

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, unless the proof is evident or the presumption is great that the person is guilty of the crime.

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.

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. For certain minor offenses the amount of bail is fixed by a judge and you have a right to be brought before a judge for that purpose at the next regular Court session. Or, you may be released on your own recognizance - that is, your own word that you will keep your date in Court.

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 counsel in Court. 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 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.

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 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.

If you're looking for an Illinois lawyer, look to **IllinoisLawyerFinder.com**



IllinoisLawyerFinder.com is the Illinois State Bar Association's statewide lawyer directory on the Web. Search for lawyers by practice area, name, county or town.

Find a lawyer near you 24/7 on the Web at **IllinoisLawyerFinder.com** or call us from around the state at **217-525-5297** or **800-922-8757** Monday through Friday from 9:00 a.m. to 4:00 p.m.



**ILLINOIS STATE
BAR ASSOCIATION**

Copyright, Illinois State Bar Association 2008

This pamphlet is prepared and published by the Illinois State Bar Association as a public service. Every effort has been made to provide accurate information at the time of publication.

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**

Pamphlets Available

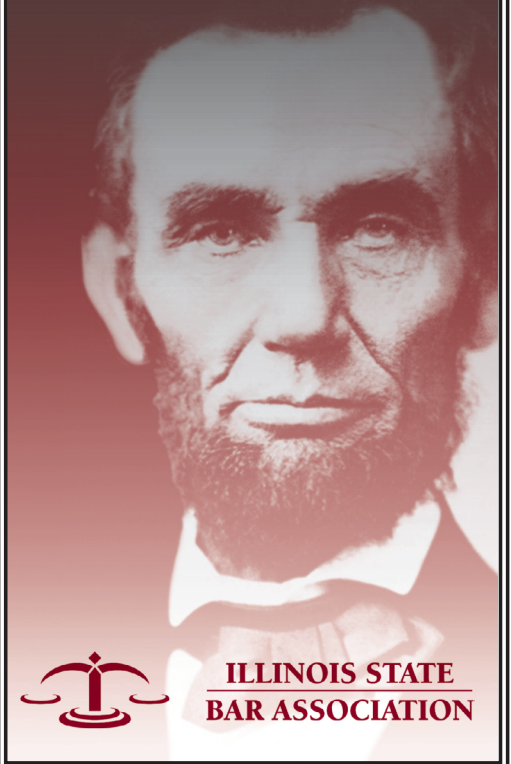
Adoption
Advice to Newly Marrieds
Auto Accidents
Automobile Insurance and Accidents
Bankruptcy for Individuals
Being a Guardian
Buying a Car
Buying a Home
Buying on Time
Estate Planning
General Practitioner
Getting a Divorce
Guide to Jury Service
Health Care Privacy
Landlord-Tenant
Law-Related Careers
Patients' Rights
Rights of Gays, Lesbians, BiSexual and Transgender
Selling a Home
Starting a Business
What is a Living Trust
Your Guide to Illinois Traffic Courts
Your Health Care
Your Rights if Arrested

For more information on legal issues or to obtain single copies of each of the pamphlets listed above (free to individuals), please visit **www.ISBALawyers.com**

ILLINOIS BAR CENTER
424 S. Second Street
Springfield, IL 62701-1779
www.isba.org

Consumer Legal Guide

Your Guide to Your Rights If Arrested



**ILLINOIS STATE
BAR ASSOCIATION**

YOUR RIGHTS IF ARRESTED

If you are a law-abiding citizen, your chances of being arrested are slight. It is important, though, that you know “Your Rights If Arrested.” 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 policeman, sheriff, deputy sheriff or state trooper can make a lawful arrest. The arrest may be made with a warrant or, under certain circumstances, without a warrant.

A warrant is an order describing the person to be arrested and the charge made; it is issued by a magistrate or judge upon the complaint of someone. It directs all law enforcement officers of the state or, in some cases, authorizes a private person by name to arrest the person named in the complaint. The arrested person is to be brought before the Court issuing the warrant or, if that is not possible, before the most accessible Court in the same county.

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 reasonable ground to believe both that a crime has been committed and that you are the person who committed it.

CITIZEN’S ARREST

A private citizen may make an arrest under certain circumstances. The law permits a citizen to detain, or place under arrest a person who commits or attempts to commit a criminal offense in his presence other than an ordinance violation. All the person making the arrest has to do is prevent the accused from leaving. He may take the person 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 conformed to the requirements of a legal arrest as stated above.

If the arrest is legal and you resist, you may be guilty of the crime of resisting lawful arrest. 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 can’t be prosecuted for resisting arrest. You may be found guilty of assault and battery.

The person making a citizen’s arrest cannot be liable for damages for false arrest if he had reasonable ground for believing a crime had taken place and 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.

Even if he does not arrest you, an officer - after identifying himself - may stop you in any public place if he has reason to believe that you have committed, are committing or are about to commit a crime. He may demand your name and address and an explanation of your actions. If he reasonably suspects that he or another is in danger of being attacked, he may search you for weapons.

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:

1. You have a Constitutional right to remain silent.

2. Anything you say can be held against you.
3. You have the right to legal counsel and that if you cannot afford a lawyer, one will be appointed for you.
4. If you choose, you may have a lawyer 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 any one else to talk, to answer questions, or sign any papers. If by threats, by persistent questioning or other means of coercion, you are forced to give incriminating information, 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 without delay 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 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

You have a right to apply for and post bail