

Procedures of Arrest

Facilitator Guide

Session Overview

Introduction & Learning Objectives	05m
Discussion – Definition of Arrest	05m
Discussion – US vs. Washington Constitution	10m
Discussion – Elements of Arrest	10m
Discussion – Authority for Arresting	05m
Discussion – Arrest Warrants	15m
Break	10m
Discussion – Exigent Circumstances	10m
Discussion – Fresh/Hot Pursuit	10m
Discussion – Probable Cause	30m
Break	10m
GROUP EXERCISE – Exceptions to M.P.R. (2/5/3)	10m
Discussion – Peyton & Steagald	05m
Discussion – Citizen’s Arrest	10m
Discussion – Outside Your Jurisdiction	10m
Ethics Considerations / Questions	15m
Break	10m
PRACTICAL SCENARIOS	50m
End of Session / Break	10m

Learning Objectives:

- Define “arrest”
- List the 4 elements of an arrest
- Explain the different between an arrest warrant and a search warrant
- List the 2 factors used to judge the reasonableness of “hot pursuit”
- Articulate the process from arrest warrant notification to physical arrest

Total Session Time: 4 hours

Main Topics of Session:

- *Arrest*
- *Legal Authority*
- *Levels of Proof*
- *4th Amendment*
- *Warrant Arrests*
- *Exigent Circumstances*
- *Probable Cause*
- *Citizen’s Arrest*
- *Fresh/Hot Pursuit*

Facilitators Needed: 1 (CP)

Location: Classroom & Outside

Materials Needed:

- *PowerPoint - Procedures of Arrest*

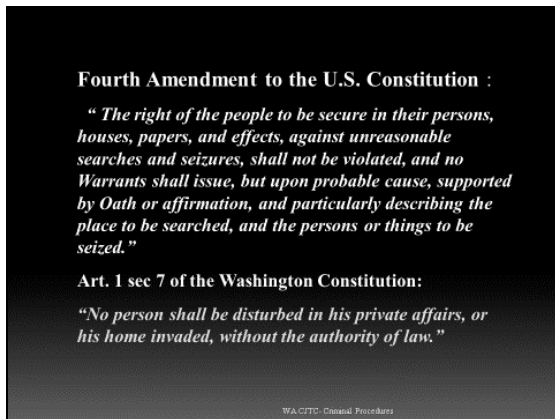
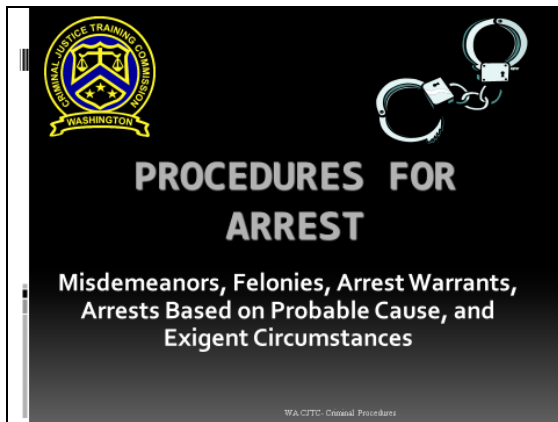
Students Should Already Have:

- *Pocket Press Books*
- *[THUMB DRIVE]*
- *Criminal Law Student Resource Guide*
- *BOOK – WAPA Confessions, Search, Seizure, & Arrest Guide for Police Officers & Prosecutors – June 2014 (M02 – Extras)*
- *HANDOUT – Definition of Arrest*



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Discuss the similarities



SAY TO CLASS

Think about the amazing responsibility a peace officer has in their ability to take away the basic freedoms the United States Constitution provides us with, to bring a suspected criminal to a judge to answer for a crime. It is a responsibility that should not be taken lightly.

One of the most important powers given a peace officer is the power of arrest. This power entails taking away the liberty of a person. You must learn how to use it within the limits of the law but you must also learn not to abuse it. You are accountable to the public and responsible for acting in the best interests of the communities you serve.

- Arrest is an amazing power
- Also a responsibility
- Liberties are sacred

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DISCUSSION - What is an Arrest?

QTC: What is an "arrest"?

AR: An arrest involves restricting a person's freedom to a significant degree for the purpose of bringing the person before a court to answer to the crime. Webster's New World Dictionary defines arrest as, "To seize by authority of the law."

QTC: Is an arrest the same as charging someone with a crime?

