

Defendant's Rights

KNOW YOUR RIGHTS

The police do not decide your charges; they can only make recommendations. The prosecutor is the only person who can actually charge you. Remember this the next time the cops start rattling off all the charges they're supposedly "going to give you."

What does it mean to be arrested?

When you are arrested, you are taken into custody. This means that you are not free to leave the scene. Without being arrested, however, you still could be detained or held for questioning for a short time if a police officer or other person believes you may be involved in a crime. For example, an officer may detain you if you are carrying a large box near a recent burglary site. Storekeepers also can detain you for a reasonable period if they suspect you have stolen something.

Whether you are arrested or detained, you do not have to answer any questions except to give your name and address and show some identification if requested.

What are my rights at the time of my arrest?

Whether you are an adult citizen or non-citizen, you have certain rights if you are arrested.

Before the law enforcement officer questions you, he or she should tell you that:

- You have the right to remain silent.
- Anything you say may be used against you.
- You have a right to have a lawyer present while you are questioned.
- If you cannot afford a lawyer, one will be appointed for you.

These are your Miranda rights, guaranteed by the U.S. Constitution. If you are not given these warnings, your lawyer can ask that any statements you made to the police not be used against you in court. But this does not necessarily mean that your case will be dismissed. And this does not apply if you volunteer information without being questioned by the police.

If Arrested, Protect Your Rights.

- Do not discuss your case with anyone other than your lawyer. Not even your friends, family, members, or cellmates. What you say can be used against you.
- Do not call or make any contact with any law enforcement agency, District Attorney, or City Attorney without first consulting with your Attorney.
- Immediately identify and locate any potential witnesses that may have any information that will help your lawyer.
- If contacted by any law enforcement investigation, immediately and politely refuse to answer any questions without your lawyer present.
- Never consent to any search or turn over anything to law enforcement without consulting with your lawyer first.
- Everything you tell your lawyer is confidential and will not be used against you. Be truthful and communicate thoroughly with your lawyer.

After I am told my rights, can I be questioned?

You can be questioned, without a lawyer present, only if you voluntarily give up your rights and if you understand what you are giving up. If you agree to the questioning, then change your mind, the questioning must stop as soon as you say so or as soon as you say that you want a lawyer. If the questioning continues after you request a lawyer and you continue to talk, your answers can be used against you if you testify to something different.

You may be required to give certain physical evidence. For example, if you are suspected of driving under the influence of alcohol, you may be requested to take a test to measure the amount of alcohol in your system. If you refuse to take the test, your driver's license will be suspended and the refusal will be used against you in court.

Once you have been booked, (meaning your arrest has been written into official police records, and you have been fingerprinted and photographed) you have a right to make and complete three free telephone calls within the local dialing area. Any additional calls made from jail must be collect calls.

Who has the authority to make an arrest?

All law enforcement officers (such as police officers, county sheriff officers, investigators in a district attorney's office or an attorney general's office, and highway patrol officers) can arrest you whether they are on or off duty, in most cases. A probation or parole officer also can arrest you.

They can arrest you even if they do not have an arrest warrant if they have probable cause or good reason to believe you committed a felony. (A felony is a crime of a more serious nature than a misdemeanor, usually punishable by imprisonment for more than a year. A misdemeanor is usually punishable with a fine or short jail term.) They do not have to see you commit a felony in order to arrest you. They do, however, have to see you commit a misdemeanor in order to arrest you.

If you commit an infraction, they may ask you to sign a citation or notice instead of taking you into custody. This is a minor offense, such as a moving violation, where the punishment usually is a fine. If you sign the citation, you are not admitting guilt; you are only promising to appear in court. If you have no identification or refuse to sign, however, an officer may take you into custody.

What is a citizen's arrest?

Any person, such as a private security guard, can make a citizen's arrest if he or she sees a misdemeanor being attempted or committed. He or she also can make a legal arrest for a felony as long as it actually was committed, and he or she has good reason to believe you did it. He or she must take you to a police officer or judge who is required by law to take you into custody.

What are my rights while in custody?

- Right to an Attorney - Defendants have the right to an attorney throughout legal proceedings. The court will appoint an attorney for the defendant at no charge if he/she cannot afford to hire one. Yet, at the end of the case, they may be asked to pay all or part of the cost for that attorney, if he/she can afford to.
- Right to a Jury Trial - Defendants have the right to a speedy, public jury trial. At the trial, the defendant is presumed innocent, and cannot be convicted unless 12 impartial jurors have been convinced of the defendant's guilt beyond a reasonable doubt.
- Right to Confront Witnesses - Defendants have the right to confront and cross-examine all witnesses testifying against them.
- Right Against Self-Incrimination - The defendant has the right to remain silent, to prevent self-incrimination, and the right to testify on their own behalf.
- Right to Produce Evidence - The defendant has the right to present evidence and to have the court issue a subpoena to bring into court all witnesses and evidence favorable to them, at no cost to them.

