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WHAT TO DO IF YOU ARE ARRESTED

This outline provides information on your rights if you are stopped, searched, or arrested by a police officer.

Law enforcement officials have the duty to protect the community, its citizens and their property according to the law. The law gives them certain rights in order to perform this duty. They must make arrests when necessary to uphold law and order.

It is a crime to resist an officer who lawfully arrests you. If it turns out that you have been arrested unlawfully, you may sue the police officer for false arrest, but the arrest or detention may be lawful even if you are innocent.

You also have rights when you are arrested and you should know what some of them are.

YOU MAY BE STOPPED OR DETAINED WITHOUT BEING ARRESTED

A law enforcement officer may ask you to identify yourself or question you briefly without arresting you. If the officer has reason to believe that you are carrying a concealed weapon and that you may be dangerous to the officer or others, the officer may conduct a limited search for their safety. If this search reveals what feels like a weapon, the officer may search for and remove the object. The officer must return any lawful object found unless you are placed under arrest. The search is limited to objects which feel like weapons.

You may have a constitutional right not to answer questions that an officer asks. Nonetheless, it is advisable to provide your name, address and identification if so requested. At the conclusion of questioning and the search, the officer must either arrest you or release you.

AN ARREST

When a law enforcement officer takes you into custody or otherwise significantly deprives you of your freedom in order to hold you to answer for a crime, you have been arrested.

A POLICE OFFICER CAN USE FORCE TO ARREST YOU

An officer may use any reasonable force necessary to arrest you and to keep you under arrest. Never resist the officer, and never interfere with an officer if someone else is being arrested. If you believe that your rights are being violated, remember exactly what the police officer does and tell your attorney about it at the earliest opportunity.

WARNINGS

Police officers do not have to inform you of your rights until after you are arrested, and then only if they want to question you. If you are arrested, with or without a warrant, you must be informed why you are being arrested and be brought promptly to a police station. Before you are questioned, you should be informed of the following: (1) The offense(s) for which you are being held; (2) That you are not obligated to say anything and that anything you say can be used against you; (3) That you are entitled to talk to a lawyer, and that if you cannot afford to hire an attorney one will be provided; (4) That you will not be questioned unless you wish, that you may talk to a lawyer before being questioned, and that you may have a lawyer present during any questioning; and (5) That any time during questioning you want to consult with a lawyer or want the questioning to stop, it will stop.

You still have all the rights all the time.

If you are not released you may be given an reasonable opportunity to communicate with a lawyer. Ultimately you will be brought before a judge and the question of bail determined.

PERSONAL PROPERTY IN YOUR POSSESSION AT THE TIME OF ARREST

The police may take money and property from you and keep it in a safe place until it can be returned to you or used as evidence. The police will list the items and they may ask you to sign the list. Be certain that the list includes all items taken from you. Usually you will be given a receipt specifying the amount of money and the type of property taken.

COMMUNICATION WITH RELATIVES, FRIENDS, OR A LAWYER

Once taken into custody, you should be given an opportunity to consult in private with a lawyer if you wish. You may be allowed to communicate with friends and relatives, but that is not a right.

YOU CAN BE SEARCHED

When you are lawfully arrested, you can be searched. Also, the immediate area of the place of the arrest may be searched. Law enforcement officials do not have the right to conduct a general search of the surrounding area without a search warrant.

If you were arrested while in a vehicle, the vehicle and containers may be searched without a warrant. A more thorough search may be made without a search warrant if the police have reasonable grounds to believe that the vehicle contains articles that they are entitled to seize. The vehicle may be impounded and an inventory of its contents made.

A search may be made at any time if you consent. If asked to sign a consent form, read it carefully to be sure that you understand what you are permitting. You do not have to give or sign a "consent."

WHEN A WARRANT IS NECESSARY

In many situations a search warrant is necessary before a search can be conducted. A search warrant is an order in writing, signed by a judge directing a police officer to search a certain place for evidence and to bring it to court. The warrant must specifically describe the place to be searched and the property to be searched for and seized.

A police officer is required to show the search warrant and to give notice of authority and purpose before making a search. You may ask to see the warrant or the officer may retain it, but a copy must be given to you after the search. An officer with a warrant may break in if you refuse to admit the police officer after receiving notice, or under other unusual circumstances.

