

YOU th & LAW



LEGAL ADVICE FOR YOUTH.

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FRANK'S REFRONK





This pamphlet was prepared by the High School Committee of the National Lawyers Guild. The Committee is composed mostly of high school students from the greater San Francisco Bay Area and includes teachers and lawyers.

If you are busted you will need a lawyer. If you or your parents cannot afford a lawyer or your parents will not hire one for you, you can get a free lawyer from:

The Public Defender
Your local Neighborhood Legal
Services or Legal Aid Office



BEFORE ARREST—WHAT TO DO IF YOU MEET A COP ON THE STREET

Does a cop have the right to question me on the street? What questions should I answer?

Police often stop kids just to "check them out", especially if they're black or brown, or have long hair. But legally they only have the right to question you if they're investigating the possibility that a crime was committed or that you committed it.



For people under 18, though it is supposedly a "crime" to be out after curfew (often 10:00 to sunrise), and if you look young, a cop can stop you to question you about your age and ask for ID.



A cop can also stop you to investigate whether you are a "runaway" or "beyond parental control."



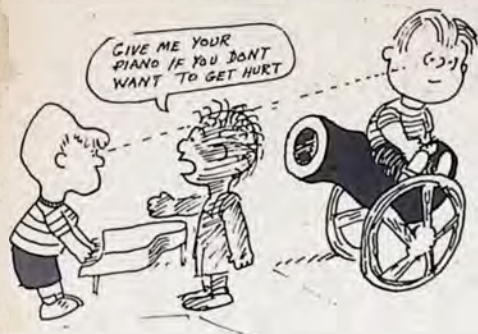
Whenever a cop stops you, he may go on a "fishing expedition" to try to find out if you or your friends have done anything illegal lately. He may or may not have a right to ask such questions, depending on the circumstances. The best way to handle such questioning depends on the circumstances, but these rules of thumb will help:

1. You should tell him your name and address and produce ID if you have it. If you don't, there's a greater chance of being busted, even if the cop had no legal right to ask for identification. If you're living with your parents, tell him that too.



2. Don't answer any more questions unless you were *nowhere near* any kind of illegal activity. A lot of people think they're not guilty of a crime unless they actually did it themselves, but this is often wrong. For instance, a kid named Fred is in jail right now for robbery. He's big, and

was standing in a park carrying a tire iron. A friend was with him, and a rich looking dude came along. Fred's friend said "OK, man, give me your wallet if you don't want to get hurt," and the guy gave him the wallet and split. When the cops caught them, Fred said, "I'm not guilty, man—I just stood there and didn't say anything." By confessing that he was there, and being caught with the tire iron, Fred admitted that he was guilty, since the dude was obviously afraid of a big guy with a tire iron.



The same goes for receiving stolen property. A guy named Tom is on probation for this. A friend of his gave him a new bike. He knew his friend didn't have enough bread to throw new bikes around, but nobody *told* him that it was stolen. When the cops came to ask him about the bike and whether he thought it might be stolen, he said, "Yeah, Gary gave it to me, and I just didn't ask him where he got it." Based on that, he was found guilty of receiving stolen property.



The general rule, then, is to admit *nothing* if you were *anywhere near* illegal activity, even if someone else actually did it.

3. If you were *anywhere near* illegal activity, **DO NOT LIE—SAY NOTHING.** A lot of people are in jail because they thought they would be clever and talk their way out of it. Police have ways of checking up, and by lying you can trap yourself.



The best way to not answer questions is to be polite, and perhaps tell the cop that you once talked to a lawyer who told you not to answer questions, and you are only following his advice. If you talk back or physically resist the cop in any way, there's a good chance of *really getting hurt* and having *heavier charges* on your head. If you refuse to answer questions, you may get arrested, but it's often worth it to avoid getting into more trouble later. You have a *right* not to answer questions, and you should use it, politely but firmly.

4. If he asks you what you're doing, and whatever you're doing is *completely legal*, it won't hurt to tell him ("I was just watching TV at my girl friend's house").

Does a cop have the right to search me? My car? My house?

Legally: a cop has no right to search you, look into your pockets, your purse, your packages, your car, or your house, unless: (1) he has a search warrant; (2) he arrests you first; or (3) you give him permission.



