**KNOW YOUR LEGAL RIGHTS**

**What to do if you have been arrested in Wisconsin**

By Michael A. Forella III

Being arrested is one of the worst things that can happen to someone. It often results in criminal charges, loss of liberty, stress, and financial obligations, amongst many other negative ramifications. This article will help provide a step-by-step guide to follow if you have been arrested so you can preserve all your rights and set yourself up for the best chance of success with the hope that you do not find yourself ever needing this advice.

**Criminal Charges v. Ordinance Violations**

Before we get started, it’s important to distinguish between state criminal charges and municipal ordinance violations.

An ordinance violation is akin to a speeding ticket in the sense that no criminal penalties will result such as loss of liberty and no criminal record will be created. Rather, an ordinance violation results in financial or other penalties such as loss of driving privileges.

In contrast, a state criminal charge can result in a loss of liberty and if convicted, a criminal record will be created. You are entitled to an attorney for criminal charges, but not ordinance violations. It can be confusing to Wisconsinites at first if they are facing a criminal charge or an ordinance violation, as there are reciprocal ordinances and charges.

For instance, in Wisconsin, one can be charged criminally for possession of THC or disorderly conduct or be charged as an ordinance violation for the same behavior. That discretion rests with the investigating officer and subsequently assigned district attorney.

**Understand the Arrest Procedure**

If you have been suspected of committing a crime, the police will usually arrest you and bring you into custody at the scene of the investigation.

Police have discretion whether or not to refer criminal charges to the district attorney’s office, who will subsequently review and make the ultimate call on what, if any, charges will be issued. Some allegations mandate arrest on scene, such as domestic abuse.

District attorneys have the same discretion as police as well as to send a complaint outlining the criminal charges with a summons to come to court on the individual’s own volition at a later date. Typically, a summons route is used for minor offenses or individuals with limited prior criminal records.

Upon arrest, a hearing is held within 48 hours of arrestto determine probable cause for criminal charges. This rule doesn’t apply if the arrest was made via warrant where probable cause is already established. Probable cause is a lower burden of proof compared to the beyond a reasonable doubt standard most are familiar with through film and television. Beyond a reasonable doubt is comparable to 99% certainty whereas probable cause is comparable to 51% certainty.

If charges are warranted, bail may be set to ensure community safety and the defendant’s appearance in court. Bail may be a signature bond, which is a written promise to pay an agreed amount of money if any violations of bond occur while the case is pending.

A court can alternatively order a cash bond, which may be posted by paying the cash amount listed or putting up equitable property such as a car or house. Both bonds may require non-monetary conditions, such as refraining from the use of illegal drugs or contact with the victim.

**Misdemeanor vs Felony Cases**

After bail is set, the criminal case will proceed through the court system. A felony case will be scheduled for a preliminary hearing within 10 or 20 days depending on whether the individual is in or out of custody. A misdemeanor case will be scheduled in front of the assigned judge in about a month to give the individual and attorney time to request and receive discovery, perform their own investigation, receive an offer from the State, and proceed from the case accordingly.

A felony case will be scheduled for a preliminary hearing. It is important to preserve evidence, witnesses, and to make your attorney aware of all possible aspects of the case to develop the strongest defense and highest likelihood of success pre-trial or at trial.

**Exercise Your Right to an Attorney and to Remain Silent**

You have two important rights that every individual should exercise upon arrest; the right to remain silent and the right to an attorney.

**Right to an Attorney**

If you exercise this right, the police must stop all interrogations until an attorney is present, who will almost always recommend that you remain silent, even if it means charges will be filed.

Police will often imply charges will be reduced or dismissed if the individual cooperates, but this is often not the case. Even so, police will rarely make specific promises in writing as such evidence can be used at trial. If you cannot afford an attorney due to indigency, one will be appointed to you through the public defender’s office or the local county.

**Right to Remain Silent**

You have the right to refrain from answering questions such as your destination, activities, or address. However, in Wisconsin, refusing to provide your name and date of birth when you are suspected of a crime constitutes obstructing an officer. However, unless it hinders a lawful investigation, you’re not obligated to identify yourself. For example, if a driver is pulled over for suspected speeding, the driver must provide name and date of birth. Passengers aren’t required to identify unless suspicion of their involvement arises. They can inquire if they’re free to leave; if not detained, they can quietly depart. If detained, they can ask on what basis and then invoke their right to an attorney and silence. Any violations can be addressed in court through civil rights lawsuits or suppression of evidence obtained.

**Miranda Rights**

Miranda Rights are the warnings officers must give to individuals to inform them of their constitutional rights, such as to remain silent and to an attorney. However, Miranda Rights are not read after every arrest. Rather, it is only if the police question you in custody without reading your Miranda Rights, does it violate one’s rights. If Miranda Rights are not read when in custody and the police perform an interrogation, any such statement procured during that interrogation is not generally admissible in court.

**Remain Calm and Comply**

Do not get aggressive with police, run from police, or resist or obstruct their lawful orders, and do not lie or give false information or documents. These actions can result in additional criminal charges. During a stop, avoid sudden movements, keep your hands visible, and if in a vehicle, keep hands on the steering wheel or dashboard.

Inform officers before you reach for documents. If you have a weapon, inform police of it right away and its location without reaching for it. If properly and legally carried, no criminal charges should result from that weapon.

**Searches**

Searches of people, places, and things are common around the time of arrest. Key points:

* You have the right to refuse consent to searches of your person, property, or vehicle. Officers need probable cause for a search, except for searches related to officer safety after suspicion of a weapon or other danger to officers.
* Officers will always ask to conduct a search of the person for officer safety before allowing the individual in the squad car after arrest. The jail also conducts its own more thorough body search upon arrival.
* If a consent to search is given, officers no longer require probable cause. If a search is conducted without consent or probable cause, the results of that search are inadmissible in court.
* Consent can be withdrawn at any time, but doing so must be done verbally. If police have a search warrant, be sure to request identification of the officers, a copy of the warrant, and read the warrant before allowing officers to proceed further. The warrant should specify the person to be arrested or the area to be searched. Any searches beyond the warrant’s scope may render the findings inadmissible.

**Follow the Rules**

Follow your attorney’s advice, comply with bond conditions, attend court hearings, cooperate with your defense, and hopefully your case or charges will be dismissed or reduced pre-trial or you be found not guilty at trial.

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