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## 1.6 Laws of Arrest

### 1.6.1 Authority to Arrest

An officer may arrest a person if the officer has *probable cause* to believe:

- a felony has been committed, and *probable cause* exists to believe the person to be *arrested* has committed the offense,
- a misdemeanor or a petty offense has been committed, and *probable cause* exists to believe the person to be *arrested* has committed the offense, or
- the person is the subject of a valid *arrest* warrant, or an Arizona civil *arrest* warrant. Only sworn officers may execute these warrants.

### 1.6.2 Probable Cause

For purposes of making an *arrest*, *probable cause* is defined as:

Facts and circumstances, and reasonable inferences from those facts and circumstances, that would lead a reasonable person to believe a crime is being, has been or *will* be committed and that the person to be *arrested* is committing, has committed or *will* commit that crime.

To have *probable cause* to *stop* or *arrest* someone is to have facts sufficient to demonstrate a “fair probability” that the person has committed or was involved in the crime.

#### 1.6.2.1 Location of Arrest; Warrant Requirements

- A. An officer who has probable cause *may* make an *arrest* with or without a warrant under the following circumstances:
1. at any time, in a public place, or in any building in which an *officer* has the legal right to be present.
  2. at the suspect’s residence if the officer has lawfully entered the residence or the curtilage where the arrestee is located,



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3. at a third party's residence if the officer has lawfully entered the residence or the curtilage where the arrestee is located.
  - B. An officer must confirm an *arrest* warrant and have *probable cause* to believe the person is at the residence in order to make a forcible entry into a person's residence to *arrest* him/her.
  - C. An officer must confirm an *arrest* warrant and have a *search* warrant in order to make forcible entry into the home of a person other than the arrestee to make the *arrest*.
  - D. Forced entry into a residence to make an *arrest* with a warrant should generally be limited to felony offenses. Officers shall not, except when approved by a *supervisor*, force entry into a person's home to serve a misdemeanor warrant.
  - E. It is an arrest to surround a residence and order a person inside to exit the residence. For the arrest to be lawful, officers must have probable cause and either an arrest warrant or an exception to the warrant requirement (such as exigent circumstances).

#### 1.6.3 Use of Force while Making an Arrest

All suspects and prisoners *shall* be treated professionally, humanely and with regard for their legal rights. When making an *arrest*, officers *shall* use only that force which is objectively reasonable.

#### 1.6.4 De Facto Arrests

- A. Officers are cautioned that detaining persons for unreasonable periods of time, using force or restraints beyond that which the totality of circumstances justify as reasonable, or transporting persons against their *will* to a police facility or other site in the absence of *probable cause*, is a de facto *arrest* requiring probable cause.
- B. A person *may* be subject to an investigatory detention based on *reasonable suspicion* of criminal activity. The length of time of an investigatory detention *may* not exceed that necessary to determine whether or not a crime has been

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committed and whether the person *will* be *arrested* or released. An investigatory detention that exceeds that length of time *may* be determined to have been an *arrest*, requiring *probable cause*.

- C. A person who is transported against his or her *will* to a police facility has been *arrested*. If there is no *probable cause* to support the *arrest*, the *arrest* is unlawful under the 4<sup>TH</sup> Amendment. Unless an *officer* has *probable cause*, the *officers shall* not transport a person, without the person's consent, to a police facility. When possible, victims and witnesses shall be transported to the suspect's location to do a show up; only with appropriate justification shall suspects be transported.

**1.6.5 Arrest Procedures**

If feasible, prior to taking any police action, including an *arrest*, an *officer shall* identify him/herself as a police *officer*. An *officer* who makes an *arrest shall*:

- inform the person being *arrested* of the cause of the *arrest*.
- if the *arrest* is pursuant to an *arrest* warrant, inform the arrestee of the existence of the warrant.


*Officers* are not required to provide the foregoing information to an arrestee if:

- providing this information would imperil the *arrest*, or
- the arrestee is presently engaged in commission of the offense, or
- the *officer* is in pursuit of the arrestee immediately after commission of the offense or after an escape, or
- the arrestee flees or forcibly resists the *officer* before the *officer* has a chance to provide the information.

