

EXHIBIT 34

AZ Legislative Session – SB1070 House Military Affairs and Public Safety Mark Spencer, Speaker March 31, 2010		
Chairman Gowan	01:53:05	Mark Spencer. For the bill?
Mark Spencer	01:53:19	<p>Mr. Chair, Representatives, thanks for your time today. My name is Mark Spencer. As of last month, I have 23 years with the Phoenix Police Department. I also have the wonderful privilege of serving and representing over 2500 rank and file Phoenix police officers and detectives as the President of the Phoenix Law Enforcement Association. The lead is to serve, and I want to start out by thanking you and commending you for serving the State. There are a lot of things we can do in life, but you choose to serve and that says a lot about you and you're worthy of commendation for that.</p> <p>PLEA members have directly experienced the blunt end of illegal immigration. I've heard the phrase or term 'cost' mentioned quite frequently up at the podium today. Let me share with you some costs of illegal immigration. Here's a cost. On Friday, May 27, 1988, Phoenix Police Officer Ken Collins was murdered by an illegal alien carrying out a bank robbery. Rudolph Romero, one of the killers, remained at large for 12 years in Mexico. It cost Ken Collins his life when that bullet went right in his head.</p> <p>Let me share another cost with you. On Sunday, December 21, 1997, Phoenix Police Officer Brian Wilbur was seriously injured when he was struck by a car driven by an intoxicated illegal alien.</p> <p>Let me share another cost with you. On Friday, March 26, 1999, Phoenix Police Officer Mark Atkinson was murdered in an ambush by illegal aliens.</p> <p>Let me share another cost with you. On Monday, March 26, 2001, Phoenix Police Officer Jason Schechterle was severely burned when an illegal alien driving a taxi cab collided into the rear of his police car.</p> <p>Let me share another cost with you. On Saturday, April 12, 2003, Phoenix Police Officer Robert Sitek was shot and seriously injured by an illegal alien involved in an armed car jacking. The illegal alien was a multiple crosser.</p>

	<p>Let me share another cost with you. On Tuesday, September the 18th, 2007, Phoenix Police Officer Nick Erfle was murdered by an illegal alien during the contact reference a civil traffic infraction. When the illegal alien took the time to stand over Nick and put another bullet in his head, that cost Nick. Cost his family dearly.</p> <p>Let me share another cost with you. On Sunday, October the 16th, 2007, Phoenix Police Officer Brett Glidewell was shot in the chest by an armed illegal alien who'd been stopped for a civil traffic violation. For the committee's edification, Jose Abel Cabrera Samosa, who was the suspect in this case, who was prosecuted by the County Attorney's Office and sentenced to 36 years on March 27th, 2009, claimed to the court that his conviction was based upon mistaken identity. Claimed to the court that his six year presence in the country wasn't a crime. Claimed to the court that he'd been stopped by police four times prior to the shooting of Glidewell, and claimed to the court that the entire case against him was motivated out of racism.</p> <p>Let me share another cost with the committee today. On Saturday, October 25th, 2008, Phoenix Police Officer Shane Figueroa was killed by an illegal alien who was driving a vehicle while intoxicated. This illegal alien was a multiple crosser and had outstanding warrants. Shane's death was described by Chief Harris as a tragic accident involving an undocumented worker. In reality, Shane was needlessly killed by a multiple crosser with outstanding warrants who, according to investigators, urinated on the side of the road while Shane's life ebbed away on the street. That's a cost.</p> <p>Police officers don't call a drug dealer an unlicensed pharmacist. They don't call a bank robber an aggressive borrower with bad credit. A softened tone for those committing a crime of illegal immigration specifically 8 U.S.C. 1325(a) can be highly offensive to those sworn to uphold the law. The numerous times that Phoenix Police officers have been shot at, assaulted, or injured as a result of contact with illegal aliens could go on for quite some time. The Phoenix Police Department routinely as a matter of common sense policing tactics engages in proactive strategies when addressing various crimes, two examples being prostitution or DUI. It's clearly understood that serious crimes orbit around these misdemeanors and a proactive approach heads numerous problems off at the pass. Starting around March 2005 when it came to illegal immigration, the Phoenix Police Department abandoned this</p>
--	--

	<p>proactive policy.</p> <p>The Phoenix Police Department routinely as a matter of common sense allows its personnel to work with federal partners. When on the street, I had the opportunity to work with Secret Service in a counterfeiting situation. I've had the opportunity to work with postal inspectors for mail theft, ATF agents for weapons violations, and DEA agents for narcotic related issues. Our robbery detectives as a course of bank robbery business have contact with the FBI, but when it came to illegal immigration starting around March 2004, the Phoenix Police Department pulled the plug and restricted and isolated its partnership with ICE. This abandonment was clearly seen and Operations Order 1.4.3 simply translated that policy in Phoenix mandated that an illegal alien commit another crime or serious felony before an officer could contact ICE. When it came to illegal immigration, another crime, another victim, another cost, more damage were required prior to the phone call to ICE for disposition. Eight out of ten of our members believe that this policy was detrimental to the quality of life in the City of Phoenix and saw a clear connection between illegal immigration and crime, the clear connection between illegal immigration and calls for service.</p> <p>I'd like to share with the committee today three important issues from PLEA. First, our members clearly saw the connection between illegal immigration and calls for service. The immigration policy did not cultivate deterrents. Number two, the federal government is failing miserably at protecting the border. Border patrol needs all the support and help it can get. Thirdly, PLEA does not believe, once again does not believe, that skin color dictates conduct. Ethnicity is not indicative of criminality. Department homicide reports clearly show that the Hispanic Latino community was bearing an unfair burden in the City of Phoenix as victims of homicides. In 2006 and 2007, Hispanics were three times more likely to be homicide victims than any other race. In 2006 and 2007, out of ten homicide victims, six of them were Hispanic. Detectives relayed to us that out of those six victims, three of them were killed by illegal aliens. It should be noted that in 2008 statistics roughly showed a drop in this number. Hispanics were at least two times more likely to be murdered in Phoenix than any other race. These numbers were alarming to PLEA and the silence about this problem was deafening. Our members saw once again a connection between illegal immigration and the major danger faced by a minority Latino community in Phoenix. The danger</p>
--	--

		<p>to our cops and our community coupled with the frustration of our members, motivated PLEA to make a concerted effort to get Operations Order 1.4.3 changed. PLEA’s goal was to allow officers a phone call to ICE if they had reasonable suspicion that a person was in the country illegally. We continued to maintain the sanctity of victims and the value of witnesses. They were not the focus. They never have been the focus. Our goal was to change the policy, not to engage in routine immigration enforcement.</p> <p>On October 15, 2008, Phoenix Police Chief Jack Harris stated that a 24% decrease in violent crime and a 20% decrease in auto thefts in Phoenix can be partly attributed to quote “a new immigration policy that allows our officers to use their discretion when dealing with criminal aliens” end quote. Unprecedented cooperation between our investigative units and our state, federal and local partners, specifically the Maricopa County Attorney’s Office. If this is what the new policy did, one could wonder beyond what I presented how much crime was generated as a result of the blind eye old policy. PLEA believes that along with proactive and discretionary immigration policies, proactive immigration legislation, as well as proactive immigration enforcement and prosecution are fueling the deterrents and are a serious factor in the falling crime rates in the State and in the City.</p>
Chairman Gowan	02:01:44	Mr. Spencer, I just need you to wrap up.
Mr. Spencer	02:01:45	I’ll wrap up here. In– young girls in Chandler sexually assaulted. That’s a cost. Hardworking ranchers in southern Arizona murdered. There’s a cost. Phoenix Police officers killed or seriously injured. That’s a cost. To disengage, do nothing, and to turn a blind eye to illegal immigration while waiting on the federal government to maintain the border while the body count piles up is, in our state, is a definition of insanity. Federal failure is no excuse for Arizona indifference. Politically correct excuses favoring illegal immigration defy the rule of law. It flies in the face of the state’s responsibility to protect the people and it increases the risk to those legally residing in the country. We would ask and urge the committee to support Senator Pearce’s bill.
Chairman Gowan	02:02:37	Thank you sir. Any questions? Ms. Sinema.

Rep. Sinema	02:02:40	Thank you Mr. Chairman, Mr. Spencer. PLEA represents I think the majority of police officers in the City of Phoenix. Is that correct?
Mr. Spencer	02:02:49	Mr. Chair, Representative, yes Ma'am.
Rep. Sinema	02:02:53	Mr. Chair and Mr. Spencer, would that include police officers who are assigned to special duties as well?
Mr. Spencer	02:02:59	Mr. Chair, Representative, correct.
Rep. Sinema	02:03:01	So Mr. Chair, Mr. Spencer, earlier I expressed some concern because under page 3, Section F, Lines 9 through 14 of this bill—sorry, line 15 of the bill—it says that any person can bring an action against a political subdivision of the state, so that could be the City of Phoenix, if the City has a policy of practice that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law. Now, so that would mean, according to the way that it's written right now, whether or not that's the intent of the sponsor, that's what the words mean, that an individual, perhaps one of us in this room, could sue the City of Phoenix if you allowed an officer to remain on special duty that does not have anything to do with immigration. For instance, the one officer in the City of Phoenix who works on stalking cases. I've met with him and talked with him and that's all he does is just work on stalking cases, and that doesn't involve the enforcement of any federal immigration laws. So, someone could sue if he continues to do that work. And I'm wondering if you have any concern about that.
Mr. Spencer	02:04:09	Mr. Chair, Representative Sinema, I think your concern is valid. Let me answer the question this way. If a detective is engaged in investigating stalking situations, and in his investigation, he or she the detective says, you know what, I think I'm going to call ICE about this guy or this gal. And the department says no, you're not. You can't call ICE. That's the intent of the bill. When an officer's discretion to engage ICE is neutralized, unplugged or prohibited, that's the issue that is addressed in the bill.
Rep. Sinema	02:04:42	Mr. Chairman, Mr. Spencer, we agree on that, in terms of the intent. If an officer feels like he needs to call ICE, he should get to. We agree on that. My concern is that the language, just the language. Because intent is nice, but language is what is litigated. And so it's the language that matters. This language

		says that any person can bring an action in Superior Court to challenge any official or agency of the state or a county, city or town, or other political subdivision of the state that adopts or implements a policy or practice that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law. So someone could bring a suit saying, hey, you've got folks working, you know, protecting schools, in the SRO program, and that is not enforcing immigration laws to the full extent permitted by federal law. Therefore, you're not doing your job. So I understand the intent and I think we agree on the intent. The problem is that this language allows anyone to sue if we have an officer doing work on stalking or on school safety or any of those issues. I'm wondering if you feel like that needs to be addressed.
Chairman Gowan	02:05:59	Mr. Spencer.
Mr. Spencer	02:06:00	Mr. Chair and Representative Sinema, if that is a valid concern of yours, I'm sure that you and Mr. Pearce can work on language. But once again, even in your specific example, we'll just call it a school resource officer, that school resource officer, his job, her job is to facilitate law enforcement on a specific school. Now, if there is a policy out there or a decision made saying in your role as a school resource officer, don't you dare call ICE. Don't you engage ICE. Don't you make that phone call, that's the intent of this bill, to prohibit those policies. It's not to short circuit an officer's discretion, it's to limit or hold departments liable or accountable for implementing policies that unplug that officer's discretion. I think Senator Pearce said it wisely and eloquently to give us the authority and the trust to fly million dollar helicopters—I think it was a six million dollar plane we just bought. You trust us to fly that. You trust us to make life and death decisions on the street. You trust us whether we have probable cause in complicated investigations. I'm confident that the citizens of Phoenix and of the State of Arizona can trust law enforcement not only in Phoenix but throughout the state, of their law enforcement officers to follow the rule of law and wisely and reasonably engage ICE in the discretionary duties that they've been given.
Chairman Gowan	02:07:22	Ms. Sinema
Rep. Sinema	02:07:23	Mr. Chair and Officer Spencer, I hear what you're saying and again, I don't think we disagree on intent. My concern is is that, and maybe this is, you know, you're an officer, I'm not. I'm an

		<p>attorney. You're not. And so maybe that's where the, you know, problem is occurring, but. Regardless of the intent, the language allows an individual to sue if they believe that there is a policy or practice that in any way limits or restricts the enforcement of federal immigration laws to the fullest extent permitted by federal law. So if someone on the street were to see an officer helping up, you know, a little old lady, like, you know, get her wheel chair across the street, he could say, hey, hey, this is a policy or practice that's not, you know, implementing the immigration laws to the fullest extent of the law. He's wasting his time getting this little old lady across the street. And I know there's undocumented immigrants right down the corner. So why isn't he down there doing that? And this language allows someone to sue for that. So I think that's still a valid concern.</p> <p>My second question for you, Mr. Chair-</p>
Chairman Gowan	02:08:22	A question Ms. Sinema?
Rep. Sinema	02:28:24	<p>I do have a question, yes. My question is about page 1, section B, which is the portion that I expressed some concern earlier with Mr. Thomas. And that is that this bill says a reasonable attempt shall be made when practicable to determine the immigration status of the person. Now there's a legal issue about what practicable means because we don't have any case law or any definition in the statute to let us know what that means, so that's a concern.</p> <p>But earlier, there was a request from the chiefs of police to have an exemption for individuals who are victims or witnesses to prevent the situation that I had articulated earlier. A woman who has been a victim of severe domestic violence, who calls the police because her abuser is going to kill her. The police come. They arrest the abuser, which they have to by law, 24 hours they have to. If they choose not to call ICE or not to inquire into her immigration status and she does end up being undocumented, but they don't make that call because they would like to preserve her as a witness and as a victim under our current statutes in order to prosecute this guy who's trying to kill her. The guy can sue the city for not following through to the fullest extent of the law under federal law to seek removal for the woman. And do you feel like that's appropriate or should there be some kind of exemption for victims and witnesses?</p>

Chairman Gowan	02:09:49	Mr. Spencer.
Mr. Spencer	02:09:50	Mr. Chair, Representative Sinema, I do believe there are already, there already is available within the system an exemption for a female of that category called a U Visa. And I'm sure open communication with ICE would facilitate that to take place. Specifically, we'll just say within the City of Phoenix. It's the policy that says no, you're not going to call ICE. You're not going to have contact with ICE. That puts that female victim, that vulnerable person at risk. It's a poor immigration policy that puts her at risk, not the officer's discretion to make sure she gets justice as a victim, whether she's here legally or illegally. That's the concern.
Rep. Sinema	02:10:28	So Mr. Chair, Mr. Spencer, I'm very familiar with the U Visa. As I mentioned earlier, I obviously do some immigration law, so I'm quite familiar with that. However, there are, a U Visa takes a lot of time and is available only to a very small number of women. So what about an adult child in the home who's the witness to that domestic violence? The adult child in the home who is the witness to domestic violence would not qualify for a U Visa under our federal statutes because they are not a personal victim of— They don't qualify under VAWA. But they are a witness to that crime. If the officer chose not to contact ICE because that adult child who witnessed the crime is undocumented, then that would also allow someone to sue. Is that not correct? Someone could sue the city for not fully enforcing the immigration laws to the quote "full extent permitted by federal law." Is that not correct?
Chairman Gowan	02:11:22	Mr. Spencer.
Mr. Spencer	02:11:23	Mr. Chair, Representative, I do not interpret or read that into the bill. Clearly as the intent, I don't, I don't perceive that to be the intent of the bill.
Rep. Sinema	02:11:30	But Mr. Chair, Mr. Spencer, as I mentioned earlier, I'm not talking about intent. What I'm talking about is the language of the bill. Because intent is not what's justiciable. What's justiciable is the letter of the law. And if the letter of the law is unclear, then you can go to legislative intent. But the letter of the law is very clear here. That there is no exemption for individuals who are victims or witnesses. And while there is a U Visa process for women who are victims of domestic violence with someone they are in a romantic relationship, there is no

		process for individuals who are victims of other crimes or witnesses of crimes. And so do you think that it's a problem that someone could sue if an officer chooses not to report to ICE a potential victim or witness in say a murder case?
Chairman Gowan	02:12:10	Mr. Spencer.
Mr. Spencer	02:12:11	Once again, I'll defer to the intent of the bill. And I think intent does play a large role in statutory requirements. There's criminal intent, whether I do it negligently, willfully, knowingly. There is intent. And—
Mr. Spencer	02:12:24	Just to that point.
Rep. Sinema	02:12:25	That point.
Chairman Gowan	02:12:26	Ms. Sinema.
Rep. Sinema	02:12:26	Mr. Chair, Mr. Spencer. Criminal intent is actually written into statutes. So as you know, for every crime there has to be an <i>actus reus</i> and a <i>mens rea</i> . But that's actually written into the language of the statute. My concern here is that you're talking about what the legislative intent is. And while I think that legislative intent is all well and good, the problem is is that the language of this bill doesn't address this concern. And because the language of the bill doesn't address the concern, then anyone in this room would have the legal right to sue the City of Phoenix if an officer in the City of Phoenix chose not to deport someone who is a witness to a murder or someone who is a victim of an attempted murder. And so there's a difference between intent of legislation and criminal intent that's actually written into legislation. So I want to be clear about that. My question is, do you think there's any concern about the written language here that doesn't provide an exemption—
Chairman Gowan	02:13:16	Well, I think he's answered it a couple of times on the same issue. You've asked three times.
Rep. Sinema	02:13:21	Mr. Chair. But that's fine. I would ask that the members of the public please keep their comments to themselves, because we are the only ones who have the authority to speak in this setting.
Chairman Gowan	02:13:37	Yes please. [Inaudible audience comments] Ms. Sinema. Do

		your questions –
Rep. Sinema	02:13:39- 02:13:43	I won't ask any more questions, Mr. Spencer, but I would appreciate it if we could remind the audience about their duties.
Chairman Gowan	02:13:44	That is true out there, please keep your comments down. Mr. Spencer, you have any other remarks?
Mr. Spencer	02:13:52	Not any other.
Rep. Sinema	02:13:53	Thank you Mr. Chair. Thank you Mr. Spencer.
Mr. Lars	02:13:55	Mr. Chairman, I'd actually like–
Chairman Gowan	02:13:56	Mr. Lars.
Mr. Lars	02:13:57	Thank you. I'd like the sponsor to come back up and maybe address some of these questions.
Rep. Seel	02:14:01	Mr. Chair. I have a question.
Chairman Gowan	02:14:03	Mr. Seel has a question here.
Rep. Seel	02:14:05	Mr. Chair, Mr. Spencer. Thank you for service. You commented in your testimony about Operation 1.4.3. I'm familiar with the versions that you probably had the most objection to. What's your opinion currently of the current amended Operation Order 1.4.3 in regards to this question?
Chairman Gowan	02:14:26	Mr. Spencer.
Mr. Spencer	02:14:27	Mr. Chair, Mr. Seel, I currently believe it's being misinterpreted and misused once again. When an officer– Example, when an officer sees a person in work clothes standing on a property that's posted against trespassing in an area that's known for trespassing and contact by the officer. Now there's reasonable suspicion. Contact by the officer results, reasonable suspicion results in contact by the officer. The subject is unable to provide Arizona or any national ID. The subject is only able to provide Mexican ID. The subject does not speak English. The subject admits to being in the country illegally, and the subject admits to being there looking for work, and when the officer picks up his phone and calls ICE and puts the subject on the phone with

		ICE and gives the phone back and ICE says yeah, he's in the country illegally, do you want us to come get him or do you want to bring him down? And the officers say we'll bring him down. Prior to bringing him down, the officers get permission from a Phoenix Police supervisor to do that, and the officers document in a written criminal report a trespassing report to preserve the contact for the city prosecutor to exercise discretion on and deliver or transport at the order or behest of ICE the subject. And ICE determines he's a six time multiple crosser. And then the officer that engages in that conduct is placed under administrative investigation in the City of Phoenix for intentional abuse of police authority. And he's been under investigation for more than six months with over 250 pages of paper documenting that contact. I don't think that was the intent of the policy. So even with the changed policy, there is resistance within Phoenix Police management to allow reasonable contact with ICE based upon reasonable suspicion.
Chairman Gowan	02:16:25	Bill?
Rep. Seel	02:16:26	In your opinion— Mr. Chair, Mr. Spencer. In your opinion, this law, how would this law affect that policy?
Chairman Gowan	02:16:33	Mr. Spencer.
Mr. Spencer	02:16:34	Mr. Chair, Mr. Seel, I think it will impact that policy by, and I have to defer to the eloquent statement by Senator Pearce, it takes the handcuffs off us. What it really does is this. It lets police officers exercise reasonable discretion when it comes to violations of federal immigration law. It allows officers the ability to pick up the phone and to engage in a federal, engage with the federal partner and say, hey, can we help you, can you help us solve this problem. It creates accountability to the cities. And I don't, I don't perceive from a police and union perspective that the smaller towns have an issue. The rule of law isn't complicated. Common sense isn't complicated. I think the smaller towns understand that. It's the bigger cities like Phoenix that struggles with the rule of law and common sense. And so that's, that's, I believe it brings accountability to departments as far as restricting the discretionary ability of officers to contact ICE and I think it encourages officers to use common sense discretion on the street to help make our state safer.

Rep. Seel	02:17:45	Mr. Chair, Mr. Spencer. Thank you.
Chairman Gowan	02:17:49	Thank you Mr. Spencer. We have some closing comments from Senator Pearce?

House Military Affairs and Public Safety Committee

March 31, 2010

<p>Sen. Pearce</p>	<p>02:17:56</p>	<p><Closing comments> Mr. Chairman, a lot has been said. And again, I'm Senator Pearce, again for the record. Some of it a little confusing to me seeing as how it's such a stretch not to enforce our laws. We have folks that have testified here today simply are anarchists, simply don't want any laws enforced at all in this state. Well, it's been addressed the deaths, the maimings, the costs, jobs taken from Americans. I mean, I really get disappointed. This is a common sense bill. Who tries to put common sense discretion back into the hands of our officers.</p> <p>I wanna address one thing on the victim witness thing. I find it interesting that we keep doing it. The reason the practicable language is put in there is for the very issue that's brought up here. What if I have a shooting in the middle of Phoenix with the MS13 gang, all of them illegals from El Salvador. One's a victim, one's a witness, one's a suspect or multiple. I'm not to ask questions? I mean, I find it amazing. That's why common sense has to be here. You can't specifically exclude anybody in this bill because that has to be a discretion, a determination, made on practicable by the officer at the scene at the time. And again, this is an effort to put handcuffs on law enforcement when they may need to use that discretion. That's why the term practicable was used.</p> <p>As far as the lawsuit issue, if people understand the Constitution of Arizona, anybody can sue. This doesn't give you more authority to sue. What it says is you have a right to hold your government accountable. We the people. I know we don't like that term, some of us. I do. I believe that we the people still count. And if your government is ignoring the law, refusing to enforce the law, and many times its because the victims – called just yesterday, just yesterday on one. An accident. Destroyed their car, injured their children. Law enforcement did nothing. The victim was suspected to be illegal. Everything on the scene indicated that. The officer indicated that that probably was true to the people. No arrests. No action. Nothing done. Like Officer Spencer said, apparently our policy is one more victim, one more crime, or multiple victims, multiple crimes, before we take action. That must stop.</p> <p>Some of the other arguments here are disappointing to say the least. The knowingly and furthering on the harboring or transferring – even under federal law there is no exception, no humanitarian exception either if you're harboring, aiding, abetting,</p>
--------------------	-----------------	---

		hiring, referring for hire, it's a felony. In this law, we do cover that. We did remove the criminal piece because we thought we had a better solution. Called in the furtherance of the illegal alien remaining in the United States. That deals with sanctuary groups. That deals with purposely employing and maintaining and harboring and aiding and abetting their remaining further. And you have to have a knowingly standard.
Rep. Sinema	02:21:15	That point.
Chairman Weirs	02:21:16	Senator Pearce to that point.
Rep. Sinema	02:21:17	Actually I just have a point of order. Mr. Chair –
Chairman Weirs	02:21:20	Point of order is first.
Rep. Sinema	02:21:22	Okay. Point of order, so Mr. Weirs, as much as I think that Mr. Shields is doing a wonderful job, we do have a House rule that says only the Chair or the Vice Chair can chair a Committee and a Member of the Committee cannot chair it. This actually came up in our Education Committee last year. So if you wouldn't mind acting as the Chair until Mr. Gowan comes back just to – well there we go. Never mind.
Chairman Weirs	02:21:38	There you go. Your other point?
Rep. Sinema	02:21:43	That was my point of order.
Sen. Pearce	02:21:44	Ask and ye shall receive yes.
Rep. Sinema	02:21:46	It worked out perfectly, didn't it? Thank you Mr. Chair and Mr. Pearce. So I just want to clarify. What I hear you saying is that according to the revised version of this striker on page seven under the transport, the person would only be liable for having committed a crime if they were transporting, like under federal law, for the purpose of furthering their illegal entry. So that would exclude individuals like the cab drivers, the bus drivers and etcetera.
Sen. Pearce	02:22:15	Mr. Chairman, there's also the emergency issue in there that was addressed. Yes. This was written intentionally to make sure that it did not include the Good Samaritan or just doing your duty as a public official. And that's why discretion is the whole key all the way through. We purposely – in the federal law there is no exception currently under federal law for harboring, aiding,

		<p>abetting, transporting, hiring, referring for hire under 8 U.S.C. 1321. There is no exception. In this, you know, it's not a felony either. You know, we tried to make it clear that we're not after anybody without a culpable mental state if you will, a mens rea engaged in this activity. We think that language covers that.</p> <p>I've met for hours with the attorneys last week again going over this line by line to make sure that this complies with federal law, that we do not exceed our responsibility in enforcing federal law or ability. We're very careful in doing this and there's a lot of – you know, there's never a bill that can't be made better and I'm the first one to admit that. But clearly this is a well written bill. The people that don't like it are the difference between those who believe the law should be enforced versus those who believe the law should not be enforced. It is a matter of protecting law abiding citizens which have a constitutional right. Taking the handcuffs off of law enforcement, giving them the tools necessary. You heard the damage. I don't know what it takes. I don't know how much more crime, how much more damage, how many more jobs taken from Americans before we finally start doing something. How many more Rob Krentz's have to be killed before we do something? We have state inherent authority and responsibility to enforce these laws. It must be done. I refuse to stand here or attend another funeral without knowing I've done all that I can to protect our neighborhoods, our families and allow law enforcement to do their job.</p> <p>02:24:12 - We're gonna have bad guys and we understand that, and even with good laws, we're going to have people that violate them. We do every day. But clearly there's evidence of attrition by enforcement. Most will self deport. You know, again, when you enforce your laws – just like DUI laws. We you know, used to kind of be a social event. You know, sight and release, take people home, whatever. It's a crime. People die from it. We finally have gotten serious over the years of recognizing the damage, the harm from failure to enforce those laws. That's what we're doing here. We continue to throw up roadblocks and impediments to our good conscious law enforcement officers to do their job and protect the citizens of this state and this community.</p>
Chairman Gowan	02:24:57	Ms. Reeve.
Rep. Reeve	02:24:59	Thank you Mr. Chairman, Senator Pearce, there was a lot of concern about the definition of harbor. I'm wondering if maybe I think maybe just a misunderstanding. Maybe if you provide your definition so that people would understand what you mean by

		harbor.
Sen. Pearce	02:25:12-	<p>Mr. Chairman, a good question. That's – and again, that's a copy if you will from federal law. And we put it in here and it meets the same criteria. It's been litigated for years. Harboring is not just driving somebody to church. It's when you have a culpable mental state, a mens rea, of providing sanctuary, hiding as was talked about, providing sanctuary for folks that you know, that you know are illegal. And it applies to other crimes too. This actually applies to this section.</p> <p>02:25:41 And I want to address another issue just briefly. You notice the part about giving the officer the authority to stop for any violation of any traffic violation is in the human smuggling section of the law. And this came about with working with the task force on human smuggling that they needed a provision because again, they also get taken to task. We do everything we can to prevent enforcement from enforcing these laws. And so they've been sued and harassed and intimidated through the court system not to do this. You know, and so they have to wait, and I'll give you a specific. This came from an officer who called me. And he said, we had a car. We could see the heads bobbing up and down. We knew that this – we knew it was packed with people. But we had to wait until a violation. Had I had this ability I could have stopped them earlier. As it turned out they ended up speeding, they ended up making a stop but his concern was had they not have committed the act of speeding, they would have known they had a van full of illegals, no ability to do anything about it. This is simply a provision provided for those human smuggling task force enforcement officers.</p>
Chairman Gowan	02:26:47	Point Senator?
Rep. Sinema	02:26:47	<p>That point. Thank you Mr. Chair and Mr. Pearce. There was some concern indicated earlier that this language whether or not it's intentional allows a stop for any civil traffic violation and that does make a differ – that basically creates two classes of people. So under the immigration statute, you can stop a person for secondary offenses like seatbelt violations and license plate violations. But outside of the immigration statute you would not be permitted to do so. And to me that does seem like it would raise a justiciable claim for equal protection. I'm wondering, was that intentional? And if not, would you be willing for us to try and fix that so that it's equitable? Either allow officers to stop for secondary offenses in the larger community or restrict this to only first offenses and</p>

		primary offenses, not secondary offenses?
Chairman Gowan	02:27:34	Senator.
Sen. Pearce	02:27:35	Mr. Chairman, and it's a good question. I'm going to look. But this has been vetted with several attorneys as we talked about this very issue. And we don't think it falls into that category. Again, we love to go to the court for everything. We think they're the final arbitrator in almost everything.
Rep. Sinema	02:27:50	They are for us.
Sen. Pearce	02:27:51	So I suspect we will be on this too. But we don't live in a judocracy. This is the group that sets policy. It's a reasonable policy to deal with the human smuggling, a violent vicious culture that we know and that's what it's for. Simply a tool for the smuggling units, you know, so that they can stop these people and take actions.
Rep. Sinema	02:28:09	I –
Chairman Gowan	02:28:10	Are you still to that point?
Rep. Sinema	02:28:11	I am. Still to that point. So Mr. Chair, Mr. Pearce, if I actually just read the language though on line 13 of page 6, it says, <i>if the officer has reasonable suspicion to believe the person is in violation of any civil traffic law and this section</i> . So that's what makes it different. Any civil traffic law involves primary and secondary traffic law violations.
Sen. Pearce	02:28:35	No. Mr. Chairman, almost all traffic law is civil. Very few are criminal.
Rep. Sinema	02:28:40	And Mr. Chair, I agree. The problem is is that some civil traffic laws are primary offenses for which officers can stop someone and some are secondary offenses for which they can't stop someone but they can fine them for once they've stopped them for a primary offense. But because this says any civil traffic law, this would give officers the authority to stop for secondary offenses as if they were primary offenses. Is that your intent?
Sen. Pearce	02:29:05	Mr. Chairman, my intent is to give them the tools to stop vehicles when they clearly know they could be possibly _____. I'm very cautious. I'll work with the Chairman on that. I don't know – I'm

		just trying to think offhand so I don't want to make a commitment here you know, that may do damage to what we're trying to do. At the same time I'm willing to look at that. I think it's a valid point. I don't think it does what you think but I think the concern is valid. [phone ringing]
Chairman Gowan	02:29:30	Whose phone just went off? Hold on Mr. Senator. Whose phone just went off? Were you here when I announced at the beginning? No?
Male	02:29:40	[Inaudible] I'm sorry.
Chairman Gowan	02:29:42	All right. Well make sure that thing's off for me. Okay? Thank you. I apologize Senator.
Sen. Pearce	02:29:47	That's okay Mr. Chairman. Thank you.
Rep. Sinema	02:29:49	So Mr. Chair, Mr. Pearce then, maybe we can just resolve that.
Sen. Pearce	02:29:52	I think so. Easily. I mean, I think you can apply it when you have suspicion or something on the smuggling or something. I think you can do that because then you're tying it to the crime that it's intended for. But it's in the smuggling statute. So I don't know that that's necessary. I'm willing to look at if there's something there though.
Rep. Sinema	02:30:08	Thank you.
Chairman Gowan	02:30:11	Do you have any more questions Ms. Reeve? No. we're going to –
Rep. Sinema	02:30:18	I have some more questions.
Chairman Gowan	02:30:19	You have more questions? Can you sum it up into one question for the Senator so we can move on here? We have veterans up here we have to take care of. If you don't mind.
Rep. Sinema	02:30:29	I can try. How about that?
Chairman Gowan	02:30:32	I would love that.
Rep. Sinema	02:30:32	I will try my hardest. Mr. Pearce, I had a question because I understand – you know, I was going off the first version so I just want to make sure it's still in this version. My understanding is that

		you're relying on 8 U.S.C. 1373C to verify a person's immigration status. Is that true still under the striker?
Sen. Pearce	02:30:51	Mr. Chairman, Representative Sinema, yes it is. 1373 and 136 – 8 U.S.C. 1644. Those are the two statutes specifically applied to the exchange or the contact or the ability to share information with ICE reference to one's immigration status.
Rep. Sinema	02:31:11	And Mr. Chair and Mr. Pearce my understanding – and I'm pretty familiar with this section under 8 U.S.C. 1373C – this is actually the statute that created the SAVE program which is the "pay for use" program. <i>[phone ringing]</i>
Sen. Pearce	02:31:28	Nice music.
Chairman Gowan	02:31:29	Sorry Senator. All right, here, I'm going to give one more shout out there. If your phone is on, I will remove you the next time. I'm gonna remove you the next time here. It's disrespectful to the – what's going on up here and the process and I need you to turn your phones off please. I hate to be rude but that's – it's rude up here. So I appreciate that. I'm sorry, Senator and Ms. Sinema.
Rep. Sinema	02:31:59	Thank you Mr. Chair. So Mr. Pearce, my understanding is that 8 U.S.C. 1373C is the portion of federal law that created the SAVE program which is a pay for use program. And my understanding is that we use that program to verify an immigrant's status if they're applying for benefits. Because we know some immigrants do qualify for benefits if they have legal status and they've been here for awhile while others do not. And so I'm wondering how that applies to what you were referencing in terms of verifying someone's status.
Sen. Pearce	02:32:26	And Mr. Chairman and Representative Sinema, it also goes beyond that. It also says that you will not be restricted from sharing information with ICE. It also is coupled with 8 U.S.C. 1644 which also says – and by the way that was solved in a case Petus versus U.S. in terms of that. But anyway, it is an appropriate statute to use for that. That's why we used it. It's the one that simply says you shall not restrict information to be shared with ICE and it allows that exchange in a proper manner.
Rep. Sinema	02:33:01	Mr. Chair, Mr. Pearce, my understanding also under the term final determination – and this just is based on my own experience as an attorney who practices some immigration law – but also in discussions with ICE. And that – my understanding is that the

		<p>officer can make a preliminary determination but only a judge can make a final determination. I know we kind of mentioned that earlier. But even a judge's determination isn't final because the person retains their right to appeal. And so it would either be the Ninth Circuit or the Supreme Court if they chose to appeal that far. So I'm wondering if you have concern about the term final determination and maybe some flexibility around adjusting that to acknowledge that officers make preliminary determinations and that courts make final determinations.</p>
Sen. Pearce	02:33:41	<p>Mr. Chairman, Representative, this is based on court law. There is litigation that has solved this. This is – again, you know and I know, I mean, being an attorney, there's artful language. This is artful language that's intended to be used for its purpose. The courts accept this language. You know, there are steps. But just like guilty, you can be found guilty in this Justice Court, in Superior Court. You have the right to an appeal. That still doesn't mean you weren't found guilty. This is a final determination. It's an artful term and it is appropriate.</p>
Rep. Sinema	02:34:14	<p>And Mr. Chair, Mr. Pearce, I have a – this is a very technical question and I don't know if you have your copy of the bill with you. But on page 7, lines 23 through 25, so you define unauthorized alien in this section as an alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 U.S.C. 1324H3. My concern is that there are a number of folks who are authorized aliens in this country who don't have the legal right to work. For instance, a student. A student who is here on a student Visa is actually legal, legally here, but is prohibited from working and they can lose their status if they get a job. And that's actually happened to a number of students who go off and get a side job and then the feds find out and {<i>sound</i>} they're gone. So I'm wondering how we can adjust this to include those who are authorized aliens who don't have the legal right to work but do have the legal right to be here.</p>
Sen. Pearce	02:35:13	<p>Mr. Chairman, and I think this actually came up. We've had that debate. It's certainly a valid point. But I think we address it as you read the entire bill, that's addressed. It has to do with those who have legal right to be here. This has to do with, that's already covered under the employment sections. This bill has to do with the ability of law enforcement to enforce the law when one doesn't have the legal right to be present in the United States. So I think that's right.</p> <p>02:35:40 - And Mr. Chairman, I don't whether Ms. Sinema is done</p>

		<p>or not. But I do want to make just a couple of quick comments. I'm really concerned when people get up here and cite the U of A study which had nothing to do with what we're talking about. It was immigrant. They combined illegal and legal and everybody in the world. Makes no sense at all. And I get a little tired of people talking about immigration. I like you respect those who follow the law and come here legally. This is about illegal aliens, not about immigrants. Never has been about immigrants. Nobody I know is anti-immigrant. We honor, respect those who respect our laws and our land and come here the rightful way. And that report is – should have gotten an F in high school for it, let alone U of A. You know, it absolutely is so unfounded, so without merit, and to quote it is rather amazing to me.</p>
Rep. Sinema	02:36:31	<p>But thank you, Mr. Chair, Mr. Pearce, I think we both agree that folks who are authorized aliens who don't have the legal right to work but do have the legal right to be here should not be prosecuted under this. And so I'm wondering if we could just adjust that language because this says, an authorized alien means an alien who does not have the legal right or authorization under federal law to work in the United States. And if what we really mean is an alien who does not have the legal right to reside or authorization under federal to work in the United States, then maybe we should adjust that. Because otherwise, students or sometimes spouses of employees who have the legal right to be here but don't have the legal right to work could face some jeopardy under this provision.</p>
Sen. Pearce	02:37:08	<p>Mr. Chairman, and again, you were busy with Representative Stevens I think when I addressed it, this – that's covered under the employment statute. I think that's covered under also the employer sanctions law. What this statute and this provision is trying to get at those that are not legal in the United States that have entered and remained illegally and are required. That's why we're, you know, you talk about having the indicia on you, that's why we give the discretion to the officer. They're not after folks who just left their card at home. We're after those who are illegally in the United States and have entered and remained. And that's what this section is to deal with. And so that's why it's written the way it's written.</p>
Rep. Sinema	02:37:50	<p>Mr. Chair, Mr. Pearce, I have another question. Section 2e of the striker which is page 2, lines 22 through 28. I had some concerns and I've received some emails from folks who are concerned about privacy rights. So this provision basically says that local governments cannot be prohibited or restricted from sending,</p>

		<p>receiving or maintaining information relating to the immigration status of any individual or exchanging that information. Now I think that we should – we all agree that local governments need the authority to exchange information with each other. If you have a criminal alien who’s escaped a facility, you have to let surrounding entities know so that they can try and find that person. Right? So I think we all agree with that. My concern is that it may provide an opportunity for these authorities to maintain information that is not directly related to a violation of immigration status. And I’m wondering if you considered any ways to provide protections for that.</p>
Sen. Pearce	02:38:52	<p>Mr. Chairman, again, this is language that’s been modeled after federal law for the exchange of information from an officer to an ICE like was illustrated both with Levi Bolton and Mark Spencer. You know I – and again, it’s artful language and I’d be cautious when we start changing federal language this has taken a relationship for the ability to exchange and determine one’s legal status and I don’t think it’s that far reaching. I think again what we’ve done here – and Representative Sinema, I certainly want to be respectful – but what we’ve done here is we’ve exaggerated issues here with extreme interpretations that just aren’t there. This is a very carefully simple law. You know, it doesn’t take away officer discretion. It allows them to make those decisions on the street. Making a policy is different than an officer who is busy, covering two beats, three beats, four beats, doesn’t have the time and his sergeant says, not tonight, you don’t have the time. The only thing they’re in violation of is being here illegally, yeah, normally, you’re right, you need to call ICE. But right now I’ve got three calls backed up. It’s not practicable for you to do that. It allows that. It allows it. This doesn’t expand law enforcement authority. This just gives – takes the handcuffs off of them. This doesn’t expand a citizen’s right to sue. It just makes sure that if they do sue and the City’s in violation of the law – again, no fines, no penalties, no nothing if the court finds the City didn’t violate the law and had a policy like they talked about telling you you can’t do it. Or a practice from administration saying you won’t do it. This is carefully written to address those issues. It does not expand one’s ability to sue. It does not expand law enforcement’s authority. It simply allows them to do their job and let citizens know they have a right to hold their government accountable to enforce these laws as written.</p>
Rep. Sinema	02:40:50	<p>Mr. Chair, Mr. Pearce, I agree and I believe – I agree in some respects. I believe that the folks who drafted this share that intent. My concern is that some of the language for me seems to provide</p>

		<p>some real problems and I think will be subject to a lot of litigation. And I have concerns about the issues concerning equal protection, the issues concerning victims and witnesses, individuals who are not intending to engage in any kind of criminal activity who could be caught up. I do have another question though –</p>
Sen. Pearce	02:41:21	<p>Mr. Chairman, may I respond to that briefly? Just simply, I mean, you create more harm. We always are fixing things down here for unintended consequences. When you start putting in an officer cannot ask a witness, cannot ask a victim, then you have a segregation policy. Can't ask a traffic stop, can't ask a victim, can't ask a witness, can't ask a juvenile, can't ask – I mean, good grief. You know, their intent is not to have you not enforce the law they would have you believe. But they've been awfully – they have enough conditions that virtually that's what they're doing. This takes all those handcuffs off. I trust my officers to make those decisions. And they know when it's practicable. They know when it's reasonable. That would be doing great harm to this bill to add those kind of provisions in here. They are not there. That's an extreme. That's exactly why the word practicable was put in there. Give that officer the discretion on the street to decide if it's reasonable, if it's practicable. You know.</p>
Rep. Sinema	02:42:21	<p>Mr. Chair, only two more questions I think.</p>
Chairman Gowan	02:42:24	<p>Representative Sinema.</p>
Rep. Sinema	02:42:25	<p>I know. All of you are thinking, how wonderful that she's on this Committee. Mr. Chair and Mr. Pearce, I wanted to ask, recently there was a story – it might have been in the Republic but it also could have been in a national paper – about the number of individuals who are undocumented who then enlist to serve in our military. And then after their military service if they die while in service sometimes the government posthumously grants them citizenship. But if they live through their service and return to their community, they are usually still without status. And I'm wondering is there anything – I know that we all share a great concern about respecting all individuals in this country who volunteer to serve in the armed forces. And so I'm wondering if there's – and maybe no one's ever brought this up – but that is a problem here in Arizona. We've had individuals who were undocumented who served and who died in the line of duty. So if an individual is undocumented, serves in the military and then comes back to the state and is still undocumented, are they going to</p>

		be subject to all of these trespass problems as well?
Sen. Pearce	02:43:31	Mr. Chairman, Representative Sinema, the exclusive –
Rep. Sinema	02:43:35	Ms., Ms. point of order. Don't call me Missus. Whew, that's scary.
Sen. Pearce	02:43:43	I didn't say Missus. You've misinterpreted.
Rep. Sinema	02:43:44	Okay.
Sen. Pearce	02:43:45	Let me tell you, that's federal law. We can't effect to change federal law. First of all, most of them are given a temporary Visa, given a fast track if they serve in the military to citizenship. Our government already facilitates that. But what you're trying to ask me to do now the things that we would debate and both of us would agree, the states cannot set policy. We can enforce the law. And we can write provisions on how to enforce current immigration law. But I can't change policy. That is an exclusive area of Congress.
Rep. Sinema	02:44:15	But to that point Mr. Chair and Mr. Pearce, you're right. We can do nothing to adjust their status. But we could as a matter of state law choose to exclude them from the enforcement provisions from the rest of the community if we chose to.
Sen. Pearce	02:44:28	Mr. Chairman I don't believe – and Representative Sinema – Ms. Sinema – I don't believe so because again what you're doing is you're carving out exceptions. They need to take care of that with the feds. I simply want the laws enforced. I give the discretion to the officers to enforce that law. I'm not going to carve out exceptions that do damage to what we're trying to do. When you start doing that, now you run into – you talked about the equal protection clause, you absolutely have crossed that line when you do that, when you treat one illegal differently than another illegal. We do not have the right to do that.
Rep. Sinema	02:45:01	But to that point Mr. Chair, we also, we are providing a differential treatment for individuals who provide emergency transport or public safety or public health transport. They are not going to be subject to the provisions of the law.
Sen. Pearce	02:45:15	Mr. Chairman.

