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This booklet is intended to be a guide through the legal process and not a substitute for an attorney. For the most accurate information about your case, consult with an attorney.

If you do not have an attorney, call Paul C. Looney or

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(713) 828-7494 (Paul Looney's Cell Phone)

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Booklet Written and Designed by Roxanne Avery

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What to Expect after You are Arrested

Many people will have an event sometime during their life involving law enforcement and an arrest. It may be a friend, neighbor or a family member -- but it will happen and it is an understatement to say it is not a pleasant experience. There are slight variances in what will happen depending on where the arrest is made.

This booklet has been written to help you understand what will happen during each phase of the process.

Guilty or Not Guilty

If the police think you have committed a crime, whether you are guilty or not guilty, you are going to be arrested and are going to jail.

Miranda Warning

The police officer should read the *Miranda* Warnings (also referred to as Miranda Rights) as required by United States law to protect you while in custody before you are interrogated.

By law, the police officer must inform you regarding yourFifth Amendment right to remain silent. Anything you say to law enforcement after that will be admissible in court.

In *Miranda v. Arizona*, the Supreme Court held the admission of an elicited incriminating statement by a suspect not informed of his rights violates the Fifth Amendment and the Sixth Amendment right to counsel.

If law enforcement officials do not give you a *Miranda* Warning whileyou are in their custody, they may interrogate you and act on the knowledge gained, but cannot use your statements to incriminate you in a criminal trial.

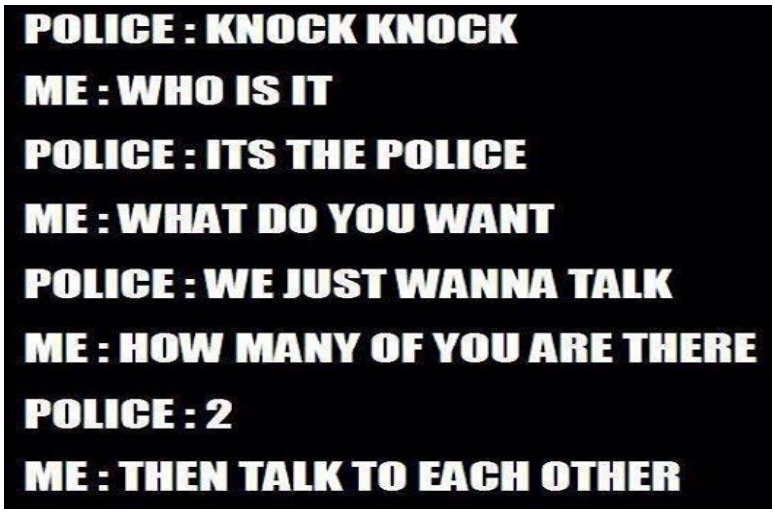
When Should You Talk to Police Without an Attorney Present?

NEVER!

Miranda Rights do not go into effect until after an arrest is made. The officer can ask you questions before an arrest, but you do not have to answer. The answers you provide will be admissible in court, so it is better to say nothing.

If you are placed under arrest and not read the *Miranda* Rights, any statements you make that are not in response to police questioning may be used as evidence in court.

For example, if you start making excuses about why you committed a crime, these statements can be used at trial. Silence can be used against you too if it occurs before you are read the *Miranda* Rights.



Top 10 Reasons<u>Not</u>To Talk to Police

Reason #1: Talking to police <u>cannot</u> help. Ever.

When the police are talking to you, it's because they suspect you have committed a crime. If they detain you, it's because they already have enough evidence to arrest you and want to see if you'll admit it, giving them a stronger case.

Remember: If the police have evidence to arrest you for a crime, they will; if they don't, they won't. It's that simple.

Talking to them or not talking to them won't make a difference. No one has ever "talked his way out of" an arrest. If the police have enough evidence to arrest, they will. If you deny committing the crime, they won't believe you. They already have evidence suggestingyou committed the crime and will assume you are lying. It will not prevent you from getting arrested.