He does have the right to give you a "pat down" if he has some reason to believe you're dangerous, and they do this all the time. But this just means he can pat the outside of your clothing to see whether you have a concealed weapon.



DURING ARREST

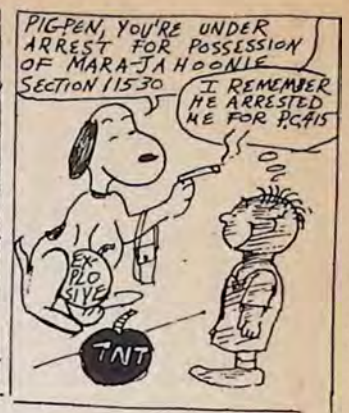
How can I tell if I'm under arrest? It's often hard, but there's one good way to find out—ask. If a cop wants to search you, or is nosing around with a bunch of questions, ask "Am I under arrest?" If he doesn't say yes, ask "Can I go?" If he says "No," you are under arrest even if he didn't formally tell you. The cop may still decide not to take you in, but if he does, the arrest started when he told you that you couldn't go.



Practically: There is nothing you can do to stop a search without risking your life. But if a cop wants to search you, do two things: (1) ask if you are under arrest, and if he says yes, ask what for. Remember what he says; (2) No matter what he says, tell him that you DO NOT GIVE PERMISSION for a search. Try to say "I don't want to be searched" loudly enough so that any witnesses can hear and testify for you later. If you physically resist him when he goes ahead to search anyhow, you're running a risk of being badly hurt.

The reason all this is important is that sometimes you can get a court to throw out any evidence that was found in an illegal search. *And without evidence, there can be no conviction.* To do this you have to prove that you did not consent. You will need witnesses because your version and the cop's version of what happened may be very different. If it's your word against theirs, guess who wins?

How do I find out what I'm arrested for? If he says you're under arrest, ask what for. Remember what he says, even if he just gives you a number ("Section 647"). Tell your lawyer later; it may be important. In California, the law says that a cop has to tell you the charges. It's a good idea to try to pin him down, because if he arrests you for something you didn't do, you might be able to prove the arrest wasn't legal. This could mean that anything he finds in searching you after arrest can't be used in court. Of course, many cops won't tell you despite the law, but remember whatever he says.

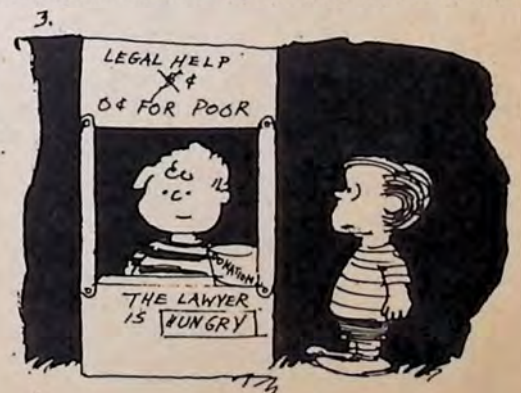


What are my rights? If a cop arrests you, he's supposed to tell you your rights immediately. But since they sometimes forget, you better know them yourself. They are: (1) The right to remain silent, since *anything* you say can be used against you; (2) The right to see a lawyer before you answer any questions; (3) The right to get a free lawyer if you can't afford one.

What should I say? If a cop says you're under arrest, give him only your name and address and the fact that you're living with your parents, if it's true. Even if you are completely innocent, once you've been arrested, you should say *nothing* more until you've had a chance to talk to a lawyer. Whether the cop comes on mean or as a "good guy" just trying to help, politely tell him that a lawyer told you never to talk until you've seen a

lawyer. Blame it on the lawyer—the cop might be less hostile. Also, don't talk to *anyone* about what really happened except a lawyer. All sorts of people cooperate with the police, like some prisoners in jail.

What's a citation? Should I ask for one? A California law says a cop can give you a "citation" like a traffic ticket if it's not a heavy offense. This means you promise to appear before a probation officer or court at a future time, but you're *not* arrested right there. You may be able to convince the cop to give you one if you've lived in the area for a long time, live with your parents, or work or go to school in the area. Ask the arresting cop, or even the booking cop for a citation—it can't hurt. But *don't* talk in exchange for a promise to "let you go" or you'll get burned.

