

“15” Ways to reduce the risk of becoming a victim of brutality, or misconduct by police

15 Universal Declaration of Human Rights, that often involve police brutality if violated. They include:

Freedom from slavery; Freedom of opinion or expression; Right to peacefully assemble; Freedom from non-discrimination; Freedom from brutality and torture; Freedom inhumane or degrading treatment; Freedom from arbitrary arrest, detention or exile; Freedom of thought, conscience and religion; Right to equality; Right to life, liberty and security; Right to remedies for violations of human rights under the law; Right to trial; Right to presumption of innocence until proven guilty; Right to adequate shelter, food, clothing, medical care and other fundamental needs; Right to protection against interference or attacks against privacy, family, home, honor, reputation, or correspondence.

Police Use of Deadly Force Denounced by Amnesty International & UN Human Right Council

Earlier this year, Amnesty International reported its findings that 50 States and the District of Columbia in the USA failed to comply with the international standards on the use of lethal force. They highlighted a “widespread pattern of racially discriminatory treatment by law enforcement officers and an alarming use of lethal force nationwide.”

We also heard about the criticism by the UN Human Rights Council early redthis year about the use of excessive force and racisms.

As our great Country works hard to resolve these crucial human rights issues, the one thing we as individuals can do to reduce fears and tensions is to understand the laws, and rights afforded within them.

“15” Ways to reduce the risk of becoming a victim of brutality, or misconduct by police

Being aware of your rights and the laws where you live or travel, is your first line of defense in avoiding police brutality.

1. Stay calm, polite and respectful;
2. Stop talking;
3. Listen carefully to instructions by police;
4. Obey the commands;
5. Always keep your hands where the officer can see them;
6. Never display a firearm or other deadly weapon unless the officer asks you to;
7. In the event, ask the officer to direct you as to how they would like it to be presented or safely displayed so that they do not feel threatened by it;
8. Move slowly and carefully at all times;
9. Never move to a location behind the police officer unless they request you to do so;
10. Never reach for, or attempt to take an officer's weapon;
11. Never argue or provoke the officer;
12. Never resist arrest;
13. Never walk away from police until they tell you that you are free to leave;
14. Never flee from the officer if they attempt to arrest you;

15. If you are being questioned or interrogated about a crime, invoke your 5th amendment right. To do this, politely tell the officer that you wish to remain silent and request that your attorney be present during any questioning regarding involvement in crime.

Any police stop can be tense for all involved. This includes the officer. Police will be the first to tell you that there is no such thing as a “routine stop.”

Police are trained to approach each encounter as though it could turn deadly, at any moment.

It is important to understand this mindset of the officer.

They will always be on guard, armed, and ready to protect themselves in the event the encounter turns violent.

If an officer feels threatened, or that his or her life is in danger, they are trained to react with force equal and necessary. That may include lethal force in the event that is the level of threat against them.

The key to avoiding a violent or dangerous encounter with police is to avoid making the officer feel threatened in any way.

Each person should be aware that their own actions may either keep them from harm, or put them in harm's way.

What Should You Do if you are Being Assaulted by Police

Though these tips will reduce your risk of harm, unfortunately, violent encounters may still erupt.

People often want to know if it is lawful to use deadly force against a police officer who is beating and brutalizing them, or using excessive force. The short answer to that is yes.

Under Arizona Criminal Code A.R.S. 13-404, a person is allowed to protect themselves by using necessary physical force, against an officer. However, this is only lawful, *if* the police officer is using physical force that exceeds that allowed by law.

Having said that, it is important to understand the consequences of which a person is exposed in making that choice:

- It could result in serious harm or death as the officer retaliates;
- The suspect who used deadly force against an officer to protect themselves will likely be arrested and a criminal investigation will ensue;
- The suspect may be charged with aggravated assault or homicide if the force used by the police officer did not exceed the lawful amount of force needed under the law;
- In trial, the suspect will need to make a showing that the physical force used by the police officer did in fact exceed the amount of force required;
- The prosecution will attempt to persuade a jury that the police officer's initial actions did not exceed the necessary force allowed under law. For this reason it is important to obtain surveillance footage, and eyewitness statements, or other evidence that can provide such showing or accurate account of the events.

The Most Common Criminal Defense used for Use of Deadly Force Charges in Self-Defense

The most commonly used defense in this situation is a what is known as “Justification” defense which affords the right to self defense under AR.S. 13-404.

Though the Justification defense generally does not apply to police officers, the exception to that is if they reasonably believed force was needed to immediately and necessarily protect themselves against the officer’s use of unlawful excessive force.

Lethal force, however, is not justified if the suspect uses it merely to resist an arrest, even if the person feels they are innocent.

Even if a suspect is completely innocent, it is important for them to stay calm, obey the orders, cooperate, and then consult a criminal defense attorney as soon as reasonably as possible following an arrest.

Formal Rights that offer Protection from Police Brutality & Use Excessive Force by Police

Most of the formal rights afforded to individuals are those under the

1. United States Constitution and Amendments;
2. State of Arizona Constitution and Amendments.

The United States Constitution

Some of the rights under the US Constitution that afford protections against brutality include:

- 4th Amendment: Freedom from unlawful search and seizures;

- 5th Amendment: Freedom from self-incrimination; deprivation of life, liberty, or property absent due process;
- 8th Amendment: Freedom against cruel and unusual punishment;
- 14th Amendment: Freedom from denial of privileges and/or immunities of citizens of the US; deprivation of life, liberty, property in absence of due process; denial of equal protection under law.