Many people believe they are savvy enough or well educated enough to talk to the police and convince them not to arrest them. No one has ever talked their way out of getting arrested. Talking to the police cannot help and it cannot prevent you from getting arrested.

Reason #2: Even if you are guilty and want to confess; don't talk to the police

People plead guilty in America every day. As many as 90% of defendants in State court plead guilty at some point during their case. There is a time to admit guilt at a later stage of the proceedings. Don't rush into that decision and don't make that decision without an attorney.

An attorney will plan a strategy for your case. You don't want any strategy closed off to you because you already admitted guilt. Sometimes people view their case from only one angle; a good attorney can see it from several angles.

An attorneycan set up a deal whereby you get something in exchange for accepting responsibility for the offense; a better plea bargain, or maybe immunity. If you confess to the police, you get nothing in return and can get a harsher prosecution because the state's case will be airtight after you confessed.

Reason #3: Even if you are innocent, it's easy to tell a little white lie during a statement

If you are innocent and are vehemently asserting your innocence, you can go overboard and deny what you think isan insignificant fact, or tell a little white lie, because you want to sound as innocent as possible.

You could become tongue-tied or confused and make an innocent misstatement. If police have evidence of that "little" lie, it makes your entire statement look like a lie and can destroy your credibility at trial in front of a jury.

The prosecutor may ask: *"Why did you lie to the police?"* And jurors may think *"Why <u>indeed</u> would he lie to the police, unless he's guilty?"*

For example: an innocent man is questioned about a murder. He wants to sound innocent and non-violent so he denies the murder, denies being in the area where it occurred, on the night it occurred. He denies owning a gun or that he has ever owned a gun. But it turns out his last statement is not true and the police can prove it.

He did at one time own a gun and now has told a lie and the police caught him in that lie. Although he is innocent of the murder, he has told a lie that will be used to destroy his credibility at trial and could cause his conviction.

Reason #4: Even if you are innocent and tell the truth, it is possible to give the police information that can be used to convict you

For example, you are being questioned about a murder and are actually innocent of the murder. But in the course of explaining your innocence, you make the statement that you never liked the victim because the victim was not a nice guy. A statement like that could be used to prove motive.

Or during the statement, you might admit you were in the area of town where the murder was committed at the time it was committed. Although you're innocent and this statement is true, the prosecutor could use that statement to suggest to the jury that you had the opportunity to commit the crime.

Reason #5: Even if you are innocent, you still should not talk to the police because the police might not recall your statement accurately

What if the police officer incorrectly remembers a part of the case? What if he remembers you said "X" when actually you said "Y"? If the police officer takes the witness stand and contradicts your statements at trial, you can lose your credibility.

You can take the witness stand and say,*"I never said that,"* but it's your word against that of a police officer. Studies show most jurors believe the uniformed officer.

Reason #6: You can make an innocent comment about a detail of the case and the police assume the only way you could have known it is that you are guilty

For example: A police officer is questioning you about a homicide and you say,*"I don't know who killed him but I've never owned an AK-47 in my life. I don't even like pistols."* There's nothing incriminating about that statement.

But suppose at trial, the prosecutor asks the police officer if anything about your statement surprised him. He answers *"Yes, it surprised me when he mentioned an AK-47, because I never mentioned it. I only told him I was investigating a homicide; I never mentioned what type of weapon."*

You may have overheard in the police station someone talking about an AK-47. If the officer taking your statement never mentioned an AK-47, and you make the statement you never owned a gun, you give the prosecution the opportunity to suggest you had a Freudian slip, and made a statement about an AK-47 because you are, in fact, the murderer. And as the murderer, you knew an AK-47 was used.

Reason #7: The police may have evidence that some of your statements are false (even if they are really true)

For example: The police have a statement from a witness who claims to have seen you in the area where the crime was committed at the time of the crime. The witness is wrong and made an honest mistake. You then give a statement to the police that you were nowhere near where the crime took place at that time. By giving the statement, you now create a conflict between your statement and the statement of this witness.