AR: No. Arrest = Loss of liberty and face charges for a specific crime.

QTC: What is a "De Facto Arrest?"

AR: This is an after-the-fact evaluation by the court of the act or actions initiated by a peace officer that would lead a reasonable person to believe that they were being held to answer to a criminal charge.

QTC: What type of police actions could trigger a de facto arrest?

AR: Placing an individual in the back of a patrol car and conducting a field interview without advising them they are not under arrest, they are "simply" being detained.

Transporting suspect anywhere without consent and with no probable cause.

Having two officers stand on opposite sides of an individual while talking with him/her during a social contact.

Some definitions:

- **Arrest** - taking custody of another, based upon probable cause, for the purpose of holding or detaining the person to answer a criminal charge.
- **Defacto Arrest** - an after-the-fact evaluation by the courts of the act or actions initiated by a police officer, that would lead a reasonable person to believe that they were being held to answer to a criminal charge.

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STUDY MATERIAL - HANDOUT - Arrest [THUMB DRIVE]

Instructions: This handout describes the various ways to “arrest” a suspect. In each of these ways, the suspect will face charges.



NOTE TO FACILITATOR

Write the following on the white board or an easel:

Article 1 sec 7 of the Washington Constitution

“No person shall be disturbed in his private affairs, or his home invaded, without the authority of law.”



DISCUSSION - US Constitution vs. Washington State Constitution

QTC: Which of these two constitutional sections is more restrictive on police?

AR: Washington’s constitution is more restrictive. When Washington State courts decide a case by applying Article 1 section 7 instead of 4th amendment this is called an independent grounds ruling. Example of this is search incident to arrest of vehicle trunks, in Washington State it is generally prohibited police procedure under Article 1 Section 7 of the Washington State Constitution, but it is accepted police procedure in other states under their state constitutions and the 4th amendment.

Some definitions:

- **Reasonable Suspicion** - Particularized articulable facts and circumstances that lead a reasonable and prudent police officer, based upon their training and experience, to believe criminal activity is afoot. (criminal activity has happened, is happening, or is about to happen). *This is the “Terry Stop” standard for investigative detention.*
- **Probable Cause** – Articulable facts and circumstances known to the officer that would warrant that officer to believe that 1) a specific crime has or is occurring, and that 2) the suspect is the person responsible. *This is the standard for an arrest.*

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IMPORTANT POINT

You do not need to have "Beyond a Reasonable Doubt" to place someone under arrest, only "Probable Cause" (51%).

How does it all relate???

- **Social Contact** requires *no standard of proof* to initiate.
I.e. A "mere suspicion" or "good faith hunch."
- **Terry Stop** requires *reasonable suspicion* (about a 25% belief of criminal wrongdoing)
- **Arrest** requires *probable cause* (about a 51% belief of criminal wrongdoing)

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Four Elements of Arrest

- Authority
- Intention
- Understanding
- Custody

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SAY TO CLASS

Authority. In the usual case, an officer is using **actual** authority when he or she has probable cause to believe the suspect committed a crime and arrests him, or when an officer arrests a person based on a valid warrant. On the other hand, an officer is using **assumed** authority when, for example, he acts under an invalid arrest warrant; or, in the absence of a statute permitting it, he arrests someone outside of his jurisdiction; or where he arrests without having probable cause.

Intention. The officer must intend to make the arrest.

Understanding. The person arrested must see that he can no longer walk away. This is most easily fulfilled by telling him he is under arrest, but can also be inferred if he resists and is subdued.

- **The person must be told**, “You are under arrest”.
- The person arrested must understand that they can no longer walk away.
- The person’s freedom is restricted to a significant degree (i.e. handcuffed, locked in a patrol car or holding cell).
- An arrest is not negated merely because the person is too drunk or deranged to understand what is happening.

Custody. The person must come within the custody and control of the officer making the arrest. No arrest will have taken place if the person is able to outrun the officer, regardless of any other factor.

Authority

- Intention
- Understanding
- Custody

Authority for Arresting

- RCW'S:
- 10.31 - Warrants and probable cause arrest
- 10.34 - Fugitives of this state (officer can arrest in any county)
- 10.88 - Fugitives from other states (fugitives from justice)
- 10.89 - Fresh pursuit (a.k.a. "Hot Pursuit")
- 10.93 - Mutual police powers (authority to act outside your jurisdiction)

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SAY TO CLASS

The following RCW's grant arrest authority to peace officers.

