

# Arizona Peace Officer Standards and Training

## Basic Curriculum Model Lesson Plan

---

**LESSON TITLE: LAWS OF ARREST 2.2**

---

SUBJECT:	Laws of Arrest
AZ POST DESIGNATION:	2.2
HOURS:	15
COURSE CONTENT:	<p>A delineation of the conditions under which an officer or citizen may make an arrest. The course distinguishes between misdemeanor and felony arrests and discusses the use of the citation form for misdemeanor cases. Also covered are the officer's duties and responsibilities prior to and during the arrest; including arrests with and without a warrant, discretionary enforcement of the law and use of force to effect an arrest. Persons' immune from arrest, legal and illegal aliens and the officer's related responsibilities are identified. Health and safety risks associated with public contact are also addressed.</p>
PERFORMANCE OBJECTIVES:	<p>Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will:</p> <ul style="list-style-type: none"><li>2.2.1 Identify that all arrest warrants must be confirmed prior to warrant service.</li><li>2.2.2 Identify examples of conditions under which a private person may make a lawful arrest as per:<ul style="list-style-type: none"><li>A. A.R.S. §13-3884.</li><li>B. A.R.S. §13-3889.</li><li>C. A.R.S. §13-3900.</li></ul></li><li>2.2.3 Given a written description of an officer entering a premise by force, identify whether or not the legal requirements for entry were fulfilled per A.R.S. §13-3891.</li><li>2.2.4 Identify the following common limitations of officer discretion:<ul style="list-style-type: none"><li>A. Law.</li><li>B. Existence of departmental policies and procedures.</li><li>C. Existence of departmental goals and objectives.</li></ul></li></ul>

- 2.2.5 Identify the requirements for taking a person arrested without a warrant before a magistrate as per A.R.S. §13-3898.
- 2.2.6 Identify the time of day or night that an arrest may be made as per A.R.S. §13-3882.
- 2.2.7 Identify examples of the information that an officer is required to provide to a person who is being arrested as per A.R.S. §§13-3887 and 13-3888.
- 2.2.8 Identify examples of the circumstances under which it is preferable to seek a long-form complaint rather than make a probable cause arrest.
- 2.2.9 Identify the provisions of A.R.S. §13-1805 regarding detention of a suspected shoplifter by a merchant or the merchant's agent.
- 2.2.10 Identify what constitutes entrapment as per A.R.S. §13-206 and case law.
- 2.2.11 Identify that in the absence of a court order or warrant, only a parole or probation officer may lawfully arrest a person for a parole/probation violation.
- 2.2.12 Given a written description of an officer effecting an arrest, identify the degree of force that may be used as per A.R.S. §§13-3881, 13-3896 and 13-3902.
- 2.2.13 Given written, visual or verbal descriptions of situations where deadly physical force is threatened or used, identify whether the act was justified. The situations will minimally cover the following:
- A. Affirmative Defenses (A.R.S. §13-205).
  - B. Execution of public duty (A.R.S. §13-402).
  - C. Use of deadly physical force (A.R.S. §13-405).
  - D. Defense of a third person (A.R.S. §13-406).
  - E. Use of physical force in defense of premises (A.R.S. §13-407).
  - F. Use of deadly physical force in law enforcement (A.R.S. §13-410).
  - G. Use of force in crime prevention (A.R.S. §13-411).
  - H. Use of force in domestic violence (A.R.S. §13-415).
  - I. Use of force in defense of residential structure or occupied vehicles (A.R.S. §13-418).
  - J. Exceptions (A.R.S. §13-419).

- K. Defensive Display of a firearm (A.R.S. §13-421).
- 2.2.14 Given written, visual or verbal descriptions of situations where physical (not deadly) force is threatened or used, identify whether the act was justified. The situation will minimally cover the following:
- A. Affirmative defenses (A.R.S. §13-205)
  - B. Executions of public duty (A.R.S. §13-402).
  - C. Use of physical force (A.R.S. §13-403).
  - D. Self-defense (A.R.S. §13-404).
  - E. Defense of a third person (A.R.S. §13-406).
  - F. Use of physical force in defense of premises (A.R.S. §13-407).
  - G. Use of physical force in defense of property (A.R.S. §13-408).
  - H. Use of physical force in law enforcement (A.R.S. §13-409).
  - I. Use of deadly force in law enforcement (A.R.S. §13-410).
  - J. Use of physical force in crime prevention (A.R.S. §13-411).
  - K. Use of physical force in domestic violence (A.R.S. §13-415)
  - L. Use of force in defense of residential structure or occupied vehicles (A.R.S. §13-418).
  - M. Exceptions (A.R.S. §13-419).
  - N. Defensive Display of a Firearm (A.R.S. §13-421)
- 2.2.15 Identify the provisions of A.R.S. §13-401 regarding the liability associated with the lawful use of physical or deadly force when the use of such force results in the injury, or death, of an innocent third party.
- 2.2.16 Identify the duties of an officer when making an arrest with a warrant as per A.R.S. §§13-3887 and 13-3897.
- 2.2.17 Identify examples of the conditions under which an officer may make a lawful arrest without a warrant as per A.R.S. §13-3883.
- 2.2.18 Given a written, verbal or visual description of an instance where an arrest may or may not be warranted, identify if probable cause for the arrest exists by applying the following standard:

Probable cause to make an arrest requires knowledge, based on facts and circumstances, which would cause a reasonable and prudent person to believe that a crime has been, or is being, committed and that the person to be arrested has committed, or is committing, that crime.

2.2.19 Identify examples of persons who are immune from arrest as per Article 4, Part 2, Section 6 of the Arizona Constitution.

2.2.20 Identify the conditions under which an arrested person may be issued a written notice to appear in lieu of detention as per A.R.S. §13-3903.

DATE FIRST PREPARED: March 2001

PREPARED BY: SME Committee

REVIEWED – **REVISED**: Lt. Harold Brady DATE: July 2002

REVIEWED – **REVISED**: SME Committee DATE: June 2003

REVIEWED – **REVISED**: SME Committee DATE: May 2008

REVIEWED – **REVISED**: SME Committee DATE: February 2009

REVIEWED – **REVISED**: Lt. Dave Kelly, Phoenix PD DATE: November 2009

REVIEWED – **REVISED**: SME Committee DATE: November 2011

REVIEWED – **REVISED**: SME Committee DATE: November 2012

REVIEWED – **REVISED**: SME Committee DATE: June 2014

REVIEWED – **REVISED**: SME Committee DATE: June 2014

REVIEWED – **REVISED**: SME Committee DATE: December 2016

REVIEWED – **REVISED**: SME Committee DATE: August 2019

REVIEWED – **REVISED**: SME Committee DATE: JULY 2020

REVIEWED – **REVISED**: SME Committee, (DocX) DATE: September 2021

REVIEWED – REVISED:

AZ POST – APPROVAL: Mandy Faust DATE: February 2021

AZ POST – APPROVAL: Lori Wait DATE: October 2021

INSTRUCTOR REFERENCES:

CLASS LEVEL: Student

TRAINING AIDS: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Lecture with discussion, overheads and handouts.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2.2 Laws of Arrest

DATE RELEASED TO THE SHARE FILE: May 27, 2022

**I. INTRODUCTION**

- A. Instructor – (self) introduction.
- B. Preview of performance objectives.

