

IF YOU ARE ARRESTED

Your Rights

Law enforcement officials have a right to ask you to identify yourself or to question you briefly without arresting you. If they have a reasonable belief that you are armed, they may do a limited pat down search of your outer clothing. This does not mean you will be arrested, and generally, you are not required to provide information other than your name, address and business in being out. Treat the officer with respect, because disrespect on your part likely will be counterproductive.

Arrest

An “arrest” occurs when the officer takes you into custody or otherwise deprives you of your freedom. “Arrest” is the taking of a person into custody in order that he may be forthcoming to answer for the commission of a crime. Remember that resisting arrest is a crime and that the officer may use reasonable force to make the arrest and to keep you from escaping. It is his duty to submit to arrest and refrain from using force or any weapon in resisting it, regardless of whether there is a legal basis for the arrest. Therefore, you should not resist the arrest nor should you interfere with the arrest of another person. You will help yourself more by remembering all details of the arrest, including the officer’s statements, the sequence of events, and by informing your attorney of these details. You have the right, and should request that the officers give you their names and badge numbers.

An arrest with a warrant is the preferred means of making an arrest. A warrant is an order issued by a judge, magistrate or justice of the peace, directing the police to arrest a certain individual. The arrest may be made in any place at any time with a warrant. An officer shall have, in any county, the same powers in relation to the process as an officer of that county. A warrant is based upon the sworn testimony that establishes “probable cause,” or belief that the individual to be arrested has committed the crime charged in the warrant.

Law enforcement officials may sometimes make an arrest without a warrant. Generally, a police officer, may make an arrest for a misdemeanor committed in the officer’s presence and for a felony which the officer has “reasonable grounds” to believe was committed by the person arrested. If the officer has reason to believe the crime was committed within the last 12 hours, the officer may arrest. However, in certain situations, the officer may make a misdemeanor arrest without witnessing the crime. Some examples are: domestic violence, driving while intoxicated (DWI), accidents or situations where the police officer has probable cause to believe the suspect will flee, will conceal or destroy evidence or will continue the criminal conduct.

Your rights and responsibilities at the time of the arrest do not depend on the existence of a warrant, and, it is most important that you cooperate with the officer and remember everything that happens. Once you are under arrest or in the presence of the police and not free to leave, the police must tell you about your *Miranda* rights before they can question you. These rights are:

- The right to remain silent;
- The warning that anything you say will be used against you in court;

- The right to have an attorney; and
- The right to have an attorney present before *any* questioning.

You do not have to make any statements or answer any questions until you talk with an attorney. Law enforcement officials are aware of these rights and will understand if you decline to talk. If arrested, in most cases, you will be entitled to be released on bail pending judicial proceedings. The amount and nature of the bail will depend upon the seriousness of the charge, your background, and your ties to the community.

The Need For A Search Warrant

Normally, a judge issues a search warrant to permit police officers to search a particular place or person for certain items. Like an arrest warrant, a search warrant is based on sworn testimony, which established probable cause for the search and to seize the items.

In the following cases, a police officer does not need a search warrant:

- When you are lawfully arrested, the police officer may search you and the area immediately surrounding you, which could include the interior of your vehicle. Again, you may not interfere with this search. The U.S. Supreme Court has stated that the search, incident to arrest exception does not apply when a person is issued a traffic citation.
- A police officer may search you or your property without a warrant if you consent. You have the right to refuse to consent, but the officer is not obligated to inform you of this right.
- A police officer may sometimes search without a warrant when there is insufficient time to get a judge's approval because of emergency circumstances or because evidence may be removed or destroyed. The existence of exigent circumstances requires "a compelling need for immediate official action and a risk that the delay inherent in obtaining a warrant will present a substantial threat of imminent danger to life or public safety." State v. Theodosopoulos, 119 N.H. 573 (1979);

If the police do not have a warrant, you are under no obligation to consent to a search, no matter how much you are pressured to do so. However, you cannot interfere with the search. Ask the police officer to note that you do not consent. Common sense dictates that forcing the police to obtain a search warrant when you have absolutely nothing to hide is expensive and counterproductive. If you know that the police will find what they are looking for as soon as they obtain a search warrant, refusing to consent to the search and forcing them to obtain a search warrant is nothing more than an exercise in futility. If a search is performed, with or without your consent, remember the details and relate them to your attorney.

