

**CHAPTER 5
ARREST**

501. ARREST DEFINED; PERSON AUTHORIZED TO ARREST

Rule 501 ARREST DEFINED; PERSON AUTHORIZED TO ARREST

An arrest is taking a person into custody, in a case and in the manner authorized by law.

502. ARREST BY LAW ENFORCEMENT OFFICER

Rule 502 ARREST BY LAW ENFORCEMENT OFFICER

A law enforcement officer may arrest a person under any of the following circumstances:

- a. The officer has a warrant commanding that the person be arrested.
- b. The officer has probable cause to believe that a warrant for the person's arrest has been issued by the Nation Court or in another jurisdiction for a crime committed therein.
- c. The officer has probable cause to believe that the person is committing or has committed:
 1. A felony; or
 2. A misdemeanor, and the law enforcement officer has probable cause to believe that:
 - A. The person will not be apprehended or evidence of the crime will be irretrievably lost unless the person is immediately arrested;
 - B. The person may cause injury to self or others or damage to property unless immediately arrested; or
 - C. The person has intentionally inflicted bodily harm to another person.
- d. Any crime that has been or is being committed by the person in the officer's view.

503. ARREST BY PRIVATE PERSON

Rule 503 ARREST BY PRIVATE PERSON

A person who is not a law enforcement officer may arrest another person when:

1. a felony has been or is being committed and the person making the arrest has probable cause to believe that the person is guilty thereof; or
2. any crime has been or is being committed by the arrested person in the view of the person making the arrest.

504. POSSESSING OF DANGEROUS WEAPONS OR INSTRUMENTS; SEARCH; SEIZURE; ARREST

Rule 504 POSSESSING OF DANGEROUS WEAPONS OR INSTRUMENTS; SEARCH; SEIZURE; ARREST

A police officer may search for dangerous weapons or instruments on any person whom he has legal cause to arrest, whenever he has reasonable cause to believe that the person possesses a dangerous weapon or instrument. If the officer finds a dangerous weapon or instrument, he may take and keep it until the completion of the questioning, when he shall either return it or arrest the person. The arrest may be for the illegal possession of the weapon.

505. DETENTION TO DETERMINE WHETHER CRIME RELATING TO FIREARMS OR DEADLY WEAPONS OR INSTRUMENTS HAS BEEN COMMITTED; REASONABLE CAUSE; SEARCH INCIDENT TO DETENTION; DISPOSAL OF SEIZED FIREARM OR WEAPON

Rule 505 DETENTION TO DETERMINE WHETHER CRIME RELATING TO FIREARMS OR DEADLY WEAPONS OR INSTRUMENTS HAS BEEN COMMITTED; REASONABLE CAUSE; SEARCH INCIDENT TO DETENTION; DISPOSAL OF SEIZED FIREARM OR WEAPON

- a. In addition to any other detention permitted by law, if a police officer has reasonable cause to believe that a person has a firearm or other deadly weapon or instrument with him in violation of any provision of law relating to firearms or deadly weapons or instruments the police officer may detain that person to determine whether a crime relating to firearms or deadly weapons or instruments has been committed.

For purposes of this section "reasonable cause to detain" requires that the circumstances known or apparent to the officer must include specific and articulable facts causing the officer to suspect that some offense relating to firearms or deadly

weapons or instruments has taken place or is occurring or is about to occur and that the person to be detained is involved in that offense. The circumstances must be such as would cause any reasonable police officer in like position, drawing when appropriate on his training and experience, to suspect the same offense and the same involvement by the person in question.

- b. Incidental to any detention permitted pursuant to subdivision (a), a police officer may conduct a limited search of the person for firearms or weapons or instruments if the police officer reasonably concludes that the person detained may be armed and presently dangerous to the peace officer or others. Any firearm or weapon seized pursuant to a valid detention or search pursuant to this section shall be admissible in evidence in any proceeding for any purpose permitted by law.
- c. This section shall not be construed to otherwise limit the authority of a police officer to detain any person or to make an arrest based on reasonable cause.
- d. This section shall not be construed to permit a police officer to conduct a detention or search of any person at the person's residence or place of business absent a search warrant or other reasonable cause to detain or search.
- e. If a firearm or weapon is seized pursuant to this section and the person from whom it was seized owned the firearm or weapon or instrument and is convicted of a violation of any offense relating to the possession of such firearm or weapon, the court shall order the firearm or weapon to be deemed a nuisance and disposed of.

