

**FISH AND WILDLIFE SERVICE  
LAW ENFORCEMENT**

**Law Enforcement**

**Part 445 Searches, Seizures, Detention, Arrests, and Evidence**

**Chapter 2 Detention and Arrest**

**445 FW 2**

**2.1 What is the purpose of this chapter?** This chapter provides guidance to Service law enforcement officers on detentions and arrests.

**2.2 What are the authorities for this chapter?**

- A. The Fourth Amendment of the Constitution.
- B. 16 U.S.C.
- C. 446 DM, Law Enforcement.
- D. See section 2.6 for information on specific, Service-enforced statutory authorities for arrests.

**2.3 What terms do you need to know to understand this chapter?**

**A. Service Officer.** Unless stated otherwise, this chapter applies only to commissioned Service officers.

**B. Mere Suspicion.** Mere suspicion is often nothing more than a “gut” feeling that an officer cannot explain, nor can he/she articulate specific facts prompting the suspicion. A Service officer may not take any forcible action against a person or stop or detain a person on the basis of mere suspicion.

**C. Reasonable Suspicion.** Reasonable suspicion is information that raises an officer’s level of suspicion above mere suspicion, but not as high as probable cause. The Service officer can articulate specific facts that prompted his/her suspicion. The facts must support a reasonable and rational inference that a person has committed, is committing, or is about to commit a crime. A Service officer may temporarily stop and detain a person for questioning based on reasonable suspicion.

**D. Probable Cause.** An officer has probable cause when he/she can objectively deduce from a set of facts that a person has committed, is committing, or is about to commit a crime.

**E. Seizure (of a person).** A Service officer seizes a person by using physical force (no matter how slight) or through a “show of authority,” to take possession of the person or meaningfully restrict the movement of the person. The seizure can be a result of either a detention or arrest, but no seizure has occurred if a person reasonably believes he or she is free to leave.

**F. Detention (or investigative stop).** A detention is a brief stop of a person as part of an investigation for the purpose of making a limited inquiry into possible criminal activity. Such stops require reasonable suspicion. Service officers must use the reasonable degree of force that is necessary to complete the stop. The length of the detention must be reasonable and as brief as possible.

**G. Arrest.** An arrest occurs when a Service officer takes a person into custody to have him/her answer to a criminal charge. To make a lawful arrest, the officer or someone else in authority must establish probable cause that the person has committed or is committing a crime. The arresting officer must be acting under statutory authority in his/her jurisdiction.

**2.4 When is a seizure (of a person) a stop or an arrest?**

A. Whether a seizure of a person is a stop or an arrest depends on many factors, including:

- (1) Duration of seizure,
- (2) Use of force during seizure,

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(3) Location of seizure, and

(4) Removal of a person seized from the area where the seizure first occurred (*Florida v. Royer*, 460 U.S. 491 (1983)).

**B.** Although there is no test to determine when a detention evolves into an arrest, removing a person a significant distance from the place of the original stop or seizure, or detaining a person longer than necessary to investigate the officer's suspicions, may turn an investigative detention into an arrest.

**2.5 What general information do Service officers need to know about detentions and arrests?**

**A. General Rules.**

(1) A Service officer may detain an individual based on reasonable suspicion.

(2) If the officer establishes probable cause that a suspect has committed a misdemeanor crime and the crime occurred in the officer's presence or view, the officer may arrest the detained individual.

(3) If the officer establishes probable cause that a suspect has committed a felony crime, the officer may arrest the detained individual even if the crime did not occur in his/her presence or view.

(4) If the officer cannot establish probable cause of a crime, he/she must release the detained individual.

**B. Use of Force During Detentions and Arrests.**

(1) Service officers may physically restrain a person during a detention only if they have reason to believe that such restraint is necessary to:

(a) Protect themselves or others,

(b) Prevent the destruction of evidence, or

(c) Prevent the person from fleeing.

(2) Although only armed Service officers may physically restrain a person during an arrest, all Service officers (including wildlife inspectors) may use the appropriate level of force necessary to protect themselves or others from an assault.

