

WHAT TO DO IF YOU ARE ARRESTED OR ACCUSED OF CRIMINAL ACTIVITY

Call an experienced criminal defense attorney immediately. He can advise you of your rights while in police custody and help protect you from hurting your chances in court. He can prepare for and appear at your arraignment, arguing against the prosecutor's request for the judge to set bail. He can thoroughly investigate your case and interview witnesses who may help you. If appropriate, he can help present your side of the story to a grand jury. Ultimately, he can challenge the evidence against you in court proceedings such as suppression hearings and trial.

IF YOU ARE STOPPED ON THE STREET:

If a police officer stops you on the street, you are not obliged by law to answer any questions he may ask. You can simply say, "I do not wish to speak to you" and walk away. The police officer, however, may attempt to continue the contact through further questioning. If he suspects you of a crime, he will try hard to get you to say something that can justify an arrest, and that can later be used against you in court. How to deal with such an encounter depends upon numerous factors. If you have been involved in illegal activities and the officer seems to suspect as much, you would be very foolish indeed to answer any questions. Even statements of intended "denial" may seriously hurt you in court (i.e., if you deny the burglary but admit you were in the neighborhood, or if you deny being drunk but admit "only a few beers"). In this situation, if you are free to leave, you should excuse yourself and do so immediately. If you are not free to leave, you are essentially in police custody and have been "arrested." Talking to the officer will not change that. You should say nothing except basic pedigree information (your name, address, date of birth, etc.). Call or request a lawyer immediately, and refuse to answer any questions without a lawyer present. Sign nothing.

IF THE POLICE ARE LOOKING FOR YOU:

If the police are calling your home asking to speak with you, you may be a suspect in a criminal investigation. Quite often, the detective will seek to question you on the telephone about the incident, and then ask you to come voluntarily to the station house to "straighten things out." If you go to the station house, you will probably be asked to talk further about the case. Ultimately, you will be asked to sign a statement giving "your side of the story" (but usually written or typed by the detective). While this might seem like a golden opportunity to get out of trouble, it is often a trap. The statement will generally be constructed to include an admission of some guilt in the matter. After you sign it, you may then be handcuffed, fingerprinted and photographed. It is sad to discover later that sometimes the only basis the police had for arresting a person at all was the statement he or she gave to them. Often this statement (which the prosecutor will call a "confession") is the most damaging piece of evidence at trial. The best thing you can do if the police come to your home or call for you on the telephone is to answer no questions and call a good defense attorney immediately.

The police can sometimes arrest you even without your statement. For example, if the police are in possession of an active arrest warrant or a bench warrant (a warrant issued for failure to appear in court), they will come looking for you. If they do not believe you are a flight risk, they may call you by telephone and try to arrange a voluntary surrender. Another example is where the police believe that they already have enough evidence against you to constitute "probable cause" (although no warrant has been signed). Since your arrest may be unavoidable under these circumstances, it may be wise to voluntarily surrender rather than force the police to find and capture you. Of course, it is crucial that you do not make any statements to the police or answer their questions, and that you quickly obtain legal counsel. An attorney can negotiate the terms of your voluntary surrender in a manner which can minimize your time in police or court custody. A person who voluntarily surrenders on a warrant is always looked upon more favorably by an arraignment judge during a bail application. The manner in which a lawyer handles the arrest and arraignment process in these situations can mean the difference between a release in one's own custody and the setting of a high and unaffordable bail.

IF YOU ARE IN POLICE CUSTODY:

In *Miranda v. Arizona*, the United States Supreme Court held that prior to any questioning of a person in custody, the police must advise the person of certain rights. These rights, commonly called the Miranda Rights, are now generally as follows: "You have the right to remain silent. Anything you say can and will be held against you in a court of law. You have the right to an attorney now. If you cannot afford an attorney, one will be appointed for you." The police will often read these rights off a preprinted card. They will read you these rights only if they intend to question you. After reading them to you, they will question you in an effort to get you to incriminate yourself. They will write down your statements, and often ask you to sign a written version. Answering questions but refusing to sign a written statement doesn't help you. Oral confessions can be just as damaging as signed written ones. Answer no questions until you have spoken with a lawyer.

What if the police neglect to read you your rights? It could result in a major blow to the case against you. Even a full written confession to the crime can be thrown out of court. And if the confession led the police to further evidence against you, that evidence could be thrown out too! However, although evidence is thrown out, remember that the case itself is not necessarily dismissed. If there is other evidence of your guilt, that other evidence could still be used to prosecute you. Also, remember that Miranda is limited to custodial interrogation. If you are not in police custody, such as in conversation on the street or over the telephone, the police can generally question you without reading your rights. And if you are in custody, but spontaneously volunteer statements (not in response to questioning), the police can write down your words and use them against you in court. The best thing you can do if you have been arrested is to answer no questions and call an experienced defense lawyer immediately.

IF YOU ARE SUSPECTED FOR AND STOPPED FOR DRUNK DRIVING:

Contrary to what some people may think, there is no constitutional right to refuse a breath or chemical test to determine the level of alcohol in your body. You are deemed to consent just by the act of driving in New York State. If you've been stopped and arrested for drunk driving, you will be faced with the decision of whether to take such a test. On the one hand, refusing to take the test has its consequences: your license can be revoked merely for the refusal (even if you're perfectly sober); your refusal may be admissible as evidence of your guilt at a trial of the drunk driving charge; and some prosecutor's offices will not extend reduced plea offers on refusal cases. Accordingly, in New York, where there was no accident, no horrendous driving record, no prior drunk driving or other criminal record, and no evidence of wild or dangerous driving, it is usually most advisable to take the test. On the other hand, if you were involved in a serious accident or have prior drunk driving arrests, it may be advisable not to take the test and endure the revocation rather than provide evidence of your possible intoxication. In addition to the chemical test, the police will generally request you to submit to various physical performance tests, such as walking heel-to-toe and touching your finger to your nose. There is no legal obligation to take these tests. As the consumption of alcohol can impair your ability to perform these tests, it may be advisable to refuse to submit to any performance tests and thereby limit the potential evidence against you. It is also advisable to request the opportunity to contact a lawyer directly from the station house, or to call a friend or family member and ask him or her to immediately seek an experienced criminal defense lawyer. A criminal defense lawyer can often speak to the police who arrested you while you are in custody, thereby gathering information about the case even before it gets to court. He can then appear at your court arraignment to argue on your behalf.