**II. GENERAL**

- A. One (1) of the most formidable powers in society is the power to arrest.
  - 1. The power to arrest for “defined crimes” is granted by statute.
  - 2. In Arizona, Title 13 grants arrest authority in general to peace officers and, in limited circumstances, to private citizens.
  - 3. The authority to arrest depends on the existence of a crime or arrest warrant; without a crime or arrest warrant, there can be no arrest. Crimes are defined throughout Arizona Revised Statutes. Officers will most often be dealing with the offenses described and defined in Titles 13, 28 and 4 and local ordinances.
  - 4. It is the responsibility of a prudent officer to remain aware of changes in statutes and case law which affect this power.
  - 5. If an officer does not remain aware of the law or abuses the power, the officer can suffer:
    - a. Criminal charges or civil lawsuits.
    - b. Job termination.
    - c. Loss of charges against a suspect in court.
    - d. Public humiliation for the officer and the agency.
    - e. Loss of public trust and confidence.
- B. The 4th Amendment defines and limits the power to arrest. **P.O. 2.2.18**
  - 1. The standard for arrest established by the 4th Amendment is “probable cause.”
  - 2. Probable cause can be defined as knowledge based on facts and circumstances which would cause a reasonable and prudent person to believe a crime has been, or is being, committed and that the person to be arrested has committed, or is committing, a crime.
  - 3. At the very outset, there must be a crime! A violation of the law is the first thing that must happen to initiate the arrest process. Otherwise, there is no basis for the arrest and such action would violate the Fourth Amendment. ***INSTRUCTOR NOTE: Discuss***

*disorderly conduct against peace officers and other “contempt of cop” situations.*

### III. WHAT IS AN “ARREST”?

#### A. Legal and Practical standards for defining “arrest”.

1. In general, an arrest involves:
  - a. Violation of the law.
  - b. Someone being taken into custody for the violation.
  - c. With the intent that the person be taken before a court.
  - d. To answer a formal charge.
2. The practical test as to whether an arrest has occurred is whether a reasonable person, under the same circumstances, would believe that he/she was not free to leave.
3. Legal test requires probable cause (per Arizona and U.S. Constitutions) and actual or constructive detention per A.R.S. §13-3881(A).
  - a. Actual detention is physical restraint through use of force or actual touching.
  - b. Constructive detention is submission to the arrest without actual touching.
4. Case law has also interpreted “arrest” as “the taking of a person into custody against his/her will for the purpose of criminal prosecution or interrogation.”
  - a. *Dunaway v. New York*, 1979 U.S. Supreme Court Case.

#### B. WHEN HAS AN ARREST OCCURRED? This can be difficult to determine and even courts may disagree.

1. Courts look at a variety of factors in determining whether an arrest has occurred, such as:
  - a. The officer’s intention to make an arrest.
  - b. Communication of the authority and cause for the arrest and other actions of the officer.
  - c. An understanding by the arrestee of the officer’s intention.
    - i. A person who is unconscious or severely intoxicated may not understand.

- ii. Nor may a person who does not speak English.
  - iii. Age.
- 2. De Facto Arrest
  - a. Unreasonable force.
  - b. Unreasonable time.
  - c. Unreasonable movement to more than one location.
  - d. Unreasonable restraints.

#### **IV. THE BASIS FOR ARREST - ESTABLISHING PROBABLE CAUSE**

- A. Definitions.
  - 1. Probable Cause (defined previously).
  - 2. Reasonable Suspicion.
    - a. Reasonable suspicion has been defined as specific articulable facts and circumstances that would lead a reasonable police officer to suspect a crime has been, is, or is about to be committed by the person to be stopped or detained.
- B. Building Blocks of Probable Cause.
  - 1. Establishing probable cause is like using building blocks to reach a certain height, as you gather information about a possible violation each piece is a building block, which is added to the others.
  - 2. The degree to which a bit of information makes it likely that a crime was committed (the weight of the information) determines the height of the building block.
  - 3. Key things to keep in mind.
    - a. Probable cause must be established before the arrest. It cannot be based upon facts that turn up after the arrest.
    - b. Probable cause must be based upon objective facts – facts that you can articulate, recall and testify about to the Trier of fact at a trial.
    - c. An officer's training and experience may affect the officer's interpretation of the facts and circumstances the officer observes.
    - d. Discuss Collective Knowledge Doctrine (i.e. One officer can rely on another

officer's knowledge).

4. What factors can be considered in establishing probable cause?
  - a. Personal knowledge of the officer – five (5) senses, past training and experience, etc.
  - b. Sources both named or unnamed.
    - i. Victims, witnesses, other officers, citizens, suspects, accomplices, etc. – generally considered reliable. **INSTRUCTOR NOTE:** *Discuss Florida V. J.L. and State V. Altieri.*
    - ii. Confidential informants, anonymous tipsters, etc. – generally must demonstrate reliability.
  - c. Suspect information – past conduct, reputation, criminal history, etc.
  - d. Physical circumstances of the crimes – location, time of day, odors, weather, lighting, etc.
  - e. Physical evidence at the scene – weapons, blood splatters, fingerprints, documents, etc.
- C. Reasons for citizen contact.
  1. Voluntary Contact. **INSTRUCTOR NOTE:** *E.g: An Officer sees a Lamborghini in government owned housing; this may seem out of place. The officer may want to do some investigation, but this situation alone does not provide any basis to stop or detain the driver of the Lamborghini.*
    - a. The officer may approach the citizen and begin speaking with him/her, but the citizen may legally ignore the officer and walk away.
    - b. “Mere suspicion” or a hunch may involve things that appear out of place, such as a person peeking around the corner of a closed business at night, or a person looking nervous and walking away. This by itself is not enough to initiate a stop.
  2. Reasonable suspicion.
    - a. Reasonable suspicion that a person is involved in criminal activity provides legal authority to stop and briefly detain that person for investigation. **INSTRUCTOR NOTE:** *Discuss Terry V. Ohio. The genesis of reasonable suspicion standard for stop or investigatory detention.*
    - b. The facts and inferences, taken as a whole, must provide a “particularized and objective basis for suspecting the particular person stopped of criminal activity.”

