

# Know Your Rights

*in Allegheny County*



*A publication of the Pittsburgh chapter of  
the National Lawyers Guild*

**T**he National Lawyers Guild is an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers, and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of the people, to the end that human rights and the rights of ecosystems shall be regarded as more sacred than property interests.

*Our aim is to bring together all those who regard adjustments to new conditions as more important than the veneration of precedent; who recognize the importance of safeguarding and extending the rights of workers, women, farmers, and minority groups upon whom the welfare of the entire nation depends; who seek actively to eliminate racism; who work to maintain and protect our civil rights and liberties in the face of persistent attacks upon them; and who look upon the law as an instrument for the protection of the people, rather than for their repression.*

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Our blog is at [pittsburghnlg.noblogs.org](http://pittsburghnlg.noblogs.org).

and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

### **Eighth Amendment**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### **Fourteenth Amendment, section 1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **Know Your Rights in Allegheny County**

The United States is known for imprisoning more of its citizens than any other country in the world, surpassing even authoritarian regimes like Russia or China. There are currently about 1.7 million prisoners in the US, with another 3.9 million on probation or parole, for a total of 5.6 million under some form of correctional supervision. These numbers are actually down from the beginning of the Covid-19 pandemic, meaning things used to be even worse. Many observers attribute this dire situation to an epidemic of racist policing that disproportionately targets poor people of color, but there is another way to look at it - as an epidemic of ignorance about basic constitutional rights. Most of those 5.6 million owe their predicament, not to being informed on by someone else, but to informing on themselves, either by confessing to crimes or at least voluntarily giving police enough information to build a case. If everyone knew and exercised their civil rights under the Constitution, arrest, conviction, and imprisonment rates would plummet, and communities would be freed of an enormous financial and emotional burden. This pamphlet is an attempt to alleviate this problem by presenting civil rights information in an easily readable and distributable format.

The reader should be aware of a few things to begin with.

First, *nothing in this pamphlet is legal advice*. We aren't just saying that to avoid being sued - it's the literal truth. Legal advice is advice you get from *your lawyer* about *your* particular legal situation. This is not that.

Second, be aware that *just because you know your rights does not mean the police will respect them in any given confrontation*. Nonetheless, if you know what your rights are you will be more able to recognize when they're being violated and make better-informed decisions concerning what to do about it.

Third, it's important to remember that *everyone's rights are different*. This might seem like a strange assertion, considering that everyone in the

country is supposedly governed by the same laws and the same constitution. However, enormous swathes of the population have had various rights stripped from them under different pretexts. Parolees, for example, are often required to allow warrantless searches of their homes. Members of the military give up much of their Fifth Amendment right against self-incrimination and First Amendment right to free speech, among others. Minors have no right to refuse searches of their bedrooms unless it is asserted by their parents. Even medical professionals can have their licenses to practice suspended by the government for merely getting arrested, in violation of their right to due process under law. Such exceptions to the Bill of Rights are so numerous that books could be written about them, but for now just note that the contents of this pamphlet in many ways represent a best case scenario. Your mileage may vary.

## **The Criminal Justice System**

Criminal justice in the United States is codified as an adversarial system. A criminal case is not an independent investigation by impartial investigators who just want to get to the truth of the matter at hand. Rather it is a contest, in which the police and prosecutor are on one side, opposing the defendant and their lawyer, with the judge acting as a referee. Both sides are fighting for the most favorable outcome, regardless of facts or justice. The prosecution wants to convict the defendant and impose the harshest possible sentence, while the defendant is trying to get as many of their charges as possible dropped or dismissed. In theory, if both sides follow the rules justice will be done. In practice, defendants who don't know their rights tend to get railroaded, regardless of innocence or guilt.

For defendants, the consequences of losing the contest are severe. If you are convicted of a felony you are permanently banned from most professional jobs and are never again

## **Appendix One: Relevant Constitutional Amendments**

### **First Amendment**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

### **Fourth Amendment**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### **Fifth Amendment**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **Sixth Amendment**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature

Then there's the "not that big a deal" exception. If evidence used to obtain a conviction is found on appeal to have been obtained in violation of the defendant's rights, the appellate court can void the conviction and order a new trial - but not if they decide that the defendant would have been convicted even without the tainted evidence.

allowed to possess a firearm, in addition to any sentence you might receive. Misdemeanor convictions, while less severe, still carry consequences that persist long after your sentence is completed, including disqualification from many professions. Even if all your charges are dropped or reduced to summary offenses, a record of your arrest will be available to potential employers and landlords forever after. Pennsylvania's Clean Slate Law mandates automatic record sealing of charges that do not result in conviction, but private background checking companies that downloaded the information while it was still available will retain it in their own databases.

As in any contest, players need to know the rules in order to win. This is the police's greatest advantage. They are professionals who play the game every day, whereas most civilians don't even know there is a game, let alone what the rules are. The only professional on Team Defense is the lawyer - and by the time they get involved it's often too late. Any criminal defense attorney will testify that their biggest problem is clients who blab to the cops in complete ignorance of their Fifth Amendment right to remain silent.

