

EXAMPLES OF YOUR RIGHTS OF SELF-DEFENSE

AGAINST UNLAWFUL ARREST

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Examples of Your Rights of Self-Defense Against Unlawful Arrest

ARTICLE DISCLAIMER: This magazine article presents to SDF members examples of established case law that in certain circumstances resistance is justified however SDF does not recommend such action.

Most of the time, you can avoid resisting arrest charges by politely complying with an officer's requests, even if you feel the arrest is unjustified. This is usually the best move, since if things escalate, you could end up charged with assaulting an officer, a much more serious charge—usually a felony. However, if you do find yourself charged with resisting arrest, a knowledgeable criminal defense lawyer can evaluate your best options.

Most state laws prohibit you from resisting or delaying police officers or EMTs who are trying to perform their jobs. Doing so is considered resisting arrest, a misdemeanor. It usually involves physical force, but not always. Depending on the circumstances, you do have options to defend yourself against these charges.

Acts Considered Resisting Arrest

Resisting arrest is usually defined as intentionally preventing a police officer from lawfully arresting or handcuffing you or taking you to jail. Here are some things that can be considered resisting arrest:

- Physical acts, such as running away, hiding, or struggling with the officer
- Giving false identification, either verbally or by presenting a fake ID
- Trying to help another person avoid arrest
- Threatening the officer

Being slow to comply with an order or swearing at an officer is not, by itself, usually enough to warrant resisting arrest charges. Neither is questioning an officer's actions or authority before ultimately complying with requests.

Defenses Against Resisting Arrest Charges

The key to defending yourself against resisting arrest charges is to remember that such charges hinge on you resisting an officer of the law in the lawful execution of his or her duties. Here are some possible defenses, depending on your situation:



Unlawful Arrest

If the arrest was not lawful to begin with, you did not do anything wrong even if you did resist. The officer was not performing his or her duties, since there is no duty to make an unlawful arrest. An example of this is resisting during an unlawful search of your home.

Self-defense: You have the right to defend yourself against police misconduct. An officer using excessive force against you has changed the arrest from lawful to unlawful. Keep in mind that if the officer's use of force was in response to forceful resistance from you, you lose your self-defense claim. Also, your response has to be reasonable given the circumstances. You cannot break free and start hitting the officer.

False Allegations

This defense hinges on proving that nothing you did fits the definition of resisting arrest. For example, you were simply rude or sarcastic, and the officer decided to retaliate by filing resisting arrest charges. It helps to have other witnesses to prove this.

Officer did not identify him or herself: It is not possible to intentionally resist an officer if you do not know the person is an officer. An example would be an undercover officer who did not verbally identify him or herself.

Established Case Law

Citizens may resist unlawful arrest to the point of taking an arresting officer's life if necessary. *Plummer v. State*, 136 Ind. 306. This premise was upheld by the Supreme Court of the United States in the case: *John Bad Elk v. U.S.*, 177 U.S. 529. The Court stated: Where the officer is killed in the course of the disorder which naturally accompanies an attempted arrest that is resisted, the law looks with very different eyes upon the transaction, when the officer had the right to make the arrest, from what it does if the officer had no right. What may be murder in the first case might be nothing more than manslaughter in the other, or the facts might show that no offense had been committed.

An arrest made with a defective warrant, or one issued without affidavit, or one that fails to allege a crime is within jurisdiction, and one who is being arrested, may resist arrest and break away.

If the arresting officer is killed by one who is so resisting, the killing will be no more than an involuntary manslaughter." *Housh v. People*, 75 111. 491; reaffirmed and quoted in *State v. Leach*, 7 Conn. 452; *State v. Gleason*, 32 Kan. 245; *Ballard v. State*, 43 Ohio 349; *State v. Rousseau*, 241 P. 2d 447; *State v. Spaulding*, 34 Minn. 3621.



When a person, being without fault, is in a place where he has a right to be, is violently assaulted, he may, without retreating, repel by force, and if, in the reasonable exercise of his right of self-defense, his assailant is killed, he is justified. *Runyan v. State*, 57 Ind. 80; *Miller v. State*, 74 Ind. 1.

These principles apply as well to an officer attempting to make an arrest, who abuses his authority and transcends the bounds thereof by the use of unnecessary force and violence, as they do to a private individual who unlawfully uses such force and violence. *Jones v. State*, 26 Tex. App. 1; *Beaverts v. State*, 4 Tex. App. 1 75; *Skidmore v. State*, 43 Tex. 93, 903.

An illegal arrest is an assault and battery. The person so attempted to be restrained of his liberty has the same right to use force in defending himself as he would in repelling any other assault and battery. (*State v. Robinson*, 145 ME. 77, 72 ATL. 260).

Each person has the right to resist an unlawful arrest. In such a case, the person attempting the arrest stands in the position of a wrongdoer and may be resisted by the use of force, as in self- defense. (*State v. Mobley*, 240 N.C. 476, 83 S.E. 2d 100).

One may come to the aid of another being unlawfully arrested, just as he may where one is being assaulted, molested, raped or kidnapped. Thus it is not an offense to liberate one from the unlawful custody of an officer, even though he may have submitted to such custody, without resistance. (*Adams v. State*, 121 Ga. 16, 48 S.E. 910).

Justice Joseph Story of the Supreme Court affirmed the right of self-defense by persons held illegally. In his own writings, he had admitted that 'a situation could arise in which the checks-and-balances principle ceased to work and the various branches of government concurred in a gross usurpation. There would be no usual remedy by changing the law or passing an amendment to the Constitution, should the oppressed party be a minority. Story concluded, If there be any remedy at all ... it is a remedy never provided for by human institutions. That was the 'ultimate right of all human beings in extreme cases to resist oppression, and to apply force against ruinous injustice. (From *Mutiny on the Amistad* by Howard Jones, Oxford University Press, 1987, an account of the reading of the decision in the case by Justice Joseph Story of the Supreme Court.

As for grounds for arrest: The carrying of arms in a quiet, peaceable, and orderly manner, concealed on or about the person, is not a breach of the peace. Nor does such an act of itself, lead to a breach of the peace. (*Wharton's Criminal and Civil Procedure*, 12th Ed., Vol.2: *Judy v. Lashley*, 5 W. Va. 628, 41 S.E. 197).

You are also within your rights not to answer any questions without a lawyer present, and if possible, to demand a video recording be made of the entire encounter that you or your lawyer keep as evidence, so that federal prosecutors can't get away with charging you with making false statements to a government investigator.



THE CONSTITUTION OF THE UNITED STATES
WE THE PEOPLE
THE SECOND AMENDMENT.

*“The right of the people
to keep and bear arms
shall not be infringed.”*



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