Anything unlawfully seized by the police may not later be used as evidence against you if you were entitled to privacy in the item. It is important to remember and tell your attorney the details about any search of your person, property, or car.

FINGERPRINTS, LINE-UPS

If you are arrested, the police have the right to take your fingerprints and photograph. You may also be required to participate in a line-up, to provide a sample of your handwriting, to speak phrases associated with the offense or to have samples of your hair taken. You may insist that an attorney be present.

QUESTIONING

You have a constitutional right to remain silent. *This is a very important right and you cannot be punished for remaining silent or have your silence used against you.* Constitutional rights can be waived (given up). Before you say or sign anything, the decision should be carefully made. Anything you say may be used against you in a court of law. If you do answer a question, you may stop at any time and not answer any further questions. You have a right to talk with an attorney before answering any questions. You have a right to have an attorney present if you decide to answer questions. If you cannot afford to hire a private attorney, an attorney will be appointed for you before any further questioning takes place, at your request. If you requested an attorney, questioning must stop until your attorney is present.

You may be asked to sign a form, which contains the warnings. By signing this form you are saying that these rights have been explained to you and you understand these rights. You may waive (give up) your right to remain silent or you may speak with an attorney before reaching a decision. If you refuse to sign the forms or are unable to understand the warnings given, because of language barriers or your physical or mental condition, a law enforcement officer may make a written record of that fact.

If someone promises you something to sign a document, or if you are threatened or forced to sign anything, tell your attorney.

WHEN YOU GO TO COURT

If you are not released from custody on a bond, you will be brought to court to have bond determined.

If you have been released, you must appear in court at the time and place specified.

Your first court appearance after you arrest is called an arraignment. In court the judge should tell you what you are charged with and advise you that you are not obligated to say anything, and anything you say may be used against you. You should be advised that you are entitled to a lawyer, and, if you cannot afford one, you will be advised that one will be provided for you. If you do not have a lawyer, you may call the local Bar Association for the name of a lawyer on the local referral list.

If you are still in custody when you are brought to court, and you were arrested without a warrant, you have the right to ask the judge to release you on bond, or simply on your sworn promise to reappear when required. The judge can order you released on a promise to appear, a non-surety bond or a surety bond. The judge can also order you released if you deposit money equal to 10% of the amount of bail with the court clerk. You will get most of this money back if you appear in court; so, the judge may feel this is enough reason to make you appear in court.

If you are charged with a felony, you have the right to a preliminary hearing within 12 days. You may demand such a hearing, or waive it. You should demand the hearing, at least until you have a lawyer to help you decide whether the hearing is necessary. Prior to making any decision you should consult with an attorney.

RELEASE AFTER ARREST

If you are arrested for a misdemeanor (a crime in which the possible penalty is one year or less in jail) the police officer may give you a written complaint and summons and release you on your promise to appear in court on a specific date. If you do not appear in court then, a bench warrant for your arrest will be issued, and you can be prosecuted for failure to appear.

If you are arrested for a felony (a serious crime in which the possible penalty may be more than one year in jail) or if the police officer thinks you may not appear in court, you will be taken to the police station.

The police officer there may release you on your written promise to appear in court or may require a bail bond (a promise to pay a specific sum of money or turn over property to the state if you do not appear in court). If the bail bond is a "personal recognizance," all you need to do is promise to pay the sum of money set in the bond. If it is a "surety bond," someone else who has enough money or property, must also promise to pay the state if you don't appear in court. It is very unlikely that you would be released by a police officer if there is a felony charge against you.

If your relatives or friends cannot provide enough money for a surety bond, you may contact a professional bail bondsperson. You will have to pay a fee for the bondsperson "posting" the bond. The bondsperson may also demand security, in the form of a house, a car or other property.

If the police do not release you and you cannot post a surety bond or get a bondsperson to post it, you have a right to ask the arraigning judge or magistrate to set bond.

The judge or magistrate may consider many factors when deciding to set bond, including: Your ties with the community; the nature of the crime you are charged with; and your prior criminal record.

If you are released and do not appear in court, a warrant for your arrest will be issued. If you were charged with a felony and do not appear, then you can be charged with another crime

for failing to appear. If you posted a bond, you or the bondsperson will owe the state the full amount of the bond.

RECORDS OF ARREST

If you are found not guilty of a charge for which you are arrested or the charge is dismissed, then you may petition to have all records of this arrest and prosecution formally erased.