

Crime is something which we've truly always had as a society. Each country on our planet has their own technique and concept of what they think is suitable as a consequence for someone who has broken the law. Despite the fact that they most likely have committed a crime, inmates are some of the most vulnerable and desperate people in our society. They are usually uneducated, have little if no money and are all on their own. When we hear that someone has been convicted of a terrible crime, as human beings we often feel angry and revengeful towards that person. But regardless as to what unspeakable things a person has done, everyone is entitled to certain rights. But what rights does one truly have while under arrest, and what rules of establishment are in place to uphold a person's rights once incarcerated? In the following essay, I shall share what I have learned on American and Canadian laws while under arrest and in prison.

In the United States of America, the Bill of Rights exists to ensure American citizens of their rights and freedom. It consists of the first ten amendments to the Constitution which were brought in by the American Congress in 1789 and later ratified in 1791 throughout every state in a vote.<sup>1</sup> The first 10 amendments (simplified) are: 1. Freedom of speech, religion, press and government 2. The right to keep and bear arms to maintain a well-regulated militia 3. Prohibition of quartering soldiers 4. The right to not have unwanted search and seizures 5. The right to remain silent 6. The right to a speedy trial 7. The right to a trial by jury 8. The right against excessive bail and cruel punishment 9. The right to your Constitution, and 10. The rights of each state.<sup>2</sup> The procedure of which Americans are arrested is usually quite simple, yet there are many small but important steps. First, to arrest someone a police officer must have either an arrest warrant from a judge, probable cause to believe that the individual committed a crime or an observation of crime by the officer. Once they have apprehended the suspect, read them their Miranda Rights and told them what crime they are being arrested for, it is not obligatory though officers often will handcuff and place the suspect in the police car for ensured safety. Police officers in America are not allowed to use excessive force against anyone and are instructed to use any sort of defense as lightly as possible in case of personal defence. If the person who has been arrested believes to have endured unfair harm by an officer they may file a civil rights lawsuit against them if they wish.<sup>3</sup>

Have you ever heard the phrase "You have the right to remain silent" on a tv show or movie before? This simple but crucial line is from the Miranda Warning, a routine police procedure which ensures and informs each and every American of their rights while under arrest.<sup>4</sup> It allows suspects to know that they have the right to remain silent and that anything they say can and will be used against them in court. They have the right to an attorney before and during their

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<sup>1</sup> "First Ten Amendments - constitution | Laws.com."

<http://constitution.laws.com/amendments/first-ten-amendments>.

<sup>2</sup> "1791: US Bill of Rights (1st 10 Amendments) - with commentary ...."

<http://oll.libertyfund.org/pages/1791-us-bill-of-rights-1st-10-amendments-with-commentary>.

<sup>3</sup> "What Procedures Must the Police Follow While Making an Arrest ...."

<http://criminal.findlaw.com/criminal-procedure/what-procedures-must-the-police-follow-while-making-an-arrest.html>. Accessed 5 Jun. 2017.

<sup>4</sup> "Miranda warning - Wikipedia." [https://en.wikipedia.org/wiki/Miranda\\_warning](https://en.wikipedia.org/wiki/Miranda_warning).

interrogation, and if they cannot afford one they may have an attorney appointed to them.<sup>5</sup> It is also required for the officer issuing the arrest to ask the suspect if they understand their rights. The Miranda Warning was created in 1966 during the Miranda v. Arizona Supreme Court case when Ernesto Arturo Miranda made a confession without being read his rights, making his confession look forced. Since his Fifth<sup>6</sup> and Sixth Amendment<sup>7</sup> rights had been violated, his trial was acquitted and then retried the next year. This was and still is a huge mistake police officers do in the U.S. while making an arrest, as any confession or information that is retrieved from the person under arrest without knowing their rights cannot be used against them in a court or trial, therefore, making it unusable and ruining the case. In 2009, research showed that 10% of American arrests were compromised by the suspects not being told the Miranda Warning.

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Once incarcerated, American citizens do not have full Constitutional rights, but they do still keep some. In prison, Americans still have their Eighth Amendment right against cruel and unusual punishment, as well as their right against sexual assault or sex crimes and any sort of<sup>9</sup> discrimination. If an inmate experiences any sort of cruel and unusual punishment or is unsatisfied their prison conditions, they have the right to talk to prison officials or a court. It is a huge debate as to if the death penalty falls under the category of cruel and unusual punishment or not, as in 32 states Americans do not have the right against capital punishment. Inmates with mental and physical disabilities are entitled under the American with Disabilities Act to receive sufficient health care and counselling if needed. The First Amendment of free speech is also a right prisoners have, which allows them to practice their selected religion and voice their opinions to a certain extent.<sup>10</sup>

In Canada, the Canadian Charter of Rights and Freedoms was signed into law in 1982 by Queen Elizabeth II in order to protect the rights of all Canadian citizens.<sup>11</sup> Within the charter, there are 8 sections of legal rights from section 7 to 14 which assure Canadians of their rights while under arrest, in custody, and in the court. The rights allow Canadians to uphold their right to life liberty and security, the right to deny search and seizure, freedom from unlawful imprisonment, the right to an attorney, the right to be allegedly innocent until proven guilty, the right to not receive cruel and unusual punishment, the right against self-incrimination, and the right to an interpreter in court.<sup>12</sup> Once an individual has been charged with an offense, their

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<sup>5</sup> "Miranda Rights: What Happens If Police Don't 'Read Your Rights ...."

