

FREQUENTLY ASKED QUESTIONS REGARDING CRIMINAL ARREST

When Are You Under Arrest?

You are arrested when law enforcement officers take you into custody or otherwise deprive you of your freedom of movement in any significant way, in order to hold you to answer for a criminal offense. Police officers, under Florida law, are obligated to identify themselves and to advise you that you are under arrest and why, unless circumstances make it impossible for them to do so at that time. You may, in fact, be under arrest even though no one has actually used the word “arrest” or any other comparable word. The fact that you have been deprived of your freedom of movement in some significant manner may amount legally to an arrest. Ordinarily, private citizens do not have power of arrest in Florida; but under limited circumstances a private party may make an arrest where an actual commission of a felony is involved (§ 901.16 and § 901.17, Fla. Stat.).

If Someone Is Arrested For A Criminal Offense, What Does He Or She Have A Right To Expect From The Arresting Officer(s)?

If arrested, you can expect to be searched for weapons by the police and taken to jail (§ 901.21 and § 901.211, Fla. Stat.). If questioned, you will be advised of your rights under the United States Constitution, in what is commonly called Miranda warnings. As soon as you request an attorney, all questioning must stop. If you do not wish to answer questions you must state that you are invoking your right to remain silent. Once this right is invoked, all questioning must stop. Some important rights to remember are the right to remain silent; no one can be forced to incriminate himself/herself. Another important right is the right to the presence of an attorney WHILE being questioned (§ 901.24, Fla. Stat.).

- You have a right to know the crime or crimes with which you have been charged.
- You have a right to know the identity of the police officers who are dealing with you.
- You have the right to communicate by telephone with your attorney, family, friends, or bondsperson as soon after you are brought into the police station as practicable. The police have a right to complete their booking procedures before you are allowed to use the telephone.

What Basic Things Should A Person Remember If Arrested?

You should remember your right to have an attorney present. Once you have identified yourself, you may refuse to make any statement or discuss the case with anyone. On the other hand, you may choose to answer questions or sign papers. However, any information you give can be used as evidence against you in court. Law enforcement officers cannot force or threaten you into answering questions and cannot offer leniency in exchange for any written or oral statements. If you want to remain silent and end an interrogation you have to break your silence and state just that, that you want to end the interrogation. Otherwise the police can just keep shooting questions at a person who refuses to talk as long as the police want, in hopes that the person will crack and give them some information. Yes, this

might be confusing, just recall that if you want to remain silent you have to speak up to end the interrogation.

How Soon After An Arrest Must A Person Appear Before A Judge?

If you are arrested and placed in jail, an “initial appearance” before a judge must occur within 24 hours of your arrest. At an initial appearance, you will be apprised of the charges against you and asked if you understand the charges. In most cases bail will be set and you will be asked if you can afford an attorney. Depending on the charge, you might be permitted to enter a guilty or no contest plea at first appearance. (Florida Rule of Criminal Procedure 3.130.)

What If A Person Cannot Afford To Hire An Attorney?

If you cannot afford an attorney, the judge will appoint an attorney from the Public Defender’s Office to represent you. An attorney from the Public Defender’s Office will be in court and you will be given an opportunity to briefly speak with him/her (Florida Rule of Criminal Procedure 3.111.)

What Does It Mean To Be Released On Bail?

Bail is designed to guarantee your appearance in court. Unless charged with a capital offense or an offense punishable by life imprisonment, and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinances shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure your presence at trial or assure the integrity of the judicial process, you may be detained. The court will require that a specific amount of money be deposited with the clerk of the court or sheriff (Chapter 903, Fla. Stat.). Sometimes the court allows deposit of a bond or title to a vehicle or home. Usually a member of the family must get the money, give the money to the clerk or sheriff and then show the receipt in order to get you released. Private bail bondspersons can be called from the jail (Florida Rule of Criminal Procedure 3.131.)

Is It True, A Seemingly Minor Action Would Be A Felony In Florida?

Yes. For example, if you falsely apply for an I.D. or unlawfully spray a fire extinguisher, or falsely report child abuse.

Can A Person Younger Than 18 Be Treated As An Adult With Criminal Sanctions Such As A Prison Sentence?

Yes. It depends on the seriousness of the offense and the age of the person charged (§ 985.556, § 985.557, and § 985.565, Fla. Stat.).

Can My Juvenile Record Be Used Against Me After I Become An Adult?

Yes. All prior criminal acts may be considered for sentencing purposes (Chapter 921, Fla. Stat.).

Can I Have My Record Sealed Or Expunged?

Maybe, depending on your charge, as well as your prior criminal record. Further, certain conditions and exceptions apply. For example, sealing your record only restricts access by the general public. Federal, state, county and city agencies may still access your criminal history record. Expunction of your record totally removes your criminal record, however agencies will be able to know that the criminal record has been removed, and can obtain the record through a court order. There are other exceptions where you may not deny or fail to acknowledge a sealed or expunged criminal incident. In addition, sealing or expunging your record in Florida may have no impact on private company or federal databases. Your record may still be available through private companies that purchase such information from the state and counties. Employers and the general public may still have access to these records through the private companies. While an individual may lawfully deny or fail to acknowledge the sealed or expunged criminal information, there are numerous exceptions to the rule. For more information on sealing or expunging your criminal record, please visit <http://www.fdle.state.fl.us/content/getdoc/c83dd888-ef7a-448e-9a96-ba69fc4181f7/Seal-and-Expunge-Home.aspx> External Link.

What are the penalties for a fake ID?

It depends on the ID itself. If you present another's true ID with their permission as your own, you risk a second degree misdemeanor. Penalties include up to: an arrest, a maximum jail sentence of up to 60 days and/or 6 months probation, and a \$500.00 fine (§ 322.32, Fla. Stat.). If you possess a forged (altered) or counterfeit (falsely produced) ID, or possess a stolen ID, you risk a third degree felony. Penalties include up to: an arrest, a maximum of 5 years prison and/or probation, and a \$5000.00 fine (§ 322.212, Fla. Stat.)