We all need to know the rules, because we can't avoid the game. The game doesn't begin at your trial, or even when you get arrested. It begins as soon as a cop approaches you and asks a question. Your moves from then on can make the difference between freedom and incarceration.

## **Your Rights on the Street**

Police are allowed to walk up to you and start chatting, just as anyone else is. This is known as the approach phase of police interactions. At this stage you are allowed to walk away from the officer, just as you are allowed to walk away from anyone else. The Fifth Amendment of the Constitution guarantees your right against incriminating yourself. This means that you do not have to talk to a cop who approaches you. Keeping quiet and walking away is generally the wisest course of action. Under Pennsylvania law, police are not supposed to chase you even if you run, unless they have reasonable suspicion that you have

committed a crime (*Commonwealth v. Taggart*, 2010). However, as we shall see below, it doesn't take much to establish reasonable suspicion. Running can get you in more trouble if you get caught.

The next stage is detainment. If the cop detains you, you must stay put until he lets you go, but you are not arrested (yet anyway). According to the Supreme Court decision *Terry v. Ohio*, police must have reasonable suspicion that someone has committed a crime to detain them. In practice, reasonable suspicion is a very low bar. For example, cops have successfully established reasonable suspicion by claiming that a suspect was staring at them, but also by saying someone refused to make eye contact. Cops don't have to tell you that you are detained, but you can always ask them. If they say you are not detained you can leave the scene. This will not always be a practical option, but if you can leave you probably should. If police refuse to tell you whether you are detained or not, you can keep asking. If they still won't tell you, consider just walking away. If the cops won't let you leave, you are detained.

State laws requiring people to identify themselves to police were ruled to be constitutional by the Supreme Court in *Hiibel v. Sixth Judicial District Court of Nevada*, but many states, Pennsylvania included, do not have such laws. You do not have to show police your ID or otherwise identify yourself in Pennsylvania unless you are pulled over while driving a motor vehicle or supervising a driver with a learner's permit, or detained by a game warden while hunting or fishing.

*Terry v. Ohio* is also the decision that instituted the so-called Terry stop or Terry pat. The Supreme Court ruled that if police have a reasonable suspicion that a detained person is armed, they can pat down the outside of the suspect's clothing to check for weapons. If the cop feels something that could be a weapon, he is allowed to reach into the appropriate pocket and retrieve the object. If the object is anything illegal, weapon or

a building or vehicle, he may enter without a warrant and search for the source of the offending odor. Since smells cannot be preserved or recorded, the plain smell doctrine is ripe for abuse.

**Warrant** A document allowing the police to search a vehicle or property, or arrest an individual. A warrant can only be issued by a judge. According to the Fourth Amendment, judges cannot issue search or arrest warrants without probable cause that evidence will be found or that the suspect has committed a crime. Police can almost always get a search warrant because defense lawyers are not allowed to intervene in the application process. However, search warrants can be challenged after the fact. If a search warrant is found to have been issued without probable cause, any evidence uncovered by the search is inadmissible under the exclusionary rule.

**Miranda warning** The Miranda warning gets its name from *Miranda v. Arizona*, the Supreme Court ruling that requires police to inform a suspect in custody of certain constitutional rights before interrogating them, notably their right to remain silent. As noted above, police only have to recite the Miranda warning if they want to ask you questions.

**Subpoena** A court order, signed by a judge, that requires the subject to turn over certain evidence in their possession, such as documents, files, or physical evidence. In the case of a grand jury, the subject of the subpoena may be required to show up and testify in person, although per the Fifth Amendment they do not have to answer any question that might incriminate them. Unlike a warrant, a subpoena can be challenged in court before it is carried out.

**Exclusionary rule** A rule of evidence which holds that any evidence gathered by the police or prosecutor in violation of the defendant's constitutional rights may not be admitted in court or otherwise taken into consideration by the judge or jury. The Supreme Court has carved out some exceptions to the exclusionary rule. One is the "woulda found it anyway" exception. If police can demonstrate that illegally obtained evidence would have eventually been discovered during their investigation by constitutional means, that evidence will be allowed.

## Glossary

**Reasonable suspicion** Reasonable suspicion is a standard invented by the Supreme Court in *Terry v. Ohio*. It allows police to detain anyone of whom they have reasonable and articulable suspicion of being involved in a crime. On paper, "reasonable and articulable" cannot just be a hunch. An officer should in theory be able to state *why* he was suspicious of a person he detained, not just that he *was* suspicious. In practice, courts have accepted such vague and undefined criteria as grounds for reasonable suspicion that police can detain virtually anyone they want for any reason. "Furtive movements" is one favorite. Appearing nervous can be grounds for reasonable suspicion. So can being overly calm.

**Probable cause** Probable cause is named in the Fourth Amendment (see Appendix 1) but not defined there. Police must have probable cause to obtain a search or arrest warrant, or to search a vehicle, person, or building without consent, or to arrest someone for a crime. An early step in any criminal case in any jurisdiction involves a judge deciding whether probable cause exists for the charges being brought against the defendant. In practice probable cause means some slight shred of evidence that a suspect committed a crime. In spite of the word "probable," there is no general requirement for the chance to be 50% or greater.