**C. Grand Jury Appearances.** A subpoena that requires a person to appear before the grand jury does not authorize a Service officer to seize the person. However, if a person fails to appear before the grand jury in accordance with a subpoena, the court can issue an arrest warrant or summons for that person. A Service officer may arrest a person if the court issues an arrest warrant.

**D. Summons.** A summons is a mandate that requires the appearance of a defendant in Federal court. Prosecutors must establish probable cause to secure a summons. Rules 4 and 9 of the Federal Rules of Criminal Procedure (F.R.Cr.P.) permit the use of a summons in place of an arrest warrant. Depending on the circumstances, the U.S. Attorney's office may determine that requesting a summons from the court is more appropriate than requesting an arrest warrant.

**E. Detention at the U.S. Border.** U.S. courts have long recognized border searches and seizures (of people and their belongings) as exceptions to the probable cause and warrant requirements of the Fourth Amendment. Although there is a reduced expectation of privacy at the border, Service officers must

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establish reasonable suspicion if they intend to detain an individual beyond a length of time required for a routine inspection. Routine inspections do not require any particular level of suspicion.

**2.6 Under what authority can Service officers make arrests?** Service officers may serve arrest warrants and make arrests without warrants based on the specific authority in most Service-enforced statutes. Service officers must follow the specific statutory authority or a court may determine an arrest is invalid, potentially exposing the Service and the officer to litigation. Following are the specific Service-enforced authorities for arrest:

**A. African Elephant Conservation Act.** Service officers are authorized to enforce the Act in the same manner as carrying out enforcement activities under the Endangered Species Act (16 U.S.C. 4224). Service officers are authorized to execute arrest warrants and arrest without a warrant any person violating this Act in their presence or view (16 U.S.C. 1540(e)(3), amended 90 Stat. 911 (1976)).

**B. Airborne Hunting Act.** Service officers are authorized to execute arrest warrants and arrest without a warrant any person violating the Act in their presence or view (16 U.S.C. 742j1(d)).

**C. Bald and Golden Eagle Protection Act.** Service officers are authorized to execute arrest warrants and arrest without a warrant any person violating the Act in their presence or view (16 U.S.C. 668b(a)).

**D. Bear River Migratory Bird Refuge Act.** Service officers are authorized to execute arrest warrants and arrest without a warrant any person violating the Act in their presence (16 U.S.C. 690e(a)).

**E. Endangered Species Act of 1973, as amended.** Service officers are authorized to execute arrest warrants and arrest without a warrant any person violating the Act in their presence or view (16 U.S.C. 1540(e)(3), amended 90 Stat. 911 (1976)).

**F. Lacey Act.** When enforcing this Act, Service officers:

(1) May execute arrest warrants and arrest individuals without warrants for any offense of laws of the United States committed in their presence or view.

(2) May arrest a person without a warrant for felony violations not committed in their presence or view *except* for those violations involving the transportation, acquisition, receipt, purchase, or sale of fish, wildlife, or plants taken or possessed in violation of any law or regulation of any State (16 U.S.C. 3375(b)).

**G. Marine Mammal Protection Act of 1972.**

(1) Service officers are authorized to execute arrest warrants and arrest without a warrant any person violating the Act in their presence or view (16 U.S.C. 1377(d)(1)).

(2) Service officers are authorized to arrest without a warrant if they have reasonable cause to believe that a vessel or other conveyance subject to the jurisdiction of the United States or any person onboard is in violation of any provision of this law (16 U.S.C. 1377(d)(2)).

**H. Migratory Bird Hunting Stamp Act.** Service officers are authorized to enforce the Act in the same manner as the Migratory Bird Treaty Act. Service officers are authorized to execute arrest warrants and arrest without a warrant any person violating the Act in their presence or view (16 U.S.C. 718f).

**I. Migratory Bird Treaty Act.** Service officers are authorized to execute arrest warrants and arrest without a warrant any person violating the Act in their presence or view (16 U.S.C. 706).

