

Term

3 Types of Encounters between PO's and Citizens?

Definition

- 1.) Voluntary
- 2.) Temporary Detention
- 3.) Arrest

Term

What kind of actions is a PO allowed during a Voluntary Encounter w/ Citizens?

Definition

- 1.) May approach a citizen to talk at a public location;
- 2.) Ask questions;
- 3.) Ask for Identification;
- 4.) Ask for cooperation;
- 5.) Request for consent to search

Term

What kind of actions is a Citizen allowed during a Voluntary Encounter w/ a PO?

Definition

- 1.) Decline to answer any questions;
- 2.) Walk away; and
- 3.) Ignore the PO

Term

PO cannot do what during a Voluntary Encounter w/ a Citizen?

Definition

- 1.) Do NOT command compliance;
- 2.) Coerce Citizen into cooperation; and
- 3.) Restrain the person

Term

A person is considered \_\_\_\_\_ when police use or demonstrate a level of authority that a "reasonable" person would not feel free to leave.

Definition

SEIZED

Term

A Consensual Encounter escalates and becomes a \_\_\_\_\_ if a PO verbally or non-verbally conveys to the suspect that compliance is required.

Definition

DETENTION

Term

The \_\_\_\_\_ Amendment prohibits **unreasonable** searches and seizures.

Definition

4th

Term

What is a Terry stop?

Definition

a PO can search the individual for weapons where the officer has reason to believe the person is armed **and** dangerous.

Term

A REASONABLE SUSPICION determination is made by...

Definition

the totality of the circumstances of each case to see whether the detaining officer had a particularized & objective basis for suspecting legal wrongdoing.

Term

Which of the following is not a level of Police-Citizen Contact?

- a.) Consensual;
- b.) Probable Cause;
- c.) Detention;
- d.) Arrest

Definition

(b.) Probable Cause

Term

There are four elements that have been used by the courts to determine whether an arrest has occurred. This element is only important when it is conveyed to the person seized. For example, you are under arrest, you are being detained, etc. Which of the following elements is being described?

- a.) Authority;
- b.) Intent;
- c.) Actual Seizure; or
- d.) Understanding of the Individual

Definition

b.) **Intent**

Term

A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime. This is the definition for which of the following?

- a.) Mere suspicion;
- b.) Probable Cause;
- c.) Reasonable Suspicion; or
- d.) Arrest

Definition

b.) **Probable Cause**

Term

The words "confined", "imprisoned", "in custody", "confinement", "imprisonment", refer not only to the actual, corporal and forcible detention, but likewise to any coercive measures by threats, menaces or the fear of injury, whereby one person exercise a control over the person of another, and detains him within certain limits. According to CCP 11.21, this defines which of following?

- a.) Arrest;
- b.) Detention;
- c.) Constructive Custody; or
- d.) Seizure

Definition

(c.) **Constructive Custody**

Term

CCP Art. 11.21. Constructive Custody

Definition

Any coercive measures by threats, menaces or the fear of injury, whereby one person exercises a control over the person of another, and detains him within certain limits.

Term

CCP Art. 11.22. Restraint

Definition

The kind of control which one person exercises over another, not to confine him within certain limits, but to subject him to the general authority and power of the person claiming such right.

Term

There are 4 elements that have been used by the courts to determine whether an arrest has occurred. Which of the following is NOT one of those elements?

- a.) Intent;
- b.) Actual Seizure;
- c.) Understanding of the individual being seized;
- d.) Probable Cause; or
- e.) Authority.

Definition

(d.) **Probable Cause**

Term

Should the initial consensual encounter with a person lead to an arrest or seizure of contraband, what must you be able to do to est. the reasonable suspicion and probable cause to support the detention, arrest or search?

- a.) demonstrate the manner in which probable cause was est.;
- b.) document sufficient facts and circumstances in a report;
- c.) explain the facts and circumstances to the court;
- d.) prepare an entry into the Captain's Journal

Definition

(b.) document sufficient facts and circumstances in a report.

Term

Probable Cause may be est. simply by showing that the PO who made the arrest or search subjectively believed he had grounds for his action. This statement is:

- a.) True; or
- b.) False

Definition

FALSE!

