

# Arrest Procedures

**Unit:** Litigation

**Problem Area:** Criminal Case Procedures

**Lesson:** Arrest Procedures

- **Student Learning Objectives.** Instruction in this lesson should result in students achieving the following objectives:

- 1 Explain the sequence of procedures involved with an arrest.**
- 2 Explain bail options.**

- **Resources.** The following resources may be useful in teaching this lesson:

E-unit(s) corresponding to this lesson plan. CAERT, Inc. <http://www.mycaert.com>.

“Bail Bond Manual,” *Chicago Police Department*. Accessed Jan. 25, 2013. <http://directives.chicagopolice.org/forms/CPD-11.909.pdf>.

“Criminal Justice Flow Chart,” *Gary E. Gersen*. Accessed Jan. 25, 2013. <http://www.garygerson.com/Criminal-Procedure.shtml>.

“Criminal Offenses,” *Illinois General Assembly*. Accessed Jan. 25, 2013. <http://www.ilga.gov/LEGISLATION/ILCS/ilcs3.asp?ActID=1876&ChapAct=720%26nbsp%3BILCS%26nbsp%3B5%2F&ChapterID=53&ChapterName=CRIMINAL+OFFENSES&ActName=Criminal+Code+of+1961>.

“Federal Rules of Criminal Procedure,” *Cornell University Law School*. Accessed Jan. 25, 2013. <http://www.law.cornell.edu/rules/frcrmp>.

“Laws and Regulations,” *USA.gov*. Accessed Jan. 25, 2013. <http://www.usa.gov/Topics/Reference-Shelf/Laws.shtml>.

National Association of Legal Assistants, Inc. *NALA Manual for Paralegals & Legal Assistants*, 5th ed. Delmar Cengage Learning, 2010.



“Plea Bargain,” *Cornell University Law School*. Accessed Jan. 25, 2013.  
[http://www.law.cornell.edu/wex/plea\\_bargain](http://www.law.cornell.edu/wex/plea_bargain).

“State of Illinois Crime & Punishment Chart,” *National Crime and Punishment Learning Center*. Accessed Jan. 25, 2013. <http://www.crimeandpunishment.net/IL/>.

Statsky, William P., *Introduction to Paralegalism: Perspectives, Problems, and Skills*, 7th ed. Delmar Cengage Learning, 2009.

“Steps in a Trial,” *American Bar Association*. Accessed Jan. 25, 2013.  
[http://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/casediagram.html](http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/casediagram.html).

“Steps in a Trial: Arrest Procedures,” *American Bar Association*. Accessed Jan. 25, 2013.  
[http://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/arrestprocedure.html](http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/arrestprocedure.html).

## ■ **Equipment, Tools, Supplies, and Facilities**

- ✓ Overhead or PowerPoint projector
- ✓ Visual(s) from accompanying master(s)
- ✓ Copies of sample test, lab sheet(s), and/or other items designed for duplication
- ✓ Materials listed on duplicated items
- ✓ Computers with printers and Internet access
- ✓ Classroom resource and reference materials

## ■ **Key Terms.** The following terms are presented in this lesson (shown in bold italics):

- ▶ arraignment
- ▶ bail
- ▶ bond
- ▶ booked
- ▶ custody
- ▶ formal arraignment
- ▶ grand jury
- ▶ Miranda Rights
- ▶ plea bargaining
- ▶ preliminary hearing
- ▶ pre-trial conference
- ▶ recognizance

## ■ **Interest Approach.** Use an interest approach that will prepare the students for the lesson. Teachers often develop approaches for their unique class and student situations. A possible approach is included here.

Ask your students the following: When someone is arrested, at what point does the arrest begin and end? Does the person being arrested have any rights? If so, what are they? Under what circumstances can a person be arrested? Where is a

person taken after being arrested? Use this discussion to launch into the lesson plan material.