506. RESISTANCE TO ARREST

Rule 506 RESISTANCE TO ARREST

If a person has knowledge or by the exercise of reasonable care, should have knowledge, that he is being arrested by a police officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest.

507. METHOD OF MAKING ARREST; AMOUNT OF RESTRAINT

Rule 507 METHOD OF MAKING ARREST; AMOUNT OF RESTRAINT

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention.

508. USE OF FORCE TO EFFECT ARREST, PREVENT ESCAPE, OR OVERCOME RESISTANCE

Rule 508 USE OF FORCE TO EFFECT ARREST, PREVENT ESCAPE, OR OVERCOME RESISTANCE

Any police officer who has reasonable cause to believe that the person to be arrested has committed an offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A police officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or of threatened resistance, of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

509. JUDGE, ORAL ORDER TO OFFICER OR PRIVATE PERSON TO ARREST

Rule 509 ~~JUDGE, ORAL ORDER TO OFFICER OR PRIVATE PERSON TO ARREST~~

The Judge may orally order a police officer or private person to arrest any one committing or attempting to commit an offense in the presence of the judge.

510. AUTHORITY TO SUMMON AID TO MAKE ARREST

Rule 510 AUTHORITY TO SUMMON AID TO MAKE ARREST

Any police officer making an arrest may orally summon as many persons as he deems necessary to aid therein.

511. FORMALITIES IN MAKING ARREST; EXCEPTIONS

Rule 511 FORMALITIES IN MAKING ARREST; EXCEPTIONS

The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person making the arrest has reasonable cause to believe that the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or the person to be arrested is pursued immediately after its commission, or after an escape.

The person making the arrest must, on request of the person he is arresting, inform the latter of the offense for which he is being arrested.

512. EXHIBITION OF WARRANT ON REQUEST

Rule 512 EXHIBITION OF WARRANT ON REQUEST

An arrest by a police officer acting under a warrant is lawful even though the officer does not have the warrant in his possession at the time of the arrest, but if the person arrested so requests it, the warrant shall be shown to him as soon as practicable.

513. ARREST UNDER WARRANT; FORCE PERMISSIBLE

Rule 513 ARREST UNDER WARRANT; FORCE PERMISSIBLE

When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary and reasonable means to effect the arrest.

514. BREAKING OPEN DOOR OR WINDOW TO EFFECT ARREST; DEMAND FOR ADMITTANCE; EXPLANATION OF PURPOSE

Rule 514 BREAKING OPEN DOOR OR WINDOW TO EFFECT ARREST; DEMAND FOR ADMITTANCE; EXPLANATION OF PURPOSE

To make an arrest, a police officer may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired.

515. NOTIFICATION OF RIGHTS

Rule 515. NOTIFICATION OF RIGHTS

- a. Upon arrest, the defendant shall be notified that he has the following rights:
 1. The right to remain silent and that any statements made by him may be used against him in Court.
 2. That he has the right to obtain an attorney and to have an attorney present at any questioning; That if he cannot afford an attorney one will be appointed to represent him.
 3. That if he wishes to answer the questions of the police, he may stop or request time to speak with his attorney at any point in the questioning.
- b. Prior to conducting a consensual warrantless search, the officer shall specifically inform

the person to be searched or the person in charge of the property to be searched that:

1. The search will be conducted only with the person's consent.
 2. That the person is under no obligation or requirement to consent to the search and may refuse to consent to the search if he chooses to do so, or request the advice of an attorney at his own expense prior to responding to the requested consent to the search.
 3. That if the person refuses to consent to the search, the officer will not search the person or property without first obtaining a warrant from the court.
- c. Whenever possible, the officer should obtain a written statement that the person understood these rights, and waives them, prior to taking a voluntary statement from a defendant or conducting a warrantless consensual search, provided that the absence of such a written statement does not preclude the admission of the statement or other evidence if the Court determines that the statement or consent to search were voluntary.