- c. Provides an interim standard – probable cause is not required but the scope and duration of detention are limited.
  - d. Officers must articulate (document) ALL of the specific circumstances that were relied on to justify a stop or seizure.
  - e. Reasonable suspicion allows officers to stop or detain for a reasonable time to investigate further to confirm or dispel the suspicion of criminal activity. The investigation may lead to the conclusion there is probable cause to arrest (or search), or that the person is not involved in criminal activity and must be released. **INSTRUCTOR NOTE:** *E.g: Detention of a motorist stopping for a smoking tailpipe was reasonable where the motorist was covered with blood and feces and claimed to have been in a fight. Officers released the motorist after a 45-minute investigation trying to determine whether the other party to the fight was injured. State V. Spreitz. Further example: An officer is investigating a one-car accident; a car drives by the scene very slowly. The officer thinks the occupant might know something about the accident so he/she pursues and stops the vehicle. Because the conduct was not criminally suspicious (slowing down and looking) and because it is not a crime to have information and not provide it to law enforcement, the stop of the citizen was ruled improper.*
  - f. An investigative detention may last no longer than necessary to effectuate the purpose of the stop. Prolonging the length of a detention may result in a de facto arrest. **INSTRUCTOR NOTE:** *State V. Boteo-Flores, 230 Ariz. 105, 208 P.3d 1239 (Ariz. 2012)*
  - g. You may use **REASONABLE** force to control the situation.
3. Probable Cause.
- a. Facts and circumstances must demonstrate a “fair probability” that the crime was committed by the person to be arrested.
  - b. The factors establishing reasonable suspicion may be the same relied upon to establish probable cause.
  - c. Once probable cause is established, it can disappear if:
    - i. New circumstances are presented. **INSTRUCTOR NOTE:** *A person thought to be a murder victim shows up unharmed.*
    - ii. The basis for probable cause is proven untruthful (informant). **INSTRUCTOR NOTE:** *Officer learns that the informant is a former jilted girlfriend of the target.*
    - iii. Innocence is established by the suspect. **INSTRUCTOR NOTE:** *Credible*

*alibi provided.*

d. Probable cause examples:

- i. An officer sees a suspect he/she arrested a couple of months earlier for drug possession standing on a street corner known for drug dealing. Does he/she have probable cause to arrest the suspect again?

NO, no facts AT THIS TIME show that the suspect is presently possessing drugs.

- ii. An officer yells at a youth that is acting suspiciously in a high narcotics trafficking area. The youth takes off running. When the officer catches the youth, does he/she have probable cause for an arrest?

NO. running away from police in and of itself is not a crime. If during the chase the suspect tosses what turns out to be drugs, then the officer would have probable cause for an arrest.

- iii. An officer comes upon a one-car accident. The suspect, who is outside the car and obviously intoxicated, states he was a passenger in the car. IS there probable cause to arrest the suspect for DUI?

NO, not without a witness who can state the suspect was driving the vehicle, or at least behind the wheel of the vehicle, immediately after the accident or some other similar evidence.

- iv. The officer is working undercover and contacts an individual that has listed a phone for sale on Craig's list. The officer contacts the individual and meets him to purchase the advertised phone. The officer inspects the phone and determines it was stolen. Does the officer have probable cause for an arrest?

Yes. The officer has probable cause for an arrest but she should question the suspect to determine if he knew the phone was stolen.

## V. DISCRETION TO ARREST AND LIMITS OF DISCRETION.

A. Generally, when officers have probable cause to arrest, they may also have discretion to make the arrest or not.

B. Limits of Discretion.

1. Law - limits the circumstances under which you can exercise your discretion in numerous ways including immunity, mandatory arrest offenses and jurisdiction to arrest.

**INSTRUCTOR NOTE:** *Domestic Violence arrests.*

**P.O. 2.2.4A**

2. Departmental policies and procedures – may limit your discretion by requiring that certain offenders be cited and released (**e.g., shoplifters with identification**); or that certain categories of offenses are always long-formed rather than handled by arrest (**e.g., civil problems**); or by specifying minimum conduct for which an arrest will occur (**e.g., 25 miles or more over the posted speed limit**). **P.O. 2.2.4B**
3. Departmental goals and objectives – may limit your discretion, treating certain conduct in a particular way, which reflects the community’s concern. Generally short term. For example, a sting operation involving prostitution offenses may require physical arrest. **P.O. 2.2.4C**

## VI. ALTERNATIVES TO CUSTODIAL ARREST.

- A. Citation in lieu of detention (A.R.S. §13-3883A.4) – states that a person is eligible to be cited and released pursuant to A.R.S. §13-3903, whenever a misdemeanor or a petty offense has been committed and there is probable cause to believe that the person to be arrested has committed the offense. **P.O. 2.2.20**
  1. This is the statutory guideline for adults.
  2. Even though an arrestee is eligible to be cited and released, it is not mandatory, and the decision is up to the officer. The person may be held in jail until seeing a magistrate.
  3. Domestic violence offenses are not eligible for cite and release by law. **INSTRUCTOR NOTE: A.R.S. 13-3601(B).**
  4. If permitted by the juvenile court, juveniles are eligible to be cited and released for (see A.R.S. §8-323):
    - a. Non-felony traffic offenses.
    - b. Purchase, possession or consumption of alcohol.
    - c. Boating or game and fish violations.
    - d. Curfew.
    - e. Truancy.
    - f. Graffiti offenses or purchase/possession of graffiti materials.
    - g. Purchase or possession of tobacco.
    - h. Any city/town ordinance.
    - i. Interference with judicial proceedings
  5. When doing a cite and release, under A.R.S. § 13-3903, an officer may:

- a. Have the person sign the citation and then release the person in the field.
  - b. Take the person to the station, take photos, get fingerprints, or any combination thereof, and then have the person sign the citation and release him/ her from the booking station.
  - c. Book the person and then any time before the person sees a magistrate, have the person sign the citation and release him/her from detention.
  - d. If the arrestee refuses to sign the promise to appear on the citation, he/she is not eligible to be released per A.R.S. §13-3903(C).
6. Search incident to arrest – a U.S. Supreme Court case, Knowles v. Iowa, has limited search incident to arrest to full custodial arrest situations. A search incident to arrest may be appropriate if the arrestee is legitimately transported to another location or if there is a need to search for further evidence of the offense (e.g., shoplifting) Once at the jail, strip searches may be allowed however body cavity searches are not authorized without a warrant. **INSTRUCTOR NOTE:** *Florence V. Burlington, 132 S. Ct. 1510 (2012)*.
7. The arrestee is entitled to a minimum of five (5) days before having to appear in court and the citation must specify where the arrestee is to appear.
8. Benefits of cite and release:
- a. Cost saving measure.
  - b. Time saving measure.
  - c. Old, infirm or fragile arrestee.
  - d. Non-violent crime.
9. Cite and release is not available for the following:
- a. Domestic violence offenses.
  - b. Felonies.
  - c. Juveniles (except for previously stated offenses).
  - d. Where policy prohibits.
  - e. Where it is obvious the arrestee will not appear.
- B. Long form or complaint in lieu of arrest.

