

COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING BASIC ACADEMY

Functional Area:
Legal Matters

Lesson Title:
Laws of Arrest LM.08

Duration:
1.0 Hour

Revised: December, 2009, September 2007; July 2004; January 2002; March 1999

LEARNING GOAL(S): The students will know the elements and mechanics of a legal arrest both with and without a warrant.

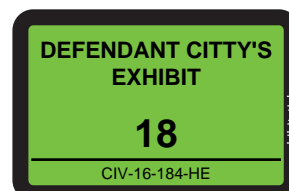
ASSESSMENT AND STANDARDS: Successful completion of this **FUNCTIONAL AREA** is achieved when the student has performed all practical tasks and exercises to the satisfaction of the instructional staff and, when tested against the **PERFORMANCE OBJECTIVES** by multiple choice exam(s), a score of 70% or higher is attained.

PERFORMANCE OBJECTIVES:

- LM.08.01 The student will identify the purpose of an arrest.
- LM.08.02 The student will identify the elements necessary to effect an arrest.
- LM.08.03 The student will identify who can make a lawful arrest
- LM.08.04 The student will identify the definition of the term "arrest warrant."
- LM.08.05 The student will identify the times during which arrest warrants, both misdemeanor and felony, may be executed.
- LM.08.06 The student will identify the requirements of a "John Doe" warrant.
- LM.08.07 The student will identify the circumstances under which a warrantless arrest can be made.
- LM.08.08 The student will identify the citizen's arrest process.

TRAINING AIDS REQUIRED:

1. Student Reference Guide



I. INTRODUCTION

- A. The laws of arrest, and an understanding of the same are essential to effective law enforcement. When an officer makes an arrest, the Officer is taking away an individual's most cherished right - the right to liberty.
- B. It is during an arrest or an attempt to arrest that the officer is most vulnerable to:
 - 1. Violence
 - 2. Injury
 - 3. Criminal Liability
 - 4. Civil Liability

P. O. [LM.08.01] The student will identify the purpose of an arrest.

- C. The purpose of arrest is to take one into custody to answer to charges. Arrest is not for the purpose of inflicting injury or punishment. Nor is arrest for the purpose of harassing individuals.
- D. Officers must respect the rights of all individuals with whom they come into contact. If you will treat all individuals with the respect and courtesy that you would like to be treated with, then you will decrease the chances of unlawful and violent confrontations.

II. DEFINITIONS OF TERMS

- A. Arrest is the taking of a person into custody that they be held to answer for a public offense.
- B. Crime or Public Offense is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following:
 - 1. Death
 - 2. Imprisonment
 - 3. Fine
 - 4. Removal from office
 - 5. Disqualified from holding office
- C. Confinement is either a moral or a physical restraint, by threats of violence with a present force, or by physical restraint of the person.
- D. Felony Offense is a crime which is, or may be, punishable with death, or by imprisonment for more than one year.
- E. Misdemeanor / Every other crime. *Remember, the Legislature occasionally defines a crime as a felony, but sets the punishment as though the crime was a misdemeanor.*

III. ELEMENTS OF ARREST

P. O. [LM.08.02] The student will identify the elements necessary to effect an arrest.

A. Intent to Arrest

1. Words alone do not necessarily constitute an arrest. There are cases where the Officer has said ‘you are under arrest’ and the court later ruled that the person was *not* under arrest. There are also cases where the Officer said ‘you are not under arrest’ and the court later ruled that the person *was* under arrest. What the Officer said or did not say is not necessarily binding on the court.
2. Physical restraint is not necessary
3. A request to have a person accompany an Officer to a Police Station is not necessarily an arrest. There are cases where the court has ruled that this situation is an arrest and there are also cases where the court has ruled this situation is not an arrest.
4. Courts use a ‘totality of the circumstances’ test. If a reasonable person under the same circumstances would not have felt free to leave the court will *probably* decide that the person is under arrest.
5. The distinction between an ‘interview’ and a ‘investigatory detention’ and an ‘arrest’ is narrow, and often difficult to define.

B. Authority to Arrest

1. As an officer, within your jurisdiction
2. Misdemeanor committed in your presence or as permitted by law (warrant or exception)
3. Felony, either with or without a warrant, in accordance with state law.

C. The Uniform Act on Fresh Pursuit (22 O.S. § 221 *et seq.*) provides:

“Any member of a duly organized state, county, or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county or municipal peace unit of this state, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state.”

Detention of the Person. This may be actual or constructive restraint.

D. Understanding of the person arrested

1. Must submit, either voluntary or involuntary.

2. If the officer states that he or she has intent to arrest and the person runs without submitting, no arrest has been made.

IV. WHO CAN MAKE AN ARREST?

P. O. [LM.08.03] The student will identify who can make a lawful arrest.

- A. A peace officer with a warrant
- B. A peace officer without a warrant
- C. Private citizens.

V. ARREST WITH A WARRANT

P. O. [LM.08.04] The student will identify the definition of the term "arrest warrant."

Warrant defined: A *warrant* is an order in writing, in the name of the State, signed by a magistrate, commanding the arrest of the defendant.

Magistrate includes:

1. Justices of the Supreme Court, Court of Criminal Appeals, Court of Appeals.
 2. District Judges, Associate District Judges, Special Judges.
- A. District Court warrants may be executed in any county in the state.
 - B. The warrant must be directed to and executed by a Peace Officer.

P. O. [LM.08.05] The student will identify the times during which arrest warrants, both misdemeanor and felony, may be executed.

