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## WHAT IS AN ARREST?

An arrest is the actual restraint of an individual or an individual's submission to the custody of a law enforcement officer. If arrested, you have legal rights that protect you from being treated unfairly.

## IF YOU ARE ARRESTED

Remember, anything you say may be used against you in court.

You have a right to:

- Refuse to answer any questions or stop answering questions at any point.
- Consult a lawyer. If you cannot afford a lawyer, one will be appointed for you by the court.
- A bond hearing.
- Notify family or friends.

When arrested, you should not:

- Resist a law enforcement officer.
- Talk back to the officer or be disorderly.
- Refuse entry for a lawful arrest or search by a law enforcement officer.

## **ADDITIONAL LEGAL TIPS AVAILABLE**

*To access prerecorded information on other legal issues, call the South Carolina Bar's LawLine. If you are calling from the Columbia area, dial 771-0011. If you are calling from anywhere else in South Carolina, dial 1-800-521-9788. Follow the recorded instructions.*

## **SOUTH CAROLINA BAR LAWYER REFERRAL SERVICE**

*If you need a lawyer, contact the South Carolina Bar Lawyer Referral Service from 9:00 a.m. to 5:00 p.m. Monday through Friday. Call 1-800-868-2284 or if you are in Richland or Lexington Counties, call 799-7100.*



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*P.O. Box 608, Columbia, SC 29202  
(803) 799-6653; Fax: (803) 799-4118  
<http://www.scbar.org>*

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# GETTING ARRESTED



# AND THE LAW

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## **FOR WHAT CAN YOU BE ARRESTED?**

You can be arrested for the violation of any criminal law, often classified as a felony, a misdemeanor or an infraction. A felony is a serious crime such as murder, burglary or robbery. Felonies may be punishable by fine, imprisonment or, in the case of capital murder, death. A misdemeanor, or any crime not classified as a felony, is punishable by fine or imprisonment. Examples include simple assault, driving under the influence, trespassing or minor drug charges. An infraction is a violation of an ordinance or regulation, such as traffic rules.

## **WHAT IS A WARRANT?**

A warrant is a court order issued by a magistrate or municipal judge based on sworn information showing probable cause that you have committed a crime. The information may be supplied by a law enforcement officer or any citizen. The warrant requires that an individual be arrested and brought before a judge. If an officer has a warrant for your arrest, the officer must tell you this, give you a copy and tell you why you are being arrested.

Do not resist arrest. If you do, the officer may use any necessary force to arrest you, such as breaking open a door or window. However, after you have been restrained, the officer cannot continue to use force. Even if you are not guilty, it is a crime to resist arrest. In the end, if you have been arrested illegally, you may be able to file a suit for false arrest.

## **MUST YOU SUBMIT TO A SEARCH OR TEST?**

After a lawful arrest, an officer has a right to search you and your belongings, including your car if you are arrested in it. However, the officer generally has no legal right to then go to your home to search it unless a search warrant is granted by a judge or you give your permission for that search.

If an officer has reasonable cause to believe you are operating a motor vehicle under the influence of alcohol or drugs, South Carolina law requires you to consent to a Breathalyzer test. You may demand the opportunity to take a blood test too, but at your own expense. If you cannot give a breath sample because of injuries or unconsciousness, a blood or urine sample may be

taken. You may refuse the breath, blood or urine test, but if you do, your driver's license may be suspended for 90 days even if you are not guilty of a crime. If you submit to the test, the results may be used in evidence. A refusal is also admissible.

## **WHAT ARE YOUR RIGHTS AFTER ARREST?**

After being arrested, you are taken to a police station. A record of your arrest and the charge must be entered promptly in an "arrest book." Your constitutional right to remain silent allows you to refuse to answer any questions, sign any statements or take any tests concerning the crime without a court order. You may have the assistance of a lawyer at all times. If you cannot afford a lawyer, one will be appointed for you. You may waive these rights and make statements, sign papers and take any tests. But remember, any information obtained from you voluntarily, and without the use of force or intimidation, may be used against you in court. You may still refuse to answer questions at any time, even if you have already answered questions.

A verbal or written admission of guilt is a confession and may be used as evidence during a trial. A law enforcement officer has no legal authority to induce you to confess or admit guilt either by force, threats or promises of leniency or no prosecution. The promise of an officer to help you or to intervene with the court in exchange for a confession is not binding but may be considered on the issue of voluntariness.

## **BAIL**

After you are arrested, you have the right to a prompt bail hearing. Bail is the posting of money, property or other security to ensure your appearance in court. Some cases require security, and some require only a personal guarantee. In South Carolina, you may be released by signing your own personal recognizance bond, unless a judge finds that your release is unreasonably dangerous to the community or that you may not return to court voluntarily for your trial. In most cases, you are entitled to bail in an amount and under conditions set by the judge.

Once bail terms are set, any person with security acceptable to the court may post bail. If a family

member or friend cannot post your bail, a professional bondsman may do so for a fee. Make sure you know and understand the cost of this bond and that it is nonrefundable. A list of bondsmen is often kept at police stations. Under certain circumstances, the judge may allow you to post 10 percent of the bail with the court. This is refundable.

It is a crime for a bondsman to refer you to a lawyer.

In most cases, you may be released on bail and remain on bail until the case is called for a plea or trial.

## **WHAT ARE YOUR RIGHTS IN COURT?**

At the bail hearing, the court must inform you of the charge and of your right to have a lawyer and a preliminary hearing in cases in general sessions court. You must be allowed reasonable time to obtain a lawyer. If you cannot afford to hire a lawyer, the court must appoint one for you.

You may also request a preliminary hearing. If you do not request a preliminary hearing, you have waived that right. At this hearing, if the judge finds there is sufficient evidence that you committed the crime, he or she will hold you for grand jury action and a trial in general sessions court. If not, your case will be dismissed.

## **WHAT HAPPENS IN COURT?**

When you are required to appear in municipal or magistrate's court, you must enter a plea of guilty or not guilty. If you plead guilty, you will be sentenced. If you plead not guilty, you may be tried either by a judge or a jury. You or your lawyer must request a jury trial at this time.

If you are required to appear in general sessions court, you can plead guilty or not guilty. If you plead guilty, your plea will be taken, and you will be sentenced at a designated time. If you plead not guilty, your case will be scheduled for a jury trial at a future date. You must notify the court and your lawyer of any changes in your address so they can let you know when your case is scheduled.

Everyone is entitled to plead guilty or not guilty. The burden is on the state to prove guilt beyond a reasonable doubt. Remember, every person is presumed innocent until proven guilty.