

reasonable period of time without booking (more than several hours or perhaps overnight), your attorney may go to a judge and obtain a writ of habeas corpus. This is a Court order instructing the police to bring you before the Court so that a judge may decide whether you are being held lawfully.

OBTAINING RELEASE ON BAIL

Bail is the money or other security you deposit with the Court as an assurance that you will appear for trial. The Court will accept property (real estate) as bail provided certain detailed conditions are fulfilled. You have a right to apply for and post bail as a means of obtaining your release from custody. The Court will normally set bail, even with a charge of murder or other serious crimes, except for the following offenses where the proof is evident or the presumption is great that the person is guilty of the crime:

- capital offenses;
- offenses that carry a potential sentence of imprisonment for life as a consequence of conviction;
- felony offenses that carry a potential sentence of imprisonment for life, without conditional and revocable release, as a consequence of conviction, where the court after a hearing, determines that the release of the defendant would pose a real and present threat to the physical safety of any person or persons;
- stalking or aggravated stalking, where the court, after a hearing, determines that the release of the defendant would pose a real and present threat to the physical safety of the alleged victim and denial of bail is necessary to prevent fulfillment of the threat of further incidents of stalking;
- the unlawful use of weapons when that offense occurred in or within 1,000 feet of a school or in any conveyance owned, leased, or contracted by a school

to transport students to or from school or a school-related activity, where the court, after a hearing, determines that the release of the defendant would pose a real and present threat to the physical safety of any person and denial of bail is necessary to prevent fulfillment of that threat; or

- making a terrorist threat or an attempt to commit the offense of making a terrorist threat, where the court, after a hearing, determines that the release of the defendant would pose a real and present threat to the physical safety of any person and denial of bail is necessary to prevent fulfillment of that threat.

In Illinois, the police may release you on bail if you deposit 10% of the amount of bail.

If there is a warrant for your arrest, the amount of bail will be stated on the warrant. Upon being arrested, you have the right to be brought before a judge without unnecessary delay in order to be informed of the charges against you and to have bail set. For minor offenses, you may be released on your own recognizance, or in other words on your promise that you will appear in court on the necessary dates instead of on monetary bail.

YOUR RIGHTS IN COURT

You have a right to a reasonable time to prepare a defense before being tried in Court. Whether or not you declined your right to be represented by counsel during police interrogation, you have the right to be represented by an attorney in all court proceedings. You are entitled to a reasonable time to obtain a lawyer of your own choosing. If you want a lawyer and cannot afford one, the Court must appoint one to defend you.

You are entitled to know the charge against you and to have, without cost, a copy of the formal paper that contains the charge.

You are entitled to plead “not guilty.” If you choose to do so, you will be tried by an impartial

jury unless you specifically waive your right to a jury trial.

You are not required to testify if you do not wish to do so. If you do not testify, neither the judge nor the jury can consider your silence as evidence of guilt. In the eyes of the law, you are innocent unless proven guilty beyond a reasonable doubt by the evidence presented in Court by the prosecution.

If you are not a U.S. citizen, the judge must inform you, before accepting a guilty plea, that a criminal conviction could result in immigration consequences, including immigration detention (custody) and removal (deportation) from the United States.

How you plead and whether you testify are vitally important questions and you should have the advice of a lawyer.

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For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call Illinois Lawyer Finder at (800) 922-8757 or online www.IllinoisLawyerFinder.com

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ILLINOIS BAR CENTER
424 S. Second Street
Springfield, IL 62701-1779
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11/15

Consumer Legal Guide



Your Guide to Your Rights If Arrested



**ILLINOIS STATE
BAR ASSOCIATION**

ASK A LAWYER

YOUR RIGHTS IF ARRESTED

If you are arrested, it is important that you know and assert your constitutional rights. An informed and alert citizenry is the best guarantee that these rights will be upheld for the benefit of all persons at all times.

The basic rights of a citizen under arrest are stated in the Fifth, Sixth, and Eighth Amendments of the “Bill of Rights” of the United States Constitution.

- “No person...shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law.” (Fifth Amendment).
- “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.” (Sixth Amendment).
- “Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted.” (Eighth Amendment).

Since the adoption of the Fourteenth Amendment to the Constitution, the states have also had to guarantee these rights. This amendment provides: “No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States.”