Chairman Gowan	02:45:16	Senator.
Sen. Pearce	02:45	And Representative Sinema, those are two separate issues. All we do is protect what is already done under EMTALA those for medical services medical purposes. That's already federal law. All we're doing is giving them exception. We're not giving a different or separation of people who break the law different treatment which is illegal like our Superior Court did here where they have a Spanish court and an English speaking court and the sentences are different. That is absolutely a violation. We treat them all the same. We give the officer the discretion. Just like the phrase in there that also covers food lines and homeless and all that. When the law is applied practically we also give – if you will we write an exception to protect those folks too when there's not a standard of income and other issues in there where you treat all who come the same way irrespective of status, we've tried to give those folks clearly some affirmative defense in administrating the law. Even though under federal law there is no distinction and to this law we try to at least provide some distinction and some defense for those who are acting as Good Samaritans when they don't require status whether it's economic or presence.
Rep. Sinema	02:46:31	Thank you Mr. Chair, Mr. Pearce. I just think that those two situations were treating differently. So I think that causes potentially a problem later. My last question I think is to ask about the training. And I know that we had heard earlier that – so if a police agency engages in a 287G agreement with the feds, then they do a 287G training. But we also have officers who are enforcing federal immigration laws without 287Gs and those officers are provided additional training from their unit, whether it's contract with the federal government or whether it's an in-house or whether they contract somewhere else. My question would be since now we will have more officers who will be enforcing immigration laws to the fullest extent of federal law, I'm presuming that we'll need more training. And so I'm just wondering who bears the burden of paying for that training? Is that something that's part of the local agencies' costs already or do we appropriate dollars for that?
Chairman Gowan	02:47:29	Senator?
Sen. Pearce	02:47:30	Mr. Chairman, two issues. One is, we provide hundreds of thousands of dollars, state dollars if you will, through criminal justice enhancement funds. They go to AZPost for purposes of training. Each agency in addition to that has training. If you're

		<p>involved in a 287G again, you don't need the 287G. The training is always nice but it – that's post-arrest stuff. So we've never had a 287G. I've enforced immigration law since 1969 as a Deputy Sheriff and nobody worried about me making a phone call to ICE. You talked about the detention. SCAP already covers that federal law for the purpose of detention for purposes of holding for a reasonable period of time for that final determination to be made. There is no additional ever. The costs like we talked about is non-enforcement of the law and billions of dollars to the taxpayer. It's a modest cost. It's training, AZPost provides training. That's their job to keep current on the laws. We pass laws down here every day, DUI and others. We don't make that an issue when we pass a tougher DUI law. We know that they're going to provide the training. We know these officers know how to act. We know they do this for a living every day. We trust them to do very sophisticated complicated cases every day but yet we prey on this as if somehow they don't know how to do this. They do. I've met with all the officers all over the state. I work closely with AP and PLEA and other law enforcement agencies. We've sat down with many a meeting to make sure this bill does what they want to do. They're capable. They're confident that this isn't an issue. I'm confident that this is not an issue. And we need to move forward on it.</p>
Rep. Sinema	02:49:10	I don't have any further questions Mr. Chairman.

EXHIBIT 35

**Arizona Peace Officer Standards & Training Board
Support Law Enforcement and Safe Neighborhoods Act Training Course**

NAME	TITLE
Angela Astore	Host, Arizona POST Digital Media Network
Beverly Ginn	Attorney, Edwards and Ginn, P.C.
Brian Livingston	Phoenix Police Officer, Retired, Executive Director, Arizona Police Association
Gerald Richard	Special Policy Advisor for Law Enforcement, Arizona Attorney General's Office
Janice K. Brewer	Governor of the State of Arizona
Hipolito Acosta	District Director (Ret) U.S. Citizenship and Immigration Services
Jesus Renteria	Correctional Office, Arizona Department of Corrections
Jimmy Chavez	President, Arizona Highway Patrol Association
Joseph Duarte	Chairman, Arizona Peace Officer Standards & Training Board
Levi Bolton, Jr.	32 Year Police Officer (Ret)/Consultant
Lyle Mann	Executive Director, Arizona Peace Officer Standards & Training Board
Patty Kirkpatrick	w/ Channel 3
Paul Babeu	Sheriff w/ Pinal County
Roberto Villasenor	Chief, Tucson Police Department
Russell Pearce	Bill Sponsor, AZ State Senate, District 18
	<i>[The Beginning]</i>
<i>[start VTS_01]</i>	<i>[Contains instructions on how to use the DVD.]</i>
<i>[start VTS_02]</i>	
	<p><i>[Screen shot picture reads the following:]</i></p> <ul style="list-style-type: none"> • CONTINUING TRAINING • E-LEARNING • LEADERSHIP TRAINING • INTEGRITY • COMPETENCE • PROFESSIONALISM • Support Law Enforcement and Safe Neighborhoods Act Training Course

<p>Lyle Mann</p>	<p>Hello. I'm Lyle Mann Executive Director for Arizona POST.</p> <p>The importance of the training you are about to receive concerning the new immigration laws cannot be overstated. The entire country is watching to see how Arizona and particular Arizona law enforcement responds. Regardless of your personal opinions about the immigration debate, your response as an individual officer is going to have significant impact on the direction of that debate.</p> <p style="padding-left: 40px;">Can local law enforcement be trusted with such powers? How will federal agencies react to the new relationships? What will other states do about this issue?</p> <p>This state and each of you have now been thrust onto the national stage and history will be made.</p>
<p>Joseph Duarte</p>	<p>My name is Joseph Duarte, and I chair the Arizona Peace Officer Standards & Training Board.</p> <p>This training does not attempt to address other immigration enforcement issues or to teach federal immigration law. We emphasize that this training is necessarily preliminary. New issues and interpretations of this law surfaced every day during the creation of this training. This training is not a comprehensive analysis of the law. That will require time and may require input from the courts or the legislature. Personally, my education and training, as an attorney, is centered around one non-negotiable principal, a single standard of justice applies equally to all people. The effects of this law will have a profound impact on individuals from diverse backgrounds. Consequently, one of the main issues will be whether the law places individuals of diverse backgrounds at greater risk of scrutiny from police. The challenge is now clear. It is to enforce the law without placing a stigma on the very people we are sworn to protect and serve intelligently and humanely. Your actions in implementing this law will impact the public's trust in Arizona law enforcement. We thank you for your integrity and professionalism. We at POST have faith and confidence in your ability to enforce the new immigration laws while respecting every person's civil rights.</p>
<p>Angela Astore</p>	<p>April 23, 2010 – the governor issued Executive Order 2010-09, directing the Arizona Peace Officer Standards & Training Board to develop a course of training for law enforcement officers in the state and all political subdivisions to implement Senate Bill 1070, Arizona's new immigration law.</p> <p>Hello everyone. I'm Angela Astore.</p> <p>This course is intended to provide clear guidance to you regarding the</p>

factors which might be used to meet your responsibilities under the new laws. These factors will closely resemble the factors described in the federal immigration enforcement training. In order to ensure consistency with federal immigration law, experts in this area have joined Arizona POST in participating in the training development and presentation you're watching. Included is an expert in immigration documents who provides training on valid immigration documents, which are required to be carried by documented aliens. You have also been provided a list of documents that suffice to create the presumption of lawful presence. A cadre of police legal advisors and POST subject matter experts provides the review of the new laws. As you watch this program, please keep in mind your oath of office, and the inherent duty of the badge you wear to always protect the civil rights of all persons, and to respect the privileges and immunities of United States citizens. Senate Bill 1070 and Sister House Bill 2162 become effective July 29, 2010. As an Arizona certified peace officer, you are required to enforce the provisions of the statute covered in this training program in a constitutionally appropriate manner. Over the following segments, we will present recommended best practices supporting procedural data and information and expert recommendations, all of which will assist you in consistently and appropriately enforcing and upholding the new immigration law.

Appearing in this training program are:

- Joseph Duarte, Chairman, Arizona POST Board
- Lyle Mann, Executive Director, Arizona POST
- Beverly Ginn, Attorney, Edwards and Ginn, P.C.
- Chief Roberto Villasenor, Tucson Police Department
- Sheriff Paul Babeu, Pinal County Sheriff's Office
- 287(g) Corrections Officer, Jesus Renteria of the Arizona Department of Corrections
- Hipolito Acosta, U.S. Citizenship and Immigration Services, Retired
- Levi Bolton, Phoenix Police Officer, Retired and Arizona Police Association
- Brian Livingston, Phoenix Police Officer, Retired, Executive Director, Arizona Police Association
- Jimmy Chavez, President, Arizona Highway Patrol

	<p>Association, and</p> <ul style="list-style-type: none"> • Gerald Richard, Special Assistant to the Arizona Attorney General. <p>On April 23, 2010, the new immigration bill was signed into law by Governor Brewer. The governor clearly stated her expectations about how this law will be upheld and enforced.</p>
Patty Kirkpatrick w/ Channel 3	<p>[Channel 3 – Breaking News]</p> <p>Good afternoon, I'm Patty Kirkpatrick. It is decision day for Senate Bill 1070. That is the controversial immigration bill passed by the state legislature on Monday.</p>
Janice K. Brewer	<p>[Live News Conference – Immigration Bill]</p> <p>Well, good afternoon everyone, and thank you all for being here today to join me as we take another step forward in protecting the State of Arizona. Today, with my unwavering signature on this legislation, Arizona strengthens its security within our borders. Let me be clear though. My signature today represents my steadfast support for enforcing the law both against illegal immigration and against racial, racial profiling. I will not tolerate racial discrimination or racial profiling in Arizona. The bill already requires that it, and I quote again, shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens, end of quote. Today, I am issuing an Executive Order directing the Arizona Peace Officer Standards & Training Board, AZ POST, to develop training to appropriately implement Senate Bill 1070. As committed as I am to protecting our state from crime associated with illegal immigration, I am equally committed to holding law enforcement accountable should this statute ever be misused to violate an individual's rights. Respect for the rule of law means respect for every law. So let us move forward, ever mindful of our rights, ever faithful to the law, and ever conscious of our bonds as Arizonans and the blessings we share together. Thank you. [Applause]</p>
Angela Astore	<p>Chief Roberto Villasenor is a native of Tucson. He joined the Tucson Police Department in 1980, and was promoted to Assistant Chief in 2000 and to Chief of Police in 2009.</p>
Roberto Villasenor	<p>Angela, I really appreciate the opportunity to talk about SB 1070. I think that I've been pretty vocal in my opinions about the law. Local law enforcement is tasked with public safety of everyone who lives in our</p>

	<p>community. It doesn't matter to us about immigration status or not. Because you're here illegally doesn't mean you give up the right, as a human being, to be safe in all your activities. I think that it affects our relationship with segments of our community that we rely upon to build upon the community policing efforts that we've all worked so hard on over the last couple decades, and which I believe are showing the fruits of that work through the dropping crime rate. When people aren't comfortable talking with us for any reason, then we lose valuable information. Anything that limits our relationship with our community, in my opinion, hurts our efforts as local law enforcement. All that being said, we are obligated to uphold the laws of the State of Arizona and we will do so.</p>
<p>Angela Astore</p>	<p>Beverly Ginn is a partner in the firm Edwards and Ginn, P.C. that exclusively contracts with police agencies. Retired after 26 years as a municipal attorney with extensive experience in employment law and as police attorney for the City of Tucson Police Department, Beverly provided a wide range of advice and assistance in the management of a major city law enforcement agency. Beverly will appear in several segments of this training program to clarify the new Arizona immigration laws in regards to how they directly affect you, the officer.</p> <p>Thank you for joining us Beverly.</p>
<p>Beverly Ginn</p>	<p>Hello, Angela. Hello, everyone.</p> <p>What we're going to talk about today, obviously, is the implementation of what has become known as Senate Bill 1070. There are actually two bills involved in the implementation of the new immigration laws in Arizona, 1070 and 2162. We'll talk about them just for a convenience purposes as Senate Bill 1070.</p> <p>Before I really start talking about the bill itself and its implications for law enforcement, I want to talk a little bit about the kind of spotlight that you are going to be placed under as law enforcement officers in the State of Arizona over the next few months. You all know because you've listened to the media. You've watched this develop. There's tremendous interest nationwide in the implementation of 1070, and the impact that it's going to have. You should know what kind of a spotlight you're going to operate under as law enforcement officers. I think the scrutiny that we'll be placed under in the next few months will be unlike anything you've ever seen. You should expect in the course of day-to-day business to be challenged in terms of what you do. You should expect people to be asking you questions. You should expect to be videotaped and audiotaped. You should expect your reports to be examined in a way they haven't been examined before. You should expect a focus on this issue</p>

	<p>that's continuing and ongoing. It's going to mean that you need to pay close attention to what you do in this area, as you do what you do in all areas of law enforcement. But you need to be particularly alert right now to the issues around immigration. You need to pay close attention to what we're going to be talking about for the next few minutes in terms of what the law actually requires you to do. And you need to be very careful to document what you do as a law enforcement officer in these situations, both when you are actively enforcing on immigration issue, and when you choose not to actively enforce an immigration issue. It's going to be important that you document what you do and why you do it so that the actions that you take under this law can be explained by you, by your superiors to the folks who are interested. This is an issue that has nationwide importance and it's an issue that's going to have very local importance for you and your communities.</p>
[start VTS_03]	<p>[Screen shot picture reads the following:]</p> <p>Racial Profiling</p>
Lyle Mann	<p>As you might imagine, I have spent a great deal of time reviewing the media coverage of this matter, and, clearly, the emotional hot button driving much of the rhetoric is racial profiling. It is also clear that the actions of Arizona officers will never come under this level of scrutiny again. Each and every one of you will now carry the reputation for the entire Arizona law enforcement community with you every day. Frankly, critics of this law believe that Arizona officers cannot be trusted with this kind of authority. They doubt your professionalism. They doubt your integrity, and they doubt your ethics. That doubt is unfair and unearned. Each of you took an oath, and each of you signed an ethical pledge, and each of you knows what is required of you.</p>
Angela Astore	<p>Brian Livingston is a retired Phoenix Police Officer and currently is the Executive Director for the Arizona Police Association. Brian, many people object to this law because they feel it could encourage or support racial profiling. As a tenured officer, what role do you feel race plays in policing?</p>
Brian Livingston	<p>Officers are trained from the time they enter the Arizona Police Academy, through in-service training provided by AZ POST, and from training provided by their local departments. Racial profiling does not constitute a lawful stop and is not an element of a lawful stop.</p>
	<p>[Screen shot picture reads the following:]</p> <p>. . . the consideration by law enforcement of an individual's race or</p>

	<p><i>ethnicity as part of the reason to contact, stop, question or arrest that individual, unless race or ethnicity is part of an identifying description of a specific suspect for a specific crime . . .</i></p>
<p>Gerald Richard</p>	<p>The term, racial profiling, refers to ...the consideration by a law enforcement officer of an individual's race or ethnicity as part of the reason to contact, stop, and question or arrest that individual, unless race or ethnicity is part of an identifying description of a specific suspect for a specific crime...</p> <p>My name is Gerald Richard, Special Policy Advisor for Law Enforcement for the Arizona Attorney General's Office. Formerly, I was with the Phoenix Police Department as a Director of the Community Services Division, the Administrative Support Division, and the Legal Support Division. There, I had the opportunity of teaching law enforcement about racial profiling out of the Arizona Law Enforcement Academy, as well as taking that message to the community so that both the community and law enforcement were on the same page, as far as how we deal with racial profiling here in Arizona. Having researched this subject in order to get a degree, having taught this subject, and having been a subject of racial profiling, I assure you, I know about racial profiling. Individual officers who profile suspects on the basis of race or ethnicity violate the civil rights of those individuals. This practice also leads to negative interaction with the police as well as with the courts. Racial profiling by law enforcement officers is unethical and it is unacceptable.</p> <p>Police agencies earn the respect of the community through impartial and consistent application of the laws. In May of 2001, Arizona law enforcement cooperatively published a model policy to address and prevent racial profiling.</p> <p>Important features of the model policy include the following:</p> <ul style="list-style-type: none"> • Traffic enforcement will be performed in an unbiased, courteous and professional manner. Officers will not stop an individual based on race, skin color and/or ethnicity. • Motorists and pedestrians will only be subject to stops or detention based on reasonable suspicion and/or probable cause that they have committed, are committing, or about to commit a violation of the law. • There is an ever present need to respect the right of all individuals to be free from unreasonable police action.

Angela Astore	The State of Arizona and its political subdivisions cannot tolerate racial profiling, if Arizona is to remain consistent and fair in its application of justice.
Levi Bolton, Jr.	I think it's first and foremost, I think officers you need to remember that racial profiling and biased policing was illegal before this law. Nothing will have changed, absolutely nothing. Race or ethnicity is not an issue of criminality.
Angela Astore	Paul Babeu was elected Pinal County Sheriff in Arizona in 2008, in the fastest growing county in America. Sheriff, if there was, only, one thing you would want officers to know about racial profiling, what would that be?
Paul Babeu	Well, Angela, racial profiling, and this is where all of us in law enforcement, and many of us from the time when we were little boys and little girls, we dreamed of the day, the honor, the great privilege to serve as a law enforcement officer in our community or somewhere in America. And here, when there's very few professions that we actually raise our right hands, swear a solemn oath, not only to our constitution, but to preserve, protect and to serve our community, but we learn about constitutional law. We learn about the Fourth Amendment and how it safeguards our citizens' right and protection against unlawful search and seizure. So we take this, this whole issue of racial profiling very seriously.
Angela Astore	Brian, what final thoughts do you want officers to know about the issue of racial profiling?
Brian Livingston <i>Executive Director,</i> <i>Arizona Police</i> <i>Association</i>	Race must not ever enter into an officer's decision to make a stop, detention, or arrest of an individual. I know from information I've received at the Arizona Police Association that there will be those that fully intend to test our officers and their professionalism. And to determine whether or not they will use race as a determining factor in stopping them for one of various different types of activities. I urge you not to use race, not to be bated by the questions that may be posed to you by individuals whose purpose is to find Arizona police officers discrimina – discriminatory in nature. I know you're not. You know you're not. Don't allow them to make you.
Gerald Richard	Commentators have stated that the new Arizona immigration law legalizes racial profiling. Nothing in the law allows racial profiling, and, in fact, the statute prohibits use of race, color, or national origin, except as

	permitted by the constitution. The constitution permits the consideration of race or color only as part of a specific suspect description. Officers can be assured that nothing about the new law makes racial profiling in any way acceptable.
Angela Astore	Chief, you've had experience with situations where an officer has been accused of racial profiling. What advise would you give officers to minimize the possibilities of such complaints?
Roberto Villasenor	Angela, there's been a lot of controversy about the potential of this law and its affect on racial profiling. You know, I do trust my officers. I do think that they will be professional out there, but I think that we have always trusted all of our officers, yet racial profiling has been an issue all along. Whether it's happening or not, I think officers need to be aware of the fact that the sensitivity towards it now is extremely heightened. And without a doubt, we are going to be accused of racial profiling no matter what we do on this. The best thing that we can do is to document thoroughly where we develop our reasonable suspicion, our probable cause, and to try and put all of those factors on someone who's not in a protected class. Someone who's just average Joe citizen. If those factors still hold up, then I think you're on firm ground. But you have to remember, even if you're on firm ground, there are people out there who are not going to believe that this is not racially motivated. And the reason they have those thoughts are because historically across the nation we have had a few bad apples that have spoiled it and have had their actions racially motivated. So you have to just be aware of this, not to become hypersensitive to this, and do your job in a way to make sure that you can defend yourself and the agency against those accusations, which are certain to come.
Angela Astore	How should officers approach the issue of racial profiling?
Jimmy Chavez	I think that if officers continue to do the job – to do the professional job that they're hired to do; I don't think racial profiling will be an issue. We're taught early on to take the totality of the circumstances during an investigation. And if officers continue to remember that and continue to hold to that, racial profiling should not be an issue.
Angela Astore	Hipolito, there may be a question in some officers' minds about their role versus that of a federal immigration officer. What do you think?
Hipolito Acosta	Angela, officers need to ask themselves, if under identical circumstances, would they come to the same reasonable suspicion conclusion if the people were white or African American? ICE as a CBP officers are taught to treat all people equally under the law. All the same standards

	apply to everyone.
Angela Astore	If there was only one thing you would want officers to know about racial profiling, what would that be?
Brian Livingston	This is something I sincerely believe, that if any officer goes into a situation with a previous mindset that one race or one ethnicity is not equal to another's, then they have no business being a law enforcement officer in this state.
Gerald Richard	The perception exists that officers will consider race or color despite the fact that it is neither a probative, nor a proper factor for reasonable suspicion of unlawful presence. Officers must guard against engaging in behavior that could encourage that perception. Every officer that makes consistent conscious decisions to act in a professional and courteous manner encourages public trust in the law enforcement profession.
Lyle Mann	Racial profiling is police misconduct. Usually police corruption conversations deal with using the official position for personal gain or to avoid some sanction. But in the case of noble cause corruption, it is a mindset that the ends somehow justify the means. In its most egregious form is the planting of evidence or the falsifying of a search warrant to get the bad guy. Racial profiling is a step on the slippery slope of career and public trust destruction. If it is done, the reports then must be falsified to cover it up. Internal Affairs statements might have to be fabricated. Testimony at trials perjured. Lost job. Lost career. Lost retirement. Lost way of life. Over what? Catching a person who didn't obey the law to get into this country. Integrity is best maintained by maintaining one's perspective.
[start VTS_04]	[Screen shot picture reads the following:] <i>New Statute A.R.S. § 11-1051</i>
Angela Astore	In this segment, we will go through the responsibilities officers have been given by the new law and the new criminal offenses established by the law. The law applies when an officer has made a lawful stop, detention or arrest for a violation of law. If during that detention, the officer finds that reasonable suspicion exists that the particular person detained is an alien and is unlawfully present, the officer has certain decisions to make.
Beverly Ginn	I just want to tell you how I'm going to go through Senate Bill 1070 and 2162 before we get started here. We have an entire series of new laws that we'll be dealing with under this legislation. We're going to go

	<p>through those new laws one at a time and talk about how each one impacts how you do your job. The core of the new legislation is the statute – brand new statute in Arizona, it is 11-1051. It is the statute that establishes the framework for immigration enforcement by local law enforcement. The statute applies in a fairly limited context. And I think one of the things we've really seen in the media coverage of this statute is a misunderstanding of the circumstances in which the statute applies. 11-1051 doesn't relate at all to consensual contacts. As you know, as law enforcement officers, as a law enforcement officer, you really can only have three kinds of contacts with individuals. You have consensual contact. You make a stop, or have an investigatory detention, or you make an arrest. Those are the only kinds of contacts that you have with individuals. 11-1051 doesn't apply to consensual contacts. It applies only in circumstances where you make a lawful stop, detention, or arrest of an individual. And in that circumstance, the law indicates that if you develop a reasonable suspicion to exist, to believe – excuse me. If you develop reasonable suspicion to believe that a person is both an alien and unlawfully present in the United States, you have a responsibility to make a reasonable attempt when practicable to determine the immigration status of the person who is stopped. Now there is an exception in the law for any circumstance in which you believe making that determination or inquiry would hinder or obstruct your investigation, in those situations, you don't need to make that inquiry. That's the essence of the statute.</p> <p>One other piece perhaps to a summary of 11-1051 before we go through it, sort of element by element, is that the statute authorizes any lawful resident of the State of Arizona to bring suit against any official or any agency that adopts or implements a policy that limits or restricts enforcement of federal immigration laws. There are penalties under the statute that apply to agencies that adopt those sorts of policies. So there are limitations here on the establishment of policies by agencies that interfere with the provisions of 11-1051.</p> <p>[Screen shot picture reads the following:]</p> <p><i>... authorizes any legal resident of this State to file suit to challenge any official or agency that adopts or implements a policy that limits or restricts enforcement of federal immigration laws. Penalties may amount to \$500 to \$5000 per day.</i></p>
<p>Lyle Mann</p>	<p>Individual officers and their agencies are between a legal rock and a hard place. On one side are people who are anxious to show that Arizona officers will racially profile Hispanic people under this new law. Officers should expect to have field tests set up by activists who want to catch you in conduct they believe will help their causes. On the other side, the law provides for suits by any legal residents of the state to challenge policies</p>

	<p>that restrict or limit enforcement of federal immigration laws to less than the full extent possible. There has never been a time or an opportunity to know just what those concepts mean. It is doubtful that your individual conduct could constitute a policy. But much is uncertain at this point. Diplomacy may be the greatest asset in these days to come.</p>
<p>Beverly Ginn</p>	<p>Let's talk about 11-1051, very specifically. We're literally going to look at the language of the statute. What you have on your handout in front of you shows the language of the statute in italics, so that you'll see. For example, paragraph (a), paragraph (b), as we go through talking about the various parts of 11-1051. The first provision in that statute, really core, key element here, is a requirement that no public agency or official in the State of Arizona limit or restrict the enforcement of federal immigration laws to, and I'll quote from the statute, less than the full extent permitted by federal law. So the focus here of 11-1051 is that officers participate to the full extent permitted by federal law.</p> <p>We start getting into the substance of 11-1051 with paragraph (b). For any lawful stop, detention or arrest in the enforcement of any other law or ordinance. So, understand that where 1051 begins for us is when we've stopped or detained someone because we have reasonable suspicion that that person has committed a crime, is committing a crime, or is preparing to commit a crime. It's in – that's the initiation of the application of 1051. The reasonable suspicion applies initially, obviously, to the commission of a crime. If in the course then of investigating that crime, you develop reasonable suspicion to believe, and here's the language of the statute, reasonable suspicion exists that the person is an alien and is unlawfully present in the United States. Understand now, we're talking about separate reasonable suspicion. We have reasonable suspicion that the crime has occurred, or is occurring, may occur, for which we've made the initial stop or the investigatory detention. Now, we're developing reasonable suspicion to believe that a person is in the United States unlawfully. You have to understand in these circumstances that what we're talking about is separate reasonable suspicion. When we talk about reasonable suspicion, as law enforcement officers, we clearly understand what we're talking about. We're talking about reasonable suspicion in the context of crime. If I have reasonable suspicion that you – to believe that you have committed assault, I know what the elements of the assault crime are. I know what elements I have to establish to develop, first, reasonable suspicion and then probable cause.</p> <p>We need to talk in a little bit of detail about what kinds of elements or facts or circumstances you need to develop to come to the conclusion that you have reasonable suspicion to believe that a person is in the country unlawfully. And the first thing I want to talk about, something that you will hear a lot about today, is the question that keeps coming up. The</p>

	<p>media has been talking about it quite a bit. The use of race, color, national origin in determining whether or not an individual is in the country unlawfully. The statute says</p> <p>[Screen shot picture reads the following:]</p> <p><i>... Officer shall not consider race or color in determining reasonable suspicion that a person is unlawfully present in the United States. If an officer does not have reasonable suspicion without reliance on race or color, then reasonable suspicion does not exist.</i></p> <p>that we are not to rely on race, color, or national origin except to the extent permitted by the United States Constitution or the Arizona Constitution and our advice to you is that you not rely on race or color at all in the determination of reasonable suspicion to believe that a person is in the country unlawfully. The reality is that the ethnic mix of our communities is such that race tells you nothing about whether or not a person is unlawfully in the United States. Ethnicity tells you nothing about whether or not a person is unlawfully in the United States. Color tells you nothing about whether a person is unlawfully in the United States.</p>
	<p>[Screen shot picture reads the following:]</p> <p><i>United States v. Montero-Camargo</i></p>
<p>[Female Reader]</p>	<p>Here is what the 9th Circuit Court of Appeals stated in <i>United States v. Montero-Comargo</i>, which held that having Hispanic appearance in a border state is not a relevant factor in reasonable suspicion.</p>
<p>[Male Reader]</p>	<p>The likelihood that in an area in which the majority—or even a substantial part—of the population is Hispanic, any given person of Hispanic ancestry is in fact an alien, let alone an illegal alien, is not high enough to make Hispanic appearance a relevant factor in the reasonable suspicion calculus. As we have previously held, factors that have such a low probative value that no reasonable officer would have relied on them to make an investigative stop must be disregarded as a matter of law.</p>
<p>Beverly Ginn</p>	<p>Here's our suggestion – our recommendation to you. When you make a stop, if you have someone in your custody, you have an investigative detention, perhaps you've gotten to the point of probable cause and you've made an arrest, the first thing that you do as a matter of routine is ask for identification. That's pretty much what we do in all circumstances. Not all circumstances is a person required to give you identification, but in most circumstances that's going to be your first question. If a person gives you identification that meets the presumptive identification under</p>

	<p>this statute. I'll talk about what presumptive ID is in just a minute. That's the end of your inquiry with regard to whether or not the person is unlawfully in the United States. If a person gives you an Arizona driver license, an Arizona non-operating identification card, tribal identification, or any other identification that comes from a governmental entity that requires proof of legal presence before they issue, in the United States, before they issue the ID, that person has given you presumptive identification and that resolves the question of whether or not the person is in the country unlawfully. If the person doesn't provide you with that identification, if they say they don't have any identification, if you have some reason to believe in the absence of that identification, talk about the kinds of things that might alert you to the question of whether the person is unlawfully present.</p>
<p>[Female Reader]</p>	<ul style="list-style-type: none"> • Lack of identification (if otherwise required by law) • Possession of foreign identification • Flight and/or preparation for flight • Engaging in evasive maneuvers, in vehicle, on foot, etc. • Voluntary statements by the person regarding his or her citizenship or unlawful presence • Note that if the person is in custody for purposes of <i>Miranda</i>, he or she may not be questioned about immigration status until after the reading and waiver of <i>Miranda</i> rights. • Foreign vehicle registration • Counter-surveillance or lookout activity • In company of other unlawfully present aliens • Location, including for example: A place where unlawfully present aliens are known to congregate looking for work. A location known for human smuggling or known smuggling routes • Traveling in tandem • Vehicle is overcrowded or rides heavily • Passengers in vehicle attempt to hide or avoid detection

	<ul style="list-style-type: none"> • Prior information about the person • Inability to provide his or her residential address • Claim of not knowing others in same vehicle or at same location • Providing inconsistent or illogical information • Dress • Demeanor—for example, unusual or unexplained nervousness, erratic behavior, refusal to make eye contact • Significant difficulty communicating in English [<i>not read, but listed on screen</i>]
<p>Beverly Ginn</p>	<p>If the person has real difficulty communicating with you in English. If the person is particularly engaged in behaviors that are simply inconsistent with what's going on. You ask them where they live, they don't know. You ask them who else is in the car with them; they claim not to know any of the people in the car. Those are the kinds of facts and circumstances that we're talking about that may allow – amount to reasonable suspicion to believe that a person is unlawfully in the United States.</p> <p>As in the development of reasonable suspicion for criminal activity, you certainly don't have to have all of those factors, and you may have lots of other factors that are not on that list or on anybody else's list. Remember, the determination of reasonable suspicion is yours to make, but you need to be able to articulate. You need to be able to state the specific facts and circumstances that lead you to the conclusion that the person – this person in front of you, is or may be, unlawfully present in the United States.</p> <p>Critical, as I said at the outset of, of my comments today, critical to that determination is your reporting on that determination. Not only do you need to make the determination, you need to make sure that when you write up your report that you include all of those facts and circumstances in the determination. Once you've made that assessment, 1051 requires you then, if you believe a person is – if you have reasonable suspicion to believe a person is here unlawfully, then to contact ICE, Border Patrol or a 287(g) certified officer in order to find out whether or not that individual is in the United States unlawfully.</p>

Jimmy Chavez	What this law simply does is allows us that if we develop reasonable suspicion that an individual is not here legally, then we can follow up with the proper federal authorities or those that are 287(g) certified to help us make that determination and then take the appropriate action.
Angela Astore	What role does race play in building reasonable suspicion or probable cause?
Levi Bolton, Jr.	The \$500 question is how does an officer develop the reasonable suspicion and race is not a component. Often, the one thing that is left out of many the discussion, and that's an admission. Some folks just simply tell you. Well, the reason I don't have that is because I'm unlawfully in the United States.
Beverly Ginn	<p>One of the things that may be repetitious for officers, but I think it's worth saying that we have to remember that in the context of really all of the work that we do but certainly in applying these new laws, reasonable suspicion exists when an officer is aware of specific articulable facts, which when considered with the objective and reasonable inferences, form a basis for particularized, excuse me, suspicion. The requirement of particularized suspicion has, as you know, two elements. The first one is that it must be based upon the totality of the circumstances so it's everything that's in front of you. And the second one is that the assessment has to absolutely develop and arouse in you a reasonable suspicion that that particular person is in the – unlawfully in the United States. That's what we're looking for when we look for reasonable suspicion in the context of unlawful presence.</p> <p>I think I've said this before and I will certainly say it again before I'm done, but it's a good thing to say over, and over, and over again. The law is very clear. Officers shall not consider race or color in determining reasonable suspicion that a person is unlawfully present in the United States. If you don't have reasonable suspicion without reliance on race or color, then you don't have reasonable suspicion that a person is unlawfully present.</p>
[Female Reader]	...a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation...
Beverly Ginn	Looking at the exact language of the statute, again, there are two words here that I think are very important for officers to recognize and those two words are, when practicable. The statute requires you to make the inquiry about a person's unlawful presence, if you have reasonable suspicion to do so, when it is practicable to make that inquiry. It's important for you to

	<p>know that there may very well be operational reasons when you as an officer will decide that it's not practicable to take the time to inquire about a person's immigration status. You may want to consider, for example, how many other calls are waiting for you to respond to; the availability of personnel who are at the crime scene that you're involved in right then; the location where you are; whether or not there's backup available; the criticality of the incident, as compared to other incidents that may be waiting for your attention or your response. One thing I don't want to leave out of that list is the direction of your supervisor. Your supervisor may very well say to you, finish this call; I need you on another one. I think the words, <i>when practicable</i>, include considerations of that sort and there may be others as well. That you will decide in a particular situation that even though you have some concern about whether a person is unlawfully present, you don't have the time, the resources, the ability for whatever reason at that point in time to pursue that inquiry. The statute allows you to make that decision.</p>
<p>Angela Astore</p>	<p>Officers are going to need to make a decision about the use of their time and the application of this law. What factors should officers consider in the decision to pursue an immigration investigation compared to other activities?</p>
<p>Brian Livingston</p>	<p>Angela, officers in Arizona have to use the discretion and be able to evaluate the time necessary to complete a call. They also have to be aware of their time obligations related to other offenses that may be occurring while they are participating in this current investigation. If a call of higher priority, or if an emergency situation exists that needs their immediate presence, then they must be able to disengage and go to that higher priority.</p>
<p>Roberto Villasenor</p>	<p>What I would want my officers to think about is the call load is what it exists; the level of violation that they're dealing with; the number of calls holding; the time of day; the day of the week; the variety of issues that affect them. And, you know, I do have confidence that they will make the proper decision that in their judgment, is this really the most important thing for them to do.</p>
<p>Beverly Ginn</p>	<p>In addition to making a determination about whether or not it's practicable to investigate immigration status in the middle of a criminal investigation on another issue. Officers also have the responsibility under the law to consider whether or not inquiring into immigration status may hinder or otherwise obstruct a criminal investigation. The officers may wish to consider before asking those questions whether to investigate immigration status in light of the need for suspect, victim, or witness cooperation in a particular investigation. For example, you may have an investigation</p>

	<p>where you're looking at money laundering; you're looking at drug trafficking; you're looking at human smuggling; human trafficking. Situations where if you start getting into the immigration status of the suspects, the victims, the witnesses, you may be interfering and effectively blocking your ability to make that case and to go forward with that prosecution. You have to make a determination in those kinds of situations whether you want to inquire during the investigative stage of your investigation about immigration issues.</p> <p>I need to make it very clear that there is nothing in 1051 that suggests that it's appropriate at any point in time to ask witnesses or victims in criminal investigations about their immigration status. So 1051 is – deals solely with suspects in situations of stop, detention, and arrest. It does not deal with victims or witnesses in those circumstances.</p> <p>When you, as a law enforcement officer, have determined that you have reasonable suspicion to believe that a person is unlawfully present in the United States or when you've made an arrest, and therefore, you're going to contact ICE to determine whether a person is unlawfully present in the United States. Your choice, you can call ICE, you can Border Patrol, or you can call a 287(g) certified officer, if there's one in your location or within your agency or an agency that you can contact locally. You should be able to get from ICE, Border Patrol, or a 287(g) certified officer whether or not that individual is unlawfully present in the United States. If you're told the person is unlawfully present in the United States, you probably want to ask a second question to avoid having to call back later. And that is, whether there's any record that the person has ever completed an alien registration document, whether the person has any other authorization from the federal government to remain in the United States. The reason that you ask that question, get the answer to that question, relates to another new statute, which we'll be talking about in a minute, 13-1509. Once you have the answer from ICE, then you'll make a determination, we'll talk about it in a minute, whether if that person is unlawfully present, whether that person is going to be transported to ICE, whether ICE is going to be able to respond to pick them up. One of the questions you do want to ask, if you're talking to ICE or Border Patrol, if they tell you the person is unlawfully present, if is – if they're willing to come and pick them up at the location where you are with that individual.</p>
<p>[Female Reader]</p>	<p>Any person who is arrested shall have the person's immigration status determined before the person is released. The person's immigration status shall be verified with the federal government pursuant to 8 U.S.C. 1373(c).</p>
<p>Lyle Mann</p>	<p>There are multiple ways to read this requirement. Some read it to apply only to persons arrested where reasonable suspicion exists that the person</p>