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**J. National Wildlife Refuge System Improvement Act of 1997, as amended.** Service officers are authorized to execute arrest warrants and arrest without a warrant any person violating the Act in their presence or view (16 U.S.C. 668dd(f)).

**K. Upper Mississippi River Wildlife and Fish Refuge Act.** Service officers are authorized to execute arrest warrants and arrest without a warrant any person violating the Act in their presence (16 U.S.C. 727(a)).

**L. Rhinoceros and Tiger Conservation Act of 1998.** Service officers are authorized to enforce the Act in the same manner as the Endangered Species Act (16 U.S.C. 5305a(e)).

**2.7 What do Service officers need to know about arrest warrants?**

**A. Obtaining Arrest Warrants from Federal Courts.** There are four basic processes by which we obtain arrest warrants from Federal Courts. The courts use the following legal instruments to document probable cause that a person has committed an offense:

**(1) Criminal Complaint.** A Federal judge can issue an arrest warrant based on a legal document called a criminal complaint. Ordinarily, the complaint is supported by an affidavit. An affidavit is a sworn written statement made before a Federal judge or other person empowered to commit people charged with offenses against the United States [Rule 4, F.R.Cr.P.].

**(a)** Service officers must obtain approval from the U.S. Attorney's office, or other appropriate office of the Department of Justice, before filing a criminal complaint.

**(b)** Service officers should consult with their immediate supervisor before filing a criminal complaint.

**(2) Information.** The U.S. Attorney can file a formal charging document known as an information. An information documents the probable cause that is required to request an arrest warrant from the U.S. District Court. If the U.S. Attorney does not request an arrest warrant, then he/she may request the court issue a summons requiring the defendant to appear in court on a specific date and time [Rule 9(a), F.R.Cr.P.].

**(3) Indictment.** A Federal grand jury can return indictments that charge subjects for violating Federal laws. The U.S. District Court must issue an arrest warrant for the defendant named in the indictment unless the Government requests a summons [Rule 9(a), F.R.Cr.P.].

**(4) Court Order or Bench Warrant.** A court order/bench warrant is a seizure order that a Federal court can issue when a defendant is in contempt of court or fails to appear in court. A judge can use the probable cause statement found in a Violation Notice to support a warrant for the arrest of a defendant.

**B. Execution of Warrants.** An arrest warrant is executed when a Service officer arrests the subject identified on the warrant.

**(1)** For felony arrest warrants, Service officers must coordinate fugitive apprehension and reporting efforts with the U.S. Marshals Service.

**(2)** Service officers may execute the arrest warrant at any time or place specified on the warrant. If not specified, Service officers may execute the warrant anywhere within the jurisdiction of the United States and at any time of the day or night.

**(3)** A Federal arrest warrant is valid until executed or cancelled by the issuing authority.

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(4) Under certain circumstances officers may need a search warrant to enter locations to search for the person to be arrested (e.g., when the subject of the warrant is located in the home of another person).

(5) The arresting officer does not need to possess the warrant at the time of the arrest, but must confirm that a valid warrant exists. Upon request, he/she must show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his/her possession at the time of the arrest, he/she must inform the defendant of the offense charged and that a warrant has been issued [Rule 4(c), F.R.Cr.P].

**2.8 Under what circumstances may Service officers make arrests without a warrant?**

**A.** Service officers are authorized to make arrests without warrants for violations of Service-enforced statutes as discussed in section 2.6 of this chapter. For other Federal offenses encountered when performing their duties, Service officers may make arrests in a public place without a warrant if the crime is a misdemeanor and was committed in the presence of the arresting officer, or if the crime is a felony. When possible and feasible, however, the officer should consult with his/her immediate supervisor and seek an arrest warrant through the U.S. Attorney's office, or other appropriate office of the Department of Justice.

**B.** A Service officer may arrest without a warrant when any of these circumstances exist and he/she:

(1) Is unsure of the identity of the violator who committed a misdemeanor in his/her presence or a felony.

(2) Must pursue, capture, and forcibly detain the violator.

(3) Cannot ascertain the residence of the violator with certainty.

