

## **YOUR RIGHTS IF QUESTIONED, STOPPED OR ARRESTED BY THE POLICE**

### **Your rights and responsibilities if . . .**

- **...the police approach and ask questions.**

The law allows the police to approach people and ask questions so they can help protect the community's citizens and their property, and you are encouraged to cooperate with the police. If you lie to an officer, you can get into trouble for obstructing official business, but you may refuse to answer any question if the answer would tend to incriminate you.

- **...the police "stop" you and ask questions.**

You are "stopped," or "detained," when an officer uses enough force, or a show of authority, to make you feel you are not free to leave. Before stopping you, the officer should first have a reasonable suspicion that you have been involved in a crime. If the matter should wind up in a court, the officer's suspicion would have to be supported by specific facts.

The police do not have to tell you that you are a suspect or that they intend to arrest you, but if they use force or a show of authority to keep you from leaving, you are probably considered a suspect, even if you were the person who called the police. If they read or tell you your Miranda rights, they suspect you have committed a crime.

You have the right to refuse to answer any questions if the answer would tend to incriminate you. Also, if you are only being stopped, you can refuse to let an officer to search you.

Anything you say can be used as evidence against you; what people say often provides a link in a chain of information that could incriminate them.

Even if you believe the officer has no grounds to stop and question you, do not argue with or resist the police. Arguing or resisting may increase your chances of being arrested you and having criminal charges brought against you. Once officers no longer have a

good reason to detain you, they should tell you that you are free to go before asking if they can search you or your car.

- **...you are arrested.**

A stop involves brief questioning in the place where you were detained. In an arrest, your freedom of movement is restricted for a longer period of time. The officer may even take you somewhere else, such as to the police station. Because an arrest restricts your freedom, the law limits the instances when arrests can be made.

**You can be arrested if...**

- ...A police officer personally saw you violate any state statute, city ordinance or federal law - either a serious crime (a *felony*) or a lesser offense (a *misdemeanor*), but if the charge is a minor misdemeanor (involving only a fine), the officer *may not* arrest you *unless* you fail to give your name, refuse to sign the citation, or have failed to appear in court or pay a fine on a similar offense before.
- ...You are suspected of having committed a felony, even if the police officer did not personally see you commit it, so long as the officer had *probable cause* to believe you committed the crime. (The court system will later determine if the officer's belief was reasonable and if you are guilty or innocent.)
- ...There is a warrant (legal document issued by the court) for your arrest, whether or not you are aware of the warrant.

**If you are arrested, the officer must:**

- ...advise you that you have a right not to answer the questions.
- ...tell you why you are being arrested and the nature of the charges against you (the crime for which you are being arrested) or, if you are arrested on a warrant, see and read the warrant within a reasonable time after your arrest, to make certain your name appears on it, and to see the charge against you.
- ...tell you your constitutional rights ("*Miranda rights*") before you are questioned following your arrest.

***Miranda rights include the right to:***

- remain silent and not answer any questions at all;
- know that if you give up your right to remain silent and *do* answer questions, the police can use your answers against you in a court to get you convicted;
- stop answering questions at any time and to speak with an attorney, even if you have begun to answer questions;
- speak privately with an attorney before you answer any questions or sign anything; and
- have an attorney appointed to represent you at no cost (if you cannot afford an attorney and jail is a possible penalty) before you are questioned, and to have that which you may later agree to submit.

Remember, you cannot be penalized for refusing to answer an officer's questions. If you try to cooperate by answering questions while you are being held in police custody, you may create difficulties for your lawyer in defending you later on. ALWAYS ASK TO SPEAK TO A LAWYER.

**You also have the following rights:**

- The right to contact, by telephone or otherwise, a responsible person, to tell him or her you have been arrested and what the charges are. You are not limited to one telephone call if more calls are needed to contact someone.
- The right to refuse any physical or chemical test (such as a polygraph "lie detector," breathalyzer, intoxilizer, field sobriety tests or physical performance tests such as walking a straight line or making other movements, the look-at-the-pen test, or mental ability tests like reciting the alphabet or doing math), until you can talk to your lawyer.
- The right to have your attorney present at any line-up or other identification procedure in which you are viewed by possible eyewitnesses to a crime.
- The right to reasonable bail or bond to secure your release from jail unless you are charged with a capital crime. Usually a judge sets the bail or conditions of your release. If you are charged with a misdemeanor, and if no judge is available, the police may, at police headquarters, accept bail in accordance with rules established by the judge.