	<p>is an alien and unlawfully present. Some read it to apply to every person arrested, and there may be other readings, as well. Resolution of the meaning impacts directly on the issuance of citations in lieu of detention. Therefore, it is necessarily an agency decision.</p> <p>Senator Pearce has expressed his desire that the legislation not be read to place unreasonable obstacles in the path of officers doing their job. Officers should follow the direction given by the agency in the implementation of this provision. The contact for verification when necessary is Homeland Security's Law Enforcement Support Center at 802-872-6020.</p>
Beverly Ginn	Let's talk a little about the presumptive identification provision, which is in 1051.
[Female Reader]	<p>A person is presumed to not be an alien who is unlawfully present if the person provides:</p> <ol style="list-style-type: none"> 1. A valid Arizona driver's license 2. A valid Arizona non-operating identification license 3. A valid tribal enrollment card or other form of tribal identification 4. If the entity requires proof of legal presence in the United States before issuance, any valid United States federal, state or local government issued identification.
Beverly Ginn	You have a stop, reasonable suspicion of criminal activity and investigative detention, reasonable suspicion of criminal activity. You develop reasonable suspicion that a person is unlawfully present. In that process, the person hands you their Arizona driver's license. Under the statute, that person has given you presumptive identification and the inquiry into unlawful presence is over.
Lyle Mann	If an officer is presented identification, which appears to be fraudulent, then the appropriate investigation should be conducted. But that is a separate investigation and not addressed by this law.
Beverly Ginn	In addition, one of the documents contained on this DVD is that list from Arizona POST of identification that is current as of the 15 th of June.
Lyle Mann	One of the forms of identification, which provides presumption of lawful presence, is quote, a valid tribal enrollment card or other form of tribal identification, unquote. There is no standardization of or comprehensive

	<p>listing for these tribal identification documents. They may take many forms. As an example, on this DVD is a letter from the Navajo nation describing appropriate forms for their tribal identification. Officers should be aware that there are tribes whose members are Mexican nationals. For example, the Tohono O'odham nation whose boundaries extend into Mexico. Officers who work in proximity to native American lands should contact their tribal liaison to obtain tribe-specific information. Tribal governments are in the process of determining how they will address SB 1070's provisions. One of the documents on this DVD is a special handout discussing these and other tribal issues.</p>
Angela Astore	<p>What other issues are involved?</p>
Lyle Mann	<p>Just because an identification document is not on the list of presumptive identification, does not mean it is invalid nor does that fact alone suggest unlawful presence.</p>
[Female Reader]	<p>Notwithstanding any other law, a law enforcement agency may securely transport an alien who the agency has received verification is unlawfully present to a federal facility in this state.</p>
Beverly Ginn	<p>Unless you have a specific policy in your agency that tells you to handle transportation differently. The statute does permit you to transport individuals who are unlawfully present in the United States to ICE. Now, you need to be aware of a couple of things in the area of transportation. The first is, clearly, you have the lawful authority both under the statute and under the law as interpreted by the 9th Circuit Court of Appeals to transport an individual who has committed a federal criminal violation. When we're talking about individuals who have committed federal civil violations, the answer at least from the 9th Circuit Court of Appeals about your authority to transport is a little bit different. The 9th Circuit Court of Appeals has told us that we do not as local law enforcement have the authority to transport individuals who are facing only federal civil violations. Practically speaking, the recommendation is, unless you have a policy that says book everybody in this situation, and some agencies may well have that policy. If you're talking to ICE, Border Patrol, you determine that a person is unlawfully present, the first thing you want to do is request ICE or Border Patrol to come and pick the individual up. That solves the transportation problem. If ICE or Border Patrol is not able to respond for whatever reason to pick the individual up, then you'll need to consult local policy about when you transport and where you transport the individual to. Some agencies are going to want you to take that individual to the local jail. Some agencies are going to want you to transport in all circumstances. Some agencies are going to want you to</p>

	transport only in limited situations.
Lyle Mann	There is a provision under 11-1051(d) stating a law enforcement agency shall obtain judicial authorization before securely transporting an alien out of state. The courts have this provision under review and no process has been announced.
[start VTS_05]	[Screen shot picture reads the following:] Federal Training New Statutes Documents
Hipolito Acosta	Recently, the State of Arizona passed Senate Bill 1070. A section of the new Arizona law directs officers to take some action if practicable where reasonable suspicion exists that the person is an alien or is not lawfully present in the United States. Arizona POST has asked me to share with you how federal agencies such as ICE and CBP approach this issue.
Angela Astore	Joining us to articulate what counts as reasonable suspicion in federal practice is Mr. Hipolito Acosta, an expert on immigration laws, regulations, policy and procedures, who has conducted extensive enforcement operations. The most decorate officer in the history of the service. He was the district director of INS at the U.S. Embassy in Mexico City as well as Houston, Texas. Hipolito, please provide for us a perspective on how federal agencies such as ICE and CBP approach this issue of reasonable suspicion.
Hipolito Acosta	ICE and CBP officers operate under the authority of 8 U.S.C. 1357, which allows them to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States. The officer must be able to articulate why they have reasonable suspicion that the person may be an alien. Some factors that can contribute to reasonable suspicion and that when combined the totality of the circumstances that result may create reasonable suspicion that an individual encountered during a lawful stop, arrest or detention might be an alien illegally in the United States. Factors ICE and CBP officers may consider which contribute to the reasonable suspicion determination are some of the following: <ul style="list-style-type: none"> • The individual or individuals seem out of place at the location encountered. • If asked, several may lack a reasonable explanation as to their presence at the location or appear to have no definite sense of

	<p>purpose or direction, in other words, look lost or uncomfortable in the surroundings.</p> <ul style="list-style-type: none"> • Dress. Depending on where the lawful encounter occurs, the manner of dress can be a factor to consider. When encountered during a lawful stop, are the individuals dressed consistent with weather conditions. If anyone appears to be wearing multiple layers of clothing or long sleeve shirts in a hot climate, this might be an indication of their recent arrival in the area. Small bags might be visible in the vehicle or residence not common to the area and are often used to carry extra clothing or basic necessities. • Demeanor. Their suspicions might be heightened if they observe any or all of those present making efforts to avoid eye contact or communication, segregate themselves, blend in or attempt to leave the area. • An officer will consider factors that an individual encountered is not familiar with the area, cannot provide a current address or time that they have resided at that location. • If the person claims to be a foreigner but legally in the United States, they should have some knowledge how, where and when they obtained their Visas and entered the United States. • Training for ICE and CBP officers mandates that race, color or ethnicity is not a factor in reasonable suspicion of illegal presence in the United States. Reasonable suspicion that a person is an illegal alien must be based on facts that the officer must be able to articulate if challenged in judicial proceedings and cannot be based on mere suspicions. <p>In closing, we have briefly discussed some of the factors that ICE and CBP officers consider during a lawful stop, arrest or detention of an individual or group. These factors are not all inclusive nor would any single one be sufficient to reach the level of reasonable suspicion. Careful consideration by the officers of these factors when combined and the totality of the circumstances are used in reaching the level of reasonable suspicion that the individuals might be in the country without proper authorization. Once this is established, the ICE or CBP officer may pursue appropriate action as established by federal guidelines.</p>
Angela Astore	Hipolito, what about the ability to clearly communicate in English?

<p>Hipolito Acosta</p>	<p>A lack of English speaking ability is not a singular factor that should be used to determine illegal presence in the United States. But when combined with some of the other factors described earlier in their totality, it can be an articulable fact for the officer to consider in trying to make a determination, if reasonable suspicion exists to determine that the individual might be in the country without the proper authorization.</p>
<p>[Female Reader]</p>	<p>A.R.S. § 13-1509 is the willful failure to complete or carry an alien registration document. In addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 U.S.C. §1304(e) or §1306(a). This statute does not apply to a person who maintains authorization from the federal government to remain in the United States.</p>
<p>Beverly Ginn</p>	<p>We need to spend a few minutes talking about 13-1509. The title of this statute is somewhat misleading. An officer can't make an arrest – you can't arrest an alien who is authorized to be in the United States simply because they don't have immigration documents in their possession. If you take a look at paragraph (f),</p> <p>[Screen shot picture reads the following:]</p> <p><i>F) This section does not apply to a person who maintains authorization from the federal government to remain in the United States.</i></p> <p>you'll see if a person maintains authorization to be in the United States, that's an exemption to the statute.</p> <p>When ICE, Customs or Border Patrol or a 287(g) certified officer advises you that an alien is unlawfully in the United States, that's the time for you to ask ICE whether there's any record that the person has ever completed an alien registration document and whether the person has any other authorization from the federal government to remain in the United States. At that point, you can then ask the person for their alien registration documents, if ICE tells you that they should have some or that they have registered.</p> <p>A person may be arrested under the statute, under 13-1509. If the officer has probable cause – you have probable cause to believe that the person is unlawfully in the United States and one or the other of these two conditions exist: either one, the person is a registered alien, 18 years or older, who is not carrying his or her registration card; or the person is an alien age 14 or older, who has been in the United States more than 30 days and has not registered.</p>

Angela Astore	To present the forms of identification provided to aliens under the federal law, and we'll describe how federal officers are instructed to deal with questions of citizenship.
[Female Reader]	To explain further, we now turn to cross-certified 287(g) Corrections Officer, Jesus Renteria of the Arizona Department of Corrections. Officer Renteria is here today to present the forms of identification provided to aliens under the federal law.
Angela Astore	Who is required to carry proof of citizenship?
Jesus Renteria	Angela, United States citizens and native Americans are not required to carry proof of U.S. citizenship, when in the U.S. On the other hand, all aliens are required to carry their proof of alien registration with them at all times. Any alien in the U.S. who has not obtained proper documentation is subject to detention. Arizona officers should know what constitutes an immigration document.
[Male Reader]	<p>As will be discussed and demonstrated in the following screens. Homeland Security and the U.S. Department of State issue several types of documents and Visas to aliens coming to the U.S. These documents usually indicate that the person named on the document has permission to be in the U.S. It is not the purpose of this course to train Arizona officers in determining whether alien registration documents are valid or not. If an officer is presented with an alien registration document, and it appears to be questionable, it is suggested that the officer verify the information on the documentation with Homeland Securities Law Enforcement Support Center, ICE or CBP.</p> <p>An immigrant is a foreign national who has been granted lawful permanent residence status in the U.S. Immigrants are issued resident alien cards, as shown here. They are also known as alien registration cards or green cards. Green cards have not been green for decades until recently. Most of the world recognized the term, green card, as synonymous with being allowed to permanently remain and work in the U.S. Immigrants are required to carry their cards with them at all times as proof of alien registration. However, failure to be in possession does not render them unlawfully present in the United States. Several different types of these cards have been issued over the last 70 yeas. A few years ago the U.S. government began putting expiration dates on all resident alien cards. But some aliens still have the old cards in their possession. If an old card is encountered, Arizona officers should as a courtesy advise the alien to obtain a new updated card. Alien registration cards have an expiration date. But this only means the card expires. An alien status as a lawful permanent resident in the U.S. does not expire when the card</p>

	<p>expires.</p> <p>For verification purposes the most important information on the resident alien card is:</p> <ol style="list-style-type: none"> 1. The complete name as it is written on the card; 2. The date of birth; 3. The date of expiration; 4. The alien registration number; and 5. The physical description of the person in the photograph. <p>Using this data Homeland Security can make a rapid determination regarding the validity of the document. A person who has been admitted to the U.S., as a refugee, or a person who has been granted asylum in the U.S., will have either a form letter from Homeland Security or a passport with an I-94, indicating his or her status. In all cases these documents will have an alien registration number that can be verified through the law enforcement support center.</p>
<p>Lyle Mann</p>	<p>When congress passed the Violence Against Women Act of 2000, it created two new categories of non-immigrant Visas: the T Visa and the U Visa. These tools are available to officers for situations, when the continued presence of an alien is critical for an investigation or prosecution. Both types of Visas can be obtained by contacting ICE or Customs Border Protection, CBP. In coordination with your prosecutor's office, the process requires that you certify that an investigation or prosecution would be harmed without the assistance of the alien or in the case of a child the alien's parent.</p> <p>T Visas are available to individuals who are victims of, a quote, severe form of trafficking and persons, unquote. These include sexual traffic of minors or forced labor.</p> <p>The U Visa is available to aliens who are either victim of or who possess information concerning a crime involving personal violence, for example, sexual assault, rape, domestic violence, homicide, sexual exploitation and many others.</p>
<p>[Male Reader]</p>	<p>In simple terms, a passport is an international travel document issued by a foreign government that is recognized by the United Nations. A passport advises immigration authorities that the bearer is not stateless and can be returned to the country that issued the bearer the passport. In recent years many countries have attempted to make their passports less susceptible to</p>

	<p>alteration and counterfeiting. Some have now placed RFID chips in the back cover for even more security. However, despite these advances passports are still frequently stolen and altered. Especially for purposes of illegal immigration, criminal activity and terrorism.</p> <p>Passports contain four very important pieces of information. The first is the face page. It contains significant biographic information and a photograph of the bearer. Individuals coming to the U.S. as non-immigrants are also required to have a non-immigrant Visa in their passport. These Visas are issued to qualified foreign nationals at our Embassy's and Consulates abroad. As will be explained shortly in our discussion of non-immigrants these Visas are issued for very specific reasons and for a limited period of time. If Arizona officers request immigration documents from a non-immigrant who is from a country not contiguous to the U.S., such as Canada or Mexico, the individual will more than likely present their passport to the officer. Non-immigrants are foreign nationals who come to the U.S. for a temporary stay. Some examples of non-immigrants are diplomats, visitors, crew members, professional athletes, investors and foreign students. When a non-immigrant presents their passport to a U.S. Customs Border Protection, CBP officer, they must also present a completed arrival departure record form, I-94. All I-94s contain the aliens name, date of birth, country of citizenship, CBP admission stamp and an admission number that is permanently written on the I-94. Understanding all of the coded information on an I-94 admission stamp is not necessary. By using the I-94 number officers can verify the document by contacting Homeland Securities Law Enforcement Support Center.</p> <p>Due to our close relationship with Mexico and Canada border crossing cards have been in use for many years. These cards are issued to Mexican and Canadian nationals who qualify to receive them and have limitations on their use. In some instances these cards can only be used for travel within a certain distance of the border area. They do not authorize employment and they are not to be used for extended stays in the U.S. While border crossing cards are acceptable evidence of legal status in the U.S. specific questions regarding their use and limitations should be directed to Homeland Securities Law Enforcement Support Center or the local office of Customs Border Protection.</p>
Jesus Renteria	Illegal aliens fall into two broad categories.
[Male Reader]	The first category, are aliens who enter the U.S. without being inspected by a U.S. Customs and Border Protection Inspector, and the second are aliens who legally enter the U.S. but failed to comply with the terms of their entry, such as aliens who illegally obtain employment, or those who

	remain beyond their permitted time.
[Male no picture]	An officer may encounter some other documentation such as a form letter regarding individuals granted temporary protected status. In any case, the letter will have an alien registration number that can be verified through the law enforcement support center. If the suspect does not make a claim to U.S. citizenship, the alien must then show proof of alien registration.
Lyle Mann	United States citizens have absolutely no obligation to carry identification unless they're engaged in activity that imposes such an obligation, such as driving a motor vehicle. Officers have no authority to ask anyone to prove their citizenship even where identification is required no officer should jump from a failure or refusal to present to identification to a reasonable suspicion that the person is unlawfully present.
Angela Astore	All officers should have received a copy of the Immigration and Customs Enforcement Brochure M396. It contains examples and information to augment this training.
Lyle Mann	Officers will not be stopping people in the streets asking for their papers. That is an ugly media image that is unwarranted. No officer should ever say, show me your papers. That's just rude.
	[Screen shot picture reads the following:] A.R.S. §13-2319 Smuggling
Beverly Ginn	The revision in this statute is intended to make it clear that in the enforcement of the smuggling law a peace officer may lawfully stop any person who's operating a motor vehicle, if the officer has reasonable suspicion to believe the person is in violation of any civil traffic law, frankly, that doesn't change current Arizona law.
Angela Astore	What do officers need to know about the changes to 23-212 and 23-212.01, dealing with knowingly hiring unauthorized aliens?
Beverly Ginn	The two changes that were made to the employment statutes. These are statutes that deal with employing unauthorized aliens either intentionally or knowingly. The change that was made to – was to insert an affirmative defense allowing the employer in appropriate circumstances to claim that they were entrapped. [Screen shot picture reads the following:]

A.R.S. § 13 – 2928 Unlawful stopping to hire and pick up passengers for work; unlawful application, solicitation or employment

I want to talk about two statutes now, 13-2928 and 13-2929 that are simply new criminal statutes. You should approach them as a law enforcement officer, as you approach any new criminal statute, you need to become familiar with the elements of each statute before you make an arrest under either of the statutes. You need to make sure that you have each element – proof of each element of the violation. And you have to make certain that your report, documentation includes in it the facts that support each element of the offense.

Look first at 2928 unlawful stopping to hire and pick up passengers for work. There actually three separate offenses articulated in this statute. The first one, subsection (a), paragraph (a) applies to an occupant of motor vehicle and these are the elements. A driver who stops on a street roadway or highway – that’s the first element. Second, in an attempt to hire or to hire and pick up a passenger. Third element, for work at a different location. Fourth element, if the motor vehicle blocks or impedes the normal movement of traffic. Officers should note that this subsection applies to all persons without regard to their immigration status.

The second crime, new offense if you will, that's articulated in the statute is in paragraph (b). This applies to the worker who is getting hired on the street. And the elements are first that you enter a motor vehicle – that person enters a motor vehicle. Second, that motor vehicle is stopped on a street, roadway or highway. Third, the stop is in order to be hired by an occupant of the vehicle. Fourth, to be transported to work at a different location. Fifth, if the motor vehicle blocks or impedes the normal movement of traffic. Once again you'll note that this subsection applies to all persons without regard the immigration status.

The third new crime that's set forth in 13-2928 is – applies to a worker who is applying, soliciting or working. So applying for employment, soliciting employment or actually working. The elements are: the person is unlawfully present in the United States. Second, is an unauthorized alien, unauthorized alien is defined in the statute, as not having the legal right or authorization under federal law to work. Third, the person knowingly applies for work or solicits work in a public place, or performs work as an employee or independent contractor in this state. Officers once again cannot consider race, color or national origin in the enforcement of this statute, except as we previously discussed can be used. Immigration status under the statute is to be determined by ICE, Border Patrol or a 287(g) certified officer.

All of these violations are Class 1 misdemeanors. And you will find in the statute definitions both of the terms solicit and of the term

unauthorized alien.

[Screen shot picture reads the following:]

A.R.S. §13-2929 Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens; vehicle impoundment

Similarly, 13-2929 includes three separate crimes within the statute itself. The first of those – well, let me – before I go to the first section let me just tell you that all three sections of the statute have a preliminary requirement. The person who is the suspect in the case, who you are focused on, has to be in violation of a criminal law at the time that they commit one of these three additional offenses. So, if a person is in violation of a criminal law and applying now to a person who is driving with knowledge that they have people in their car who are unlawfully present in the United States, that person transports, moves, or attempts to transport or move an alien in furtherance of the illegal presence of the alien, in a means of transportation, if the person knows or recklessly disregards that the alien has come to, entered, or remained in the United States in violation of the law.

The second violation under the statute, again now, has to be committed by a person who is already committed another criminal violation. It applies to people who are concealing. Here are the elements: conceals, harbors, or shields, or attempts to conceal, harbor or shield an alien from detection in any place. Once again, if the person knows or recklessly disregards that the alien has come to, entered, or remained in the United States in violation of the law.

The third portion of the statute again, committed by someone who is already engaged in another criminal activity applies to inviting people who you know not to be lawfully present in the United States to come here. So the elements are encouraging or inducing an alien to come to or reside in this state. And once again, if the person knows or recklessly disregards that such coming to, entering, or residing in this state is/or will be in violation of the law.

A couple of other parts of the statute that are important, paragraph (b) in this statute indicates that a vehicle that's used in the commission of any violation under this statute is subject to impoundment under 28-3511. I think you're all familiar with the impoundment statute.

Once again, officers cannot use race, color or national origin in the enforcement of this section, except as we previously discussed can be used. Immigration status, once again, is to be determined by ICE, Border Patrol or a 287(g) certified officer. There are some exceptions to this statute: CPS workers, Child Protective Services; persons who are acting

	<p>as first responders; ambulance attendants; emergency medical technicians.</p> <p>Again, this is a Class 1 misdemeanor. If there are more than 10 aliens involved in the violation, it is a Class 6 felony.</p>
Angela Astore	Beverly what is the impact of the additional language in 13-3883?
Beverly Ginn	<p>The revision that was made to 13-3883 doesn't, I think, change the law in Arizona, at all. But what – the revision that's made here is adding a Section A, paragraph (5). A peace officer may arrest with probable cause if – and here's the new language, the person to be arrested has committed any public offense that makes the person removable from the United States.</p> <p>There have been some questions about what public offenses make a person removable. The definition in federal law, frankly, is pretty broad a sort of category of offenses. So I can't really give you a list of offenses that make a person removable. For our purposes I don't think that it matters because the, the authority that's added here or, purportedly added to 3883 – it really doesn't change Arizona law. You currently may make warranty – warrant less arrest for all public offenses, as they are defined in Title 13. So this really doesn't add anything to your authority.</p>
[Female Reader]	This section shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.
[start VTS_06]	<p>[Screen shot picture reads the following:]</p> <p>Conclusion</p>
Russell Pearce	<p>The civil rights provision in this bill – it cannot be based solely on ethnicity, or race, or language – it can't be. They have it to get. If you understand it – and I want to be cautious here. But I – that is a little demeaning, in my opinion, to the men and women in uniform because they do this every day. They do this every day. They don't immediately come up and ask you for alien ID. You know they simply – they are probably going to make sure you're okay and you're safe, if you're out there driving by yourself. As you indicated, I think bad things can happen: muggings and assaults. So I find that a little s___[inaudible and clearing throat] because it just isn't the way it works. It's just not the way it works. They have in this law a lawful contact, reason to believe, and then before they can arrest probable cause. The same as any other law or violation. This is the first nation – we have folks from every country of the world legally here. Nobody's out to pick on anybody. This is about</p>

	<p>reasonable suspicion, probable cause. Let them do their job. This is a common-sense bill. We tried to put common-sense discretion back into the hands of our officers.</p> <p>I want to address one thing on the victim/witness thing. You know I find it interesting we keep doing it. The reason the practicable – the practicable language is put in there for the issue that's brought up here. What if I have a shooting in the middle of Phoenix with the MS13 gang, all them illegal from El Salvador, one is a victim, one is a witness, one is a suspect, or multiple. I'm not to ask questions? I mean I find it amazing. That's why common-sense has to be here. You can't, specifically, exclude anybody in this bill because that has to be a discretion – a determination made on practicable by the officer at the scene at the time. I trust my officers to make those decisions and they know when it is practicable – they know when it's reasonable. It's about time you had a little respect for the law, Mr. President, and put into place simply the ability of law enforcement to do their job. In this bill we've given them discretion. We've made it clear that they have discretion, when practicable. We put in there that if it impedes an investigation, that they, that they have that discretion. I worked with law enforcement very closely, very closely on this.</p>
<p>Angela Astore</p>	<p>Are there any other points you think should be made in this training?</p>
<p>Roberto Villasenor</p>	<p>You know, I'm close to 30 years in law enforcement, I don't believe I've ever seen a topic or a subject cause such controversy, not only in the law enforcement community, but nationwide. It has caused divisiveness within the law enforcement community, within the legislative community. And which ever way you fall on this topic I think that you are probably – you probably have some strong feelings about this. What I will stress with my agency and just give it to you as a word of advice. When all the dust settles, we have to remember that we are all law enforcement. We are sworn to uphold the laws – we will do so in a professional manner. And it's our integrity and our professionalism that will help us to get through this issue. Because there's a lot of people saying a lot of things that don't really understand what our jobs are about. And we have to remember to stand strong, and stand together so that we can get through this time.</p>
<p>Hipolito Acosta</p>	<p>As a federal law enforcement officer for almost 30 years, I can understand the concerns and sensitivities associated with this law. All of us have a sworn responsibility to ensure proper enforcement of the law respecting everyone's civil rights.</p>

<p>Paul Babeu</p>	<p>There's often been a debate about this and how we find ourself in the middle of this entire world-win national debate, and about us and local law enforcement being pulled into this, and there's lot of opinions. And we can respect those opinions. You can agree. You can disagree. But in the end what's in the title of our very job – in our duties is law enforcement officer, and that's what we'll do. We'll stand up. We'll do our job, and we'll do it with the utmost professionalism using courtesy and dignity that we're affording each and every person. We assume any person who is in our state is a citizen, and until we find otherwise. It doesn't mean that we treat them any different than you would your next door neighbor or you'd want the same courtesy in regard extended to your own sister or to your own brother. And I have full faith and confidence in each of us that we'll do our job and we'll do it well representing the very best and finest among us in our time honored profession.</p>
<p>Levi Bolton, Jr.</p>	<p>I think it's real important, if I had to give you some street run advice. Laws are passed each and every year at the legislature. Don't be overwhelmed by this new provision. Understand the nuances. We have an obligation, as we've always have had to become familiar with new laws and the nuances of their enforcement. There's always going to be a training component. Be familiar with those things, and abide by your departmental policy. Understand what those policies are with respect to how to treat all persons, and I think you'll be able to effectively transition into this new, this new provision. And I am confident that police officers will rise to that task.</p>
<p>Brian Livingston</p>	<p>I don't need to tell Arizona police officers how to do their jobs. They have done their jobs successfully since the state became a state. I don't want officers to believe that we are here to tell them that what they've done in the past is inappropriate because, in fact, that's not true. We hold the highest standards for police officers in this state, and we will maintain that same high standard.</p>
<p>Jimmy Chavez</p>	<p>I don't fear that anyone that I know, whether it's a family member or friend that's Hispanic, who is not law enforcement, I have no fear that, that they're going to be a quote/unquote victim of any kind of racial profiling or any kind of biased enforcement, as a result of this. And I don't believe that police officers in general are going to operate under, under any biased or start racially profiling individuals because of this new law.</p>
<p>Levi Bolton, Jr.</p>	<p>Your obligation to understand the nuances of this new immigration bill or senate Bill 1070 go far beyond your enforcement on the street. They are going to follow you on the testimony in court. I'm sure you've heard about this thing called, <i>Brady v. Maryland</i>. Be particularly careful one of</p>

	<p>the things or one of the elements that can certainly land you very squarely on the Brady list is that if you are – believe to engage in biased policing or racial profiling. It is – this is probably a time to make those kinds of career decisions that you need to be paying very close attention to your obligation to treat all people squarely and equitably. And do remember if my parting comment is race or ethnicity is not a crime.</p>
<p>Gerald Richard</p>	<p>What I would like every officer to keep in mind each time that they come into contact with an individual is how would they want their family member to be treated – their mom, their dad, their younger brother or the younger sister, their spouse, their significant other. How would they want their family member to be treated? Looking through the eyes of that individual who is looking at the officer.</p>
<p>Brian Livingston</p>	<p>In my 20 years of actual police experience, I have found that most citizens become disgruntled with law enforcement officers, when they feel the law enforcement officers has failed to engage them in conversation detailing why they were stopped or why certain questions were necessary for them to be asked. If an officer engages a citizen in good sound conversation, the intonation an officer uses to conduct that conversation is extremely important. If you conduct your business in a professional manner and in a courteous manner, the chances that you will be selected for a complaint of racial profiling are diminished tremendously. Treat others the way you wish to be treated, act and relate to them as you would expect an officer to relate to you. If you do those things, you're chances of having a complaint filed against you will be diminished.</p>
<p>Lyle Mann</p>	<p>I've been asked how officers can possibly know that race did not play a role in their determination of reasonable suspicion. Some have suggested that the psychological reality is that people cannot divorce themselves from their pre-conceived notion about how race plays into the situations they encounter. There are probably many ways an officer can protect against unconscious racial profiling. I suggest one way to prevent racial profiling is to consciously check yourself. Before you act on reasonable suspicion ask yourself, if everything about this situation was identical, except that the individual was white or black or a different color would I still conclude that reasonable suspicion exists to believe that the person is an alien who is unlawfully present. If the answer is, yes, reasonable suspicion exists. If the answer is, no, it does not and you should not act on it. Officers should not lose sight of the fact that people of all races are illegally here in the United States. Focusing on one group is unfair to that group and to the society at large. Arizona Peace Officers are selected with the most stringent criteria of any in the United States. We have high standards of integrity in ethical performance. This is a challenge we are capable and qualified to meet. The discretions that officers have</p>

	<p>concerning the enforcement of these laws should not be confused with the obligation officers have to obey laws. Officers make decisions every day about enforcing laws. But officers should never believe they have the authority to decide which laws they obey. There have already been several lawsuits challenging the statute as unconstitutional on its face. It is reasonable to expect additional lawsuits based on the manner in which the law is applied. Officers actions will be scrutinized to see whether they apply it fairly and evenly across all segments of society. Officers should behave as if every word and every action is being video-recorded. Arizona POST has no authority to set policy for any law enforcement officers or agencies. This training does not suggest policy and should not be viewed as attempting to dictate policy. Officers must read all of the handouts. All the information is not contained in the DVD presentation. Please don't forget that everything in this training is necessarily preliminary. It is not possible to address and answer every question raised by these statutes without the assets of time, judicial construction, and experience with their application. Officers should stay current on developments as they occur.</p>
<p>Angela Astore</p>	<p>This concludes our training program on Arizona's immigration laws. Please be sure to access the document section on this DVD to download the resource materials included with this training. It is important that upon completing this training program that you take the appropriate steps to inform your training coordinator in order for you to receive Arizona POST training credit. This is a very complicated matter. So, please, if you have any questions or are unsure, contact your agency's legal advisor. The board and its staff appreciate your careful attention to protecting the public trust in our profession. This is an opportunity for you, the men and women of the Arizona law enforcement, to showcase your professionalism and commitment.</p> <p>I'm Angela Astore. Thank you for watching this edition of the Arizona POST Digital Media Training Series. Please be careful out there, and remember to always wear your vest.</p>
<p>[start VTS_07 & 8]</p>	<p>[Screen shot picture reads the following:]</p> <p>Special Thanks to:</p> <p><i>Janice K. Brewer</i> <i>Governor</i> <i>State of Arizona</i></p> <p>Russell Pearce, Senator, Arizona State Senate, District 18</p> <p>Thanks to:</p>

<p>ACTV</p> <p>Arizona Department of Public Safety</p> <p>Bill Amato Legal Advisor, Tempe Police Department</p> <p>Nancy Beck Assistant Attorney General, Arizona Attorney General's Office</p> <p>Harold Brady Legal Advisor, Glendale Police Department</p> <p>KKTV Channel 3</p> <p>KNXV ABC 15</p> <p>Child Help International</p> <p>Community Oriented Police Services</p> <p>Neville W. Cramer Immigration and Naturalization Service Special Agent in Charge (Ret)</p> <p>Annie Foster Assistant Attorney General, Arizona Attorney General's Office</p> <p>Arizona Department of Public Safety</p> <p>Gilbert Police Department</p> <p>Eric Edwards Attorney, Edwards and Ginn, P.C.</p> <p>City of Glendale</p> <p>International Association of Chiefs of Police</p> <p>Lisa Judge Legal Advisor, Tucson Police Department</p>
--

	<p>Jennifer Laroque Phoenix Police Lieutenant, Attorney, Legal Unit</p> <p>Phoenix Police Department</p> <p>Tucson Police Department</p> <p>Appearing On Camera</p> <p>Angela Astore Host</p> <p>Hipolito Acosta District Director (Ret) U.S. Citizenship and Immigration Services</p> <p>Paul Babeu Sheriff, Pinal County</p> <p>Levi Bolton, Jr. 32 year police officer (Ret)/Consultant</p> <p>Officer Darren Burch Phoenix Police Department</p> <p>Jimmy Chavez Sergeant, DPS President, Arizona Highway Patrol Association</p> <p>Joseph Duarte Board Chair, Arizona Peace Officer Standards & Training Board</p> <p>Officer Matthew Griffis Tucson Police Department</p> <p>Brian L. Livingston Executive Director, Arizona Police Association</p> <p>Officer Heidi Lochner Gilbert Police Department</p> <p>Lyle Mann</p>
--	---

	<p>Executive Director Arizona Peace Officer Standards & Training Board</p> <p>Jesus Renteria Correctional Officer III/287(g) Officer Arizona Department of Corrections</p> <p>Gerald Richard Special Policy Advisor for Law Enforcement Arizona Attorney General's Office</p> <p>Beverly Ginn Attorney, Edwards and Ginn, P.C.</p> <p>Officer Joshua Shurtz Gilbert Police Department</p> <p>Roberto Villasenor Chief, Tucson Police Department</p> <p>Officer Lori Ketron Arizona Department of Public Safety</p> <p>Officer Harry Atkins Mesa Police Department</p> <p>Officer Lynn Howe Phoenix Police Department</p>
--	--

EXHIBIT 36

**HB2042; Unlawful Roadside Solicitation of Employment
January 21, 2010
House Judiciary Committee**

Speaker	Time	
Mr. Cavanagh	38:11	... In its current form it's quite simple. It just penalizes activity where individuals are stopping vehicles in the street, thereby impeding and obstructing traffic when it involves labor situations. The reasons for the bill are many. First and foremost, public safety. Disrupting traffic, you know, at best, causes aggravation and alarm and agitation. At worst, it can cause injuries and accidents. So the public safety issue is big. But it's also an issue of community order. Large congregations of almost exclusively men hanging around in communities is a problem. It's unsightly. It's intimidating, especially to people on the street, particularly women. And there's also crime associated. In Fountain Hills, we have a large congregation and there is a number of burglaries and car break-ins in the general surrounding area where they're congregating.
	39:12	But there are other issues. One involves the workers themselves in terms of occupational safety. This is the black market of labor. You know, they're taken to sites. Who knows what sort of occupational safety standards are there. There's also the issue of benefits. People who pick these individuals up are almost always working these people off the books. And that basically means they don't get Worker's Compensation. They don't get Social Security benefits, and a lot of other protections, which being a documented worker gives you in this country. So it's actually harmful also to those individuals. And then there's the issue of the budget. Working up the books means no taxes are paid. So we're being deprived of tax revenue by allowing this avenue of illicit employment to occur. And last but not least, there's an illegal immigration factor. A large number of these people are illegal immigrants and this is the way they get work and this work is one of the anchors that keeps them in the country.
	40:09	So for the public safety, the community order, the occupational safety, the budgetary, and the illegal immigration. Eight reasons I think this would be a good bill to once again pass. And I'd be glad to answer any questions.
Mr. Cavanagh	43:25	Well, in this particular case, if there's no impediment of traffic, there's no violation of the section. So if they're not impeding, there's no violation.
Ms. Sinema	43:32	But Mr. Chair and Mr. Cavanagh, then my question is, if they're not impeding traffic, then there's no violation, and we already have codes that punish people for impeding traffic no matter what the reason. I'm wondering why we need an additional statute?

Speaker	Time	
Mr. Cavanagh	43:46	Well, I think the major reason would be that under the circumstances of labor solicitation, particularly taking into account the other problems besides public safety traffic impediment, community disorder. I mean, you know, I think we all remember the issue with the Pruitt's Furniture store that allowing this type of activity to occur created. The intimidation of women by the large groups. The occupational safety issues of people being worked off the books depriving us of taxes, them with rights. The lost taxes – the illegal immigration. What we have here, in my opinion is, we have an aggravating factor. So just like if you go the penal code, if I strike somebody with my fist and cause physical injury, it is misdemeanor assault. If, on the other hand, I cause the exact same injury, but I pick up a stick and do it, it becomes felony. It's an aggravating factor. And I think what you have here is, when you do it in the context of this type of street pickup labor, which causes these other problems, it becomes an aggravating factor to the impediment of traffic.
Mr. Konopnicki	47:28	Mr. Chair, Mr. Cavanagh, the underground economy, in my opinion, has been one of the most important things we could address. And I think this address, attempts to address a piece of it. ... I think we really need to hone in on this underground cash economy because with what we have right now, we're forced, in some people's opinion, we're forcing legal people to do these illegal activities and what we want to do is force people that are doing the illegal activities to do the legal activities....
Mr. Cavanagh	48:19	And absolutely. And I also mentioned that a law like this, having been a police officer for 20 years, a law like this is an excellent tool to allow enforcement authorities to get at the underground economy. Because when you start to arrest unscrupulous business owners who are working people off the books without adequate protections and benefits, when you get to arrest them, that opens the door to investigation. You know, if you followed them to their work site and you see 20 people there, you suddenly discovery, hey, you know, where are your documents for these people? Are you paying Worker's Compensation? And you can begin to literally catch, you know, the – and again, by the way, this bill not only addresses the person who is going into the vehicle, this bill addresses the driver of the vehicle. It takes two to tango and it's important that we grab them both with equal zeal. And this would be a tool. But I certainly would love to get on the road of additional legislation.
Mr. Ash	49:16	Mr. Chairman, Representative Cavanagh, there's nothing in this bill that presents someone driving on a highway to pull off into a side street, park and visit with these prospective employees.
Mr. Cavanagh	49:29	That's correct. So long as there's no impediment of traffic on the side street.

11711473.1

EXHIBIT 37

THE WALL STREET JOURNAL.

WSJ.com

MAY 2, 2010, 4:51 PM ET

Hillary Clinton Migrates Into Arizona Law Controversy

In blunt comments during the Sunday talk show fest, Secretary of State **Hillary Clinton** equated Arizona's new immigration law with racial profiling. Asked on NBC's "Meet the Press" whether she thought the law "invites profiling, racial profiling," Clinton responded: "I don't think there's any doubt about that."



Secretary of State Hillary Clinton during an interview on "Meet the Press" (AP Photo/Meet the Press, William B. Plowman)

"Clearly, as I understand the way the law is being explained, if you're a legal resident, you still have to carry papers," she said. "Well, how is a law enforcement official supposed to know" whether someone might be an illegal visitor, she asked.

The topic was raised in the context of Mexico's new travel alert to its residents and citizens, which criticizes the "negative" political environment for immigrants, due to the new law. "It must be assumed that every Mexican citizen may be harassed and questioned without further cause at any time," Mexico's foreign ministry warned last week.

Arizona last month enacted a law that makes it a crime to be present in the state without legal immigration status, and authorizes police to question people suspected to be illegal immigrants about their status.

The law has become a lightning rod for immigration advocates, who rallied in cities across the country on Saturday, urging Congress to pass legislation overhauling immigration policy.

Clinton said that although there were legitimate concerns about securing the borders, the state of Arizona didn't have the authority to usurp federal immigration laws and impose its own.

The new law poses some delicate diplomatic issues for Mexico President **Felipe Calderon**'s upcoming state visit with President Barack Obama. The two sides have been working to combat violent drug cartels along the U.S.-Mexico border.

"We don't want to make his life any harder," Clinton said.

On Sunday, Calderon, visiting Germany, called the Arizona law "racist discrimination" and a "threat" to immigrants and to the whole Hispanic-American population, according to the Associated Press.

Copyright 2008 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our [Subscriber Agreement](#) and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit www.djreprints.com

EXHIBIT 38

ARIZONA STATE SENATE

49TH LEGISLATURE SECOND REGULAR SESSION

MINUTES OF COMMITTEE ON PUBLIC SAFETY AND HUMAN SERVICES

DATE: January 20, 2010 **TIME:** 9:00 A.M. **ROOM:** SHR3

CHAIRMAN: Senator Linda Gray **VICE-CHAIRMAN:** Senator S. Allen

ANALYST: Amber O'Dell **INTERN:** Kendra Kovarik

**COMMITTEE
SECRETARY:** Shelley Ponce

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Alvarez	X			SB 1018	DPA
Senator Landrum Taylor	X			SB 1070	DPA
Senator Melvin	X			SB 1071	DP
Senator Rios	X			SB 1084	DP
Senator Waring	X			SB 1091	DP
Senator S. Allen, Vice-Chairman	X				
Senator L. Gray, Chairman	X				

Chairman Gray called the meeting to order at 9:05 a.m. and attendance was taken.

CONSIDERATION OF BILLS

SB 1070 – immigration; law enforcement; safe neighborhoods – DO PASS AMENDED

Amber O'Dell, Public Safety and Human Services Committee Analyst, explained SB 1070 and the 25-line Gray amendment dated 01/19/10 at 3:08 p.m. (Attachment A).

Senator Russell Pearce, bill sponsor, further explained SB 1070.

Senator Gray noted the individuals who registered their position on the bill (Attachment B).

Allison Bell, Arizona Chamber of Commerce & Industry, testified as neutral and explained that the amendment alleviates possible problems.

Jennifer Allen, Executive Director, Border Action Network, testified in opposition to SB 1070.

Fernando Gonzales, representing himself, testified in opposition to SB 1070.

John Thomas, Arizona Association of Chiefs of Police, testified in opposition to SB 1070.

Mark Spencer, President, Phoenix Law Enforcement Association (PLEA), testified in support of SB 1070.

Joe Sigg, Arizona Farm Bureau, testified in opposition to SB 1070.

Rob Haney, representing himself, testified in support of SB 1070.

Alessandra Meetze, Executive Director, American Civil Liberties Union (ACLU) of Arizona, testified in opposition to SB 1070.

Tom Husband, representing himself, testified in support of SB 1070.

Senator Sylvia Allen moved SB 1070 be returned with a DO PASS recommendation.

Senator Sylvia Allen moved the 25-line Gray amendment dated 01/19/10 at 3:08 p.m. (Attachment A) be ADOPTED. The motion CARRIED by voice vote.

Senator Sylvia Allen moved SB 1070 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by roll call vote of 4-3-0 (Attachment 1).

Senators Alvarez, Landrum Taylor and Sylvia Allen explained their votes.

RECESS

Senator Linda Gray stated that the committee would RECESS at 10:30 a.m. for five minutes.

RECONVENE

Senator Linda Gray RECONVENED the meeting at 10:35 a.m.

SB 1018 – photo enforcement procedures; justice courts – DO PASS AMENDED

Amber O’Dell, Public Safety and Human Services Committee Analyst, explained SB 1018 and the 11-line Gray amendment dated 01/19/10 at 1:12 p.m. (Attachment C).