Term

What can a PO do with MERE SUSPICION?

- a.) Conduct a computer check of the license plate of a vehicle;
- b.) Conduct an investigation to determine what, if anything is occurring;
- c.) Approach a person and ask questions; or
- d.) All the above

Definition

(d.) All the above

Term

What you see, hear or smell that indicates there may be criminal activity are examples of what?

- a.) Suspicion;
- b.) Seizure;
- c.) Detention; or
- d.) Reasonable Doubt

Definition

- (a.) Suspicion

Term

What Amendment to the U.S. Constitution forms the basis for probable cause?

- a.) 1st;
- b.) 2nd;
- c.) 3rd; or
- d.) 4th

Definition

- (d.) 4th

Term

The police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if based on specific and articulated facts, the PO had reasonable suspicion that criminal activity was afoot. The actions by the PO would occur during what type of interaction between the police and the public?

- a.) Detention;
- b.) Arrest;
- c.) Consensual;
- d.) Seizure

Definition

- (a.) Detention

Term

Chapter 14 of the CCP is about what topic?

Definition

Arrest WITHOUT Warrant

Term

Chapter 15 of the CCP is about what topic?

Definition

Arrest UNDER (or WITH) a Warrant

Term

Which of the following rulings by the TX Court of Criminal Appeals clarified the section of CCP 14.03, "Persons in suspicious places?"

- a.) Terry vs Ohio;
- b.) Dyar vs. State;
- c.) Brown vs. State; or
- d.) Abbott vs. Costello.

Definition

(b.) Dyar vs. State

Term

When a Magistrate observes a felony or breach of the peace occur within his presence or view, what action can he take?

- a.) Issue a public apology;
- b.) Verbally order a peace officer to arrest the offender;
- c.) Establish bond in this case; or
- d.) Conduct an evidentiary hearing.

Definition

(b.) verbally order a PO to arrest the offender.

Term

The act or fact of holding a person in custody, confinement, or compulsory delay defines which of the following?

- a.) Detention;
- b.) Restraint;
- c.) Confinement; or
- d.) Seizure

Definition

(a.) Detention

Term

What is Black's Law Dictionary definition of Probable Cause?

Definition

A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime.

Term

What are other definitions of Probable Cause?

Definition

"The belief of a reasonable and prudent man that a crime has been or is being committed."

"The facts must be such as would warrant a belief by a reasonable and prudent man."

"A reasonable belief that a person has committed a crime."

Term

Probable Cause is necessary to.....

Definition

effect an arrest, conduct a search of a person, place or thing, and to seize contraband and other evidence of a crime.

Term

The court must be convinced that based upon what you saw, heard or smelt was sufficient enough proof that a crime...

Definition

was being committed, was going to be committed, or had been committed.

Term

Police may, without a warrant or probable cause...

Definition

"briefly detain an indiv. for investigatory purposes if, based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity may be afoot."

^^^^^^^^^^^^^^

## Unlocking Habeas

### FOCUS COLUMN

By Amy D. Hogue and Pablo J. Drobny

By reading this article and taking the accompanying self-study test, trial and appellate bench officers as well as attorneys will learn the fundamentals of habeas corpus writs. Readers will gain an introduction regarding who is eligible to file a writ; what must be included in a petition; a court's option of asking for an informal

response; summary denials and procedures following a court's order to show cause.

"The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings." California Constitution article VI Section 10. The writ is also codified in Penal Code Section 1473(a).

The California Supreme Court has held that although courts of appeal have original jurisdiction to issue writs of habeas corpus, they are bound by the procedures in Penal Code Section 1473. *Adoption of Alexander S.*, 44 Cal.3d 857 (1988).

A person is eligible to file a petition for writ of habeas corpus if he or she is unlawfully imprisoned or restrained under any pretense whatever. Penal Code Section 1473(a). A person whose sentence, parole or probation on the state conviction has terminated or expired, however, is not eligible to file a petition and the courts do not have jurisdiction to grant a petition for writ of habeas corpus. *In re Azurin*, 87 Cal.App.4th 20 (2001).

