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YOUR CONSTITUTIONAL RIGHTS – WHAT YOU NEED TO KNOW



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At some point in your life there is a good chance that you will find yourself in an encounter with law enforcement. Whether the encounter stems from a routine traffic stop or an actual arrest it is imperative that you have at least a basic understanding of your Constitutional rights. Your Constitutional rights are intended to protect you at any stage of a criminal investigation or prosecution; however, your rights can only protect you if you know what they are and you assert them at the appropriate time.

THE BILL OF RIGHTS

In the United States, the U.S. Constitution provides the framework and the foundation for our entire judicial system. Because we operate under a federalist form of government in the U.S., the individual states also have their own independent government and laws; however, no law may be passed by any state that violates the Constitution. Of particular importance to anyone facing an encounter with law enforcement or the judicial system are the rights found in the first ten amendments to the Constitution, collectively known as the "Bill of Rights". The Bill of Rights contains numerous rights and privileges that are important during an encounter with the police and/or as a defendant in a criminal trial, including:

- **Fourth Amendment** – Right against unreasonable searches and seizures; warrant requirement
- **Fifth Amendment** – Right against self-incrimination; double jeopardy; due process
- **Sixth Amendment** – Right to an attorney; right to trial by jury; right to confront witnesses; right to know accusers; speedy trial right
- **Eighth Amendment** – Right against cruel and unusual punishment; right to bail

QUESTIONING



It is rare for an individual to make it through an entire lifetime without being questioned by the police for one reason or another. Whether the questioning is in relation to a simple traffic stop or relates to a major criminal investigation, you have rights that apply anytime a law enforcement officer wishes to question, interview, or interrogate you. The most important of those rights is the **Fifth Amendment right to remain silent.**

Your right to remain silent is broad and applies at all times. Whether you encounter a law enforcement officer while walking down the street, at your home, or after being officially placed under arrest ***you do not have to answer questions.*** The only exceptions to this very important right apply to questions intended to illicit your identity and/or basic information during a traffic stop. State laws vary; however, in some states you are required to provide your name when asked by a law enforcement officer. You are also required to provide your name, registration and insurance information during a traffic stop. Once you have provided the required answers, however, you may refuse to answer further questions. Furthermore, if you



choose to answer any additional questions you may stop answering them at any time.

Along with your right to remain silent, the Sixth Amendment right to an attorney may also apply during police

“questioning”. All too

often “questioning” is actually an interrogation in disguise. Just as you always have a right to remain silent you also always have the right to consult with an attorney prior to answering any questions. If the questioning takes place after you have been formally charged with a

criminal offense and you cannot afford to hire an attorney the court is required to appoint an attorney to represent you.

If you are confronted by the police who wish to question you it is best for you to firmly, but respectfully, say something along the lines of “I assert my right to remain silent and do not want to answer any further questions. I also want to speak to an attorney.”

SEARCHES AND SEIZURES

The Fourth Amendment is where you will find the prohibition against “unreasonable searches and seizures”. Typically, this means the police cannot conduct a search without first obtaining a warrant based on



probable cause. The scope of the protection offered by the Fourth Amendment depends, to a large extent, on the place to be searched. Your home retains the most Fourth Amendment protection.

With few exceptions, your home cannot be searched without a warrant or your consent.

The Fourth Amendment protection diminishes somewhat when the place to be searched is a business, a vehicle, or your person. The police may, for example, conduct a “pat down” search of the outside of your clothing without a warrant if they have “reasonable suspicion” that you might have a weapon on your person. A search of your vehicle may also be conducted without a warrant but requires an officer to have probable cause that a crime has likely occurred or that evidence of a crime will be found in the vehicle.



DETENTION AND ARREST

Often the extent of protection afforded you by the Constitution depends on your custodial status. In an encounter with the police you could be free to

go at any time, detained, in “custody”, or arrested. Frequently, it is not clear what an individual’s status is at any given time. One way to know if you are free to go is to simply ask – “Am I free to go?” If the answer is yes then you may walk away. If the answer is no then you have been detained or are “in custody” but may not have officially been arrested at that point. One reason the line between detention and arrest is significant is that only upon an arrest are the police required to read you your rights. Although your Constitutional rights apply at all times, the police are only required to *tell* you they apply when you are placed under arrest.



TRIAL

If you are actually arrested and charged with a criminal offense a number of your Constitutional rights become important. First, you have a right to bail except in the most serious cases (murder, treason). Your right to remain silent continues and becomes even more important as does your right to an attorney. If you are arrested, you should verbally assert both of these rights immediately. If you do so, the police are required to stop questioning you until you have a lawyer present.



Your Sixth Amendment rights to a jury trial and a speedy trial also become important at this point. Although you may decide to waive both of these rights if doing so benefits you, you should be aware of both rights. At trial, you have the right to confront and cross-examine witnesses against you. This means that if the prosecution calls a witnesses who provides damaging testimony against you, your attorney may also question the

witness to try and discredit him/her or cast doubt on the testimony. At trial, asserting your right to remain silent cannot be used against you, meaning the judge or jury cannot infer anything negative from your silence.

Finally, the Eighth Amendment guarantees that you cannot be tried for the same offense twice (double jeopardy) and ensures that, if convicted, you will not be subject to "cruel and unusual punishment.



A basic understanding of your Constitutional rights is important for everyone to have; however, if you find yourself in an encounter with the police there is no substitute for experienced

legal advice. Therefore, contact an experienced Florida criminal defense attorney right away.

Cornell University School of Law, [Bill of Rights](#)

Constitution Society, [Summary of Constitutional Rights, Powers, and Duties](#)

South Carolina Judicial Department, [Rights of the Defendant](#)

ABOUT THE AUTHORS



Amanda Powers Sellers

Florida criminal defense lawyer, Amanda Powers Sellers, has aggressively defended thousands of Florida criminal cases. With over nine years of criminal jury trial experience, she has the necessary background to represent cases ranging from Driving under the Influence (DUI) to

First Degree Murder.

Amanda is a seasoned litigator and an aggressive negotiator. With a wealth of experience she has proven that her gentle, but aggressive style of criminal defense litigation consistently achieves results for her clients.



Jenna C. Finkelstein

Florida criminal defense attorney, Jenna Finkelstein, has over sixty (60) criminal jury trials to her credit. Her experience defending individuals charged with crimes in the state of Florida ranges from domestic battery to DUI Manslaughter, Sexual Battery, First Degree Murder and all

crimes in between.

She is passionate about the law and promises personal attention to all of her clients and their individual needs. Jenna is a seasoned trial attorney who knows the legal system and its players. Jenna and her team at the Law Offices of Powers Sellers & Finkelstein, PLC, are committed to fighting for you.

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