

ARRESTED – YOUR RIGHTS

(1) What are my rights if I am arrested?

A: The basic Constitutional protections which are of most use and importance to New Jersey gun owners may be summed up as three simple rules for giving you the best chance at not becoming a victim of New Jersey's criminal justice system. These three rules can be remembered by the acronym S.A.C.

SAC

1. S - Remain Silent
2. A - Ask for your Attorney
3. C - Do not Consent to giving up or waiving your rights

The S.A.C. (Strategic Air Command) base provides defense to the U.S. The S.A.C. Constitutional protections provide a basic legal defense.

(2) What are my Fifth Amendment rights? (The “S” in SAC.)

A: The Fifth Amendment right to remain silent is one of the most important Constitutional rights, and the most logical action for an individual to take. When it comes to a criminal violation, most law-abiding citizens are probably ignorant about what to do. By opening their mouths, they remove all doubt. By remaining silent, a person is not assisting the State in its case against him or her. This is the purest form of a self-protection. It is something everyone should do after being arrested for any reason, whether the person believes him/herself innocent or not.

Think of Martha Stewart or Scooter Libby. Neither was guilty of the initial charges, but both were convicted of lying to the authorities. If they had remained silent they would never have lied. Remember: “The fish that opens its mouth is the one that gets caught!”

(3) What are my Sixth Amendment rights? (The “A” in SAC.)

A: The Sixth Amendment guarantees the individual's right to an attorney. By asking for your attorney and remaining silent, you will have given yourself the most basic and strongest foundation for your legal defense. Requesting an attorney does much more than simply get you legal counsel. It causes a wall of protection to spring up around you, which will prevent further interrogation. By demanding an attorney, further interrogation cannot be used by the State as evidence against oneself unless one's attorney is present. This is true even if information is obtained by “dirty tricks” without one's attorney being present. When dealing with a firearm and/or weapons related matter, always demand an attorney who is familiar with New Jersey gun, knife, and weapons law.

(4) What are my Fourth Amendment rights? (The “C” in SAC.)

A: A right given up is a right lost. Do not consent to a search without a warrant. Do not sign any documents or statements without an attorney’s advice. All citizens have a Fourth Amendment right to a warrant being issued before their person or premises are searched. There are exceptions to the necessity for a warrant and there is a large body of law that exists as to when a law enforcement officer has probable cause for a warrantless search. However, whether probable cause for the warrantless search exists or not, one should never consent to a warrantless search. The key here is consent. If a law enforcement officer insists on searching you, in no way resist being searched. Just make it clear that you are not consenting to this search. Additionally, do not sign any consent form or for that matter any document without the advice of your attorney.

If a search is done without adequate probable cause, then the court will suppress evidence obtained, and the State will not be able to use it. When people consent to a search, then anything found may be used as evidence -- evidence against them! -- whether there was probable cause or not! Although people may feel that they have nothing to hide, consider that people may possess contraband which they believe to be legal, or that friends may have left contraband in their cars, in their houses or even in borrowed clothing.

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Constitutional protections are a citizen’s first line of defense if he or she has a problem with New Jersey law. In the same way that the Second Amendment, by providing for an armed citizenry, is the ultimate protector of the Constitution and the Bill of Rights, the other amendments in the Bill of Rights can help to protect our rights to own and enjoy firearms.

Not giving consent is not probable cause for a search. Some people feel that if they do not consent to the search the officer will suspect them and they are afraid of the improper question of “What do you have to hide?” The proper question of “Why does this law enforcement officer feel it is necessary to invade your privacy and conduct a search?” properly shifts the burden to the police. Remember, the Fourth Amendment is there to protect our privacy.

Always remain polite when asserting your rights, but the key is to assert them. Do not be embarrassed or intimidated into giving up your rights. If you give up your rights (apart from making my job of defending you that much harder), you will have substantially increased your chance of becoming the next horror story victim of New Jersey gun law that your friends will be talking about while you sit in jail.

*We are frequently asked about what to do if pulled over in a vehicle while transporting firearms. First of all, make sure that all firearms are being transported lawfully (see Transportation of Firearms and Exemptions sections, **NEW JERSEY GUN LAW GUIDE.**) Secondly, be polite, and hopefully the reason for your pullover is simply a traffic matter and will be handled as such without it blowing up into a full-fledged car search. The key indicator as to whether this stop is going further than a traffic summons will be revealed by the officer’s questions and actions. If*

asked whether or not there are any weapons in the car, immediately be aware that you are in danger of becoming a victim of New Jersey Gun, Knife, & Weapon Law.

This question may be handled in many ways. However, my personal response is to ask the officer why I am being asked that question. Determining the reason for this question goes directly to the issue of probable cause. Why are you being asked whether you have weapons in the car? Is it a fishing expedition on behalf of the officer or is it because there are spent shell casings in plain view on the front seat? If it is a fishing expedition, then that question is clearly inappropriate. If there are spent shell casings on the seat, then regardless of your answer you are probably looking at having your vehicle and person searched.

We have all heard the Miranda Rights given on various TV cop shows. We have heard them so often that many of us don't even pay attention to what these rights mean. The media has so belittled the Miranda warning that many naïve defendants ignore it. New Jersey gun owners cannot afford to ignore it. Because the exemptions to the New Jersey law are so technical and "narrowly construed," innocent statements to the police may inadvertently remove a person from the protection of the exemptions and make proving an affirmative defense difficult, if not impossible.

The key here is not to give any excuses for a vehicle search while transporting firearms. If you obey New Jersey's law and act in a practical and intelligent manner, you should be able to avoid one of New Jersey's more infamous tourist attractions -- vehicle stop and search.