

## FREQUENTLY ASKED QUESTIONS

Please note — these answers apply only to the California counties in which we are licensed by the State Bar: Alameda, Contra Costa, Fresno, Marin, Napa, San Francisco, San Joaquin, San Mateo, Santa Clara, Solano, and Sonoma Counties.

### An officer abused me or violated my rights. Can I sue? Can I get him/her fired?

If an officer has violated your rights, you can pursue two different kinds of remedies.

- **The first** is getting the officer disciplined. Getting the officer fired, demoted or suspended are all examples of discipline.
- **The second** is getting financial compensation for the wrongs that you suffered.

**These two remedies are completely separate.** Each has different requirements and a different process. You can pursue one, both or neither.

### Getting an Officer Disciplined.

**To get an officer disciplined, you must file a formal complaint.** There are two different kinds of complaints you can file. You should file both, if you can, see below.

- **The first type of complaint is a complaint to the police department itself.** Police Departments have divisions that deal with wrongdoing by officers, commonly known as Internal Affairs. **(Note that this division is not always called "Internal Affairs". For instance, in San Francisco, it is called the "Management Control Division".)**
- **When you file a complaint with Internal Affairs, if it is sustained it goes on the officer's record.** If an officer has a number of complaints or one or more particularly serious complaint, the Department may investigate and discipline the officer.
- **The second kind of complaint is with a civilian review agency.** These agencies vary greatly from city to city. Some cities do not have any civilian oversight of the police at all. Below is information about how to file a complaint with the civilian review agencies in San Francisco and Oakland. **If your incident was not in Oakland or San Francisco consult the enclosed information about where to file complaints.**

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- **In San Francisco, the Office of Citizen Complaints (OCC)** works to investigate allegations of police misconduct. If the OCC sustains a complaint against an officer, the incident will go on his or her permanent record. The OCC makes recommendations for discipline that the Police Chief sees and considers. **And if the OCC thinks the case is serious enough, it can bring it before the San Francisco Police Commission, a civilian body that has the authority to discipline officers.**
- **In Oakland, the Citizen Police Review Board (CPRB)** receives and investigates complaints about police misconduct. It conducts public hearings on some cases and may make written recommendations to the City Manager for discipline of officers or rangers. **The City Manager then makes the final decision about any discipline of individual officers or changes to police or city policy.**

## GETTING FINANCIAL COMPENSATION

Getting financial compensation requires filing a lawsuit.

- **Your first step should be to get a lawyer.** The law doesn't require you to have a lawyer, but it is very difficult to navigate the legal system without one. We strongly recommend that you get a lawyer.
- The first procedural step in being able to file a lawsuit is filing an administrative claim against the **city (or against the county if the officers were Sheriffs, the state if California Highway Patrol)** for damages.
- **You must file this claim within six months of the date of incident.** This is a little different if the claim is only for false arrest, with no other types of abuse. In these cases, you can file within six months from the dismissal of the criminal charges against you. **But, in general, you should put in a claim for any case within six months from the date of the incident just to be safe.**
- **Filing this claim is not the same as filing a lawsuit.** But it's something you have to do before you file a lawsuit. It gives the city, county or state a chance to make a monetary offer without going through the courts.

**The city (or county or state)** has 45 days to respond to your claim. Almost always, the **city (or county or state)** rejects these claims, saying that it is not liable. If your claim is **rejected**, you have six months from the date of the rejection letter to file a lawsuit in either state superior court or small claims court. **If the 45 days passes and you don't receive a rejection letter, you can assume that your claim has been rejected and proceed accordingly.**

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Now you are ready to file a lawsuit. The main advice we can give you about the lawsuit is to consult with your attorney to develop your plan, based on the particular facts of your case. Other than that, we would remind you about the time limits for filing — **six months for an administrative claim, and six months from rejection of that claim to file a lawsuit.**

**We also have a couple of warnings about litigation:**

1. You should know that it can be difficult to get an attorney to take police misconduct cases. Often, the **damages (i.e., the financial cost to you of the abuse)** are not that high. **Without damages, it is hard for attorneys to make back the money they spend fighting a case. This can make it hard sometimes to find an attorney for your case.**

2. You should know that — win or lose — **the lawsuit will not result in any discipline for the officer.** That requires complaints of the kind described above. **The lawsuit will not go on the officer's record.** The money (except in San Francisco) comes out of the city's budget, not the police department's budget. **All in all, these lawsuits do not have much effect on police departments at all.**

If you cannot get an attorney you may want to consider small claims court of self-representation. Additional information about self-representation is available at your local library.