## CONTENT SUMMARY AND TEACHING STRATEGIES

**Objective 1:** Explain the sequence of procedures involved with an arrest.

**Anticipated Problem:** What is the sequence of procedures involved with an arrest?

- I. Arrest procedure sequence
  - A. Arrest processes follow strict procedures as they restrict a right or freedom provided for by the U.S. Constitution. A person is not to be deprived of life or liberty without due process of the law.
    1. According to FindLaw.com, an arrest occurs “when police take you into custody.” It is complete when the suspect is “no longer free to walk away from the arresting officer.” It is the deprivation of freedom by a legal authority.
    2. An arrest can take place when a grand jury returns an indictment, a judge issues an arrest warrant based on information filed by a prosecutor, or a police officer has reasonable rationale for carrying out an arrest. Often the person arrested is brought to the county jail.
  - B. A person who is under arrest for suspicion of having committed a crime has **Miranda Rights** or certain rights that must be explained before any questioning may occur.
    1. When an individual is in police **custody** (a situation in which law enforcement officials hold an accused or convicted person in criminal proceedings) and is under interrogation, Miranda Rights must be read to him or her.
    2. The following rights are known as Miranda Rights:
      - a. “You have the right to remain silent and to refuse to answer questions.”
      - b. “Anything you do say may be used against you in a court of law.”
      - c. “You have the right to consult an attorney before speaking to the police and to have an attorney present during questioning now or in the future.”
      - d. “If you cannot afford an attorney, one will be appointed for you before any questioning, if you wish.”
      - e. “If you decide to answer questions now without an attorney present, you will still have the right to stop answering at any time until you talk to an attorney.”
  - C. Immediately following an arrest, an individual will be **booked**—a situation in which the charges against an individual are entered in the police register, and basic

information is taken about the suspect (e.g., name, address, photo, and fingerprints).

- D. Sometimes a person is detained without being booked. When a person is detained but not booked, the detainee’s attorney may go to a judge and obtain a writ of habeas corpus instructing the police to bring the client before the court so a judge may decide if the detainee is being lawfully held.
- E. Once arrested by the police, information (a police report) is provided to the prosecutor’s office. The prosecutor reviews the information and makes an independent decision as to what charges should be filed.
- F. Prosecutors’ options include filing a complaint with the trial court, going to the **grand jury** (a panel of citizens organized by a court to decide whether it is appropriate for the government to indict a suspect—not to determine guilt or innocence) or nolo contendere (“I will not contest” the charges and will not pursue the matter). Prosecutors determine what a person should be charged with (including a lesser charge).
- G. A preliminary **arraignment** (the act in which charges are read and a suspect must plead guilty or not guilty) takes place before a district judge or magistrate.
  - 1. The arraignment occurs within 72 hours of arrest, and the accused receives written charges. **Bond** is a written guaranty or pledge purchased from a bonding company (usually an insurance firm) or by an individual as security to guarantee some form of performance is set.
  - 2. **Bail** is the money that must be posted with the court to be released from jail. It is a way of ensuring the court that the accused will attend future court appearances. Under U.S. law, all defendants have a right to bail, unless the judge deems that the person is a flight risk or a danger to the community. Then the judge withholds bail and forces the defendant to stay in prison throughout the duration of the court case.
  - 3. The next court proceeding date is set.
- H. A preliminary hearing (probable cause hearing) is scheduled typically within 3 to 10 days of arrest, but postponement is possible. It is not a guilt or innocence proceeding. The **preliminary hearing** is an examination of basic evidence to determine whether there is sufficient evidence to hold the case for trial before a judge or jury. The accused is presumed innocent and usually does not testify.
  - 1. Sometimes this hearing results in the reduction of charges, dismissal of the case, or an assessment of fines.
  - 2. A motion for bond reduction may be made at this proceeding.
- I. The **formal arraignment** is a hearing at which the accused receives final charges in writing and enters a plea of guilty or not guilty.
  - 1. The accused requests a jury or a non-jury trial.
  - 2. Counsel representation is recorded, a judge is assigned, and time periods for proceeding paperwork is established.
  - 3. If a grand jury is involved, a formal document (“indictment”) accuses the defendant of a crime.

4. If no grand jury is involved, the accusation document is called “information.”
- J. **Plea bargaining** is a negotiation process in which the accused agrees to plead guilty to a lesser offense in exchange for a lighter sentence or dismissal of other charges. Share the following website with your students for more information: [http://www.law.cornell.edu/wex/plea\\_bargain](http://www.law.cornell.edu/wex/plea_bargain).
- K. Next, the pre-trial conference is scheduled. The **pre-trial conference** is a session that communicates information regarding how the case will proceed via jury trial, non-jury trial, pre-trial motions, and plea. The dates for trial or plea are scheduled.
- L. Then the case moves to trial (jury or non-jury) and sentencing, if the accused is convicted of the charges.