- 10.31 - Warrants and probable cause arrest
- 10.34 - Fugitives of this state (officer can arrest in any county)
- 10.88 - Fugitives from other states (fugitives from justice)
- 10.89 - Fresh pursuit (a.k.a. "Hot Pursuit")
- 10.93 - Mutual police powers (authority to act outside your jurisdiction)

ARREST WARRANTS (arrest warrants are for people)

- **Identification** of an arrest warrant serves as **reasonable suspicion** to hold a person.
- **Confirmation** of an arrest warrant serves as **probable cause** to arrest a person.

This process is easy when you have contacted the person where they have expectation of privacy...in public....but what if they are hiding?

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SAY TO CLASS

It's up to you to tell dispatch to confirm. Warrants found by dispatch are considered "unconfirmed." A "confirmed" warrant means dispatch has verified the validity of the warrant.

- Confirming Warrants

The **service of an arrest warrant must be reasonable** in consideration of the tactics employed, as well as the time and location of the service.

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DISCUSSION - Reasonable Warrant Service

QTC: What is the difference between an arrest warrant and a search warrant?

AR: Arrest warrants are to seize people.
Search warrants are to enter protected places

QTC: The service of an arrest warrant must be reasonable in consideration of the tactics employed, as well as the time and location of the service. What do you think I mean when I say the service of an arrest warrant must be reasonable?

AR: Recruit's responses

QTC: Where can we serve arrest warrants?

AR: 1. Any public place
2. First party residence

Service in a **public place** is reasonable. Service in a **first party** residence is reasonable when allowed entry by consent. When attempting to execute an arrest warrant at a residence, the officer must first knock and announce before making entry

QTC: What does first party residence mean?

AR: Where the person lives

QTC: Do you think there are times when you can force entry into a first party residence?

AR: Yes, entry to a **first party** residence may be forced when:
1. the officer reasonably believes the suspect is present;
2. a "knock and announce" is employed; and
3. he or she is refused admittance.



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Arrest Warrants

- Location of service:
 - service in a **public place** is reasonable
 - service in a **first party** residence is reasonable when allowed entry by consent
 - entry to a **first party** residence may be forced when (all of the following are required)
 - the officer reasonably believes the suspect is present
 - a "knock and announce" is employed (RCW 10.31.040)
 - the seriousness of the crime necessitates the entry
 - a ruse may be employed as long as reasonable

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Arrest Warrants

- Location of service (continued)
 - Service/arrest in a **third party** residence is reasonable when allowed entry by consent or search warrant.
 - Service/arrest in a **third party** residence is not reasonable when entry is forced **UNLESS** there are **exigent circumstances**.
 - you must wait for the person to cross the threshold of the residence
 - a ruse may be employed as long as reasonable

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IMPORTANT POINT

Explain that the seriousness of the crime necessitates the entry. Most felony crimes are considered serious enough to force entry into a 1st party residence for an arrest warrant subject, however misdemeanor crimes must be evaluated for seriousness of the crime. (i.e. wanted subject with Failure to Appear (FTA) warrant for Misdemeanor Theft vs. Assault 4 Domestic Violence). This is the most important rule in all of this section.

- Seriousness of the crime determines if you can force entry

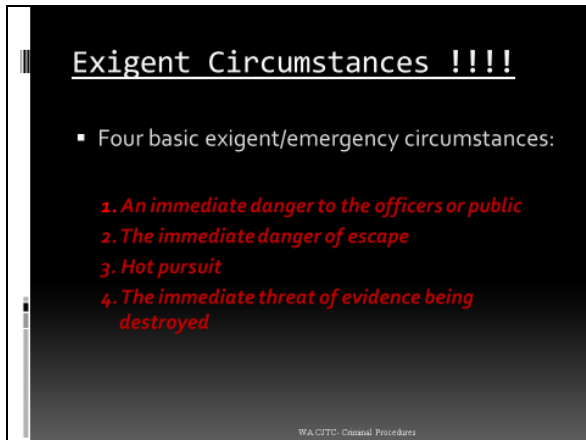


BREAK



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QTC: What does knock and announce mean?

AR: This is when the police knock on the door and announce their presence, “Police! I have a warrant. Open up.” You must wait a reasonable amount of time.

QTC: What if the subject with the arrest warrant is hiding in a third party residence, what do you do?