## How do I file a small claims court case against the police?

First you must file a claim against the city (or against the county if the officers were Sheriffs, the state if California Highway Patrol) for damages.

- **You must file this claim within six months from the date of incident.** This is a little different if the claim is only for false arrest, with no other types of abuse. In these cases, you can file within six months from a favorable disposition of the criminal charges. **But, in general, you should put in a claim for any case within six months from the date of the incident just to be safe.**
- **Filing this claim is not the same as filing a lawsuit.** But it's something you have to do before you file a lawsuit. It gives the city, county or state a chance to make a monetary offer without going through the courts.

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- **The city (or county or state) has 45 days to respond to your claim.** Almost always, the **city (or county or state)** rejects these claims, saying that it is not liable. If your claim is **rejected**, you have six months from the date of the rejection letter to file a lawsuit in either state superior court or small claims court. **If the 45 days passes and you don't receive a rejection letter, you can assume that your claim has been rejected and proceed accordingly.**

We have an information packet about pursuing small claims actions. It includes a sample claim form. We can mail you a packet, or you can download it at <http://www.ellabakercenter.org/bapw/smallclaims/>

**Here are the most important guidelines for filling out your claim form:**

- **Keep your description of the incident very general (i.e., not too many details about the facts of what happened — save it for when you get to court);**
- **Name every possible type of claim (e.g., false arrest, false imprisonment, excessive force, illegal search etc.). Make sure to name all the broad categories.**
- **When it asks you for the amount of your claim, write: "Undetermined at this time. However, jurisdiction will rest with Superior Court."**

## **I have pending criminal charges. Should I file a complaint now or wait?**

You have the right to file a complaint regardless of whether you have criminal charges pending against you. But just because you *can* file a complaint doesn't mean that you *should*.

We advise you **NOT** to take any action against the police as long as you have pending criminal charges.

**Why? A few reasons.**

- **If you file a complaint or claim now, the police will have access to it and can use it against you.** Even if you have nothing to hide, you don't want to give the police anything to use against you.
- **You also don't want to give the police your version of the events** because it could possibly help them prepare their version or give them access to your witnesses.

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- **Finally, you don't want to provoke the officers or the police department** into putting more time and energy than necessary into getting a conviction against you in the criminal case. If you file a complaint with criminal charges pending, the police may retaliate by working harder to put you in jail. **DO NOT WAIT PAST 6 MONTHS TO FILE A CLAIM.**

Keep in mind that, regardless of the status of any criminal charges, you must comply with the **six-month statute of limitations** when filing a governmental claim against the **city, county or state.**

If this sounds tricky, consult the enclosed form **Tips on How to Fill Out a Claim Form.** That should be helpful. Please keep in mind that while filling out this form you should use terms which will be the least detrimental to your criminal case.

## **I was the victim of a crime and the police refused to make an arrest and/or prosecute. What can I do?**

The police have tremendous discretion in deciding whether a crime has been committed, whether it is serious and whether they have enough evidence to make an arrest.

In our work, we have seen some officers abuse this discretion when they have a personal bias against the victim. If you think that an officer has abused his/her discretion by not arresting or pressing charges against someone, there are a few things you can do.

- **Write up a brief description of the crime** . Make a list of all available documentation (**e.g., information about witnesses, hospital records, etc.**). Keep a log of all your efforts to get the police to press charges (**e.g., date and time of contact, name of officer involved, what you said, what they said, what they did, etc.**).
- Write a cover letter that explains how the failure to arrest and/or press charges is impacting you (**e.g., putting you at risk for future assaults, preventing you from being able to take civil legal action, etc.**). Also include a sentence stating that if the police do not take appropriate action you will be forced to take civil action against the police.
- Put your cover letter and your packet together and mail a copy by certified mail to **a)** the investigating officer, **b)** that officer's supervisor, the captain of his or her unit, or the watch commander, **c)** internal affairs, **d)** the DA's office and **e)** your city's civilian oversight body (**if applicable**).

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## I am the victim of a pattern of police harassment. A certain officer or group of officers just won't leave me alone. My damages are not large enough for a lawyer referral. What can I do?