Gerald Williams, President, Maricopa County JP Association, testified in support of SB 1018.

Senator Russell Pearce, bill sponsor, further explained SB 1018.

Lester Pearce, Judge, Mesa Justice Court, testified in support of SB 1018.

Jerry Landau, Legislative Liaison, Arizona Supreme Court, Administrative Office of the Courts, testified as neutral and discussed the Gray amendment.

Mike Williams, Redflex, testified as neutral on SB 1018.

Senator Sylvia Allen noted the individuals who registered their position on the bill (Attachment B).

Senator Sylvia Allen moved SB 1018 be returned with a DO PASS recommendation.

Senator Sylvia Allen moved the 11-line Gray amendment dated 01/19/10 at 1:12 p.m. (Attachment C). The motion CARRIED with a voice vote.

Senator Sylvia Allen moved SB 1018 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 6-0-1 (Attachment 2).

Senator Gray explained her vote.

SB 1071 – involuntary civil commitment; privileged communications - DO PASS

Kendra Kovarik, Public Safety and Human Services Committee Intern, explained SB 1071.

Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office, testified in support of SB 1071.

Senator Gray noted the individuals who registered their position on the bill (Attachment B).

Senator Sylvia Allen moved SB 1071 be returned with a DO PASS recommendation. The motion CARRIED by a roll call vote of 6-0-1 (Attachment 3).

SB 1084 – injunction against harassment; fees – DO PASS

Kendra Kovarik, Public Safety and Human Services Committee Intern, explained SB 1084.

Senator Gray noted the individuals who registered their position on the bill (Attachment B).

Don Hughes, Lobbyist, American Family Insurance Company, answered questions posed by the committee.

Senator Sylvia Allen moved SB 1084 be returned with a DO PASS recommendation. The motion CARRIED by roll call vote of 6-0-1 (Attachment 4).

SB 1091– CPS workers; investigations; group homes – DO PASS

Kendra Kovarik, Public Safety and Human Services Committee Intern, explained SB 1091.

Emily Jenkins, President/CEO, Arizona Council of Human Service Providers, testified in opposition to SB 1091.

Herschella Horton, Chief, Legislative Services, Department of Economic Security (DES), answered questions posed by the committee.

Beth Rosenberg, Children's Action Alliance, testified in support of SB 1091.

Senator Sylvia Allen moved SB 1091 be returned with a DO PASS recommendation. The motion CARRIED by roll call vote of 6-0-1 (Attachment 5).

There being no further business, the meeting was adjourned at 11:04 a.m.

Respectfully submitted,

Shelley Ponce
Committee Secretary

(Audio recordings and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115. Audio archives are available at <http://www.azleg.gov>)

EXHIBIT 39

ARIZONA HOUSE OF REPRESENTATIVES
Forty-ninth Legislature – Second Regular Session

COMMITTEE ON MILITARY AFFAIRS AND PUBLIC SAFETY

Minutes of Meeting
Wednesday, March 31, 2010
House Hearing Room 3 -- 9:00 a.m.

Vice-Chairman Gowan called the meeting to order at 9:01 a.m. and attendance was noted by the secretary.

Members Present

Ms. Fleming
Ms. Reeve
Mr. Seel

Ms. Sinema
Mr. Stevens

Mr. Gowan, Vice-Chairman
Mr. Weiers JP, Chairman

Members Absent

Mrs. McGuire

Committee Action

SB1070 – DPA S/E (5-2-0-1)
SB1109 - HELD

SCR1056 – DPA (7-0-0-1)

Note: On Tuesday, March 30, Representative Sinema was appointed as a Member of the Committee on Military Affairs and Public Safety replacing Representative Patterson.

CONSIDERATION OF BILLS:

SB1070 – immigration; law enforcement; safe neighborhoods – DO PASS AMENDED S/E
S/E: same subject

Without objection, Vice-Chairman Gowan announced that he will allow his three-line amendment dated 3/30/10 for consideration (Attachment 1). Ms. Sinema objected on the basis that the amendment was distributed after the deadline. She said it can be offered in Committee of the Whole. Vice-Chairman Gowan concurred.

Mr. Seel moved that SB1070 do pass.

Mr. Seel moved that the Gowan 24-page strike-everything amendment dated 3/29/10 to SB1070 be adopted (Attachment 2).

COMMITTEE ON MILITARY AFFAIRS
AND PUBLIC SAFETY
March 31, 2010

Rene Guillen, Majority Research Analyst, Banking and Insurance Committee and the Water and Energy Committee, advised that the strike-everything amendment (Attachment 2) is similar to the underlying bill and to HB2632, immigration; law enforcement; safe neighborhoods, which was heard in this Committee and passed out of Committee of the Whole last week. He reviewed the major differences between the underlying bill and the changes made by the strike-everything amendment (Attachment 3):

- Stipulates that any person who is arrested must have his status determined before the person is released.
- Stipulates that implementation of the provisions relating to determination of status for lawful contact cannot solely consider race, color or national origin.
- Specifies that a person is presumed to not be unlawfully present if they provide any of the following to an officer: a valid driver license, a valid nonoperating identification license, a tribal enrollment card or other form of tribal identification or a valid federal, state or local government-issued identification.
- Changes the trespassing provisions from trespassing to willful failure to comply or carry an alien registration document.
- Provides a defense from prosecution under unlawfully transporting, moving, concealing, harboring or shielding unlawful aliens if the person is providing or assisting in providing emergency public safety or public health services otherwise available to the general public without regard to income.
- Changes the wording requiring peace officers to impound or remove vehicles using transporting, moving, concealing, harboring or shielding unlawfully present aliens.
- Explains the severability, implementation and construction of the bill clause.

In reply to Ms. Sinema's questions relating to the trespass section, Mr. Guillen explained that the original bill required that a person had to be on private or public land or in violation of registration documents. The strike-everything amendment removes language relating to trespassing and being on public or private land and retains just the violation of registration documents language.

Senator Russell Pearce, sponsor, advised that this bill addresses the federal government's failure to act with regard to securing our borders and enforcing our laws. He stated that this is a nation of laws and that the rule of law is important. He contended that citizens have a constitutional right to expect the immigration laws to be enforced. This bill eliminates the sanctuary policies which are already illegal. In addition, it is illegal to have a policy that restricts the exchange of information between local law enforcement and Immigration and Customs Enforcement (ICE). He maintained that this is not only a federal issue and that states have an inherent authority to enforce these laws and ask for information about immigration status the same as for any other legal traffic stop. He reiterated that he wants these laws to be enforced and the integrity of this nation protected.

Ms. Sinema queried whether the state has the ability to arrest, try in a court of law and deport undocumented persons. Senator Pearce answered that the federal entity deports illegal aliens; no state has the authority to remove a person from this country.

Senator Pearce continued with his testimony. He related that this legislation allows law enforcement to do its job. If a person is in Arizona in violation of federal law, that person can be arrested by state law enforcement. He pointed out that 75 percent of the citizens endorse this proposal and he read the names of law enforcement associations and other groups in support of SB1070. He asked Members for their support.

Ms. Sinema expressed concern about the language on page 4, lines 10 through 12, relating to failure to carry an alien registration document and asked whether a photocopy is sufficient to meet the requirement of this policy. Senator Pearce advised that federal law does not allow photocopies. He stated that this language mirrors federal law and only Congress can change federal law. Ms. Sinema argued that a person can be held in custody while that person's status is being verified, causing the person to be subject to a loss of liberty even though the person has not committed a crime. Senator Pearce disagreed. He said that if the legal status is validated by a call to ICE, the person will not be held. Ms. Sinema again stated that the person is subject to being held until verification is made by ICE.

Ms. Fleming brought up the issue of foreign national spouses of military personnel. Senator Pearce stated that this bill does not address that issue because it is already in federal statute.

In reply to Ms. Sinema, Senator Pearce said there is a very strong civil rights provision in the bill. He pointed out that in order to have lawful contact, law enforcement personnel must have reasonable suspicion to believe there is probable cause before a person can be arrested.

Dale Wiebusch, Legislative Associate, League of Arizona Cities and Towns, in opposition to SB1070, testified that local law enforcement works with the ICE unit of the Department of Homeland Security. Statistics show that 6,500 to 7,000 illegal aliens have been turned over to ICE by municipal law enforcement agencies so the League does not believe this bill is necessary because it is already being done.

To that point, Chairman Weiers asked why a large number of law enforcement officers have told him they want this bill because their hands are tied on this issue. Mr. Wiebusch said that since these people are being turned over to ICE, it appears that the system is working.

Mr. Seel asked Mr. Wiebusch whether the League represents the City of Phoenix. Mr. Wiebusch stated that all incorporated municipalities in the state are members of the League. Mr. Seel brought up the City of Phoenix's policy which specifically instructed its officers, when they came across illegal aliens, that they were not to identify them but were supposed to turn them over to community organizations. To that point, Ms. Sinema said she understands that the City of Phoenix policy requires officers to identify people who have engaged in criminal activity but not to do so for lesser offenses, such as traffic stops.

Ms. Sinema asked whether all cities that oppose this legislation share concerns about unfunded mandates included in the bill. Mr. Wiebusch said they also have other concerns with the bill.

John Thomas, Arizona Association of Chiefs of Police, testified in opposition to SB1070 because of drafting concerns and said those concerns can be resolved by redrafting the language. He reviewed specific areas that need to be addressed:

Page 1, lines 16 through 19 and lines 20 through 24

Page 2, lines 17 through 21

Page 3, lines 9 through 14 and lines 26 through 31

Page 4, lines 7 through 21 and lines 10 through 12

Page 6, lines 11 through 14

Pages 7, line 29

Page 8, lines 1 through 2, lines 3 through 7, lines 8 through 10, and lines 14 through 17

Page 9, lines 8 through 9

Page 20, lines 17 through 20

Ms. Sinema brought up areas of concern to her and discussion ensued on the following:

- Page 1, line 24 – “when practicable” is not defined.
- Page 2, section D – “transporting an individual outside the jurisdiction of the law enforcement agency” may be interpreted as out of state.
- Page 3, section F – “less than full extent permitted by federal law” could make an official or agency of this state, county, city, town or other political subdivision subject to a civil suit.
- Page 6, section E – “an officer may lawfully stop any person if he believes the person is in violation of any civil traffic law” changes a secondary offense to a primary offense.
- Page 7, section 13-2928 – “transporting” may apply to a school bus driver, public bus driver or cab driver.

Ron Johnson, Executive Director, Arizona Catholic Conference, spoke in opposition to SB1070. He contended that humanitarian concerns need to be protected. He reminded Members about testimony he gave on HB2632 about victims and witnesses of crimes and spoke of the need for further clarity so they will not be afraid to come forward. He raised additional concerns about language on pages 7 and 8 relating to conceal, harbor, and transport and said that language is so broad it can be interpreted to include nonprofit organizations, serving meals to the homeless, homeless shelters or just serving the community at large. He pointed out that on page 8, line 2, there is a defense included; however, he said he believes “defense” should be changed to “exemption.”

Mr. Stevens questioned whether it is possible to look at a person and determine whether that person is a criminal. Mr. Johnson replied in the negative. Mr. Stevens asked Mr. Johnson if he has a problem with a church harboring or hiding illegal immigrants. Mr. Johnson said the Arizona Catholic Conference does not endorse anything that is against the law and added that is not one of the concerns being addressed.

Jennifer Allen, Executive Director, Border Action Network, testified as being opposed to the entire bill. Members of the Border Action Network are absolutely opposed to all components of this legislation because they believe SB1070 is one of the most poorly thought out, scantily-researched and most far-reaching pieces of legislation they have ever reviewed. She agreed that the current immigration policy is broken and needs to be fixed; however, this proposal is not the

solution and does nothing to address the fundamental problems of the issue. She said this proposal will result in exorbitant costs to the state and cause undue hardship to residents. She said this is politics, not policy making. It takes away law enforcement flexibility; it takes away officer discretion and adds new complex responsibilities without providing for training or resources. It has civil liberties implications by requiring all people to carry identification documents to establish their legal status in this country. As written, it will be costly to implement the provisions of the bill. She maintained that SB1070 is irresponsible legislation and urged Members to vote against this bill.

Father Glenn Jenks, Valley Interfaith Project, in opposition to SB1070, spoke about unfunded costs to municipalities and the loss of revenue to the state. He said that undocumented residents spend about \$4.4 billion dollars in this state per year and pay \$2.4 billion in taxes every year. He said it is irresponsible in this economic climate to pass such a bill. In addition, families are terrified; they will not report crimes, nor will they be witnesses to crimes as long as these kinds of bills become law.

Mr. Stevens asked Father Jenks about the financial data he cited and asked whether it can be provided to the Committee. Father Jenks answered that the numbers are from a study done by a professor at the University of Arizona. He said he will be happy to provide that data.

In response to Ms. Sinema's query, Father Jenks advised that Valley Interfaith Project represents about 75,000 people in 45 congregations.

Allison Bell, Vice President for Government Relations, Arizona Chamber of Commerce & Industry, neutral on SB1070, spoke about retention of E-Verify records, the inappropriateness of transferring criminal code into civil statutes, and the definition of "harboring."

Todd Landfried, Director, Government Relations & Marketing, Arizona Employers for Immigration Reform, neutral on SB1070, revealed some concerns with the bill. He said he shares concerns expressed by others about the lack of resources to communities to cover the costs of implementing the provisions of the bill, and opined that taxes will have to be raised and businesses will have to pay. He expressed unease about unintended consequences; the bill can be interpreted only as a negative incentive for businesses to locate in Arizona. Lastly, there is concern about the harboring issue and gave an example where a construction business will be in violation of this law if a driver has someone in the truck who is an undocumented person. He encouraged Legislators to fix language to address these issues.

Levi Bolton, Vice President, Phoenix Law Enforcement Association (PLEA), testified in support of SB1070. He provided an example of verification of a suspected illegal alien by law enforcement and pointed out the simplicity of verifying whether the person is undocumented. In addition, he referred to testimony relating to additional training which will be costly and onerous, and claimed that current training enables officers to determine reasonable suspicion. He urged support of the legislation.

Mark Spencer, President, Phoenix Law Enforcement Association (PLEA), in support of SB1070, spoke about the cost of illegal immigration by citing the names of police officers who have lost their lives or been injured at the hands of illegal aliens. He related that in March, 2004 the

Phoenix Police Department abandoned its proactive policy on immigration enforcement, restricted its partnership with ICE and mandated that an illegal alien commit another crime or serious felony for an officer to contact ICE. Eight out of ten members of PLEA believed this policy was detrimental to the quality of life in the City of Phoenix and saw a clear connection between illegal immigration and crime. He stated that the federal government has failed miserably in protecting the borders. He related that PLEA does not believe that ethnicity is an indication of criminality. He urged the Committee to support this bill.

Ms. Sinema asked whether the verbiage on page 3, section F, causes concern. Officer Spencer replied that the section addresses an officer's discretion. Ms. Sinema said she is not referring to intent, but to the language which allows anyone to sue. Discussion ensued.

Ms. Sinema referred to the language relating to "when practicable" on page 1, line 24, and asked whether there should be an exemption for a victim or a witness. Officer Spencer said that is addressed by federal statute.

Mr. Seel brought up the City of Phoenix policy on immigration. Officer Spencer opined that even with the changed policy, there still is resistance by Phoenix police management. Mr. Seel asked how this proposal will affect that policy. Officer Spencer stated that it allows an officer to exercise reasonable discretion to engage with federal officers in immigration matters. He said it brings accountability to departments and encourages officers to use common sense.

Senator Pearce asserted that this is a common sense bill; it puts common sense and discretion back into the law. He addressed arguments and objections raised by opponents of the bill. The bill complies with but does not exceed federal law. It is about protecting law-abiding citizens and he again stated that the state has the inherent responsibility to enforce laws and protect the citizens of this state.

Ms. Reeve asked for an explanation of "harbor." Senator Pearce said that language was taken from federal law.

Ms. Sinema again brought up the language on page 6, section E, which allows an officer to stop someone for a secondary offense and she asked whether further work can be done on terminology to resolve the issue.

Ms. Sinema stated concern for the people who are authorized aliens but do not have a legal right to work, such as students, and asked whether language can be adjusted to address this. Senator Pearce advised that issue is addressed in the bill. He noted that this legislation is about illegal aliens in the United States, not about immigrants.

Ms. Sinema raised concern about privacy rights and referenced page 2, lines 22 through 28. Senator Pearce related that language mirrors federal law. The language does not expand the duties of law enforcement officers, nor does it limit the ability for someone to sue. It gives officers the discretion to determine whether actions are reasonable and practical.

Ms. Sinema brought up the issue of illegal aliens who volunteer to serve in the armed forces. She asked whether they will be subject to this legislation when they return after serving the

country. Senator Pearce stated that matter is covered by federal law and states cannot change federal policy. Ms. Sinema commented that states can choose to make exclusions.

Ms. Sinema asked who will provide training since more officers will be engaged in enforcing immigration policies. Senator Pearce advised that the Arizona Peace Officers Standards and Training Board (AZPOST) provides officer training; no additional training will be required.

Mr. Seel announced the names of those who signed up in support of the strike-everything amendment to SB1070 but did not speak:

Paul Yoder, American Citizens United
Diana Culver, Director/President Kids Klub, Inc.
Ray Churay, Deputy Director, Maricopa County Sheriff's Office
Beth Straley, Campaign Administrator, 40 Days For Life, representing self
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office
Kevin Myers, United for A Sovereign America (USA), representing self
Pamela Pearson, representing self
James Hallgren, Assistant Prayer Coordinator, 40 Days for Life, representing self
Royce Flora, Chairman, District 8 Republican Committee, representing self
Brian Livingston, Executive Director, Arizona Police Association
Ann Flora, representing self
Kathryn Kobon, representing self
Martha Payan, American Conservation Union

Mr. Seel announced the names of those who signed up in opposition to the strike-everything amendment to SB1070 but did not speak:

Lucy Howell, St. Vincent de Paul Society, Phoenix Diocesan Board
Jeff Greenspan, Arizona Campaign for Liberty
Rosemary Anton, representing self
Chris Griffin, representing self
Salvador Reza, coordinator, representing self
Alessandra Meetze, Executive Director, American Civil Liberties Union of Arizona
Thomas Donovan, Valley Interfaith Project
Craig McDermott, representing self
Rob Dalager, City of Phoenix Police Department
Bonnie Danowski, Valley Interfaith Project
Ellen Katz, Litigation Director, William E. Morris Institute for Justice
Jozef De Groot, representing self
Susan Charlton, attorney, City of Phoenix, Phoenix Police Department
Scott Butler, City of Mesa
Ryan Harper, representing City of Sierra Vista
Lisa Estrada, Intergovernmental Affairs Coordinator, City of Peoria
Lydia Guzman, representing self
Katie Decker, Legislative Liaison, Town of Fountain Hills
Ken Rineer, Self and Gun Owners of Arizona
Connie Scoggins, Assistant City Attorney, City of Yuma
Janet Valder, Valley Interfaith Project
Paul Ahler, Executive Director, Arizona Prosecuting Attorneys' Council

Michelle Gramley, Town of Gilbert
Linda Brown, Arizona Advocacy Network
Molly McGovern, Service Employees International Union (SEIU) Arizona
Shirley Gunther, Intergovernmental Affairs Manager, City of Avondale
Tom Schoaf, City of Litchfield Park
Kendra Leiby, Arizona Coalition Against Domestic Violence
Jamaar Williams, Vice Chair, Chicano Latino Law Students' Association
Ramon Garcia, representing self

Mr. Seel announced the names of those who signed up as neutral on the strike-everything amendment to SB1070 but did not speak:
Farrell Quinlan, State Director, National Federation of Independent Business

Ms. Sinema advised that Alessandra Soler Meetze, Executive Director of the American Civil Liberties Union of Arizona, sent an e-mail to Members of the Committee asking that her written statement be made part of the record (Attachment 4).

Question was called on the motion that the Gowan 24-page strike-everything dated 3/29/10 to SB1070 be adopted (Attachment 2). The motion carried.

Mr. Seel moved that SB1070 as amended do pass. The motion carried by a roll call vote of 5-2-0-1 (Attachment 5).

SB1109 – technical correction; vehicle refueling apparatus(now: disciplinary warnings; personnel; definition) - HELD

Vice-Chairman Gowan announced that SB1109 will be held.

SCR1056 - Vietnam veterans' memorial day – DO PASS AMENDED

Mr. Seel moved that SCR1056 do pass.

Nicholas Calderon, Majority Intern, stated that SCR1056 designates March 29 of each year as Vietnam Veterans' Memorial Day in Arizona (Attachment 6).

Mr. Seel moved that the Weiers two-line amendment dated 3/29/10 to SCR1056 be adopted (Attachment 7).

Mr. Calderon explained that the amendment changes the title of the holiday from Vietnam Veterans' Memorial Day to Vietnam Veterans' Day (Attachment 7).

Senator Ron Gould, sponsor, said he brought this legislation forward because it was brought to his attention that Arizona has never declared a Vietnam Veterans Day.

In reply to Chairman Weiers, Senator Gould said he agrees with the amendment, explaining that it will eliminate any confusion between Memorial Day and Vietnam Veterans Memorial Day.

Colonel Joey Strickland, Director, Arizona Department of Veterans' Services, testified in support of SCR1056. He related that 40 years ago, three million soldiers were asked to serve in America's longest war. He stated that 60,000 never returned home and thousands continue to die from Agent Orange exposure every day. He said those who survived came home to a country that took its anger and political views out on them, the American warrior. The past cannot be changed but by supporting this Resolution and creating a Vietnam Veterans Day in Arizona, a wrong can be corrected.

David Lucier, President, Arizona Veterans Foundation, in support of SCR1056, related that he received the Congressional Gold Medal for his late mother, a civilian who was a Woman's Air Service pilot, just two weeks ago when that organization received official recognition, veterans' benefits and an official memorial for the women who died in the line of duty.

Michael Marks, representing self, apologized to the Committee for his emotional testimony. He revealed that he and his two brothers fought in Vietnam. He lost one brother two years ago from Agent Orange and the other brother is fighting cancer from exposure to Agent Orange. He stated that he has been a volunteer with a Vietnam veterans' organization for 20 years and has been fighting for this recognition for a long time. He thanked Members for this bill and stated his total support for SCR1056.

David Carasco, representing self, testified in favor of SCR1056. He advised that he is the commander of an honor guard known as the Prisoner of War (POW), Missing in Action (MIA) and Killed in Action (KIA) Honor Guard. He disclosed that he has been working at the Vietnam Memorial over the last two weeks in preparation for the ceremony that will take place and said that passage of this legislation will be a great gift at that time.

Mr. Seel announced the names of those who signed up in support of SCR1056 but did not speak:
David Hampton, Public Information Officer, Arizona Department of Veterans' Services
Robin Quinn, representing self
Beth Straley, Campaign Administrator, 40 Days For Life, representing self
James Hallgren, Assistant Prayer Coordinator, 40 Days for Life, representing self
Ramon Garcia, representing self

Question was called on the motion that the Weiers two-line amendment dated 3/29/10 to SCR1056 be adopted (Attachment 7). The motion carried.

Mr. Seel moved that SCR1056 as amended do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 8).

Without objection, the meeting adjourned at 12:28 p.m.

Joanne Bell, Committee Secretary
April 6, 2010

(Original minutes, attachments and audio on file in the Chief Clerk's Office; video archives available at <http://www.azleg.gov>)

COMMITTEE ON MILITARY AFFAIRS
AND PUBLIC SAFETY
March 31, 2010

EXHIBIT 40

ARIZONA LEGISLATIVE COUNCIL

MEMO

March 23, 2010

TO: Senator Russell Pearce

FROM: Aaron Henson, Legal Intern
Ken Behringer, General Counsel

RE: Immigration; detention; REAL ID Act (R-49-154)

QUESTIONS

1. Would Arizona Revised Statutes (A.R.S.) section 11-1051, as added by SB 1070, allow for the indefinite detention of a person?
2. Pursuant to A.R.S. section 11-1051, what are the limitations, if any, of bureaucratic access to national identification files?
3. Is SB 1070 a de facto implementation of the REAL ID Act of 2005?

ANSWERS

1. Probably not. A.R.S. section 11-1051, as added by SB 1070, would not permit a state agency or employee to indefinitely detain any citizen (law abiding or not).
2. The limitations are stated in the bill itself. Access to information relating to immigration status is subject to A.R.S. section 11-1051, subsection F's four "official purposes" only.
3. Probably not. SB 1070 is not a de facto implementation of the REAL ID Act because the bill narrowly defines under what situations information is accessed and exchanged.

DISCUSSION

A.R.S. section 11-1051, subsections B through E essentially empowers state agencies and employees with law enforcement authority to determine the status of illegal aliens, transfer aliens already determined to exist in the United States illegally to federal custody and arrest anyone believed to have engaged in an offense warranting legal

removal from the United States. The bill section does not grant authority, either explicitly or implicitly, to detain a person indefinitely.

A.R.S. section 11-1051 states well established legal concept in the context of immigration enforcement; however, there are a few points worth noting. Subsection B allows a law enforcement entity, where reasonable suspicion exists, to presumably detain a suspected illegal alien for the purpose of determining immigration status. This is simply a restatement of the federal law already in place. *See Brown v. Texas*, 443 U.S. 47 (1979); *see also Ramirez v. Webb*, 719 F.Supp. 610, 616 (W.D. Mich. 1989) (holding that law enforcement authorities "may detain an individual for a brief period of interrogation where the circumstances create a reasonable suspicion that the individual is engaged in illegal activity. In this case, the relevant illegal activity is that the individual is illegally present in this country."). There is nothing in this subsection that would permit a law enforcement entity to go beyond this allowance and indefinitely detain someone.¹

Subsection E provides that a law enforcement officer "may arrest a person if the officer has probable cause to believe that the person has committed any public offense that makes the person removable from the United States." Again, as with subsection B, this is simply a restatement of the established constitutional protections and does not go so far as to permit indefinite detention. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) (holding that "[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.>").

Subsection C requires the immediate transfer of an illegal alien to federal custody once state sanctions expire. Subsection D allows a law enforcement agency to transport an illegal alien in the agency's custody to a federal facility at other points in the process. Neither subsection authorizes indefinite detention.

The other issue presented in this memorandum focuses on whether A.R.S. section 11-1051 functionally implements the REAL ID Act of 2005 ("RIDA"). The bill would not implement RIDA. RIDA states that "a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of this section." Further, RIDA states that the Secretary of Homeland Security "may make grants to a State to assist the State in conforming to the minimum standards set forth in this title." Other than allowing the Secretary to make grants to assist states in conforming to the minimum standards, it is an all or nothing policy: a state either conforms or it is in violation of the Act.

The fact that A.R.S. section 11-1051 allows for the sending, receiving, maintaining or exchanging of immigration status information with any federal, state or local agency does not in any way invoke the application of RIDA in Arizona. Arizona,

¹ If a law enforcement entity did detain a person indefinitely, it would violate federal and constitutional law. There is nothing in A.R.S. section 11-1051 that attempts to override these federally mandated procedural protections.

pursuant to federal and state law currently in place, could easily exchange information with any federal entity and maintain its "sovereignty" with regard to RIDA.

Finally, A.R.S. section 11-1051 narrowly restricts when a public agent can access status related information. Subsection F states four limiting "official purposes." If a public agent or bureaucrat cannot demonstrate that he accessed a person's information pursuant to subsection F's official purposes, that agent would not find asylum in section 11-1051. This subsection is apparently causing some people confusion, because they are reading the paragraphs as a new requirement for governmental entities to seek information. SB 1070 does not create new mandates to seek information. These paragraphs must be read with the whole subsection. They limit the purposes for which immigration status information may be exchanged.

CONCLUSIONS

A.R.S. section 11-1051 does not allow for the indefinite detention of an individual. A.R.S. section 11-1051 is not a de facto implementation of the REAL ID Act of 2005. A.R.S. section 11-1051 limits access to information to four narrowly constructed official purposes.

EXHIBIT 41



Arizona Peace Officer Standards and Training Board


2643 East University Drive Phoenix, Arizona 85034-6914 Phone (602) 223-2514 FAX (602) 244-0477

CERTIFICATION OF ARIZONA POST RECORDS

The attached records are certified copies of the records of the Arizona Peace Officer Standards and Training Board 585 – Hour Basic Curriculum Model Lesson Plans.

Laws of arrest 2.2, 32 pages, November 2009
Search and Seizure 2.3, 25 pages, March 2010
Civil Liability Issues 2.12, 12 pages, December 2009
Ethics and Professionalism 1.5, 14 pages, April 2009
Cultural Awareness 6.1, 50 pages, April 2010

The certification statement and seal affixed to this page, serves as certification as to each of the lesson plans listed above and attached hereto.


Kyle W. Mann
Executive Director
Custodian of Records



THIS IS TO VERIFY THAT THIS IS
A TRUE AND ACCURATE COPY
OF RECORDS ON FILE AT THE
ARIZONA PEACE OFFICER
STANDARDS & TRAINING BOARD


CUSTODIAN OF RECORDS

ARIZONA PEACE OFFICER AND STANDARDS TRAINING BOARD
585 - HOUR BASIC CURRICULUM
MODEL LESSON PLAN

LESSON TITLE: ETHICS AND PROFESSIONALISM 1.5

April 2009

SUBJECT: Ethics and Professionalism

AZ POST DESIGNATION: 1.5

HOURS: 6

COURSE CONTENT: An emphasis on the high moral, ethical and performance standards required of law enforcement personnel. The functions and responsibilities of the Arizona Peace Officer Standards and Training Board (AZ POST) are outlined.

PERFORMANCE OBJECTIVES: Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will:

- 1.5.1 Identify examples of gratuities and bribes in accordance with the following definitions:
- A. Gratuity: Anything of value intended to benefit the receiver; given to the person because of his/her position of authority.
 - B. Bribe: See A.R.S. §13-2602(A)(2).
- 1.5.2 Identify examples of the problems associated with an officer's acceptance of gratuities.
- 1.5.3 Identify the key phrases in the "Law Enforcement Code of Ethics" (AZ POST 10/02) and the "Cannons of Police Ethics" (IACP, Articles 1-5).
- 1.5.4 Given a written, verbal or visual description of unethical or criminal actions on the part of a fellow officer, identify the following methods for handling the situation:
- A. Reporting unethical actions to a supervisor.
 - B. Preventing unethical behavior where reasonable.
- 1.5.5 Identify the purpose for, and the responsibilities of, the AZ POST Board.
- 1.5.6 Identify the causes for revocation, suspension and denial of a peace officer's certification by AZ POST per Arizona Administrative Code R13-4-109.
- 1.5.7 Identify the following important considerations associated with an officer's use of discretion in enforcing the law:



THIS IS TO VERIFY THAT THIS IS
A TRUE AND ACCURATE COPY
OF RECORDS ON FILE AT THE
ARIZONA PEACE OFFICER
STANDARDS & TRAINING BOARD


CUSTODIAN OF RECORDS

- A. Statutory requirements.
- B. Departmental policies and procedures.
- C. Best interests of the community.
- D. Best interests of the department.
- E. Best interests of the victim.

LEARNING ACTIVITIES:

- 1.5.8 The trainee will receive instruction and participate in an instructor-led discussion of the reason why:
 - A. Law enforcement officers, both on and off duty, should exemplify the highest ethical and moral standards.
 - B. An officer must take positive action upon becoming aware of unethical or criminal conduct on the part of a fellow officer.
- 1.5.9 The trainee will receive instruction and participate in an instructor-led discussion of:
 - A. The common satisfactions and dissatisfactions inherent in a law enforcement career.
 - B. The effects that a law enforcement career may have upon one's family and social relationships (i.e., spouse, boyfriend/girlfriend, children, etc.)

LESSON TITLE: ETHICS AND PROFESSIONALISM

**APRIL 2009
PAGE 3**

DATE FIRST PREPARED: August 1995

PREPARED BY: Sgt. Jerry Heuett, Phoenix P.D.

REVIEWED – REVISED: SME Committee DATE: February 2001

REVIEWED – REVISED: SME Committee DATE: March 2002

REVIEWED – REVISED: AZ POST (Word) DATE: July 2003

REVIEWED – REVISED: Cmdr. Dean Nyhart, AZ DPS (& SME) DATE: August 2005

REVIEWED – REVISED: AZ POST DATE: September 2008

REVIEWED – REVISED: Lt. Dave Kelly, Phoenix PD - ALEA DATE: April 2009

REVIEWED – REVISED: DATE:

REVIEWED – REVISED: DATE:

REVIEWED – REVISED: DATE:

AZ POST – APPROVAL: Richard Watling DATE: April 2009

INSTRUCTOR REFERENCES: Michael Josephson, Josephson Inst. of Ethics

CLASS LEVEL: Recruit

TRAINING AIDS:

- Handout #1 – AZ POST Law Enforcement Code of Ethics.
- Handout #2 – IACP Law Enforcement Oath of Honor – “Cannons of Police Ethics.”
- Handout #3 – Power and Duties of the Board.
- Handout #4 – AZ POST – R13-4-105.
- Handout #5 – AZ POST – R13-4-109.
- Handout #6 – AZ POST Disciplinary Rules Checklist.
- AZ POST Certification video.

INSTRUCTIONAL STRATEGY: Interactive lecture, reading assignments, instructor demonstration, group discussion and problem solving.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 1.5 Ethics and Professionalism

I. INTRODUCTION

- A. Instructor – Brief Self Introduction
- B. Preview of Performance Objectives
- C. Attention “Grabber”

This can be an ethics scenario taken from the AZ POST Misconduct Bulletins

II. INTRODUCTORY DISCUSSION

- A. Why do peace officers make poor ethical decisions?
 - 1. Financial pressure
 - 2. Peer pressure
 - 3. Fear of discipline
 - 4. Predisposed
 - 5. Belief it can be gotten away with
 - 6. Benefit
 - 7. Thrill

Student input/List on board

Over-extended credit, child support-alimony, catastrophic life event such as illness or family death...

Children may give in... adults should never

“I screwed up, I better hide it!”

Character, core values, and beliefs are generally determined before adulthood. The evil just need the opportunity to act.

The evil mind always connives with certainty of success.

Money, property, position

Adrenaline can fuel the corrupt act

“The reputation of a thousand years may be determined by the conduct of one hour.” Japanese Proverb

B. Remember the “stakeholders” affected by your decisions.

1. Self

Forever tainted

2. Family

Embarrassed, disgraced

3. Friends

You’ll lose them

4. Community

Erodes public trust

5. Peers/Co-workers

Work under suspicion

6. Department Reputation

Tarnished and diminished

7. Law Enforcement Reputation

Tarnished and diminished

C. Do the right thing to retain your job, your success, and your peace officer certification.

Making poor choices will impact your life forever!

“It takes less time to do a thing right, than it does to explain why you did it wrong.” Henry Wadsworth Longfellow (poet)

D. Learning, developing, and teaching good ethical behavior is essential to forming habits that will guide our actions under stress.

“To know what is right and not do it is the worst cowardice.”
Confucius (Chinese philosopher)

“There are several good precautions against temptation, but the surest is cowardice.”
Mark Twain (author)

E. What are the factors that create, mold, and shape our character and core values that affect our decision making processes?

Have students identify as many as possible.

1. Family (Parents)

2. Friends

3. School

4. Church

5. Co-Workers

6. Culture

F. What are your observations about ethics in society today?

Have students identify incidents of scandal in the corporate, political, and police world's.

Corporate World: Tyco, Health-South, Enron, World.com, others?

Greed fueled corporate pillage of companies by executive management and fostered atmosphere of entitlement

Political World: AZSCAM, vendor costs (\$400 toilet seats in military), UN Food-for-Oil Program, Clinton/Lewinsky, others?

Arrogance of power

Police World: NY's Tammany Hall, NYPD Knapp Commission, LAPD Rampart Investigation, Detroit PD, Miami PD, Denver PD, New Orleans PD, others?

Bribes, false arrest, manipulating evidence, falsifying records, lying, protection racket, assault, murder...

1. Identify local policing examples

List on board.

2. National trends

a. Accreditation

CALEA accreditation can be threatened

b. Lawsuits/court decisions

Individual officers can be held personally liable

c. Criminal charges against officers

Increased likelihood of prison. No longer are things handled strictly administratively.

III. WHAT IS PROFESSIONALISM

A. Definitions.

1. The conduct, aims or qualities that characterize a profession.

2. Exhibiting a courteous, conscientious and generally businesslike manner in the workplace.

B. Is law enforcement a profession?

Pilots, doctors, lawyers etc.

1. Clear-cut field qualifications for entry.

Age, education, citizenship

LESSON TITLE: ETHICS AND PROFESSIONALISM

**APRIL 2009
PAGE 7**

<ul style="list-style-type: none"> 2. Required education. 3. Certification or licensing. 4. Common body of knowledge. 5. Lifetime career. 6. Strong commitment to a set of ethics or values 	<p>Minimum of HS/GED AZ POST certification. Consistent academy curriculum statewide.</p>
<p>C. AZ POST Code of Ethics & IACP Cannon of Police Ethics</p>	<p>P.O. 1.5.3 READ and DISCUSS Handout's #1 & #2</p>
<p>D. Have recruits read and sign the AZ POST Code of Ethics.</p>	<p>Turn in for RTO's to place in recruit training file</p>
<p>E. IACP Oath of Honor</p>	<p>Handout #3 and have read</p>
<p>IV. ARIZONA POST HISTORY</p>	
<p>A. The President's commission on crime 1965.</p>	<p>Met to establish standards</p>
<p>B. AZ POST formed as the Arizona Law Enforcement Officer's Advisory Council (ALEOAC).</p>	<p>As a result, ALEOAC formed in 1968.</p>
<p>1. Before 1965, there was no basic training.</p>	
<p>2. The basic course has grown since then: From zero (0) hours to 200 hours, to 240 hours, to 400 hours, to 440 hours and now 585 hours.</p>	<p>Academies exceed minimum AZ POST requirements.</p>
<p>3. Thirteen members are appointed by the governor and represent various components of the Arizona criminal justice and law enforcement communities.</p>	<p>Some positions are permanent others rotate amongst the agencies</p>
<p>4. The purpose is to prescribe minimum standards for the selection, training and retention of law enforcement officers and to prescribe minimum standards for the selection/training of corrections officers.</p>	<p>P.O. 1.5.5 Handout #4 for Reference only. AZ POST established under A.R.S. §41-1822.1.</p>
<p>C. Certified peace officer status.</p>	
<p>1. Minimum qualifications for appointment under R13-4-105</p>	<p>Handout #5 for reference only</p>
<p>2. Causes for revocation, suspension or denial under R13-4-109.</p>	<p>P.O. 1.5.6 Handouts #6 for reference</p>
<p>V. DEFINITIONS</p>	

- A. Ethics: The study of the general nature of morals and of specific moral choices; the rules or standards governing the conduct of the members of a profession.
- B. Ethical behavior.
 - 1. Conforming to the right principles of conduct as generally accepted by a specific profession.
 - 2. Do the right thing because it is right, **not** because there are sanctions

“Live so that your friends can defend you but never have to.”
Arnold H. Glasow (author)

- C. Integrity: Strict personal honesty and independence

Contrast formal definitions with the students’ definitions. Various types of ethical codes: Military code, “code of the west,” attorneys, gang member, medical profession, etc. Ethics is group in nature.

Integrity is individual in nature

VI. OFFICER USE OF DISCRETION

P.O. 1.5.7

- A. Can officers give breaks?
- B. Important considerations associated with the exercise of discretion in enforcing the law.
 - 1. Statutory requirements – how is your discretion limited by law? This is the most important factor to consider. It is absolute and incontestable.
 - 2. Departmental policies and procedures
 - a. Individual agency policy and procedures
 - b. Supervisory approval
 - 3. The best interests of the community.
 - a. Will a suspect’s release jeopardize safety of the community or individuals?
 - b. Is a person a danger to himself/herself?
 - c. If a suspect is booked, who will care for the

Yes! In some circumstances more than others. Traffic vs. Criminal

P.O. 1.5.7A i.e. Domestic Violence vs. Mutual Combatants

P.O. 1.5.7B May vary

What do they say? They are there to give guidance and structure for decision making.

When in doubt; ask!

