



CIVIL LIABILITIES

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148 arrests are always a problem

The language of the statute is cumbersome and the DA doesn't like to file on this type of crime

Juries don't like to convict because you are the victim (BOO HOO)

148 ARRESTS AND WHY EVERYBODY HATES THEM (except plaintiff's civil rights lawyers)

Law Enforcement hates 148 arrests because the DA's Office never files on them. The DA's Office hates them because they can never convict anyone. Juries hate them because they see it as nothing more than a "contempt of cop" arrest. Remember you are the alleged "victim" and juries have a hard time translating that into a conviction. Isn't some delay and some verbal abuse part of your job?

Penal Code Section 148 states in pertinent part:

"148.(a)(1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment."

The problem is nobody can truly interpret what "willfully resists, delays, or obstructs" means. For instance, how many times have you had people tell you to "get the hell off my property" or "screw you" when you get to a location that you have been dispatched to for a "loud music" call. I guess you can say that this person is willfully resisting you, as evidenced by the use of the words "hell" and "screw", as opposed to "you are absolutely right officer, I am turning my music down immediately". One can also argue that this person is also delaying you in the performance of your duties because you probably have ten other calls hanging or some reports you have to catch up with from five days ago. Of course, this same person is probably talking to you through a closed screen door, so he is obstructing you as well. Anyone making an arrest under these facts will end up on the wrong side of a federal civil rights lawsuit.

Now let's say that this same person keeps yapping at you for about fifteen minutes reminding you how he pays taxes and your salary. He then makes the mistake of opening the screen door and getting right in your face. By now you obviously had it with this idiot so you grab him, you cuff him, then

Oftentimes the 148 arrest is at a home and there are other issues pertaining to entry

Even a conviction for a 148 doesn't prevent the suspect from bringing suit against you for excessive force in making the arrest

you seat him on the ground while you write him a ticket for the 148 and eventually you let him go.

A slight variation to this story is that when the idiot gets in your face you OC (pepper spray) him or ASP him (strike him with a baton) a few times or even taser him (Edison Medicine), then you actually book him in jail for the 148. A few weeks later you actually catch up with your paper and you submit your 148 report to the DA's Office expecting an indictment by a unanimous decision of the grand jury.

Unfortunately, your report gets rejected two minutes after it hit the DA's desk. Not only that, the DA himself writes "If I wasn't the DA, I would personally sue you in federal court" on his rejection letter of your report.

Even more unfortunate, this idiot's attorney somehow got a hold of the DA's rejection letter and does sue you in federal court.

But let us be a little more optimistic. Let's assume that in a moment of lucidity or perhaps because of a clerical error the DA's Office does file your 148 case. Let's even assume that the case actually goes to criminal trial and the idiot gets convicted!

You would think that such a conviction would take care of your problems in the civil lawsuit the idiot filed against you in federal court claiming that you weren't as gentle as you should have been in making this arrest. After all, if the idiot was convicted this would necessarily imply that your actions were lawful. Otherwise, how can this idiot be convicted of willfully resisting, delaying or obstructing you while you were engaged in the performance of your **unlawful** duties?

Well, the 9th Circuit Court of Appeals addressed this very issue. Unfortunately, they ruled against you. The 9th Circuit said idiot can still sue you for excessive force. In the case of **Smith v. Hemet**, filed January 10, 2005, the 9th Circuit held that claims of excessive force are not barred even if the suspect pleads guilty(or is convicted) of a violation of Penal Code Section 148(a)(1).

So what is the moral of this story? Stay away from 148 arrests if that is the only charge you have against somebody. Obviously you weren't creative enough to come up with anything of substance. Is this always the right thing to do? Probably not, some people do need to go to jail or be charged with a 148. The problem is that it needs to be used selectively. Do you really have a 148 or are you just having a bad day? Keep in mind that the jury doesn't necessarily like a criminal case where you come in as the "victim". People don't believe that you are a victim. You are paid to take verbal abuse just as a citizen has the right to speak out and protest. Oftentimes the federal lawsuit has a claim of retaliation meaning that you arrested them for exercising their first amendment right to protest. We are just telling you what you probably already know. "Everybody hates 148 arrests".

REMINDERS:

Oftentimes the PC 148 arrest occurs at a home. Remember some of the guidelines if you intend to make an arrest and hopefully have something other than just a bare 148.

The Fourth Amendment's prohibition on warrantless entry into an individual's home does not apply to arrests made at the doorway, because the doorway is considered a public place. United States v. Santana, 427 U.S. 38 (1976). Indeed, the Court has recognized only a few such emergency conditions or what is called exigent circumstances. Santana, (hot pursuit of a fleeing felon); Schmerber v. California, 384 U.S. 757, 770 (1966) (destruction of evidence); Michigan v. Tyler, 436 U.S. 499, 509 (1978) (ongoing fire). The "hot pursuit" doctrine only applies to arrests made in the home, and isn't applicable to misdemeanors. See: Welch v. Wisconsin, 466 U.S. 740 (1984), entry into home to make a drunk driving arrest violates the 4th amendment.

The police bear a heavy burden when attempting to demonstrate an urgent need to justify warrantless searches or arrests and that police can meet that burden only by demonstrating specific and articulable facts to justify the finding of exigent circumstances. This burden is not satisfied by having a court speculate about what may or might have been the circumstances. United States v. Driver, 776 F.2d 807 (9th Cir. 1989).

In LaLonde v. County of Riverside, 204 F.3d 947 (9th Cir. 2000) just about everything that could go wrong at the doorway did. Deputies responded to an apartment house in the early morning hours and met with the complaining witness about a disturbance. There had been prior calls, which were not substantiated, and the complaining party indicated that LaLonde had a rifle and didn't like law enforcement.

Deputies go to speak with LaLonde. The roommate opens the door and the deputy asked for LaLonde who was in his underwear and a T-shirt, holding a sandwich in his hand. He was inside the apartment and the deputy was outside the residence, about two to three feet from the door. The deputy asked him to step outside and he refused.

The deputy explained the situation and LaLonde indicated it was "bullshit". The deputy tried to reach in and grab him because LaLonde turned and headed toward the interior of his apartment. LaLonde denied that occurred but had his shirt ripped in the process. The deputy then entered and made the arrest. No attempt to arrest was made at the doorway, so no threshold defense. No exigent circumstances existed to enter and the court found that the case should proceed to trial.

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Remember home entries require a warrant or a valid exception

Exigent circumstances are limited

Is it really an emergency

Is it a felony or a misdemeanor