When is an arrest warrant issued?

Usually, a warrant is required before you can be taken into custody from within your home. But you can be arrested at home without a warrant if fast action is needed to prevent you from escaping, destroying evidence, endangering someone's life or seriously damaging property. An arrest warrant must be signed by a magistrate or judge, who must have good reason to believe that you committed a crime.

Once an arrest warrant is issued, any law enforcement officer in the state can arrest you even if the officer does not have a copy of the warrant. Generally, there is no time limit on using a warrant to make an arrest.

Before entering your home, a law enforcement officer must knock, identify him or herself and tell you that you're going to be arrested. If you refuse to open the door or if there's another good reason the officer can break in through a door or window.

If the police have an arrest warrant, you should be allowed to see it. If they don't have the warrant with them, you should be allowed to see it as soon as is practical.

The police may search the area within your reach. If you are arrested outdoors, they may not search your home or car.

Resisting an arrest or detention is a crime. If you resist arrest, you can be charged with a misdemeanor or felony in addition to the crime for which you are being arrested. If you resist, an officer can use force to overcome your resistance or prevent your escape. The officer can even use deadly force if it appears you will use force to cause great bodily injury.

When can I be released after I am arrested?

If, during the questioning and before a charge is filed, the police are convinced that you have not committed a crime, they will give you a written release. Your arrest then will be considered a detention and not be recorded as an arrest.

Can I be searched without a warrant?

An officer can always conduct a search with either your consent or a search warrant. You have a right, however, to see the warrant before the search begins.

Body Searches

If you are arrested, an officer can search you, without a warrant, for weapons, evidence or illegal or stolen goods. Strip searches should not be conducted for offenses that do not involve weapons, drugs or violence unless police reasonably suspect you are concealing a weapon or illegal goods, and they have authorization from the supervising officer on duty. If you are booked and jailed, you may undergo a full body search, including body cavities.

Home Searches

In emergencies, such as when an officer may be trying to prevent someone from destroying evidence, your home can be searched without your consent and without a warrant. If you are taken into custody in your home, an officer without a warrant can search only the limited area in which you are arrested. Other rooms and even other parts of the same room are off limits, unless the officer believes that other suspects are hiding in other rooms. While searching your home, an officer can seize evidence of any crime, such as stolen property or drugs, which is in plain sight.

Car Searches

Your car and trunk can be searched without your consent or a warrant if an officer has good reason to believe it contains illegal or stolen goods or evidence. If the police stop your car for any legal reason such as a broken taillight they can take any illegal goods in plain sight. If you, your home or your car is searched illegally, a judge might say that any evidence found during the search cannot be used against you in court. If you or your lawyer, however, do not object to the evidence before trial, the court might allow the evidence to be used. Even if the judge does decide that the evidence cannot be used against you, that does not always mean that your case will be dismissed.

Police Encounters

There are three basic types of encounters with the police: Conversation, Detention, and Arrest.

Conversation

When the cops are trying to get information, but don't have enough evidence to detain or arrest you, they'll try to coerce information from you. They may call this a "casual encounter" or a "friendly conversation." If you talk to them, you may give them the information they need to arrest you or your friends. In most situations, it is not advisable to volunteer information to the police.

Detention

Police can detain you only if they have reasonable suspicion (see below) that you are involved in a crime. Detention means that, though you aren't arrested, you can't leave. Detention is supposed to last a short time, and they aren't supposed to move you. During detention, the police can pat you down and go into your bag to make sure you don't have any weapons. They aren't supposed to go into your pockets unless they feel a weapon.

If the police are asking you questions, ask if you are being detained. If not, leave and say nothing else to them. If you are being detained, you may want to ask why. Then you should say the Magic Words: "I am going to remain silent. I want a lawyer" and nothing else.

A detention can easily turn into arrest. If the police are detaining you and they get information that you are involved in a crime, they will arrest you, even if it has nothing to do with your detention. For example, if someone is pulled over for speeding (detained) and the cop sees drugs in the car, the cops may arrest her for possession of the drugs, even though it has nothing to do with her being pulled over.