(4) Must forcibly detain the violator to prevent destruction of evidence.

(5) Must forcibly detain the violator to prevent injury to officers or others.

(6) Is unsure of whether or not the violator can be located again if released.

**C.** For misdemeanor violations, the officer is not required to witness the entire offense, but must be able to perceive the acts that make up the entire offense. If making such an arrest without a warrant, the officer must make the arrest immediately after he/she witnesses the offense or after fresh pursuit.

**2.9 What are the notification requirements for making arrests?**

**A.** If possible, Service officers must notify their immediate supervisor before making arrests. If there is inadequate time for prior notification, officers must notify their immediate supervisor as soon as possible following the arrest.

**B.** When a Service officer makes an arrest without a warrant, he/she must consult with the U.S. Attorney's office as soon as possible. The arresting officer must also ensure the prisoner's appearance before the nearest available U.S. Magistrate Judge without unnecessary delay (Rule 5(a), F.R.Cr.P.). If a U.S. Magistrate Judge is not available, the officer must bring the prisoner before a State or local judicial official as authorized in Rule 5(c), F.R.Cr.P.

**C.** Service officers must keep their immediate supervisors apprised of all efforts related to making arrests, including obtaining and executing arrest warrants.

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**D.** When a Service officer makes an arrest, their immediate supervisor must convey the information through the appropriate chain of command, including: the Special Agent in Charge, Refuge Zone Officer or Regional Chief, Office of Refuge Law Enforcement.

**2.10 What actions follow an arrest?**

**A. Search Incident to Arrest.** As part of a valid arrest, Service officers may conduct a warrantless search of the arrested person and the area within the immediate reach of the arrested person at the time and place of the arrest. Officers may seize any evidence or weapons found during this search and should make a complete itemized list of all items seized during the search (also see 445 FW 3, Evidence).

**B. Miranda Warnings.** Service officers must read the Miranda warning to an arrested person or a person that may believe he/she is in custody of law enforcement before asking that person any investigative questions. *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966). Following is the Miranda warning:

*You have the right to remain silent. Anything you say can be used against you in court. You have the right to consult with an attorney and have them present during questioning. If you cannot afford an attorney, one will be appointed to represent you prior to any questioning. Do you understand your rights? Are you willing to waive these rights and talk to me?*

**C. Transfer of Property and Evidence.**

**(1)** Service officers should retain custody of all seized weapons or evidence. (Also see 445 FW 3, Evidence.)

**(2)** If possible, Service officers should transfer all other property they remove from the physical possession of the arrested individual to the receiving facility. The facility will return the property to the arrested individual upon release.

**(3)** Service officers should get an itemized receipt of all transferred property from the facility. The receipt should state the name of the receiving officer and include his/her signature and title.

**D. Housing Prisoners.** Service officers must house people they arrest in secured jail facilities. Not every jail facility is federally approved for housing Federal prisoners. To minimize administrative problems, Service officers should house prisoners in federally approved facilities. The U.S. Marshals Service is not responsible for a person arrested by a Service officer until that person has made an initial appearance before a judicial officer authorized under 18 U.S.C. 3041.

**E. Initial Appearance.**

**(1)** The arresting officer must take the defendant without unnecessary delay for initial appearance in Federal court, usually before a Magistrate Judge (Rule 5(a), F.R.Cr.P.).

**(a)** If the officer arrested the defendant in the district where he/she allegedly committed the offense, the initial appearance must be in that district.

**(b)** If arrested in another district, the initial appearance must be in either the district where the officer arrested the defendant or in an adjacent district. The appearance can only occur in an adjacent district if it will occur more promptly there, or it will occur on the same day as the arrest (Rule 5(c), F.R.Cr.P.).

**(2)** The judge tells the defendant what charges he/she faces and the maximum penalties. The District Court makes an initial determination whether it will detain the defendant or release him/her on certain

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conditions (Rule 5(d), F.R.Cr.P. and 18 U.S.C. 3142). The court may hold a subsequent detention hearing to determine whether it will confine or release a defendant pending trial (18 U.S.C. 3142(f)).

