

YOUR RIGHTS IF ARRESTED



WHAT IS AN ARREST?

You are “arrested” when law enforcement officials or private persons take you into custody or otherwise deprive you of your freedom of movement in order to hold you in connection with a criminal offense.

It is not necessary for the arresting party to use the word “arrest” or some other comparable word in order to place you effectively under arrest.

MAY YOU BE STOPPED OR DETAINED WITHOUT BEING ARRESTED?

A police officer may ask you to identify yourself or may question you briefly at any time without arresting you.

If an officer has reason to suspect that you are carrying a concealed weapon, and that you may be dangerous to him or to others, he may conduct a limited search or “frisk.”

If this frisk reveals what feels like a weapon, he may search for and remove the object he feels. The officer must return to you any lawful object he finds unless he places you under arrest. In a “stop and frisk,” the search is limited to objects that feel like weapons.

The officer may also ask you some questions. However, you have a constitutional right not to answer any of them, although it is advisable to give your name and address.

At the conclusion of the stop and frisk, and when any conversation has terminated, the officer must either arrest you or let you go.

A merchant or his employees may detain you for a reasonable time for questioning in the immediate vicinity of his premises if he has probable cause to believe that you have committed or are attempting to commit a larceny of goods for sale or a larceny of the personal property of someone on his premises.

WHEN MAY YOU BE ARRESTED WITH A WARRANT?

An officer may arrest you at any time if he has a warrant for your arrest. A warrant is an order issued by a court charging that you committed a crime and directing a policeman to arrest you and bring you before the court. An arrest warrant is different from a search warrant. You may ask to read the warrant after you have been arrested.

WHEN MAY YOU BE ARRESTED WITHOUT A WARRANT?

An officer may arrest you without a warrant in many situations, including when:

- He knows that a warrant for your arrest has been issued and is still in effect.
- The arresting officer has probable cause to believe that a felony has been or is being committed by you. A felony is a crime that is punishable by imprisonment in the state prison for a term of years. Examples of felonies include murder, rape, robbery, breaking and entering, sale of narcotics or assault and battery with a dangerous weapon.
- A misdemeanor is committed in the presence of an officer and involves a present or anticipated breach of the peace. A misdemeanor is a “lesser” criminal act which may include petty theft, prostitution, simple assault, trespass and vandalism.
- A statute provides that an arrest for a specific misdemeanor, such as crimes involving domestic violence, not involving a breach of the peace, can be made without a warrant.
- You are driving a car, and the police find that you are driving without a license.

Remember, an officer may use all the reasonable force necessary to arrest you and to keep you under arrest. You should never resist the officer arresting or searching you, nor should you interfere with him if he is arresting or searching someone else. The act of resisting arrest has now been made a separate felony offense, which may subject you to additional penalties if you are charged with this crime.

If you believe that your rights are being violated, remember exactly what the police officer does, and then tell your attorney about it at the earliest appropriate time.

WHEN MAY YOU BE SEARCHED?

The law of search and seizure is very complex and whether

a specific search is “lawful” will often depend on the facts and circumstances in a particular case. You should never resist a search, but if you object to a search, tell the policeman who is conducting it that you do not consent and ask him to identify himself.

It is important that you remember, and later tell your attorney, the details about any search of your person, property or car.

You, your home, or your car can be searched at any time if you consent to the search. If you are asked to sign a consent form, read it carefully before you sign it to ensure that it conforms to your understanding of what you are allowing.

A police officer may search you, your home or your car any time with a search warrant. The search warrant is a court order authorizing him to conduct a search. The search must be limited to the area described in the warrant. You may ask to see the warrant or ask that the officer read it to you. Since it is a court paper, the officer will retain custody of the warrant.

In most cases, if the warrant does not specify the person, building or car to be searched and the items to be seized, the officer has no legal right to search without your freely given permission.

Your person may be searched without your consent and without a warrant when:

- You have been arrested. Such a search may be made to seize evidence of the crime for which you have been arrested in order to prevent its destruction or concealment. Also, the police may remove any weapons you might use to resist arrest or to escape and may conduct a search after your arrest to inventory any items in your possession. Items found in a properly conducted inventory search may be the basis for additional criminal charges.
- When a police officer has stopped you briefly for questioning and has a reasonable fear for his safety, or reason to believe you have a weapon, he may conduct a limited search of your person, called a “pat frisk.” In a pat frisk, the officer may pat your clothing and person to determine if you are carrying a weapon. The officer may remove any weapon found during such a search.

Your home may be searched without your consent and without a warrant when:

- You are arrested at home. The police may conduct a limited search of the area where you are arrested with-

out a search warrant. However, they do not have the right to conduct a general search of your entire house or apartment without a search warrant.

Your car may be searched without your consent and without a search warrant when:

- You are arrested in your car. A limited search of a car can be made at the time of your arrest. The interpretation of a “limited search” of a car is according to the specific facts of the case.

A more complete search may be made without a search warrant if the police have probable cause to believe that your car contains articles that the police are entitled to seize. The police also may impound your car until a warrant can be obtained and may take a routine inventory of items in plain view, in the glove compartment and elsewhere in the vehicle.

