary

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

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**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 named in 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 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

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## Glossary, Continued

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**consular  
service  
staff**

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

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**custody**

A formal arrest or its “functional equivalent”

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**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

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**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

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**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

The process of gathering information from a person who has knowledge of the facts that an officer will need to conduct an investigation

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**interview**

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

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## Glossary, Continued

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**invoke**

To assert a right, constitutional or otherwise

---

**involuntary  
confession**

A statement that results from the use of coercion

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**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

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**precomplaint  
warrant**

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

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**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

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**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

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**search**

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

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## Glossary, Continued

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**seizure of a person**

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

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**seizure of property**

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

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**stale misdemeanor**

Commission of a misdemeanor by an adult in another person's presence (including a peace officer), where the other person fails to arrest the adult within a reasonable time thereafter

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**statute of limitation**

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

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**subterfuge**

The use of deception or falsehoods as an evasive tactic when interrogating a suspect

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**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

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**waive**

To give up a right, constitutional or otherwise

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