Cops have two reasons to detain you: 1) they are writing you a citation (a traffic ticket, for example), or 2) they want to arrest you but they don't yet have enough information to do so.

Arrest

Police can arrest you only if they have probable cause (see below) that you are involved in a crime. When you are arrested, the cops can search you to the skin and go through your car and any belongings.

By law, an officer strip-searching you must be the same gender as you.

Reasonable Suspicion vs. Probable Cause

Reasonable suspicion must be based on more than a hunch - cops must be able to put their suspicion into words. For example, cops can't just stop someone and say, "She looked like she was up to something." They need to be more specific, such as, "She was standing under the overpass staring up at some graffiti that hadn't been there 2 hours ago. She had the same graffiti pattern written on her backpack. I suspected that she had put up the graffiti."

Cops need more proof to say they have a probable cause than to say they have a reasonable suspicion. For example, "A store owner called to report someone matching her description tagging a wall across the street. As I drove up to the store, I saw her running away splattered with paint and carrying a spray can in her hand."

Searches

Never consent to a search. If the police try to search your house, car, backpack, pockets, etc. say the Magic Words: "I do not consent to this search." This may not stop them from forcing their way in and searching anyway, but if they search you illegally, they probably won't be able to use the evidence against you in court. You have nothing to lose from refusing to consent to a search and lots to gain. Do not physically resist cops when they are trying to search, because you could get hurt and/or charged with resisting arrest or assault. Just keep repeating the Magic Words so that the cops and all witnesses know that this is your stance.

Be careful about casual consent. That is, if you are stopped by the cops and you get out of the car but don't close the door, they can search the car and claim that they thought you were indicating consent by leaving the door ajar. Also, if you say, "I'd rather you didn't search," they can claim that you were reluctantly giving them permission to search. Always just say the Magic Words: "I do not consent to this search."

Questioning

Interrogation isn't always bright lights and rubber hoses -- usually it's just a conversation. Whenever the cops ask you anything besides your name and address, it's legally safest to say these Magic Words: **"I am going to remain silent. I want to see a lawyer."**

This invokes legal rights, which protect you from interrogation. When you say this, the cops (and all other law enforcement officials) are legally required to stop asking you questions. They probably won't stop, so just repeat the Magic Words or remain silent until they catch on. If you forget your decision to remain silent and start talking to the police, you can and should re-invoke the Magic Words, then remain silent. Do not raise your status as a medical marijuana patient, unless specifically asked about this or the medicine has already been found.

Remember, anything you say to the authorities can and will be used against you and your friends in court. There's no way to predict what information the police might try to use or how they will use it. Plus, the police often misquote or lie altogether about what was said. So say only the Magic Words and let all the cops and witnesses know that this is your policy. Make sure that when you're arrested with other people, the rest of the group knows the Magic Words and promises to use them.

One of the jobs of cops is to get information out of people, and they usually don't have any scruples about how they do it. Cops are legally allowed to lie when they're investigating, and they are trained to be manipulative. The only thing you should say to cops, other than identifying yourself, are the Magic Words: *"I am going to remain silent. I want to see a lawyer."* And remember the Golden Rule: **POLICE ARE NOT THERE TO BE YOUR FRIEND AND THEY ARE ALLOWED TO LIE TO YOU.**

Here are some lies they may tell you:

- "You're not a suspect -- just help us understand what happened here and then you can go."
- "If you don't answer my questions, I'll have no choice but to arrest you. Do you want to go to jail?"
- "If you don't answer my questions, I'm going to charge you with resisting arrest."
- "All of your friends have cooperated, and we let them go home. You're the only one left."

Cops are sneaky, and there are lots of ways they can trick you into talking. Here are some scams they may pull:

- Good Cop/ Bad Cop: Bad cop is aggressive and menacing, while good cop is nice, friendly, and familiar (usually good cop is the same race and gender as you). The idea is bad cop scares you so badly you are desperately looking for a friend. Good cop is that friend.
- Prisoners' Dilemma: The cops will tell you that your friends ratted on you so that you will snitch on them. Meanwhile, they tell your friends the same thing. If anyone breaks and talks, you all go down.
- The cops will tell you that they have all the evidence they need to convict you, but that if you "take responsibility" and confess, the judge will be impressed by your honesty and go easy on you. What they really mean is: "We don't have enough evidence yet, please confess."

Jail is a very isolating and intimidating place. It is really easy to believe what the cops tell you. Insist on speaking with a lawyer before you answer any questions or sign anything.