**Plain view doctrine** An exception to the requirement for a search warrant. If evidence of illegal activity can be seen without making any affirmative act to expose it, that evidence may be seized by police and used in court without obtaining a search warrant. Police may enter a building or vehicle to seize evidence in plain view.

**Plain smell doctrine** Similar to the plain view doctrine, plain smell holds that if an officer smells anything illegal wafting from

not, it can be used as evidence against the suspect, a glaring exception to the Fourth Amendment right against unreasonable search and seizure. Abuse of the Terry pat has driven the rise of stop-and-frisk tactics in Black neighborhoods across the country. With the exception of the Terry pat, the police can only search you without a warrant if they first arrest you or if you give them permission. To deny them permission for a search you have to say clearly "*I do not consent to a search.*" Anything less explicit can be construed by the courts as permission. You should say this any time you are searched by police, even if you think the search is constitutional, even if you think they won't find anything. They may search you anyway (don't resist), but if your refusal is on record via body camera footage or other means, you might have a fighting chance of getting evidence suppressed or winning a lawsuit. See the Holding Police Accountable section below.

While *Terry v. Ohio* ripped a giant hole in the Fourth Amendment, it left the Fifth untouched. You still don't have to talk to the cops, even if you are being detained. If they ask you questions, you can just say that you are going to remain silent and you want to talk to an attorney. Do not lie to police. There is some kind of law against lying to police in all 50 states and federally. Even if it is legal to lie to the particular cops who are talking to you, getting caught might establish probable cause to arrest you or someone else. Always remember that police are allowed to lie to you, however. The best way to avoid lying to the police is simply not to tell them anything.

Arrest is the third stage of police interaction. Generally, if a cop goes to the trouble of detaining someone on the street it's because he wants to arrest them. In order to do so he must have probable cause that the suspect has committed a crime. Unlike reasonable suspicion, probable cause is enshrined in the Constitution itself, by the Fourth Amendment. Also unlike reasonable suspicion, probable cause requires some evidence, although sometimes not much. For example, in many jurisdictions possession of condoms is considered probable cause for prostitution charges. If police have probable cause to make an arrest, they don't need to detain the suspect first. Consequently, when a cop detains someone it's usually so he can ask them questions to establish

probable cause. This is why you should not answer questions when being detained. If the police can't get enough information to reach probable cause there's a better chance they will let you go.

If you do get arrested, don't panic. In order to convict you of a crime, prosecutors have to prove you guilty beyond a reasonable doubt, a much higher bar than the probable cause needed to merely make an arrest. Police will often arrest a suspect on very limited evidence, and count on the defendant talking to them to finish making their case. Don't fall into this trap. If police attempt to interrogate you after you have been arrested, tell them only "*I am going to remain silent and I want an attorney.*" Make sure you are clear and explicit on both counts, the silence and the lawyer. Once you say this, the police are not supposed to question you any further, according to the Supreme Court's ruling in *Miranda v. Arizona*. If they continue to question you, just keep repeating the magic words. If you slip up and say anything else, this may constitute a waiver of your right to remain silent. In that situation you should re-invoke your Fifth Amendment rights by repeating the magic words - "*I am going to remain silent and I want an attorney.*" Ironically, you cannot assert your right to remain silent by simply not talking. The Supreme Court ruled in *Berghuis v. Thompkins* that defendants must explicitly invoke their right to remain silent by speaking out loud.

When you are arrested the police are supposed to read you your Miranda rights before they interrogate you, another benefit conferred by the *Miranda v. Arizona* decision. There is a misconception that the cops have to read the Miranda warning to anyone they arrest, and that if they don't all charges against the defendant will be dropped. *This is not true.* They only have to read you your rights if they plan to interrogate you. If they don't read you your rights and you tell them something incriminating, your lawyer might be able to get your statement thrown out under the so-called exclusionary rule, which states that any

If you get detained, consider asking bystanders to film the interaction. Again, you will have to be able to contact them afterward to get the files. Surveillance cameras are another possibility. Look around the area for building-mounted cameras, Ring doorbells, and similar devices. Try to talk to the owners to get the footage. Keep in mind that it will probably be overwritten by new video after a few days, so don't waste time.

Another good source of video can be the cops themselves. Every officer in Pittsburgh now wears a body camera, and the footage is available via Pennsylvania's Act 22. Cops are notorious for turning off their cameras before they do something sketchy, but they screw up and leave them on surprisingly often. To request body camera footage you need the officer's name and badge number. If you end up getting arrested this information will be on the police report, but if not you will have to note and remember it. City surveillance cameras are widespread in Pittsburgh, and their footage too can be retrieved with an Act 22 request. Look at the light poles near where your rights were violated to see if one of them has a camera. Your request might be denied on the grounds that the footage is needed in a police investigation. In this case your lawyer can often get the necessary footage in the discovery process, which in a civil rights lawsuit is where the government has to turn over whatever relevant evidence it possesses. Note that Pittsburgh police only keep body camera footage for thirty days. In Pittsburgh you can file an Act 22 request with the city's Agency Open Records Officer by certified mail or by delivering a written request to their office. Other towns and boroughs should have a similar procedure.



worth asking around.