P.O. 1.5.7C

i.e. DUI or DV suspects

Can be taken in for psychiatric evaluation

Policies and law and CPS

<p style="text-align: center;">children if present?</p> <p>4. The best interests of the department.</p> <p style="padding-left: 40px;">a. Consider the impact of actions in reflection of professional judgment, appear in perception as ulterior motives, or reflect poorly on the department?</p> <p>5. The interests of the citizen or victim</p> <p style="padding-left: 40px;">a. Will arresting/booking the suspect enhance or damage efforts to prosecute?</p> <p style="padding-left: 40px;">b. Will my actions prevent further victimization?</p> <p>C. The following factors should not be considered when exercising discretion in enforcing the law:</p> <p>1. Prejudice or bias based on: Race, sex, ethnic origin, religious preference, sexual preference or any other social, cultural or economic factors.</p> <p>2. Emotional: If someone angers you, they conquer you. Don't react in kind, remain objective and professional and in control of yourself.</p> <p>3. Position in the community.</p>	<p>(Child Protective Services)</p> <p>P.O. 1.5.7D</p> <p>P.O. 1.5.7E</p> <p>May come into contact with police informants...</p> <p>Treat everyone impartially and by the same standards. This helps in accusations of racism or racial profiling.</p> <p>Loss of control due to anger can lead to complaints! Sustained complaints lead to possible loss of job!</p> <p>Treat all people impartially regardless of who they may be...use wisdom and discretion.</p>
<p>VII. GRATUITY</p> <p>A. Anything of value intended to benefit the receiver; given to the person because of his/her position of authority.</p> <p style="padding-left: 40px;">Most times people just want to be nice and do something out of gratitude or respect. (i.e. special discounts)</p> <p>B. Ask the class to identify problems associated with acceptance (feeling of indebtedness, expectations of giver, easy to move from small gifts to large, public perception).</p>	<p>P.O. 1.5.1</p> <p>P.O. 1.5.1A Most common in law enforcement: free or reduced meals...leave enough tip to cover the whole meal.</p> <p>P.O. 1.5.2</p>
<p>VIII. BRIBE</p> <p>A. A person commits bribery of a public servant or party</p>	<p>P.O. 1.5.1B</p> <p>Review definition under A.R.S. §13-2602.A.1 and 2</p>

officer if with corrupt intent:

1. Such person offers confers or agrees to confer any benefit upon a public servant or party officer with the intent to influence the public servant's or party officer's vote, opinion, judgment, exercise of discretion or other action in his official capacity as a public servant or party officer; or
2. While a public servant or party officer, a person solicits, accepts (or agrees to accept) any benefit upon an agreement or understanding that his/her vote, opinion, judgment or exercise of discretion or other action as a public servant or party officer may thereby be influenced.

Discuss how a bribe and gratuity differ. Emphasize that consideration is taken in return for some expected favor. A quid-pro-quo arrangement.

A.R.S. §13-2602.A Bribery must include the element of: *"Corrupt intent."*

IX. UNETHICAL BEHAVIOR OF OTHERS

A. Are you responsible for the actions of others?

P.O. 1.5.8B Yes

Do their actions impact you?

Yes- Case law can be set by one incident, policy developed by one action

1. Why might an entire recruit class be disciplined for the actions of one? A reminder, that we, as a profession, are judged by the actions of one.
2. What happens when an officer in another part of the country makes a poor decision; headline.

Ask class for opinions.

B. What is your responsibility upon observing unethical or unlawful actions by another officer?

P.O. 1.5.4

1. Report serious incidents to supervisors.
2. Prevent fellow officers from becoming involved, if possible.

P.O. 1.5.4A

P.O. 1.5.4B This depends upon the severity of the infraction or offense!

a. Example: Sleeping on duty vs. theft

Be careful on what events you decide to intervene on, you may be guilty by association or accused of covering up.

"Associate yourself with men of good quality if you esteem your own reputation, for 'tis better to be alone than in bad company" George Washington

"Code of Silence": The description of the real or perceived practice whereby individuals within a profession remain conspicuously quiet about the unethical or unlawful actions of co-workers.

There is complicity when silence triumphs! Not a common institutional practice anymore, but the perception remains that it

X. EVALUATING YOUR DECISION

A. "Ethics check" questions

Is it legal? Does it violate any statutes, codes, laws, or constitutions? Just because it is legal, is it always ethical?

Is it authorized? Do agency policy, orders, or procedures limit or control my actions?

Is it fair? Is my decision fair to others? Does my position give me unfair advantage over others? Is there a conflict of interest between my interests and those of the community?

How does it feel or how will it feel? Stomach test, headline test, and mirror test.

"Whenever you are to do a thing, though it can never be known but to yourself, ask yourself how you would act were all the world looking at you, then act accordingly." Thomas Jefferson

"Conscience is that inner voice that tells us somebody may be looking." H. L. Mencken (author)

XI. ACCOMPLICES OF UNETHICAL CONDUCT

A. Rationalization:

"No man is justified in doing evil on the grounds of expediency."
Theodore Roosevelt

"The community owes me!"

"The department owes me!"

"This guy's a dirt bag anyhow."

"Maybe I did not work as much overtime today as I claimed, but plenty of times I do and I do not put in for it."

"Everyone else does it."

B. Minimalization:

is. Do a good job of policing ourselves and holding each other accountable.

If it doesn't feel right, or it makes you feel ill, you probably ought not do it! It is your conscience speaking! Listen to it!

You expect this from kids, not cops!

“I only did it is just one (1) time.”

“With all the good work I do, this should not even be an issue.”

“No one will ever even know.”

“No one got hurt by it.”

“It was just a couple of dollars.”

Rationalizing and minimizing are illusions!

XII. SATISFACTIONS AND DISSATISFACTIONS

A. There are satisfaction and dissatisfactions inherent in law enforcement work, as it is in any career:

P.O. 1.5.9A

1. Initial satisfactions:

a. Good entry-level pay.

Decent... puts a roof over your head and food on the table!

b. Good benefits

20 yr. retirement, overtime, health coverage, etc.

c. Physiological and safety needs addressed.

Maslow's Hierarchy of Needs (basic)

d. Social needs addressed – self-esteem and challenging work.

Maslow's Hierarchy of Needs (advanced)

2. Potential dissatisfactions:

a. Opportunities for growth lessen.

Restricted internal movement to detectives, K-9, SWAT, etc. Many officers interested for few openings!

b. Self-esteem wanes with failure to promote.

Feel like the agency doesn't appreciate your talents or an unhealthy job identity

c. Boredom

“giving up” or just “lazy”

d. Dissatisfaction with management

Blame game or just taking “it” personal

C. Law enforcement career's effects on family and social relationships:

P.O. 1.5.9B

1. Odd shift schedules that contrast with family.

Don't see each other as much, feelings of isolation,

2. Difficulty discussing work with family, thus spend more time socializing with co-workers.

poor communications

Family doesn't understand or don't want to listen

D. Discuss the effect the previous issues have on officers' decision making. Do not lose sight of the reasons we joined the profession. Do not forget the stakeholders.

Officers may begin to place all their time and energies into the job

X. MAINTAINING A HIGHER STANDARD

A. Does society have the right to hold you to a higher standard?

P.O. 1.5.8A Yes!!! As it does for pilots, doctors, judges, teachers, etc.

B. Do personal conduct expectations apply only when on duty or does it extend to off-duty?

They apply off-duty as well...bar fights, DUI, DV, neighborhood conflicts, and others will all land an officer in major trouble including termination

1. Cops live in a "fishbowl" rightly or wrongly...your actions will be watched, judged, criticized and scrutinized to a greater degree than other occupations. Hold yourself to a higher expectation; raise your personal standard of conduct high.

An accountant or engineer is arrested for DUI and the world shrugs its shoulders, a cop does anything wrong and it's a headline.

C. Core components of character development:

"I hope I shall always possess firmness and virtue enough to maintain what I consider the most enviable of all titles, the character of an honest man." George Washington

1. Be a person of honesty and integrity

"A man is ethical only when life, as such, is sacred to him...truth has no special time of its own. Its hour is now – always." Albert Schweitzer

"He, who permits himself to tell a lie once, finds it much easier to do it a second time...honesty is the first chapter in the book of wisdom." Thomas Jefferson

2. Build trust with people – be sincere, candid and consistent in your actions.

3. Treat individuals with respect and dignity.

4. Accept responsibility – do not look for excuses for poor performance, actions or inactions.

5. Be just and fair – be responsible in the treatment of all people.
6. Courage – stand up for what is right.

“One man with courage makes a majority.” Mahatma Ghandi (PM of India)

What does the badge represent?

- a. Officers live and die for the principles the badge represents.
- b. Do not dishonor it.

Honor it by the way you live,
by the way you conduct
your life...

XI. CONCLUSION

- A. Review of Performance Objectives
- B. Final Questions and Answers
- C. Instructor Closing Comment(s)

ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD
585 - HOUR BASIC CURRICULUM
MODEL LESSON PLAN

LESSON TITLE: LAWS OF ARREST 2.2

NOVEMBER 2009

SUBJECT: Laws of Arrest

AZ POST DESIGNATION: 2.2

HOURS: 15

COURSE CONTENT:

A delineation of the conditions under which an officer or citizen may make an arrest. The course distinguishes between misdemeanor and felony arrests and discusses the use of the citation form for misdemeanor cases. Also covered are the officer's duties and responsibilities prior to and during the arrest, including arrests with and without a warrant, discretionary enforcement of the law and use of force to effect an arrest. Persons' immune from arrest, legal and illegal aliens and the officer's related responsibilities are identified. Health and safety risks associated with public contact are also addressed.

PERFORMANCE OBJECTIVES:

Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will:

- 2.2.1 Identify that all arrest warrants must be confirmed prior to warrant service.
- 2.2.2 Identify examples of conditions under which a private person may make a lawful arrest as per:
 - A. A.R.S. §13-3884.
 - B. A.R.S. §13-3889.
 - C. A.R.S. §13-3900.
- 2.2.3 Given a written description of an officer entering a premise by force, identify whether or not the legal requirements for entry were fulfilled per A.R.S. §13-3891.
- 2.2.4 Identify the following common limitations of officer discretion:
 - A. Law.
 - B. Existence of departmental policies and procedures.
 - C. Existence of departmental goals and objectives.
- 2.2.5 Identify the requirements for taking a person arrested without a warrant before a magistrate as per A.R.S. §13-3898.



THIS IS TO VERIFY THAT THIS IS
A TRUE AND ACCURATE COPY
OF RECORDS ON FILE AT THE
ARIZONA PEACE OFFICER
STANDARDS & TRAINING BOARD

[Signature]
CUSTODIAN OF RECORDS

- 2.2.6 Identify the time of day or night that an arrest may be made as per A.R.S. §13-3882.
- 2.2.7 Identify examples of the information that an officer is required to provide to a person who is being arrested as per A.R.S. §§13-3887 and 13-3888.
- 2.2.8 Identify examples of the circumstances under which it is preferable to seek a long-form complaint rather than make a probable cause arrest.
- 2.2.9 Identify the provisions of A.R.S. §13-1805 regarding detention of a suspected shoplifter by a merchant or the merchant's agent.
- 2.2.10 Identify what constitutes entrapment as per A.R.S. §13-206 and case law.
- 2.2.11 Identify that in the absence of a court order or warrant, only a parole or probation officer may lawfully arrest a person for a parole/probation violation.
- 2.2.12 Given a written description of an officer effecting an arrest, identify the degree of force that may be used as per A.R.S. §§13-3881, 13-3896 and 13-3902.
- 2.2.13 Given written, visual or verbal descriptions of situations where deadly physical force is threatened or used, identify whether the act was justified. The situations will minimally cover the following:
 - A. Affirmative Defenses (A.R.S. §13-205).
 - B. Execution of public duty (A.R.S. §13-402).
 - C. Use of deadly physical force (A.R.S. §13-405).
 - D. Defense of a third person (A.R.S. §13-406).
 - E. Use of physical force in defense of premises (A.R.S. §13-407).
 - F. Use of deadly physical force in law enforcement (A.R.S. §13-410).
 - G. Use of force in crime prevention (A.R.S. §13-411).
 - H. Use of force in domestic violence (A.R.S. §13-415).
 - I. Use of force in defense of residential structure or occupied vehicles (A.R.S. §13-418).
 - J. Exceptions (A.R.S. §13-419).

- 2.2.14 Given written, visual or verbal descriptions of situations where physical (not deadly) force is threatened or used, identify whether the act was justified. The situation will minimally cover the following:
- A. Affirmative defenses (A.R.S. §13-205)
 - B. Executions of public duty (A.R.S. §13-402).
 - C. Use of physical force (A.R.S. §13-403).
 - D. Self defense (A.R.S. §13-404).
 - E. Defense of a third person (A.R.S. §13-406).
 - F. Use of physical force in defense of premises (A.R.S. §13-407).
 - G. Use of physical force in defense of property (A.R.S. §13-408).
 - H. Use of physical force in law enforcement (A.R.S. §13-409).
 - I. Use of deadly force in law enforcement (A.R.S. §13-410).
 - J. Use of physical force in crime prevention (A.R.S. §13-411).
 - K. Use of physical force in domestic violence (A.R.S. §13-415)
 - L. Use of force in defense of residential structure or occupied vehicles (A.R.S. §13-418).
 - M. Exceptions (A.R.S. §13-419).
- 2.2.15 Identify the provisions of A.R.S. §13-401 regarding the liability associated with the lawful use of physical or deadly force when the use of such force results in the injury, or death, of an innocent third party.
- 2.2.16 Identify the duties of an officer when making an arrest with a warrant as per A.R.S. §§13-3887 and 13-3897.
- 2.2.17 Identify examples of the conditions under which an officer may make a lawful arrest without a warrant as per A.R.S. §13-3883.
- 2.2.18 Given a written, verbal or visual description of an instance where an arrest may or may not be warranted, identify if probable cause for the arrest exists by applying the following standard:

Probable cause to make an arrest requires knowledge, based on facts and circumstances, which would cause reasonable and prudent police officers to believe that a crime has been, or is being,

LESSON TITLE: LAWS OF ARREST

**NOVEMBER 2009
PAGE: 4 of 32**

committed and that the person to be arrested has committed, or is committing, that crime.

- 2.2.19 Identify examples of persons who are immune from arrest as per Article 4, Part 2, Section 6 of the Arizona Constitution.
- 2.2.20 Identify the conditions under which an arrested person may be issued a written notice to appear in lieu of detention as per A.R.S. §13-3903.

DATE FIRST PREPARED: March 2001

PREPARED BY: SME Committee

REVIEWED – **REVISED:** Lt. Harold Brady DATE: July 2002

REVIEWED – **REVISED:** SME Committee DATE: June 2003

REVIEWED – **REVISED:** SME Committee DATE: May 2008

REVIEWED – **REVISED:** SME Committee DATE: February 2009

REVIEWED – **REVISED:** ALEA DATE: October 2009

REVIEWED – REVISED: DATE:

AZ POST – APPROVAL: Richard Watling DATE: November 2009

INSTRUCTOR REFERENCES:

CLASS LEVEL: Recruit

TRAINING AIDS:

INSTRUCTIONAL STRATEGY: Lecture with discussion, overheads and handouts.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2.2 Laws of Arrest

REVISIONS: Numerous changes throughout the lesson plan

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives.
- C. Attention “grabber.”

II. GENERAL

- A. One (1) of the most formidable powers in society is the power to arrest.
 - 1. The power to arrest for “defined crimes” is granted by statute.
 - 2. In Arizona, Title 13 grants arrest authority in general to peace officers and, in limited circumstances, to private citizens.
 - 3. The authority to arrest depends on the existence of a crime; without a crime, there can be no arrest. Crimes are defined throughout Arizona Revised Statutes. Officers will most often be dealing with the offenses described and defined in Titles 13, 28 and 4 and local ordinances.
 - 4. It is the responsibility of a prudent officer to remain aware of changes in statutes and case law which affect this power.
 - 5. If an officer does not remain aware of the law or abuses the power, the officer can suffer:
 - a. Criminal charges or civil lawsuits.
 - b. Job termination.
 - c. Loss of charges against a suspect in court.
 - d. Public humiliation for the officer and the agency.
 - e. Loss of public trust and confidence.
- B. The 4th Amendment defines and limits the power to arrest.
 - 1. The standard for arrest established by the 4th Amendment is “probable cause.”

P.O. 2.2.18

2. Probable cause can be defined as knowledge based on facts and circumstances which would cause reasonable and prudent police officers to believe that a crime has been, or is being, committed and that the person to be arrested has committed, or is committing, a crime.
3. At the very outset there must be a crime! A violation of the law is the first thing that must happen to initiate the arrest process. Otherwise, there is no basis for the arrest and such action would violate the Fourth Amendment.

Discuss disorderly conduct against peace officers and other "contempt of cop" situations

III. WHAT IS AN "ARREST"?

- A. Legal and Practical standards for defining "arrest".
 1. In general, an arrest involves:
 - a. Violation of the law.
 - b. Someone being taken into custody for the violation.
 - c. With the intent that the person be taken before a court.
 - d. To answer a formal charge.
 2. The practical test as to whether an arrest has occurred is whether a reasonable person, under the same circumstances, would believe that he/she was not free to leave.
 3. Legal test requires probable cause (per Arizona and U.S. Constitutions) and actual or constructive detention per A.R.S. §13-3881(A).
 - a. Actual detention is physical restraint through use of force or actual touching.
 - b. Constructive detention is submission to the arrest without actual touching.
 4. Case law has also interpreted "arrest" as "the taking of a person into custody against his/her will for the purpose of criminal prosecution or interrogation."

- a. (Dunaway v. New York, 1979 U.S. Supreme Court Case.)
- B. WHEN HAS AN ARREST OCCURRED? This can be difficult to determine and even courts may disagree.
 - 1. Courts look at a variety of factors in determining whether an arrest has occurred, such as:
 - a. The officer's intention to make an arrest.
 - b. Communication of the authority and cause for the arrest and other actions of the officer.
 - c. An understanding by the arrestee of the officer's intention.
 - i. A person who is unconscious or severely intoxicated may not understand.
 - ii. Nor may a person who does not speak English.

IV. THE BASIS FOR ARREST - ESTABLISHING PROBABLE CAUSE

- A. Definitions.
 - 1. Probable Cause (defined previously).
 - 2. Reasonable Suspicion.
 - a. Reasonable suspicion has been defined as specific articulable facts and circumstances that would lead a reasonable police officer to suspect a crime has been, is, or is about to be committed by the person to be stopped or detained.
- B. Building Blocks of Probable Cause
 - 1. Establishing probable cause is like using building blocks to reach a certain height, as you gather information about a possible violation, each piece is a building block, which is added to the others.
 - 2. The degree to which a bit of information makes it likely that a crime was committed (the weight of the information) determines the height of the building block.

3. Key things to keep in mind.
 - a. Probable cause must be established before the arrest. It cannot be based upon facts which turn up after the arrest.
 - b. Probable cause must be based upon objective facts – facts which you can articulate, recall and testify about to the Trier of fact at a trial.
 - c. An officer's training and experience may affect the officer's interpretation of the facts and circumstances the officer observes.
4. What factors can be considered in establishing probable cause?
 - a. Personal knowledge of the officer – five (5) senses, past training and experience, etc.
 - b. Sources both named and unnamed.
 - i. Victims, witnesses, other officers, citizens, suspects, accomplices, etc. – generally considered reliable.
 - ii. Confidential informants, anonymous tipsters, etc. – generally must demonstrate reliability.
 - c. Suspect information – past conduct, reputation, criminal history, etc.
 - d. Physical circumstances of the crimes – location, time of day, odors, weather, lighting, etc.
 - e. Physical evidence at the scene – weapons, blood splatters, fingerprints, documents, etc.

Discuss Florida v. J.L. and State v. Altieri

C. Reasons for citizen contact.

1. Hunch (Voluntary Contact).

E.g.: An Officer sees a Rolls Royce in government owned housing; this may seem out of place. The officer may want to do some investigation, but this situation alone does not provide any basis to stop or detain the driver of the Rolls.

- a. A hunch provides no legal authority to do anything unless it is consensual – cannot stop or detain the citizen. The officer may approach the citizen and begin speaking with him/her, but the citizen may legally ignore the officer and walk away.
 - b. Also called “mere suspicion”, a hunch may involve things that appear out of place, such as a person peeking around the corner of a closed business at night, or a person looking nervous and walking away. This by itself is not enough to initiate a stop.
2. Reasonable suspicion.
- a. Reasonable suspicion that a person is involved in criminal activity provides legal authority to stop and briefly detain that person for investigation.
 - b. The facts and inferences, taken as a whole must provide a “particularized and objective basis for suspecting the particular person stopped of criminal activity.
 - c. Provides an interim standard – probable cause is not required but the scope and duration of detention are limited.
 - d. Officers must articulate (document) **ALL** of the specific circumstances that were relied on to justify a stop or seizure.
 - e. Reasonable suspicion allows officers to stop or detain for a reasonable time to investigate further to confirm or dispel the suspicion of criminal activity. The investigation may lead to the conclusion that there is probable cause to arrest (or search), or that the person is not involved in criminal activity and must be released.

Discuss Terry v. Ohio – genesis of reasonable suspicion standard for stop or investigatory detention.

E.g.: Detention of a motorist stopped for a smoking tailpipe was reasonable where the motorist was covered with blood and feces and claimed to have been in a fight. Officers released the motorist after a 45 minute investigation trying to determine whether the other party to the fight was injured. State v. Spreitz.

. E.g.: An officer is investigating a one car accident; a car drives by the scene very slowly. The officer thinks the occupant might know something about the accident so

- f. You may use **REASONABLE** force to control the situation.
3. Probable Cause
- a. Facts and circumstances must demonstrate a “fair probability” that the crime was committed by the person to be arrested.
 - b. The factors establishing reasonable suspicion may be the same relied upon to establish probable cause.
 - c. Once probable cause is established, it can disappear if:
 - i. New circumstances are presented.
 - ii. The basis for probable cause is proven untruthful (informant).
 - iii. Innocence is established by the suspect.
 - d. Probable cause examples:
 - i. An officer sees a suspect he/she arrested a couple of months earlier for drug possession standing on a street corner known for drug dealing. Does he/she have probable cause to arrest the suspect again?

NO, no facts AT THIS TIME show that the suspect is presently possessing drugs.
 - ii. The officer stops same suspect for a traffic violation and conducts a consent search, finding a concealed weapon. Assuming the search is valid, does the officer have probable

he/she pursues and stops the vehicle.
Because the conduct was not criminally suspicious (slowing down and looking), and because it is not a crime to have information and not provide it to law enforcement, the stop of the citizen was ruled improper.

E.g.: A person thought to be a murder victim shows up unharmed.
E.g.: Officer learns that informant is former jilted girlfriend of the target
E.g.: Credible alibi provided

cause for an arrest?

YES, for carrying a concealed weapon, but NOT for drug possession.

- iii. An officer yells at a youth that is acting suspiciously in a high narcotics trafficking area. The youth takes off running. When the officer catches the youth, does he/she have probable cause for an arrest?

NO. running away from police in and of itself is not a crime?

If during the chase the suspect tosses what turns out to be drugs, then the officer would have probable cause for an arrest.

- iv. An officer comes upon a one car accident. The suspect, who is outside the car and obviously intoxicated, states he was a passenger in the car. IS there probable cause to arrest the suspect for DUI?

NO, not without a witness who can state the suspect was driving the vehicle, or at least behind the wheel of the vehicle, immediately after the accident or some other similar evidence.

- v. An officer legally stops a vehicle, containing four people, for a traffic violation. As the driver rolls down the window to speak to the officer, the pungent odor of marijuana emanates from the vehicle. Does the officer have probable cause for an arrest?

No. The officer has the right to search the vehicle (probable cause exception or destruction of evidence exception to the search warrant requirement) and may arrest those in the car if the drugs are found. In addition, the officer has reason to check the driver for impairment, which may lead to an arrest for DUI.

V. DISCRETION TO ARREST AND LIMITS OF DISCRETION.

- A. Generally, when officers have probable cause to arrest, they also have discretion to make the arrest or not.

LESSON TITLE: LAWS OF ARREST

NOVEMBER 2009

PAGE: 12 of 32

B. Limits of Discretion

1. Law -- the law limits the circumstances under which you can exercise your discretion in numerous ways including immunity, mandatory arrest offenses and jurisdiction to arrest.
2. Departmental policies and procedures -- may limit your discretion by requiring that certain offenders be cited and released (**e.g., shoplifters with identification**), or that certain categories of offenses are always long-formed rather than handled by arrest (**e.g., civil problems**) or by specifying minimum conduct for which an arrest will occur (**e.g., 25 miles or more over the posted speed limit**).
3. Departmental goals and objectives -- may limit your discretion, treating certain conduct in a particular way, which reflects the community's concern. Generally short term. For example, that a sting operation involving prostitution offenses may require physical arrest

P.O. 2.2.4A E.g.:
Domestic Violence arrests

P.O. 2.2.4B

P.O. 2.2.4C

VI. ALTERNATIVES TO CUSTODIAL ARREST

- A. Citation in lieu of detention (A.R.S. §13-3883.4) -- states that a person is eligible to be cited and released pursuant to A.R.S. §13-3903, whenever a misdemeanor or a petty offense has been committed and there is probable cause to believe that the person to be arrested has committed the offense.
1. This is the statutory guideline for adults.
 2. Even though an arrestee is eligible to be cited and released, it is not mandatory, and the decision is up to the officer. The person may be held in jail until seeing a magistrate.
 3. Domestic violence offenses are not eligible for cite and release by law.
 4. If permitted by the juvenile court, juveniles are eligible to be cited and released for (see A.R.S. §8-323):
 - a. Non-felony traffic offenses.
 - b. Purchase, possession or consumption of alcohol.
 - c. Boating or game and fish violations.

P.O. 2.2.20

LESSON TITLE: LAWS OF ARREST

**NOVEMBER 2009
PAGE: 13 of 32**

- d. Curfew.
 - e. Truancy.
 - f. Graffiti offenses or purchase/possession of graffiti materials.
 - g. Purchase or possession of tobacco.
 - h. Any city/town ordinance.
 - i. Interference with judicial proceedings
5. When doing a cite and release, under A.R.S. § 13-3903, an officer may:
- a. Have the person sign the citation and then release the person in the field.
 - b. Take the person to the station, take photos, get fingerprints, or any combination thereof, and then have the person sign the citation and release him/ her from the booking station.
 - c. Book the person and then any time before the person sees a magistrate, have the person sign the citation and release him/her from detention.
 - d. If the arrestee refuses to sign the promise to appear on the citation, he/she is not eligible to be released per A.R.S. §13-3903(C).
6. Search incident to arrest – a recent U.S. Supreme Court case, Knowles v. Iowa, has limited search incident to arrest to full custodial arrest situations. A search incident to arrest may be appropriate if the arrestee is legitimately transported to another location or if there is a need to search for further evidence of the offense (e.g., shoplifting).
7. The arrestee is entitled to a minimum of five (5) days before having to appear in court and the citation must specify where the arrestee is to appear.

LESSON TITLE: LAWS OF ARREST

**NOVEMBER 2009
PAGE: 14 of 32**

8. Benefits of cite and release:
 - a. Cost saving measure.
 - b. Time saving measure.
 - c. Old, infirm or fragile arrestee.
 - d. Non-violent crime.
9. Cite and release is not available for the following:
 - a. Domestic violence offenses.
 - b. Felonies.
 - c. Juveniles (except for previously stated offenses).
 - d. Where policy prohibits.
 - e. Where it is obvious the arrestee will not appear.

B. Long form or complaint in lieu of arrest.

1. In some situations it is preferable to delay arrest or summon the defendant into court; in other words, to send the reports to the prosecutor who determines whether to file charges and what charges to file. Various factors must be considered when making this decision.
2. When is long-forming used? Some situations where a long form complaint is appropriate might be:
 - a. When your probable cause is weak and a victim is demanding action, yet the suspect does not appear to be a threat to anyone's physical safety.
 - b. When it is a complex case requiring a lot of follow-up by a specially trained investigator, such as a computer fraud case.
 - c. When the non-dangerous suspect's medical condition is poor and would be exacerbated by incarceration.
 - d. When you are involved in a situation in which review by either supervisors or prosecutors prior to an arrest seems to be the appropriate course of action.
 - e. When departmental policy or procedure requires it or departmental goals or objectives will be furthered by long forming.

P.O. 2.2.8

E.g.: Situations fraught with civil liability such as child custody, mechanic's liens or non-profit organizations conducting casino night gambling

VII. EFFECTING AN ARREST

A. Who has authority to make an arrest?

1. Police officer – with or without an arrest warrant.
 - a. Scope of Authority (A.R.S. §13-3871) – provides statewide authority to make arrests with or without a warrant (there are jurisdictional concerns, though, on Indian reservations and federal enclaves such as military base, V.A. hospital, etc.).
2. A citizen.
 - a. A citizen may make an arrest under certain circumstances, but the citizen's authority is more limited than that of a peace officer.
 - b. Limited to felony or breach of the peace misdemeanor (A.R.S. §13-3884).
3. A merchant – for shoplifting under A.R.S. §1805(C) and (D) and a movie theatre operator –for recording a movie without consent under A.R.S. §3723(C).
 - a. Has no power to arrest.
 - b. Can detain on “reasonable cause” in a reasonable manner, for a reasonable time, on the premises for questioning or summoning a police officer.
4. Bail Bondsperson.
 - a. Historically, could go anywhere to make an arrest, as they are not government actors, but rather have a contractual relationship.
 - b. Under A.R.S. §13-3885, a bail bondsperson must conduct himself/herself in a certain manner when recovering a surety.
 - c. Law enforcement can, but are not required to, accompany a bonds-person, but are only present to keep the peace; if the arrestee uses force against the bondsperson, he/she may be arrested (assault), but then you should take custody of the prisoner, as you will never see the prisoner until the other charges are

P.O. 2.2.2

P.O. 2.2.2A; Is shoplifting a breach of the peace misdemeanor? What about a DUI?

P.O. 2.2.9

LESSON TITLE: LAWS OF ARREST

**NOVEMBER 2009
PAGE: 16 of 32**

satisfied.	
5. Parole/probation officers – only parole or probation officers may: a. Arrest for a violation of parole or probation condition, if there is no warrant. b. Make and file a complete record of persons placed under suspended sentence by the court. c. Exercise general supervision and observation over persons under suspended sentence by the court.	P.O. 2.2.11
B. How is the arrest made?	
1. Method of arrest for officers (A.R.S. §13-3888) – must inform the arrestee of your authority to arrest and the cause for the arrest, unless: a. The arrestee is engaged in the offense. b. The arrestee is pursued immediately after the offense, or after an escape, or flees or forcibly resists; or c. Giving the information would imperil the arrest.	P.O. 2.2.2B and 2.2.7 The rule is the same for citizens under A.R.S. § 13-3889, but they must announce their intention to arrest and the cause for the arrest.
C. After arrest (A.R.S. §13-3900) citizens must:	P.O. 2.2.2C
1. Deliver the arrestee to a peace officer; or 2. take the arrestee before the nearest or most accessible magistrate and, 3. either the officer, or if the officer cannot, the citizen, shall swear out a complaint in front of the magistrate showing the facts of the offense.	
D. An officer can make a custodial arrest for a minor crime, such as a petty offense. <i>Atwater v. Lago Vista, Texas</i> (2001).	
E. Degree of force in effecting an arrest:	P.O. 2.2.12
1. A.R.S. §13-3881 – how made, force and restraint. 2. A.R.S. §13-3896 – after escape or rescue.	Example of too much force: Rodney King Incident. It's against the law and you

- 3. A.R.S. §13-3902 – treatment of arrested person.

could end up with charges or civil violations against yourself. Do what's right always!

VIII. GENERAL ARREST PRINCIPLES

- A. Time of day (A.R.S. §13-3882) – allows an arrest to be made any time of the day or night and any day of the week.

P.O. 2.2.6

- B. Place of arrest

- 1. An officer is authorized to make an warrantless arrest in a public place at any time.
- 2. An officer is authorized to enter a home or other building to effect an arrest under any of the following circumstances:

P.O. 2.2.3

- a. After having received consent to enter from a person with authority to consent to such entry.
- b. When exigent circumstances exist – generally a person's life must be in danger, evidence will be lost or it is a case of hot pursuit.
- c. There is a felony warrant (for a person at his/her own residence) and probable cause to believe the person is inside of the residence, or there is an arrest warrant and a search warrant for a person at a third party's home.,
- d. Nonconsensual entries require you to knock and announce prior to entry and have either no response or admittance refused OR a no knock search warrant.
- e. Examples:
 - i. You have a warrant to arrest for John Doe for robbery. A neighbor calls telling you that John Doe is home and when you arrive a couple of minutes later, you find John Doe's car in the driveway. John Doe owns the home and the neighbor confirms he has not seen John Doe leave. You go up to the door and knock and announce, but receive no answer after a couple of minutes. The door is closed, but unlocked and you enter the home. Lawful

Note: Check department policy for misdemeanor warrants.

entry?

* Yes, the entry was lawful. You had an arrest warrant and probable cause to believe the suspect was there. In accordance with A.R.S. §13-3891, you knocked and announced and only entered after a reasonable time.

- ii. Officer Rios has a felony arrest warrant for Bill Jones. She also has probable cause to believe he is inside at a friend's residence. After knocking, announcing and waiting a reasonable time period, may Officer Rios lawfully force entry into the premises?

*No. Officer Rios must also have a search warrant authorizing entry to the friend's residence or permission from the friend to enter the premises.

- iii. Deputy Smith and his partner are pursuing Susie Jones for a bank robbery that just occurred. They pursue her to a house that she enters. They surround the house and knock at the door with no response. May entry be forced?

*Yes, The deputies may forcibly enter the premises, but should continue to identify themselves after entry.

- C. Searches – See VI.A.6 above.
- D. Booking – complete the booking paperwork and any necessary fingerprinting or photographing of the arrestee; transport the arrestee to jail to await the initial appearance.
- E. Juveniles and vulnerable arrestees -- remember to keep juveniles away from adults, females separate from males and the mentally unstable by themselves and under watch.
- F. Prisoner's property – you have the responsibility to safeguard prisoner property. If your agency has an appropriate inventory policy you may inventory the property.
- G. Legal counsel – the arrestee has the right to consult with an attorney, in private if requested, per A.R.S. §13-3901 and Arizona Rules of Criminal Procedure, Rule 6.1.

LESSON TITLE: LAWS OF ARREST

**NOVEMBER 2009
PAGE: 19 of 32**

- H. The arrestee is permitted to make a least one (1) phone call regardless of to whom it is made.
- I. Safety Issues – you need to be very careful in searching prisoners (or dealing with any member of the public), as there are many health and safety risks associated with such physical contact. Among those risks are:
 - 1. Needles.
 - 2. Drug paraphernalia.
 - 3. Presence of weapons.
 - 4. Communicable diseases (transmitted via touch, airborne organisms, or body fluids).

XI. ARREST WITHOUT A WARRANT

- A. Most arrests are made without an arrest warrant. **P.O. 2.2.17**
- B. Requirements after an arrest without a warrant.
 - 1. When a person is arrested without a warrant, they are to be taken, without unnecessary delay, before a magistrate in the county where the arrest occurred. **P.O. 2.2.5**
 - 2. A complaint must be filed before the magistrate explaining the facts of the case and the basis of those facts. **A.R.S. §13-3898**
- C. An officer may make an arrest under the following circumstances in accordance with A.R.S. §13-3883:
 - 1. There is probable cause to believe that a felony has been committed by the person to be arrested.
 - 2. There is probable cause to believe that the person to be arrested has been involved in an accident, there was a criminal violation of Title 28 and such criminal violation occurred just prior to, or immediately following, such traffic accident.
 - 3. There is probable cause to believe a misdemeanor or petty offense has been committed by the person to be arrested.

X. ARREST PURSUANT TO AN ARREST WARRANT

- A. Method of arrest with a warrant (A.R.S. §§13-3887 and 13-3897). **P.O. 2.2.7 and 2.2.16**

LESSON TITLE: LAWS OF ARREST

**NOVEMBER 2009
PAGE: 20 of 32**

1. Inform the arrestee of the cause of the arrest and the fact that there is a warrant UNLESS:
 - a. The arrestee flees or forcibly resists, or
 - b. Giving of the information will imperil the arrest.
 2. If the arrestee requests to see the arrest warrant, show it to him/her as soon as practical (it is not necessary to have it in your possession).
 3. If the arrest occurs in the county where the offense occurred and the warrant was issued, take the arrested person in front of the magistrate issuing the warrant, or if the magistrate is unavailable, before the nearest and most accessible magistrate in the county (A.R.S. §13-3897).
 4. If the arrest occurs in a county other than where the warrant was issued, take the arrestee before the nearest and most accessible magistrate in the county where the arrest occurs.
 5. An arrest warrant is valid until quashed or served.
 6. Unlike a search warrant, an arrest warrant can be served any time of the day or night.
- B. Remember that arrest warrants must be served by a peace officer. At least one of the officers in a group must be aware of the existence of the warrant if relying on it to take law enforcement action, (A.R.S. §13-3887).
- C. The arrest warrant must be facially valid (also referred to as 'fair on its face') – in other words, it must appear to a reasonable police officer to be valid if he/she were to look at it without any knowledge of the circumstances.
- D. A warrant **MUST BE CONFIRMED** prior to serving. When confirming a warrant, make sure your dispatcher confirms at least the following information:
1. Suspect name/identity – the identification of the offender is going to be extremely important in defending your reasonableness in executing the warrant (i.e., physical description, social security number, driver's license number, etc.).
 2. Offense committed is specified.
 3. Words ordering the arrest are present.
 4. Signature of a magistrate is present.
 5. Any bond/extradition information is included.
- E. If unsure that the person named in the warrant is the arrestee, then:
1. Do not book.

P.O. 2.2.1

LESSON TITLE: LAWS OF ARREST

**NOVEMBER 2009
PAGE: 21 of 32**

2. Consult a supervisor.
 3. Get a one (1)-roll fingerprint and check it.
 4. Check signatures on citations compare to any available samples.
 5. Check the original report or with the original agency for further information.
- F. Good faith – officers may rely on a warrant which is facially valid and has been confirmed. Confirming a warrant provides a defense to claims of false arrest.
- G. If the warrant is invalid as a result of a police error, any evidence obtained via the arrest, for example a confession or evidence obtained during a search incident to arrest will be suppressed under the Exclusionary Rule (Arizona v. Evans).
- H. Extradition – a legal proceeding providing transport of a wanted subject from one (1) state to another to answer criminal charges.
1. If the wanted person “waives” extradition, the person is transported to the requesting state.
 2. If the subject fights extradition (A.R.S. §§13-3841 through 13-3846), the Governor of the state, having custody of the wanted subject, must consent to transfer.

XI. TITLE 13 – CHAPTER 4 – JUSTIFICATION

- A. A.R.S. §13-401 Justification; use of reasonable and necessary means.
1. Even though a person is justified under this Chapter in threatening or using physical force or deadly physical force against another, if in doing so such person recklessly injures or kills an innocent third person, the justification afforded by this Chapter is unavailable in a prosecution for the reckless injury or killing of the innocent third person.
 2. Except as provided in subsection A, justification, as defined in this Chapter, is a defense in any prosecution for an offense pursuant to this Title.
- B. A.R.S. §13-205 Affirmative defenses; burden of proof.
1. The defense of justification under Title 13, Chapter 4 (A.R.S. §12-401. et seq. which includes self-defense, defense of others, defense of premises, etc.) is no longer an affirmative defense requiring the defendant to prove that his/her use of force

P.O.2.2.15

P.O. 2.2.13A and 2.2.14A

LESSON TITLE: LAWS OF ARREST

NOVEMBER 2009

PAGE: 22 of 32

was lawful. Now, if the defendant presents any evidence of justification, the state must prove that act was not justified beyond a reasonable doubt.

C. A.R.S. §13-402. Justification; execution of public duty.

P.O. 2.2.14B and 2.2.14B

1. Unless inconsistent with the other sections of this chapter, defining justifiable use of physical force or deadly physical force or with some others superseding provision of law, conduct which would otherwise constitute an offense, is justifiable when it is required or authorized by law.
2. The justification afforded by subsection A also applies if:
 - a. A reasonable person would believe such conduct is required or authorized by the judgment or direction of a competent court or tribunal or in the lawful execution of legal process; or
 - b. A reasonable person would believe such conduct is required or authorized to assist a peace officer in the performance of such officer's duties, notwithstanding that the officer exceeded the officer's legal authority.