- The right to be brought before a court as soon as is reasonably practicable after your arrest, so that you can request a preliminary hearing to test the basis of your arrest and/or trial to determine your guilt or innocence.

### **If I am arrested, what will the police do?**

- If you are arrested, the police will search you for weapons, handcuff you, transport you to jail, and photograph and fingerprint you for identification.
- If you are not under arrest or if police do not have a search warrant (a court order allowing them to search), the police may ask you to allow them to search your car, your home and/or your other possessions. **YOU CAN REFUSE TO CONSENT TO THESE SEARCHES.**
- You have a right to be free from unreasonable searches and seizures; most of the searches for which an officer might ask your consent would require the officer to first obtain a warrant from a judge, *unless you consent and give up this right.*
- Only a judge can decide whether the search is proper before that search is conducted. There is no penalty for exercising your right to have the judge decide whether to allow the search. Your refusal to consent to a search cannot be used against you.
- If you are uncertain about how to respond to any request made by an officer, assert your right to counsel and discuss it with your attorney first before taking further action on the officer's request.

### **Do's and don'ts during arrests and custody**

- **Do not argue with the police.** You cannot talk your way out of being investigated, arrested or prosecuted. Do not try. Any explanation you give the police may give them more information than they already have, so it's often wise to save your explanation and defenses for court.
- If you have been arrested, the police believe you committed a crime. Their job is to investigate and gather evidence. Telling the police your side without a lawyer present is usually a bad idea, even if you believe you have done nothing wrong. Only your attorney and the judge have the power legally to make things easier/better for you.

- Always pay close attention to what happens when you first encounter the police and afterwards. Try to memorize who was there to see and hear what happened. Sometimes the court needs to look into what happened to you while you were in custody. It will help you if you can later fully inform your counsel about these events, so be observant.
- Do not tell your family and friends all about it or ask non-lawyers for legal advice. It is possible, if not probable, that they may be ordered to appear at trial to repeat what you said.
- Rely on your lawyer to advise and defend you no matter what you did or did not do. Legal ethics rules prohibit your attorney from disclosing without your permission any information you give him or her during the attorney-client relationship. However, your attorney may disclose your intention to commit a crime and the information necessary to prevent the crime. Also, your attorney has an ethical duty to keep you from offering testimony that he or she knows is not true.

### **What are my rights in court?**

Within 72 hours after your arrest, the judge must:

- Tell you the crime of which you are accused and explain it to you if you do not understand it.
- Give you a copy of the written complaint against you if you do not have one already.
- Give you a continuance (more time) to get an attorney, or appoint one for you if there is a possibility you could go to jail if convicted and you can't afford to pay an attorney to help you.
- Tell you the nature and effect of the pleas you may enter and what will happen if you enter them. You may enter a plea of *not guilty*, *no contest* or *guilty*.
  - *Not guilty* means you do not give up any of your rights, including the right to a trial. If you are in doubt, plead not guilty.
  - *No contest* means you admit the facts in the complaint are true, but you deny guilt. The judge may find you guilty or not guilty. (A *no contest* plea cannot later be used against you in a civil lawsuit for money damages. If someone sues you over the incident, he or she will have to prove you were at fault and violated the law.) Most no contest pleas result in a guilty finding unless the arresting officer

has cited you under the wrong statute or ordinance, or if the arresting officer's written statement of facts fails to sufficiently support the charge.

- *Guilty* means you admit the crime(s) of which you are accused and *waive* (give up) your right to a trial at which the prosecution would have to prove you guilty beyond a reasonable doubt. You also give up your right to remain silent. The judge may sentence you immediately or at a later hearing. A guilty plea can later be used to prove you were at fault in a civil lawsuit. A guilty plea to a charge can also lay the basis for a harsher punishment if you are later convicted of another offense.
- You are entitled to have a record made by a court reporter or tape recorder of what has happened in the courtroom. Then, if a question later arises, you have evidence of what happened when you were in court.