<http://www.nolo.com/legal-encyclopedia/police-questioning-miranda-warnings-29930.html>

<sup>6</sup> "Fifth Amendment to the United States Constitution - Wikipedia."

[https://en.wikipedia.org/wiki/Fifth\\_Amendment\\_to\\_the\\_United\\_States\\_Constitution](https://en.wikipedia.org/wiki/Fifth_Amendment_to_the_United_States_Constitution).

<sup>7</sup> "Sixth Amendment to the United States Constitution - Wikipedia."

[https://en.wikipedia.org/wiki/Sixth\\_Amendment\\_to\\_the\\_United\\_States\\_Constitution](https://en.wikipedia.org/wiki/Sixth_Amendment_to_the_United_States_Constitution).

<sup>8</sup> "Miranda rights and wrongs | Officer.com."

<http://www.officer.com/article/10921620/miranda-rights-and-wrongs>.

<sup>9</sup> "Prisoners' Rights | American Civil Liberties Union." <https://www.aclu.org/issues/prisoners-rights>.

<sup>10</sup> "Prisoner's Rights Law - HG.org." <https://www.hg.org/prisoner-rights-law.html>.

<sup>11</sup> "Canadian Charter of Rights and Freedoms - Wikipedia."

[https://en.wikipedia.org/wiki/Canadian\\_Charter\\_of\\_Rights\\_and\\_Freedoms](https://en.wikipedia.org/wiki/Canadian_Charter_of_Rights_and_Freedoms).

<sup>12</sup> "Your Guide to the Canadian Charter of Rights and ... - Canada.ca."

<http://canada.pch.gc.ca/eng/1468851006026>.

rights are still quite similar. Canadians have the right to a trial within a reasonable time frame, to be allegedly innocent until proven guilty by a prosecutor, and to be released on bail unless there is a legitimate need for them to be kept in custody.<sup>13</sup>

Canadian inmates, as most inmates, are in a serious dilemma. On average, approximately 40,000 Canadians are sent to jail everyday. And many of these alleged criminals have not even been accused for a crime yet and are awaiting their trial or bail.<sup>14</sup> Studies show that between 2009 - 2010, over 13,600 inmates were held in remand in Canadian prisons. Inmates in remand have increased over 84% since 2000/2001, and the those with sentenced custody have declined 9%.<sup>15</sup> This is happening mostly to people charged with non-violent crimes, and courts that quickly remand people into custody waiting for trial or bail as it is easier and more convenient for police to do so.<sup>16</sup> This technically infringes on sections 7 and 11 of the Canadian Charter of Rights which ensure Canadians of their right to trial in a reasonable time. Not only is it interfering with people's rights, but it also creates unnecessary crowding in Canada's already overpopulated jails, which of course costs taxpayers more unnecessary money. It is also terribly unfair and not logical to send someone who is not yet proven guilty to prison, as many of these people might be innocent. The cost of incarcerating an innocent person is also a huge factor to take account of, as in Ontario the cost to keep someone in jail who is awaiting bail or trial can cost roughly \$183 a day.<sup>17</sup> This is a serious issue that Canada is currently facing, as it is certainly worsening each year. Issues like these are why criminal rights are and should be important for everyone, as technically something like this should not be happening in the first place.

In conclusion, our rights are something most of us tend to under appreciate. We use our freedom of speech everyday, and can usually live our lives safely as the law allows us to. As members of society, we often forget how lucky we are to have the rights that we've got. On the other hand, those involved in the criminal justice system recognize the full worth of the laws put in place to protect them as it is often a life or death situation for them. While being prosecuted for a crime you've never committed, or asked questions you do not know how to answer, it must be a relieving thought to remember that your legal rights can protect you. Sometimes, certain criminal defence cases rely solely on the rights of a person being violated, which can make or break a person's life. Knowing your rights can be one of the most useful tools one can have,

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<sup>13</sup> "Your rights when charged or arrested - Legal Line."

<http://www.legalline.ca/legal-answers/your-rights-when-charged-or-arrested/>.

<sup>14</sup> "Prisons and Jails - Canadian Civil Liberties Association."

<https://ccla.org/focus-areas/policing-and-public-safety/prisons-and-jails/>.

<sup>15</sup> "Trends in the use of remand in Canada, 2004/2005 to 2014/2015."

<http://www.statcan.gc.ca/pub/85-002-x/2017001/article/14691-eng.htm>.

<sup>16</sup> "Globe editorial Why are so many unconvicted Canadians behind bars?."

<https://www.theglobeandmail.com/opinion/editorials/why-are-so-many-unconvicted-canadians-behind-bars/article19733777/>.

<sup>17</sup> "Globe editorial Why are so many unconvicted Canadians behind bars?."

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since as human beings we are all entitled to them, and you never know when they can come in handy.