D. A.R.S. §13-403. Justification; use of physical force.

P.O.2.2.14C

The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

1. A parent or guardian and a teacher or other person entrusted with the care and vision of a minor or incompetent person may use reasonable and appropriate physical force upon the minor or incompetent person when, and to the extent, reasonably necessary and appropriate to maintain discipline.
2. A superintendent or other entrusted official of a jail, prison or correctional institution may use physical force for the preservation of peace, to maintain order or discipline or to prevent the commission of any felony or misdemeanor.
3. A person responsible for the maintenance of order in a place where others are assembled or on a common motor carrier of passengers, or a person acting under his/her direction, may use physical force if, and to the extent that, a reasonable person would believe it necessary to maintain order, but such person may use deadly physical force only if reasonably necessary to prevent death or serious

- physical injury.
4. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself/herself, may use physical force upon that person to the extent reasonably necessary to thwart the result.
 5. A duly licensed physician, a registered nurse or a person acting under his/her direction or any other person who renders emergency care at the scene of an emergency occurrence, may use reasonable physical force for the purpose of administering a recognized and lawful form of treatment which is reasonably adapted to promoting the physical or mental health of the patient if:
 - a. The treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his/her parent, guardian or other person entrusted with his/her care and supervision except as otherwise provided by law; or
 - b. The treatment is administered in an emergency when the person administering such treatment reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.
 6. A person may otherwise use physical force upon another person as further provided in this Chapter.
- E. A.R.S. §13-404. Justification; self-defense. P.O.2.2.14D
1. Except as provided in subsection B of this section, a person is justified in threatening or using physical force against another when, and to the extent, a reasonable person would believe that physical force is immediately necessary to protect himself/herself against the other's use, or attempted use, of unlawful physical force.
 2. The threat or use of physical force against another is not justified:
 - a. In response to verbal provocation alone; or
 - b. To resist an arrest that the person knows, or should know, is being made by a peace officer or by a person acting in a peace officer's presence and at his/her direction, whether the arrest is lawful or unlawful, unless the physical force used by the peace officer exceeds that allowed by law; or

LESSON TITLE: LAWS OF ARREST

NOVEMBER 2009
PAGE: 24 of 32

- c. If the person provoked the other's use, or attempted use, of unlawful physical force, unless:
 - i. The person withdraws from the encounter or clearly communicates to the other his/her intent to do so reasonably believing he/she cannot safely withdraw from the encounter, and
 - ii. The other nevertheless continues, or attempts, to use unlawful physical force against the person.
 - F. A.R.S. §13-405. Justification; use of deadly physical force: A person is justified in threatening or using deadly physical force against another:
 - 1. If such person would be justified in threatening or using physical force against the other under A.R.S. §13-404; and
 - 2. When, and to the degree, a reasonable person would believe that deadly physical force is immediately necessary to protect himself/herself against the other's use, or attempted use, of unlawful deadly physical force.
 - G. A.R.S. §13-406. Justification; defense of a third person: A person is justified in threatening or using physical force or deadly physical force against another to protect a third person if:
 - 1. Under the circumstances as a reasonable person would believe them to be, such person would be justified under A.R.S. §§13-404 or 13-405 in threatening or using physical force or deadly physical force to protect himself/herself against the unlawful physical force or deadly physical force a reasonable person would believe is threatening the third person he/she seeks to protect; and
 - 2. A reasonable person would believe that such intervention is immediately necessary to protect the third person.
 - H. A.R.S. §13-407. Justification; use of physical force in defense of premises.
 - 1. A person or his/her agent in lawful possession or control of premises is justified in threatening to use deadly physical force or in threatening or using physical force against another when, and to the extent that, a reasonable person would believe it immediately necessary to prevent or terminate the commission, or attempted commission, of a criminal trespass by the other person in, or upon, the premises.
- P.O.2.2.13C**
- P.O.2.2.13D and 2.2.14E**
- P.O.2.2.13E and 2.2.14F**

LESSON TITLE: LAWS OF ARREST

**NOVEMBER 2009
PAGE: 25 of 32**

2. A person may use deadly physical force under subsection A only in the defense of himself/herself or third persons as described in A.R.S. §§13-405 and 13-406.
 3. In this section, "premises" means any real property and any structure, movable or immovable, permanent or temporary, adapted for both human residence and lodging whether occupied or not.
- I. A.R.S. §13-408. Justification; use of physical force in defense of property. **P.O.2.2.14G**
1. A person is justified in using physical force against another when, and to the extent that, a reasonable person would believe it necessary to prevent what a reasonable person would believe is an attempt, or commission, by the other person of theft or criminal damage involving tangible movable property under his/her possession or control.
 2. Such person may use deadly physical force under these circumstances as provided in A.R.S. §§13-405, 13-406 and 13-411.
- J. A.R.S. §13-409. Justification; use of physical force in law enforcement. **P.O.2.2.14H**
1. A person is justified in threatening or using physical force against another if in making, or assisting in making, an arrest or detention or in preventing, or assisting in preventing, the escape after arrest or detention of that person.
 2. Such person uses, or threatens to use, physical force and all of the following exist:
 - a. A reasonable person would believe that such force is immediately necessary to effect the arrest or detention or prevent the escape.
 - b. Such person makes known the purpose of the arrest or detention or believes that it is otherwise known, or cannot reasonably be made known, to the person to be arrested or detained.
 - c. A reasonable person would believe the arrest or detention to be lawful.
- K. A.R.S. §13-410. Justification; use of deadly physical force in law enforcement. **P.O.2.2.13F and 2.2.14I**
1. The threatened use of deadly physical force by a person against another is justified pursuant to A.R.S. §13-409 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is:

LESSON TITLE: LAWS OF ARREST

**NOVEMBER 2009
PAGE: 26 of 32**

- a. Actually resisting the discharge of a legal duty with deadly physical force or with the apparent capacity to use deadly physical force; or
 - b. A felon who has escaped from lawful confinement; or
 - c. A felon who is fleeing from justice or resisting arrest with physical force.
2. The use of deadly physical force by a person other than a peace officer against another is justified pursuant to A.R.S. §13-409 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is actually resisting the discharge of a legal duty with physical force or with the apparent capacity to use deadly physical force.
 3. The use of deadly force by a peace officer against another is justified pursuant to A.R.S. §13-409 only when the peace officer reasonably believes that it is necessary:
 - a. To defend himself/herself or a third person from what the peace officer reasonably believes to be the use of imminent deadly physical force.
 - b. To effect an arrest or prevent the escape from custody of a person whom the peace officer reasonably believes:
 - i. Has committed, attempted to commit, is committing or is attempting to commit, a felony involving the use, or a threatened use, of a deadly weapon.
 - ii. Is attempting to escape by use of a deadly weapon.
 - iii. Through past or present conduct of the person which is known by the peace officer that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay.
 - iv. Is necessary to lawfully suppress a riot if the person, or another person participating in the riot, is armed with a deadly weapon.
 4. Notwithstanding any other provisions of this Chapter, a peace officer is justified in threatening to use deadly physical force when, and to the extent, a reasonable officer believes it necessary to protect himself/herself against another's potential

LESSON TITLE: LAWS OF ARREST

**NOVEMBER 2009
PAGE: 27 of 32**

- use of physical force or deadly physical force.
- L. A.R.S. §13-411. Justification; use of force in crime prevention. **P.O.2.2.13G and 2.2.14J**
1. A person is justified in threatening or using both physical force and deadly physical force against another if, and to the extent, the person reasonably believes that physical force or deadly physical force is immediately necessary to prevent the other's commission of:
 - a. Arson of an occupied structure under A.R.S. §13-1704.
 - b. Burglary in the second or first degree under A.R.S. §§13-1507 or 13-1508.
 - c. Kidnapping under A.R.S. §13-1304.
 - d. Manslaughter under A.R.S. §13-1103.
 - e. Second or first degree murder under A.R.S. §13-1104 or 13-1105.
 - f. Sexual conduct with a minor under A.R.S. §13-1405.
 - g. Sexual assault under A.R.S. §13-1406.
 - h. Child molestation under A.R.S. §13-1410.
 - i. Armed robbery under A.R.S. §13-1904.
 - j. Aggravated assault under A.R.S. §13-1204, subsection A, paragraphs 1 and 2.
 2. There is no duty to retreat before threatening or using deadly physical force, justified by subsection A of this section.
 - a. A person is presumed to be acting reasonably for the purposes of this section if he/she is acting to prevent the commission of any of the offenses listed in subsection A of this section.
 - b. This section is not limited to the use or threatened use of physical or deadly physical force in a person's home, residence, place of business, land the person owns or leases, conveyance of any kind, or any other place in this state where a person has a right to be.
- M. A.R.S. §13-412. Duress. **P.O.2.2.14J**
1. Conduct which would otherwise constitute an offense is justified if a reasonable person would believe that he/she was compelled to engage in the prescribed conduct by the threat or use of immedi-

LESSON TITLE: LAWS OF ARREST

**NOVEMBER 2009
PAGE: 28 of 32**

- ate physical force against this person or the person of another which resulted, or could result, in serious physical injury which a reasonable person in the situation would not have resisted.
2. The defense provided by subsection A is unavailable if the person intentionally, knowingly or recklessly placed himself/herself in a situation in which it was probable that he/she would be subjected to duress.
 3. The defense provided by subsection A is unavailable for offenses involving homicide or serious physical injury.
- N. A.R.S. §13-415. Domestic violence. **P.O.2.2.13H and 2.2.14K**
1. If there have been past acts of domestic violence as defined in A.R.S. §13-3601, subsection A against the defendant by the victim, the state of mind of a reasonable person under A.R.S. §13-404, 13-405 and 13-406 shall be determined from the perspective of a reasonable person who has been a victim of those past acts of domestic violence.
- O. A.R.S. §13-418 Justification; use of force in defense of residential structure or occupied vehicle. **P.O.2.2.13I and 2.2.14L**
1. Notwithstanding any other provision of this chapter, a person is justified in threatening to use or using physical force or deadly physical force against another person if the person reasonably believes himself or another person to be in imminent peril of death or serious physical injury and the person against whom the physical force or deadly physical force is threatened or used was in the process of unlawfully or forcefully entering or had unlawfully or forcefully entered, a residential structure or occupied vehicle, or had removed or was attempting to remove another person against the other person's will from the residential structure or occupied vehicle.
 2. A person has no duty to retreat before threatening or using physical force or deadly physical force pursuant to this section.
 3. For the purposes of this section:
 4. "Residential Structure" has the same meaning prescribed in A.R.S. §13-1501.
 5. "Vehicle" means a conveyance of any kind, whether or not motorized that is designed to transport persons or property.

LESSON TITLE: LAWS OF ARREST

**NOVEMBER 2009
PAGE: 29 of 32**

P. A.R.S. §13-419 Presumption; exceptions; definition.

P.O.2.2.13J and 2.2.14M

1. A person is presumed to be acting reasonably for the purposes of sections 13-404 through 13-408 and section 13-418 if the person is acting against another person who unlawfully or forcefully enters or entered the person's residential structure or occupied vehicle, except that the presumption does not apply if:
 - a. The person against whom physical force or deadly physical force was used has the right to be in or is a lawful resident of the residential structure or occupied vehicle, including an owner, lessee, invitee or titleholder, and an order of protection or injunction against harassment has not been filed against that person.
 - b. The person against whom the physical force or deadly physical force was used is the parent or grandparent, or has legal custody or guardianship, of a child or grandchild sought to be removed from the residential structure or occupied vehicle.
 - c. The person who uses physical force or deadly physical force is engaged in an unlawful activity or is using the residential structure or occupied vehicle to further an unlawful activity.
 - d. The person against whom the physical force or deadly physical force was used is a law enforcement officer who enters or attempts to enter a residential structure or occupied vehicle in the performance of official duties.
2. For the purpose of this section:
 - a. "Residential Structure" has the same meaning prescribed in section 13-1501.
 - b. "Vehicle" means a conveyance of any kind, whether or not motorized, that is designed to transport persons or property.

XII. IMMUNITY FROM ARREST

P.O.2.2.19

Certain persons are not subject to arrest either at all or when performing certain functions. Officers should investigate and complete a report on any incident where immunity may be involved.

LESSON TITLE: LAWS OF ARREST

**NOVEMBER 2009
PAGE: 30 of 32**

- A. Ambassadors and foreign ministers, are totally immune from arrests for any crime, and their their families, servants and staff have varying levels of immunity.
 - 1. Contact the FBI or the U.S. State Department to confirm a person's status. Persons claiming immunity should also have an ID card issued by the Department of State specifying their level of immunity.
 - 2. Immunity is based on agreement between countries to:
 - a. Avoid international incidents.
 - i. Not interfere with the conduct of necessary affairs of foreign governments in this country.
 - 3. Immunity is not designed to place foreign representatives above the law.
 - a. If a foreign official or member of his/her family or staff commits a crime because of mental derangement or otherwise is a danger to the community, he/she can be taken into "protective custody." The FBI shall be notified immediately. They, in turn, will notify the Department of State.
- B Foreign consuls are not cloaked with diplomatic immunity.
 - 1. The level of protection afforded is governed by treaty with the consular official's country.
- C. U.S. members of Congress (Senators and Representatives) are immune from arrest while Congress is in session and while traveling to and from their homes. Arizona legislators (State Senators and Representatives) are immune from arrest while the legislature is in session and for 15 days prior to the session. This immunity does not apply in cases of treason, felonies or breaches of the peace (Arizona Constitution, Article 4, Part 2, Section 6; also see U.S. Constitution Article I, Section 6).
- D. Federal employees enjoy no immunity for traffic offenses (including the post office) or for criminal offenses other than a minor parking exemption; there is immunity for driver's license violation if it is a U.S. employee driving a U.S. vehicle.
- E. Witnesses under subpoena are privileged from arrest, except for felonies, treason or breach of the peace misdemeanors while attending or traveling to, or from, court per A.R.S. §12-2213.
- F. National Guard members are immune from arrest for all offenses except felonies while traveling to, from or

For Arizona legislators, it also applies to civil process, including civil traffic violations but is more correctly referenced as a privilege

attending military drills or duty per A.R.S. §26-166(A).

XIII. DETENTION AND ARREST OF NON-US CITIZENS

A. Authority and procedure:

1. There is no exception from arrest and prosecution for violation of state laws and municipal ordinances for non-citizens.
2. Federal law provides that **only agents of the Immigration and Naturalization Service (INS)** have the authority to arrest a foreign national for being in the United States illegally.
3. If arrested and booked for a state law violation, an "INS hold" can be placed on the alien.
4. They may be detained for a reasonable time while an officer conducts an investigation for violation of a state or local law and the INS may be asked to respond. Officers may not detain solely to wait for the INS's response.
5. If a foreign national is physically booked, the arrestee must be advised of their consular notification rights, and the consulate of the foreign national's government may need to be contacted.
 - a. Countries are either mandatory notification countries, in which case notice must be provided without regard to the desires of the arrestee, or some countries are voluntary notification countries. Under A.R.S. §13-3906, notification must be made to voluntary notification countries unless the arrestee waives notification.
 - b. This requirement is mandated by treaty (Vienna Convention on Consular Relations) and Arizona law (A.R.S. §13-3906).

Illegal presence in the U.S. is a civil violation.

XIV. ENTRAPMENT – DEFENSE TO ARREST

- A. Entrapment occurs when a suspect who is not predisposed to commit a crime, is induced to do so by the conduct of the government.
1. In exceptional cases, it will require dismissal of the criminal charges. (U.S. Supreme Court case where a federal agent sent advertisements of child pornography to a suspect for two (2) years before the suspect finally ordered some).
 2. In other cases, it is a defense to the charge and is a factual question to be decided by the Trier of fact. See A.R.S. §13-206.

P.O.2.2.10

E.g.: Another example is where the government supplies both the buyer and the seller, supplies the drugs and uses a suspect as a middleman

- B. Arizona requires the suspect to choose, at trial, between the entrapment defense and any other conflicting defense, federal law does not (because this is an evidentiary matter).
1. Offering an inducement (a benefit) for committing a crime is not prohibited in every case; it is only when that offer will overcome the suspect's free will that you have a problem.
 2. A.R.S. §13-206(B) requires a suspect, in order to claim the defense of entrapment, to prove:
 - a. The idea for the crime started with law enforcement, not the suspect.
 - b. Officers urged and induced the person to commit the crime.
 - c. The person was not predisposed prior to the crime.
- C. Entrapment did not occur if:
1. The person is predisposed to commit the crime.
 2. An opportunity to commit the crime is presented.
 3. The person chooses to take advantage of that opportunity and commits the crime.

E.g.: Offer of money for drugs is not usually prohibited; on the other hand, telling a suspect that he/she will not receive money needed for medical treatment unless he/she sells drugs would probably be entrapment.

III. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).

ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD
585 - HOUR BASIC CURRICULUM
MODEL LESSON PLAN

LESSON TITLE: SEARCH AND SEIZURE 2.3

March 2010

SUBJECT: Search and Seizure

AZ POST DESIGNATION: 2.3

HOURS: 18

COURSE CONTENT: An analysis of constitutional requirements, statutes and case law on search and seizure. The probable cause and conditions under which an officer may make a legal search and seizure, including searches of persons, premises and vehicles, are identified. The procedure for obtaining and serving a search warrant, emphasizing the recording of probable cause in written reports and affidavits for search warrants, is outlined.

PERFORMANCE OBJECTIVES: Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will:

2.3.1 Identify examples of the conditions under which a lawful search with a warrant may be made per A.R.S. §§13-3916 and 13-3917.

2.3.2 Identify the grounds for issuance of a search warrant per A.R.S. §13-3912.


2.3.3 Identify examples of the following search concepts per case law:

- A. Consent.
- B. Scope of search.
- C. Contemporaneous.
- D. Probable cause.
- E. Instrumentalities of the crime.
- F. Fruits of the crime.
- G. Contraband.
- H. Knock and announce.

2.3.4 Identify the requirements and procedures for obtaining, executing and returning a search warrant per A.R.S. §§13-3911 through 13-3924.



THIS IS TO VERIFY THAT THIS IS
A TRUE AND ACCURATE COPY
OF RECORDS ON FILE AT THE
ARIZONA PEACE OFFICER
STANDARDS & TRAINING BOARD


CUSTODIAN OF RECORDS

- 2.3.5 Identify the following items for which an officer may legally search as delineated in case law decisions:
- A. Dangerous weapons.
 - B. Fruits of the crime.
 - C. Instrumentalities of the crime.
 - D. Contraband.
 - E. Suspects and additional victims.

- 2.3.6 Given a written, verbal or visual description of an instance where “probable cause” for police action may or may not exist, identify if probable cause exists to search consistent with the following standards:

- A. Probable cause to obtain a search warrant requires that enough credible information exists to make it reasonable to believe that the contraband, or evidence to be searched for, is located in the place to be searched.
- B. Probable cause to search a vehicle without a warrant requires that enough credible information exists to make it reasonable to believe the contraband, or evidence to be searched for, is located in that part of the vehicle which is to be searched.

- 2.3.7 Given a written, verbal or visual description of possible criminal activity, identify whether “reasonable suspicion” exists for an officer to detain a suspect.

The elements required to establish reasonable suspicion are a set of specific, articulable facts which support an inference consistent with the following standards:

- A. Crime-related activity has occurred, is occurring or is about to occur;
- B. The person to be detained is connected with that activity.

- 2.3.8 Identify examples of situations/circumstances which do not require a search warrant, to include:

- A. Consent search.
- B. Exigent circumstances search.

1. Response to an emergency.
 2. Hot pursuit.
 3. Likely destruction of evidence.
 4. Substantial risk of harm to persons involved.
 5. Substantial possibility of violence.
- C. Incidental to arrest search.
- D. Plain view search.
- E. Mobile vehicle search.
- F. Inventory of a person's property.
- G. Searching abandoned property.

2.3.9 Identify the permissible scope of the following searches:

- A. Consent search.
- B. Exigent circumstances search.
1. Response to an emergency.
 2. Hot pursuit.
 3. Likely destruction of evidence.
 4. Substantial risk of harm to persons involved.
 5. Substantial possibility of violence.
- C. Incident to arrest search.
- D. Plain view search.
- E. Open fields search.
- F. Mobile vehicle search.
- G. Inventory of a person's property.
- H. Searching abandoned property.

LESSON TITLE: SEARCH AND SEIZURE

MARCH 2010
PAGE: 4 of 25

- 2.3.10 Identify the definition and the following purposes of the “exclusionary rule”:
- A. The primary purpose is to deter unlawful searches and seizures by peace officers. This is accomplished by eliminating the incentive for such behavior by prohibiting the admission of any evidence which is illegally obtained.
 - B. A secondary purpose is to maintain the dignity and integrity of the courts by keeping “tainted” evidence out of the courtroom.
- 2.3.11 Identify the requirements and scope of both a lawful “stop” and a lawful “frisk” (Terry v. Ohio).
- 2.3.12 Given a simulated situation in which a “stop and frisk” is appropriate, **demonstrate** a lawful “stop and frisk.”

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 5 of 25**

DATE FIRST PREPARED: January 2000

PREPARED BY: SME Committee

REVIEWED – **REVISED**: SME Committee DATE: April 2002

REVIEWED – REVISED: Lt. Harold Brady, SME Co-Chair DATE: July 2002

REVIEWED – **REVISED**: SME Committee DATE: April 2006

REVIEWED – **REVISED**: SME Committee/Lt. Harold Brady DATE: January 2010

REVIEWED – REVISED: DATE:

REVIEWED – REVISED: DATE:

REVIEWED – REVISED: DATE:

REVIEWED – REVISED: DATE:

REVIEWED – REVISED: DATE:

AZ POST – APPROVAL: Richard Watling DATE: March 2010

INSTRUCTOR REFERENCES: Bibliography listing.

CLASS LEVEL: Recruit

TRAINING AIDS: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive lecture and class discussion.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

REVISIONS: Highlighted

COMPUTER FILE NAME: 2.3 Search and Seizure

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives.
- C. Attention “grabber.”

II. CONSTITUTION OF THE UNITED STATES

- A. Fourth (4th) Amendment to the Constitution.

“The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched and the persons or things to be seized.”

- B. Article II, Section 8 of the Arizona Constitution.

“No person shall be disturbed in his private affairs, or his home invaded without authority of law.”

This provision of the Arizona Constitution has been held to be more restrictive for law enforcement than the U.S. Constitution (i.e., situations that the U.S. Constitution would have allowed were ruled not allowable under the Arizona Constitution).

- C. Definition of search warrant – a search warrant is an order, in writing, issued in the name of the state of Arizona, signed by a magistrate, directed to a peace officer, commanding him/her to search for personal property, persons or items described in A.R.S. §13-3912.

P.O. 2.3.4
A.R.S. §13-3911

- D. Review of the key concepts.

- 1. Right of the people to be secure in their persons, houses, papers and effects.
- 2. Against unreasonable searches and seizures.
 - a. Only applies to a government conduct / government actors.
 - b. Standing: The right to challenge the legality and admissibility of the evidence in

4th Amendment to the U.S. Constitution.

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 7 of 25**

- | | |
|--|---|
| <p>question. (Does a person have an expectation of privacy?)</p> <p>c. A person cannot challenge search unless he/she has standing.</p> <p>d. Example of non-governmental entity: A security guard <u>not</u> acting as an agent of the state; searches conducted by parents, neighbors or school officials.</p> <p>3. The court assumes a search/seizure conducted with a warrant is "reasonable".</p> <p>a. A search/seizure without a warrant is considered "unreasonable" absent a search warrant exception.</p> <p>b. The burden of proving reasonableness lies with the state.</p> <p>c. The preferred method of a search is with a warrant.</p> <p>E. Requirements for a search warrant:</p> <p>1. Probable cause: Articulate facts that would lead a reasonable person to believe an item having evidentiary value is at a specific location. See U.S. v. Ross where informant's information constituted probable cause to search a car and finding of contraband gave probable cause to believe more was present opening scope of the search to the whole car.</p> <p>2. Signed by an impartial judge (Superior Court, Justice of the Peace, Magistrate, Court of Appeals or Supreme Court of Arizona).</p> <p>3. Affidavit documenting probable cause.</p> <p>4. Specific in date/time/location.</p> <p>5. Scope of search – detailed and adhered to.</p> <p>6. Search warrant return:</p> <p>a. A search warrant must be executed with five (5) calendar days of being issued. An option to renew the warrant for five (5) calendar days is available with the judge's authorization.</p> <p>b. Once served, the search warrant must be returned to a magistrate within three (3) court business days after being executed.</p> | <p>Rakas v. Illinois</p> <p>A.R.S. §32-2634</p> <p>P.O. 2.3.4
P.O. 2.3.3D
P.O. 2.3.6</p> <p>P.O. 2.3.4
A.R.S. §13-3915</p> <p>Illinois v. Gates (1983).</p> <p>P.O. 2.3.3B
P.O. 2.3.4
A.R.S. §13-3921
A.R.S. §13-3918</p> |
|--|---|

LESSON TITLE: SEARCH AND SEIZURE

MARCH 2010
PAGE: 8 of 25

- | | | |
|-----|---|---------------------------------|
| 7. | Nighttime search (2200 – 0630) requires good cause. | P.O. 2.3.1
A.R.S. §13-3917 |
| | Good cause is an articulable reason the warrant must be served between 10:00 p.m. and 6:30 a.m. This can include officer safety or evanescent evidence. | P.O. 2.3.4 |
| 8. | Hearsay can support the issuance of a search warrant. | Jones v. United States (1960). |
| 9. | Informant reliability issues. | Illinois v. Gates (1983). |
| | a. Detailed record of information. | State v. Robinson (Ariz. 1990). |
| | b. Reliability buys. | |
| 10. | Receipt for property: A detailed receipt for property shall be given, or left, where the property was taken from. | P.O. 2.3.4
A.R.S. §13-3919 |
| 11. | Retention of property: Seized property shall be retained by the seizing agency. | P.O. 2.3.4
A.R.S. §13-3920 |
| 12. | Unlawful procurement of a search warrant with intent to harass and without probable cause, causes the search warrant to be executed as a Class 2 misdemeanor. | P.O. 2.3.4
A.R.S. §13-3924 |
| F. | Definitions. | |
| | 1. Search: "A governmental violation of a person's reasonable expectation of privacy"; a physical intrusion for the purpose of seeking evidence. | |
| | 2. Expectation of privacy – "What is sought to be preserved as private, even in an area accessible to the public, may be constitutionally protected." | Katz v. U.S. (1967). |
| | Expectation of privacy issues: | |
| | a. Driveways. | Florida v. Riley (1989). |
| | b. Front yards. | People v. Bradley (CA 1969). |
| | c. Windows. | |
| | d. Neighbor's property. | |
| | e. Open field. | State v. Paredes (1991). |

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 9 of 25**

<ul style="list-style-type: none"> f. Use of binocular A.R.S./visual aids (i.e., flashlights). g. Aerial view. h. Dog sniff. i. Human sniff. <p>3. Seizure: An exercise of dominion or control of that person or object. Property seizure must be crime related, such as contraband.</p> <p>G. Service of warrant.</p> <ul style="list-style-type: none"> 1. Service by a police officer; may be assisted by non-sworn personnel so long as their participation is reasonably related to a law enforcement purpose. 2. Knock and announce requirements. <ul style="list-style-type: none"> a. Reasonable time to respond must be given. b. After notice of authority/presence and purpose of the search warrant, admittance is refused. c. No knock requirements. 3. Items in "Plain View" may be seized based on probable cause even if an item was not enumerated in the warrant (contraband). 4. Photographs, measurements, impressions and scientific tests are permitted. 5. Searching persons found at the premises, or vehicle, is permitted if: <ul style="list-style-type: none"> a. It is reasonably necessary to protect against the use of a concealed weapon. b. It reasonably appears that property or items enumerated in the warrant may be concealed upon the person, or in the vehicle. <p>H. Grounds for issuance.</p> <p>A search warrant may be issued upon any of six (6)</p>	<p>U.S. v. Dunn (1987).</p> <p>CA v. Ciralo (1986).</p> <p>State v. Weinstein (Ariz. 1997).</p> <p>State v. Peters (Ariz. 1997).</p> <p>P.O. 2.3.1 and P.O. 2.3.4 A.R.S. §13-3916</p> <p>P.O. 2.3.1 and P.O. 2.3.3H U.S. v. Banks (2003). Note: The U.S. Supreme Court refused to provide a bright line rule establishing a "reasonable time" before entry can be made, instead choosing to look at each situation independently, based on a totality of the circumstances.</p> <p>P.O. 2.3.1 and P.O. 2.3.5D A.R.S. §13-3916(C)</p> <p>P.O. 2.3.1 A.R.S. §13-3916(D)</p> <p>P.O.2.3.1 A.R.S. §13-3916(E)</p> <p>May detain residents present while search. Michigan v. Summers (1981).</p> <p>P.O. 2.3.2 and 2.3.4 A.R.S. §13-3912</p>
---	---

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 10 of 25**

grounds (list grounds in warrant).

1. Property to be seized was stolen or embezzled.
2. Used as a means of committing a public offense.
3. Property is in the possession of a person with the intent to use the property to commit a public offense or a person concealing property.
4. Property or items to be seized indicates a particular offense was committed or that a person has committed the offense.
5. Property is to be searched in the interest of public health.
6. The person sought is the subject of an outstanding arrest warrant.

I. When is a search warrant necessary?

1. If you are at all in doubt about the lawfulness of a search, then get a warrant. Failure to have a warrant puts the burden on the officer to justify an applicable exception to the warrant requirement.
2. Recognized exceptions.
 - a. Consent.
 - b. Exigent/emergency circumstances.
 - c. Incident to arrest.
 - d. Plain view.
 - e. Open fields.
 - f. Mobile vehicles.
 - g. Inventory of a person's property.
 - h. Abandoned property.

J. Items for which an officer may search:

1. Dangerous weapons. Terry v. Ohio
2. Fruits of a crime (stolen property). Ariz. v. Mahoney

P.O. 2.3.5

P.O. 2.3.5A

P.O. 2.3.5B and 2.3.5F

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 11 of 25**

<ul style="list-style-type: none"> 3. Instrumentalities of a crime. <u>Abel v. U.S.</u> 4. Contraband (drugs). <u>Minnesota v. Dickerson.</u> 5. Suspects and additional victims. <u>Ariz. V. Mincey</u> 	<p>P.O. 2.3.5C and 2.3.5E</p> <p>P.O. 2.3.5D and 2.3.5.G</p> <p>P.O. 2.3.5E</p>
<p>K. Arrest warrants.</p> <ul style="list-style-type: none"> 1. An arrest warrant allows an officer to force entry (after knocking and announcing) into the arrestee's residence for purposes of serving the warrant (making the arrest). <ul style="list-style-type: none"> a. It must be the residence of the subject of the arrest warrant, and: b. The officer must have probable cause to believe that the subject of the arrest warrant is in the residence. 2. Absent a recognized exception to the search warrant requirement, a separate search warrant is needed, along with an arrest warrant, to arrest someone in the home of a third party. 3. If a defendant seeks to suppress evidence on grounds that the arrest warrant was invalid, the defendant has the burden and must present sufficient evidence to dispel the warrant's presumption of reasonableness. 4. Police may use valid, pre-existing warrants to effect an arrest even if the arrest is made to investigate other suspected crimes. 5. A search warrant authorizes the entry of law enforcement and other <u>necessary</u> personnel, <u>not</u> the media or other unrelated third parties. 	<p>Payton v. New York (1980).</p> <p>Steagald v. U.S. (1981).</p> <p>State v. Hyde (Ariz. 1966). Rule 16.2(b), Ariz. Rules of Criminal Procedure.</p> <p>Wilson v. Layne (1999).</p>
<p>III. WARRANTLESS SEARCHES AND SEIZURES</p>	
<p>A. Field interviews.</p> <ul style="list-style-type: none"> 1. Reasonable suspicion: "More than a hunch and less than probable cause" are articulable reasons to suspect that criminal activity is ongoing and that the person stopped is involved in that criminal activity. 2. A non-consensual field interview is a seizure; a frisk is a search. 	<p>P.O. 2.3.7</p>

LESSON TITLE: SEARCH AND SEIZURE

MARCH 2010
PAGE: 12 of 25

B. Terry stop.

1. Must have reasonable suspicion, based on articulable facts, that a crime has occurred or there is criminal activity "afoot." (Review Terry v. Ohio).

2. Can use reasonable force to detain (handcuffs, physical restraint) only if there is a reasonable risk of flight and/or articulable officer safety concerns.

3. Detention must be brief.
 - a. The key is whether the police diligently pursued a means of investigation which was likely to confirm or reject their suspicion.
 - b. "Totality of the circumstances" is the test used by the courts.

4. Cannot transport to a police station or other place for questioning; however, transporting a detainee a short distance for the purpose of an on-scene identification by a witness, is permissible.

Still, the best practice is to transport the witness to the detainee.

5. Any person may be contacted without reasonable suspicion, if the person voluntarily submits to the contact. The key is that it must be a consensual encounter.

However, if the person indicates they do not wish to talk to the officer, the person may not be detained and must be allowed to proceed on his/her way.

P.O. 2.3.11

- Terry v. Ohio (1968).
- State v. Blackmore (Ariz. 1996).
- U.S. v. Sharpe (1985).
- State v. Solano (Ariz. 1985).
- Florida v. Bostick (1991).
State v. Rogers (Ariz. 1996).

C. Terry frisk.

1. An officer may frisk (pat down) a person only if the officer has reasonable suspicion that the person is presently armed and dangerous.

A routine frisk of each person contacted is unconstitutional.

2. Must first be a lawful detention based on reasonable suspicion that the person is involved in unlawful activity.

P.O. 2.3.11

- State v. Garcia (Ariz. 1990).

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 13 of 25**

3. Scope of a Terry frisk.

- a. Pat down (frisk) of outer clothing for weapons only.
- b. If bulky is clothing and the officer cannot feel the contents, the officer may reach in to ensure there is no weapon.
- c. If the officer feels what is believed to be a weapon, but upon removal discovers contraband, then the plain view doctrine applies.
- d. If, during a lawful "frisk" an officer feels an object whose contour and mass makes its identity as contraband immediately apparent, it may be seized even though it is not believed to be a weapon.
 - i. This is known as the "plain feel" doctrine.
 - ii. The officer's experience/training are important to the "plain feel" doctrine.
 - iii. The item may not be squeezed or manipulated during pat down any more than necessary to determine that the item is/is not a weapon.
- e. A vehicle may also be subject to a frisk, if there is reasonable suspicion to stop and reasonable suspicion that the vehicle contains weapons.

State v. Vasquez (Ariz. 1991).

Minnesota v. Dickerson (1993).

Michigan v. Long (1983).

In such a case, the officer may check the entire passenger compartment for weapons where a weapon may reasonably be hidden.

D. Special situations.

1. Sobriety checkpoints.

No reasonable suspicion needed if:

- a. All vehicles are stopped.
- b. Vehicles are stopped in a specific pattern.
- c. An officer can see into a vehicle stopped at a checkpoint.

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 14 of 25**

- 2. Wanted flyers (ATL).
 - a. The issuing agency must state the probable cause for stop and arrest.
 - b. The issuing agency must state the reasonable suspicion for a lawful detention.
 - c. The receiving agency must verify facts.

- 3. Vehicle stops.
 - a. Officer must have reasonable suspicion or probable cause of a traffic violation or criminal offense to stop vehicle.

Whren v. U.S. (1996).
CA v. Acevedo (1991).

A vehicle may also be stopped if probable cause exists to believe evidence or contraband is within the vehicle.
 - b. Officer can have driver and passengers exit the vehicle.

Maryland v. Wilson (1997).
Pennsylvania v. Mims (1977).

 - i. Can physically remove if necessary.
 - ii. Must have reasonable suspicion to pat down for weapons.
 - c. Stop of a motorist who violates traffic law is not unlawful even if officer has other motives for stop.

Whren v. U.S. (1996).

Profiling based solely on race is unconstitutional.
 - d. On traffic stop, officer may:
 - i. Immediately demand driver's license and vehicle registration.

State v. Paredes (Ariz. 1991).
 - ii. Run warrants check on driver.
 - iii. Run warrants checks on passengers.

State v. Ybarra (Ariz. 1987).
 - iv. Look for VIN.
 - v. If driver does not have registration or refuses to provide it, officer can conduct limited search of vehicle for

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 15 of 25**

proof of ownership.

- a) Can only search in places where registration could be found.
- b) One (1) Arizona Court of Appeals has held that the officer must also believe the vehicle is stolen before the officer can search for the registration.

State v. Branham (Ariz. 1997).

- vi. If driver's name does not match registered owner's name and there is a question as to driver's identity, officers can search car for evidence of identity.

State v. Bedoni (Ariz. 1989).

- vii. Can ask for consent to search vehicle. Officers do not have to advise that the subject is free to go before asking for consent, but doing so does add credibility to the consent.

4. Canine searches.

- a. Items, including a vehicle, may be detained for canine sniff if reasonable suspicion exists to do so.
- b. Length of detention is judged on a case-by-case basis; officer must diligently pursue the investigation.

IV. EXCEPTIONS TO SEARCH WARRANT REQUIREMENT

P.O. 2.3.8 and P.O. 2.3.9

- A. Consent.
- B. Incident to arrest.
- C. Plain view (not a search).
- D. Inventory (not a search).
- E. Open fields (not a search).
- F. Mobile vehicle.
- G. Exigent/emergency circumstances.

LESSON TITLE: SEARCH AND SEIZURE

MARCH 2010
PAGE: 16 of 25

- H. Abandoned property (not a search).
- I. Consent.
 - 1. Always ask, even if you have another exception that might apply; however, do not use this as a shortcut.
 - 2. Consent must be voluntary and intelligent; suspect must know/understand that rights are being waived.
 - 3. Court will look at voluntariness and the circumstances surrounding the consent. The government bears the responsibility for proving that the consent was voluntary.
 - a. Was force used?
 - b. Threats?
 - c. Clearness of consent (in order of priority: In writing, verbal and actions alone).
 - d. Misrepresentation.
 - e. Failure to object – submission to authority.
 - f. Knowledge of the right to refuse.
 - g. Physical and mental condition.
 - h. Experience and background.
 - i. Opportunity to talk with counsel.
 - 4. Consent must be clear and explicit. Examples indicating consent was given voluntarily.
 - a. Written consent.
 - b. Evidence that defendant first suggested search.
 - c. Evidence that suspect told officers where to find the items.
 - 5. Authority to search: A valid consent to search may only be given by a person who has a right to the "lawful use and control of the property at the time of the consent."

P.O. 2.3.8A
P.O. 2.3.9A

Florida v. Royer (1983).

State v. Flannigan (Ariz. 1998).

LESSON TITLE: SEARCH AND SEIZURE

MARCH 2010
PAGE: 17 of 25

- a. The words “use and control” do not necessarily imply ownership of the property.
- b. If two people have joint control over the property or area to be searched and one person denies the officer consent, no search may be made.
- c. Examples:
 - i. Landlord/tenant.
 - ii. Husband/wife.
 - iii. Consent by parent(s) – (age/rent/control of room issues).
 - iv. Roommates – common areas.
- 6. Ask person’s authority and scope of control.
 - a. Consider apparent authority, but do not depend on this.
 - b. Explain what the search is looking for.
- 7. Limitation of consent: May search only where permission is given.
- 8. Revocation of consent: Suspect may withdraw consent at any time and search must stop.
- J. Search incident to arrest.
 - 1. Chimel v. California 1969 – prior to this case, search of an entire home incident to arrest was lawful; however, Chimel defined the requirements and narrowed the scope.
 - 2. Searches incident to custodial arrests are approved by the courts because they are necessary to protect the arresting officer and avoid destruction of evidence by the arrested person.
 - 3. Search and arrest must be contemporaneous.
 - a. The term “contemporaneous” refers to actions occurring during the same time frame, but not simultaneous.

Georgia V. Randolph
(2006)

P.O. 2.3.8C
P.O. 2.3.9C

Knowles v. Iowa (1998).

LESSON TITLE: SEARCH AND SEIZURE

MARCH 2010
PAGE: 18 of 25

- | | |
|--|---|
| <ul style="list-style-type: none">b. Arrest must be a custodial arrest, not cite and release. <ul style="list-style-type: none">4. Permissible scope of the search – if the lawful custodial arrest takes place within the premises, the officer may search the arrestee and the area under his/her immediate control for weapons, fruits of the crime and evidence of the crime.5. Search of a motor vehicle incident to lawful, custodial arrest.<ul style="list-style-type: none">a. General rule is that if a person has been arrested for a crime and the arrest takes place in, or near, a motor vehicle which the arrestee was an occupant or “recent occupant”, then the vehicle may be searched incident to a lawful arrest.b. The scope of the search includes the entire passenger compartment and may include glove box and console, but not the trunk.c. The search must be made within the immediate vicinity of the arrest contemporaneous in time to the arrest.d. Emphasize this is a search incident to arrest, not a vehicle search based on another legal basis. <p>K. Plain view doctrine.</p> <ul style="list-style-type: none">1. If the officer is where he/she has a right to be, whatever is observed in the open where it can be seen by anyone who cares to look, is in <u>plain view</u> and it is not a search to observe it.2. Key to the plain view doctrine is lawful presence and probable cause to believe item to be seized constitutes evidence or contraband.3. When an officer, outside of a constitutionally protected area, sees an item inside of that protected area and has probable cause to believe the item constitutes evidence, a search warrant is required to seize the item, unless an exception to the search warrant requirement exists. This is called “<i>open view</i>.” Example: Standing on a sidewalk and seeing bales of marijuana inside a home. <p>L. Inventory.</p> <ul style="list-style-type: none">1. Vehicle – inventory of vehicle is proper if the | <p>Maryland v. Buie (1990).</p> <p>Thornton v. U.S. (2003)</p> <p>New York v. Belton (1981).</p> <p>P.O. 2.3.8D
P.O. 2.3.9D
Horton v. California (1990).</p> <p>AZ v. Hicks (1987).</p> <p>P.O. 2.3.8G</p> |
|--|---|

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 19 of 25**

<p>vehicle is lawfully taken into custody <u>and</u> if the following circumstances exist:</p>	<p>P.O. 2.3.9G</p>
<p>a. Inventory is done with the intent to protect the owner's property and/or the officer from allegations of theft.</p>	<p>Colorado v. Bertine (1987).</p>
<p>b. Good faith is essential.</p>	
<p>c. Agency must have a written policy concerning inventory and policy must be complied with.</p>	
<p>i. Agency's policy must specify the scope of the inventory to be done, especially relative to containers.</p>	
<p>ii. The entire vehicle can be searched only if the policy specifically authorizes it as part of the inventory.</p>	
<p>2. Inventory search of person – personal property of subject taken into custody can/should be inventoried to protect the officer from allegations of theft and to safeguard the owner's property.</p>	
<p>3. Locked containers should be opened only if department policy directs such.</p>	<p>Florida v. Wells (1990).</p>
<p>M. Open fields.</p>	<p>P.O. 2.3.8E P.O. 2.3.9E</p>
<p>The Fourth (4th) Amendment does not protect open fields, only curtilage.</p>	
<p>1. "Curtilage" is the immediate area surrounding the home and is entitled to full 4th Amendment protection.</p>	<p>Oliver v. U.S. (1984).</p>
<p>2. Consider the following facts to determine if the area is open field or curtilage.</p>	
<p>a. Proximity to house or structure.</p>	
<p>b. Fenced.</p>	
<p>c. Nature and use of area.</p>	
<p>d. Steps taken by property owner to maintain privacy.</p>	<p>U.S. v. Dunn (1987).</p>
<p>N. Vehicle Exception to the warrant requirement – May search without a warrant if probable causes exists.</p>	<p>P.O. 2.3.8F P.O. 2.3.9F</p>
<p>If an officer has <u>probable cause</u> exists that the vehicle</p>	

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 20 of 25**

<p>contains evidence or contraband (sufficient for a search warrant), a vehicle may be searched without a warrant. (Review Ross and Belton cases.)</p>	<p>Carroll v. U.S. (1925).</p>
<p>1. Search no longer needs to be contemporaneous; the vehicle may be towed to another location and searched later.</p>	<p>Chambers v. Maroney (1970).</p>
<p>2. Applies to felonies or misdemeanors.</p>	
<p>3. Applies to motor vehicles, buses, watercraft or aircraft.</p>	
<p>4. Includes closed containers and the trunk if the items sought could be found there.</p>	<p>U.S. v. Ross (1982). CA v. Acevedo (1991).</p>
<p>O. Emergency/exigent circumstances.</p>	<p>P.O. 2.3.8B P.O. 2.3.9B</p>
<p>1. Emergency: Entry may be made if the officer has probable cause to believe an emergency exists. The emergency cannot be created by the officer for purposes of making entry.</p>	
<p>a. Officer must have facts that would lead a reasonable police officer to conclude that the emergency does exist (officer smells fire; officer hears screams). This includes response to an emergency, substantial risk of harm to persons involved and/or substantial risk of violence.</p>	<p>State v. Ault (Ariz. 1986).</p>
<p>b. In some cases, the information received will lead to further investigation, while in some cases it will require immediate action.</p>	
<p>c. Upon entry, plain view doctrine applies.</p>	
<p>d. Once the emergency is resolved, obtain consent or warrant.</p>	<p>Mincey v. Arizona (1978).</p>
<p>e. An "emergency" created by the officer is not a real emergency.</p>	
<p>2. Exigent circumstances: Probable cause to believe that evidence is present in the area and that the evidence will be lost or destroyed without immediate action.</p>	<p>Schmerber v. CA (1966).</p>
<p>a. Evanescent evidence: Tending to vanish like vapor (i.e., blood, fingernail scrapings).</p>	
<p>b. Hot pursuit: If police are pursuing a subject who they have probable cause to arrest for a felony, <u>immediately after commission of</u></p>	

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 21 of 25**

the crime and the subject runs into a home, officers can enter the home if they are in the midst of the chase.