By itself, the statement of the witness that he saw you in the area at the time the crime was committed is not that useful. But by giving this statement, and creating a conflict with this witness's statement, you now have made this relatively minor witness into the government's star witness.The jury will hear the conflict and will assume you are lying.

Even if you tell the truth, you're putting your cards on the table without first seeing what evidence the government has. If the government has some bit of evidence that, through an honest mistake, contradicts part of your story, you set yourself up to be portrayed as a liar. Your attorney will gather that information while building your defense.

Reason #8: The police do not have authority to make deals or grant leniency in exchange for your statement

Sometimes people give a statement to the police because the police tell them they'd be better off if they cooperated and admitted what they did wrong. The police may say something like *"everything will go easier for you if you admit to this (crime)."* They may tell you they will do what they can to help you and put in a good word for you if you will cooperate.

Remember:

Police do not have authority to make deals, grant immunity, or negotiate plea agreements

The only entity with that authority is the District Attorney in state court and the U.S. Attorney in federal court. Despite their claim that they are trying to help you, they aren't because they can't.

Reason #9: There may be factors to justify a lesser charge

Police want to focus on the facts that suggest you have committed the most severe crime possible when you may have committed a lesser grade of offense.

If given the opportunity to talk to an attorney first, the attorney may be able to explain what facts are important in establishing that you are guilty of a lesser offense, not a higher grade. A confession presented in this context to the District Attorney's office might result in a lesser charge and a more lenient penalty.

Reason #10: It is difficult to tell the same story twice in exac tly the same way.

If you tell your story one time at trial and you tell the truth and you're innocent, there's very little the prosecutor can do by way of cross-examination. But if you've told your story twice, once at trial, and once previously in a statement to the police many months apart, the chances are high even if you are telling the truth, some little details in your statement are going to change.

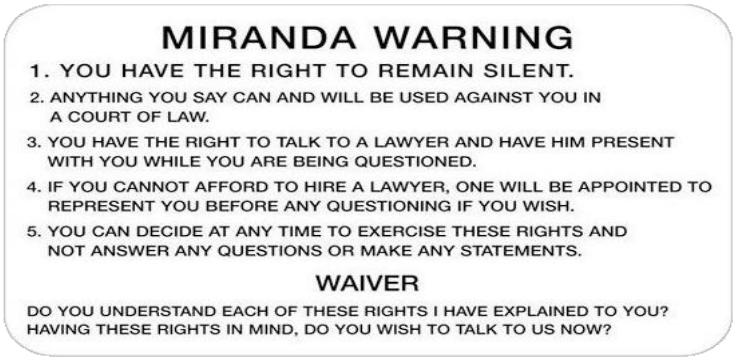
A good cross-examiner will note these changes and relentlessly question you about them to make it look like you are lying.Whether you are guilty or innocent; whether you want to confess or exonerate yourself; whether you're poorly educated or the most eloquent speaker in the world:

NEVER, EVER, under any circumstances, give a statement to the police when you have been detained as a suspect. Call an attorney!

Signing the *Miranda* Warning

If you are being investigated and wish to remain silent before being Mirandized,you need to tell the officer that your attorney advised you not to speak to the police without him or her present. This looks less suspicious than simply refusing to answer questions.

The *Miranda* Warning is as follows:



The police officer may ask you to sign a document acknowledging these rights were read to you.

The warning, intended to inform you of your rights regarding police questioning, does not have to be read if you have not been placed under arrest. This is because if you are not arrested for committing a crime, you are not going to trial, and therefore don't need to be warned that anything said can be used against you in trial.

You cannot be arrested for refusing to answer the officer's questions; however, police can arrest you for other reasons. Probable cause is when there is a reasonable basis for believing a crime may have been committed and evidence of the crime is present. It is important to be polite and avoid aggravating the situation.

The Pat-Down and Consent to Search

If police have a reason to suspect you of a crime, they may detain you and can "pat you down" for weapons if they have a reason to fear you may be armed.

They may not go through your pockets or require you to empty your pockets or purse. They may only feel for weapons, and cannot manipulate your clothing to discern what is inside your pockets beyond their need to ensure that you are not armed.