- C. Felony warrants may be executed at any time during day or night.
- D. Misdemeanor warrants may be executed between the hours of 6:00 a.m. and 10:00 p.m., unless other times are authorized on the warrant, or if the person named in the warrant is found on a public road or in a public place.
- E. If requested, the officer must show the arrestee the arrest warrant within a reasonable time.
 1. In misdemeanor cases, the arrestee may request to appear before a judge in the county where arrested for the purpose of posting bail. (*whether the judge will agree to this varies.*)
 2. All persons arrested under the authority of a warrant must be taken before the judge without unnecessary delay. If the delay is more than 48 hours, the state must show the court why the delay was reasonable under the circumstances.

P. O. [LM.08.06] The student will identify the requirements of a "John Doe" warrant.

- F. John Doe warrants - if the name of the defendant is unknown, then the warrant may be issued in any name ('John Doe' is just a popular one) as long as there is some kind of physical description on the warrant.
- G. If an officer runs a warrant check on an individual and the check reveals an outstanding warrant, the officer should use all reasonable means to confirm that the warrant is currently valid and outstanding.
- H. Breaking open a window or door may be permitted in serving an arrest warrant where the officer has been refused admittance, after the officer has identified self and given notice of his or her authority.

The Oklahoma Statutes are –

22 O.S. § 194: (warrant arrest, refused admittance) “The officer may break open an outer or inner door or window of a dwelling house, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.” Note that the statute is not specific as to felonies or misdemeanors.

22 O.S. § 197: (warrantless arrest) “To make an arrest ... the officer may break open an outer or inner door or window of a dwelling house, if, after notice of his office and purpose, he be refused admittance.” Again, note that the statute is not specific as to felonies or misdemeanors.

CAVEAT: The U.S. Supreme court has ruled that—

1. Any entry into a home without a warrant is *presumed* unreasonable and the burden is on the state to show why the entry into the home was reasonable under the totality of the circumstances.
2. To justify a warrantless entry into a home the state must show exigent circumstances that make it necessary to enter the home *now* instead of asking a magistrate for a warrant. Exigent circumstances might include things like –
 - a. How serious the offense is and how much it affects public safety.
 - b. Genuine hot pursuit
 - c. Preventing the destruction of evidence.
3. The main Supreme Court case is Payton v. New York, 445 U.S. 573 (1980)

Bottom line, the officer must be very careful about entering a home without a warrant, and must be ready to explain to the court why it was necessary. If you don't have a good reason, that you can defend on the witness stand, to enter the home without a warrant, go ask for a warrant.

Note to instructor – some cases you may want to discuss—

1. Payton v. New York, 445 U.S. 573 (1980). “The Fourth Amendment ... prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest...The Fourth

Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.”

2. Welsh v. Wisconsin, 466 U.S. 740 (1984). “Before government agents invade the sanctity of the home, the government must demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries.”

- I. Municipal warrants from a municipal court of record may be served anywhere in the State by an officer of the issuing municipality or by a deputy sheriff. 11 O.S. § 28-121

VI. ARREST WITHOUT A WARRANT

P. O. [LM.08.07] The student will identify the circumstances under which a warrantless arrest can be made.

1. A peace officer may, without a warrant, for the following reasons:
 - a. An offense committed or attempted in the Officer’s presence
 - b. For a felony, not committed in the Officer’s presence, with Probable Cause
 - c. With Probable Cause to believe a party was driving or in actual physical control of a motor vehicle involved in an accident and was under the influence
 - d. Pursuant to the Domestic Abuse and Victim Protection Order laws
 - e. With Probable Cause to believe a larceny of merchandise has occurred
 - f. Based on communications with another Peace Officer for moving traffic violations
 - g. Taking a person with mental disorders into custody if the person’s life or the life of another person is in danger (probably not technically an ‘arrest’.)
2. When arresting without a warrant, the officer should inform the person of the Officer’s authority, unless the crime was committed in the officer’s presence or the Officer was in pursuit immediately after an escape.

VII. ARREST BY PRIVATE PERSON

P. O. [LM.08.08] The student will identify the citizen’s arrest process.

- A. Private person may arrest another:

1. For a public offense committed or attempted in his presence.
 2. When the person arrested has committed a felony although not in his or her presence.
 3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it. (the statute should probably read 'probable cause'.)
- B. Before making the arrest, the person must inform the person to be arrested of the cause thereof, and require him to submit, except when he is in actual commission of the offense or when he is arrested on pursuit immediately after its commission.
- C. A private person who has arrested another for the commission of a public offense, must without unnecessary delay, take him before a magistrate or deliver him to a peace officer.
- E. Peace officers working as private security guards or outside of their jurisdiction must arrest as a private citizen.

However, pursuant to the Uniform Act on fresh pursuit an officer who is in pursuit of a felony offender may pursue into a reciprocating state and make a valid arrest.

VII. MISCELLANEOUS

- A. Any person making an arrest must take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he or she is taken.
- B. A person who is placed under arrest unlawfully has the right to resist the arrest, as the officer becomes the trespasser.
- C. General requirements of purpose and authority:
1. No matter what crime a person may have committed in the past he or she is privileged to use reasonable force to defend himself from any unlawful force that deprives him of his liberty or might injure or kill him.
 2. It is important that an officer notify the person of:
 - a. Intent to arrest
 - b. Authority for the arrest, and
 - c. Reason for the arrest
- D. Since an arrest is for the purpose of bringing the arrested person before a court any unreasonable delay makes the detention illegal.
1. Unreasonable delay in order to get a confession is illegal.
 2. There is no legal authority to hold a suspect in jail for questioning in the absence of a charge.
 3. An officer should never take it upon their own authority to place a person in jail to punish him or her for any violation.

4. Every person is considered innocent until proven guilty.
 - D. An officer who makes an illegal arrest is subject to a civil suit. An officer with a bad or illegally drawn warrant, knowing the warrant to be defective, is not protected from liability.
 - E. Every person must aid an officer in the execution of a warrant, if the officer requires his aid.