- c. Bomb searches/investigation.
- .d. Possibility of violence (protective sweep).

P. Abandoned property.

Under this exception, property abandoned or thrown away may be searched or seized by police officers without a warrant because there is no reasonable expectation of privacy. The property must be clearly abandoned (Greenwood case – difference between garbage left at the curb and garbage next to the house).

**P.O. 2.3.8H
P.O. 2.3.9H**
CA v. Greenwood (1988).
Abel v. U.S. (1960).

Q. Other “exceptions”:

- 1. Airport/border searches.
 - a. Conducted as a matter of public safety.
 - b. Conducted by special authorities.
- 2. Parolee/probationer.
 - a. Agreed to by suspect as condition for release.
 - b. If authority is not specifically provided by the court, the search must be done by parole / probation officer, not by police officer.

V. EXCLUSIONARY RULE

A. If evidence or contraband is obtained in violation of the 4th Amendment, the evidence may be suppressed. The state is not allowed to use the evidence at trial against the defendant.

P.O. 2.3.10
Wong Sun v. U.S. (1963).

B. Purpose of the exclusionary rule.

- 1. The primary purpose is to deter unlawful searches and seizures by peace officers. This is accomplished by eliminating the incentive for such behavior by prohibiting the admission of any evidence which is illegally obtained.
- 2. The secondary purpose is to maintain the dignity and integrity of the courts by keeping “tainted”

Weeks v. U.S. (1914).

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 22 of 25**

evidence out of the courtroom.

- C. Good faith exception to exclusionary rule.
 - 1. If an officer is acting in good faith on a warrant which is later held to be invalid, evidence may be used.
 - 2. If officer acts in good faith based on law later determined to be unconstitutional, evidence may be used.

VI. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).

BIBLIOGRAPHY

Abel v. U.S. – Abandoned property in a hotel room.
362 U.S. 217 (1960)

AZ v. Ault – Exigent/emergency circumstances.
150 Ariz. 459, 724 P.2d 545 (1986)

AZ v. Harding – Warrant check on driver.
137 Ariz. 278, 670 P.2d 383 (1983)

AZ v. Hicks – Plain view doctrine.
480 U.S. 321 (1987)

AZ v. Paredes – Detainment for records check, canine sniff of vehicle.
810 P.2d 607 (1991)

AZ v. Rogers – Detainment based on reasonable suspicion/voluntary contact.
186 Ariz. 508, 924 P.2d 1027 (1996)

AZ v. Solano – Detainment based on reasonable suspicion.
187 Ariz. 512, 930 P. 2d 1315 (App. 1996)

AZ v. Weinstein – Protective sweep of home, canine sniff, search conducted by non-government agent.
190 Ariz. 306,947 P.2d 880 (App. 1997)

AZ v. Ybarra – May ask vehicle passenger for ID.
156 Ariz.257, 751 P.2d 591 (1987)

California v. Acevedo – Searching of closed container in vehicle.
500 U.S. 565 (1991)

California v. Ciralo – Warrantless aerial observation of fenced-in back yard.
476 U.S. 207 (1986)

California v. Hodari – Seizure started at time of capture.
499 U.S. 621 (1991)

Carroll v. United States – Landmark case regarding vehicle searches.
267 U.S. 132 (1925)

Colorado v. Bertine – Inventory of locked containers.
479 U.S. 367 (1987)

Florida v. Bostick – Voluntary contact does not require suspicion.
501 U.S. 429 (1991)

Florida v. Riley – Observation from a helicopter.
488 U.S. 445-50 (1989)

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 24 of 25**

Florida v. Wells – Requirement of a department policy for inventory.
495 U.S. 1 (1990)

Horton v. California – Plain view seizure.
496 U.S. 128 (1990)

Illinois v. Gates – Elimination of Aguilar/Spinelli rule, informant rules.
462 U.S. 213 (1983)

Illinois v. Rodriguez – Reasonableness of search based on officer's knowledge.
497 U.S. 177 (1990)

Katz v. United States – Expectation of privacy rule.
389 U.S. 347 (1967)

Knowles v. Iowa – Search incident to arrest, traffic infraction (cite and release).
119 S. Ct. 484 (1998)

Maryland v. Buie – Protective sweep of home.
494 U.S. 325 (1990)

Michigan v. Long – Protective sweep of vehicle for weapons.
463 U.S. 1032 (1983)

Michigan v. Sitz – Sobriety check points.
496 U.S. 444 (1990)

Mincey v. Arizona – Once emergency is removed, a warrant is necessary.
437 U.S. 385 (1978)

Minnesota v. Dickerson – Plain feel doctrine.
113 S. Ct. 2130, 124 L. Ed.2d 334 (1993)

Minnesota v. Olson – Overnight guest/expectation of privacy.
495 U.S. 91 (1990)

New York v. Belton – Search incident to arrest/motor vehicle.
453 U.S. 454, 462 (1981)

Oliver v. United States – Open fields doctrine.
466 U.S. 170 (1984)

Pennsylvania v. Mims – Can have motorist exit vehicle.
434 U.S. 106 (1977)

Rakas v. Illinois – Issue of standing/passengers of motor vehicle.
439 U.S. 128, 143 (1978)

Staegald v. United States – Service of arrest warrant in third party home.
451 U.S. 204 (1981)

LESSON TITLE: SEARCH AND SEIZURE

**MARCH 2010
PAGE: 25 of 25**

United States v. Dunn – Curtilage issues/expectation of privacy/use of flashlight.
480 U.S. 294 (1987)

United States v. Ross – Search of vehicle based on probable cause includes containers.
456 U.S. 798 (1982)

Weeks v. United States – Exclusionary rule.
232 U.S. 383 (1914)

Whren v. United States – No such thing as pretext for stop.
517 U.S. 806 (1986)

Wilson v. Arkansas — Knock and announce requirements.
514 U.S. 927 (1995)

Wilson v. Layne – Media involvement of warrant execution.
119 S. Ct. 1692 (1999)

Wong Sun v. United States – Fruits of the poisonous tree doctrine.
371 U.S. 471 (1963)

ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD
585 - HOUR BASIC CURRICULUM
MODEL LESSON PLAN

LESSON TITLE: CIVIL LIABILITY ISSUES 2.12

DECEMBER 2009

SUBJECT: Civil Liability Issues

AZ POST DESIGNATION: 2.12

HOURS: 4

COURSE CONTENT: A review of civil and criminal liability facing law enforcement agencies and officers. The concept of vicarious liability is discussed. Emphasis is placed on knowledge of federal civil rights violations, including 18 U.S.C. §§241 and 243 and 42 U.S.C. §1983.

PERFORMANCE OBJECTIVES: Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will:



THIS IS TO VERIFY THAT THIS IS
A TRUE AND ACCURATE COPY
OF RECORDS ON FILE AT THE
ARIZONA PEACE OFFICER
STANDARDS & TRAINING BOARD

[Signature]
CUSTODIAN OF RECORDS

- 2.12.1 Identify the following common causes of civil litigation against law enforcement officers and agencies:
 - A. False arrests.
 - B. First aid.
 - C. Excessive force.
 - D. Vehicle collisions.
 - E. Illegal search and seizure.
 - F. Failure to protect.
 - G. Workplace harassment.
- 2.12.2 Identify examples of direct and vicarious liability.
- 2.12.3 Identify examples of when an officer may be subject to civil liability and/or criminal prosecution as per A.R.S. §28-624D and §13-201.
- 2.12.4 Identify examples of civil rights violations as per 18 U.S.C. §§241 and 242 and 42 U.S.C. §1983.
- 2.12.5 Identify the scope of criminal liability for civil rights violations per 18 U.S.C. §§241 and 242.
- 2.12.6 Identify the scope of civil rights violations as per 42 U.S.C. §1983.

LESSON TITLE: CIVIL LIABILITY ISSUES

**DECEMBER 2009
PAGE: 2 of 12**

DATE FIRST PREPARED: February 2001

PREPARED BY: SME Committee

REVIEWED – REVISED: Lt. Harold Brady – SME Co-Chair DATE: July 2002

REVIEWED – **REVISED**: AZ POST (Word) DATE: April 2003

REVIEWED – **REVISED**: Michael McNeff, Lisa Judge, SME Committee DATE: April 2006

REVIEWED – REVISED: Lt. Dave Kelly, ALEA DATE: December 2009

REVIEWED – REVISED: DATE:

REVIEWED – REVISED: DATE:

REVIEWED – REVISED: DATE:

REVIEWED – REVISED: DATE:

REVIEWED – REVISED: DATE:

REVIEWED – REVISED: DATE:

AZ POST – APPROVAL: Richard Watling DATE: December 2009

INSTRUCTOR REFERENCES:

CLASS LEVEL: Recruit

TRAINING AIDS: Handouts: 18 U.S.C. §§241 and 242 and 42 U.S.C. §1983.
<http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive lecture and class discussion.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2.12 Civil Liability Issues

LESSON TITLE: CIVIL LIABILITY ISSUES

DECEMBER 2009

PAGE: 3 of 12

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives.
- C. Number of lawsuits being filed increases each day.
 - 1. Police agencies represent a “deep pocket.”
 - 2. The type of work performed by law enforcement officers lends itself to claims of constitutional violations.

Instructors may want to use recent examples of such cases from local area agencies.

II. LEADING CAUSES OF CIVIL LITIGATION AGAINST LAW ENFORCEMENT OFFICERS

P.O. 2.12.1

- A. False arrest – arrests made without probable cause.
- B. First aid – either rendering first aid improperly or failing to render first aid when necessary.
- C. Excessive force.
 - 1. Officers must know the statutory rules regarding use of force.
 - 2. Federal constitutional law is more strict than Arizona statutes regarding use of force on fleeing felons: Deadly force may be used only with felons involved in crimes of violence or otherwise constituting a danger to the public.
 - 3. Possible sources of liability include negligence, assault and battery, wrongful death and civil rights violations. This is where claims of negligent training, supervision, hiring and retention often occur.

P.O. 2.12.1A

P.O. 2.12.1B

P.O. 2.12.1C

Graham v. Connor, 490 U.S. 386 (1989). The factors to use in determining whether force is reasonable under circumstances:

- 1. Severity of the crime.
- 2. Whether the suspect is actively resisting arrest.
- 3. Whether the suspect is attempting to escape.
- 4. Whether the suspect poses an immediate threat to the safety of the officer or others.

- D. Vehicle collisions – includes liability for negligent traffic control, simple traffic accidents, pursuits which end in or cause accidents and “Code 2.5” driving (driving your police vehicle at high speed without lights and siren).
- E. Illegal search and seizure – includes stops without reasonable suspicion and searches without a warrant or an applicable exception to the warrant requirement.
- F. Failure to protect – generally, no specific duty owed an individual person; however, if you make promises, which creates a special relationship, or assert control over the

P.O. 2.12.1D

P.O. 2.12.1E

P.O. 2.12.1F

LESSON TITLE: CIVIL LIABILITY ISSUES

DECEMBER 2009

PAGE: 4 of 12

individual, you have a legal duty.

1. Examples include the drunk you come in contact with and then leave on the side of the street, who is later killed while crossing the street.
2. Another example might be the domestic violence victim who you tell not to worry, that "The police will take care of her."

Special relationship

State created danger

- G. Work place harassment – discrimination on the basis of protected class or category, the creation of, or participation in, a hostile work environment, sexual harassment or violence in the work place.

P.O. 2.12.1G

III. CIVIL LIABILITY

- A. Distinguish between criminal and civil law.

1. Criminal law.
 - a. Government complains of individual's conduct.
 - b. Fine or imprisonment imposed if found guilty.
 - c. Guilt is established beyond a reasonable doubt.
 - d. Burden of proof is on the government.
 - e. Jury must be unanimous.
2. Civil law.
 - a. Individual complains of another's conduct.
 - b. Individual asks court for a remedy (usually money or injunctive relief).
 - c. Responsibility is established by a preponderance of the evidence (more than 50%).
 - d. Burden of proof is on the plaintiff.
 - e. Jury need not be unanimous.

- B. Tort – defined as a civil wrong, other than a breach of contract, for which the court will provide a remedy in the

form of an action for damages. Includes:

1. Intentional torts (assault, defamation, false arrest).
2. Negligent torts (automobile accidents).
3. Strict liability (handling of explosives).
4. Constitutional torts (civil rights violations).

C. Direct and vicarious liability.

1. Direct liability – the actor himself/herself is responsible for the act that occurred and the damages associated with that act.
2. Vicarious liability – indirect legal responsibility for the actions of another.

Respondent superior is the legal theory that holds that an employer is responsible for the wrongs committed by its employee, so long as the employee is acting within the scope of employment. This principle allows the municipality to be sued for employee's torts committed within the scope of employment.

3. Specific examples of vicarious liability:
 - a. Negligent employment – agency knew, or should have known, that the employee should never have been hired (e.g., hiring someone for whom there is an outstanding arrest warrant for first-degree homicide).
 - b. Negligent retention – agency knew, or should have known, that the employee should not have been retained (e.g., retaining an officer after the officer intentionally and unlawfully uses deadly force).
 - c. Negligent assignment or entrustment – agency knew, or should have known, that the employee should not have been assigned to a particular assignment or that the employee was not responsible enough to entrust with a particular piece of equipment (e.g., assigning an alcoholic to an undercover squad or allowing an officer to retain his/her duty weapon while suspended for personal mental health problems).

P.O. 2.12.2

Example: Hiring of ex-felons by LAPD.

- d. Negligent supervision – knew, or should have known, that the employees needed better supervision (e.g., not supervising employees or failing to write appropriate policies providing guidance to employees).
 - e. Negligent failure to train – knew, or should have known, that there was a need to train and failure to do so (e.g., failure to train on when to discontinue the use of force, even if the force was initially applied in a lawful manner).
 - f. Negligent training – knew, or should have known, that the training was somehow insufficient (e.g., not including new statutory changes in training; not providing realistic training).
4. Intentional torts – examples of direct liability:
- a. Assault and battery.
 - i. Battery – an offensive or unwarranted touching of a person.
 - ii. Assault – placing a person in “imminent apprehension” of a battery.
 - iii. Most false arrest claims will also include assault claims.
 - iv. Usual defense is that the officer is entitled to use reasonably necessary force.
 - b. False arrest and false imprisonment.
 - i. Generally, any arrest without probable cause.
 - ii. Whether the person is guilty or innocent is not an issue.
 - iii. Good faith or reasonable belief defense may be available.
 - iv. Arrests with a warrant rarely result in false arrest verdicts, unless the warrant was invalid or defective on its face.

- c. Malicious prosecution.
 - i. Involves the right to be free from unjustified litigation.
 - ii. Must prove absence of probable cause.
 - iii. Actual malice must be shown.
 - d. Others:
 - i. Trespass.
 - ii. Defamation.
 - iii. Invasion of privacy.
 - iv. Intentional infliction of emotional distress.
 - e. Common defenses – in the law enforcement context, common defenses include the existence of reasonable suspicion or probable cause, the right to use reasonable force and good faith.
- D. Negligent torts – examples of direct liability.
- 1. Elements of a negligence case:
 - a. Duty.
 - b. Breach of duty.
 - c. Injury.
 - d. Breach of duty is proximate cause of injury.
 - 2. Common defenses – no duty, no breach of duty, no injury and no proximate cause.
 - 3. Officer must remember that all duties, whether imposed or volunteered, must be performed with reasonable care. General police duties, which may form the basis of negligence claims, include the following:
 - a. Care of incapacitated persons – once you start, you must finish.
 - b. Reasonable medical care – unclear as to whether there is a legal duty, the best course of action is to get the person to a

medical facility or medical providers (paramedics).

- c. Duty to protect property in your custody.
- d. Care of arrestee – both with regard to the arrestee and his/her actions.

E. Liability created by statute.

- 1. 42 U.S. §1983, which will be discussed later in this class, creates a cause of action based on the violation of a statute. It specifically authorizes recovery for violation of many different statutory rights.
- 2. State statutes may also be the source of negligence litigation.
 - a. The prime example is emergency driving.
 - b. Emergency vehicle operations are governed by statute and non-compliance is either negligence per se or strong evidence of negligence.
 - c. The statute itself establishes the duty that an officer may not breach.

IV. ARIZONA STATUTORY ISSUES

A. Civil.

- 1. The state of Arizona has virtually abolished sovereign immunity (the immunity of the government from suit).
 - a. There are currently only a few limitations on when the government (including law enforcement agencies) can be sued.
 - b. Those limitations may be found in A.R.S. §12-820 and following statutes.
 - c. For example, a public employee acting within the scope of the employee's duties has qualified immunity regarding the decision not to arrest or take someone into custody.
- 2. Many state statutes establish duties that, if breached, could lead to suit.

P.O. 2.12.3

Absolute immunity bars suit altogether. Qualified immunity (under state statute) means that the employee cannot be held liable unless the employee "intended to cause injury or was grossly negligent."

LESSON TITLE: CIVIL LIABILITY ISSUES

DECEMBER 2009

PAGE: 9 of 12

<p>a. A good example is A.R.S. §28-624, regarding emergency driving.</p> <p>b. This statute allows authorized emergency vehicles to exceed posted speed limits and proceed through red traffic signals and through stop signs, so long as emergency lights and siren are activated.</p> <p>c. However, subsection D of A.R.S. §28-624 provides that police officers and other operators of emergency vehicles must drive with due regard and may be subject to liability for accidents caused by reckless disregard of others' safety.</p> <p>B. Criminal – the definition of “person” in A.R.S. §13-201 makes no exception for police officers. Therefore, police officers are held liable to the same degree as any citizen under each and every one of the criminal statutes.</p> <p>1. Officers must become familiar with those statutes that provide officers with justification for their actions (see Chapter 4 of Title 13) and must abide by those statutes.</p> <p>2. Failure to do so may result in criminal charges.</p>	<p>Instructor should review with trainees the requirement of A.R.S. §28-624.</p> <p>P.O. 2.12.3</p> <p>Instructor should review with trainees the provisions of A.R.S. §13-201.</p>
<p>V. FEDERAL STATUTORY ISSUES</p> <p>A. Historical background.</p> <p>1. The 14th Amendment of the United States Constitution guarantees due process and equal protection to all citizens.</p> <p>2. It was adopted immediately after the Civil War in an effort to ensure that states would provide due process and equal protection to all of their citizens.</p> <p>3. The statutes we are about to review are the application of the 14th Amendment to local government and subject those who violate another's civil rights to criminal penalties and civil damages.</p> <p>B. Criminal (18 U.S. §241) – DUE PROCESS.</p> <p>1. Two (2) or more persons conspire.</p> <p>2. <u>To willfully</u> injure, oppress, threaten or intimidate any <u>citizen</u> from enjoying or exercising any right guaranteed under the laws of the United States or</p>	<p>P.O. 2.12.4</p> <p><u>Student handout.</u></p>

LESSON TITLE: CIVIL LIABILITY ISSUES

**DECEMBER 2009
PAGE: 10 of 12**

- the Constitution.
3. Penalty: From a fine to death, depending on the nature of the act and the injury to the victim.
- a. Examples: KKK members setting fire to a predominantly African American church.
 - b. Skinheads assaulting a Jewish rabbi.
- C. Criminal (18 U.S. §242) – EQUAL PROTECTION. *Student handout.*
- 1. Person acting under “color of law.”
 - 2. Willfully deprives any inhabitant of a right guaranteed under the laws of the United States or the Constitution.
- OR -
- 1. Person acting under “color of law.”
 - 2. Willfully subjects any inhabitant to different punishment or penalties than prescribed for citizens.
 - 3. Because of their status as alien or because of race or color.
4. Penalty: From a fine to death, depending on the nature of the act and the injury to the victim. **P.O. 2.12.5**
- a. Police officers who assault a suspect who has just been arrested for the shooting of another officer.
 - b. A police officer who makes an illegal entry into the home of a Hispanic family because “They are probably illegal anyway.”
- D. Civil (42 U.S.C. §1983) – requires states to provide equal protection and due process to all their citizens and establishes liability for failure to do so. **P.O. 2.12.6**
- 1. Person acting under “color of law.” *Student handout.*
 - 2. Deprives any inhabitant of a right guaranteed under the Constitution or under certain laws of the United States.
 - 3. Basis of liability – the officer knew, or should have known, that the action would violate the constitutional rights of the person, or the officer acted with malicious intent to deprive a person of constitu-

tional rights or to injure.

4. Agency policy or custom – liability of the agency may also be based on an adopted agency policy or custom. The theory is that the agency’s actions “caused” the employee to act in a particular manner. This theory of liability is often advanced in cases arising under 42 U.S.C. §1983, as it is the primary way that plaintiffs can reach the “deep pockets” of the employer.
5. Examples – false arrest, excessive use of force, illegal search and seizure, illegal interrogation, interference with 1st Amendment rights (speech, press) and so on.
6. Defenses – the following, if established, result in qualified immunity for the officer:
 - a. The actions in question did not violate clearly established law or constitutional rights (e.g., the existence of probable cause in an action for false arrest), or
 - b. The facts and circumstances could be interpreted by a reasonably well-trained police officer as within the law.
 - i. Note: This is an objective standard – it does not matter what the police officer subjectively believed.
 - ii. This is generally known as the “good faith” defense.

VI. DEPARTMENT PROCEDURES; PERSONAL LIABILITY

- A. Every officer should become familiar with his/her agency’s position regarding police professional liability litigation.
 1. Every officer should understand, under the circumstances, that agency will provide a defense to liability lawsuits (the general rule in most agencies is that a defense is offered unless the officer was engaged in intentional criminal conduct).
 2. This means that the agency will hire an attorney to represent you in the lawsuit and, in most situations, pay any damages that may be awarded against you.
- B. Process – every officer should become familiar with his/her agency’s procedures for handling a lawsuit if one is served upon the officer.

1. Whom do you send the paperwork to, whom do you notify and do you need to complete a memo or report?
2. Most lawsuits must be responded to by the attorney representing you within 20 days of service, so it is important that you immediately notify the agency of the existence and service of the suit.

VII. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).

**ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD
585 - HOUR BASIC CURRICULUM
MODEL LESSON PLAN**

LESSON TITLE: CULTURAL AWARENESS 6.1

APRIL 2010

SUBJECT: Cultural Awareness

AZ POST DESIGNATION: 6.1

HOURS: 8

COURSE CONTENT: A discussion of the benefits and methods of developing positive police/community relations, with emphasis on recognizing cultural differences within the community and the role of the individual officer in developing positive police/community relations.

PERFORMANCE OBJECTIVES: Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will:

- 6.1.1 Identify the following as common, negative stereotypes of law enforcement:
- A. Unethical.
 - B. Uncaring and apathetic toward the needs of the community.
 - C. Ineffective in delivering services and combating crime.
 - D. Excessively violent in their use of authority.
 - E. Biased against racial and ethnic groups, gays and women.
 - F. Overweight and out of shape.
 - G. Protective of each other, to the extent of concealing or ignoring inappropriate conduct by fellow officers.
- 6.1.2 Identify the following as factors which influence the image of law enforcement within the community:
- A. Response time for calls for service.
 - B. The officer's behavior and demeanor when responding to calls for service, at accident or crime scenes, etc.
 - C. The officer's behavior, demeanor and use of time when performing general patrol activities.
 - D. The officer's behavior and demeanor when not in service.



THIS IS TO VERIFY THAT THIS IS
A TRUE AND ACCURATE COPY
OF RECORDS ON FILE AT THE
ARIZONA PEACE OFFICER
STANDARDS & TRAINING BOARD


CUSTODIAN OF RECORDS

- E. The officer's judgment, particularly with regard to the use of force.
 - F. The officer's ability to successfully resolve problems.
 - G. The officer's behavior and demeanor when off duty.
- 6.1.3 Identify the following as roles of the police in providing community service:
- A. Providing service.
 - B. Maintaining order.
 - C. Preventing crime.
 - D. Enforcing the law.
 - E. Providing positive role models.
 - F. Providing education and information.
 - G. Encouraging community participation in police-related matters.
- 6.1.4 Identify the following as ways to personally influence the community's attitudes toward law enforcement:
- A. School contacts (school presentations, contacts with school administrators, attendance at parent/teacher group meetings, etc.).
 - B. Contacts with the media (i.e., television, radio and newspapers).
 - C. Contacts/involvement in various community service organizations, businesses, etc.
 - D. Daily contacts with the public, particularly during traffic stops and calls for service.
- 6.1.5 Identify the following benefits of enhancing police/community relations:
- A. Greater community cooperation in solving/preventing crime.
 - B. Enhanced community understanding of the police mission.
 - C. Reduction in community-held, negative stereotypes of law

enforcement.

- D. Increased community support for law enforcement as reflected in such things as:
1. Increased law enforcement funding.
 2. The passage of new laws/ordinances.
 3. Improved media relations.
 4. Increased support for enforcement of existing laws/ordinances.

LEARNING ACTIVITIES:

- 6.1.6 The trainee will receive instruction and participate in an instructor-led discussion of the major subcultures in the academy's service area as defined by race, ethnicity, socioeconomic status and sexual orientation. Such instruction and discussion will address:
- A. The ideals, beliefs, values, customs, conventions and attitudes toward law enforcement held by each subculture.
 - B. Methods of overcoming barriers between law enforcement and each subculture.
 - C. Methods for effectively communicating with persons from each subculture.
 - D. The likely needs for law enforcement services of each subculture.
 - E. How the officer is likely to benefit from a greater understanding of each subculture.
- 6.1.7 The trainee will receive instruction and ***participate in an instructor-led discussion*** of how an officer's behavior is likely to be perceived differently by the following persons:
- A. Members of each major subculture within the academy's service area (as defined by race, ethnicity, socioeconomic status and sexual orientation).
 - B. Suspects, victims, witnesses, etc.
 - C. The officer's supervisor.
 - D. The officer's peers.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 4 of 50**

DATE FIRST PREPARED: August 1995

PREPARED BY: Sgt. Gerald Heuett, Jr.

REVIEWED – REVISED: SME Committee DATE: January 2001

REVIEWED – **REVISED**: AZ POST (Word) DATE: May 2003

REVIEWED – REVISED: AZ POST DATE: April 2007

REVIEWED – **REVISED**: Lt. Dave Kelly, ALEA (minor edits) DATE: April 2010

REVIEWED – REVISED: DATE:

REVIEWED – REVISED: DATE:

AZ POST – APPROVAL: Richard Watling DATE: April 2010

INSTRUCTOR REFERENCES:

CLASS LEVEL: Recruit

TRAINING AIDS: AZ POST video: U.S. History Lesson.
OPTIONAL: ABC 20/20 VHS tape, "Police Discrimination," Los Angeles, CA, 1992, ABC Turning Point VHS tape "Murder in Mississippi, The Freedom Riders," 1994 and Vietnam collage.

INSTRUCTIONAL STRATEGY: Interactive lecture and class discussion.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 6.1 Cultural Awareness

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 5 of 50**

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives.
- C. Attention “grabber.”

II. PURPOSE AND FOCUS OF THE CLASS

- A. The purpose of this course is to assist you, as police officers, in performing your duties in a professional manner.
 - 1. Many law enforcement agencies are implementing community-based policing policies and as a beginning step, a foundational step, we need to take a look at the different types of people that we serve.
 - 2. If we are going to continue to be effective in the 21st century, we need to recognize the changes that we are going to see as the population and demographics of our country and community change.
- B. In addition, a number of executive staffs of these agencies are promoting a new form of management called Total Quality Management.
 - 1. This style of management allows us to look at those we serve as customers.
 - 2. Our customers include not only the citizens whom we protect, but also those whom we have to arrest, other departments we have to work with and the individuals and bureaus within our own departments with whom we must interact in order to get our job done in an efficient manner.
 - 3. It also includes other entities of the government, the private sector, educational institutions and citizen activist groups, both those that work with law enforcement and those who closely watch the activities of the organization.
 - 4. By maintaining this attitude, we will be able to adopt a more realistic approach to achieving community-oriented policing.
- C. There are different ways to teach cultural awareness and

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 6 of 50**

all of those methodologies have something to offer.

- D. This course is different in that it is a course on cultural awareness and cultural communication that is written for police officers by a police officer.
- E. It is also not intended to make “soft cops.”
 - 1. It is not our intention to present a lot of rhetorical theory.
 - 2. This course is structured to be interactive and bring in the experiences of the officers.
 - 3. Cultural awareness training is for ALL officers, regardless of color or gender.
 - 4. This course is non-blaming.
 - 5. Laying blame is not constructive, nor does it solve the problems that we are faced with.
 - 6. This course will further build your skills and provide information, education and tools to assist you in working with the community.
 - 7. It will also give us an opportunity to discuss the many facets of our job that we face in our diverse and changing communities that we serve and the increased challenges we face into the 21st century, in an already complex and demanding profession.
- F. The contemporary view is that in order to be an effective officer in today’s society it is necessary to understand basic assumptions about ourselves and the community and to remember from where we came from before we became involved in law enforcement.
 - 1. Simply put: Remember to treat people as we wish to be treated.
 - 2. It is not necessary that to be an effective officer in today’s world that we totally accept, agree with or change our own values for cultural uniqueness to those of some of the cultures and communities that we serve.
 - 3. However, at the very least, we need to be aware of other cultures and the characteristics other than our own.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 7 of 50**

- G. What we will provide in this class is education, information and tools to assist you in working with the community that you serve. Communication tools to:
1. Enable you to work more effectively.
 2. Work more efficiently.
 3. Be a better listener.
 4. Gain the respect of those diverse communities.
 5. Become a more competent, complete law enforcement professional.
- H. We also understand that you are not going to walk out of this class a "new person."
1. The values you had when you walked into this classroom will be the same ones you will walk out with.
 2. There is nothing wrong with the values that you have.
 3. Most people that come into the public service arena have good solid values and come into this line of work to have an impact or make a difference in the world that they live in.
 4. Most officers, if you were to take away the protective mechanisms that we have surrounded ourselves with, are people that have a solid set of ideals, a simple belief that they may not be able to change the world, but they can change their part of it.
 5. Our intention is to lay the foundation for you to be better aware, more conscientious and culturally competent law enforcement professionals.
- I. So what are we going to talk about?
1. First, we are going to take a long look at ourselves, our culture and the culture of cops.
 2. Cops:

Who are we?
Why are we the way we are?
Why do we look at the world the way we do?
Why do we think the way we do?

What is our culture all about?

3. No matter what our color, what our gender or where we work, we are going to discover that we have a lot of common denominators and though we may be different as individuals, we as cops are very much the same.

- J. We will look at historical perspectives and attitudes that have been involved in the perception we have of the public and the perceptions the public also has of us and the reasons for those perceptions.

- K. We will also look at power and discretion – the power we as police officers have and the way power also affects the perception many members of the community have of us.

We will also look at the most powerful tool that we have in our arsenal, the power of discretion.

- L. We will then look at several major cultures that we, as law enforcement professionals, deal with everyday, but we are going to look at those cultures through the way they communicate and use language, the structure and importance of the family and inherent values associated with them.

- M. All we would ask is that for the next several hours you keep an open mind, keep the dialogue going among ourselves and try to learn from each other.

III. THE GOAL

- A. In order to be more effective into the 21st century and attempt to work more efficiently and effectively with the public, we need to work toward two (2) major goals.
 1. Build a dynamic structure of trust and communication between the public and the police.
 2. Use of empowerment and education of both the police and the public to sustain positive and productive relationships in progressive times and adverse times.

- B. For community-based policing to work, modern police philosophies, trust and communication are essential.
 1. Traditional methods, “kick ass and take names,” may not work very well into the next century or, at the very least, should be augmented into more productive community-based philosophies.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 9 of 50**

2. The community was not involved and sometimes we made adversaries of allies.
 3. Common negative stereotypes of law enforcement:
 - a. Unethical. **P.O. 6.1.1A**
 - b. Uncaring and apathetic toward the needs of the community. **P.O. 6.1.1B**
 - c. Ineffective in delivering services and combating crime. **P.O. 6.1.1C**
 - d. Excessively violent in the use of authority. **P.O. 6.1.1D**
 - e. Biased against racial and ethnic groups, gays and women. **P.O. 6.1.1E**
 - f. Overweight and out of shape.
 - g. Protective of each other by concealing, protecting and/or ignoring inappropriate conduct by fellow officers.
 4. In order to make allies of our adversaries or to increase public support and to gain the trust back, we need to:
 - a. Become better listeners.
 - b. Become better communicators.
 - c. Understand that we will always have to be the ones who will take the first steps toward education and improvement and will always be under scrutiny.
 - d. Hopefully, it will be a beginning to gaining the trust back.
- C. We need to educate ourselves, but also the public.
1. Does the public really know what we do?
 2. How we do our job?
 3. All the youth programs and volunteer activities our officers are involved in?
 4. The answer is probably NO.

- D. The education process and allowing public input in assisting problem solving within the community, assists trust and communication efforts:
 - 1. During the good times.
 - 2. During the adverse times.

- E. In order to accomplish this and to be fair to ourselves, we need to spend some time:
 - 1. Looking at who we are.
 - 2. Looking at who the public is.
 - 3. Looking at the future.
 - 4. Now, let us look at some reasons and rationale as to demographics, perceptions and values and how they will affect the law enforcement community.

DISCUSS what happens when we are all faced with Rodney King and New York City's Haitian immigrant case transition.

IV. DEMOGRAPHICS AND RATIONALE FOR THE COURSE

- A. If positive interaction and dialogue are going to occur for both, we need to look at the changes that are occurring all around us.
 - 1. The future is a series of options.

The population demographics are really changing fast.
 - 2. Remember what your grandparents went through and the changes they faced.
 - 3. Work force changes.
 - a. The challenges of recruiting police officers in the future.
 - b. Grade-school enrollment is going up (called the Echo Baby Boom).
 - c. The main reason crime is down is that the group of 16- to 22-year olds who commit most of the crime is at its lowest number since 1973.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 11 of 50**

- d. This group is growing fast.
 - e. Also, a lot of older citizens and retirees.
 - f. The challenges of both of these groups and the differing value systems are going to change our calls for service.
 - g. Most of us that have not been police officers before have gotten the view of what policing is all about through television and other media.
 - h. It is not going to be all non-stop action.
- B. Let us look at some of the demographic changes that affect us now and in the future in the United States:
- 1. The borders between Canada and the United States are porous and Canada has twice the per capita immigration than we do.
 - 2. We often assume that because we border Mexico that the greatest challenge we face in this country is from Mexico, when people are gaining access through Canada and both sea coasts in addition to Mexico.
 - a. Washington, D.C., is over 70% African-American.
 - b. Miami, Florida, is over 66% Hispanic.
 - c. In California, at least 50% of the population can speak a language other than English.
 - d. In Los Angeles, 40% are Hispanic, 37% are Anglo, 13% are Black and 18% of the population is below the poverty line.

Over 100 different languages are spoken in California high schools.
 - e. Anglos will be only 52% of the population of the United States by the year 2050.
- C. There are numerous challenges to us as law enforcement as the population demographics change.
- 1. In Nampa, Idaho, Hispanic workers and Anglos are in conflict.
 - 2. In Nashville, Tennessee, as well as numerous other cities, the issue of racial profiling is para-

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 12 of 50**

mount.

- D. In Las Vegas, there are 60,000 immigrant children from Mexico that have to be educated. If the schools cannot handle the influx, we will get them sooner or later.
- E. Perry, Iowa, the home of Iowa Beef Packers has hired countless Hispanic and Asian workers.
 - 1. They make \$8.50 per hour plus benefits.
 - 2. That is a fortune to people from Mexico who do not make \$8.50 per day.
- F. Siler City, North Carolina, is another area of ethnic tension between Hispanic workers and Anglos. People make the statement that "These immigrants are taking their jobs" when, in fact, many people would not do the job and the economy is expanding so fast, workers are desperately needed.

V. DEMOGRAPHICS

- A. Point out the population numbers in Arizona and the service area of your county or city.

Also, point out the birth rates of various cultural, racial and ethnic groups.
- B. Birth rates of the population go a long way in explaining why the demographics of Arizona are changing so rapidly.

The largest group of diversity is the youngest, the Hispanics, and they are at prime child-bearing ages, compared to Anglos.
- C. Older retirees also bring the average age up for Anglos.
 - 1. American Indians are also younger, but because of the size of the population, will not have a large affect on their group's growth.
 - 2. The Hispano/Latino population will grow by leaps and bounds as immigration increases along with the birth rates, while the Anglo population will fall if they continue with lower birth rates that will sustain the culture.
- D. Why is cultural awareness training important to us in law

DISCUSS the demographics in your service area.

DISCUSS the fact that it takes 2.1 children per couple to maintain a culture or race. Anglos are at 1.7. Spanish birth rates in Spain are at 1.5. Both will eventually die out if the rates do not come up.

"Why is Cultural Awareness Important"

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 13 of 50**

enforcement?

What are some pragmatic reasons we should educate ourselves in these important issues?

and have the recruits DISCUSS some benefits in groups.

VI. PRAGMATIC PERFORMANCE-BASED BENEFIT FOR LAW ENFORCEMENT

Let us look at some of the benefits of enhancing police/community relations:

P.O. 6.1.5

A. Reduced community/police conflict by reducing community held, negative stereotypes of law enforcement.

P.O. 6.1.5C

B. Increased community/police cooperation in solving and preventing crime.

P.O. 6.1.5A

C. Improved community understanding of the police mission.

P.O. 6.1.5B

D. Increased community support as reflected by:

P.O. 6.1.5D

1. Increased law enforcement funding.

2. The passage of new laws/ordinances.

3. Improved media relations.

4. Increased support for enforcement of existing laws and ordinances.

E. Officer safety: Learning to deal with other cultures enhances our safety.

F. Political power changes as the demographic changes, or changes with the significance of issues presented.

G. Police image and political power dictate how we perform our job, what we do and how we appear to others in the community.

H. Cultural views of police differ from those communities that have been here and from those that are coming to the United States.

I. To understand differences assists us in understanding a different point of view, which enables us to communicate more effectively in positive and adverse conditions.

J. To understand the differences and perceptions that others have of the police and others in positions of power, it is paramount that we consider historical perspectives.

VII. CULTURAL TRUTHS

- A. To really start to understand the issues of culture, it is important to understand, as a human being, about general aspects of culture.
1. Culture is hard to define.
 2. It is actually the sum total of a group's way of living.
 3. It is a complex group of behaviors and standardized social characteristics peculiar to a specific group.
 - a. Culture is learned, it is not biologically inherent.
 - b. Culture is transmitted from one (1) generation to another.
 - c. Culture states to all of us what is good, bad, right or wrong.
 - d. Culture has definite rules that guide us on how to behave.
 - e. Culture affects how we view the world.
- B. Culture is value laden:
1. Before we even say hello, we have already made many firm decisions about another individual.
 2. We all naturally value people differently.
 3. We all bring prejudices to the profession.
- C. The challenge, of course, is to get above those realities and work on perceptions and pre-judgments.
- As law enforcement officers, it is mandatory to remain professional all of the time.

Talk about how people really are, not how "politically correct" we may want them to be.