AR: When servicing an arrest warrant in a third party residence, the only way you can cross the threshold of a residence is if you have:

- Consent (from the person who has an expectation of privacy)
- Search Warrant (for the residence naming the warrant subject who does not live there as the “item” to be seized)
- Exigent (Emergency) Circumstances

Once inside, if you see the person (plain view), you have the authority to seize them.

QTC: Imagine that you have an arrest warrant for John. You learn that John is inside Frank’s house. You go to Frank’s house and knock on the door. John answers the door, but is just inside the threshold. Can you reach in and grab John?

AR: No, you do not have the authority to cross the threshold. You must wait for the person to cross the threshold of the residence.



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QTC: Can we “lie” to trick John to come outside so we can grab him?

AR: Yes. In legal terms, it’s called a “ruse.” A ruse can be employed as long as it is reasonable.

Fresh or Hot Pursuit

- The courts have defined “Fresh” or “Hot” pursuit as: *“...some sort of chase, though it need not be of an extended hue and cry in the public streets.”*
- RCW 10.89.050 states:
“Fresh pursuit...shall not necessarily imply instant pursuit, but pursuit without unreasonable delay”

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Fresh or Hot Pursuit

- The ultimate determination for the reasonableness of a fresh or hot pursuit will be judged upon the **totality of the circumstances** to include:
 - the seriousness of the offense
 - danger posed to the officer or public
- Be prepared to explain why you did not get a warrant!

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SAY TO CLASS

The courts have defined “Fresh” pursuit as: *“...some sort of chase, though it need not be of an extended hue and cry in the public streets.”*

RCW 10.89.050 states: *“Fresh pursuit...shall not necessarily imply instant pursuit, but pursuit without unreasonable delay”*

The US Supreme Court has upheld “hot pursuit” as an *exigent circumstance*. - *U.S. v Santana, 427 US 38 (1976)*

The courts have also stated that the chase or pursuit must be immediate or continuous.

The general rule of application states *“a police officer may enter a home and / or otherwise conduct a search, the intensity of which will disclose the suspect or weapons while in pursuit of a fleeing felon. The primary purpose of the search is to locate the suspect.”*

- Court’s definition
- RCW definition
- Supreme Court upheld it
- Must be continuous
- “General Rule”

Arrest for Probable Cause

- RCW 10.31.100 states: *“a police officer having probable cause to believe a person has or is committing a crime shall have the authority to arrest the person without a warrant.”*
- This rule applies to **all felonies**, however misdemeanors must occur in an officer’s presence unless they are a listed exception.

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BREAK



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SAY TO CLASS

The ability to arrest without a warrant has a common law background. It has always been recognized that in some situations it would be unreasonably difficult if not impossible to obtain a warrant before making an arrest warrant, hence is the reason for the Misdemeanor Presence Rule.

- Arrest w/o warrant has common law background



GROUP EXERCISE - Exceptions to Misdemeanor Presence Rule

Time: 10 min (2 prep / 5 work / 3 discuss)

Instructions: Take 5 minutes with your squad and try to list all the exceptions to the Misdemeanor Presence Rule. These will need to be memorized before the exam, and also for your performance on mock scenes.

NTF: When 5 minutes is up, allow the students to look up the ones they missed. Have them refer to a handout from a previous Session:

- HANDOUT - Misdemeanor Presence Rule *[THUMB DRIVE]*

Arrest for Probable Cause

Exceptions to the Misdemeanor Presence Rule

- Crimes involving physical harm or threats of harm to persons or property.
- Unlawful taking of property
- Possession of cannabis
- Possession / consumption of alcohol by minor
- Hit and run attended
- Hit and run unattended
- DUI
- Physical Control
- DWLS
- Boating under the influence
- Trespass

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Arrest for Probable Cause Exceptions to the Misdemeanor Presence Rule

- Indecent exposure
- Violation of court orders to include anti-harassment orders, no contact, protection and restraining orders.
- Reckless Driving
- Negligent Driving
- Interference with health care facility within 24 hours.
- Possession of firearms or other dangerous weapons on public school premise.

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What if you don't see 'em?

Forward a report to the prosecutor for review and filing of charges.

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Arrest for Probable Cause

- Location of service:
 - arrest in a **public place** is reasonable
 - arrest in a **first or third party** residence is reasonable when allowed entry by consent
 - entry to a **first or third party** residence may not be forced!!!
 - a ruse may be employed as long as reasonable
- Exceptions can occur when an **exigent circumstances** exist.