If you feel that you are the target of repeated police harassment, you can try to bring it to an end by reporting the harassment. At the least, you would report it to internal affairs and the watch commander of the responsible unit. If one officer in particular is harassing you, you may want to report it to his/her direct supervisor also. Finally, if your city has a civilian oversight body (like San Francisco's Office of Citizen Complaints or Oakland's Citizen's Police Review Board), you would also want to report the harassment to that body.

Here's how you report the harassment.

- Document every detail of each interaction you have with the police. Include dates, times, location, and any identifying information about the officers involved (e.g., names, badge numbers). Write down the names of any witnesses. Take photos if you can. Also, create a succinct (one- or two-page) log of all the incidents.
- Put this packet together with a cover letter and send it to the agencies, departments or people listed above. If any of these agencies has their own form, fill that out as well.

All of this will help you establish that there is a pattern of abuse. This will be helpful not only in reporting the harassment but also as evidence in any possible legal case (e.g., filing a lawsuit for harassment or defending yourself against false arrest).

## The police searched (or keep searching) my home. They claim someone on parole or probation lives here, but it's not true. What can I do?

TO PREVENT SIMILAR INCIDENTS IN THE FUTURE:

- We've found that the best thing to do is to clearly notify both the relevant parole/probation department and the commander of the unit that has been conducting the searches.

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- **Write a letter stating in clear, succinct terms that the person in question does not live at or use your address.** Mention that you can put the police in touch with neighbors who can verify this. Include a brief description of the search(es). Make it clear that you expect these unjustified searches to stop immediately.
- **Send the letter by certified mail.** If there is a warrant to search for this person, also send a letter to the judge that issued the warrant.

#### IF THERE IS PROPERTY DAMAGE:

- **Document the damage in detail and take photos. Also get estimates for repairs. Then file a claim with the city. You can also go to small claims court.**

**I am (or someone I live with is) on probation/parole. I understand the police can search my home. But they do it ALL THE TIME. They are violent and they search everywhere. It's damaging my home. What are my options?**

- **The first thing you should do is find out exactly what your rights are.** Get the stipulations of the parole/probation search clause, in writing, from the parole or probation officer.
- If the police's searches are beyond the scope of the search clause, or if there is no search clause, file complaints with both the probation/parole department and the police department.
- If the police come to your home again and try to conduct a search beyond what the search clause permits (**e.g., in parts of the house not covered by the search clause**), show the officers the written stipulations and insist that they do have neither the legal authority nor your consent to search those areas.
- Make sure to document and take photos of everything that they do and have other people present to witness the searches.

**If there is any property damage to your house, document the damage in detail and take photos. Also get estimates for repairs. Then file a claim with the city. You can also go to small claims court.**

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## The police A) won't let me file a complaint, or B) demand that I go through an intimidating interview process before giving me a complaint form. What can I do?

- **Everyone has the right to access a department's grievance process without harassment or obstacles.** If the department is making it difficult, be persistent (**but not hostile**). Assert your right through the **California Public Records Act** to a complaint form and information about the department's complaint process.
- **You should be able to pick up a complaint form in person or have it mailed to you.** If someone refuses to give you a form, get his/her name and ID number. Ask that s/he put the refusal in writing and ask for the protocol that allows them to do so. If they demand you go through an interview process, ask for this protocol in writing.

**If you still can't file the complaint, file a complaint with the agency that controls the department.** In Oakland, for instance, this would be the Citizen's Police Review Board and the City Manager's office. **If the department still won't take your complaint, consult an attorney.**

## I don't know how to get a police report/CAD transcript. How do I go about doing so?

- **If you were arrested, you have a right to your police report.** You should have a defense attorney or be appointed one. Your attorney should get a copy of the police report right away.
- **If your charges were dropped or you don't have an attorney, you can request the police report directly from the police department.** Every department's process is different. The department should have a form that you can fill out or an address where you can send your request. You may not have an opportunity to talk to someone in person. There is usually a small fee that you include with the document request.
- **If you filed the report yourself (e.g., you called to report a crime in which you were the victim), you should have access to this report also.**

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A CAD report is the transcript of a 911 call. The caller has the right to request the transcript. It will probably require a small fee. Getting the actual 911 tape (**as opposed to the transcript**) requires a subpoena.

## The police confiscated my property and they will not give it back. How do I get my property back?

The police department should have an evidence department. If your property is not being used in an investigation, you should be able to pick it up there.