If you are arrested and if the arresting officer hasn't done so yet he/she will search you more thoroughly to make sure you have no drugs or weapons. At this point, police can go through your pockets, purse, and belongings.

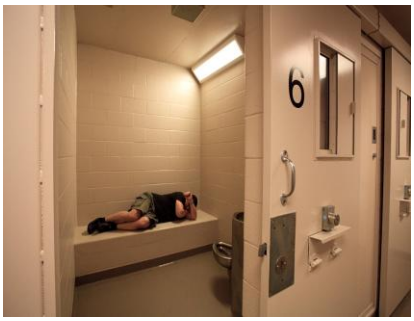
Police may also request consent to search your home, your car, or other property. You should never consent to any searches. If police have probable cause to obtain a warrant, then they will do so and will need your consent.

They are only looking for evidence to incriminate you, and you do not need to assist them by providing your consent.

Handcuffs and the Patrol Car

The arresting officer will have you place your hands behind your back, handcuff them together, place you in the backseat of a patrol car and take you to the nearest detention facility.

The Holding Cell



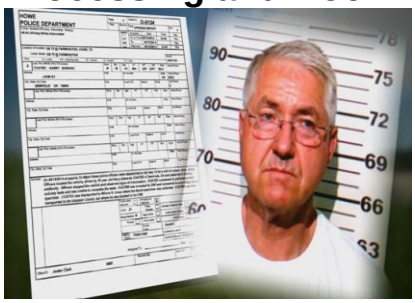
Depending on the size of the facility and space availability, you will be placed in a holding cell until authorities can book you in. Placing you in a cold space the size of your bathroom is believed to be for your own protection.

This procedure is followed for different reasons including:

1. If you have had too much alcohol, it allows time to sober up.

2. If you are angry, upset or otherwise emotional, it allows time for observation to evaluate if you are a threat to yourself, staff or others.

Processing and Booking into Jail



A booking officer will ask you a list of standard personal questions, photograph you, take your fingerprints and run a nation-wide computer database search.

The officer will then gather your belongings to put in your property bag and give you your inmate outfit and rubber sandals. There may be an officer watching you disrobe (for females a female officer will be present). There may or may not be a cavity search.

If you have been arrested for a minor offense, you are usually given the right to pay a cash "stationhouse bail," and ordered to appear before a magistrate (a court officer, typically a court clerk). For more serious crimes or if you cannot make the stationhouse bail, you will stay in jail until you can be taken before a magistrate.

Phone Call

You are allowed a phone call. Being courteous and respectful to the correction officers might get you more than one call.

Filing the Complaint

A prosecutor is now brought into the case and reviews the facts and decides whether charges should be brought against you based mostly on sufficiency of the evidence. If you are to be charged, the prosecutor prepares a "complaint." Most complaints are sworn in front of a magistrate by a police officer or sheriff's deputy.

First Appearance

After the complaint has been filed, you are now a "defendant" and are brought before a judge. The step of bringing you before the judge the first time is called a "first appearance."

If you received stationhouse bail, the first appearance is usually several days after your arrest. In the usual case where there is no stationhouse bail, you're still in custody and must be brought for the first appearance "without unnecessary delay."

There will usually be a few hours (but typically no more than 72 hours) between your arrest and the first appearance and there may be an intervening weekend (for example, if you are arrested on Friday night, and not brought for the first appearance until Monday morning).

The judge does not evaluate the sufficiency of the evidence in any way during the first appearance. Instead he or she usually:

1. Informs you of the charges **(notice of charges)**
2. Notifies you that you have the right to an attorney. If you cannot afford one but would like to have one, the Judge will begin the process of appointing an attorney to you **(right to an attorney)**

Bail and a Bondsman

Bail is security (money) given allowing you to be released temporarily so you can continue your life while preparing for court. Initial bail amounts in Texas are set on a county level by the County Bail Boards.

The bail schedule is reviewed annually and published for public and law enforcement usage.

