

# legal lines

from  
MOORE, SUSLER, MCNUTT & WRIGLEY  
Lawyers

## What Do I Do Now?



by  
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### *“I’m placing you under arrest.”*

Words we hope never to hear spoken to us. Yet, even generally law-abiding citizens are faced with arrest every day, whether for just a simple speeding ticket or as a result of being involved in an accident that is our fault. And, yes, people do get arrested for crimes they do not commit. This article attempts to explain what can and cannot happen next.

Our protections — the limits of what can happen to us — come from the U.S. and Illinois constitutions. Most of these constitutional rights are a part of Illinois statute laws. Here is what the statutes say:

Any peace officer, whether State police, City police, or Sheriff’s deputy can make an arrest when the officer has a warrant for the person’s arrest, has reasonable grounds to believe that a warrant for the person’s arrest has been issued, or has reasonable grounds to believe that the person is committing or has committed an offense.

In making an arrest, the officer may call upon the aid of any person over the age of 18. That person then has the same authority to arrest as the officer.

Any of us may arrest another when we have reasonable grounds to believe that an offense other than

just an ordinance violation is being committed. If you saw a robbery, you could attempt to arrest the robber, foolish though it might be. As much as you might like to, you could not arrest the guy who tosses his McDonald’s cup on the sidewalk. He has only violated the anti-litter ordinance.

An arrest is made by submission or active physical restraint of a person. An arrest may be made at any time, day or night, and anywhere within the jurisdiction of the peace officer. A state police officer can arrest anywhere within the state, sheriff officers anywhere within the county. Decatur City police can arrest only within the city limits. Any necessary and reasonable force may be used by the officer to effect an entry onto any property or into any building to make an authorized arrest.

Not all detentions are classified as arrests. An officer may temporarily restrain a person when the officer reasonably infers from the circumstances that the person is committing or is about to commit an offense. The officer must first identify himself or herself as a peace officer. The suspected person may then be detained in any public place for a reasonable period of time and required to provide his or her name and address and an explanation of his or her actions. Such detention and temporary questioning is to be conducted near where the officer stopped the person. The officer can’t “take you downtown” to do this.

After an arrest, the person making the arrest must inform the arrested person whether there has been a warrant issued for his or her arrest and, if so, the offense described in the warrant. If the arrest is without a warrant, the officer must inform the arrested person what the charge is.

*What about being read your Miranda rights?* Almost everyone believes that when arrested, you must be advised of these Miranda rights. As a matter of fact, there is no requirement to advise anyone of rights under Miranda. These rights only come into play in the event the arresting authority wishes to use any statements made by the arrested person in a trial. Before any statement can be used against a person after an arrest, the person arrested must have been advised of the rights under Miranda. In most cases

### *Fresh O.J.?*

Sorry, we’re almost out...of fresh comments on the Simpson trial, that is. We did think one of the most telling quotes came out of Judge Ito a few weeks ago. On a Thursday afternoon, by way of telling the jurors court would not be in session Friday, Judge Ito said “Ladies and Gentlemen, we’ll be dark tomorrow.” Dark is a theater term as in most New York playhouses are dark on Mondays. Sadly, this trial is Hollywood all the way. It is doubtful justice can be served either for the Defendant or the People.

## What Do I Do Now? *(Continued)*

for simple law violations (misdemeanors as opposed to felonies), the arresting officers do not concern themselves with obtaining statements from the arrested person. Therefore, in cases such as traffic tickets, you usually will not hear your rights under Miranda.

Who was Miranda anyway? He was the defendant in a U.S. Supreme Court case that held Miranda's statements to the police inadmissible against him. Why? Because he had not been told of his right to remain silent and to have counsel before the statement was taken.

**Can you be strip-searched, if arrested?** Not for a traffic, regulatory or other non-felony offense, except in cases reasonably suspected to involve weapons or a controlled substance. Even when permissible, there can be no strip-search unless the person arrested is taken into custody by or turned over to the Sheriff or to a correctional institution pursuant to a court order. Otherwise, the arresting officer must obtain the written permission of the officer's commander, prepare a report of the strip search and give a copy to the person searched. A search of any body cavity other than the mouth requires a duly executed search warrant. The search must be performed under sanitary conditions, either by or under the supervision of a licensed physician.

If you are arrested, you've already heard that you have the right to remain silent and you do. No unlawful means of any kind shall be used to obtain a statement, admission or confession and one arrested is to be treated humanely and provided with the

proper food, shelter and, if required, medical treatment.

You have the right to communicate with your lawyer and a member of your family by making a reasonable number of telephone calls or by any other reasonable means. These calls must be permitted within a reasonable time of arrival at the first place of custody.

As to your lawyer, that right is to consult, alone and in private, at the place of custody as many times and for such period of time as is reasonable.

After arrest, the person arrested has the right to post bail which in most traffic cases involves merely the posting of one's driver's license, a bond card or a reasonable sum of money to insure appearance in court after release from jail. For a more serious traffic charge, such as driving under the influence of alcohol – a DUI – one would be required to post a driver's license and a \$100 cash bond or, if no driver's license is available for posting, a \$300 cash bond.

For most misdemeanors, a cash bond of \$100 is required prior to release, to insure appearance in court.

In felony cases, the amount of bond is based on the offense charged, risk of the accused fleeing, taking into account ties to the community and the severity of the penalty which could be imposed.

**If you are arrested**, it is very serious business and legal counsel should be sought. Your lawyer should be consulted prior to any statements being made to the police. Even a simple traffic arrest can have serious consequences for your driving privileges.

## Have you met our Legal Assistant?



If your dealings with our firm have involved estate matters, chances are good you already know our legal assistant Marilyn Cushing.

Marilyn came to the firm in 1968 as an already experienced legal secretary. Only Dan Moore, of the present staff, has been with the firm longer. She was our office manager from 1979 to 1987 when she assumed the responsibilities of legal assistant in probate, guardianship and real estate matters. Meticulous could be Marilyn's middle name. Her thoroughness in these very technical areas of the law is much appreciated. Marilyn is the mother of three adult children and doting grandmother to four grandchildren.

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