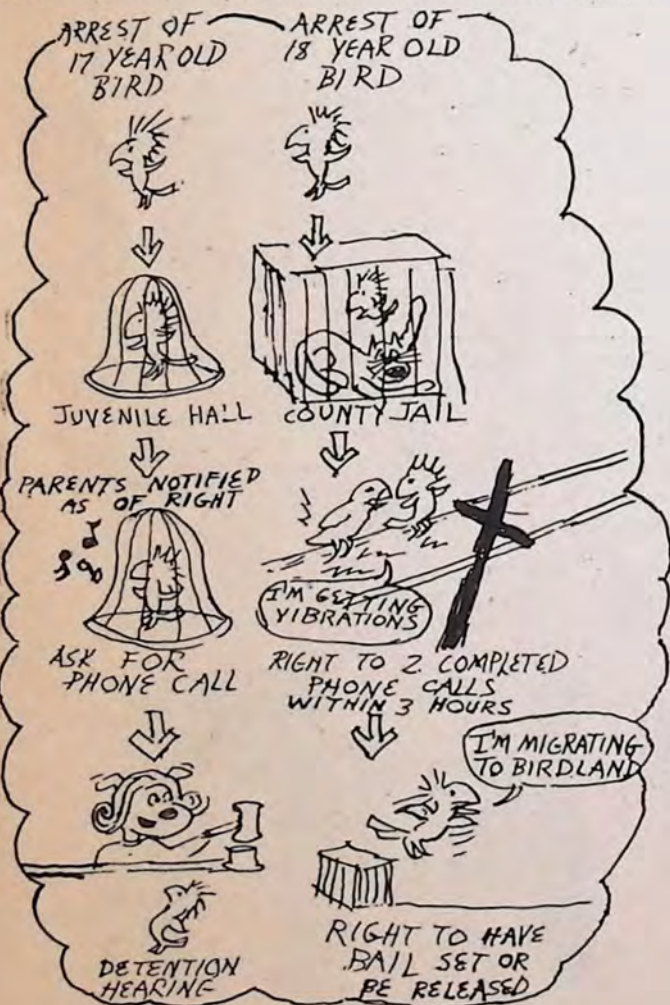


AFTER ARREST

After you're arrested, things are pretty much out of your control. *Don't talk to anyone until you see a lawyer. Sign nothing.* Read this section so you'll know what to expect and be able to protect yourself against the legal system the best you can.

Where will I be taken after arrest? Generally in California if you're 17 or younger, after being booked at the police station, you'll be taken to a juvenile hall. If you're 18 or older, you'll be booked and taken to county jail or city prison. *Can I make a phone call?* If you're booked as an adult (18 or over) you have a right to make at least two completed phone calls no later than three hours after the bust. If you're taken to juvenile hall, the cops have the legal duty to inform your parents or guardian about the arrest as soon as possible. You should be able to make your own call too, and you should ask for this, but they often won't allow it.

How do I get released? If you are booked as an adult, you have the right to bail, and a friend can bail you out as soon as the amount is set. Or, you can wait and try to convince the judge the next day in court to release you without bail or to lower it. However, a juvenile has no right to bail and has to go through a special procedure to get released that's described below.



What should I say to the probation officer? When you are taken to juvenile hall you'll have to talk to a probation officer ("P.O."). They'll tell you that they're not cops, and indeed they're not. Some are OK, but others aren't. All of them will try to get you to talk about what you were busted for.