When bail amounts are set, public safety is the first consideration; the more severe the crime, the higher the amount of bail.

The Judge may release you without bail, on your own recognizance (the promise that you will appear in court every time you are scheduled to do so).

The Judge may raise or lower the amount of bail, or deny bail altogether if he or she believes there is no bail amount that ensures you will show up for court.

Depending on the reasons for your arrest, your past criminal behavior and whether or not the judge thinks you are a flight risk, bail can be set anywhere from one dollar to a million dollars.

Most people have bail amounts between $1,000 to $10,000 dollars. When paying cash, you are expected to show up for all court obligations. If you fail to appear for a court date, you risk losing your bail money and being placed back in police custody until your trial.

Bail bond services are available to people who are unable to pay cash for their bail. In these cases, a bondsman is available. The bondsman charges a fee, usually a percentage of the full bail amount, and will proceed to pay the rest of the money for you to help secure your release from jail.

Like the cash bail, if you fail to show up for court dates and other legal obligations, the bail money will be forfeited.

Now is the time for you to make arrangements for your release from jail. Whether you call a family member, friend or bail bondsman, it is up to you to get money for bail arranged.

Payment for a bail bond can usually be made by cash, check, Visa, MasterCard, American Express or Discover. Other financial options may be available; ask a bondsman for more information. A list of local bondsmen and a phone book are normally provided for your convenience. Most bondsmen are available 24 hours a day, seven days a week.

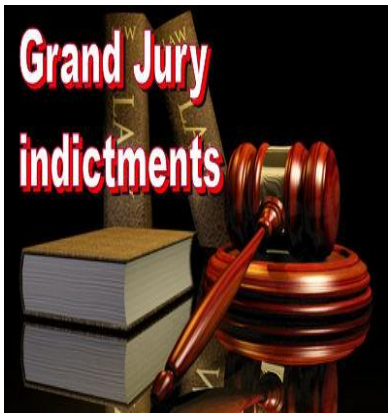
Not everyone can pay the bond. These people remain in jail until their trial date because they do not have the funds to post their bail.

Preliminary Hearing

The next proceeding in felony cases is usually the preliminary hearing. Like the first appearance, this takes place before a Judge and the purpose is for the Judge to make a neutral determination of whether there is probable cause (a “legal” reason) to believe you committed the crime charged.

The prosecutor will be there along with you and your attorney, and the prosecutor will tell the Court what the State believes it can prove.

If the Judge finds probable cause, he will “bind over” the case for the next stage(either sending it to the grand jury if an indictment is required, or sending it directly to the trial court if an indictment is not needed).



Grand Jury Proceeding

The grand jury proceeding is a closed proceeding in which grand jurors decide, by majority vote, whether to issue an indictment. You are not represented or able to present any issue to a grand jury; only the district attorney presents information. Not all information presented at a grand jury proceeding is admissible at trial.

"No Bill": If the grand jury does not return an indictment, the charge against you is "no-billed" and the case is dismissed.

Grand Jury Packet: Your attorney can provide information to be reviewed by the Grand Jury in their determination. A "Grand Jury Packet" can be prepared by your attorney, giving the grand jurors the information they may need to counter the State's evidence. Whether a Grand Jury Packet is appropriate in a specific case is an issue to be discussed with your attorney.

Filing of Indictment

In felony cases, an indictment must be returned by a grand jury before the State can proceed. An indictment is a finding by a grand jury indicating the grand jury believes enough evidence has been presented to go forward with a trial.

Arraignment

Once an indictment has been returned by a grand jury, you are "arraigned" on the indictment. At the arraignment, you are brought before the trial court, informed of the charges against you, and asked whether you plead guilty or not guilty.

The case is typically set for trial several months after the arraignment. There may be anywhere from one to several case settings between the arraignment and the trial, for discovery, negotiations, pre-trial motions, and investigation.Make sure you appear on time at every hearing unless your attorney tells you otherwise.

PreTrial Motions

Your attorneythen has the opportunity to make various pretrial motions. The most common motions are to:

1. Obtain discovery of the prosecution's evidence; and

2. Have some of the prosecution's evidence suppressed (for example, to have a confession ruled inadmissible because Miranda procedures were not followed).