WHAT PROCEDURES ARE USUALLY FOLLOWED AFTER YOUR ARREST?

- The officer will take you to a police station.
- The police will list the tentative charges against you. However, these charges may be later changed by the district court or by the grand jury.
- You may be required to participate in a lineup, to present a sample of your penmanship or to speak phrases associated with the offense with which you are charged.
- You may be required to submit to being fingerprinted and photographed.
- You will be arraigned at a court session or arrangements can be made for your release either by yourself or by your attorney. Arrangements also can be made for your release either by yourself or by your attorney at the station.
- You will be arraigned at the next court session.

WHAT RIGHTS DO YOU HAVE WHEN ARRESTED?

- You have a right to know the crime with which you have been charged.
- You have a right to know the names of the police officer dealing with you. Any policeman, by statute and custom, should identify himself upon request.
- You have a right to use the telephone soon after you are brought to the police station to call your family, a friend, a lawyer or to arrange bail, but you have the right to use a telephone only for an hour after you have been informed of this right.

YOUR RIGHTS IF ARRESTED

- You have a right to hire an attorney. If you cannot afford an attorney, you have the right to request the court to appoint one to represent you free of charge in any felony or misdemeanor case for which a penalty of imprisonment is provided. You may be ordered to reimburse the commonwealth for some or all of the costs of an appointed attorney.

Remember, constitutional rights can be waived or given up. Before you say or sign anything, weigh your decision carefully. Read any waiver form carefully before you sign it and make sure you understand what rights you are giving up.

WHAT RIGHTS DO YOU HAVE WHEN QUESTIONED WHILE IN CUSTODY?

- You have the right to remain silent.
- If you choose to speak, anything you say can and will be used against you in a court of law.
- If you decide to answer any question, you may stop at any time and not answer any further questions.
- You have the right to talk to an attorney before answering any questions. If you wish, you have the right to have him or her present in the event you decide to answer questions, and if you cannot afford an attorney, the commonwealth will provide one for you before any questions are asked. You should consider carefully whether to answer any questions. Your oral statements are as admissible in a court as written statements.
- If someone promises you something, if you sign a document, or if you are threatened or are forced to sign anything, tell your attorney and the police official in charge.

WHAT HAPPENS TO YOUR PERSONAL PROPERTY?

The police may take money and property from you to keep in a safe place until it can be returned to you or used as evidence. The police will list the items, and they should ask you to sign the list. You should make certain that the list includes all the items taken from you.

HOW ARE YOU RELEASED?

You are ordinarily released on personal recognizance, which means you promise to appear in court. Otherwise, you may be released on bail, which is money or property deposited with the court as security for your court appearance. In deciding between personal recognizance or bail, the court considers the crime you are charged with, family

ties, financial resources, employment record, history of mental illness, if any, reputation and length of residence in the community and any previous record of flight to avoid prosecution or failure to appear at court proceedings.

You may be held in custody without bail if you are charged with certain violent offenses. At your arraignment, the commonwealth will request that a hearing be held to determine whether your release would endanger the safety of a particular person or the public at large. You are entitled to this hearing within seven days of your arraignment. If at this hearing you are found to be a dangerous person, then you may be held in custody without bail for up to 90 days, or the judge may place other restrictions upon your release. You may also be held in custody without bail up to 60 days if you are arrested while awaiting trial on previous criminal charge.

If court is open, the judge will release you. If court is closed (at night or on weekends), then a bail commissioner or court clerk will perform the role of the judge. Usually this officer is not on duty at the police station but must be specially called by the police. He or she is required by law to respond to every call with all reasonable promptness.

If you have a lawyer, he will call the releasing official; if not, ask the police to make the call. If they refuse, ask to make the call yourself. A list of bail commissioners or court clerks should be available at the police station, and some bail commissioners are listed in the Yellow Pages of the telephone directory.

Bail commissioners and court clerks are allowed to receive a fee of \$50.

If the police decide to drop the charges against you, then you will be allowed to go free. The police may condition your release on your signing papers giving up your right to be brought to court on the charge. You should read the "release papers" carefully before you sign them and make sure you understand what rights you are giving up.

HOW DO YOU ARRANGE FOR A LAWYER?

If you are uncertain if you can afford a private lawyer, you may consult one to discuss his or her fee.

If you cannot afford a private lawyer, you may ask the judge to appoint a lawyer for you. The court will ask you some questions to determine whether or not you can afford an attorney and you may be required to sign a statement showing your financial situation. If a lawyer is appointed by the court to represent you, you may be assessed a sum of money, depending upon your financial ability, to reimburse some or all of the cost of your court-appointed attorney.

This pamphlet was prepared by members of the Massachusetts Bar Association as a public service and does not constitute legal advice, which can only be given by an attorney. The contents of this pamphlet pertain only to the laws of Massachusetts at the time of publication. Legal assistance is available through the MBA services listed below.

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Call and speak to an attorney, free of charge, on the first Wednesday of every month.

5:30-7:30 p.m. (617) 338-0610

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