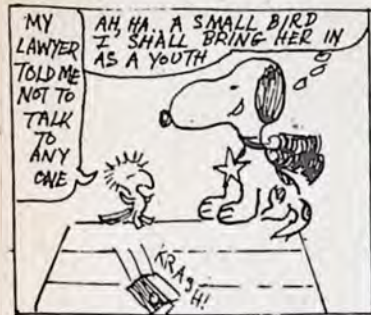
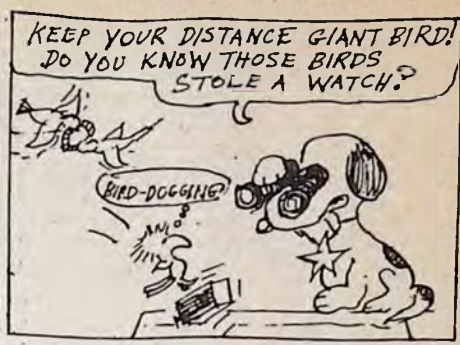
A P.O. is supposed to tell you, and your parents if they're there, your rights—the same ones the cop was supposed to tell you when you were busted. But then they'll tell you that they are there to help, and can only help if you'll talk. The P.O. has the power to let you go without filing charges, so it's really tempting to talk. A lot of kids with sense enough not to talk to a cop break down under this "soft sell" and talk to the P.O. Often they end up in court with the P.O. repeating whatever the kid said.

The P.O., you see, decides whether to bring charges against you, and usually prosecutes you in court too. Even if there's a D.A. or another P.O. in court, your P.O. can be a witness against you. So, you should treat the P.O. just like a cop, even if he seems friendlier: (1) talk only if you were *nowhere near* anything illegal; (2) otherwise politely decline to talk about the charges until you get to see a lawyer; (3) do not sign *anything* until you talk to a lawyer. You can talk about anything else,



like what your parents are like, how you're doing in school, etc., and that might help, but just don't talk about what you were arrested for. If you know a lawyer you could call, or someone who might call one for you, ask the P.O. to let you make a phone call. If you haven't got the money for a lawyer, ask the P.O. to get you one for free. But the most important thing to remember is to consult with a lawyer before you decide to tell the P.O. what happened.

PEANUT'S PARANOIA



The P.O. will read the police report, talk to you, and decide whether to file charges against you (called "filing a petition"). If you're being held in jail, he has to decide whether to file

charges within 48 hours of your arrest, *not counting* weekends and holidays. If he doesn't do this, he must let you go.

But the P.O. can let you go at any time,



whether or not he decides to file charges. He's supposed to keep you in juvenile hall until you go to court only if you are (1) dangerous to yourself or society; (2) likely to run away before your trial; (3) on probation when you're picked up; or (4) something's wrong with your home life, like no one to take care of you or an "unfit" home. So you should ask to be released right away, even if the P.O. is going to file charges.

The P.O. can let you go without going to court in one of two ways: (1) scot-free, no strings attached, no charges; or (2) on "informal probation", where you agree to go straight and check in if he wants you to, and he agrees not to file charges. Your parents have to agree to this too. This can be a good deal, because you don't get a court record (although you do get a probation department record that will be used against you if you get busted again). He can file the original charges any time within the period of probation, if you get into any more trouble.

What happens if the P.O. refuses to release me? If he doesn't let you go, you have to have a court hearing within 24 hours after he files charges. This is called a "detention hearing" and its purpose is to decide only whether to keep you in jail until your trial ("jurisdictional hearing"). The detention hearing is usually held before a "referee" rather than a judge. This guy sometimes has no legal training, and doesn't follow the law. At the hearing the P.O. is supposed to prove one of the grounds for detention, which means at least having some evidence that you actually did what you're accused of.

You have a right to a lawyer at the detention hearing, and it is *very important* that you insist on one. Your lawyer has a right to cross-examine the witnesses against you, including the probation officer, and argue that you should be released. You also ought to have your parents and friends come to the hearing, if they'll be able to give the referee good reasons why you should be released. Friends can only be in the hearing if they're going to be witnesses.

REASONS FOR DETENTION

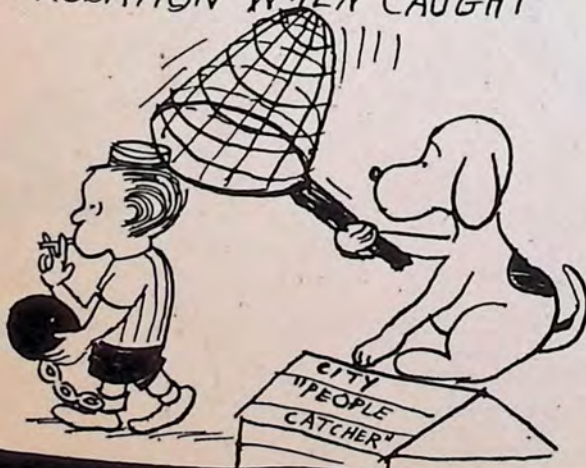
1. DANGEROUS TO HIMSELF AND OTHERS.