**2.11 What does a Service officer need to know about releasing an arrested person?**

**A.** In some circumstances, an officer may release an arrested person before the initial appearance. For example, an officer may learn that:

(1) The U.S Attorney has declined to prosecute,

(2) The warrant has been withdrawn, or

(3) Additional facts are discovered. The facts lead the officer to determine that there is no longer probable cause for the arrest. In this situation, the Department of Justice recommends releasing the person.

**B.** Service officers should make every attempt to discuss the procedures for the release of an arrested person with their U.S. Attorney because Districts vary on their policy.

**C.** Officers should develop detailed documentation of the circumstances leading to the arrest, as well as those necessitating the release of the subject.

**2.12 What special circumstances should an officer be familiar with related to detention and arrest?**

**A. Juveniles.** If a Service officer arrests a juvenile, he/she must:

(1) Contact the U.S. Attorney immediately for appropriate instructions.

(2) Immediately advise the juvenile of his/her legal rights in language he/she can understand.

(3) Immediately notify the juvenile's parents, guardian, or custodian of the arrest, the juvenile's rights, and the nature of the alleged offense.

(4) Take the juvenile before a magistrate.

(5) Not detain a juvenile in a jail or similar place of detention unless, in the opinion of the arresting officer, such action is necessary to secure the juvenile's custody or ensure his/her safety or that of others. In this case, the officer must contact the nearest U.S. Marshals office for instructions for transportation and lodging.

**B. Foreign Nationals.**

(1) Service officers who arrest foreign nationals must inform the U.S. Attorney's office of arrests and of the subjects' wishes for notifying their consul. Service officers should inform an arrested foreign national that the U.S. Attorney's office will advise his/her consul of the arrest, unless the person objects. In such cases, Service officers should attempt to get the refusal of consul notification in writing from the subject.

(2) If a treaty exists between the United States and the foreign national's country that requires consul notification, the arresting officer should inform the subject that the U.S. Attorney's office will notify the consul.

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**C. Diplomatic Immunity.**

(1) The Vienna Convention on Diplomatic Relations and the Diplomatic Relations Act (22 U.S.C. 254) establish the privileges, rights, and immunities for diplomatic and consular personnel. The Office of the Chief of Protocol, U.S. Department of State, is responsible for overseeing diplomatic families and diplomatic personnel traveling throughout the United States.

(2) When dealing with an individual with diplomatic immunity, officers must:

(a) Determine the identity and diplomatic category of the foreign person and his/her level of immunity, if any. This information may appear on the U.S. State Department identification card carried by diplomats and other foreign people. If officers have questions about a person's diplomatic status, they must contact the State Department for verification. Bilateral agreements between the United States and certain countries designate all members of their foreign staff as entitled to full criminal immunity. In general, other than diplomatic agents, members of a mission who permanently reside in the United States enjoy no privileges or immunities.

(b) Notify their appropriate SAC or Regional Chief whenever they detain a foreign diplomat.

**D. Prisoner Transport Aboard Commercial Aircraft.** Service officers must follow the guidance below when escorting a prisoner aboard commercial aircraft. Officers who escort prisoners aboard commercial aircraft also must be familiar with the transportation regulations found in 49 CFR 1544.221.

(1) Two Service officers, or a Service officer and another law enforcement officer, must escort no more than one prisoner at a time and are solely responsible for the security of the prisoner. The officers must maintain direct control of the prisoner at all times.

(2) If possible, Service officers should notify the airline within 24 hours that they will be escorting a prisoner and ask if there are any special restrictions or situations that they should discuss prior to travel.

(3) Air carriers establish corporate policy on the level of restraint required/allowed. Service officers should ensure that the airline policy is adequate for the situation.

(4) Neither the prisoner nor the escorting officers may consume any alcoholic beverages during the prisoner transport.

(5) Service officers must notify the flight attendant if he/she should not serve the prisoner a meal.

(6) Upon arrival at the destination, the Service officers and prisoner must remain seated until all other deplaning passengers have left the aircraft.

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