Comment that as you came into the room, because of your appearance, someone did not especially like you.

VIII. STEREOTYPES

A. All human beings stereotype other people and things.

1. Stereotypes are a natural way of perceiving others that are resistant to change.
2. They are subject to very natural biological and cognitive changes.

B. Stereotypes are formed quickly and, typically, with little information.

As human beings, we have a tendency to judge others based on our very first impressions.

C. The mind works like a computer.

1. It takes in a very first impression of something and then makes a solid judgment of it.
2. When the person then comes into contact with that same stimuli again, the mind goes back automatically to its first experience.
3. We tend to be "cognitive misers." We do not usually want to waste a lot of time thinking through issues.
4. It takes energy and is hard.
5. We will take a shortcut every time.

D. **Attributional errors:**

We make errors of fact a couple of ways, either situational or dispositional.

1. If two (2) people are in class and take a test, they can make these errors several ways.
2. The teacher hands back a test.
3. One (1) person scored a "100," the other scored a "73."

Explain what stereotypes are.

"We maintain stereotypes through. . ." explain what the mind does.

Confirmatory bias.

We look for confirmation of our stereotypes. Give an example of buying a car. We pick out an unusual color and model we have not seen much of and by the time we drive it home, we have seen three (3) others like it. The reasons we have not noticed it was because of the structured, somewhat lazy, way the mind works.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 16 of 50**

4. The person with the "100" will make a dispositional error, thinking they are smarter than the other.

5. The person with the "73" will make a situational error by thinking if he/she would have spent more time studying, he/she would have gotten a "100" too.

E. Challenging stereotypes:

It is important to realize that challenging stereotypes takes effort and conscious consideration.

1. The more we practice challenging them, the better we become.
2. Everyone has stereotypes, even the bad guys.
3. If they had one (1) bad experience early on in their childhood with a police officer, they are usually locked into that experience, assuming that all cops are like the first one they ran into as a kid.
4. It is what we do with the information that gets us, as police, into trouble.

F. Mental stereotypes exercise:

Ask students to turn to page 15 in their resource manuals.

1. Ask them to fill in the blanks mentally for each of the comments.
2. Do not have them share their comments with others.
3. Just point out how easy it was to fill in the blanks with their own stereotypes.

G. Stereotyping and racial profiling:

1. One (1) of the concerns of police today is the issue of race in criminal profiling as well as race relations affecting police operations.
 - a. Racial controversy is not new to law enforcement.
 - b. American police do not get enough credit for the enormous amount of positive daily

Attributional errors.
Use the example of the two (2) students to explain how the mind works.

"You see a white male driving a newer Lexus automobile at 2:00 a.m. in an area that has a reputation for prostitution and drug activity. Do you stop him?"

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 17 of 50**

interaction within minority communities.

- c. The challenge is how to ethically and legally perform in an environment where treatment of minorities is critically examined on a daily basis.
2. As you have learned in law and legal matters, the Fourth (4th) Amendment to the U.S. Constitution sets out a standard for unreasonable searches or seizures.
- a. The term “unreasonable” is the one that can be in conflict.
 - b. While we do not wish to get into any legal detail in this particular block of instruction, pre-textual stops are authorized as a legitimate basis for stopping a car (usually a minor traffic violation) to perform a search, usually for drugs or other contraband.
 - c. These stops seem to involve minority motorists more than others.
3. Probably nothing has caused more controversy than the use of profiles to justify reasonable suspicion to stop a vehicle.
- a. Criminal profiling has a very legitimate and successful history when applied to rapists, hijackers, child molesters and arsonists; however, thousands of stops for these concerns are not made every day.
 - b. The problems start when officers use race as the original and major basis for the stop.
4. Officers who do not understand reasonable suspicion or who have inadequate training and supervision in what constitutes reasonable suspicion may tend to use the easier, but less competent, traffic violation to justify a stop.
- a. While the stop is technically legal, the problems caused regarding race relations and the police may not justify the stops themselves.

In many groups of veteran officers, one-half (½) will say they would stop, one-half (½) would not. The correct answer is not enough probable cause or reasonable suspicion to stop. People will be split on this issue. This is why it is a training issue.

The notice of the car, driver and the suspicion of illegal activity is not the problem, the stop is. Get into a discussion on what else could be added to the activities of the driver to justify a stop.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 18 of 50**

- b. Some officers may tend to “push the envelope” when it comes to stops and searches, which causes untold problems for police and community relations.
- 5. It is up to each one of us to learn what we can do instead of what we cannot do as far as reasonable suspicion is concerned.

IX. PERSONAL VALUES

- A. Personal values are formed early on in life through a variety of influences:
 - 1. Parents.
 - 2. School.
 - 3. Friends.
 - 4. Church or spiritual influences.
 - 5. Media.
- B. These values stay with us as we become older. They can modify, develop or change depending upon various situations we meet as we grow up, but they usually stay intact.
- C. This next exercise, “The Journey,” can point out differences in these values, how we interpret events and what is important to us as human beings.
- D. Everyone, please read “The Journey” and rank the characters at the bottom of the page as to who was the most reprehensible.
- E. Who was the most reprehensible?
 - 1. Abigail.
 - 2. Gregory.
 - 3. The riverboat captain.
 - 4. The friend.
 - 5. Slug.
- F. Who was the most reprehensible and why?
- G. Who was the least reprehensible and why?

The “Journey” form is on page 17 in the resource manual.

Then ask them to share the information with their neighbors.

Then ask them as a group to DISCUSS who they chose and why.

LESSON TITLE: CULTURAL AWARENESS

APRIL 2010
PAGE: 19 of 50

G. Who had the most power?

H. The assumption would be that we in this room are all police officers, we were all trained essentially the same and if this were a "police problem," the assumption would be that we would all have the same conclusion, but we did not.

1. We made decisions on who was the most reprehensible or the least or who had the most power based on our personal values.
2. Our values drive our decision-making process in our personal lives and in our professional lives.
3. We are the ones who decide who gets one (1) ticket or 15, who gets a citation or who goes to jail.
4. We are the people that write the reports that can have a particular "slant" to the investigation.
5. It is called discretion; the most powerful tool we have.
6. Our values drive our decision-making process, so let us take a little closer look at what those values are and what are important to us.

X. VALUES AND SELF PERCEPTIONS

- A. We all came to different conclusions to "The Journey" based on our personal value system and our perception of what we felt.
- B. We found that our personal value system tempered our decision-making process.
- C. On the Self Perception form, please rank what you personally value as most important and rank them from one (1), being the most important, through 14.
1. Some of the categories will not apply to all, so rank only those that apply to you.
 2. This type of form is used all over the United States in training, but with police officers, we had to add the category of ex-spouse because, regretfully, we have a lot of these in our business.

The Perceptions exercise form is on page 18 in the resource manual.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 20 of 50**

- a. What were your top three (3)?
 - b. What were the bottom three (3)?
 - c. How many of you had "others' perceptions of you" and group loyalty in the bottom half (1/2)?
 - d. Why do we typically rank those items at the bottom of our value system?
- D. Several challenges we will have in this profession are that "others' perceptions of us" are critically important.
1. Image is the name of the game in this profession.
 2. Group loyalty will also become more important as you move through this profession.
 3. We have a strong "extended family" in law enforcement.
 4. The group will become important to you.
- E. Where did these values come from? As we discussed in the exercise, "The Journey," they came from a multitude of sources.
- F. As we grew into adulthood, we refined and further developed our value system.
- G. Then, we became police officers.
- H. Is there another set of additional values placed upon us as police officers?
1. What are they?
 2. Did you feel, in the academy, a sense of accomplishment and a sense of pride that set you apart from the others?
 - a. Yes, and you should have.
 - b. And you should feel proud of who you are and what you are.
- I. We have personal values coupled with police values and for years it sometimes puts us in the position, or we place ourselves in the position, of us and them: I am a cop and you are not.

- J. Now, we ask you to go into the community and be an integral working partner in the community or neighborhood you serve as a professional.

To do that you need to understand issues of power and how they relate to people before we can begin to work on effective communication.

XI. POWER

- A. What are some of the reasons this country and this "American Culture" were founded?
1. Freedom of religion was paramount to the people that came here; to worship in the church they wanted to.
 2. Respect for the individual, individual rights by nature of citizenship, not wealth or means.
 3. Demand for property and opportunity for personal "wealth."
 4. Equal system of justice.
 5. Control of centralized power was essential, a constitutional, federal system.
- B. In most countries across the world, what is the most visible sign of power and government?
- THE MILITARY.**
- C. In the United States, what is the most visible sign of government and power?
- THE POLICE.**
- D. We are the most visible sign of power and government because we are available seven (7) days per week, 24 hours per day and even on holidays.
1. What happened in 1973 when NBC put on the movie "Heidi" during a football playoff game? The Jets came back with Quarterback, Willie Joe Namath, to win the game, but the networks had

DISCUSS the last five (5) minutes of the New York Jets vs. Oakland Raiders game. The network executives switched to Heidi

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 22 of 50**

- switched to Heidi.
- The NYPD 911 system crashed because the police were the only folks people thought could help. Now that is power!
2. The roles of the police in providing community service are:
- a. Provide a service. **P.O. 6.1.3A**
 - b. Maintain order. **P.O. 6.1.3B**
 - c. Prevent crime. **P.O. 6.1.3C**
 - d. Enforce the law. **P.O. 6.1.3D**
 - e. Provide positive role models. **P.O. 6.1.3E**
 - f. Provide education and information.
 - g. Encourage community participation in police-related matters.
3. Is that our job? You bet it is.
4. We are our brother's keeper, our sister's keeper.
5. And they are all our responsibility.
- E. With that visibility comes responsibility. Our image within the community is critically important, it is important to:
- 1. Treat people fairly and objectively.
 - 2. Be aware of the inherent power we represent to other cultures in the community.
 - 3. Be aware of how those cultures react to you and their perceptions of you.
 - 4. Be aware that in some communities you also represent affluence because of the new police car you drive, the new uniform, radio, etc.
 - 5. Factors which influence the image of law enforcement within the community: **P.O. 6.1.2**
 - a. Response time for calls for service.
 - b. The officer's behavior and demeanor when responding to calls for service, at accident or crime scenes, etc.
- at 7:00 p.m. when there was five (5) minutes left and the Jets were down by three (3) touchdowns.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 23 of 50**

- c. Behavior both on and off duty.
 - d. Behavior during and after use of force incidents.
 - e. The officer's judgment, particularly with regard to the use of force.
 - f. The officer's ability to successfully resolve problems.
 - g. The officer's behavior and demeanor when off duty.
- F. It is important to understand the community and why we may or may not have support.
- 1. Understanding historical perspective is a critical issue.
 - 2. In the past, the minority communities have not always been treated well by police and law enforcement in general.
 - 3. If one looks at the Civil Rights Movement in the 1960's and the actions of police in those situations, one can see why people may not hold us in the highest esteem.
- G. In our communities, what percentage of the people is non-supportive of the police?
- 1. Approximately 10% and probably less.
 - 2. Believe it or not, approximately 90% of the people are generally supportive of the police.
 - 3. Why do we as police officers feel as though the percentage is so low?
- H. If 90% are supportive, what are some of the reasons it may appear that they are not?
- 1. Fear of the other 10%.
 - 2. Our job may be, and often is, taken for granted until they need us.
 - 3. Are there sections of the community that are afraid of the police?
 - a. Recent Southeast Asian immigrants?

Play the AZ POST nine (9)-minute Civil Rights and Vietnam conflict tape.

Ask students to pick out one (1) phrase or scene that stuck out in their minds.

This can be a very emotional experience for some students.

The whole lesson can take from one-half (½) to one (1) hour depending upon the discussion.

You will find that the students are very insightful about this information.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 24 of 50**

- b. People from Mexico, Central and South America and the former Soviet Union?
 - c. And those that may have been part of the experiences in turbulent American history?
- I. If there is going to be any progress in this area, we need to not only recognize the power we represent and the historical perspectives, but also the power and importance of communication.

XII. COMMUNICATION CONCEPTS

- A. In police work:
 - 1. Seven percent (7%) of our job is law enforcement or "hookin' and bookin'."
 - 2. Ninety-three percent (93%) is communicating with people.
 - 3. From that perspective, let us look at the language we primarily use and how we process information.
- B. Language/communication among human beings is characterized by the use of:
 - 1. Arbitrary spoken or written symbols.
 - 2. Agreed-upon meanings.
 - 3. More broad language that may be thought of as communication in general.
 - 4. Language that can be studied from two (2) points of view:
 - a. Its structure.
 - b. Its use.
- C. The use of the language is what we as officers are most affected by:
 - 1. What humans say.
 - 2. What they say they are thinking.
 - 3. And what they mean by what they say and write to each other.
- D. Included in looking at the use of language is:

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 25 of 50**

1. The content and analysis of the message.
2. The historical perspective of the language and how meanings and definitions change throughout the course of time.
3. The addition of words in the vocabulary from historical events or cultural interaction.
4. Most importantly, the way that language can influence behavior.

XIII. POLICE PERSONALITY AND CULTURE: HOW POLICE TYPICALLY PREFER TO COMMUNICATE

- A. Carl Jung, a famous psychologist, developed and classified four (4) cognitive communication styles and preferences.
1. Those classifications can help us understand how people prefer to take in and process information and based on the way they prefer to take in information, helps us understand how people make a decision on the information they have just received.
 2. His work gives us a way to define communication preferences.
- B. People take in information in basically two (2) ways:
1. Sensing (S) – relies primarily on observable facts or happenings through one (1) or more of the five (5) senses.
 2. Intuition (N) – relies on meanings and casual relationships or possibilities beyond what the conscious mind sees.
- C. Once the information has been taken in, a person then makes a decision or judgment on what has happened.
- There are two (2) ways in which the decision-making process occurs:
1. Thinking (T) – decides impersonally on the basis of objectives and logical consequences.
 2. Feeling (F) – makes a decision primarily on the basis of personal or social values.
 3. Now, let us look at the four (4) combinations of the communication preference models based on Jungian Cognitive Styles and what are

Understanding police personality is on page 33 of the manual.

Explain to students that people can do it both ways, but they have a definite preference of one (1) way over the other.

To demonstrate this, ask them to sign their signature as though they were signing a check. (They will pick up a pencil and do it without thinking.)

Then ask them to use their other, less dominate hand. They will struggle, but finally be able to do it. This is what we mean by preferences.

We can do it both ways, but when our strength is one (1) way, we usually

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 26 of 50**

typical communication behaviors for each of the four (4) combinations.

will do it that one (1) way.
It is easier.

D. Sensing/Thinking (ST) police officers.

Uses the five (5) senses to take in information and uses objective logic to make a decision.

1. Descriptors of communication preferences are:
 - a. Concrete.
 - b. Logical.
 - c. Traditional.
 - d. Decisive.
 - e. Impersonal.
 - f. Pragmatic.
 - g. Direct.
 - h. Analytical.
 - i. Structured.
2. Seventy percent (70%) of police officers prefer ST, compared with 32% to 42% of the public.

E. The next most common are:

Intuitive Thinking (NT) police officers.

1. Take in and process information through the sixth (6th) sense intuition.

After using the intuitive process to take in information, a decision will be made based on "pure" logic and reasoning.
2. Communication descriptors of an NT are:
 - a. Global.
 - b. Precise.
 - c. Factual.
 - d. Visionary.

The important issue to point out is both ST's and NT's make decisions with pure logic and talk in an impersonal manner "just the facts ma'am."

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 27 of 50**

- e. Demanding.
 - f. Reserved.
 - g. Theoretical.
 - h. Impersonal.
 - i. Direct.
3. Fourteen percent (14%) of police officers are NT, compared with 15% to 22% of the public.
- F. The relatively uncommon type of police officer is a Sensing/Feeling (SF) officer.
- 1. Take in and process information through the five (5) senses and has a primary concern for subjective feelings and personal issues.

After using the sensing process to take in information, a decision will be made based on social value or personal considerations.
 - 2. Communication descriptors of an SF are:
 - a. Sociable.
 - b. Caring.
 - c. Friendly.
 - d. Tactful.
 - e. Trusting.
 - f. Considerate.
 - 3. Eleven percent (11%) of police officers are NT, compared with 31% to 41% of the public.
- G. Intuitive Feeling (NF) police officers.
- 1. These officers process information through their intuition and make decisions with consideration for personal values, feelings or social values.
 - 2. Communication descriptors of an NF are:
 - a. Creative.
 - b. Idealistic.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 28 of 50**

- c. Friendly.
- d. Charismatic.
- e. Empathetic.
- f. Intense.
- g. Committed.
- h. Congenial.
- i. Devoted.

3. Five percent (5%) of police officers are NF, compared with 15% to 21% of the public.

4. It also points out that the favorite decision-making process of the majority of police, ST's and NT's, is pure logic (thinking) at 84%, while only approximately one-half (½) of the population prefers that direct style.

This is one (1) of the reasons people look at us and the police culture as impersonal, direct and pragmatic "just the facts, ma-am" – a comment made by Detective Jack Friday of the old TV show "Dragnet."

5. **The Arizona Community Policing Institute conducted a survey of citizens in Arizona from 56 different areas.**

The question they asked was "What do you think police officers should have to be effective?"

The most important trait they wanted police officers to have was communication skills.

6. **People want us to behave in a compassionate, understanding and "feeling" way and yet the nature of the job of policing is objective, structured and pragmatic.**

Police have to learn and make an extra effort to communicate in a compassionate and considerate way.

H. Police are the same throughout the world.

1. If the job of policing is the same, the same folks are attracted to the job.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 29 of 50**

2. Everybody brings something to the table.
3. The feeling types do very well in communicative areas of policing such as: Dare or Great, Community Relations or School Resource.
- I. Police officers that are ST's and NT's may have to work harder to build their communication skills.
- J. Communication in policing is a critical issue. Studies have shown that 93% of our work is communicating and only seven percent (7%) is "hookin and bookin."
- K. We will look at how police officers, people and other cultures in our community apply communication preferences with communication context.

XIV. CONTEXT OF COMMUNICATION

- A. To communicate more effectively with other people and cultures, we have to look at communication styles.
- B. Dr. Edward Hall was one (1) of the pioneers of modern thought on the consideration of context in communication.
- C. Communication context among other definitions is how information is handled that is communicated from one (1) person to another.
- D. By looking at communication contexts, we are essentially observing and working with:
 1. The structure of the language.
 2. How the language is used.
 3. The importance and impact of the words vs. the message.
 4. The dynamics of the people or culture, the language and cultural values as well as socio-historical perspectives and how they communicate.
 5. The dynamics between the sender and the receiver.
 6. Body language, posturing, gesturing and facial expressions.
 7. The interpretation of the message delivery.

- E. Communication context can be placed along a horizontal continuum from lower to higher context.

Lower context cultures are:

1. Scandinavian.
2. German.
3. English.
4. Canadian.
5. Australian.
6. American.

- F. Lower context communication styles are:

1. Words are very specific and have definite meanings and definitions.
2. People or cultures that are lower in context, generally what they say is what they mean.
3. Less verbal and very direct in communication system.
4. The who, what, where, when and how – very structured communication.

- G. Lower context values are:

1. Personal reliance.
2. Individual rules and responsibilities.
3. Time is critically important.
4. American cultural values are lower context values.
5. Middle context indicates a movement towards more complex communication patterns and extended family values.

- H. In general terms, in higher context cultures, the communication process of communication is just as important as the content of the message.
 - 1. Words send only PART of the message.
 - 2. Emotions, family process, historical perspective, posturing and gesturing often may bury the implicit meaning of the words or message.
 - 3. Historical perspective may have an emphasis on the context of the message.
 - 4. Much more verbal, less direct.
 - 5. Emotions, posturing and gesturing are all or part of the message delivery.
- I. Higher context values are critical to understand.
 - 1. The family is extended.
 - 2. Saving face, dignity and personal respect are critical.
 - 3. Time is not important; whenever it gets done is when it gets done.

XV. CONTEXT COMMUNICATION APPLICATIONS

- A. We are going to look at the different styles of communication exhibited by the various cultures within our given community and determine the communication context most associated with the culture and the family structure or how the culture looks at issues.

We are going to look at:

- 1. The police culture.
- 2. Asian.
- 3. Native American.
- 4. Euro-American.
- 5. African-American.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 32 of 50**

6. Hispano-Latino.
-
- B. Police.
 1. In looking at the police culture and the training given to police officers, regardless of their cultural background and the nature of the job and job tasks associated with law enforcement, what kind of communicators are we?

Lower context.
 2. Use of radio codes to replace words in casual conversation.
 3. The who, what, where, when, how, etc.
 4. Specific instructions demand a specific response. Communicate in an ST, pragmatic way.
 5. Specific ideas and meanings to the words and phrases we use.
 6. What we say is what we mean.
 - C. Family structure of the profession – are we an extended family or nuclear family in the way we view the world and the issues that affect us?
 1. Extended family.
 2. What would happen if we had an officer down situation 200 yards away from where we are now?

What would be our response?
 3. We all would respond immediately. Would we protect the officer from any threats from a gathering crowd?

We are protective of each other.
 4. Do we get upset when we see our profession displayed unfairly on a news broadcast or news show?

Do we get angry?
 5. When one (1) of “us” gets killed or seriously hurt, does that cause us to stop and think about the officer’s family, squad members, family, etc?

6. These are all "extended family" issues; we are an extended family.

XVI. CHALLENGE EXERCISES

- A. These exercises are excellent and give the recruits an opportunity to learn, dispel rumors or erroneous information about a culture and build on their experiences from a cultural context and communication point of view.

Directions: Have the recruits break out into groups of five (5) or six (6).

Ask them to refer to the information in their reference manuals for each culture.

Ask one (1) member of each group to pull one (1) of the same forms out of the exercises on page 51 or page 52 in the back of the reference manual.

One (1) student should be a scribe for the others.

1. Choose a culture to start with that is not a major subculture in your area. (You want the students to become familiar with the exercise so they can risk being honest.)
2. Ask them to define the culture as being high or low context, with either a nuclear or extended family structure.
3. Give them 10 minutes per group and ask them to list the benefits this culture brings to the United States and also the challenges they bring to us in law enforcement.

Note: This exercise gives people an opportunity to put information about cultures into perspective.

It gives them pause to reflect the values other cultures bring to the United States.

It can also clear up any misconceptions about certain cultures. An example: "Immigrants are on welfare and do not work" is a common misconception.

Per capita, there are fewer Hispanic immigrants utilizing governmental services than Anglos.

They will discuss: Work ethic, strong family values, etc., as well as challenges of attitude and experience with police in Mexico and problems with

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 34 of 50**

language.

Do this with each of the five (5) cultures.

You may also wish to assign certain cultures to certain groups in the classroom.

Be sure to refer them to the reference manual so they can read, discuss and learn from each other.

There are specific sections in the manual for challenges each culture may afford police to jog their memories.

B. Asian culture.

1. Higher context or lower context in communication style?

Higher context.

2. Regionalization and stratification of the cultures has an impact on the language and usage of the language.
3. Respect and politeness to the speaker are very important.
4. Being direct is rude and offensive.
5. Respectful of authority.
6. Family unit – extended.

C. Euro-American culture.

1. Higher context or lower context in communication style?

Lower context.

2. German, English, Scandinavian, Dutch and Celtic are the main cultural influences.
3. Very direct and structured in the use of the language.
4. Emotion is not a driving force in the delivery of the message, the words are.
5. The words have specific meanings to the sender and the receiver.

Go to page 31 and ask the students to fill in the blanks. Most can very quickly. This speaks to how cultural values become imbedded into how we do things. DISCUSS page 32, other cultural sayings.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 35 of 50**

- 6. Family unit – nuclear.
- D. Native American culture.
 - 1. Higher context culture.
 - 2. Regionalization and stratification of communication styles.
 - 3. Fluidity of the languages and universality of culture languages and religions.
 - 4. The process involved in delivering the message is just as important as the words selected to convey the message.
 - 5. Family unit – extended.
- E. African-American culture.
 - 1. Higher context culture.
 - 2. Communication is regionalized and stratified.
 - 3. Traditionally, an oral culture with the ability to use language is seen as a personal strength respected in the culture.
 - 4. Family unit – extended.
- F. Hispano/Latino cultures.
 - 1. Higher context culture.
 - 2. A group of many subcultures tied together by a common language, Spanish, and a common religion, Roman Catholicism.
 - 3. Family unit – extended.

XVII. COMMUNICATING ACROSS CULTURES

- A. Every culture has customs, traditions and conventions for socializing and communication. Those communication techniques can be broken down into eight (8) areas:
 - 1. Conventions of courtesy.
 - 2. Sequence.
 - 3. Phasing.

LEARNING ACTIVITIES:

P.O. 6.1.6A-E

P.O. 6.1.7A-D

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 36 of 50**

4. Objectivity.
 5. Specificity.
 6. Assertiveness.
 7. Candor.
 8. Simplicity.
- B. Conventions of courtesy.
1. Each culture has conventions for courtesy.
 2. People who do not use the formulas established within a culture for courtesy and respect may be considered rude.
 3. People who do not know the conventions may feel rejected when the expected response is not there.
 4. Conventions could be the tempo of the conversation and tone of voice.
 5. The context of the culture and the conventions contribute to communication.
 6. Do not assume conclusions on a group or individual based on the initial contact.
- C. Sequence.
1. How people arrange information varies from culture to culture?
 - a. La casa roja.
 - b. The red house.
 2. People that are bilingual may have to think in one (1) language and respond in another.
 3. There is no direct language interpretation from most languages to English or vice-versa.
- D. Phasing.
1. Culture affects how and when business is discussed.
 2. Regional differences also affect the communication protocol.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 37 of 50**

3. Business and pleasure do not always mix.

E. Objectivity.

1. The facts – orderly, logical and precise are what are appreciated.

2. Trust has a significant affect on inter-cultural communication.

3. Dominating air damages communication.

F. Specificity.

1. Starting with specifics is a lower context style, while other cultures may start with generalities and move into specifics.

2. Lower-context cultures may look at parts of the picture, where higher-context cultures may look at the whole picture.

3. Communication may be out of synch.

G. Assertiveness.

In some cultures assertiveness may be appropriate and in others it is very rude.

H. Candor.

In some cultures courtesy, sensitivity, loyalty and “honor, saving face” are more important than “straight talk.”

I. Simplicity.

Using big words may not impress, it may fail to communicate. Keep it simple.

J. Eye contact.

1. By looking at the communication process, we begin to understand that the person who looks away from us when spoken to may not be lying as we have been trained to think, but may defer eye contact as part of a cultural upbringing.

2. In many cultures, eye contact is a sign of disrespect of an elder or authority.

3. Forcing the issue creates a barrier of communication and a barrier of building the trust needed for communication dynamics.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 38 of 50**

4. It becomes an issue of *power* and after that there is *no* communication.

K. Communication process.

When looking at the communication process, we can begin to understand certain behavioral and communication traits:

- a. Crowds at arrest scenes.
- b. Reactions different than our own perspective based on our communication style and experiences.

XVIII. CULTURAL PERSPECTIVES

- A. **Hispano-Latino.** This culture is expansive and multi-faceted and generally includes anyone sharing Spanish ancestry and tied directly with the Spanish language, spreading from the Lesser Antilles in the Caribbean through Mexico and Central America to the tip of South America.

Contained within the term "Hispano-Latino" or the more modern and inclusive term of "Hispano-Latino" are many races and cultures.

Most Hispanos-Latinos do share some general characteristics.

The term "Hispano-Latino" is an umbrella term used to identify people who claim Spanish-speaking ancestry.

If the situation arises, and you are ever in doubt as to what those individuals of Hispano-Latino ancestry may want to be called, common courtesy dictates to just ask their preference.

1. Higher value placed on interaction with others rather than individualism.
2. The process may be more important than the eventual outcome or finished product.
3. Greater concern about family expectations.
4. Concern about the opinions of others and the importance of honor, dignity and respect.

LEARNING ACTIVITIES:

P.O. 6.1.6A-E

P.O. 6.1.7A-D

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 39 of 50**

5. Pride in background, heritage and culture is important.
 6. Communication may be indirect in the interest of courtesy.
 7. High value placed on honor of family and personal reputation.
 8. Family and religion are the single most important social units of concern.
 9. Communication may be more vocal and expressive and centered around the process and not necessarily the content of the words.
 10. Most families that are in the acculturated structure with the changing roles of women within the Hispano-Latino family and the American identity are important to recognize.
 11. Traditional concept definitions:
 - a. Hombre – traditional context meant courage, hard word, able to endure hardships, face the enemy no matter what the odds, to wrest a living from the land and to survive, palabra de hombre – word of man, veracity.
 - b. Macho – exudes maleness, being very male; muy macho does not preclude someone from being muy hombre.
 - c. Machismo – a show of daring with no useful purpose, a provocative show of courage that encroaches on the rights of others and a selfish dramatic display.
- B. African-Americans.
1. Several key issues must be taken into consideration from the onset when discussing African-American culture which includes the fact that African-Americans were initially brought to this country as slaves (many of whom were free people in their own country) which affected their treatment then and continues to affect it now.
 2. Institutional racism involves the systematic (conscious and unconscious) exclusion of many African-Americans from the mainstream because of inaccurate stereotypes that have persisted since

the 1700's.

3. Because of the "American Black experience," the "African-American culture" is somewhat different than traditional "African culture."

4. The heterogeneous nature of the culture has had little substantive research.

a. Africans sailed with Christopher Columbus even on his first voyage in 1492 and had accompanied several of the early New World explorations.

In the following four (4) centuries, millions of immigrants were brought to the Americas as enslaved people.

Today their descendants comprise a significant ethnic group in the United States, South and Central Americas and the Caribbean.

b. A strong, African influence pervades music, arts, dance, literature, speech forms and religious practices in Latin America and the Caribbean.

Africans, whether free or enslaved, brought a variety of African influences to the New World.

They came from too many places and were too scattered to re-establish all of the conditions of their homelands, but attempted to reconcile reality with beliefs.

c. The African-American population is almost all descendants of the slave trade to the Americas from 1501 when the Spanish first permitted slavery in its colonies and 1808 when the United States banned the importation of new slaves.

In Mexico, the slaves intermingled with the other races; however, in the United States and Canada remained socially and culturally distinct.

- d. Although African customs and practices were suppressed in North America, many African practices and customs were combined with European cultural elements to create a diversified and tenacious African American culture that has had a significant impact on North American society.
- e. African-Americans have absorbed the language and social skills needed to survive while maintaining a distinct cultural identity.

African-Americans have been characterized by intense struggles for civil rights, economic equity and political self-determination in modern United States' history.
- f. Urban migration of African-Americans after reconstruction resulted because of poor economic conditions in the south.

The migration was to the north and the west. The economic competition for jobs in those areas has been a source of friction for many generations.
- g. Migration from the south to the north, also at the beginning of WWI, had thousands of African-Americans moving to the northern cities for better economic, social and educational opportunities.
- h. From 1948 to 1961, the proportion of Blacks earning over \$3,000 declined from 78% to 47% and the percentage of Blacks earning over \$10,000 increased from one percent (1%) to 17%.
- i. The 1954 Brown Decision allowing the desegregation of schools in the United States, which reversed the Plessey vs. Ferguson decision, which established "separate but equal" facilities, was the first sign of federal intervention to establish racial equality.

However, 10 years after the decision, only two percent (2%) of the schools in the south were integrated.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 42 of 50**

The Brown Decision served as a catalyst for the Civil Rights Movement of the late 1950's and 1960's.

- j. The upsurge of the 1960's significantly affected African-American social and cultural life with a closer identification with the distinctive aspects of African and African-American history.

Cultural dichotomy still remains in our society; cultural values and historical experiences of African-Americans that made racial advancements possible in earlier times will still serve as the basis for the energy needed for further progress.
- k. The link between African-Americans and their families is significant.
- l. Loyalty, trust and kinship are important.
- m. Egalitarian parental responsibilities and role flexibility of the parents.
- n. African-Americans prioritize educational values as a social strength, coupled with family strength and religion.
- o. African-Americans have contributed greatly to society in science, industry and education, sometimes overshadowed by a somewhat negative depiction by the media of a small percentage of people.
- p. Communication style is higher in context and can be very expressive.
- q. The use of the language and communication may involve significant non-verbal behavior (posturing and gesturing) coupled with being more verbal, less direct and use of volume and expressiveness involving the entire process of communication dynamics between the sender and the receiver.
- r. "Black power" is considered by many African-Americans as a positive reinforcement of esteem, pride and accomplishment and the term means different things to different people within the culture.
- s. Some African-American families celebrate Kwanzaa, a celebration of family, unity,

culture, pride and commitment being celebrated by more and more African-Americans every year during the holiday season.

It is an effort to re-establish a stronger cultural identity.

It is often celebrated along with Christmas and Hanukkah.

- C. Euro-American/Anglo/White as the cultural moniker indicates, Euro-American cultures are those that are primarily derived from Europe: Scandinavian, German, English, Irish, Danes, Italian and other northern European ethnic groups.

Seventy percent (70%) of all immigrants through the 1940's were from Europe who brought traditions and customs with them and settled in areas where their cultural identity could be maintained.

1. Individualism and personal achievement is encouraged.
2. Individual competition is a strong value.
3. Conversations are usually direct and to the point and the specific meaning of spoken words carry the majority of the message.
4. Individual opinions are encouraged and valued.
5. The more you personally achieve, the more you learn.
6. Risk taking and individual initiative are encouraged.
7. Personal recognition is important.
8. Emphasis is on facts and being objective.
9. Social relationships are informal.
10. Open expressions of personal confidence are encouraged.
11. Completion is more important than the process of getting there.
12. Nuclear family structure is common (father, mother and 2.1 children).
13. Individualism/privacy/practicality/efficiency.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 44 of 50**

- 14. Time dominates.
- 15. Youth/future orientation.

D. Native Americans. Once the only inhabitants of this nation, Native Americans comprise less than one percent (1%) of the U.S. population (.8%).

In 2000, the total Native American population was approximately 1,800,000.

There are about 500 Indian nations in the U.S., however, according to census data, more than one-half ($\frac{1}{2}$) of the American Indian population are members of 10 nations.

There are approximately 200 languages within the Native American populations.

- 1. Living patterns are strongly influenced by tribal cultures.
- 2. Extended family systems are critical as well as those in the same tribe or clan.
 - a. Family relationships are important.
 - b. In many tribes, aunts and uncles are referred to as "mother and father" or "little mother and little father."
- 3. Indian religion cannot be separated from culture.
 - a. There are many traditions that are an integral part of religion.
 - b. Many American Indians consider religion a very private matter and discussion with non-tribal members or non-Indians is frowned upon.
- 4. Native Americans who have been converted to traditional religion by missionaries may experience a sense of losing their culture due to the integral nature of Indian religion to their culture.
- 5. The concept of time is cyclical and an important part of Indian religious ceremonies.

In many tribal languages, there is no word for being late or on time.
- 6. For many American Indians, health is a state of harmony within one's life whereas disease is

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 45 of 50**

caused by disharmony.

The physical body cannot be separated from the spirit.

7. Many Indians live a dual existence.

One (1) is off the reservation where they can make a living and the other is connected to the reservation where their roots remain.

8. Elders of the communities are highly revered and respected.

9. American Indian culture is considered higher context, where process is as important as content.

- E. Asian again, the term "Asian" reflects those individuals with Asian heritage including: China, Southeast Asia, Japan, Korea, Thailand, the Philippines, the Pacific Islands and some peoples from mainland Asia.

Each culture is different from each other, but again, they may share some of the following common characteristics:

1. Cooperation is important and competition is avoided.
2. Sharing with the group is important.
3. The individual is not important, but just what the individual can contribute to the group.
4. A high value is placed on harmony with others.
5. There is a sense of obligation to the group and organization.
6. Formality is respected in social interactions.
7. Conversation is complex and process is important as well as content.
8. Planning is long term and can involve more than one (1) lifetime.
9. Conversation is usually quiet, formal and extended over long periods of time prior to business or other important subjects being discussed.
10. Interactions are polite and can be tentative with much discussion within the group prior to decisions being made.

LESSON TITLE: CULTURAL AWARENESS

**APRIL 2010
PAGE: 46 of 50**

11. Time is free flowing and less structured.
 - a. Business negotiations with Asians can take a long time as the process is as important as the content.
 - b. Asians usually place a high value on patience and indirectness.
12. Asians may tend to be more spiritual or fatalistic and less materialistic than other cultures.
13. Elders are highly respected within the cultures and maintain the highest status in the family social unit.

XIX. GAY AND LESBIAN ISSUES

Dealing with homophobia.

- A. Homophobia is defined as a fear, dislike or hatred of lesbians or gays, often resulting in acts of prejudice or discrimination.

Homophobia does not exist in isolation and shares many characteristics with other forms of prejudice such as racism and sexism.
- B. To even raise the issue of homosexuality discussions is sure to elicit strong emotion and even outrage.
 1. Some people feel that any consideration of, or discussions regarding, homosexuality without condemning it outright as being "unnatural," is wrong.
 2. These discussions can, and often do, evoke fear and strong emotion.
 3. However, if we are to deal with discrimination, racism and other "isms," we must consider all of the other issues involving discrimination including discrimination against gays and lesbians.

- C. We do not intend to take a moral position regarding the “rightness” or “wrongness” of any sexual orientation issue.

Nor do we intend to try to justify the legitimate existence and right or any sexual orientation over another, but do wish to discuss some possibilities of mis-information we all have been exposed to throughout our lives in an attempt to understand some of the issues.

1. We must be wary of justifying oppression or discrimination of any group in any way through the use of religion.
 - a. Similar arguments have been used by various religious groups to try to justify or legitimize slavery, racial segregation, anti-Semitism and male domination.
 - b. It is also important to note that many religious groups strongly advocate the civil rights of gays and lesbians and various caucuses of differing faiths and are working towards increasing rights for gays and lesbians within religious communities.
2. We all have personal opinions and deeply held beliefs.
 - a. Our perception of what is “natural,” however, is often the product of socialization.
 - b. What has long been proscribed, legislated and condemned can come to be seen as “unnatural.”
 - c. It may be instructive to note, for example, that homosexuality was considered “natural” for a certain percentage of people in most European societies until the 13th century when religious groups, who controlled governments, began an attempt to declare it “unnatural” on religious grounds.
3. We also need to discuss the question of “proselytizing,” since this is usually raised when efforts are made to discuss homosexuality in an open forum.
 - a. Many people feel that such discussions will somehow “lure” youngsters into

LESSON TITLE: CULTURAL AWARENESS

APRIL 2010
PAGE: 48 of 50

homosexuality from heterosexuality.

- b. People do not want to be accused of influencing people to become gay or advocating for gay and lesbian rights so they avoid discussing the subject altogether.
 - c. They also may be concerned that if they advocate for gay or lesbian rights, they may be accused of being gay or lesbian if they may not be, or if they are and do not wish to risk "coming out," they may still be stigmatized by the majority.
- D. This is assuming of course that being gay or lesbian is a matter of choice.
- People mistakenly assume that through discussion they can guide children to the "right" choice.
- E. Though the direction of one's sexuality may be a matter of choice for a small percentage of adults, the majority of gays and lesbians become aware that they are somehow "different" from the heterosexual norm quite young.
- 1. This awareness occurs in a profoundly anti-gay social setting and in spite of a heterosexual society that continually reinforces the idea of heterosexuality over homosexuality.
 - 2. Given the issue that gays and lesbians succeed in discovering their sexual identity despite the pervasiveness of heterosexual influences provides a strong argument that sexual orientation is not the result of, nor influenced by, talking about it or discussing the issues.
- F. **The critical issue is that gay men and lesbians, as legitimate and productive members of our communities, are entitled to the same rights as other citizens of our communities and that is to be free from harassment and discrimination**

XX. CHANGING COMMUNITY ATTITUDES

- A. There are many ways we can reach out to the community and personally influence the public's views of police. They involve:

P.O. 6.1.4

LESSON TITLE: CULTURAL AWARENESS

APRIL 2010
PAGE: 49 of 50

- | | | |
|-----------|--|--------------------|
| 1. | Through school contacts, by the way of school presentations, contacts with school administrators, attendance at parent/teacher group meetings, etc. | P.O. 6.1.4A |
| 2. | Contacts with the media organizations. Via Internet, Television, Radio and Newspapers. | P.O. 6.1.4B |
| 3. | Contacts with community service organizations or businesses. | P.O. 6.1.4C |
| 4. | Daily contacts with the public, particularly during traffic stops and calls for service. | P.O. 6.1.4D |
| 5. | Citizen police academies. | |
| B. | Remember to always: | |
| 1. | Acknowledge public perception. | |
| 2. | Remember historical perspective. | |
| 3. | Know cultural demographics of your communities. | |
| 4. | Understand the importance of the use of power and discretion. | |
| 5. | Understand communication context. | |
| 6. | We came here to provide some information, perspective and communication tools for you to be more effective law enforcement professionals. | |
| 7. | You have an extremely tough job with immense responsibility and many times with little payback from the community that you serve. | |
| 8. | Your "bottom line" is unlike any other profession. | |
| | a. Your bottom line is not a profit margin or a spreadsheet. | |
| | b. Your bottom line is coming home to friends and family at the end of your shift. | |
| 9. | Take what we have provided as an extra tool to assist you in working more effectively in the community and establishing better communication with the entire community as we move into the next century. | |

XXI. CONCLUSION

LESSON TITLE: CULTURAL AWARENESS

APRIL 2010
PAGE: 50 of 50

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).