- **If the department refuses to return your property or claims not to have it, write a letter demanding the property's return.** Include a log of all the property in question that states when, where and by whom it was seized. Also include a clear statement that if the property is not returned by a specified date (**e.g., two weeks from the date of the letter**), you will be forced to take civil legal action for compensation not only for the value of the confiscated property, but also for the inconvenience of being without it.
- **Send this demand letter by certified mail.** If nobody responds to the letter, go to small claims court and ask for the value of the property plus punitive and emotional damages.

Please note that small claims cannot exceed \$5,000.

## I live in a neighborhood/housing project where the police are constantly harassing people who live here and we are fed up. How do we make it stop?

There are a number of steps you can take to get the police to stop harassing your neighborhood.

- **Get as many people as possible to file complaints.** It is important that some of these people are direct victims of or witnesses to the police misconduct. File all the complaints at once and try to make a news event of it. **Call the local newspapers, radio stations and television stations to let them know what you're doing.**
- Organize a group of neighbors to demand a meeting with the local substation captain.

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- Organize large groups to speak inside and rally outside of city council meetings, police commission meetings, and other meetings of groups who have the power to do something about the problem.

The more people that are signed on and are willing to speak out, the more likely the department will have to listen. Always try to get local media to cover any particular harassment event as well as the broader problem. **PoliceWatch** may be able to give some advice (like strategy or media pointers) if your community is organizing itself.

## The cops came by and wanted to come in my house. I don't know what to do if they come back.

Unless there are special circumstances, the police do not have the right to enter your home without either a warrant or your consent.

- **If they come back, answer the door and step immediately outside the front door and close the door behind you.** If they ask questions, just tell your name and address and show them your ID. You don't have to do anything more than that. If they want more, You have the right to stay be silent and to ask for an attorney; anything you say can be used against you.
- **If they want to come in, ask to see a warrant.** If they show you one, make sure it has the current date, correct address and is signed by a judge. It should also say what the police are looking for. Remember, the police can only do what the warrant allows them to do. So if they are looking for a person, they don't get to look in places where no one could fit, like your dresser or your jewelry box.
- **If someone on parole or probation lives in the home, the police probably have a right to search the place.** But, again, they can only do what they are allowed to do in writing — in this case, in the search clause stipulations in the parole or probation conditions. For instance, they may be allowed to search only that person's bedroom and common areas. If you don't know exactly what the stipulations are, you can find out from the person's parole/probation officer.
- **If police insist on coming in without authorization, state clearly and loudly for any witnesses to hear "I do not consent to you entering my home, I want to see a warrant."** Don't physically prevent the officers from moving forward. But make it very clear that the police do not have consent and you should not open the door for them. If they attempt to use force to break the door, you may want to open the door, even though the search is illegal, to avoid damage to the door. If you do this, you should still state that the police do not have your consent to enter.

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- **By making it clear that they do not have your consent, you are giving yourself a basis on which to challenge the search later in court if necessary.** To help bolster such a challenge, you should also document the search in whatever way you can. If you have a video camera or handheld audio recorder, record the search. Try to have neighbors and/or others living in the home witness the illegal entry and search. **Watch the police and write down what they do, what they take, what they leave, etc.**
- **You may consider calling 911 to document the illegal entry.** This is by no means a perfect solution. It may bring more police to your house and complicate matters even further. But it's a way to make an audio recording of the search and your explicit non-consent. **If you call, 911 will continue recording as long as you don't hang up — even if you drop the phone on the floor.**

**I was in a car accident and it was clearly the other driver's fault. But the police showed up and — despite all the evidence — they wrote that it was my fault in their report. What can I do?**

It is difficult to get the police to change a report. Begin by immediately collecting data that contradicts the police report.

- **Try to get statements from any witnesses, along with their contact information.** Be thorough — check surrounding businesses and homes for people who might have seen anything.
- Present all this information to the officer and try to persuade him/her to correct the report.
- **Witnesses to the incident can also attempt to file reports and demand that the officer interview them regarding the accident.** If the officer refuses to budge, you should put together an incident summary and a list of the mistakes in the report and mail it to the officer's supervisor and internal affairs. Demand that the report be corrected or you will be forced to take civil legal action against the department for falsification of a report and the resulting damages (**e.g., inability to pursue civil legal action against the other driver because of the police report**).

If your insurance company is providing an attorney, make sure s/he knows of all the evidence that contradicts the police version of events. Try to get this attorney to help you get the report changed.

