

CRIMLAW: Possession of a Forged Instrument - F:1 - T:0.87% - E:0.14% - J:100.00% - Prio: MED

Under the NY Penal law, a person is guilty of criminal possession of a forged instrument in the first degree if the prosecutor can prove beyond a reasonable doubt that: (1) the defendant possessed (or uttered) a forged instrument; (2) he knew the instrument was forged; and (3) he possessed (or uttered) it with an intention to defraud (or deceive or injure) another.

CRIMLAW: Resisting Arrest - F:1 - T:0.87% - E:0.14% - J:0.00% - Prio: LOW

Under the NY Penal Law, a person is guilty of resisting arrest when he intentionally prevents or attempts to prevent a police officer or peace officer from effecting an authorized arrest of himself or another person. Pursuant to the "no sock" rule, a suspect, in almost all cases, may not use force to evade an arrest, even if such arrest is illegal.

CRIMLAW: Right to Counsel/Miranda - F:7 - T:6.09% - E:1.00% - J:28.57% - Prio: HIGH

Under the 5th Amendment of the U.S. Constitution, a defendant has a right to counsel when he is in custody and subject to interrogation. The privilege against self-incrimination of the 5th Amendment, as applied to the states through the 14th Amendment, bars a state from compelling a person to provide evidence of a testimonial or communicative nature. Evidence is testimonial or communicative when it reveals a person's subjective knowledge or thought processes. *Miranda v. Arizona* requires the exclusion of any statement obtained through police questioning of a suspect who is in custody or otherwise deprived of his freedom of action in any significant way unless prior to the making of the statement the interrogators have informed the suspect that: (1) he has the right to remain silent; (2) any statement he makes can and will be used in court against him; (3) he has the right to consult with a lawyer and to have the lawyer with him during interrogation; and (4) if he is indigent, he has a right to have a lawyer appointed to represent him prior to any interrogation. *Miranda* is triggered when there is custodial interrogation. Custody is defined as a coercive environment or a police dominated atmosphere. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to consult with a lawyer, the interrogation must cease. *Miranda* warnings need not be given when a case is still in the investigational stage and the defendant is not in custody or under arrest at the time. For example, custody is less likely to exist when the questioning occurs in the suspect's home. One exception to *Miranda* warnings is a threat to "public safety." In addition, a suspect may waive his 5th Amendment privilege, "provided the waiver is made voluntarily, knowingly and intelligently." Note that in a criminal case, a jury may not draw an adverse inference based on a defendant's exercise of his 5th Amendment privilege.

Under the 6th Amendment of the U.S. Constitution, criminal defendants have a right to counsel during all "critical stages" of the proceedings against one accused. The 6th Amendment right to counsel attaches when a person is charged with a crime. The right is offense-specific. Under the New York CPL, the defendant has an indelible right to counsel. A defendant cannot waive his right without the presence of a lawyer once the indelible right to counsel has attached. In New York, the indelible right to counsel under the 6th Amendment attaches when: (1) the defendant is subject to police activity overwhelming to the lay person and requests counsel; (2) upon the filing of an accusatory instrument, (3) upon arraignment; and (4) upon significant judicial activity. The 14th Amendment due process clause requires any waiver of the right to counsel to be knowing, voluntary, and intelligent. Once the indelible right to counsel attaches, and if police are aware that the defendant is represented by counsel, the defendant may only waive his right to counsel in counsel's presence. One exception to this rule is that spontaneous statements that are neither the product of interrogation or the result of police inducement, made in the absence of counsel. In addition, when the indelible right to counsel attaches for one charge and then the defendant is questioned on an unrelated charge, waiver need not occur in the attorney's presence. A defendant who is not in custody on the prior matter in which he is represented is free to waive his right to counsel for questioning on the new charge. It is the defendant, not counsel on the prior matter, who decides whether or not to invoke the defendant's right to counsel. However, a statement taken in violation of the defendant's right to counsel may be used as impeachment evidence.

CRIMLAW: Robbery - F:2 - T:1.74% - E:0.29% - J:100.00% - Prio: MED

Robbery is defined as the unlawful or trespassory taking or carrying away of property, from the person of another, with the intent to permanently deprive the person of the property by use of force or an apprehension of harm. This offense involves the combination of two other offenses: larceny plus either: criminal mischief, attempted assault or assault. Property must be of the kind subject to larceny, including real property. The taking need not be in the presence of the other person.

Under the NY Penal Law, there are three degrees of robbery based on the degree of force exerted. A person is guilty of robbery in the third degree when he forcibly steals property. The elements of robbery in the second degree are (1) the defendant is aided by another who is actually present; or (2) the defendant or another participant physically injures a non-participant; or (3) there is a threat, whatever its nature, of immediate use of physical force such as the display of a firearm. The elements of robbery in the first degree are: (1) the defendant causes a non-participant serious physical injury or (2) the defendant is armed or threatens use of a dangerous instrument or displays what appears to be a firearm. The victim must reasonably perceive from defendant's actions that a gun is present - words alone are insufficient. For robbery in the first degree, it is an affirmative defense that the alleged firearm displayed is not loaded, but this only reduces the crime to robbery in the second degree.