Another obstacle to winning a civil rights lawsuit is the doctrine of qualified immunity. Established in principle by the Supreme Court's decision in *Harlow v. Fitzgerald*, and strengthened in *Pearson v. Callahan*, qualified immunity holds that police cannot be sued for violating one's constitutional rights except when they have broken "clearly established law", which is defined as a previous case in which the details of the officers' offending behavior are similar to the situation at hand. Qualified immunity is particularly hard to overcome in cases of excessive force and police brutality, but not necessarily impossible, and not all constitutional violations involve those issues in any case. Again, if you believe your rights have been violated it's worth consulting with an attorney to find out if you have a winnable case.

Any case is easier to win if you have independent evidence. If a lawsuit comes down to your word versus that of one or more cops, you will probably lose, because most judges are biased in favor of the police. Witnesses can be very helpful. If anyone saw your rights being violated it's a good idea to try to identify them and ask if they might be willing to testify on your behalf. If they consent, ask them to write down what they saw and keep the notes in a safe place. It might be years before the case gets to the point where witnesses testify to the facts, and they will forget much of what happened if they don't write it down. This is also good practice if you get arrested and you think witnesses can help you fight criminal charges.

Video evidence is also extremely useful in criminal and civil cases. Witnesses can be cross-examined and have their credibility and objectivity called into question, but video shows irrefutably whatever was in front of the camera. In today's camera-filled world, there are a number of sources of video evidence. Bystanders with phones are one. Filming the police is legal in all 50 states and Washington, DC, although cops hate it.

evidence gathered by the government in violation of the defendant's rights is inadmissible in court. It's a very bad idea to count on this, though. Much better to invoke your right to remain silent with the magic words, and then shut up, Miranda warning or no. Once more, "*I am going to remain silent and I want an attorney.*" In the recent decision *Vega v. Tekoh*, the Supreme Court ruled that the police can no longer be sued for violating a suspect's Miranda rights, but any evidence so obtained can still be thrown out under the exclusionary rule.

When police arrest you they are allowed to search your person incident to the arrest. If the arrest takes place in your home, they are also allowed to search the area in your immediate vicinity, but if they want to search the rest of the house they must get a search warrant. This so-called wingspan rule was established by the Supreme Court in *Chimel v. California*.

## **Your Rights in Your Home**

Police are not allowed to enter your home without a warrant, except under certain limited circumstances. According to the Fourth Amendment to the Constitution, a search warrant must specifically describe the thing to be searched, which for a house means it has to have the correct address. A warrant must also describe what evidence the police are looking for. Police are only allowed to search parts of the house where that evidence might reasonably be found. For example, if they are looking for a stolen car, they are not allowed to search a bedroom closet on the second floor. To get a search warrant, police must demonstrate probable cause to a judge that evidence of a crime will be found on the premises to be searched. If police do come to your home with a warrant, try to get a copy. If the warrant does not meet the requirements of the Fourth Amendment, your lawyer might be able to get any evidence the cops find thrown out under the exclusionary rule. An unconstitutional warrant can also be grounds for suing the police. Remember that the Fifth Amendment still applies when your house is being searched. Police often try to interrogate residents during house searches. You don't have to say anything except the magic words: "*I am going to remain silent and I want an attorney.*"

One of the exceptions to the requirement for a search warrant is consent by a resident. If you or your housemates let cops into your house without a warrant, they aren't supposed to dig through closets and drawers, but anything in the open is covered by the so-called plain view doctrine. Plain view says that anything visible without a search can be used as evidence by police without a warrant. A conceptually similar legal principle is the plain smell doctrine, which is often used in marijuana arrests. Dishonest cops will pretend they smell marijuana to falsely establish probable cause to enter a house and search for weed. Any evidence they find, whether weed or not, is then admissible in court. This ruse is not applicable in some states that have legalized or decriminalized marijuana, but as of this writing that has not happened in Pennsylvania. Federal law enforcement agents can pull this trick anywhere, since marijuana is still illegal under federal law. And finally, even if you are traveling in a state where marijuana is legal, police can abuse the plain smell doctrine during traffic stops if driving while under the influence of marijuana is prohibited.

If police knock on your door, you do not have to let them in unless they have a warrant. Since most warrants these days are the no-knock type, if they have one they will probably just break down your door and come in. If not, they will probably at least announce they have a warrant. If they just knock on your door and yell "*Police, open up!*", you can ask if they have a warrant. If they don't have one, you do not have to let them in. Some know-your-rights guides suggest going outside and closing the door behind you to ask the police what they want and if they have a warrant. This is risky. Even if you just open the door, over-aggressive police might push their way in and later assert you gave them consent, or exploit the plain smell doctrine by falsely claiming to smell marijuana. We recommend staying inside and speaking to the police, if at all, by yelling through the door.

Anyone who lives in a house or apartment can give police

for police to be criminally charged for civil rights violations. Only when a case of police violence ends up in the media, such as the murder of George Floyd, are the cops involved likely to be charged, and even then they often end up getting off the hook. Usually the only available recourse if your rights have been violated by the police is a civil suit.