**P.O. 2.2.8**

1. In some situations it is preferable to delay arrest or summon the defendant into court; in other words, to send the reports to the prosecutor who determines whether to file charges and what charges to file. Various factors must be considered when making this decision.
2. When is long-forming used? Some situations where a long form complaint is appropriate might be:
  - a. When your probable cause is weak and a victim is demanding action, yet the suspect does not appear to be a threat to anyone's physical safety.
  - b. When it is a complex case requiring a lot of follow-up by a specially trained investigator, such as a computer fraud case.
  - c. When the non-dangerous suspect's medical condition is poor and would be exacerbated by incarceration.
  - d. When you are involved in a situation in which review by either supervisors or prosecutors prior to an arrest seems to be the appropriate course of action.  
**INSTRUCTOR NOTE:** *Situations fraught with civil liability such as child custody, mechanic's liens, or non-profit organizations conducting casino night gambling.*
  - e. When departmental policy or procedure requires it or departmental goals or objectives will be furthered by long forming.

## VII. EFFECTING AN ARREST

### A. Who has authority to make an arrest?

1. Police officer – with or without an arrest warrant. **P.O. 2.2.2**
  - a. Scope of Authority (A.R.S. §13-3871) – provides statewide authority to make arrests with or without a warrant (there are jurisdictional concerns, though, on Indian reservations and federal enclaves such as military bases, V.A. hospital, etc.).
2. A citizen.
  - a. A citizen may make an arrest under certain circumstances, but the citizen's authority is more limited than that of a peace officer.
  - b. Limited to felony or breach of the peace misdemeanor (A.R.S. §13-3884).  
**INSTRUCTOR NOTE:** *Is shoplifting a breach of peace misdemeanor? What about DUI?* **P.O. 2.2.2A**
3. Bail Bondsperson.

- a. Historically, could go anywhere to make an arrest, as they are not government actors, but rather have a contractual relationship.
  - b. Under A.R.S. §13-3885, a bail bondsperson must conduct himself/herself in a certain manner when recovering a surety.
  - c. Law enforcement can, but are not required to, accompany a bonds-person, but are only present to keep the peace; if the arrestee uses force against the bondsperson, he/she may be arrested (assault), but then you should take custody of the prisoner, as you will never see the prisoner until the other charges are satisfied.
4. Parole/probation officers – only parole or probation officers may:
- P.O. 2.2.11**
- a. Arrest for a violation of parole or probation condition, if there is no warrant.
  - b. Make and file a complete record of persons placed under suspended sentence by the court.
  - c. Exercise general supervision and observation over persons under suspended sentence by the court.
- B. Who has the power to detain? **P.O. 2.2.9**
- 1. A merchant – for shoplifting under A.R.S. §1805(C) and (D) and a movie theatre operator for recording a movie without consent under A.R.S. §3723(B).
    - a. Has no power to arrest.
    - b. Can detain on “reasonable cause” in a reasonable manner, for a reasonable time, on the premises for questioning or summoning a police officer.
- C. How is an arrest made. **P.O. 2.2.2B and 2.2.7**
- 1. Method of arrest for officers (A.R.S. §13-3888) – must inform the arrestee of your authority to arrest and the cause for the arrest, unless: **INSTRUCTOR NOTE:** *The rule is the same for citizens under A.R.S. §13-3889.*
    - a. The arrestee is engaged in the offense.
    - b. The arrestee is pursued immediately after the offense, or after an escape, or flees or forcibly resists; or
    - c. Giving the information would imperil the arrest.
- D. After arrest (A.R.S. §13-3900) citizens must: **P.O. 2.2.2C**

1. Deliver the arrestee to a peace officer; or
  2. Take the arrestee before the nearest or most accessible magistrate and,
  3. Either the officer, or if the officer cannot, the citizen, shall swear out a complaint in front of the magistrate showing the facts of the offense.
- E. An officer can make a custodial arrest for a minor crime, such as a petty offense. *Atwater v. City of Lago Vista*, 532 US 318 (2001).
- F. Degree of force in effecting an arrest: **P.O. 2.2.12**
1. A.R.S. §13-3881 – how made, force and restraint. ***INSTRUCTOR NOTE:*** *An example of a situation where too much force was used: The Rodney King incident.*
  2. A.R.S. §13-3896 – after escape or rescue.
  3. A.R.S. §13-3902 – treatment of arrested persons. ***INSTRUCTOR NOTE:*** *It's against the law and you could end up with charges, ~~or civil violations against yourself. Do what's right always!~~ civil violations, and/or AZPOST certification action against you. Always do what is right.*

#### VIII. GENERAL ARREST PRINCIPLES

- A. Time of day (A.R.S. §13-3882) – allows an arrest to be made any time of the day or night and any day of the week. **P.O. 2.2.6**
- B. Place of arrest.
1. An officer is authorized to make a warrantless arrest in a public place at any time.
  2. An officer is authorized to enter a home or other building to effect an arrest under any of the following circumstances: **P.O. 2.2.3**
    - a. After having received consent to enter from a person with authority to consent to such entry.
    - b. When exigent circumstances exist – generally a person's life must be in danger, evidence will be lost or it is a case of hot pursuit.
    - c. There is a warrant (for a person at his/her own residence) and probable cause to believe the person is inside of the residence, or there is an arrest warrant and a search warrant for a person at a third party's home. ***INSTRUCTOR NOTE:*** *Check department policy for felony and misdemeanor warrant distinctions.*
    - d. Nonconsensual entries require you to knock and announce prior to entry and have either no response or admittance refused OR a no knock search warrant.

**INSTRUCTOR NOTE:** check department policy for prohibitions.

- e. For a warrantless arrest at a residence, if officers are going to conduct a Knock & Talk it must be at a reasonable hour. **INSTRUCTOR NOTE:** *U.S. V. Lundin 2016 9th Circuit.*

- e. Examples:

- i. You have a warrant to arrest John Doe for robbery. A neighbor calls telling you that John Doe is home and when you arrive a couple of minutes later, you find John Doe's car in the driveway. John Doe owns the home and the neighbor confirms he has not seen John Doe leave. You go up to the door and knock and announce, but receive no answer after a couple of minutes. The door is closed, but unlocked and you enter the home. Lawful entry?

Yes, the entry was lawful. You had an arrest warrant and probable cause to believe the suspect was there. In accordance with A.R.S. §13-3891, you knocked and announced and only entered after a reasonable time.

- ii. Officer Rios has a felony arrest warrant for Bill Jones. She also has probable cause to believe he is inside at a friend's residence. After knocking, announcing and waiting a reasonable time period, may Officer Rios lawfully force entry into the premises?