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Arrest for Probable Cause

▪ Payton/Steagald Rule:

- An officer may not enter the home of a suspect to make a warrantless arrest unless there are exigent circumstances or consent is given.
Payton v. New York, 445 US 573 (1980)
- An officer may not enter the home of a third party to make an arrest of the suspect unless a **search warrant** for the home of the third party has been issued, or he has consent of someone in charge of the premises, or exigent circumstances exist.
Steagald v. United States, 451 US 204 (1981)

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SAY TO CLASS

Payton v. New York, 445 US 573 (1980)

An officer may not enter the home of a suspect to make a warrantless arrest based on probable cause unless there are exigent circumstances or consent is given.

Steagald v. United States, 451 US 204 (1981)

An officer may not enter the home of a third party to make an arrest of the suspect based on probable cause unless a search warrant for the home of the third party has been issued, or he has consent of someone in charge of the premises, or exigent circumstances exist.

A violation of Payton-Steagald will result in poisoning the tree and the loss of its fruits – any physical evidence and incriminating statements. It may open the officer up to liability. It is vital to understand this.

- Case Law: Peyton
- Case Law: Steagald
- Violating these will ruin the case



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Citizen's Arrests

- A citizen *may* arrest for:
 - A crime committed or attempted in his/her presence.
 - A felony actually committed when citizen has PC for that person.
 - A "breach of peace" committed in their presence.
- **YOU** must review the circumstances and ensure the arrest is valid.

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SAY TO CLASS

When a citizen has used force to hold a suspect (Citizen's Arrest), you must evaluate the citizen's actions to ensure it was reasonable given the circumstances. If it was not reasonable – you might have a crime committed by the citizen as well!

RCW 9A.16.020 – *Use of Force – When Lawful* – is the law that authorizes Citizen's Arrest in Washington. Look it up right now.

- Citizen's Arrest must be reasonable
- RCW



RESEARCH - RCW 9A.16.020 - Use of Force - When Lawful [*THUMB DRIVE*]

Instructions: Find this RCW in your Criminal Law Student Resource Guide.



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Arrest outside of your jurisdiction

- RCW 10.34.010 - An officer may arrest a fugitive from this state in any county.
- RCW 10.88.270 - A Washington state arrest warrant may be authored and serviced, based upon a demand from another state, wherein the Governor decides that the demand is reasonable.
 - IE: Subject wanted in Florida is discovered hiding in Washington.

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Arrest outside of your jurisdiction

RCW 10.88.330 - A police officer may *lawfully arrest a person without a (Washington) warrant* upon reasonable information that the accused has been charged in the courts of a state (an out-of-state warrant) wherein the penalty for such a crime exceeds one year incarceration (IE: felony).

IE: Wanted car thief from Oregon revealed on a traffic stop in Washington.

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Arrest outside of your jurisdiction

- RCW 10.93.070 - The ***Mutual Police Powers Act*** states that police officers may enforce the traffic or criminal laws of this state throughout the state under the following circumstances:
 - upon prior written consent by the primary jurisdiction's Chief or Sheriff,
 - in response to an emergency involving the immediate threat to human life or property,

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Arrest outside of your jurisdiction

- In response to the request of another officer or mutual aid request,
- when the officer is transporting a prisoner,
- when the officer is executing an arrest or search warrant (remember notification!!!)
- when the officer is in fresh pursuit

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SAY TO CLASS

RCW 10.34.010 – An officer may arrest defendant in any county.

“If any person against whom a warrant may be issued for an alleged offense, committed in any county, shall either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this state, and for that purpose may command aid, and exercise the same authority as in his own county.”

What About Ethics?

- When arresting with a warrant and without
 - In their home
 - In another's home
 - In public
 - US and WA State Constitution

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RESOURCE MATERIAL - BOOK - WAPA Confessions, Search, Seizure, & Arrest Guide for Police Officers & Prosecutors - June 2014 [THUMB DRIVE]

Instructions: This resource is available on your thumb drive under Mod 2 / Extras.



BREAK



NOTE TO FACILITATOR

Spend the remaining hour outside the classroom (mock city or dorms) running various scenarios involving service of arrest warrants. Make sure the scenarios involve 1st and 3rd party residences.

Ensure that the participating student officers can articulate their justification for each arrest or non-arrest situation.



BREAK /END OF SESSION

