

## PRELIMINARY HEARING OR GRAND JURY

In felony cases (criminal charges that involve a sentence of one or more years in prison), a preliminary hearing will be conducted by a judge within 30 days of your arrest. During the preliminary hearing, you are entitled to be represented by an attorney. If you cannot afford an attorney, the judge will appoint one to represent you at the preliminary hearing.

During the preliminary hearing, the state's attorney (the prosecutor) must present sufficient evidence to show that there is probable cause to proceed with the criminal charges filed against you. Probable cause means that there are reasonable grounds to believe that a crime has been committed and that you are the person who committed that crime. If the judge finds no probable cause, the criminal complaint against you will be dismissed; however, if the State obtains additional evidence against you at a later date, the charges against you may be reinstated.

In felony cases, instead of the court holding a preliminary hearing, the State may submit criminal allegations to a grand jury for a determination of probable cause. The grand jury is a special group of citizens that hears testimony and reviews evidence presented by law enforcement officers and the State regarding the criminal allegations made against you. If the grand jury finds probable cause exists, the State is authorized to proceed with felony charges against you.

## HOW TO FIND AN ATTORNEY

When you are charged with a crime, you should be represented by a trained criminal defense lawyer. The Chicago Bar Association can assist you in obtaining a qualified criminal defense lawyer to prepare your case. Call The Chicago Bar Association Lawyer Referral Service at (312) 554-2001.

This pamphlet is based on Illinois law as of the copyright date of this pamphlet, and was written to provide you with general information about Illinois criminal law. It is not intended as legal advice and does not constitute an attorney-client relationship. If you have questions about any information in this brochure, or a specific criminal law matter, please call The Chicago Bar Association Lawyer Referral Service at (312) 554-2001.

### Looking for an Attorney?

The Chicago Bar Association Lawyer Referral Service makes referrals to experienced lawyers in all areas of the law, including adoption, wills and estate planning, consumer fraud, employment law and real estate.

For referral to a lawyer right away:

- Call (312) 554-2001  
(M-F, 9:00 a.m. - 12:00 noon, 1:00 - 4:30 p.m.)
- [www.chicagobar.org](http://www.chicagobar.org) (24 hrs.)



Reprinted April 2008.

Special thanks to YLS volunteers Justin Heather, YLS Editor-in-Chief, and Danielle Parisi, for updating the 2008 version of this brochure.

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# Your Rights If Arrested: What to do if you are arrested, bail/bond, preliminary hearing information and how to find an attorney

# Your Rights If Arrested



A public service pamphlet by the Young Lawyers Section of The Chicago Bar Association

## WHEN YOU ARE UNDER ARREST

You are under arrest when you are not free to leave the custody of law enforcement officers. The police do not have to read you your rights at the moment of arrest and they do not have to say, "You are under arrest," in order for you to be considered under arrest. When you are in police custody and not free to leave, you have the right to remain silent, as anything you say can and will be used to charge you with a crime.

## WHO MAY ARREST YOU

Any law enforcement officer, such as a policeman, detective, sheriff deputy, or state trooper, may arrest you, and you may be taken into custody with or without a warrant. A warrant is an order naming the person to be arrested and stating the charge made against that person. A judge issues a warrant and directs all law enforcement officers of the State to make the arrest. A private citizen, under certain circumstances, can also detain or arrest a person who commits, or attempts to commit, a criminal offense in his or her presence. A law enforcement officer may arrest you without a warrant in the following cases:

- The officer has reasonable grounds 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 grounds to believe that a crime has been committed and that you are the person who committed that crime.

## WHAT YOU SHOULD DO IF YOU ARE ARRESTED

If you are stopped or detained by law enforcement, you should provide your true name, age, date of birth, and current address upon request. Never resist, or run or hide from, law enforcement officers attempting to take you into custody. You do not have the right to resist an arrest, even if the arrest is unlawful. Do not resist a law enforcement officer's attempt to search or frisk you. It is legal for an arresting officer to search you and the area in your immediate control.

You have the right to remain silent - to say nothing to the police - and to refuse to take a polygraph ("lie detector") test. However, you cannot refuse to be placed into a line-up. If you choose to remain silent, and refuse to answer questions and give information concerning the facts of a crime, your decision to remain silent cannot be used against you in any way.

You have the right to have a lawyer present while you are being questioned. You should contact a lawyer as soon as possible following your arrest. If law enforcement officers prevent you from contacting a lawyer, remain silent and refuse to answer any questions.

Remember, what you say to anyone except for your attorney can and will be used to file criminal charges against you or be used against you in any criminal case, if you are charged with a crime. This includes statements made to police and other law enforcement officers as well as other individuals, such as State's attorneys (prosecutors). If you do not have a lawyer, you can obtain the assistance of a lawyer through The Chicago Bar Association Lawyer Referral Service by calling (312) 554-2001. If you cannot afford a lawyer, the court will appoint one for you at your first court appearance. At the police station immediately after your arrest, however, the police will not provide a lawyer for you, even if you cannot afford one.

## AFTER YOUR ARREST

You have the right to an itemized receipt for all money and property taken from you after you are arrested. If you are detained for an extended period of time, an attorney may seek a writ of habeas corpus from the court. 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. If you are not charged with a crime, you will be released from the police station without charges.

## BAIL/BOND

If you have been arrested and charged with a crime, an appropriate bail (commonly called "bond") may be set for you and you may be released. Bail is the amount of security (cash or real estate) pledged by you to guarantee that you will return to court for all hearings in your case while criminal charges are pending against you. Courts often permit you to be released on bail,

unless you have a history of missing court dates or are charged with a very serious crime and are considered a risk either to flee or to the community. As long as you comply with the conditions of your bond, the entire amount will be returned to you at the end of your case.

In felony and domestic violence cases, bail is set by a judge at a bail hearing, so you should ask the police where and when the bail hearing will take place. As soon as you find out the time and place of the bail hearing, you should call a family member, friend, or lawyer and provide them with that information. In misdemeanor cases, except domestic violence cases, the Illinois Supreme Court's Rules regarding Bail Schedules generally set and govern bail amounts, in order for the police to determine the proper bail amount and release you directly from the police station.

During a bail hearing, the prosecutor will inform the judge of the charges against you and your criminal background, if any. Your lawyer can provide the judge with your brief personal history. Based on this, the judge will set bail. You cannot present your defense to the criminal charges at a bail hearing, and anything you say during this hearing can be used against you at the trial.

Most of the time the judge sets a Discount Bond, also known as a "D Bond." You or someone on your behalf must pay 10% of the D Bond amount before you will be released from custody. (For example, a \$5,000 bond requires \$500 in cash or security to be paid.) If the judge sets a Cash Bond ("C Bond"), the total bail amount must be paid for you to be released from custody. Sometimes, often in very serious cases, the judge may decide that you can be held with "no bond," which means that you cannot be released from custody before trial. Finally, if the judge sets an Individual Bond, or "I Bond," you will be released from custody without having to actually any money.

You, or someone on your behalf, can deposit the required bail amount at the location where bond is set or at the county jail. In addition to attending all court hearings, you must follow any other conditions of bail that the judge imposes. Common conditions may include a curfew, travel restrictions, or an order to stay away from certain person(s) and/or certain location(s). If you violate any of the conditions of your bail, your bond may be increased or revoked.