A person may be in constructive custody, which would make him or her eligible to file a petition. Constructive custody occurs if a person's freedom is restrained significantly, such as being released from custody on bail or own recognizance, or being on probation or parole. *In re Catalano*, 29 Cal.3d 1 (1981).

### **The Petition**

A habeas proceeding begins with the filing of a petition for writ of habeas corpus. The petition must allege unlawful restraint, name the person by whom the petitioner is restrained, and specify the facts supporting the claim that the restraint is unlawful. *In re Lawler*, 23 Cal.3d 190 (1979); Penal Code Section 1474. The petition must be verified by the petitioner and signed by the petitioner or someone on his or her behalf; specify where and by whom the petitioner is restrained; state the alleged illegality of the confinement; identify and describe the nature and disposition of all prior petitions arising from the same detention; and be served on the prosecuting agency. Penal Code Sections 1474, 1475. According to the court in *Adoption of Alexander S.*, these requirements are mandatory and are applicable to both trial and appellate courts.

The petition must "state fully and with particularity the facts upon which relief is sought" and include "copies of reasonably available



documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or declarations." *People v. Duvall*, 9 Cal.4th 464 (1995).

A trial court must act on the petition within 60 days of filing by either extending time for a ruling, requesting an informal response, summarily denying relief, or issuing an order to show cause. California Rules of Court, Rule 4.551(a)(3)(A). If the trial court fails to rule within 60 days, the petitioner may file a notice and request for ruling with a declaration stating the date when the petition was filed, the date of the notice and request for ruling, and a statement that the petitioner has received no ruling. Rule 4.551(a)(3)(B)(i). The trial court must rule on the petition within 30 days of receiving a complete notice and request for ruling. Rule 4.551(a)(3)(B)(ii). There are no similar deadlines for an appellate court.

### **Procedural Issues**

Upon the filing of a petition for a writ of habeas corpus, the trial or appellate court must first determine whether the petition states a prima facie case for relief, that is, whether it states facts that, if true, entitle the petitioner to relief and also whether the stated claims are for any reason procedurally barred. *In re Clark*, 5 Cal.4th 750 (1993).

To assist the court in determining the sufficiency of the petition, the court may request an informal response from the respondent. See Rules 4.551(b), 8.380(c). The court must serve a copy of the request for an informal response on the petitioner and the informal response, if any, and provide petitioner with 15 days to file a reply. Rules 4.551(b), 8.380(c)(1), (2). The court may not deny the petition until it has either received the petitioner's reply or allowed the 15-day period to lapse. Rules 4.551(b), 8.380(c)(3). A trial court must rule on the petition by denying it or issuing an order to show cause within 45 days after the receipt of the informal response. Rule 4.551(a)(5). There is no similar time limit for an appellate court.

According to *Clark*, if the court determines the petition on its face fails to state a prima facie case for relief or that the petitioner's claims are procedurally barred, it may summarily deny the petition. A trial court must specify the reasons for its denial. Rule 4.551(g) ("An order only declaring the petition to be 'denied' is insufficient.") No similar requirement compels a court of appeal to state its reasons for the denial, except that a statement of reasons must be given when the

denial is because the petition was filed in the wrong appellate district. Rule 8.380(d)(3).

If the court determines the petition is sufficient on its face because it states a prima facie case on a claim that is not procedurally barred, the court is required to issue a writ of habeas corpus. Penal Code Section 1476. The writ of habeas corpus does not grant affirmative relief but serves merely a procedural role: It represents a preliminary determination that the petitioner has made a prima facie statement of specific facts which, if established, entitles him to habeas corpus relief under the law. *In re Serrano*, 10 Cal.4th 447 (1995).

The writ commands the person having custody of the petitioner to bring him before the court before which the writ is returnable (Penal Code Section 1477) and justify the petitioner's imprisonment or other restraint (Penal Code Section 1480). Because appellate courts are not equipped to have prisoners brought before them, and because many issues cognizable on habeas corpus can be resolved on the basis of documentary evidence or stipulated facts without bringing the petitioner before the court for a testimonial hearing, the Supreme Court has authorized the issuance of an order to show cause as a substitute for the writ of habeas corpus. *In re Hochberg*, 2 Cal.3d 870 (1970). Most trial courts have also adopted the practice of issuing an order to show cause in place of the writ of habeas corpus. See Rule 8.551(c).

