

# Criminal Investigation: Laws of Arrest, Search and Seizure

Unit 7

Ola Law & Justice

Introduction to Public Safety



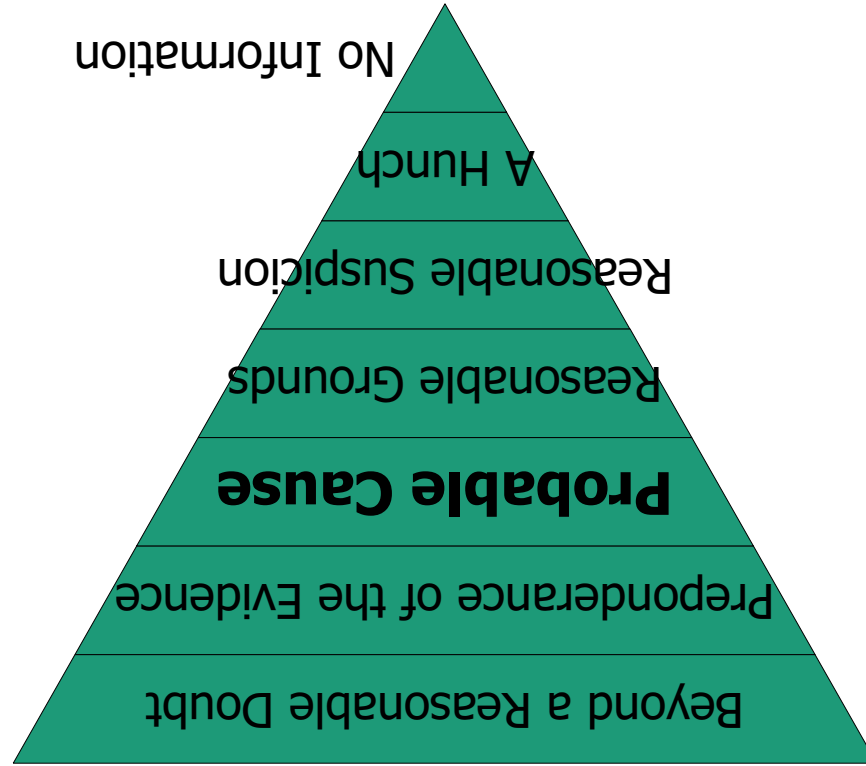
# Arrest

- **Probable Cause** must exist to place somebody under arrest
- **Probable Cause defined-** A reasonable belief, based on the reasonable person standard, that a crime was committed and that the arrested person committed the crime.
- **Criminal Charges-** don't always follow arrest

# Detention

- Is a temporary and limited interference with the freedom of a person for investigative purposes
- An officer must have ***reasonable suspicion*** to detain somebody for investigation
- **Reasonable Suspicion-** A reasonable belief by a reasonable person with similar experience and training as the officer that crime is afoot and the person detained may be involved in the crime.
- The detention must be brief with limited investigation, and the officer must then decide either to release or arrest the subject

# Probable Cause Continuum



# Arrest Procedures

- An arrest may be made under the following circumstances
  1. **Warrant** is issued by a Judge
  2. When a ***misdemeanor is committed in the presence of an officer***
  3. When the officer has probable cause to believe that a ***felony has been committed and the suspect committed the felony, whether or not in the officer's presence***
  4. **Statutory instances**
    1. Domestic Violence (misdemeanor cases)
    2. DUI cases

# The Fourth Amendment

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon *probable cause*, supported by Oath or affirmation, and *particularly describing the place to be searched, and the persons or things to be seized.*

# Exclusionary Rule

- Illegally seized evidence generally cannot be used:
  - If a court decides that a search or seizure was illegal, the evidence gained from the search cannot be used against the defendant.
  - The defendant can still be tried and convicted, but only legal evidence can be used at the trial.



# Fruit of the Poisonous Tree



- In addition to being excluded as evidence against the defendant, evidence resulting from an illegal search may not be used to discover other evidence.





# 4<sup>th</sup> Amendment warrant exceptions

- 1. Search incident to a lawful arrest
- 2. Stop and frisk
- 3. Consent
- 4. Plain view
- 5. Hot pursuit
- 6. Vehicles
- 7. Emergencies
- 8. Border and Airport
- 9. Schools and the military



# Search Incident to Lawful Arrest



- Police may search a lawfully arrested person and the area immediately around that person (for hidden weapons or for evidence that might be destroyed).
  - *Chimel v. California*
- Protective Sweep:
  - *Maryland v. Buie*

# Stop and Frisk (Terry Search)

- Police who reasonably think that a person is behaving suspiciously and is likely to be armed may stop and frisk the suspect for weapons. Search may only be for weapons.
  - Terry v. Ohio



# Consent

- When a person voluntarily agrees, the police may conduct a search without a warrant or probable cause.
- Consent can transform an otherwise illegal search into a legal one.
- A person can be polite and respectful while still asserting your rights.



# Plain View

- If an object connected with a crime is in plain view and can be seen from a place where an officer has a right to be, it can be seized without a warrant.
- “Plain smell” and “plain hearing” count, too.



# Hot Pursuit

- Police in hot pursuit of a suspect are not required to get a search warrant before entering a building that they have seen the suspect enter,
- Evidence found during hot pursuit of a suspected felon is admissible, even against people totally unrelated to the pursuit.



# Vehicle Searches

- A police officer who has **probable cause** to believe that a vehicle contains illegal items can search it without a warrant.
- This is based on the idea of **exigent circumstances** and a reduced expectation of privacy in your car.



# Schools

- New Jersey vs. TLO (1985)
  - School authorities need only reasonable suspicion to search students and their belongings. Usually probable cause is the standard to search beyond a “pat search” with reasonable suspicion that a person “may have” a weapon.



# Suspicionless searches

- Airports
- School athletes
- Railroad workers
- DUI checkpoints
- Probation and Parole search clauses

# Emergency Situations



- In certain life threatening emergencies, the police don't have time to get a warrant.
- The evidence they find in the course of dealing with the emergency is admissible.
- "Cop Hears Screams" Hypo.

# Profiling

- Racial profiling
- Criminal profiling

# Miranda Vs Arizona 1966

- Originates through the:
  - 5<sup>th</sup> amendment
  - 6<sup>th</sup> amendment

# Miranda v. Arizona (1966)

- If you take someone into custody and their freedom is deprived in a significant way read the Miranda warning **before questioning them about the crime**
- If a suspect chooses to remain silent, ask no further questions
- Same if they want an attorney
- If they waive their rights they must do it intelligently and knowingly

# Miranda Warning

- You have the right to remain silent.
- Anything you say can and will be used against you in a court of law.
- You have the right to speak to an attorney, and to have an attorney present during any questioning.
- If you cannot afford a lawyer, one will be provided for you at government expense.