

# Legal Aspects of Reserve Law Enforcement

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# Legal Aspects of Reserve Law Enforcement

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# Legal Aspects of Reserve Law Enforcement

## Today's Topics

- Use of Force
- Legal Updates

# Use of Force Rules

Federal Law

State Law

Dept.  
Policy



# Use of Force

- **Use of Force Authorized.** Minnesota Statute § 609.06, subd. 1 provides “reasonable force may be used upon or toward the person of another without the other’s consent when the following circumstances exist or the actor reasonably believes them to exist: (1) when used by a public officer or one assisting a public officer under the public officer’s direction: (a) affecting a lawful arrest; or (b) in execution of legal process; or (c) in enforcing an order of the court; or (d) in executing any other duty imposed by the public officer by law.”

# Use of Force

Reasonable Force may be used by public officer or one assisting a public officer:

- 1) In effecting a lawful arrest; or
- 2) In the execution of legal process; or
- 3) In enforcing an order of the court; or
- 4) In executing any other duty imposed upon the public officer by law
- 5) **In *self-defense* or the defense of another**

# Why Use Force

- To **DEFEND** against the conduct of another
- To **CONTROL** the conduct of another

# Use of Force

- Tools

- Tactics

- Timing

# Use of Force – Tools

- Handcuffs
- Taser
- Chemical Aerosol
- ASP Baton
- Fist
- Elbow

# Use of Force – Tactics

- Rear Cuffing from a Standing Position
- Spray Chemical into Subject's Face
- Driving Stun
- Open-Mode Weapon-Side Strike
- Palm-Heel Strike
- Forearm Strike

# Use of Force – Timing

- When to Handcuff?
- When to Spray Chemical?
- When to Taser?
- When to Strike with the Baton?
- When to Place Hands on a Subject?

# Immunity

The doctrine of immunity protects government officials from liability based on discretionary acts taken by them in the course of their official duties. The doctrine “protects public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties.” A discretionary act is one that requires “the exercise of individual judgment in carrying out the official's duties.” A ministerial act, in contrast, is an act taken pursuant to a duty that is “‘absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts.’ ” A government official is not protected by immunity when he or she fails to perform a ministerial act or when his or her performance of a discretionary act is willful or malicious.

# Qualified Immunity

- A government official receives the protections of Qualified Immunity when performing discretionary functions unless he could reasonably be expected to recognize that his conduct would violate clearly established statutory or constitutional rights.

# Use of Force

**How to get yourself in trouble**

# Legal Updates

- Incident-to-Arrest Vehicle Searches
- Vehicle Impounds
- Certain Misdemeanors are now Payable Offenses
- Court Trials for Payable Misdemeanors

# Incident-to-Arrest Vehicle Searches

## *Arizona v. Gant*

[129 S. Ct 1710 (2009)]

# Arizona v. Gant

- Anonymous tip of drug dealing in house
- Resident had arrest warrant for driving with a suspended license (DAS)
- Later that evening, the police see the defendant driving a car

# Arizona v. Gant

- Police arrest the driver
- Police handcuff the driver and place him in the squad car
- Police search the car incident to arrest
- Police find drugs and guns in the car

# Arizona v. Gant

- Search-Incident-to-Arrest Standard at the time:

“The permissible scope of a search incident to arrest of a recent occupant of a vehicle includes the passenger compartment of the vehicle and all containers within the passenger compartment”

*New York v. Belton, 453 U.S. 454 (1981)*

# Arizona v. Gant

The ***Gant*** Court reasoned that the Belton standard was an application of the general Search-Incident-to-Arrest doctrine which allows for a search incident to arrest of the arrestee's person and the area within her immediate control – *i.e.*, the area from which she might gain possession of a weapon or destroy evidence.

# Arizona v. Gant

- Slow down the horsies:
- In many cases, the arrested person does not have access to the car after the arrest.
- In other cases, like traffic violations, there is no reasonable basis to believe the vehicle contains evidence of the offense.

# Arizona v. Gant

- The U.S. Supreme Court drastically limited incident-to-arrest vehicle searches, holding them permissible only if:

# Arizona v. Gant

1. The arrestee is unsecured and within reaching distance of the vehicle's passenger compartment at the time of the search,  
or
2. It is reasonable to believe that the vehicle contains evidence of the offense of the arrest

# Incident-to-Arrest Vehicle Search

- Arrestee unsecured & within reaching distance of vehicle's passenger area, or
- Reasonable belief that the vehicle contains evidence of the offense of the arrest.

