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What is an arrest?

You have been arrested when a police officer or citizen takes you into custody or restrains you physically or verbally so that you may be held to answer for a crime or an offense; you may be taken into custody immediately or be given an appearance ticket similar to a traffic ticket.

Arrest warrants

A warrant for an arrest is a process issued by a court. It may be executed on any day of the week and at any hour of the day or night. The police officer must tell you that he is acting under the authority of a warrant. He also must show you the warrant, if you ask, and give you a chance to read it either at the time of the arrest, if it is in his possession, or as soon as he obtains it.

If you refuse to let him in, a police officer with an arrest warrant may break open a door or window to gain entrance, after he has given you notice of his authority and purpose or without notice if he reasonably believes that you will escape, destroy evidence or that notice will endanger him.

Arrest without a warrant

A police officer may arrest you without a warrant if:

(a) He has reason to believe that a crime, violation or offense is being committed or attempted in his presence.

(b) He has reason to believe that you committed a crime although not in his presence. Crimes include felonies and misdemeanors.

(c) He has reason to believe that you were lawfully arrested by a private person.

When making an arrest without a warrant a police officer must tell you the reason for the arrest, unless you are in the act of committing the crime or are being chased. In any arrest without a warrant, a police officer may chase you beyond his geographical area.

Citizen's arrest

A citizen may arrest you without a warrant if you have committed a felony in fact or if you have committed a non-felony in his presence. He must tell you the reason for the arrest unless that is impractical to do.

You may sue a private individual for unlawful arrest if you did not commit any crime, even if the individual had reasonable cause to believe you had committed a crime.

You may use reasonable force to resist an unlawful arrest being made by a private citizen.

If you are arrested by a private citizen you must be taken before a judge or turned over to a police officer "without unnecessary delay."

Use of force

If you resist an arrest, the police officer may use all necessary means to arrest you, including force.

Questioning without arrest

The law permits a police officer to approach any person in a public place to request information if he reasonably suspects that you are committing, have committed or are about to commit a crime. He may demand to know your name, address and an explanation of your actions.

You are not required to answer; the right to remain silent is guaranteed you by the Federal and New York State constitutions.

When you are lawfully arrested, your person may be searched. In addition, the immediate area of the place of your arrest may be searched.

If you are held for questioning by a police officer and he reasonably suspects that he is in danger, he may search you for weapons or instruments that could cause serious injury.

If he finds a dangerous weapon or instrument on you, he may keep it until he finishes questioning you. If he does not arrest you, he must give you back the weapon (provided you have a permit to carry it). If the police officer, while searching you for dangerous weapons, finds anything else on you which is a crime to possess, he may take it, and arrest you for possessing it.

Search warrants

In all situations, the police officer needs a warrant to search you, except where the search is incidental to a lawful arrest or under other specific circumstances where the search may be justified by law.

Anything unlawfully taken by the police may not later be used as evidence against you.

A search warrant is an order in writing signed by a judge directing a police officer to search a certain place and/or person for specified property and to bring that property to court. The warrant must describe the place and/or person to be searched and the property to be searched for.

The police officer has to show the search warrant and give notice of his authority or purpose before making entry and beginning to search. However, the warrant may authorize the police to break in and search without notice. A police officer can break in if you refuse to admit him after being given notice.

Anything unlawfully taken by the police may not later be used as evidence against you.

If you are taken into police custody (this includes juveniles) you have the following rights:

(a) You have a right to telephone your lawyer or to telephone your friends or family in order to notify them of your arrest.

YOUR RIGHTS IF ARRESTED

(b) You have a right to speak with your lawyer at the place where you are being held.

(c) You have a right to remain silent. This means you can remain completely silent or answer some questions and not others.

(d) Before the police question you, they must tell you (1) of your right to remain silent; (2) that any statement you make may be used as evidence against you; (3) that you have a right to first speak with a lawyer and, if you wish, to have a lawyer present when you are being questioned.

The police must also tell you that if you want to speak with a lawyer before questioning and you cannot afford a lawyer, one will be assigned without cost to you. The questioning must stop until you have a lawyer.

If you agree to allow the police to question you and they begin questioning you, you may still change your mind and ask for a lawyer before the police continue the questioning.

(e) You have a right to have your lawyer present if you are placed in a police line-up.

Arrest records

When you are arrested for felonies or misdemeanors, a record is made of your arrest. You will be fingerprinted and photographed. If you are found not guilty or the case is dismissed, you may apply for return of your fingerprints and photographs and the sealing of the record of that case.

If personal property or money is taken from you, you must be given a receipt showing the amount of money or the kind of property taken.

Once you are arrested and booked, you must be taken to court "without unnecessary delay." If the court is not then open, you may be held in custody until it is open.

Right to a lawyer

Your right to have a lawyer is a fundamental one at every stage of a criminal proceeding.

If you appear in a court without a lawyer, the judge must allow you a "reasonable time" to find

one before proceeding with the case, which usually means a few days. In addition, the judge must tell you of your right to use the telephone or to send a letter free of charge in order to get a lawyer and to tell a relative about your arrest.

Your right to have a lawyer is a fundamental one at every stage of a criminal proceeding.

If you do not have a lawyer at the time of your first appearance before the judge, you have the right to insist that the court assign you an attorney if you cannot afford one. If you have waived your right to counsel earlier and you now decide you want one, you may exercise your right at this stage.

Depending on the local plan in effect for providing a lawyer in such cases, you may get a private attorney, or you may be assigned someone from a legal aid society. A public defender will be assigned if your community has one.

This pamphlet, which is based on New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney who knows criminal law and court rules, because the facts of each individual case are different and may change the application of the law. Produced by the New York State Bar Association Committee on Public Relations in cooperation with the Criminal Justice Section.



New York State Bar Association

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