

Criminal Defense FAQ

The following are some answers to the most frequently asked questions when a stop, arrest and prosecution is under way:

Q: What do I say or do at the time of my motor vehicle stop or initial interrogation?

A: Typically at the onset of a law enforcement interrogation you are most likely temporarily detained, such as a motor vehicle stop, and are not free to leave or go about your business. As such, a *Miranda* warning does not necessarily need to be elicited during this initial line of questioning as it is considered a *field inquiry*. Accordingly it is recommended that you answer the field questions without incriminating yourself. There is an obligation for you to answer these basic questions (i.e. where are you coming from?, did you consume any alcoholic beverages this evening?, where are you heading?) otherwise the officer maintains the discretion to skip this line of questioning, outright arrest you and then may even supplement the state's charges against you to further include an *obstruction of the administration of the law*. So please bear in mind, you are not constitutionally permitted to remain 100% silent, as our *Fifth Amendment* only triggers once the arrest and interrogation has commenced. Simply put, cooperate on a basic level, be respectful, do not incriminate yourself by attempting to "explain your situation" and once an arrest commences (i.e. the temporary detainment of you and your property becomes permanent) then you are in a position where you do not have to say anything as the "*field inquiry*" has graduated to an "*interrogation*".

Q: What do I say or do after I have been arrested?

A: Do not say or do anything. Do not attempt to explain yourself to the authorities as trickery is constitutionally permitted by all law enforcement. Utilize your phone contact and seek professional advisement immediately from a seasoned criminal defense attorney.

Q: What is a "No Bail" and what are my options?

A: A "No Bail" means that you can neither post bail nor hire a bail bondsman to post bail for you. Your only effective option is to have an attorney file and argue a *Notice of Motion to Modify No Bail* status before the court.

Q: What is "Bail with or without 10%"?

A: *Bail with 10%* means you or your bail bondsman may produce 10% of the total bail amount to the court as condition to your release. Likewise, a *no 10% option* means you must produce the entire amount for same to occur.

Q: What is a "property bond"?

A: This is where you or your family is permitted to *bond real property* to satisfy the *bail amount* (typically when *no 10% option* exists). A legitimate appraisal of present market value must be proven to the reviewing judge in order for you to prevail on this application.

Q: What is a “source hearing”?

A: In the event a large amount of money is necessary to be produced to the court for a subject’s release the judge may require a *source hearing*. The onus is on the defense to prove to the state that the money used to bail our defendant is derived from a legally accountable source.

Q: Once my property has been seized at the time of my arrest when can I get it back?

A: Typically all seized property is only released after prosecution and sentencing has occurred. However, small items not necessary for the state’s prosecution may be returned to you as soon as your attorney can arrange for an officer to make this transaction. Legal property such as a motor vehicle directly connected to a crime may only be returned after sentence or become the subject of a civil forfeiture litigation as it becomes state property when in connection with criminal wrongdoing. Naturally any contraband or CDS cannot be returned at any time as it is illegal to possess in the first place.

Q: What is a “Motion to Sever”?

A: Your attorney will make application to the court in the event your case involves co-defendants. The reasoning for this is based upon the fact that these individuals may be used by the state to testify against you and vice versa.

Q: What is a “Motion to Suppress”?

A: This motion challenges the constitutionality of how the law came into contact with you (i.e. it calls the court’s attention to examine how your officer encountered you in person or the reason for your motor vehicle stop, or entry onto or into your premises). In the event your attorney succeeds in proving to the court your “search and seizure” was illegal all evidence in possession of the state is deemed “fruit of the poisonous tree” and the entire case will be dismissed.

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