2. LIKELY TO RUN AWAY

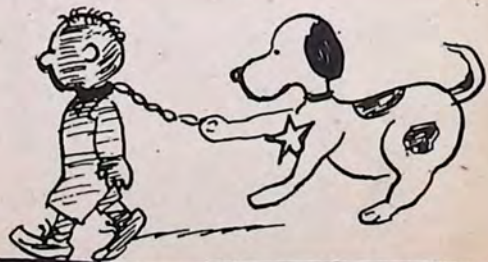


3. ON PROBATION WHEN CAUGHT



4. COMES FROM "UNFIT HOME"

I'M TAKING YOU IN BECAUSE OF PARENTAL NEGLECT



1. WHAT TO EXPECT AT "COURT."



What happens if the referee refuses to release me? If this happens, you have the right to another hearing before a judge. You should demand it right then; you have nothing to lose and it might work. The rehearing will probably be held the same day or the next.

What kind of trial do I get? Almost all kids under 18 are tried in juvenile court. Kids between 16 and 18 can be tried in adult court if they have long records, but first the P.O. has to convince a judge that you wouldn't benefit from the juvenile process (in fact, few people do). Kids between 18 and 21 usually get a regular adult criminal trial, al-

2. THE REFEREE SOMETIMES ISN'T A LAWYER.



though sometimes their lawyer can get them moved back to the juvenile court.

If you're tried in juvenile court, the trial is called a "jurisdictional hearing." The purpose is supposed to be to decide whether you come within the "jurisdiction of the juvenile court." (See the next section for what this means).

In juvenile court, as the law now stands, you do not have a right to a jury trial—the judge or referee decides everything. You do have a right to a lawyer, and you should insist on one. At the trial, the P.O. (or D.A. if there is one) has to prove you're guilty beyond a reasonable doubt.



What does "within the jurisdiction of the juvenile court" mean? The juvenile court is supposed to have "jurisdiction" (power) over you only if you did something wrong, or something about your family life makes a judge think you need "help" from the juvenile court.

W&I, secs. 600-602: Wardship.
"Within the jurisdiction of the Juvenile Court."



The most common case is a juvenile who committed a crime. (Sec. 602 of the Welfare and Institutions Code). In addition to the crimes that adults can commit, juveniles have to worry about such things as curfew laws.

W&I, sec. 602: Juvenile involved in Criminal Act.



The second most common thing for a teenager to get busted on is for being a runaway or "beyond parental control". (Sec 601, W & I Code).

W&I, sec. 601: Beyond Parental Control and Guidance



The same law allows arrest for being habitually truant from school, and for being continually disobedient to anyone who has power over you, like your parents or the school authorities. Obviously, this law can be used to rip off a lot of people. Hardly anyone actually is sentenced to jail for this, but a lot of kids are busted and then put on probation. If you're a long way from your parents, cops often bust you for this and send you home, even if you have your parents' permission to travel. So, if you're under 18, be cool about being seen by cops hitching or with a pack.



The third way that a juvenile court can interfere with your freedom and your family is if your parents are not taking care of you in some way, like by not feeding you, or beating you. (Sec. 600, W & I Code). This mostly happens with young kids.



What will the court do to me? What the court will do depends, of course, on what you are charged with, what your record is, and a lot of other things, like whether the judge is in a bad mood or especially down on the kind of thing you were arrested for.

