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DUI Arrest

After a traffic stop and any field sobriety tests, the first stage of the criminal process in a DUI case begins when a police officer places the suspect under arrest. An "arrest" occurs when a person has been taken into police custody and is no longer free to leave or move about. The use of physical restraint or handcuffs is not necessary. An arrest can be complete when a police officer simply tells a crime suspect that he or she is "under arrest", and the suspect submits without the officer's use of any physical force. The key to an arrest is the exercise of police authority over a person, and that person's voluntary or involuntary submission.

A police officer may usually arrest a person in the following circumstances:

The Police Officer Personally Observed a Crime

If a police officer personally sees a person commit a crime, the officer may lawfully arrest that person. For example:

A police officer pulls over a vehicle that is being driven erratically, and after administering a Breathalyzer test, sees that the driver's alcohol intoxication level is more than twice the state's legal limit for safe operation of a vehicle. The police officer can legally arrest the driver for DUI.

The Police Officer Has "Probable Cause" To Suspect Criminal Activity

When a police officer has a reasonable belief, based on facts and circumstances, that a person has committed (or is about to commit) a crime, the officer may arrest that person. This belief, known as "Probable Cause", may legally justify a DUI arrest in certain situations where strong indications of DUI are present, but administration of a chemical test is refused or is otherwise not possible. For example:

A police officer sees someone throw a bottle out of a vehicle in a jurisdiction that makes it a crime to throw bottles out of a moving vehicle. The officer pulls the vehicle over and notices empty beer bottles in the back seat of the car. When the driver refuses to submit to a breath test, the officer may lawfully arrest the motorist based on probable cause that a DUI has been committed.

The Police Officer Made a Lawful Traffic Stop Which Led to a DUI Arrest

In a large number of cases, traffic stops for routine traffic violations lead to DUI arrests. This is because police officers must show that they were not acting randomly or in an arbitrary manner merely to harass or intimidate an individual.

Legal traffic stops by police officers can range from the obvious, such as speeding violations, to more subtle violations like broken tail lights or illegal u-turns. For example:

A police officer notices a vehicle with an expired license. When the officer pulls the driver over, he smells alcohol coming from the vehicle, along with other indications that he or she has been drinking. The officer then asks the driver to submit to a breath test or field sobriety test, finding that the driver is over the legal limit. Most courts will find that it was reasonable for the officer to detain the driver long enough to determine whether he or she is, in fact, intoxicated.

An Arrest Warrant Has Been Issued

When a police officer has obtained a valid warrant to arrest a person, the arrest is lawful. An arrest warrant is a legal document issued by a judge or magistrate, usually after a police officer has submitted a sworn statement that sets out the basis for the arrest. When issued, an arrest warrant typically:

- Identifies the crime(s) committed;
- Identifies the individual suspected of committing the crime;
- Specifies the location(s) where the individual may be found; and
- Gives a police officer permission to arrest the person(s) identified in the warrant.

Challenging An Unlawful Arrest

At all stages of the criminal process, including arrest, police officers must protect citizens' constitutional rights, such as the right to remain silent and the right to be free from unreasonable searches. If these rights are violated, a court may later deem the arrest unlawful, and certain evidence may be thrown out of the case. Click [here](#) to learn more about a defendant's legal rights at the arrest stage.

While a criminal suspect may question the lawfulness of an arrest when it is happening, including the basis for the arrest and the actions of the police officers, that battle is better fought in court than on the street.

See also:

- From FindLaw's Criminal Law section
- [When is an Arrest a Legal Arrest?](#)
- [FAQs: Police Interrogations](#)
- [Miranda Warnings and Police Questioning](#)
- [Police Questioning After Arrest](#)

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