

# What You Should Know If You Are Arrested

## **Introduction**

The criminal justice system protects us by arresting and jailing criminals. Yet not everyone who is arrested is the bad guy. Someday, you, a family member, or a close personal friend may be accused of committing a crime and arrested. This pamphlet provides an overview of the rights of those who have been arrested and explains how your lawyer can help protect your rights.

## **Arrest by Law Enforcement Officers**

In an arrest, a law enforcement agent, such as a police officer, a sheriff, or a state trooper constrains your freedom of movement because of your possible involvement in a criminal offense. In some cases, the arresting officer may take you into custody; in others, you may be stopped, verbally or physically, so that you can be questioned about a crime.

An arrest warrant is a written order by a judge directing the police to arrest the person named in the warrant. If a warrant for your arrest has been issued, the police may arrest you in your home or in a public place. At the time of your arrest, the officers making the arrest should tell you that they have a warrant and show it to you.

Without your consent or special circumstances, you cannot be arrested in your home without a warrant. The police can arrest you without a warrant for committing a misdemeanor in their presence. Misdemeanors are ordinarily lesser crimes. Examples include trespassing, disturbing the peace, driving under the influence of alcohol, failing to stop when you are in an accident, driving without a valid driver's license, or causing the police to believe you will disregard a traffic citation.

The police can also arrest you without a warrant if they have reason to believe that you have committed a felony, such as robbery, murder or drug offenses. If you are arrested without a warrant for a felony or a misdemeanor, you are entitled to a prompt hearing to determine whether the officers had the minimum level of evidence required for a legal arrest.

## **Citizen's Arrest**

A citizen, such as a security guard or store owner, may arrest you if you have committed a crime in their presence. They can also arrest you if they have good reason to believe that you have committed a felony. However, the arrest is only lawful if you committed the crime for which you were arrested, and you must be promptly taken before a judge or turned over to the police. You may be entitled to recover damages for unlawful arrest for a crime you did not commit.

## **Resisting Arrest**

The police may use the reasonable force necessary to arrest you, but they are not permitted to use excessive force or brutality. Even if you are innocent, you should not resist arrest. Besides risking injury to yourself, you may be charged with the crime of resisting arrest. If you resist a citizen's arrest, you might be charged with assault and battery. Even if you are eventually found innocent of the original charges, the arrest is not illegal if it conformed to the requirements of the law.

## **Search**

Ordinarily, the police must have a search warrant before conducting a search. However, after you have been arrested, the police may search you and the immediate area around you without a warrant if they reasonably suspect that you may be armed. A search is also permitted when the police see contraband at the time of making an arrest. If the police find something that it is a crime to possess, such as a gun or drugs, they may take it and arrest you for possessing it. The police may also take your money and property from you to keep in a safe place until it can be returned to you or used as evidence. If possible, try to verify that all of the items taken from you are inventoried on a written list.

## **Getting Legal Assistance**

You are entitled to telephone a lawyer, a friend, or a family member to notify them of your arrest. You have the right to consult with a lawyer and have him or her present when the police question you. The best practice is to remain silent until your lawyer is present since any statement that you make can be used as evidence against you. If you cannot afford to hire an attorney, you are entitled to a court-appointed lawyer. Depending on local procedures, the court may appoint a private attorney, a lawyer from a legal aid society, or a public defender. The police are required to notify you of these rights before questioning you. Ordinarily they are recited during the confusion of the arrest. Remember them. They may become critical to your defense later on.

Even if you declined a lawyer at the time of arrest, you retain the right to have a lawyer at any time after being arrested. You should seek the advice of a lawyer at the earliest possible time to avoid incriminating yourself, to get released from custody, to decide how to plead, and to prepare for your trial.

If you are called by a family member or friend who has been arrested, remind them that they have a right to a lawyer and that they do not have to respond to police questioning until the lawyer is present. If a lawyer has been engaged, the person who has been arrested should let the police know that they claim the right to counsel and that a lawyer is on the way.

### **Being Taken into Custody**

After you have been arrested, you may be taken into custody and brought to a detention facility. At the detention facility your arrest will be registered into police records and you may be fingerprinted and photographed. After you have been taken into custody, you or your lawyer can make arrangements for your release while you are waiting for your trial.