Trial

If the charge is a felony or a misdemeanor punishable by more than twelve months in prison, you have the right to have the case tried before a jury.

Juries consist of 12 citizens in felony cases. If your offense was a misdemeanor, the jury will consist of six people.

Sentencing

Sentencing is the stage when punishment is imposed after a finding of guilt resulting from trial, or entry of a plea of guilty or no contest.

If you had a jury trial, you may choose whether the judge or the jury is to decide what punishment is appropriate.

The judge may order a pre-sentence investigation (PSI) report and postpone sentencing until after the report has been submitted and reviewed.

The PSI includes information about the case and circumstances of the crime, any prior criminal record, your reputation in the community, education, employment, health and background of your family.

The PSI may also include your lifestyle, behavior pattern and general attitude. When the PSI is completed, your attorney reviews it with you and prepares for the sentencing hearing. Your attorney can have doctors or other experts evaluate you and prepare a sentencing report with recommendations to be presented to the judge.

Your attorney needs to know in advance the names and addresses of people who want to speak at the sentencing hearing on your behalf. At this hearing, you have the right to present witnesses, and the right to speak and have your attorney make a presentation.

The judge or the jury then imposes the sentence ranging from suspending the sentence, or a probation term, to the maximum jail or prison time allowable.

The judge can, and, in some cases must, require you to pay restitution to the victim and attorney (public defender) fees and court costs.

In capital cases, the maximum sentence is death and the law provides for a sentencing process that involves jurors making a recommendation to the judge regarding whether to impose the death penalty.

Appeals

If you entered a plea of guilty or no contest, you do not have the right to appeal, except if the judge allows you to reserve the right to appeal a particular point of law.

If you are convicted at trial and want to appeal the conviction, your attorney must file a notice of appeal within 30 days of being sentenced (15 days in Federal court).

Your attorney must convince the appellate court that the trial judge's errors affected the outcome of the case. Some common errors are that the judge did not follow the law or that you were prevented from exercising your constitutional rights.

In some cases, the judge may allow your release on bail until a final decision is made by the Appellate court. The judge may set a bond for you while your case is on appeal. If you are not released on bond, it is possible that you may serve your entire sentence during the appellate process.

Community Supervision (Probation)

Community supervision is an alternative to being sentenced to jail or prison, and carries significant limits on your liberties.

The judge may sentence you to community supervision instead of, or in addition to, serving time in jail or prison. You will be under the supervision of a Probation Officer and must abide by the Court's rules until the sentence is completed.

Community Supervision may take the form of an intensely supervised and restrictive program in which a probation officer makes regular unannounced visits to your home and may electronically monitor your movements.

In addition to the visits, you will regularly report to a probation officer, receive permission from your probation officer before changing addresses or jobs or leaving the county, and must not commit any new crimes or abuse drugs or alcohol while on probation or community control.

If the probation officer believes you violated any of the conditions of your probation, the officer can file an affidavit alleging the specific violations and may ask the judge to hold a hearing to determine if you are in violation. You can be arrested and held in jail pending the probation revocation hearing.

At the hearing, if the judge finds that you violated the terms, the judge may revoke the probation and sentence you to jail or prison or extend the probationary period. He may also order counseling, drug treatment, or a short term in jail, followed by a return to probation. If the judge finds you did not violate the terms of probation, you will be restored to probation.

Fees, Costs and Restitution

The services of the Public Defender or an appointed lawyer are not free unless you are acquitted (found not guilty) or the charges are dismissed.

If you are found guilty after a plea or a trial, the judge may require you to pay attorney's fees for the reasonable value of the services the lawyer provided, court costs and restitution.

The judge can require the payment of the costs and fees as a condition of the sentence or can impose a lien on your property. If they are not imposed as a lien, the Clerk of the Court will enroll you in a payment plan.

Additionally, a judgment may be filed against you for the attorney's fees, court costs and restitution.