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This packet is normally a part of a lesson package that includes a corresponding video. See the back page for a special offer for purchasing this video and other videos that correlate to the Introduction to Law & Justice curriculum.

**Searches of Persons II:
Search Incident to Arrest
and
Gender Specific Problems**

Series IV Video 12

Overview
Training Guide
Test Questions and Answers

OBJECTIVES

BLOCK: _____

INSTRUCTOR: _____ **TIME ALLOCATED:** _____

DATE PREPARED: _____ **PREPARED BY:** ALERT

SYNOPSIS: Through lecture, class discussion, the showing of the **ALERT** instructional video field training sessions, and the administration of the accompanying test, the training officer or instructor will be able to offer this course in **Searches of Persons II: Search Incident to Arrest and Gender Specific Problems.**

OBJECTIVES:

1. to know safely searching persons in field;
2. to know what constitutes an arrest;
3. to know that a Search Incident to Arrest is automatically permitted in accordance with every lawful arrest;
4. to know that a Search Incident to Arrest means searching a person, his/her clothing and carried belongings, and the area to which the arrestee has immediate access;
5. to avoid departmental and personal liability when a Search Incident to Arrest involves a person of the opposite sex.

**Searches of Persons II:
Search Incident to Arrest and Gender Specific Problems
Series IV Video 12
Overview and Training Guide**

INTRODUCTION

NOTES

I. Search Incident to Arrest

A Arrests

1. Any seizure of a person which goes beyond the limits of an investigative (terry) stop is an arrest.
2. An arrest requires **probable cause** to believe that the the subject has committed a crime.
 - a. **probable cause:** facts and circumstances which, taken together with reasonable inferences in light of an officer's training and experience and measured in terms of common sense, would establish *a fair probability* that ...
 - 1) **(to arrest)** a crime has been committed and that a particular person committed it; or
 - 2). **(to search)** evidence of a crime or contraband is in a particular place.
 - b. **an involuntary encounter** which does not meet the requirements of lawful investigative stop is an arrest which requires **probable cause**.
3. an arrest occurs when. . .
 - a. **a reasonable person** would **not** feel free to leave., and

EXAMPLE
"Picking up" a person for questioning and transporting him involuntarily is an arrest and is an unlawful seizure, unless probable cause is present. [*Dunaway v. N.Y.*], 99 S. Ct. 2248 (1979)

NOTES

- b. this condition persists for more than the time limits for an investigative stop, or
- c. there is **involuntary movement of the subject** a significant distance (or even a short distance, if unexplained in terms of safety and security requirements), or
- d. officers use force and/or restraints in excess of the amount reasonably required for an investigative stop.

B. The Search Incident to Arrest

1. Search Incident to Arrest is automatically permitted in accordance with every lawful arrest. The Search Incident to Arrest must be conducted immediately before, during, and immediately after the arrest. Probable cause to arrest is required for a Search Incident to Arrest, but the search may be conducted whether or not there is any reason to believe evidence and/or weapons will be found.

Landmark U.S. Supreme Court case on Search Incident to Arrest is Chimel v. California, 395 U.S. 752 (1969)

2. Scope and Intensity of Search Incident to Arrest

A Search Incident to Arrest is a full and complete search for evidence and weapons within the area of immediate access of the arrestee. Damage or breakage generally is not permitted because this would be contrary to the concept of immediate accessibility. The search may extend to the person, his/her clothing and carried belongings, and the area to which the arrestee has immediate access, often referred to as "lunge area." If the arrest occurs in a home or motel, a Search Incident to Arrest may be conducted of the area immediately surrounding the arrestee.

NOTES

This search can include looking in drawers, closets, under furniture, and the like, that could have been reached by the arrestee in one quick movement. If an arrestee wants or needs access to certain areas for his/her convenience and/or comfort, the officer may inform the arrestee that such access is conditional upon the arrestee's consent to a prior search by the officer of the areas to which access is requested.

See and Review
Washington v. Chrisman, 455 U.S. (1982)

If consent is withheld, the arrestee should be denied access to that area.

3. Motor Vehicle Seizure

If the arrestee is seized from within a motor vehicle, the Search Incident to Arrest may extend to the accessible portions of the passenger compartment, even if, by the time of the search, the arrestee has been removed from the vehicle and secured.

See and Review
New York v. Belton, 453 U.S. 454 (1981)

C. Search Incident to Arrest Upon Change of Custody

A Search Incident to Arrest is also authorized upon a change of custody of the arrestee. A Search Incident to Arrest or "Search Incident to a Change of Custody" is consistent with the Fourth Amendment's requirement that searches and seizures be "reasonable." It is reasonable that the police officer acquiring custody of an arrestee be allowed to insure that his prisoner does not have a weapon and/or evidence secreted on or about his/her person, even if another officer may have conducted an earlier Search Incident to Arrest.

D. Strip Searches/Body Cavity Searches

Strip and/or body cavity searches are rarely necessary. Except in jail intake procedures, strip searches and visual body cavity inspections should be reserved for truly exigent circumstances, involving high levels of probable cause to believe that weapons and/or critical evidence of serious crimes are present and the only means reasonably available to remove the threat of access by the arrestee is to conduct such a search. In such cases, the officer should make every reasonable effort to maximize the personal privacy of the arrestee. The search should be conducted by an officer of the same sex as the arrestee, if reasonably possible.