**1.6.6 Disposition Following Arrest**

**1.6.6.1 Full Custodial Arrest (Booking)**

- A. *Officers shall* make a custodial *arrest* of any person *arrested* for a felony offense, when required by law (for example, certain *domestic violence* offenses) or pursuant to an *arrest* warrant. Exceptions to this policy require the approval of a *supervisor*.

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*Officers should make a custodial arrest of a misdemeanor in the following situations:*

1. the suspect cannot be satisfactorily identified,
  2. the suspect refuses to sign a promise to appear or by overt action or statement gives the *officer* reason to believe that the person *will* not appear in court,
  3. the suspect committed the misdemeanor in the *officer's* presence and a release would be inappropriate
  4. there is information indicating that similar charges are pending against the subject
  5. a *supervisor* directs the custodial *arrest* of the suspect
- B. *Officers* making a full custodial *arrest* of an individual *shall search* that individual incident to *arrest*.
- C. A person who is physically arrested may be booked into jail in the County in which the offense occurred or where the person is arrested. The person may also be taken before the nearest and most accessible magistrate in the County in which the offense occurred or where the person is arrested. In either situation, an initial appearance before a magistrate must occur within twenty-four hours of the arrest, or the person must be released.

#### **1.6.6.2 Booking for both Felony and Misdemeanor Charges**

When a subject is *arrested* for both felony and misdemeanor offenses, the *officers shall* book the arrestee into jail on the felony offense(s) only and fully document the misdemeanor offense(s) in a *Department report*.

#### **1.6.6.3 Cite and Release**

- A. *Arizona law* authorizes an *officer* to complete a citation and release a person charged with a misdemeanor or petty offense, instead of taking the person into custody, if the person signs a written promise to appear in



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court on the cited charge(s). Release on a promise to appear is not permitted when:

- a custodial *arrest* is mandated by statute or *Department* procedures (for example, in certain cases of *domestic violence*).
- the offender is under the age of 18 and comes under the jurisdiction of the Juvenile Court for an offense for which citation and release is not authorized by the Juvenile Court.
- in the opinion of the *officer* the release could jeopardize the safety and welfare of the suspect or any other person.
- the suspect has been cited and refuses to leave or continues to commit a violation of the law.
- an identification (obtaining fingerprints or photograph) or custodial *arrest* would be more appropriate.


B. If the *officer* is unsure of the identity of the arrestee, the *officer shall* conduct procedures to accurately identify an arrestee prior to citing and releasing the arrestee. *Officers may* also conduct identification procedures if the information would assist in a criminal investigation. These procedures include fingerprinting and photographing the arrestee prior to release.

C. Either a fingerprint (right index fingerprint on the citation) or a two-fingerprint biometric-based identifier is required prior to release by citation on Title 13 sex offenses and *domestic violence* offenses and Title 28 DUI offenses. In addition, these arrestees *shall* be provided with a notice of mandatory fingerprinting form, which *shall* advise the arrestee to appear for fingerprinting prior to arraignment.

#### 1.6.7 Arrests Involving Foreign Nationals

A. The United States is obligated under international treaties and Arizona law enforcement is also obligated under *A.R.S. § 13-3906* to notify foreign consulates in certain situations when foreign nationals of their country are *arrested*, or otherwise detained for an extended period.

B. Whenever a foreign national is *arrested* or detained, the *arresting officer shall* determine whether notification is by treaty mandatory or voluntary. A list of countries and their status as voluntary or mandatory, *translations* of the advice to

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be given to the *arrested* person, consulate fax sheets, and fax numbers for all consulates are available at the PSAP.

- C. If the arrestee is from a voluntary notification country, the *officer must* advise the arrestee that, unless the arrestee waives notification, the *officer will* advise their consulate of their *arrest*. The *officer shall* document the time that the arrestee was advised and whether or not the arrestee waived notification.
- D. If the arrestee is from a country that requires mandatory notification of consular officials then the *arresting officer shall* advise the arrestee that his or her consulate *will* be notified of the *arrest*. The *officer shall* document that the arrestee was so notified.
- E. If the arrestee does not waive notification, or if the arrestee is from a mandatory notification country, the *officer shall* complete and fax the consulate notification fax sheet to the appropriate consular or embassy office. A copy of the fax notification *should* be attached to the *officer's report*.
- F. Once notification of the appropriate consulate or embassy has been made it is not necessary to wait for a reply before continuing with the investigation. If the consulate does contact the *officer* and ask to talk with the suspect, the consulate is entitled to reasonable, private access. That access does not take priority over the investigation. Unless the official is licensed to practice law in the United States, the consulate or consular official *may* not act as an attorney and *may* not invoke any of the suspect's rights on the suspect's behalf.