Types Of Crimes

Crimes are divided into two major categories: felonies and misdemeanors. Felonies have penalties, which may include a prison sentence of more than one year, up to a death sentence, and/or fines up to \$4,000. If alcohol is involved (DWI), the judge could sentence a person to 7 consecutive 24 hour periods at a facility. 2.: a) Any individual may not exceed \$4,000 for a felony, \$2,000 for a class A misdemeanor, \$1,200 for a class B misdemeanor, and \$1,000 for a violation. Violations of the Controlled Drug Act may bring a state prison sentence of up to life, and/or a fine up to \$500,000. Only the commitment of prior offenses will enable life imprisonment

There are two classes of misdemeanors. Lesser misdemeanors (categorized as Class B) are punishable by a fine up to \$1,200, and community service. Class B misdemeanors carry no jail time. The more serious misdemeanors are categorized as Class A, and carry a possible jail sentence up to one year, and/or a fine up to \$2,000. If alcohol is involved (DWI), judge could sentence a person to 7 consecutive 24 hour periods at a facility.

Offenses against city ordinances and motor vehicle laws are categorized as violations, which are not crimes. Violations are punishable by a fine up to \$1,000 and the suspension or revocation of your license. Violations, although they are not crimes, may lead to serious problems. For example, certain motor vehicle violations, such as DWI, are punishable by both a fine and loss of driver's license. Conviction for a second DWI constitutes a Class A misdemeanor, and carries a mandatory jail sentence, fine and loss of drivers' license. Also, repeated violation of certain motor vehicle laws can result in being designated as a habitual offender. With this designation, if you are caught driving a motor vehicle, you will be imprisoned for not less than one year, and not more than five years.

Criminal Procedure

Criminal matters are begun in New Hampshire by either a complaint or an indictment. A complaint is prepared by the police officer or the prosecutor and filed in the District Court. The complaint **must** be filed by a police officer or by the prosecutor. An indictment is an accusation brought by a grand jury in felony cases and is heard in Superior Court. No person shall be tried for any offense, punishable by more than one year in prison, unless an indictment has been made. The original charge is usually brought as a complaint by the police, and filed in the district court where the judge conducts a preliminary hearing (called a probable cause hearing) to determine if there is sufficient evidence to hold the defendant for further consideration by the grand jury.

The first step in being charged with a crime is the arraignment. At the arraignment, you appear in court and are formally charged with a crime. You must enter a plea of *guilty*, *not guilty* or *nolo contendere* (no contest). An Arraignment must happen within 24 hours of being arrested. The arraignment is an important step. If you plead *guilty* or *nolo contendere*, you will be sentenced. If you plead *not guilty*, a trial will be scheduled where the prosecution must establish your guilt beyond a reasonable doubt. You should understand, fully, the charges and your rights before entering a plea. Do not hesitate to ask the judge to explain the proceedings. It is highly advisable that you consult with an attorney before being arraigned.

In most cases, you will be entitled to be released on bail after arrest. At the bail hearing, the judge sets bail for the actual or potential payment of money to the court in order to guarantee your appearance at all hearings and the trial. The judge also may impose other conditions on your bail, such as restrictions on travel.

Between the bail hearing and the trial, you and your attorney should gather the evidence to present in court. The trial is the process of presenting the evidence to the judge, or to the judge and jury, who will weigh the evidence, determine the facts of your case, apply the law to the facts, and determine whether the burden of proof, by legal standards, has been met. If you are found guilty, the judge will sentence you, which may include a fine, imprisonment, community service, and/or restitution to the victim. If found guilty, you have the right to appeal to Superior Court (if the trial was in District Court) or to the New Hampshire Supreme Court.

For more information, see [You Are Under Arrest. Do You Know Your Rights?](#) by the New Hampshire Bar Association.

How To Find A Lawyer

If you are charged with an offense that could result in a jail sentence, and if you are not sure that you can afford an attorney, you may apply for court-appointed counsel at the arraignment. If you cannot afford an attorney for a civil (non-criminal) matter, contact New Hampshire Legal Assistance, or the Legal Advice & Referral Center. The Lawyer Referral Service of the New Hampshire Bar Association also can help you find an attorney for a civil or criminal matter.

You can find an attorney by looking in the yellow pages of the phone book or by asking friends, family or co-workers for a recommendation. Many attorneys offer a free initial consultation. Remember that if you meet with an attorney and you decide not to hire him or her, you can always call another attorney. In general, the attorney, without your permission, may not disclose any information, even if you decide not to hire him or her.

For more information, see [Selecting, Hiring, and Working With A Lawyer](#) and [What To Expect From Your Lawyer](#) by the New Hampshire Bar Association.