**Teaching Strategy:** Use VM–A through VM–C in a class discussion. As a class, spend some time researching and reviewing the local bail schedule. Discuss the differences between the criminal charges listed (felony versus misdemeanor), the scheduled bail amounts, and crimes in which the judge has discretion. As a class, discuss which factors may influence the judge’s decision.

**Objective 2:** Explain bail options.

**Anticipated Problem:** What bail options exist?

- II. Several types of bail exist.
  - A. **Recognizance** or “own recognizance” (O.R.) is a situation in which the defendant is released on his or her own authority and has paid the bail amount instead of going through a bail bondsman. Similar to O.R. is a signature bond, which is a contract in which the person pledges his or her word that he or she will return for the hearings. If the defendant defaults on the agreement, the judge can put a warrant out for his or her arrest and assess monetary fines.
  - B. Cash bail or cash-only bail is used when the court has doubts that the defendant will show up for the court date. A judge might use this course of action if a defendant has unpaid fines or fees from the past.
  - C. Bail bonds or surety bonds are used when the defendant does not have the means to afford the full bail amount set by the judge. The defendant can choose to enter a surety bail bond agreement with a third party who pays the bail and assumes the risk and obligation of the defendant. The bondsman pays the defendant’s bail for a nonrefundable fee—10 percent of the bail amount set by the judge.
  - D. Property bonds are pledges of property used as collateral to make bail. The defendant sets up the property bail bond directly with the court by signing documents allowing the court to place a lien against property in case he or she does not comply with his or her legal obligations. The property must be valued at an amount equal to the bail amount or more.

- E. Bail schedules vary by state, county, and crime. The more serious charges allow for the judge to determine the bail amounts.

**Teaching Strategy:** *As a class, spend some time researching and reviewing the local bail bondsmen providers. Make sure to discuss the nonrefundable fees taken by the service and the advantages of using bail bondsmen. A Chicago Police Department schedule can be viewed at <http://directives.chicagopolice.org/forms/CPD-11.909.pdf>. Assign LS-A.*

- **Review/Summary.** Use the student learning objectives to summarize the lesson. Have students explain the content associated with each objective. Student responses can be used in determining which objectives need to be reviewed or taught from a different angle. If a textbook is being used, questions at the ends of chapters may be included in the Review/Summary.
- **Application.** Use the included visual master(s) and lab sheet(s) to apply the information presented in the lesson.
- **Evaluation.** Evaluation should focus on student achievement of the objectives for the lesson. Various techniques can be used, such as student performance on the application activities. A sample written test is provided.

## ■ **Answers to Sample Test:**

### **Part One: Matching**

1. c
2. e
3. f
4. b
5. a
6. d
7. g

### **Part Two: True/False**

1. F
2. F
3. T
4. T
5. T
6. F
7. T



### Part Three: Short Answer

1. Answers will vary but should include the following: Bail is the money that must be posted with the court to be released from jail. Several types of bail exist. These are the most common:
  - ◆ Recognizance or “own recognizance” (O.R.) is a situation in which the defendant is released on his or her own authority and has paid the bail amount instead of going through a bail bondsman. Similar to O.R. is a signature bond, which is a contract in which the person pledges his or her word that he or she will return for the hearings. If the defendant defaults on the agreement, the judge can put a warrant out for his or her arrest and assess monetary fines.
  - ◆ Cash bail or cash-only bail is used when the court has doubts that the defendant will show up for the court date. A judge might use this course of action if a defendant has unpaid fines or fees from the past.
  - ◆ Bail bonds or surety bonds are used when the defendant does not have the means to afford the full bail amount set by the judge. The defendant can choose to enter a surety bail bond agreement with a third party who pays the bail and assumes the risk and obligation of the defendant. The bondsman pays the defendant’s bail for a nonrefundable fee—10 percent of the bail amount set by the judge.
  - ◆ Property bonds are pledges of property used as collateral to make bail. The defendant sets up the property bail bond directly with the court by signing documents allowing the court to place a lien against property in case he or she does not comply with his or her legal obligations. The property must be valued at an amount equal to the bail amount or more.