# Warrantless Vehicle Search

- An officer who has reasonable, articulable suspicion that a detained person is dangerous and may gain immediate control and may gain immediate control of weapons from a vehicle may search the vehicle's passenger compartment for weapons.

*Michigan v. Long, 463 U.S. 1032 (1983)*

# Incident-to-Arrest Vehicle Search

- An officer who has probable cause to believe that a vehicle contains evidence of criminal activity, the officer may search any area of the vehicle in which the evidence might be found.

*United States v. Ross, 456 U.S. 798 (1982)*

# Impound Inventory

- What about the Impound Inventory?
- A caretaking function which is not really a search.

# Impound Inventory

- Stop a car – Driver has Suspended DL
- Stop a car – Driver has No Proof of Ins.
- Stop a car – Driver has Arrest Warrant
- Stop a car – Driver is DWI

# Impound Inventory

## *State v. Gauster*

*752 N.W.2d 496 (Minn. 2008)*

# Impound Inventory

- In *Gauster*, the Court held that:
- When the owner is only issued a citation and is not arrested, the owner himself has the ability to remain at the scene to take care of his belongings (even if he cannot lawfully drive). Therefore, impoundment is not necessary to protect the vehicle or property inside.

# Impound Inventory

- Custodial Arrest

- Driver does not request other arrangements.

- Traffic Hazard

- Certain Parking Offenses

- No Insurance Coverage

# Payable Misdemeanor Offenses

- Minor Consumption of Alcohol
- Driving after Suspension/Revocation
- No Proof of Insurance
- No Insurance Coverage

# Payable Misdemeanor Offenses

- The offender need not go to court if cited for a payable misdemeanor offense
- The offender may go to court to try to resolve the matter with the prosecutor
- The offender may be required to go to court if the matter is charged out by formal complaint.

# Payable Misdemeanor Offenses

- Why can't we just take the person to jail?

# Payable Misdemeanor Offenses

## Minnesota Rules of Criminal Procedure

- Rule 6.01. Release on Citation by Law Enforcement Officer Acting Without Warrant

### Subd. 1. Mandatory Issuance of Citation.

- (1) *For Misdemeanors.*
- (a) **By Arresting Officers.** Law enforcement officers acting without a warrant, who have decided to proceed with prosecution, shall issue citations to persons subject to lawful arrest for misdemeanors, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct, or that there is a substantial likelihood that the accused will fail to respond to a citation. The citation may be issued in lieu of an arrest, or if an arrest has been made, in lieu of continued detention. If the defendant is detained, the officer shall report to the court the reasons for the detention. Ordinarily, for misdemeanors not punishable by incarceration, a citation shall be issued.

# Payable Misdemeanor Offenses

## Minnesota Rules of Criminal Procedure

- Rule 6.01. Release on Citation by Law Enforcement Officer Acting Without Warrant
- Subd. 1. Mandatory Issuance of Citation.
- (1) *For Misdemeanors.*
- (b) **At Place of Detention.** When a person arrested without a warrant for a misdemeanor or misdemeanors, is brought to a police station or county jail, the officer in charge of the police station or the county sheriff in charge of the jail or an officer designated by the sheriff shall issue a citation in lieu of continued detention unless it reasonably appears to the officer that detention is necessary to prevent bodily harm to the accused or another or further criminal conduct or that there is a substantial likelihood that the accused will fail to respond to a citation. If the defendant is detained, the officer in charge shall report to the court the reasons for the detention. Provided, however, that for misdemeanors not punishable by incarceration, a citation shall be issued.

# Payable Misdemeanor Offenses

## Minnesota Rules of Criminal Procedure

- Rule 26.01. Trial by Jury or by the Court
- Subd. 1. Trial by Jury.
- (1) Right to Jury Trial.
- (a) Offenses Punishable by Incarceration. A defendant has a right to a jury trial for any offense punishable by incarceration. All trials must be in the district court.
- (b) Misdemeanors Not Punishable by Incarceration. In any prosecution for the violation of a misdemeanor not punishable by incarceration, trial must be to the court.

# Legal Aspects of Reserve Law Enforcement

*Thank you for your attention.*

*(The End)*

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