**1.6.8 Diplomatic, Legislative and Statutory Immunity from Arrest**

**1.6.8.1 Legislators**

- A. Federal legislators are privileged from *arrest* except in cases of treason, felonies, or misdemeanors amounting to a breach of the peace, during the following:
  - 1. while the legislature is in session, and
  - 2. while traveling from or returning to their homes to attend a session.



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- B. State legislators are privileged from *arrest* except in cases of treason, felonies, or misdemeanors amounting to a breach of the peace. State legislators *shall* not be subject to any civil process including civil traffic citations, during the following:
1. while the legislature is in session, and
  2. for 15 days prior to the start of the session.
- C. The decision to *arrest shall* be referred to a *supervisor* in all cases. *Arrests will* be made for misdemeanors only in the following cases:
1. a violent offense,
  2. disturbance of public order (such as disorderly conduct or trespass),
  3. driving while under the influence of intoxicating liquor (DUI).

#### 1.6.8.2 Foreign Dignitaries

- A. Foreign diplomatic agents (ambassadors and foreign ministers), their families and staff *may* enjoy complete immunity from *arrest*, and their property or residences *may* not be *searched*, even with a warrant. These persons *may* also not be compelled to testify or provide evidence in court proceedings. Generally, foreign consuls, their families and *employees* are not immune from *arrest*.
- B. Persons protected by diplomatic immunity *will* have an identification card provided by the U.S. Department of State that contains a photograph of the person, the person's name, title, mission, City and state, date of birth, identification number, expiration date and State Department Seal. It *may* also contain a statement regarding the application of immunity to the person. If the *officer* is uncertain as to the validity of the identification or the application of immunity to the person detained, a *supervisor should* be contacted immediately.

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Agents of the *FBI* or the State Department *may* be contacted to assist in verifying consular status as well as the existence and scope of a person's immunity.

**1.6.8.3 National Guard Members**

Active duty *National Guard* members *may* not be *arrested*, except for felonies, while in camp, maneuvers or formations, or while engaged in armory drill, or while on their way to or from such duties. If a Guard Member commits a misdemeanor during this time, an investigation *will* be completed so that a warrant or summons *may* be issued after the period of immunity expires. This immunity does not extend to civil traffic violations not requiring detention.

**1.6.8.4 Persons Under Subpoena**

A witness under subpoena is privileged from *arrest*, except for treason, felony, or breach of the peace, while attending or traveling to and from court.

**1.6.8.5 Military Personnel**

If an active-duty member of any of the armed forces of the United States is arrested for a crime other than minor civil infractions or minor traffic offenses, the arresting officer will notify the arrestee's immediate supervisor. If the arrestee is **active duty**, the officer shall attempt to telephone the arrestee's immediate supervisor and advise them that an active-duty military member has been arrested. Officers must provide the following information:

- A. Name, rank, date of birth and serial number of the arrested subject,
- B. The offense(s) with which the person is charged,
- C. The case number.

**1.6.9 Arrest Warrants**

**1.6.9.1 Obtaining an Arrest Warrant**





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An *officer* who seeks to have an *arrest* warrant issued *must* contact the appropriate prosecutor's office to apply for the warrant. The *officer shall* present the facts of the case to the prosecutor. If approved by the prosecutor, the prosecutor *will* prepare a criminal complaint. The *officer may* then be requested to appear before the appropriate Magistrate, Justice of the Peace or Superior Court Judge and swear to the facts underlying the complaint. The warrant *will* then be issued and signed by the judge.