No. Officer Rios must also have a search warrant authorizing entry to the friend's residence or permission from the friend to enter the premises.

- iii. Deputy Smith and his partner are pursuing Susie Jones for a bank robbery that just occurred. They pursue her to a house that she enters. They surround the house and knock at the door with no response. May entry be forced?

Yes, The deputies may forcibly enter the premises, but should continue to identify themselves after entry.

- C. Searches – See VI.A.6 above.

- D. Booking – complete the booking paperwork and any necessary fingerprinting, DNA collection or photographing of the arrestee; transport the arrestee to jail to await the initial appearance. **INSTRUCTOR NOTE:** *DNA-Maryland V. King, 133 S. Ct. 1958, 186 L.Ed. 2d 1 (2013) Booking-Factors relevant to eligibility for bail should be included in booking paperwork such as prior arrest or conviction for a serious offense, potential danger to others, and results of a risk or lethality assessment.*

- E. Juveniles and vulnerable arrestees -- remember to keep juveniles separated by sight and sound from adults, females separate from males and the mentally unstable by themselves and under

watch.

- F. Prisoner's property – you have the responsibility to safeguard prisoner property. If your agency has an appropriate inventory policy you may inventory the property.
- G. Legal counsel – the arrestee has the right to consult with an attorney, in private if requested, per A.R.S. §13-3901 and Arizona Rules of Criminal Procedure, Rule 6.1.
- H. The arrestee is permitted to make at least one (1) phone call regardless of to whom it is made. If an arrestee requests to speak with an attorney, you must provide the arrestee a private room with a phone and phone numbers for attorneys. **INSTRUCTOR NOTE:** *State V. Penney, 229 Ariz. 32 (CA1 2012)*
- I. Safety Issues – you need to be very careful in searching prisoners (or dealing with any member of the public), as there are many health and safety risks associated with such physical contact. Among those risks are:
  - 1. Needles.
  - 2. Drug paraphernalia.
  - 3. Presence of weapons.
  - 4. Communicable diseases (transmitted via touch, airborne organisms, or body fluids).

## XI. ARREST WITHOUT A WARRANT

- A. Most arrests are made without an arrest warrant. **P.O. 2.2.17**
- B. Requirements after an arrest without a warrant. **P.O. 2.2.5**
  - 1. When a person is arrested without a warrant, they are to be taken, without unnecessary delay, before a magistrate in the county where the arrest or offense was committed.
  - 2. A complaint must be filed before the magistrate explaining the facts of the case and the basis of those facts. **INSTRUCTOR NOTE:** *A.R.S. §13-3898.*
    - a. A person who is arrested without a warrant shall without unnecessary delay be taken before the nearest or most accessible magistrate in the county in which the arrest occurs or, if the offense that the person is being arrested for was committed in another county, before either the nearest or most accessible magistrate in the county in which the arrest occurs or a magistrate in the county where the offense was committed, and a complaint shall be made before the magistrate setting forth the facts, and the basis for his statement of the facts, showing the offense for which the person was arrested.
    - b. Subsection A of this section does not apply if the person making the arrest is a

peace officer and decides to proceed under the provisions of § 13-3903.

- C. An officer may make an arrest under the following circumstances in accordance with A.R.S. §13-3883:
1. There is probable cause to believe that a felony has been committed by the person to be arrested.
  2. There is probable cause to believe that the person to be arrested has been involved in an accident, there was a criminal violation of Title 28 and such criminal violation occurred just prior to, or immediately following, such traffic accident.
  3. There is probable cause to believe a misdemeanor or petty offense has been committed by the person to be arrested.

**X. ARREST PURSUANT TO AN ARREST WARRANT**

**P.O. 2.2.7 and P.O. 2.2.16**

- A. Method of arrest with a warrant (A.R.S. §§13-3887 and 13-3897).
1. Inform the arrestee of the cause of the arrest and the fact that there is a warrant UNLESS:
    - a. The arrestee flees or forcibly resists, or
    - b. Giving of the information will imperil the arrest.
  2. If the arrestee requests to see the arrest warrant, show it to him/her as soon as practical (it is not necessary to have it in your possession).
  3. If the arrest occurs in the county where the offense occurred and the warrant was issued, take the arrested person in front of the magistrate issuing the warrant, or if the magistrate is unavailable, before the nearest and most accessible magistrate in the county (A.R.S. §13-3897).
  4. If the arrest occurs in a county other than where the warrant was issued, take the arrestee before the nearest and most accessible magistrate in the county where the arrest occurs.
  5. An arrest warrant is valid until quashed or served.
  6. Unlike a search warrant, an arrest warrant can be served any time of the day or night.
- B. Remember, arrest warrants must be served by a peace officer. At least one of the officers in a group must be aware of the existence of the warrant if relying on it to take law enforcement action, (A.R.S. §13-3887).
- C. The arrest warrant must be facially valid (also referred to as 'fair on its face') – in other words, it

must appear to a reasonable police officer to be valid if he/she were to look at it without any knowledge of the circumstances.

**P.O. 2.2.1**

- D. A warrant **MUST BE CONFIRMED** prior to serving. When confirming a warrant, make sure your dispatcher confirms at least the following information:
1. Suspect name/identity – the identification of the offender is going to be extremely important in defending your reasonableness in executing the warrant (i.e., physical description, social security number, driver’s license number, etc.).
  2. Offense committed is specified.
  3. Words ordering the arrest are present.
  4. Signature of a magistrate is present.
  5. Any bond/extradition information is included.
- E. If unsure that the person named in the warrant is the arrestee, then:
1. Do not book.
  2. Consult a supervisor.
  3. Check fingerprints.
  4. Conduct further investigation on the identification.
- F. Good faith – officers may rely on a warrant which is facially valid and has been confirmed. Confirming a warrant provides a defense to claims of false arrest.
- G. If the warrant is invalid, as a result of a police error, any evidence obtained via the arrest, for example a confession or evidence obtained during a search incident to arrest will be suppressed under the Exclusionary Rule (Arizona v. Evans).
- H. Extradition – a legal proceeding providing transport of a wanted subject from one (1) state to another to answer criminal charges.
1. If the wanted person “waives” extradition, the person is transported to the requesting state.
  2. If the subject fights extradition (A.R.S. §§13-3841 through 13-3846), the Governor of the state, having custody of the wanted subject, must consent to transfer.

**XI. TITLE 13 – CHAPTER 4 – JUSTIFICATION**

**P.O. 2.2.15**

- A. A.R.S. §13-401 Justification; use of reasonable and necessary means.