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## The police targeted me for Driving While Black (DWB). Is there anything else I should do besides document the incident with PoliceWatch?

- If you believe you were pulled over while driving because of your race, you should call the **DWB hotline of the ACLU**. The number is **1-888-DWB-STOP**. They will document the incident and use the data to support their current DWB lobbying campaign.
- **The ACLU is working hard for new anti-racial profiling legislation.** By requiring officers to write down everything about every traffic stop, including the race of the perceived driver, the new law would make it possible to track — and then stop — racial profiling in traffic stops.

You should know that the ACLU will not help you with criminal defense or civil litigation. They are only collecting information for the lobbying campaign.

## Someone in my family died while in jail/prison or police custody. They say it was natural causes/suicide but I have reason to believe there was foul play. What can I do?

- If the deceased was a member of your immediate family, you should be able to access the death certificate, the coroner's report and the autopsy report. You can also pay for and demand your own private autopsy. **You should be able to view the body and take pictures of it.**
- **In addition to physical evidence from the body, you should get as much circumstantial evidence as possible.** Collect any letters from your family member that refer to problems with jail/prison staff. Document similar information you may have learned in phone calls from the deceased or by talking to other inmates. Try to find out about grievances the inmate may have filed.
- **Medical neglect may also have contributed to the death.** Try to find out about any medical request forms the deceased may have filed.

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If, after seeing all the evidence, you think there's a chance that, through neglect or foul play, the jail/prison staff or police may have been at least partially responsible for the death, try to hire an attorney. **If you have the coroner's report and think it says something other than what the jail/prison is saying, but you are not exactly sure what it says, try to identify a doctor or attorney who can help you understand the report.**

## **I am incarcerated and have a serious injury/illness and am not receiving treatment. What can I do?**

**If your medical needs are being neglected, you need to document it as much as possible.** This will allow you to sue, if necessary, to get the facility to provide the medical care you need.

- **Every day, fill out medical request forms and grievances.** Keep a log of your attempts to get help, the progression of the injury/illness itself, its effects and any witnesses to the nature of the injury/illness.
- **Have people on the outside (e.g., friends, family) make persistent attempts to make sure the jail/prison knows that people on the outside are paying constant attention to the situation.** They can make calls to the medical clinic and the Sheriff, Warden and ombudsperson (if one exists). When doing so, they should reference your medical requests and medical needs.
- **Outside contacts can also send certified mail** letting the Sheriff or Warden and the head of the medical department know that if the injury/illness is aggravated or the condition worsens as a result of the neglect, they could take civil legal action against the prison/jail.

**You and your family/friends should document all of these communications in writing.** In addition to legal action, you can also get the media involved in extreme cases. If a jail/prison is putting inmates' lives at risk by failing to provide medical care, that could be a big story.

## **I was falsely arrested. I want to sue the police. How do I do that?**

**As with any legal case, you would need to hire an attorney who would guide you through the entire lawsuit.**

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- **You should know, though, that suing for false arrest is very difficult.** It is a tough case to prove, so very few attorneys are willing to take these cases. Attorneys are also reluctant to take false arrest cases because the damages are usually relatively small.
- **To win a false arrest claim, it is not enough to show that the police made a mistake.** You also have to prove that they did it with some malice or corruption. This is very hard to prove. That your case was dropped is not enough. District Attorneys drop cases all the time for a variety of reasons.
- Proving the case becomes even more difficult **(and finding an attorney basically impossible)** if you pled guilty to anything, even a lesser charge.

In short, unless there is also a claim of brutality or long-term false imprisonment, it is almost impossible to sue for false arrest. However, you may be able to try your luck in small claims court for a false arrest case with small damages.

## The police say they will arrest me unless I name names, cooperate with a sting investigation, give them information, etc. What can I do?

In this situation, we advise you never to offer the police any information or cooperate with any investigation unless advised by a criminal defense attorney.

- The police may offer to drop your charges if you cooperate. **Remember, just because they're saying they will or won't arrest you if you do this or that doesn't make it true.** They can arrest you after you name names. They can choose not to arrest you even if you don't name names. **And we have found that, if they haven't made an arrest yet, it probably means that they don't have enough of a case to make an arrest.**

Of course, only you know the risks involved in refusing to cooperate. But in our work, we've found that waiting for advice from a criminal defense attorney is the best way to go.

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