Civil suits are lower stakes affairs than criminal prosecutions. They proceed much more slowly, there is no risk of imprisonment, and the losing party doesn't end up with a criminal record. For police officers, the risk is even lower, since their lawyers are paid for by the police union, and if they lose or settle the case the judgement is paid by the city. Nonetheless, suing officers for constitutional violations can generate financial awards and sometimes lead to settlement agreements that restrict further violations by the offending police agency. The *Handschu* case from New York is a classic example.

Lawsuits against state and municipal police officers for civil rights violations are enabled in federal law by the statute *42 U.S. Code § 1983*. A similar principle to that enshrined in 1983 was applied to federal law enforcement agents by the Supreme Court in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, but note that the Supreme Court recently severely restricted *Bivens* in the decision *Egbert v. Boule*.

While it is legally permissible to sue cops for violating your constitutional rights, it is not easy. For starters, it's hard to find a lawyer to take a civil rights case. Attorneys can generally only get paid for that type of case either on a contingency fee basis, in which they take a percentage of whatever settlement is reached, or if the judge awards them attorney's fees. This means spending years advancing the case through various motions, hearings, and appeals before they see a dime. Anyone coming out of law school with tens of thousands of dollars in student debt will find it easier and more lucrative to specialize in something like tax law or contracts. Civil rights lawyers can also find themselves discriminated against by judges and prosecutors, which hurts their other clients. Nonetheless, some lawyers do take civil rights cases. Some public interest law firms even specialize in them. If you think your rights have been violated it's

County will usually dismiss the case at the request of the defense. The dismissal will be without prejudice, meaning that the county can refile the charges, but often they don't bother. Even if prosecutors do eventually refile, you are free to go in the interim, and will be released from jail if you are confined. This is why you and your lawyer should be ready to proceed from the beginning. If neither side is prepared for the hearing, the prosecution gets a free pass, but if the defense is ready to go, the prosecutor is the one who has to request a continuance. If that happens three times you're probably home free.

## **Court Docket**

Pennsylvania has a very capable docket search engine for court cases. Sometimes a suspect's name and charges will appear in the docket before they have been arrested. If you are worried that you might have a warrant out for your arrest, you can go to [ujsportal.pacourts.us/CaseSearch](https://ujsportal.pacourts.us/CaseSearch) and look up your name.

Choose Participant Name from the list, and then enter your first and last names and date of birth. Choose Criminal from the Docket Type list and Allegheny from the County list. If you see a new case in the results table that you are not familiar with, with a status of Inactive, there is probably a warrant for your arrest. Note that this method is not guaranteed to work, especially in other counties, but it never hurts to try. Advice on what to do if you find you have a warrant is beyond the scope of this pamphlet, but if you decide to turn yourself in we strongly suggest consulting a criminal defense lawyer first.

## **Holding Police Accountable**

Despite the fact that the Constitution is the highest law of the United States, it's very difficult to punish police officers who violate someone's constitutional rights. Theoretically, a cop who searches or arrests someone in violation of the Constitution is committing the same crime of assault that a civilian who did the same thing would be charged with - but it's virtually unheard of

consent to enter the space and search communal areas, but not to search other residents' bedrooms. Your landlord cannot give police permission to enter unless he lives in the apartment with you. Any illegal object found in a private area such as a bedroom can incriminate only the residents of that bedroom. Illegal objects found in communal spaces can be addressed under the doctrine of constructive possession, which says that a person can be said to possess an object who has both knowledge of the object and access to it, even if the object does not belong to them. Constructive possession can be used to incriminate an entire household for any illegal object in a common area of the house. It's a good idea to make sure all your housemates know not to let police inside without a warrant.

Consent is the most common excuse for warrantless searches by police. However, there are a couple of others you should be aware of. The hot pursuit exception holds that if cops are chasing someone who runs into a building, they are allowed to follow the suspect inside without getting a warrant. In addition, the plain view doctrine allows police to enter a home if they spot something potentially illegal inside. For example, if a cop looks through a window and sees someone who looks like they might be under 21 holding a container that could possibly hold an alcoholic beverage, they can claim probable cause to enter the house to search for evidence of underage drinking. People hosting house parties should strongly consider closing their curtains. There are various other exceptions, but they all follow a similar pattern. Police are allowed into your home under different pretexts, and once inside they can use the plain view doctrine to gather evidence of crimes and develop probable cause to make arrests.

## **Your Rights in Your Car**

The driver and passengers in a motor vehicle are detained when a cop pulls the vehicle over. All occupants are required to exit the vehicle if the cop tells them to. The driver is required to show the police their driver's license, vehicle registration, and proof of insurance. Passengers do not have to show physical ID or give their names in Pennsylvania. Police must have reasonable suspicion to initiate a traffic

stop, but the multiplicity of traffic regulations make this an even lower bar than for detaining pedestrians. It's nearly impossible to drive for any length of time without breaking some traffic law or other, a situation that police take full advantage of. Being in a car does not affect your Fifth Amendment rights. No one in the car has to answer questions.

