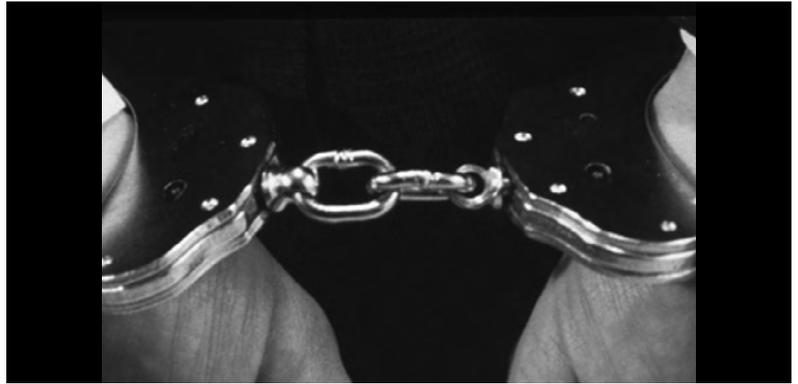


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**Volunteer Lawyers Project  
Nebraska State Bar Association**

# **Your Rights If Arrested**

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## **What should I do if I am arrested?**

You should not resist arrest or attempt to escape. You should be advised of your “Miranda” rights at the time of your arrest. These rights include the right to have the advice and representation of a lawyer. You should call your lawyer at the first chance to do so. You should say nothing without the advice and help of your lawyer. If you cannot afford a lawyer and you are arrested, ask for the help of a lawyer and say nothing else until you have a lawyer representing you. You may be unable to see a lawyer until you have been brought before a judge and “arraigned.” At that point, the judge will ask you if you plead guilty or not guilty to the charge. If you plead “not guilty,” you may then ask for a lawyer.

## **What’s the difference between an arrest and being detained?**

Arrested means you have been taken into custody and can’t leave. You can be detained for a short period of time if the police believe you may be involved in a crime.

## **Do I have to give my name, address, or show identification if asked?**

Yes. If asked, you should give your name and address. You should also provide identification if asked to do so. This does not violate your Miranda rights.

## **Can I be questioned after I am told my rights?**

You can only be questioned if you voluntarily give up your rights and you understand that you have given up your rights. If you agree and then change your mind, questioning should stop as soon as you say you want a lawyer. If you talk after asking for an attorney, the information may be used against you if you testify to something else.

## **Can I be stopped and questioned without being arrested?**

Yes. The police can stop and question without arresting you. After seeing suspicious activity, a police officer may temporarily detain you, ask you to identify yourself, and ask about the suspicious activity. If the officer asks about additional matters, it may become an arrest. For safety, the police may frisk a person for weapons. If they feel something that may be a weapon, they may remove it. However, they cannot remove anything from your pockets that cannot be a weapon, even if they believe it to be contraband.

## **Can I always have an appointed lawyer in a criminal case?**

No. The court may appoint a lawyer for you if you are indigent (very poor), and the judge may decide if you qualify for that service. The court may not appoint a lawyer for you if the crime you were charged is very minor and you are not risking the possibility of serving time in jail.

## **When can I be arrested?**

A police officer may arrest you if he or she has a warrant for your arrest. He or she may arrest you without a warrant if the officer has probable cause to believe you have committed or are committing a crime.

## **Can the police use force to arrest me?**

If you resist lawful arrest, the police can use all reasonable force to arrest you and keep you under arrest. However, after you have been restrained, they cannot continue to use force.

## **What if I am innocent?**

Even if you think you are innocent, it is a crime to resist an officer who arrests you lawfully. Do not resist an officer. If it turns out that you have been arrested illegally, the law provides remedies.

## **Do the police always have to tell me the truth?**

No. The police may legally lie to you during an investigation. They can lie about the evidence they have against you or the strength of their case.

## **Do I have to submit to a search?**

A police officer, following an arrest, may search your person and effects, including your car if you are arrested while you are in your car. How far that search may go is governed by law. The immediate area of the arrest may be searched. A general search of the surrounding area cannot be searched without a search warrant. A search may be made at anytime if you consent. A general search of the surrounding area cannot necessarily be searched incident to your arrest. Therefore, while you must be cooperative with law enforcement in physically submitting to a search when instructed to do so, you never are required to provide verbal or written consent to search. You should talk to your lawyer if you believe that a search or the extent of a search was improper.

## **To what tests must I submit if I am arrested for driving while intoxicated?**

Nebraska law requires that a law enforcement officer have reasonable cause to believe you are driving while intoxicated before he or she may arrest you for that charge. To help in finding out if he or she has the necessary reasonable cause, the officer may ask you to do field sobriety tests.

You do not have to do the field sobriety tests. However, if you are arrested for driving while intoxicated, the officer will ask that you take a breath or blood test. Nebraska law does require you to take the test. If you refuse to take the breath or blood test, you can have your driver’s license suspended by the state department of motor

vehicles for one year and be charged in criminal court with driving while intoxicated and refusing to submit to the test, each of which carry separate penalties.

Why is this? By having the privilege of being a licensed driver, you have agreed to abide by the laws governing travel on the public highways. One of these laws includes agreeing to submit to an intoxication test.

The information in this brochure is for educational purposes only. It is not legal advice or a substitute for legal advice by a lawyer. If you want legal advice, you should contact a lawyer licensed to practice law in Nebraska.

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