1. Even though a person is justified under this Chapter in threatening or using physical force or deadly physical force against another, if in doing so such person recklessly injures or kills an innocent third person, the justification afforded by this Chapter is unavailable in a prosecution for the reckless injury or killing of the innocent third person.
  2. Except as provided in subsection A, justification, as defined in this Chapter, is a defense in any prosecution for an offense pursuant to this Title.
- B. A.R.S. §13-205 Affirmative defenses; burden of proof. **P.O. 2.2.13A and P.O. 2.2.14A**
1. The defense of justification under Title 13, Chapter 4 (A.R.S. §12-401. et seq. which includes self-defense, defense of others, defense of premises, etc.) is no longer an affirmative defense requiring the defendant to prove that his/her use of force was lawful. Now, if the defendant presents any evidence of justification, the state must prove that act was not justified beyond a reasonable doubt.
- C. A.R.S. §13-402. Justification; execution of public duty. **P.O. 2.2.14B and P.O. 2.2.14C**
1. Unless inconsistent with the other sections of this chapter, defining justifiable use of physical force or deadly physical force or with some other superseding provision of law, conduct which would otherwise constitute an offense, is justifiable when it is required or authorized by law.
  2. The justification afforded by subsection A also applies if:
    - a. A reasonable person would believe such conduct is required or authorized by the judgment or direction of a competent court or tribunal or in the lawful execution of legal process; or
    - b. A reasonable person would believe such conduct is required or authorized to assist a peace officer in the performance of such officer's duties, notwithstanding that the officer exceeded the officer's legal authority.
- D. A.R.S. §13-403. Justification; use of physical force. **P.O. 2.2.14C**
1. The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:
    - a. A parent or guardian and a teacher or other person entrusted with the care and supervision of a minor or incompetent person may use reasonable and appropriate physical force upon the minor or incompetent person when, and to the extent, reasonably necessary and appropriate to maintain discipline.
    - b. A superintendent or other entrusted official of a jail, prison or correctional institution may use physical force for the preservation of peace, to maintain order or discipline or to prevent the commission of any felony or misdemeanor.

- c. A person responsible for the maintenance of order in a place where others are assembled or on a common motor carrier of passengers, or a person acting under his/her direction, may use physical force if, and to the extent that, a reasonable person would believe it necessary to maintain order, but such person may use deadly physical force only if reasonably necessary to prevent death or serious physical injury.
  - d. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself/herself, may use physical force upon that person to the extent reasonably necessary to thwart the result.
  - e. A duly licensed physician, a registered nurse or a person acting under his/her direction or any other person who renders emergency care at the scene of an emergency occurrence, may use reasonable physical force for the purpose of administering a recognized and lawful form of treatment which is reasonably adapted to promoting the physical or mental health of the patient if:
    - i. The treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his/her parent, guardian or other person entrusted with his/her care and supervision except as otherwise provided by law; or
    - ii. The treatment is administered in an emergency when the person administering such treatment reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.
  - 2. A person may otherwise use physical force upon another person as further provided in this Chapter.
- E. A.R.S. §13-404. Justification; self-defense. **P.O. 2.2.14D**
- 1. Except as provided in subsection B of this section, a person is justified in threatening or using physical force against another when, and to the extent, a reasonable person would believe that physical force is immediately necessary to protect himself/ herself against the other's use, or attempted use, of unlawful physical force.
  - 2. The threat or use of physical force against another is not justified:
    - a. In response to verbal provocation alone; or
    - b. To resist an arrest that the person knows, or should know, is being made by a peace officer or by a person acting in a peace officer's presence and at his/her direction, whether the arrest is lawful or unlawful, unless the physical force used by the peace officer exceeds that allowed by law; or

- c. If the person provoked the other's use, or attempted use, of unlawful physical force, unless:
- i. The person withdraws from the encounter or clearly communicates to the other his/her intent to do so reasonably believing he/she cannot safely withdraw from the encounter, and
  - ii. The other nevertheless continues, or attempts, to use unlawful physical force against the person.
- F. A.R.S. §13-405. Justification; use of deadly physical force: A person is justified in threatening or using deadly physical force against another: **P.O. 2.2.13C**
1. If such person would be justified in threatening or using physical force against the other under A.R.S. §13-404; and
  2. When, and to the degree, a reasonable person would believe that deadly physical force is immediately necessary to protect himself/herself against the other's use, or attempted use, of unlawful deadly physical force.
- G. A.R.S. §13-406. Justification; defense of a third person: A person is justified in threatening or using physical force or deadly physical force against another to protect a third person if: **P.O. 2.2.13D and P.O. 2.2.14E**
1. Under the circumstances as a reasonable person would believe them to be, such person would be justified under A.R.S. §§13-404 or 13-405 in threatening or using physical force or deadly physical force to protect himself/herself against the unlawful physical force or deadly physical force a reasonable person would believe is threatening the third person he/she seeks to protect;
- H. A.R.S. §13-407. Justification; use of physical force in defense of premises. **P.O. 2.2.13E and P.O. 2.2.14F**
1. A person or his/her agent in lawful possession or control of premises is justified in threatening to use deadly physical force or in threatening or using physical force against another when, and to the extent that, a reasonable person would believe it immediately necessary to prevent or terminate the commission, or attempted commission, of a criminal trespass by the other person in, or upon, the premises.
  2. A person may use deadly physical force under subsection A only in the defense of himself/herself or third persons as described in A.R.S. §§13-405 and 13-406.
  3. In this section, "premises" means any real property and any structure, movable or immovable, permanent or temporary, adapted for both human residence and lodging whether occupied or not.

- I. A.R.S. §13-408. Justification; use of physical force in defense of property.

**P.O. 2.2.14H**

1. A person is justified in using physical force against another when, and to the extent that, a reasonable person would believe it necessary to prevent what a reasonable person would believe is an attempt, or commission, by the other person of theft or criminal damage involving tangible movable property under his/her possession or control.  
***INSTRUCTOR NOTE:*** *Pointing a gun at a person can be considered a use of force. Espinoza V. San Francisco, 589 F. 3d 528.*
2. Such a person may use deadly physical force under these circumstances as provided in A.R.S. §§13-405, 13-406 and 13-411.

- J. A.R.S. §13-409. Justification; use of physical force in law enforcement.

1. A person is justified in threatening or using physical force against another if in making, or assisting in making, an arrest or detention or in preventing, or assisting in preventing, the escape after arrest or detention of that person.
2. Such person uses, or threatens to use, physical force and all of the following exist:
  - a. A reasonable person would believe that such force is immediately necessary to effect the arrest or detention or prevent the escape.
  - b. Such a person makes known the purpose of the arrest or detention or believes that it is otherwise known, or cannot reasonably be made known, to the person to be arrested or detained.
  - c. A reasonable person would believe the arrest or detention to be lawful.

- K. A.R.S. §13-410. Justification; use of deadly physical force in law enforcement.