It is still a good idea to make sure your vehicle is as legal as possible, however. Keep the registration and inspection current, remove any window tinting, and get rid of any air fresheners or other objects hanging from the rear view mirror. Make sure all lights are in working order. Thanks to a recent decision by the Pennsylvania Supreme Court, police in PA are allowed to stop anyone with a frame around their license plate for having an obscured plate, even if the frame does not obstruct the plate number. Take the frame off your plate if you have one. These measures will not stop a cop from pulling you over if he really wants to, but will give him fewer offenses to include on the ticket, potentially saving you money.

The Supreme Court ruled in *Michigan v. Long* that police can search the compartments of a vehicle in which an occupant could reasonably reach a concealed weapon, extending the Terry doctrine to vehicle searches. Per *Arizona v. Johnson*, police can do actual Terry pats on the vehicle's occupants with reasonable suspicion that they are armed. This means they are not allowed to search the trunk or engine compartment during a traffic stop without permission from the driver. Again, refusal of permission has to be explicit and unmistakable. "*I do not consent to a search of my vehicle.*" is your best bet.

Police can search your entire car during a traffic stop, trunk and all, if they have probable cause it is involved in a crime. This rule was established in 1925 by the Supreme Court in *Carroll v. United States*. Just as on the street, probable cause is a higher bar than reasonable suspicion. You should not give the police probable cause to search your car by talking to them. If police

defender has a higher case load than most private criminal defense lawyers - or prosecutors for that matter. In Allegheny County this problem is not as acute as in some places, but our public defenders are still overworked compared to their opposition. Another problem is that the PD's office will assign you your lawyer - you don't get to pick your own. Nonetheless, PDs gain a lot of experience in a hurry, and in Allegheny County they are a reasonable alternative to a paid attorney. It's quite possible to fork over a lot of money to a private lawyer who won't do any better a job than a public defender. To sign up with the Allegheny County public defenders, call 412-350-2401. If they don't pick up, leave a message with your name, phone number, and preliminary hearing date, and keep calling back until you talk to a live person. You can also request a PD on their web site at [www.alleghenycounty.us/Government/Court-Related/Public-Defender/Online-Application-Instructions](http://www.alleghenycounty.us/Government/Court-Related/Public-Defender/Online-Application-Instructions).

## **Preliminary Hearing**

The preliminary hearing is the next step in a criminal case after the preliminary arraignment. This is where the prosecution formally argues that there is so-called prima facie evidence that you committed the crimes with which you are charged. Prima facie is supposedly a higher bar than probable cause, but in practice they are the same thing. If the judge disagrees with the prosecutor, one or more of your charges will be dropped. This doesn't happen often, but it's not unheard of.

Preliminary hearings are usually scheduled for a few days after the preliminary arraignment. It's important to use this limited time to retain a lawyer as soon as possible. If you are in Allegheny County Jail you should call the public defenders office the first chance you get. They will represent anyone confined in ACJ. If you are out on bond you should still find a lawyer as soon as you can. The idea is to give your lawyer as much time to prepare as possible, so that they don't have to request a continuance of your hearing. There is an important reason for this. Most preliminary hearings end up getting continued several times when either the prosecution or defense is not ready to proceed, but if the prosecution needs three continuances, judges in Allegheny

bondsman will charge you a percentage of the amount needed, which he keeps. If you violate your release conditions and a judge revokes your bond, the bondsman will be on the hook for the full amount, but you will be the one sent back to jail. Often a bail bondsman will require some kind of collateral, such as a house. This means if a judge decides to revoke your bond, the bondsman takes possession of the collateral.

Bukit Bail Fund is a local nonprofit bail fund that will bail out certain defendants for free. The money returned to Bukit from concluded cases is recycled into the fund for future beneficiaries. Bukit is a little harder to get hold of than most bail bondsmen, and there are limits to the amount of bail they can afford for any particular defendant. However, if they can help you it can save a lot of money. Their request form is on their web site at [bukitbailfund.org](http://bukitbailfund.org).

Finally, you can get your lawyer to ask the judge to lower or eliminate your bail, either at your preliminary hearing or at a separate bail reduction hearing. This too is free (or at least should be covered by your lawyer's retainer), but it can take days and there's no guarantee the judge will agree.

## **Right to a Lawyer**

The Sixth Amendment of the Constitution guarantees the right to be represented by a lawyer in court cases. In the landmark case of *Gideon v. Wainwright*, the Supreme Court decided this means that defendants in criminal cases must be appointed lawyers if they can't afford their own. This requirement, which before Gideon only applied to federal cases, led to the formation of public defenders offices to represent indigent defendants. The Allegheny County public defenders office fulfills this function in Pittsburgh.

Compared to private attorneys, public defenders have a few drawbacks. Due to chronic underfunding, the average public

arrest you during a traffic stop they will probably impound your car, which allows them to search it without a warrant. Any evidence they find can be used against you in court. However, if they arrest you without your car they must get a warrant to search it. In this situation you do not have to tell police where your car is parked.

Once the cops give the driver their license back, the vehicle and its occupants are no longer detained. In *Ohio v. Robinette*, the Supreme Court ruled that police have no duty to inform the driver of this fact. Cops exploit this loophole to continue to interrogate drivers even after the traffic stop has been completed. Don't fall for it. If cops try to interrogate you during a traffic stop, you can refuse to answer questions. Once they return your license just drive away.