#### 1.6.9.2 Service of Arrest Warrant

- A. Arrest warrants may be served by peace officers and, when the person to be arrested is already incarcerated in a jail facility or surrenders to that jail facility, by a detention officer at the jail facility where the detention officer is employed. Officers who have reason to believe that a warrant exists for a person may detain that person pending validation of the warrant. The warrant must be confirmed prior to arrest.
- B. A warrant *shall*:
- contain the name of the person to be *arrested* or, if the name is unknown, any name or description by which the person can be identified with reasonable certainty,
  - include the criminal charges and *shall* command that the person be *arrested* and brought before a magistrate,
  - state the bond, if bail is available as a matter of right, and
  - contain the magistrate's signature or wording indicating that the original warrant has a signature.
- C. A warrant that is not sufficiently specific to allow an *officer* to verify the identity of the person to be *arrested* is unenforceable and an *officer should* not make an *arrest* based on that warrant.
- D. The *officer shall* verify the identity of the person to be *arrested*. If it is necessary to establish identity, a fingerprint check *may* be made. If identification is inconclusive, the person *shall* be released.
- E. Forcible entry to execute an arrest warrant is limited to felony or serious/violent misdemeanor warrants. To make a forcible entry to arrest



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a person on an arrest warrant (no consent or exigency), an officer must have:

1. To arrest the suspect in his/her own home:
  - a. an arrest warrant, and
  - b. probable cause to believe the suspect is home.
2. To arrest the suspect in someone else's home:
  - a. an arrest warrant, and
  - b. probable cause to believe the suspect is home, and
  - c. a search warrant.

#### 1.6.9.3 Warrant Verification

- A. No warrant *shall* be served without verification. If the warrant is local, it *shall* be verified as still valid through the Communication's section.
- B. If the warrant is from another agency, the Communication's section *shall* contact that agency by telephone and request warrant verification. The name and identification number of the person who verifies the warrant *shall* be included in the *arresting officer's report*. A computer entry from ACIC or NCIC is not sufficient for verification of a warrant and *may* not form the basis for an *arrest*.
- C. It is not necessary to obtain a copy of an *arrest* warrant prior to serving it; however, if the suspect requests to see a copy, the *officer shall* secure a copy and provide it to the arrestee as soon as practicable.
- D. If the warrant itself is verified but the issuing agency is unable to immediately confirm that they *will* extradite or, if in Arizona arrange for an out-of-county transfer, the warrant *shall* not be served and the suspect *shall* be released. If the warrant is verified but extradition or out-of-county transfer is denied, or if the warrant is no longer valid, the suspect *shall* be released (if there are no other charges). If the warrant is verified but not being served, for whatever reason, the person *shall* be advised that the



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warrant remains active. Persons *arrested* on out-of-county, out of state or international warrants *shall* be booked at the jail in the county of *arrest*.

- E. The *officer shall* include within the written *report* all efforts made to establish identity and to confirm the warrant. If the warrant is not served, the *report shall* include a complete explanation of the reasons for the non-service.

#### 1.6.9.4 Juvenile Arrest Warrants

Juvenile warrants are valid only until the person is 18 years of age. Juvenile warrants *shall* be served in the same manner as adult warrants, except that the juvenile *shall* be detained at the Mesa Juvenile Intake facility.

#### 1.6.9.5 Non-Service of Warrants


An *officer* has the discretion not to serve a misdemeanor warrant if doing so would be a hazard to the health and well-being of the defendant, if the offense is minor and the defendant is accompanied by minor children, and in similar situations. An *officer* who elects not to serve a warrant *shall* advise the subject that the warrant remains active. The *officer shall* document the contact in a *DR* and *shall* include all current information on the person named in the warrant, including physical description, current residential and business addresses and other relevant information.

#### 1.6.9.6 Department Warrants – Extradition/Out-of-County Transfer Policy

*Department* warrants are generally only extraditable within *Maricopa County, AZ*. Other law enforcement agencies inquiring about the *Department's* extradition and out-of-county transfer policy on warrants *shall* be advised this *Department may* extradite and cooperate with out-of-county transfers at the discretion of the *shift supervisor*.

#### 1.6.10 Military Members who are AWOL/Deserters

- A. When a person is suspected of being absent without leave (AWOL), or a deserter, from the armed forces, the *officers shall* confirm the person's status with military authorities. A service member *will* be detained once an *officer* is

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advised by an appropriate military representative that the proper written order exists to *arrest* the person and hold them as AWOL or as a deserter.

