

# Laws of Arrest

## LD-15

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San Jose Police Department

Learning Domain 15  
SJPD CSO Basic Course

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

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

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

[15.01.E02]

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

## Relevant Concepts

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

[15.01.E03]

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

[15.01.EO4]

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

[15.01.E05]

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

Federal & State

[15.01.E06]

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

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

Federal & State

[15.01.E06]

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

## Consensual Encounters

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

Defined

[15.02.E02]

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

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

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# Consensual Encounters

## Examples

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[15.02.E02]

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

Elevations

[15.02.E03]

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

Results of Unlawful Detentions [15.02.E04]

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- ☐ Loss of Criminal Case
  - ☐ Civil Liability
  - ☐ Criminal Liability
  - ☐ Departmental Discipline.
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# Detentions

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

## Defined

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- ❑ An assertion of authority by a peace officer
  - ❑ that would cause a reasonable person to believe they are *NOT free to leave*
  - ❑ Such a belief may result from:
    - physical restraint
    - unequivocal verbal commands
    - or other conduct by an officer.
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# Detentions

## Limitations & Requirements

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

## Reasonable Suspicion Defined

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- An officer
- Has sufficient facts and information to make it reasonable to suspect
- That criminal activity may be occurring and
- The person to be detained is connected to that activity

NOTE: This is based on your training & experience.

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# Detentions

## LEO Actions During Detentions

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

## CSOs & Detentions

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

## CSOs & Detentions

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

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

## What is an Arrest

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

## Probable Cause

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❑ Justifies an arrest when:

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

## Why CSOs Need to Understand PC

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

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

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# Arrests

## Legal Authority to Arrest

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

## Why SJPD CSOs Do Not Make Arrests

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

**Department policy discourages arrests by CSOs**

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