**P.O. 2.2.13F and P.O. 2.2.14I**

1. The threatened use of deadly physical force by a person against another is justified pursuant to A.R.S. §13-409 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is:
  - a. Actually resisting the discharge of a legal duty with deadly physical force or with the apparent capacity to use deadly physical force; or
  - b. A felon who has escaped from lawful confinement; or
  - c. A felon who is fleeing from justice or resisting arrest with physical force.
2. The use of deadly physical force by a person other than a peace officer against another is justified pursuant to A.R.S. §13-409 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is actually resisting the

discharge of a legal duty with physical force or with the apparent capacity to use deadly physical force.

3. The use of deadly force by a peace officer against another is justified pursuant to A.R.S. §13-409 only when the peace officer reasonably believes that it is necessary:
    - a. To defend himself/herself or a third person from what the peace officer reasonably believes to be the use of imminent deadly physical force.
    - b. To effect an arrest or prevent the escape from custody of a person whom the peace officer reasonably believes:
      - i. Has committed, attempted to commit, is committing or is attempting to commit, a felony involving the use, or a threatened use, of a deadly weapon.
      - ii. Is attempting to escape by use of a deadly weapon.
      - iii. Through past or present conduct of the person which is known by the peace officer that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay.
      - iv. Is necessary to lawfully suppress a riot if the person, or another person participating in the riot, is armed with a deadly weapon.
  4. Notwithstanding any other provisions of this Chapter, a peace officer is justified in threatening to use deadly physical force when, and to the extent, a reasonable officer believes it necessary to protect himself/herself against another's potential use of physical force or deadly physical force.
- L. A.R.S. §13-411. Justification; use of force in crime prevention.

**P.O. 2.2.13G and P.O. 2.2.14J**

1. A person is justified in threatening or using both physical force and deadly physical force against another if, and to the extent, the person reasonably believes that physical force or deadly physical force is immediately necessary to prevent the other's commission of:
  - a. Arson of an occupied structure under A.R.S. §13-1704.
  - b. Burglary in the second or first degree under A.R.S. §§13-1507 or 13-1508.
  - c. Kidnapping under A.R.S. §13-1304.
  - d. Manslaughter under A.R.S. §13-1103.
  - e. Second or first degree murder under A.R.S. §13-1104 or 13-1105.

- f. Sexual conduct with a minor under A.R.S. §13-1405.
  - g. Sexual assault under A.R.S. §13-1406.
  - h. Child molestation under A.R.S. §13-1410.
  - i. Armed robbery under A.R.S. §13-1904.
  - j. Aggravated assault under A.R.S. §13-1204, subsection A, paragraphs 1 and 2.
2. There is no duty to retreat before threatening or using deadly physical force, justified by subsection A of this section.
- a. A person is presumed to be acting reasonably for the purposes of this section if he/she is acting to prevent what the person reasonably believes and the imminent or actual commission of any of the offenses listed in subsection A of this section.
  - b. This section is not limited to the use or threatened use of physical or deadly physical force in a person's home, residence, place of business, land the person owns or leases, conveyance of any kind, or any other place in this state where a person has a right to be.
- M. A.R.S. §13-412. Duress. **P.O. 2.2.14J**
- 1. Conduct which would otherwise constitute an offense is justified if a reasonable person would believe that he/she was compelled to engage in the prescribed conduct by the threat or use of immediate physical force against this person or the person of another which resulted, or could result, in serious physical injury which a reasonable person in the situation would not have resisted.
  - 2. The defense provided by subsection A is unavailable if the person intentionally, knowingly or recklessly placed himself/herself in a situation in which it was probable that he/she would be subjected to duress.
  - 3. The defense provided by subsection A is unavailable for offenses involving homicide or serious physical injury.
- N. A.R.S. §13-415. Domestic violence. **P.O. 2.2.13H and P.O. 2.2.14K**
- 1. If there have been past acts of domestic violence as defined in A.R.S. §13-3601, subsection A against the defendant by the victim, the state of mind of a reasonable person under A.R.S. §13-404, 13-405 and 13-406 shall be determined from the perspective of a reasonable person who has been a victim of those past acts of domestic violence.
- O. A.R.S. §13-418 Justification; use of force in defense of residential structure or occupied vehicle.

**P.O. 2.2.13I and P.O. 2.2.14L**

1. Notwithstanding any other provision of this chapter, a person is justified in threatening to use or using physical force or deadly physical force against another person if the person reasonably believes himself or another person to be in imminent peril of death or serious physical injury and the person against whom the physical force or deadly physical force is threatened or used was in the process of unlawfully or forcefully entering or had unlawfully or forcefully entered, a residential structure or occupied vehicle, or had removed or was attempting to remove another person against the other person's will from the residential structure or occupied vehicle.
2. A person has no duty to retreat before threatening or using physical force or deadly physical force pursuant to this section.
3. For the purposes of this section:
  - a. "Residential Structure" has the same meaning prescribed in A.R.S. §13-1501.
  - b. "Vehicle" means a conveyance of any kind, whether or not motorized that is designed to transport persons or property.

**P. A.R.S. §13-419 Presumption; exceptions; definition.****P.O. 2.2.13J and P.O. 2.2.14M**

1. A person is presumed to reasonably believe that the threat or use of physical force or deadly force is immediately necessary for the purposes of sections 13-404 through 13-408, section 13-418 and section 13-421 if the person knows or has reason to believe that the person against whom physical force or deadly force is threatened or used is unlawfully or forcefully entering or has unlawfully or forcefully entered and is present in the person's residential structure or occupied vehicle.
2. For the purposes of sections 13-404 through 13-408, section 13-418 and section 13-421, a person who is unlawfully or forcefully entering or who has unlawfully or forcefully entered and is present in a residential structure or occupied vehicle is presumed to pose an imminent threat of unlawful deadly harm to any person who is in the residential structure or occupied vehicle.
3. The presumptions in subsections A and B of this section do not apply if:
  - a. The person against whom physical force or deadly physical force was threatened or used has the right to be in or is a lawful resident of the residential structure or occupied vehicle, including an owner, lessee, invitee or titleholder, and an order of protection or injunction against harassment has not been filed against that person.
  - b. The person against whom physical force or deadly physical force was threatened or used is the parent or grandparent, or has legal custody or guardianship, of a child or grandchild sought to be removed from the residential structure or

occupied vehicle.

- c. The person who threatens or uses physical force or deadly physical force is engaged in an unlawful activity or is using the residential structure or occupied vehicle to further an unlawful activity.
- d. The person against whom physical force or deadly physical force was threatened or used is a law enforcement officer who enters or attempts to enter a residential structure or occupied vehicle in the performance of official duties.

4. For the purpose of this section:

- a. "Residential Structure" has the same meaning prescribed in section 13-1501.
- b. "Vehicle" means a conveyance of any kind, whether or not motorized, that is designed to transport persons or property.