You may be asked to participate in a lineup. This is a procedure in which several people, including one or more suspects, are shown to victims or witnesses of a crime to see if they can identify the one who committed it. If you are asked to participate in a lineup, you have a right to have your attorney present.

If you are confined in a detention facility, it may be several hours to a couple of days before you appear before a judge who can consider releasing you. Do your best to stay calm, and do not discuss the circumstances of the alleged crime with others. Any statements you make may be reported to the police and used against you.

If you are accused of a less serious crime, such as a minor traffic violation, the police may ask you to sign a citation instead of taking you into custody. If you sign the citation, you are promising to appear in court, but you are not admitting guilt. If you have no identification or refuse to sign the citation, the police may take you into custody.

### **Getting Released From Custody**

After the arrest, you will be brought before a judge to be formally charged with a crime and provided an opportunity to be released while awaiting a trial. If you appear in court without a lawyer, the judge must allow you a reasonable time to find one before proceeding with the case. You might be required to post bail, or you may be released on your promise to appear in court. Bail is money or other property deposited with the court to ensure that you will appear for your trial. To decide whether to require bail, the judge will consider various factors, such as your family ties, financial resources, employment record, and the seriousness of the crime you have been charged with.

### **Being Detained**

You can be detained without being arrested if the police suspect that you are engaging in criminal activity or that you might be armed. For example, the police may ask you to identify yourself and conduct a limited search for weapons if they observe you pacing in front of a closed store in the dark. Or a store owner or employee might detain you for a reasonable time for questioning if they have a strong reason to believe that you have stolen or have attempted to steal something.

### **If you are wrongfully arrested**

If your arrest did not conform to the legal requirements, the arresting officers, and the governmental authority they work for, may be responsible for compensating you for damages. Similarly, a person who makes a citizen's arrest without reasonable grounds is potentially liable for damages for false arrest, as is the person's employer. If you believe that you have been wrongfully arrested or detained, tell your lawyer the exact details of what was said and done to you.

### **Conclusion**

For people who have never before faced criminal charges, an arrest can be a frightening experience. The stress of the arrest may cause you, your family members, or friends to overlook important matters, such as the right to remain silent and the right to advice from a lawyer. If you are arrested, you should consult a lawyer as soon as possible in order to protect your rights and defend yourself against the charges made against you. He or she can also negotiate on your behalf with the police and the prosecutor and advise you of the risks and advantages of cooperating with the authorities. Your lawyer can also help you with the bail process. If you cannot afford to hire a lawyer, you may ask the judge to appoint a court-paid lawyer for you. Above all, do your best to stay calm. An arrest is not a conviction. You really are innocent until proven

guilty. Prospective employers cannot ordinarily inquire into your arrest, nor can it be used to undermine your testimony in court. If you have further questions about these matters, ask your lawyer about them.

#### **COMMON CRIMES**

- Arson
- Assault
- Bankruptcy fraud
- Battery
- Burglary
- Carjacking
- Child abuse and molestation
- Computer hacking
- Credit card fraud
- Date rape
- Domestic violence
- Driving while intoxicated
- Embezzlement
- Extortion
- Forgery
- Fraud
- Hit and run
- Homicide
- Indecent exposure
- Internet fraud
- Kidnapping
- Larceny
- Manslaughter
- Money laundering
- Murder
- Perjury
- Possession or use of illegal drugs
- Rape
- Robbery
- Sexual battery
- Stalking
- Terrorist threats
- Theft

#### **Criminal Justice Officials**

- Correction Officials
- Judges
- Magistrates
- Parole Officers
- Police
- Prosecutors

#### **Arrest Rights**

- Right to have a lawyer while being questioned
- Right to have a lawyer without cost if you cannot afford one
- Right to remain silent
- Right to be informed that anything you say may be used against you
- Right to be informed of the charges against you
- Right to be considered for release pending trial
- Right to compensation for wrongful arrest

This pamphlet provides general information. Laws develop over time and differ from state to state. This pamphlet does not provide legal advice about specific legal problems. Let us advise you about your particular situation.