Miranda Rights

The police do not have to read you your rights (also known as the Miranda warnings). Miranda applies when there is (a) an interrogation (b) by a police officer or other agent of law enforcement (c) while the suspect is in police custody (you do not have to be formally arrested to be "in custody"). Even when all these conditions are met, the police intentionally violate the Miranda requirement. And though your rights have been violated, what you say can be used against you. For this reason, it is better not to wait for the cops to inform you of your rights or ask if you want to remain silent. You know what your rights are, so you can invoke them by saying the Magic Words, *"I am going to remain silent. I want to see a lawyer."*

If you've been arrested and realize that you have started answering questions, don't panic. Just re-invoke your rights by saying the Magic Words again. Don't let them trick you into thinking that because you answered some of their questions, you have to answer all of them.

Arrest and Search Warrants

If the police come to your door with an arrest warrant, step outside and lock the door behind you. Cops are allowed to search any room you go into, so don't go back into the house for any reason. If they have an arrest warrant, hiding won't help, because they are allowed to force their way in if they know you are there. It's usually better to just go with them without giving them an opportunity to search. If the cops have a search warrant, nothing changes - it's legally safest to just say the Magic Words. Again, you have nothing to lose from refusing to consent to a search and lots to gain if the search warrant is incorrect or invalid in some way. If they do have a search warrant, ask to read it. A valid warrant must have a recent date (usually not more than a couple of weeks old), the correct address, and a judge's or magistrate's signature; some warrants indicate the time of day the cops can search. You should say the Magic Words whether or not the search warrant appears correct. The same goes for encounters with any other government official who tries to search you, your belongings, or your house.

Infiltrators and Informants

Undercover cops sometimes infiltrate political organizations. They can lie about being cops even if asked directly. Undercover cops can even break the law (undercover cops get hazard pay for doing drugs as part of their cover) and encourage others to do so as well. This is not legally entrapment.

FBI, DEA, and Other Government Agents

The essence of the Magic Words "I'm keeping my mouth shut until I talk to a lawyer" not only applies to police but also to the FBI, DEA, INS, CIA, even the IRS. If you want to be nice and polite, say that you don't wish to speak with them until you've spoken with your lawyer, or that you won't answer questions without a lawyer present. If you are being investigated as a result of your political activity, you can call SEAN TABIBIAN & ASSOCIATES 1-800-658-1500.

Phone Calls in Jail

You're entitled to make a phone call from jail, but that doesn't mean you're going to get one right away. Jail telephones are often rigged to only make collect calls, although some take coins as well. All telephone calls from people in custody can be monitored. You may not want to discuss anything that is secret or sensitive - circumstances of your arrest, people you are close to, any contact information for those people, etc.

Taking Notes

Whenever you interact with or observe the police, always write down what is said and who said it. Write down the cops' names and badge numbers and the names and contact information of any witnesses. Record everything that happens. If you are expecting a lot of police contact, get in the habit of carrying a small tape recorder and a camera with you. Be careful -- cops don't like people taking notes, especially if the cops are planning on doing something illegal. Observing them and documenting their actions may have very different results; for example, it may cause them to respond aggressively, or it may prevent them from abusing you or your friends.

Conclusion

People deal with police in all kinds of circumstances. You must make an individual decision about how you will interact with law enforcement. It is important to know your legal rights, but it is also important for you to decide when and how to use them in order to best protect yourself.

Getting Out of Jail

There are several procedures for getting out of jail while a case is in process. If you are in possession of more than one ounce of marijuana, the police decide whether to give you a citation and release you, or to arrest you and let the judge decide the validity of your medical marijuana claim. Once arrested, the judge will decide whether to offer you bail, bond, or release on your own recognizance (OR).

Citation: Citing out is a type of release from custody in which you sign a citation, which is a promise to appear in court. It is usually a form that looks like a traffic ticket. Never sign a piece of paper that is an admission of guilt. Read the form closely and make sure you know what you are signing.

Bail: Bail is money you pay to the court, to be forfeited if you don't appear at scheduled hearings. A bail bondsman can put up the money for you, but you have to give the bondsman a percentage of the total bail, which the bondsman keeps as payment. Often, there is a pre-set bail for misdemeanors and lesser felonies that you can pay at the jail without waiting to go before a judge.

Bond: A bond is like bail except that you put up collateral instead of paying money. Collateral is something of value, like a car, a house, or property.

OR: Release on your own recognizance (OR, ROR or PR) is simply your promise to come to court for scheduled hearings without having to put up bond or pay bail. Usually you will only be released on your own recognizance if you can prove that: (1) you are not a danger to the community; and (2) you are not a flight risk or unlikely to return for court appearances.