Many of the provisions found in the “Bill of Rights” of the U.S. Constitution also appear in the “Bill of Rights” of the Illinois Constitution. The following discussion is based upon both constitutions and upon other laws governing the citizens of this state.

WHO CAN MAKE AN ARREST

Any law enforcement officer such as a police officer, sheriff, deputy sheriff, or state trooper can make a lawful arrest. The arrest may be made with or without a warrant, depending on the circumstances.

A warrant is an order issued by a magistrate or a judge describing the person to be arrested and the charge(s) against that person. It directs all law enforcement officers of the state—or in some cases authorizes a private citizen—to arrest the person named in the complaint.

A law enforcement officer must have a warrant for your arrest unless one of the following circumstances exists:

- The law enforcement officer has reasonable ground to believe that a warrant for your arrest has been issued in this state or in another jurisdiction.
- You committed or attempted to commit a crime in the presence of the officer.
- The officer has probable cause to believe both that a crime has been committed and that you are the person who committed it.

Regardless of whether the arrest is made with or without a warrant, the arrested person should be brought before the nearest and most accessible judge in that county without unnecessary delay.

CITIZEN'S ARREST

A private citizen may make an arrest under certain circumstances. The law permits a citizen to detain or place under arrest another person when that citizen has probable cause to believe that a criminal offense other than an ordinance violation is being committed. The law does not permit, however, a citizen to detain or arrest another person based on the mere suspicion that a crime is being committed; the citizen must have personal, firsthand knowledge of the commission of the offense. All the person making the arrest

has to do is prevent the accused from leaving the area. For example, a person executing a citizen's arrest may take the accused by the arm and say something like, “Stop. I'm holding you for the police.”

WHAT NOT TO DO IF ARRESTED

Do not resist a law enforcement officer who attempts to arrest you—even if you are innocent. The fact that you are innocent will not make the arrest illegal if the officer's action conform to the requirements of a legal arrest as stated above.

If the arrest is legal and you resist, you could be charged with resisting a lawful arrest, which is a Class A misdemeanor that could result in up to one year in prison and a maximum fine of \$2,500. If the arrest is illegal, you are entitled to bring an action against the law enforcement officer for false arrest.

It is best not to resist a citizen's arrest, although you cannot be prosecuted for resisting arrest. You may, however, be charged with assault and battery.

The person making a citizen's arrest cannot be liable for damages for false arrest if he or she had probable cause to believe that a crime had taken place and that you are the person who committed it.

Do not resist a law officer's attempt to search or “frisk” you. It is legal for an arresting officer to search your person and the area in your immediate presence once he or she has arrested you.

Even if he or she does not arrest you, a police officer—upon identifying him or herself—may stop you in any public place if he or she has reason to believe that you have committed, are committing, or are about to commit a crime. The officer may demand your name and address as well as an explanation of your actions. If he or she reasonably suspects that there is a danger of being attacked, he or she may search you for weapons only.

YOUR RIGHTS AFTER ARREST

The U.S. Supreme Court has ruled that as soon as you are taken into custody, you must be informed of the following, commonly known as your Miranda rights:

1. You have the constitutional right to remain silent.
2. Anything you say can and will be held against you in a court of law.
3. You have the right to an attorney; if you cannot afford an attorney, one will be appointed for you.
4. If you choose, you may have your attorney present during interrogation.

In addition to advising you of your rights, the arresting authorities must respect your rights. For example, you cannot legally be required or forced by a police officer or anyone else to talk, to answer questions, or to sign any papers. If you are forced to give incriminating information by threats, by persistent questioning, or by any other means of coercion, you can prevent its use against you in court.

Within a reasonable time after you have been taken into custody, you have a right to make a reasonable number of telephone calls or otherwise communicate with an attorney of your choice and a member of your family. If you are transferred to a new place of custody, this right of communication is renewed. If you are not a U.S. citizen, you must be informed within 48 hours of booking or detention of your right to contact your local consulate or embassy. Consular officials may visit you, help you arrange for legal representation, and contact your family.

You have a right to an itemized receipt for all money and property taken from your person after you are taken into custody.

You have a right to be “booked” within a reasonable period of time. “Booking” is the entry of a charge against you in a record called the “arrest book” or “police blotter.”

Should your detention go beyond a