### **Return and Traverse**

The petition for writ of habeas corpus serves to launch the judicial inquiry into the legality of the restraint on the petitioner's liberty. *People v. Romero*, 8 Cal.4th 728 (1994). If the court determines that the petition states a prima facie case and issues the order to show cause, the respondent custodian is required to serve and file a verified "return" that must allege facts establishing the legality of the custody or restraint. The return, according to the *Lawler* court, "becomes the principal pleading, analogous to a complaint in a civil proceeding."

The return must do more than simply allege the existence of a conviction and sentence. It must either allege facts controverting the allegations in the petition or present additional facts that contradict the petitioner's allegations. Penal Code Section 1480; Rule 4.551(d). According to the court in *Duvall*, "The factual allegations of a return must also respond to the allegations of the petition that form the basis

for the petitioner's claim." Moreover, "Any material allegation of the petition not controverted by the return is deemed admitted for the purposes of the proceeding." Rule 4.551(d). In a trial court, the return is due 30 days after service of the order to show cause. Rule 4.551(d).

Next, the petitioner may file a response to the custodian's return. In this response, called a "traverse," the petitioner "may deny or controvert any of the material facts set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to discharge." Penal Code Section 1484. The traverse may incorporate the allegations made in the petition. *In re Lewallen*, 23 Cal.3d 274 (1979). The factual allegations in the return are deemed true unless the traverse specifically denies them. In a trial court, the traverse is due 30 days after the filing of the return. Rule 4.551(e). The due dates for filing the return and the traverse in appellate courts are set by the court in the order to show cause.

### **Evidentiary Hearing**

Once the return and the traverse have been filed, the issues are joined for review. If there are no disputed material facts, the court may resolve the legal issues and decide whether relief should be granted to the petitioner or whether the petition should be denied. *In re Sixto*, 48 Cal.3d 1247 (1989). If material factual issues are in dispute, however, the petitioner's entitlement to relief will hinge on the resolution of those disputed factual issues and an evidentiary hearing will be required. At the evidentiary hearing the court may hear evidence from both sides, and has full power and authority to enforce subpoenas and "to do and perform all other acts and things necessary to a full and fair hearing and determination of the case." Penal Code Section 1484.

In a trial court, within 30 days after receipt of the traverse (or expiration of the time to file the traverse) the court must act either by granting or denying the relief sought in the petition or by setting an evidentiary hearing. Rule 4.551(f). A trial court is required to conduct a hearing if "the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner's entitlement to relief depends on the resolution of an issue of fact." Rule 4.551(f).

Because appellate courts normally function as reviewing courts, they are not designed to conduct evidentiary hearings. For this reason,

when an evidentiary hearing is required in a habeas corpus proceeding in an appellate court, the court has two options.

First, it may appoint a referee to take evidence and make recommendations as to the resolution of disputed factual issues. See *In re Fields*, 51 Cal.3d 1063 (1990). The referee's factual findings are upheld if they are supported by substantial evidence. *In re Johnson*, 18 Cal.4th 447 (1998). The referee's resolution of mixed questions of law and fact and the conclusions of law are subject to independent review by the court. *In re Williams*, 7 Cal.4th 572 (1994).

The court's second option when an evidentiary hearing is required is to make the order to show cause returnable before the trial court. Penal Code Section 1508(a), (b). This procedure in effect transfers the entire habeas corpus proceeding to the trial court, which will conduct the evidentiary hearing and thereafter grant or deny relief based on the law and its determination of the facts.

## **Relief**

The form of relief traditionally granted in a habeas proceeding is release from custody. Penal Code Section 1485. Over time however, the functions of habeas corpus have been greatly expanded by judicial decisions. Today, a petitioner may also secure relief from illegal conditions of confinement or obtain a declaration of rights. The courts also have broad discretion to fashion an appropriate remedy to enforce the petitioner's rights. According to Penal Code Section 1484, "the court ... must ... dispose of [the] party as the justice of the case may require."

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