- B. Confirmation *shall* be made by contacting the military police at the closest military or reserve military installation and providing the person's name, rank, social security number, date of birth, unit designation or station, and any other available information. If the AWOL or desertion status is confirmed and military authorities advise that the proper order exists to hold the person, the person *shall* be *arrested* and transported to jail. The military unit requesting detention *will* be requested to provide a copy of the written order as soon as practicable. The name and rank of the military person requesting the hold *shall* be included in the booking paperwork at the jail and in the *DR*; the charge description *will* be listed as Desertion in violation of Article 86, Uniform Code of Military Justice.
- C. When an arrestee is subsequently discovered to be AWOL or a deserter, the above verification and documentation process *shall* be followed and the arrestee *shall* also be booked on the AWOL or desertion charge.

**1.6.11 Civil Arrest Warrants (Non-Child Support)**

- A. A "civil *arrest* warrant" is a court order issued in a non-criminal matter directing *officers* to *arrest* a person and bring the person to the court. Civil *arrest* warrants do not necessarily contain a statutory violation nor *will* they contain a criminal charge.
- B. A civil *arrest* warrant *must* be verified with the court prior to service. Generally, unless the warrant specifically states otherwise, a civil *arrest* warrant *may* only be served between the hours of 0630-2200. If the contact occurs during this time and the warrant is verified by the court, it *shall* be served on the person. (At any other time of day, the *officer shall* simply advise the person of the existence of the warrant but *will* not serve the warrant.) If the court is in session, the person *arrested may* be transported directly to the court; otherwise the person *shall* be booked into jail.

**1.6.12 Civil Child Support Arrest Warrants**

- A. A child support *arrest* warrant is a court order issued in a child support case directing *officers* to *arrest* a person and bring the person to court. Child support



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*arrest warrants may be served at any time of day or night (24 hours a day) and will be executed like any other arrest warrant.*

- B. Child support warrants *may* be verified by contacting the Clerk of the Court to verify the warrant and the release amount. If the warrant is valid, the person *may* be transported directly to the court; otherwise the person *shall* be booked into jail under A.R.S. § 25-681, Civil Child Support Arrest Warrant. The *officer shall* complete a DR documenting the service of the warrant.

#### 1.6.13 Citizen's Arrests

- A. Before accepting a person from a citizen claiming to have made a citizen's *arrest*, an *officer shall* confirm that the *arrest* is lawful. Member's of the public *may* make *arrests* in the following circumstances:
- when the person to be *arrested* has in the presence of another committed a misdemeanor amounting to a breach of the peace (for example, trespass, DUI, assault, threatening and intimidating, and disorderly conduct), or a felony, or
  - when a felony has in fact been committed and the person making the arrest has reasonable grounds to believe that the person to be *arrested* committed it.
- B. The *officer should*, prior to accepting custody of the person, ask the person making the arrest whether or not he/she has made an *arrest* and, if so, that individual *should* advise the person of the cause for the *arrest*. The *officer may* then take custody of the person. Once the *officer* takes custody of the arrestee, the *officer must* inform the person that he/she is under *arrest* and provide the reason for the *arrest*.
- C. The person making the arrest *should* be advised that they are not required to sign a criminal complaint, but that they *may* receive a subpoena to testify in court as a witness.

#### 1.6.14 Telephone Calls for Arrested Persons

- A. When a suspect is detained or *arrested* and transported to a police facility prior to being booked into jail, the suspect *should* be given the opportunity to make two telephone calls within two hours of the time the suspect arrives at the facility,



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unless extenuating circumstances exist for postponing the calls (e.g., *search warrant* is being drawn and contraband *may* be removed or destroyed if the suspect is allowed to make a call). If the call is delayed due to extenuating circumstances, the relevant specific information *shall* be included in the *DR*.

Long distance calls *must* be paid for by the prisoner (credit card, collect, or by charging to a third number).

- B. If a prisoner requests to contact an attorney, *officers shall* dial the telephone number requested and place the prisoner in a holding cell or similar area with the telephone, in order to ensure the prisoner's right to a confidential conversation with the attorney. The *officer shall* move far enough away so as not to overhear the conversation, or leave the room, while maintaining visual contact with the arrestee.

If the prisoner is unable to contact an attorney for any reason, the reason *shall* be noted in the *DR* and the *officer shall* discontinue all interrogation concerning the criminal case unless the prisoner, without any coercion or duress, indicates they want to talk without consulting their attorney.

- C. Telephone numbers called *shall* be listed on the *Arrest/Booking Record* if the prisoner is booked or on the applicable *reports* if the subject is released.