Body cavity probes are authorized only upon very high levels of focused probable cause to believe a weapon or evidence of a crime is concealed in the body cavity. Absent consent or exigent circumstances compelling immediate warrantless action, body cavity probes should be conducted in accordance with a search warrant. Qualified medical personnel should be used to conduct a body cavity probe.

E. Inventory of Personal Possessions

The United States Supreme Court has made clear that it is reasonable to inventory the carried possessions of a person upon his/her entry into a detention facility. The justification for this action is the caretaking responsibility of law enforcement agencies over the valuables and possessions of arrested persons.

The inventory assures that valuables will be safely guarded and properly cared for. It also protects against claims of theft or mismanagement of property. Lastly, the inventory protects officers and the detention facility against introductions of dangerous instrumentalities (bombs, toxic materials, etc.). For such an inventory search to be lawful, the arrest and commitment into the detention must be lawful and in compliance with Departmental policy requiring such an inventory.

The leading United States Supreme Court

See and Review
Illinois v. Lafayette,
462 U.S. 640 (1983)

II. Gender Specific Problems

A. If Male Officer has Female Suspect and Search Incident to Arrest

1. call for Female Officer to do search
2. if no female officer, call backup officer to cover you
3. if no officer available, then you will need to search
 - a. tell person what you are doing
 - b. tell others around you (witnesses) what you are doing
 - c. avoid groping and having female suspect remove clothes in public
4. report time you leave scene and time you reach station

B.. If Search Incident to Arrest is necessary

1. handcuff first, then search
2. handcuff others (in car) for safety and put in your vehicle until patdown/search is over

C. Patdown and Frisk Search

1. always execute from back of person
2. tell person to put hands on head and intertwine and reassure person that this patdown is for your safety
3. tell person to spread legs apart
4. move in slowly, telling person "Don't move"
5. clasp person's intertwined hands with your hand

NOTES

6. step between person's legs with your corresponding leg
(if using left hand to control person's hands, step in with left leg)
7. pull back slightly on intertwined hands to put person off-balance
8. divide the person's body in half and begin patdown
9. begin with hair and hairline
10. check behind ears and look inside
11. rub hands over collar of shirt or coat
12. rub hand over chest area
13. check under arms and around shirt sleeves
14. patdown along waist and belt buckle area
15. check front pockets
16. patdown groin area
17. check along belt and top of pants area,
rolling belt slightly out
18. check lower back
19. pat down buttocks area and inside thighs
20. check legs, knees, and ankles
21. look into shoes and socks
22. stand up, switch hands and legs

NOTE:
Use back of hand
when touching
private areas

NOTE:
Use back of
hand when
touching private
areas

23. repeat process on other half of body
24. once finished tell person to not to move
and thank person for his cooperation
25. move back slowly
26. begin Field Interview prepared and ready

D. Detention Strip Search

1. use female officer, correction officer, or trained dispatcher
for female detainees
2. use male officer, correction officer, or trained dispatcher
for male detainees
3. if no female backup available for female detainee,
 - a. have female change in private room into appropriate
detention wear
 - b. check clothes with metal detector
 - c. put into cell by herself until a female officer can
search female detainee

E. Always Refer to Your Agency or Departmental Policies

CONCLUSIONS

What you have learned:

ALERT has provided information in a training guide and video for Searches of Persons II: Search Incident to Arrest and Gender Specific Problems.

We have defined in detail the objectives, lesson plans, evaluations, records, attendance policies, and documentation, and the importance of each of these. Your packet should contain examples of each.

These materials should not supersede departmental policy, and ALERT is not, under any circumstances, dictating that policy.

Instructors, trainers, and law enforcement personnel must consult their own department legal counsel on specifics of the law in their area.

You have permission to make copies of the written material for your training courses only.

Searches of Persons II: Search Incident to Arrest and Gender Specific Problems
Series IV Video 12
Test Questions

1. The first priority in a search incident to arrest would be
 - A. looking for evidence
 - B. officer safety
 - C. looking for concealed weapons
 - D. completing as quickly as possible to get suspect back to jail
 - E. A and D

2. If you have a Search Incident to Arrest of a female and you are a male, you should use your palms to search for weapons in the groin and breasts areas.

True False

3. If you have to use a dispatcher to help you with a search, make sure that person is well-_____ and document that _____.

4. When you have a Search Incident to Arrest (whether a female or male), _____ first and then conduct search.

5. An arrest requires probable cause to believe that the subject has committed a crime.

True False

6. A Search Incident to Arrest must be conducted _____ before, during, and after the arrest.

7. The search may extend to the person, his/her clothing and carried belongings, and the area to which the arrestee has immediate access, often referred to as _____ area.

8. In a house, the search can include looking in drawers, closets, under furniture, and the like, that could have been reached by the arrestee in one quick movement.

True False

Searches of Persons II:

9. A body cavity search requires a _____, and qualified medical personnel should be used to conduct a body cavity probe.
10. Always refer to your agency or departmental policies whenever you are confronted with a cross-gender search.

True

False

Searches of Persons II: Search Incident to Arrest and Gender Specific Problems
Series IV Video 12
Test Answers

1. b. officer safety
 2. False, use the back of your hand to avoid groping in private areas
 3. trained, training
 4. handcuff
 5. True
 6. immediately
 7. lunge
 8. True
 9. warrant
 10. True
-

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