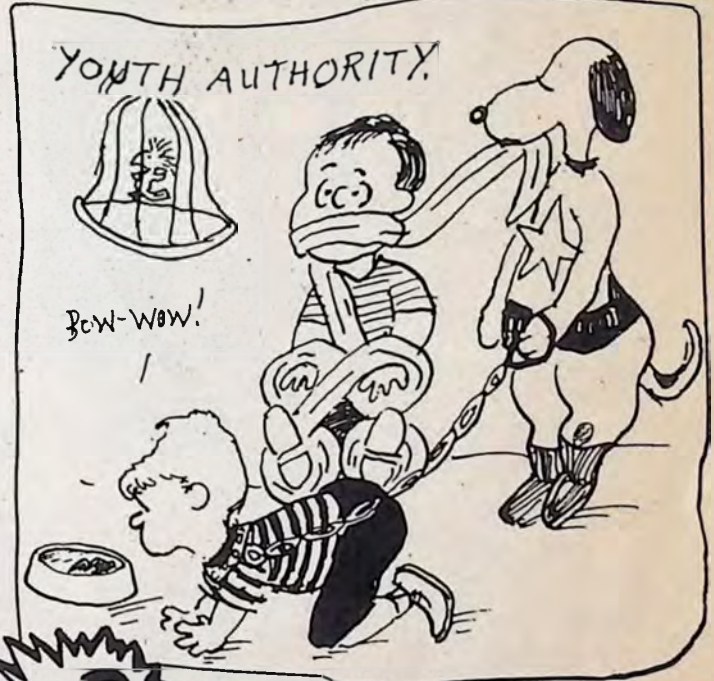
If you're found guilty of a crime, the judge can do any of the following things: (1) put you on probation; (2) order you committed to a county camp (work camps usually with no fences or armed guards); (3) order you committed to California Youth Authority (which is like state prison for juveniles).

Dispositions.

PROBATION.

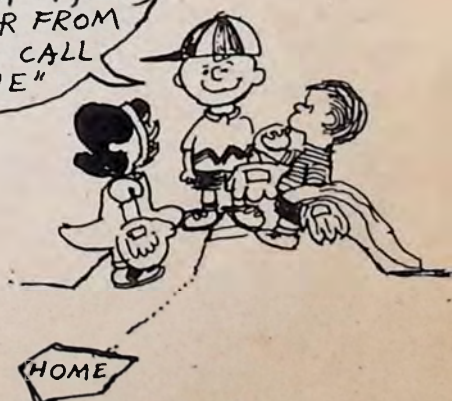


COUNTY CAMP.



OR FOSTER HOME, COMMUNITY PLACEMENT.

I AM IN THE MIDDLE OF THE COMMUNITY HERE, NOT FAR FROM WHAT I CALL "HOME"



HOME

The term you are sentenced for is not set by the judge—he just says you go in until you are 21 or "sooner released by process of law." What this means is that the people who run the camp decide when to let you out.



If you're a runaway or truant, the judge can't put you in CYA, but he can still put you in county camp, on probation, or in a foster home. If you are a neglected child, the judge will either put you and your family under supervision of the probation department, or will put you in a foster home. *How can I get my record sealed?* You can have your whole juvenile record sealed when you are 21, or before that if you go for five years without getting into any trouble. You do this by going back to the juvenile court and asking the clerk to give you the forms to fill out. After it's been sealed, if anyone, including a potential employer or school, asks if you have a record, you have the legal right to say no and not give them any information about what happened in juvenile court.



Important Things To Remember

(You can tear this out and keep it with you)

1. When stopped by a policeman, remember your rights:

- Anything you say may be used against you later
- You have a right to remain silent
- You have a right to see a lawyer before answering questions
- You have a right to a free lawyer if you can't afford one

2. If you are *anywhere near* illegal activity, do not give the police any information other than your name and address, and your parents' name and address, until you have seen a lawyer.

- Do *not* lie—they can often trip you up
- If you are not polite, or if you physically resist in any way, you run a good chance of being hurt and getting heavier charges.

3. You may allow the police to pat the outside of your clothing for weapons, which they usually have a right to do. But if they start to search you:

- Ask if you're under arrest, and *remember* the answer
- No matter what they say, tell them you do not give permission for the search. You will not be able to stop the search, but it is important to say that you don't consent

4. At the police station, ask to talk to your parents when they call them, and ask for a telephone call of your own. Do the same if you are taken to juvenile hall and haven't yet gotten your calls. If you're over 18, ask for two completed telephone calls.

5. Follow the same rules for a probation officer as for the cops. Remember that no matter how he comes on, his job is to decide whether to bring charges against you. If you are anywhere near illegal activity, politely refuse to discuss the case with him until you've seen a lawyer. Be sure to insist on seeing a lawyer before any court hearings.

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THE JUVENILE COURT GAME

