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Chronology: The Arrest Process

When someone is arrested by the police, a specific series of events follows. The police must follow legal procedures during the actual arrest process, and at many other stages along the way to actually placing a suspect in jail.

An arrest occurs when police take you into custody and is complete the moment you, as the suspect, are no longer free to walk away from the arresting officer.

In 1966, the U.S. Supreme Court ruled in *Miranda v. Arizona*, that individuals who are under arrest for suspicion of having committed a crime have certain rights that must be explained to them before any questioning may occur. The rights are designed to protect your right to be free from self-incrimination under the Fifth Amendment to the U.S. Constitution. There are five different rights, known as the "*Miranda Rights*":

1.
You have the right to remain silent and to refuse to answer questions.
2.
Anything you do say may be used against you in a court of law.
3.
You have the right to consult an attorney before speaking to the police and to have an attorney present during questioning now or in the future.
4.
If you cannot afford an attorney, one will be appointed for you before any questioning if you wish.
5.
If you decide to answer questions now without an attorney present, you will still have the right to stop answering at any time until you talk to an attorney.

Note: *Miranda rights must only be read when an individual is in police custody and is under interrogation. Therefore, if the police stop you to give you a traffic ticket, and you start explaining to them why you were speeding, you cannot later protest that you were not read your Miranda rights. While the police may have been "interrogating" you in a certain sense, you were not in police custody.*

If you are stopped by the police, they may frisk you by performing a "pat-down" of your outer clothing in order to determine if you are concealing a weapon. Later, after your arrest, they may perform a full-blown search of your person and immediate surroundings to ensure that you do not have any weapons, stolen items, contraband, or evidence of a crime. If the police take possession of your car, it may be searched as well.

In many jurisdictions, you have the right to make a telephone call, or calls, once you are placed into custody. In some states, you are only allowed to call someone in order to secure a lawyer or to arrange for bail, although you may be able to call a family member or friend to help you make those arrangements. Generally, you are not entitled to make a telephone call until after you have been booked.

The police may take any personal property or money that you have with you and put it in a safe place after performing an inventory. The police will ask you to sign the inventory and, after reviewing it, you should do so if you agree with the contents of the inventory.

Once you are arrested, you will be booked. During the booking procedure the police will ask you for basic information about yourself (such as your address and birthdate), and fingerprint and photograph you. You may also be asked to participate in a line-up, give a handwriting sample or do similar things.

If you are detained but not booked within a reasonable period of time (usually several hours, or overnight) your attorney may go to a judge and obtain a writ of habeas corpus. A *writ of habeas corpus* is an order issued by the court instructing the police to bring you before the court so that a judge may decide if you are being lawfully held.

Once you are arrested by the police, the information will be provided to the appropriate prosecutor's office. The prosecutor will then review the information before making an independent decision as to what charges should be filed.

Note: *If you have been arrested for a felony, a prosecutor may enlist the services of a grand jury to review the available information in order to determine what crimes you should actually be charged with.*

If you are placed in custody, you have the right to a "speedy trial," which usually means that the prosecutor must decide within 72 hours which charges, if any, will be filed. A prosecutor is not bound by the initial charge decision, but may later change the crimes with which you will be charged once more evidence is obtained.

Note: *The required time in which a prosecutor must make a charge decision varies from jurisdiction to jurisdiction. While many state laws require the decision to be made within 72 hours, other states, such as California, require that the decision be made within 48 hours after you are taken into custody.*

You will have an appearance in court called an *arraignment* at which point the charges against you will be read and you will be asked whether you plead guilty or not guilty.

Note: *A third possible type of response to an indictment is that of "nolo contendere" or "no contest." Nolo contendere is not strictly a plea, but means that you do not contest the charges made by the government. The plea of nolo contendere cannot be used in other aspects of the criminal trial as an admission of guilt, but can be used only in the indictment phase as an implied confession of the specific offense charged and an admission of the facts stated in the indictment. A plea of nolo contendere is only accepted by a judge if they feel that it is being made voluntarily and intelligently.*

If you are placed in jail, you may be able to get out prior to your trial if you "post bail." *Bail* is money you pay to the court in order to ensure that you will appear in court when told to do so. If you do appear as required, the bail will be refunded to you. If you do not show up, the court keeps the money and can issue a warrant for your arrest.

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Bail may be paid in cash or in a cash equivalent. You may also be allowed, depending upon the circumstances, to post a bond. A bond is a guarantee of payment of the full bail amount should the need arise. In other situations, you may be allowed to be "released on one's own recognizance." This means that the payment of bail is waived on condition that you appear in court when required. This is generally only used in crimes which are minor in nature or where the judge is of the opinion that you are a trustworthy individual who is unlikely to flee the jurisdiction.

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Not every arrested individual is entitled to bail. In particularly heinous crimes, or where there is a risk that the defendant will flee the jurisdiction or harm members of the public, bail may be denied and the defendant will be kept in jail as a "pre-trial detainee." You may also be considered a "pre-trial detainee" if you are unable to post bail for your release.

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The judge is responsible for setting your bail. In many jurisdictions, there is a pre-set schedule listing the bail amounts for particular crimes. In other situations, bail may be determined on a case-by-case basis. The Eighth Amendment to the U.S. Constitution requires that bail not be excessive.

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