Remember that the plain view doctrine applies to cars as well as houses. Even if police don't bother to do a Terry search, they can still arrest you if they spot anything illegal in the vehicle. Police have been known to peer inside parked cars for evidence of crimes, and hide nearby to await the driver's return and arrest them.

## **Drug Sniffing Dogs**

We put this in its own section because it's complicated. The Supreme Court ruled in *Illinois v. Caballes* that police do not even need reasonable suspicion to walk a dog around your car to sniff for drugs during a traffic stop - as long as they do not prolong the traffic stop beyond its normal duration to wait for the K9 unit to arrive. The reasonable suspicion that prompted the traffic stop in the first place does not allow police to detain a driver longer than it takes to write a ticket. To get around this, a cop might claim a separate reasonable suspicion that you are carrying illegal drugs in your car, but this is harder to establish than reasonable suspicion of a traffic violation. Alternatively, the cop might claim probable cause that you are carrying drugs in your car, but again, this requires some evidence. Giving the K9 unit time to show up is another reason cops like to keep you hanging around after they give you back your license. Again, don't be tricked.

If a drug sniffing dog does alert on your car, police then have probable cause to search the vehicle for drugs. If they don't find drugs, but do find something else illegal, that evidence is still admissible in court even though it wasn't what the dog sensed. Many K9 officers have trained their dogs to alert on a surreptitious signal from the dog handler, regardless of what they smell. This trick lets K9 cops search pretty much any vehicle they want. The best defense is to never give consent to a search, and leave as soon as you get your license back.

## Your Rights to Your Cell Phone

Police will confiscate your phone when they arrest you, but they are not supposed to examine its contents without a search warrant, according to the Supreme Court decision *Riley v. Carpenter*. The plain view doctrine means that anything visible on your phone's screen, such as notifications, can be used as evidence against you without a warrant. It is a good idea to configure your phone and apps to include as little information as possible in notifications. Keep in mind, as cautioned above, that the police do not always follow the rules. If your phone can be unlocked with a fingerprint or facial recognition, an unscrupulous cop can hold your finger down on the fingerprint scanner, or hold the phone up to your face to unlock it. The best way to defeat these tactics is to make sure your phone can only be unlocked with a strong alphanumeric password.

Usually when police get a warrant to search a phone, they can break into it using government hacking tools in spite of the password. If you can turn your phone off before you get arrested, this task becomes more difficult. If police can't hack a phone, the phone's owner might be subpoenaed for the password. The rule of thumb here is that anything you possess, which includes your fingerprint and face, must be made available to the police with a subpoena. Anything you know, like a password, is covered by your Fifth Amendment right against self-incrimination. However, this issue has not been definitively

entered on your behalf. In jurisdictions where you have to enter your own plea, always plead Not Guilty. You can always change a Not Guilty plea to Guilty as part of a plea deal, but it is nearly impossible to go in the other direction.

There are several kinds of pre-trial release. The best is Released on Own Recognizance (ROR). This means you are free to go, there's no payment required, and you just have to show up for your court dates. Next best is non-monetary bond. Like ROR, non-monetary bond means you get released immediately without having to pay any money, but you will probably have to check in with Pre-trial Services the next business day and observe other conditions while you await trial. Be sure to read your paperwork carefully and do what it says. Otherwise you might get sent back to jail while your case winds its way through the system. Typical release conditions include not getting arrested, checking in periodically with Pre-trial Services, and remaining within a specified geographic area.

If the judge decides to impose bail, he can allow the option of bond, where you or your friends pay ten percent of the bail amount to the court for your release. You get the money back when the case concludes, but if you violate your release conditions the judge can not only send you to jail to await trial, but force you to pay the entire amount of the bail to the court. In the worst case the judge will require straight bail, where someone has to pay the entire bail amount before you can get out. Again, you get the money back after the case is over, but if you violate your release conditions you can, at the judge's option, go to jail and forfeit the money. Signature bond is a form of bond that does not require an up-front payment, but leaves the defendant potentially responsible for the full amount of the bond if they violate their release conditions. Note that if you get signature bond your full address will appear in your docket sheet, as opposed to the mere zip code published there otherwise.

If you end up with a bail amount you can't afford, you have a few options. The fastest but most expensive one is to call a bail bondsman from jail (their numbers are posted beside the jail phones). The

or associates you should refuse to answer. This is problematic in Allegheny County. At some point before arraignment you will be questioned by employees from so-called Pre-trial Services, ostensibly to gather information the judge needs to determine your bail. Like anything else you say to law enforcement personnel, your answers can and will be used against you in court. However, if you refuse to answer the judge might impose higher bail. You have to take these questions on a case by case basis, and only answer if you are sure of not incriminating yourself. This practice is a blatant violation of the Fifth Amendment that will hopefully be struck down by the courts soon.

There is a sleazy trick cops like to pull on defendants in custody, which is to offer them a bottle of water and then harvest their DNA from the mouth of the bottle. Normally in Pennsylvania obtaining a DNA sample requires a judge's order as part of a defendant's sentence after they have been convicted. Even if police in Pittsburgh aren't doing this yet, they could start any time, and it's a common practice in many other cities. Don't fall for it.

