

Question: What are my constitutional rights?

You have important constitutional rights which you need to know about. You need to know what they are and you need to work to protect them. The fourth, fifth, sixth, eighth and fourteenth amendments to the federal constitution are particularly important to know and remember.

The fourth amendment prohibits unreasonable searches and seizures. It instructs that a warrant shall be issued when there is probable cause to suspect a crime and the request for a warrant must be supported by oath or affirmation which describes the place to be searched and the person or things to be seized. There are a lot of exceptions to the warrant requirement like exigent circumstances, an emergency or consent and search incident to an arrest. Some brief detentions, when a person is seized may be based on an articulable suspicion of criminal conduct.

The fifth amendment provides many important rights. The fifth amendment protects one against self incrimination, you cannot be forced to testify against yourself. The prohibition against double jeopardy - being tried twice for the same offense is found in the fifth amendment. And the fifth contains the important due process clause; the state is prohibited from any deprivation of life, liberty or property without due process of law.

The sixth amendment requires that any criminal defendant has the right to an attorney, the right to be informed of the law and possible punishments faced for violation of the law, the right to compel witnesses to appear and testify, the right to confront witnesses and the right to a speedy and public trial by an unbiased jury.

The eighth amendment bars the state from excessive bails or excessive fines. The eighth amendment is also the one which prohibits cruel and unusual punishment.

The fourteenth amendment holds important privileges and immunities, in fact it's called the privileges and immunities clause of the fourteenth amendment. This amendment bars the state that you live in from enacting or trying to enforce any law which violates the privileges and immunities of citizens of the United States. The fourteenth amendment also has it's own due process clause and the very important equal protection clause. The equal protection clause demands that no State may selectively enforce certain of it's laws and selectively deny citizens within it's borders - the protection of United States citizenship.

The right to remain silent can be found in the fifth amendment described a moment ago. It is so important it bears a little more discussion. This right means that a person accused of a crime cannot be called as a witness at his or her trial. A criminal defendant cannot be made to testify or even answer questions if the

questions may tend to incriminate him or her. Even at grand jury proceedings the witness may refuse to answer any questions that suggest the possibility that they will incriminate themselves. That means that if a person's answer to a question will require them to admit some action that constitutes a crime and would subject them to criminal prosecution, then the fifth amendment allows them to refuse to answer. To compel answers in this context - prosecutors may give the witness immunity from prosecution to force them to testify despite their fifth amendment rights.

Our Miranda rights come from the famous United States Supreme Court case of *Miranda v. Arizona*. In that case the Supreme Court held that suspects in the custody of the police must be informed that they have important constitutional rights before they are questioned. The purpose of this rule is to make sure that if an accused person answers questions in an interrogation that this waiver of their constitutional right to remain silent and to have an attorney present is made freely and with knowledge of the existence of the right.

Miranda rights grow out of the fifth amendment right to remain silent and the sixth amendment right to an attorney. On TV they sound something like this, you have the right to remain silent, if you give up the right to remain silent anything you say can and will be used against you in a court of law, you have the right to an attorney and if you cannot afford an attorney, an attorney will be appointed for you. What about this right to an attorney?

The right to an attorney also grows out of the sixth amendment. This guarantees the right to legal counsel at all important stages of the criminal process. The right of legal counsel is so important that there is a parallel right given to people who are unable to pay for legal counsel, to have an attorney appointed and paid for by the government. Both the federal and state systems have procedures for the appointment of attorneys for indigent defendants. This right to an attorney has been enlarged to the interrogation phase of an investigation, the trial, sentencing proceedings and the initial appeal of any conviction.

The right to a trial by jury is basic to American jurisprudence. Remember the Spanish inquisition or the star chambers? - - The folks who founded the United States remembered and that's why trial courts must be open and public in American judicial courts. In the old common law system a criminal defendant was entitled to a public trial by jury in cases of felonies and misdemeanors where the term of imprisonment would exceed one year. Under modern constitutional law a jury trial is required when the term of imprisonment may exceed six months. You must know these rights to protect them..