

# XIV. THE CRIMINAL JUSTICE PROCESS: INVESTIGATION PHASE

## KEY TERMS

arrest

drug courier profile

to corroborate

arrest warrant

probable cause

stop and frisk

The criminal justice process includes everything that happens to a person from arrest through prosecution and conviction to release from the control of the state. Freedom is sometimes gained almost immediately – at the station house – or after time has been served in a correctional institution. Freedom may also come at any stage in between. At various points in the process, the prosecutor may drop a case for lack of evidence.

## ARREST

An **arrest** takes place when a person suspected of a crime is taken into custody. An arrest is considered a “seizure” under the Fourth Amendment, and the Constitution requires that seizure be reasonable. A person can be taken into custody in one of two ways: by an arrest warrant or without a warrant if there is “probable cause”.

An **arrest warrant** is a court order commanding that the person named in it be taken into custody. A warrant is obtained by the filing of a complaint before a judge or magistrate. The person filing the complaint is generally a police officer but may be a victim or a witness. The person making complaint must also describe and swear to the facts and circumstances of the alleged crime. If, on the basis of the information provided, the judge finds probable cause to believe that an offence has been committed and that the accused committed it, a warrant will be issued. On many occasions, police don’t have time to get warrant. In felony and certain misdemeanour cases, they may make a warrantless arrest based on **probable cause**.

**Probable cause** is defined as a reasonable belief that a person has committed a crime. This reasonable belief may be based on much less evidence than is necessary to prove a person guilty at trial. For example, suppose the police receive a radio report of a bank robbery. An officer sees a man matching the description of the

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bank robber waving a gun and running away from the bank. The officer would have probable cause to stop and arrest the man. In recent years, the courts have allowed drug enforcement officials to use what is known as a drug courier profile either to provide a basis to stop and question that person or to help establish probable cause for arrest. This profile is often based on commonly held notions concerning the typical age, race, personal appearance, and mannerisms of drug couriers.

Police may establish probable cause from information provided by citizens in the community. Information from victims or witnesses can be used to obtain an arrest warrant. Police also use information from informants to establish probable cause if they can convince a judge that the information is reliable. In determining the reliability of an informant's tip, a judge will consider all the circumstances. These include whether the informant has provided accurate information in the past, how the informant obtained the information, and whether the police can corroborate, or confirm, the informant's tip with other information.

#### LAW IN ACTION

The police receive a tip that a drug pusher named Steve will be flying from New York to Washington sometime on the morning of September 8. The informant describes Steve as a tall man with reddish hair and a beard. He also tells police that Steve has a habit of walking fast and that he will be carrying illegal drugs in a brown leather bag. The police have received reliable information from this informant in the past.

On the morning of September 8, the police watch all passengers arriving from New York. When they see a man who fits the description – carrying a brown leather bag and walking fast – they arrest him. A search of the bag reveals a large quantity of cocaine.

-  Based on what you know, do you think the police had probable cause to arrest Steve? Why or why not?
-  Should the police have obtained a warrant before arresting Steve? Why or why not?
-  Assume the police have not received a specific tip but they know that crack cocaine is being brought regularly on trains from one city to another by teenagers hired by older drug dealers. They see a 16-year-old African-American male arriving by train alone with a small canvas bag. Should they be able to stop and question him? Under what circumstances should they be able to search or arrest him?

## ADDITIONAL INFORMATION ON PROBABLE CAUSE

The police do not need probable cause to stop and question individuals whom they reasonably suspect to be involved in criminal activity. In such cases, the police may stop the person temporarily to ask for identification and for an explanation of the suspicious behaviour. When questioned, such individuals do not have to answer. In a few states, the refusal to answer can be used in determining probable cause. In most states, the right against self-discrimination prohibits silence from being used as part to determine probable cause.

Some contend, however, that the reality is that silence may make the police more suspicious and lead to further investigation. In all states a person who flees when police ask for identification can have this factor considered in determining probable cause. In addition, if a police officer, based on his or her experience, thinks a person is behaving suspiciously and is likely to be armed, the officer may stop and frisk (pat down) the suspect for weapons.

A police officer may use as much physical force as is reasonably necessary to make an arrest. However, most police departments limit the use of deadly force to incidents involving dangerous or threatening suspects. In 1985, the U.S. Supreme Court was asked to decide whether it was lawful for police to shoot an “unarmed fleeing felony suspect.” In deciding the case, the Court ruled that deadly force “may not be used unless it is necessary to prevent the escape, and the officer has probable cause to believe the suspect poses a significant threat of death or serious physical harm to the officer or others.”



### LAW IN ACTION

After an evening at the movies, Alexander Adama and his girlfriend, Karin, decide to park in the empty lot behind Briarwood Elementary School. After several beers, they are startled by the sound of breaking glass from the rear of the school. Unnoticed in their darkened car, Alex and Karin observe two men loading office equipment from the school into the back of a van. Quickly concluding that the men must be burglars, Alex revs up his engine and roars out of the parking lot onto Main Street. Meanwhile, unknown to Alex and Karin, a silent alarm has also alerted the police to the breaking at the school. Responding to the alarm, Officer Callahan heads for the school and turns onto Main Street just in time to see Alex's car speeding away.

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- If you were Officer Callahan, what would you do in this situation? If you were Alex, what would you do?
- If Officer Callahan chases Alex, will she have probable cause to stop and arrest him?
- How do you think Officer Callahan would act after stopping Alex? How do you think Alex and Karin would act?
- Assume Alex takes a baseball bat from the back of the car and begins to wave it. Would it be legal for Officer Callahan to use deadly force?

### UNLAWFUL ARREST IN THE USA

If the police use too much force or make an unlawful arrest, the accused may bring a civil action for a violation of the federal Civil Rights Act. The government could also file a criminal action against the police. It must be shown that the officer acted maliciously or had no reasonable grounds for suspicion of guilt. Also, if an arrest is later ruled unlawful, the evidence obtained as a result of the arrest may not be used against the accused.

### LAW IN ACTION

Paul and Jerry are standing on a street corner known to police as a place where drug transactions often take place. Officer Lucia Vasquez walks by the corner and tells them to move on. Paul says, “No way, bitch.” She tells him that he must move on again, saying that he is loitering. He raises his fist and shouts, “You are the one loitering, slut!” Officer Vasquez hits him in the head with her nightstick. Closing the wound requires eight stitches.

- What should Paul and Jerry have done when ordered to move on?
- How else could Officer Vasquez have handled this situation?
- Assume that Paul sues the officer and the local government for damages. How would you decide the case?