# Arrest Procedures

## ► Part One: Matching

**Instructions:** Match the term with the correct definition.

- |                       |                         |
|-----------------------|-------------------------|
| a. arraignment        | e. Miranda Rights       |
| b. booked             | f. plea bargaining      |
| c. formal arraignment | g. pre-trial conference |
| d. grand jury         |                         |

- \_\_\_\_ 1. The accused receives final charges in writing and enters plea of guilty or not-guilty
- \_\_\_\_ 2. Certain rights that must be explained to individuals who are under arrest before any questioning may occur
- \_\_\_\_ 3. A negotiation process in which the accused agrees to plead guilty to a lesser offense in exchange for a lighter sentence or dismissal of other charges
- \_\_\_\_ 4. Where the charges against an individual are entered in the police register and basic information is taken about the suspect (name, address, photo, fingerprints, etc.)
- \_\_\_\_ 5. Charges are read and suspect must plead guilty or not guilty
- \_\_\_\_ 6. Panel of citizens organized by a court to decide whether it is appropriate for the government to indict a suspect—not to determine guilt or innocence
- \_\_\_\_ 7. A session that communicates information regarding how the case will proceed via jury trial, non-jury trial, pre-trial motions, and plea

## ► Part Two: True/False

**Instructions:** Write *T* for true or *F* for false.

- \_\_\_\_ 1. A person who is in custody has no rights because he or she has broken the law.
- \_\_\_\_ 2. A surety bond is a cash bond.





- \_\_\_ 3. Bail schedules vary by district.
- \_\_\_ 4. Bail is designed to encourage the accused to attend future court appearances.
- \_\_\_ 5. Cash bail is used when the court has doubts that the defendant will show up for the court date or the defendant has unpaid fines or fees from the past.
- \_\_\_ 6. Property bonds are pledges to keep the accused on the property of the residence.
- \_\_\_ 7. A person is not to be deprived of life or liberty without due process of the law.

► **Part Three: Short Answer**

**Instructions: Answer the following.**

Explain the different types of bail.

# CRIMINAL JUSTICE FLOW CHART

- ◆ As a class, review the following:  
<http://www.garygerson.com/CM/Custom/Criminal-Procedures.asp>.
- ◆ You may want to draw an actual flow chart to represent the process.



# SEQUENCE OF EVENTS IN THE CRIMINAL JUSTICE SYSTEM

- ◆ As a class, review the following:  
[http://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/casediagram.html](http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/casediagram.html)
- ◆ You may want to recreate the information in a new visual in your notebook to help yourself remember the process.



# ARREST SEQUENCE

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- ◆ Arrest
- ◆ Custody
- ◆ Miranda Rights
- ◆ Booked
- ◆ Police report to prosecutor
- ◆ Prosecutor response
- ◆ Preliminary arraignment
- ◆ Bail/bond
- ◆ Preliminary hearing
- ◆ Formal arraignment
- ◆ Plea bargaining
- ◆ Pre-trial conference
- ◆ Trial (jury or non-jury)
- ◆ Sentencing

# Miranda v. Arizona

## Purpose

The purpose of this activity is to examine the history and significance of the Miranda Rights.

## Objectives

1. Research Miranda Rights and Miranda v. Arizona case and the Fifth Amendment right to refuse to answer self-incriminating questions.
2. Prepare a report based on research.

## Materials

- ◆ computer with Internet capability
- ◆ paper
- ◆ writing utensil
- ◆ legal research software

## Procedure

1. Research Miranda Rights using Google and other search engines. You may also use resources such as legal research software, if it is available.
2. Research Miranda v. Arizona.
3. Research the Fifth Amendment right to refuse to answer self-incriminating questions.
4. Use your research to answer the following questions: Can I waive my rights after they have been read to me? A police officer stopped me and asked questions, but he or she did not read me my Miranda Rights. Is this legal? What if I cannot afford an attorney?
5. Organize your research of Miranda Rights, the legal case, the Fifth Amendment, and the answers to the above questions in a presentation.
6. Presentations may be hard copy PowerPoint, posters, or other formats approved by the teacher.
7. Share your presentation with the class.