Q. A.R.S. §13-421 Justification: defensive display of a firearm; definition

**P.O. 2.2.13K and P.O. 2.2.14N**

1. The defensive display of a firearm by a person against another is justified when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the use or attempted use of unlawful physical force or deadly physical force.
2. This section does not apply to a person who:
  - a. Intentionally provokes another person to use or attempt to use unlawful physical force.
  - b. Uses a firearm during the commission of a serious offense as defined in section 13-706 or violent crime as defined in section 13-901.03.
3. This section does not require the defensive display of a firearm before the use of physical force or the threat of physical force by a person who is otherwise justified in the use or threatened use of physical force.
4. For the purposes of this section, "defensive display of a firearm" includes:
  - a. Verbally informing another person that the person possesses or has available a firearm.
  - b. Exposing or displaying a firearm in a manner that a reasonable person would understand was meant to protect the person against another's use or attempted use of unlawful physical force or deadly physical force.
  - c. Placing the person's hand on a firearm while the firearm is contained in a pocket,

purse or other means of containment or transport.

## XII. IMMUNITY / PRIVILEGE FROM ARREST

### P.O. 2.2.19

- A. Certain persons are not subject to arrest either at all or when performing certain functions. Officers should investigate and complete a report on any incident where immunity may be involved.
1. Ambassadors and foreign ministers are totally immune from arrests for any crime, and their families, servants and staff have varying levels of immunity.
    - a. Contact the FBI or the U.S. State Department to confirm a person's status. Persons claiming immunity should also have an ID card issued by the Department of State specifying their level of immunity.
  2. Immunity is based on agreement between countries to:
    - a. Avoid international incidents.
      - i. Not interfere with the conduct of necessary affairs of foreign governments in this country.
  3. Immunity is not designed to place foreign representatives above the law.
    - a. If a foreign official or member of his/her family or staff commits a crime because of mental derangement or otherwise is a danger to the community, he/she can be taken into "protective custody." The FBI shall be notified immediately. They, in turn, will notify the Department of State.
    - b. Foreign consuls are not cloaked with diplomatic immunity. The level of protection afforded is governed by a treaty with the consular official's country.
  4. U.S. members of Congress (Senators and Representatives) are immune from arrest while Congress is in session and while traveling to and from their homes. Arizona legislators (State Senators and Representatives) are immune from arrest while the legislature is in session and for 15 days prior to the session. This immunity does not apply in cases of treason, felonies or breaches of the peace (Arizona Constitution, Article 4, Part 2, Section 6; also see U.S. Constitution Article I, Section 6). **INSTRUCTOR NOTE:** For Arizona legislators, it also applies to civil process, including civil traffic violations but is more correctly referenced as a privilege.
  5. Federal employees enjoy no immunity for traffic offenses (including the post office) or for criminal offenses other than a minor parking exemption; there is immunity for driver's license violation if it is a U.S. employee driving a U.S. vehicle.
  6. Witnesses under subpoena are privileged from arrest, except for felonies, treason or breach of the peace misdemeanors while attending or traveling to, or from, court per

A.R.S. §12-2213.

7. National Guard members are immune from arrest for all offenses except felonies while traveling to, from or attending military drills or duty per A.R.S. §26-166(A).

### **XIII. DETENTION AND ARREST OF NON-US CITIZENS**

#### **A. Authority and Procedure:**

1. There is no exception from arrest and prosecution for violation of state laws and municipal ordinances for non-citizens.
2. State law enforcement officers are not authorized to make arrests for civil immigration violations. Illegal presence in the U.S. is a civil violation.
3. If ICE/CBP indicates the immigration violation is criminal, state law enforcement officers are authorized to make an arrest.
4. If arrested and booked for a state law violation, an "ICE" hold" can be placed on the alien.
5. If during a lawful stop an officer develops reasonable suspicion to believe that the detainee is an alien and unlawfully present in the United States, the officer shall attempt to verify the detainee's immigration status with either Immigration and Customs (ICE) or Customs and Border Patrol (CBP). However, the officer shall not extend the duration of the contact for the purpose of obtaining the response, but instead shall release the detainee once the contact is otherwise completed, if a response back has not been received or the response is anything other than a criminal charge.
6. If a foreign national is physically booked, you must verify the arrestee's immigration status through CBP/ICE and the arrestee must be advised of their consular notification rights, and the consulate of the foreign national's government may need to be contacted.
  - a. Countries are either mandatory notification countries, in which case notice must be provided without regard to the desires of the arrestee, or some countries are voluntary notification countries. Under A.R.S. §13-3906, notification must be made to voluntary notification countries unless the arrestee waives notification.
  - b. This requirement is mandated by treaty (Vienna Convention on Consular Relations) and Arizona law (A.R.S. §13-3906).
  - c. A.R.S. §11-1051(B) requires that the immigration status of every arrested person be verified with ICE or CBP. This includes not only custodial arrests, but also criminal citations in lieu of detention, whether in the field or at the station or jail. While processes may be in place for adult custodial arrestees to be verified at jail facilities, juvenile offenders and persons cited and released will most likely

require the officer to ensure that verification is completed.

#### XIV. ENTRAPMENT – DEFENSE TO ARREST

P.O. 2.2.10

- A. Entrapment occurs when a suspect who is not predisposed to commit a crime, is induced to do so by the conduct of the government. **INSTRUCTOR NOTE:** *An example is where the government supplies both the buyer and the seller, supplies the drugs and uses a suspect as a middle man.*
1. In exceptional cases, it will require dismissal of the criminal charges. (U.S. Supreme Court case where a federal agent sent advertisements of child pornography to a suspect for two (2) years before the suspect finally ordered some).
  2. In other cases, it is a defense to the charge and is a factual question to be decided by the Trier of fact. See A.R.S. §13-206.
- B. Arizona requires the suspect to choose, at trial, between the entrapment defense and any other conflicting defense, federal law does not (because this is an evidentiary matter). **INSTRUCTOR NOTE:** *The offer of money for drugs is not usually prohibited; on the other hand, telling a suspect that he/she will not receive money needed for medical treatment unless he/she sells drugs would probably be entrapment.*
1. Offering an inducement (a benefit) for committing a crime is not prohibited in every case; it is only when that offer will overcome the suspect's free will that you have a problem.
  2. A.R.S. §13-206(B) requires a suspect, in order to claim the defense of entrapment, to prove:
    - a. The idea of the crime started with law enforcement, not the suspect.
    - b. Officers urged and induced the person to commit the crime.
    - c. The person was not predisposed prior to the crime.
- C. Entrapment did not occur if:
1. The person is predisposed to commit the crime.
  2. An opportunity to commit the crime is presented.
  3. The person chooses to take advantage of that opportunity and commits the crime.

#### XV. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).