If you call anyone from jail, any jail, remember that your conversation can be, and probably is being, recorded. Do not say anything on a jail phone you wouldn't want a cop to hear. The same goes for talking with strangers you meet inside. Allegheny County prosecutors are known to work with jailhouse snitches, prisoners who will testify against you falsely in return for a lighter sentence in their own cases.

## **Arraignment and Bail**

Preliminary arraignments in Allegheny County are done by video, so even if your friends come to support you, you won't be able to see them. You may get a public defender for your preliminary arraignment, but this is not guaranteed. In the absence of a lawyer, a plea of Not Guilty will automatically be

settled by the Supreme Court as of this writing. For now, your best bet is to protect your phone with a long alphanumeric password, turn off fingerprint and face unlocking, and do not give the password to police or unlock your phone for them without consulting a lawyer first.

Even if the police do not have possession of your phone, they can still get access to your Google Drive or iCloud account by sending a subpoena to Google or Apple. The best defense is to turn off these services and rely solely on your phone's internal storage. If you want to back up your phone data, we suggest copying files to a laptop with an encrypted hard drive.

Police can use your phone against you without ever unlocking it. So-called geofence warrants force phone service providers, as well as Google and Apple (although Google recently gave up collecting user location data), to identify anyone within a given area during a given time period to the police, based on location data from GPS and cell tower logs. This tactic has been challenged in federal court, but the issue has not yet been resolved by the Supreme Court. For now, anyone who is planning on attending an event that might attract police attention, such as a protest, should consider leaving their phone behind, and possibly bringing an anonymous burner phone instead.

Worse even than geofence warrants, police can collect cell phone data in real time by using decoy cell towers known as "stingrays." These devices allow the cops to block cell phone signals, eavesdrop on calls and SMS texts, and harvest the number of any phone within their range. Evidence from stingrays can sometimes be challenged in court under the exclusionary rule if it was obtained without a warrant, but police are known to gather data that they do not plan to use in court in order to compile databases of protester information. Consider bringing a burner phone to protests and communicating only with encrypted apps such as Signal Private Messenger.

Police are allowed to tap your phone with a wiretap warrant. Technically, police must have probable cause that your communications will yield evidence of a crime to get a wiretap

warrant, but in practice this is just paperwork. Most judges in Allegheny County never refuse a warrant request, and if one does the police can simply resubmit the application to a more pliant judge. Wiretaps allow police to listen in on your phone calls. Police can also get all your old SMS text messages from your phone provider, again only with a warrant. If you think police might be interested in your texts and calls, consider using Signal Private Messenger and/or Keybase to communicate with your friends and associates all the time. These apps feature end-to-end encryption, which means even company employees do not have access to users' communications and cannot give any information to police in response to a warrant. If you decide to use Signal, remember to set disappearing messages for each conversation. This setting will automatically delete texts after a preconfigured amount of time, so that they cannot be recovered even if police confiscate your phone. Signal users should also set a PIN on their account. This will prevent police or anyone else from hijacking the account by taking over the user's phone number.

Anything you make public on social media can be viewed by the police without a warrant, just as it can be viewed by anyone else. Police are supposed to get a search warrant if they want to examine any content that you have restricted to just your friends. Any data they obtain unconstitutionally is inadmissible in court under the exclusionary rule, but again, this only matters if the evidence is introduced in court. Pittsburgh police are known to have an intel unit that is tasked with keeping track of so-called security threat groups, which is a code phrase for activists and protesters. We can reasonably assume that the intel unit might collect and store information that will never appear in a court case. It is also known that social media companies like Facebook and Twitter have entire departments devoted to fulfilling police requests for users' data. Many employees in these departments identify with the police and are happy to do them favors. Nothing you post on social media should be considered secure or private. This is why many

experienced protest organizers do not use social media. Consider following their example if you feel like anything you do on line might interest law enforcement.

## Dealing With Criminal Charges in Allegheny County

Note that much of the following section applies *only to adults or minors charged as adults*. People under the age of 18 are processed differently. Among other complications, minors can only be released from custody to a parent or guardian. However, minors are still not required to talk to police. Defendants charged with federal crimes in Allegheny County will also undergo a different procedure than that described here.

### Arrest and Booking

When you get arrested in Allegheny County you will be brought to either a police station or Allegheny County Jail downtown to be booked. This involves giving police your name and other basic information, and having your mug shot and fingerprints taken. After this you go to the Pittsburgh Municipal Court next door to the jail for your preliminary arraignment. This is a judicial procedure in which you are formally charged and the judge determines the conditions of your release while awaiting trial, such as bail. Expect the process to take hours. Unlike some jurisdictions, Pittsburgh Municipal Court does arraignments 24/7, but it can still take more than a day to get through the whole ordeal.

You may be brought to police headquarters on Western Ave. for interrogation at some point before arraignment. If this happens recite the magic words - "*I am going to remain silent and I want an attorney.*" This will assert your right against self-incrimination, and possibly get you out of there sooner into the bargain.

It's important to remember your Fifth Amendment rights during the process. You can give the police basic personal information like your full name, address, etc. during booking, but if they try to get you to admit anything incriminating, or ask any questions about your friends