

What you might not know about getting arrested

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Getting in trouble with the law raises a complicated set of legal issues that, given the heightened emotions of the situation, can seem overwhelming for most people.

To help sort through legal topics, we asked several criminal defense attorneys to answer: What do you do if you get arrested?



Keeping your silence

"People need to remember that they are not required to talk to the police and they are not required to consent to anything," said Davidson County Public Defender Ross Alderman. The public defender's office provides legal representation for clients who can't afford to hire their own lawyers.

If an officer stops you and asks to search your car or comes to your home and asks for permission to search it, you can decline if that officer does not have a warrant.

You shouldn't be rude, the public defender said, but you can assert your rights. Your consent just waives your right to whatever objection you may have about the search, he said.

Top 10 of arrests

"You have the absolute right to say, 'No, sir, if you don't have a search warrant,'" Nashville attorney Rich McGee said.

If officers do have a search warrant, McGee's advice is to sit down and keep your eyes open, ears open and mouth shut.

Then if you are arrested, you still don't have to talk to police other than to give the necessary information to be booked into the jail, McGee said.

You also have the right to speak to a lawyer. People should know that someone from the public defender's office is on call 24 hours a day, seven days a week, Alderman said. But just because you can't speak to a lawyer immediately does not mean you should talk to police.

"It's always better to say, 'Fine, I'll wait.' If you think you need to talk to a lawyer, that doesn't change because one is not sitting in the next room ready."

You can catch more flies with honey than vinegar...

"It's always wise to be polite with police," Alderman said. One reason is that in many cases, the difference between receiving a written citation and being arrested is your behavior around an officer, Nashville attorney David Raybin said.

And if you're related to someone in trouble, don't start fighting the issue out in the street. "You have to remember that that police officer is just as afraid of you as you are of him," Raybin said. That means that you and your relatives should act in a non-threatening way at all times.

What not to say; when not to say

Confession might be good for the soul, but it's not good for your case. If you confess and wish you hadn't, it could be difficult to have that admission of guilt thrown out of court.

"I always tell my clients that if the police want to question you, that would be a good time to talk to a lawyer," McGee said.

And watch what you say. If you and your buddy have just been arrested in a bar fight and are in the back of the patrol car talking, that conversation could be recorded. The same is true if you call your wife from the jail or talk to other inmates.

Getting the telephone call: "I've been arrested"

If a friend or family member calls and is in trouble, don't panic and don't try to litigate the case over the phone, Raybin said. "The first thing you should do is get as much information as you can about where they are, and your objective should be toward getting this person out on bond, not worrying so much as to what they are accused of doing because that's not all that relevant at that time," Raybin said.

The natural inclination for a loved one is to say, "Why did you do this?" or "Are you falsely accused?" but the most important thing is to make bond, he said.

Bond is an amount of money set by a court designed to ensure that the defendant will appear in court at an appointed date. If the court date is missed, the bond amount is forfeited.

The last thing a loved one should do is to go charging down to the jail, Raybin said. Stay by the phone and call a bondsman.

How do I make bond?

In some counties — and Davidson is one of them — you may not need to make bond if you are a good citizen charged with a less serious crime. Some jails have a program known as pretrial release. It keeps the jails from being overcrowded, said Eric Bauder, who manages inmate processing at the Metro Jail. "Now, it's not a free service," Bauder said. "There is a \$35 fee for that, but it's a lot cheaper than posting bond."

If you aren't eligible, you need to look in the phone book under "bail bonds." Most bail bond companies are open 24 hours a day.

Bonding companies ask you to pay 10% of your bail plus a processing fee. So if your bail is \$10,000, you would pay \$1,000 plus a processing fee to the bonding company.

Wiping the slate clean

Generally, anyone who has been acquitted of a criminal charge or has had it dismissed is eligible to have any record of that arrest expunged, or wiped clean. But it's not automatic. You have to ask the court.

If you are convicted of a less-serious crime and have been a good citizen in the past, you might be able to have your record wiped clean under a process called pre-trial diversion. Ask your lawyer if you qualify.

Also, if you plead guilty to a lesser charge you can't have the most serious charge expunged, said Roger Moore, Davidson County assistant district attorney. That means if you get arrested on aggravated assault in a bar fight, but you plead guilty to simple assault, the aggravated assault charge will remain on your record. But if charges have been dismissed, you can have your record expunged.

But beware: That arrest still may haunt you in the future even if it is expunged because of the vast network of electronic databases. Police departments routinely sell arrest records to companies, so even if your charge is wiped clean from all official public information files, a company that bought the arrest information from the police department — long before your charges were dismissed — still has you in its database.

Also, it's a good idea to check and see if the records have actually been expunged, even if a judge has signed off on it.

Getting the right help

Other lawyers are often the best source of referrals, Raybin said. So if you have an attorney you used in a divorce, or in a real estate or business transaction, ask him or her to recommend a good criminal defense attorney.

"Most criminal defense attorneys do not advertise," Raybin said. "I don't advertise."

It's advisable to talk to more than one criminal defense attorney, and take your time, Raybin and McGee said.

You want to be just as careful as you would be if you were searching for a doctor to operate on your child or if you were trusting someone with your retirement fund, McGee said.

Surprisingly, some people don't treat criminal charges with the seriousness that they deserve, both attorneys said.

One of the byproducts of our information-saturated world is a loss of privacy, and more and more businesses have access to criminal records, McGee said.

Your past criminal record can keep you out of an apartment, keep you from getting a good job and haunt you in ways you might not anticipate.