State of Arizona Constitution

Some Rights under the State of Arizona Constitution Article II which address the protections against brutality, harm, and police, and police misconduct include:

Article II. Declaration of Rights

- Section 4. Freedom from deprivation of life, liberty, or property without due process;
- Section 5. Right of petition and for peaceful assembly, protest rights;
- Section 8. Right to privacy; freedom from disturbance and home invasion without lawful authority;
- Section 15. Freedom from excessive bail; and infliction of cruel & unusual punishment;
- Section 24. Rights of the accused in criminal prosecutions

Consequences of Law Enforcement Violation of Rights in Criminal Law

One common violation is the US Constitution's 4th Amendment for unlawful search and seizure.

If the police entered your home without a valid warrant or your consent to search it, then seized evidence against you, and planned to use that evidence to prosecute you, then that would be a constitutional violation.

If the unlawful search and seizure was material, your criminal defense **attorney** may file a motion to suppress that evidence.

This means the evidence obtained as a result of a violation of the suspects rights, will not be admissible to use against them in trial.

Suppression of material evidence generally leads to an acquittal or dismissal of the criminal charges or other favorable outcome in case for the defendant.

Remedies for Victims of Brutality, Criminal Misconduct, or Cruel and Unusual Punishment

Constitutional Violations that involve brutality, gross misconduct, or cruel and unusual punishment, may have both criminal and civil remedies available.

In the case of an officer involved shooting, a detained inmate grossly abused or neglected, or fatally beaten by guards, criminal charges may be brought against those involved.

Civil remedies exist such as law suits being filed by qualified survivors for wrongful death of their loved one. The civil suits may be filed against the agency, jail, prison, city, county, or other locale with jurisdiction of those who committed the crime.

Civil Law suits may be filed by the victims, or their families or the American Civil Liberties Union (ACLU) on behalf of the victims.

Law Suits for Constitutional Violations of this nature are filed under Federal Rule 42 USCA § 1983; often referred to as a “Section 1983” lawsuits.

These are civil right laws that protect inmates in prison or jail, or civil detainees, from being deprived of their Constitutional rights.

Those responsible from the violations may include law enforcement officers, jail or prison guards, or other employees working there.

Obstacles to Justice: Qualified Immunity Laws

Police, guards, and other civil servants have general protections under what are known as *Qualified Immunity Laws*. These are in place at the federal, state, and local level. In Arizona, they can be found under A.R.S. 12 – 820.02 for reference.

These laws provide immunity from civil liability against litigation against officers acting within the scope of their job duties.

As long as their actions were not in violation with police, prison, jail procedures; and as long as their actions did not constitute a criminal offense the civil servant will be afforded protection under the Qualified Immunity Laws of their jurisdiction.

In these situations often people feel the criminal justice system has turned away, without offering any remedy for their injury or injustice.

There is a perception among many that prosecutors and police are on the “same side” considering they work closely together to prosecute criminal offenses. As a result, they feel that prosecutors are in no hurry to bring charges against police in these situations.

Amidst the recent fatal police shootings and tragedies, the violent **protests** that erupted had much to do with the fact that it has been increasingly difficult to prosecute criminal conduct by police.

Charges can be brought against a police officer in two ways in Arizona and most states in the USA. They can be brought by the prosecutor filing a formal complaint, or by Grand Jury indictment.

A Grand Jury indictment is not required to bring criminal charges.

It is the prosecution who decides if they want to take the case to the Grand Jury or file the formal charges themselves.

The prosecution decides what evidence they want the jury to see and hear; and what witnesses to call.

So generally speaking if the prosecution is not passionate about the grand jury bringing charges, they know what the jury needs to see and hear, to assure the desired outcome.

Even if the Grand Jury decides not to bring charges, the prosecution can still bring them. They are not bound to the grand jury's decision not to bring them.

In numerous cases recently, where the charges were not brought where evidence seemingly existed to the contrary that criminal liability existed, violent protests erupted.

Tensions continue to mount as more tragic incidents occur, in Arizona and across our great nation.

What a Criminal Defense Attorney can do to help you if you face Criminal Charges

If you were arrested or face criminal charges, you should always consult an **experienced** DUI or Criminal defense attorney before going to court, or pleading guilty.

If retained your criminal defense attorney will thoroughly review your case, gather all the evidence available including evidence in your favor. They will present your side of the story through the proper legal channels.

They will then determine what the best defense strategy will be given the circumstances of your case. If your constitutional rights were violated, they may file a motion to have the evidence obtained as a result that violation, be suppressed.

Other defenses may exist in your case that you are not aware of. The challenge may lead to a favorable outcome such as a reduction of charges, mitigation of sentencing in the event of conviction, dismissal, or acquittal of the case.

James Novak, DUI, and Criminal Defense Attorney is a former Maricopa County Prosecutor who is effective, and dedicated to providing a strong

criminal defense for his clients. He will work hard to get the best possible outcome in your case.

If you face active criminal or DUI charges in Phoenix, Mesa, Gilbert, Tempe, Scottsdale, or Chandler, AZ call James Novak of The Law Office of James Novak for a free initial consultation at (480) 413-1499.

If defending and resolving your charges is important to you, it's more important to James Novak, experienced DUI & Criminal Defense Attorney of the Law Offices of James Novak.

Personal Insights

As a proud American, and former US Marine, I consider the USA to be the greatest country in the world.

No one deserves to be deprived of their fundamental human rights. Yet, atrocities mount across the globe as we speak.

We are not alone in this fight, given no country on the planet is immune to the travesties, violations, abuses, or corruption.

Our forefathers who created the Declaration of Independence, The US Constitution, the Bill of Rights, 235 years ago when the United States was founded, likely did not imagine the events we face today.

For over two centuries our brave soldiers fought, lost life and limb for our country while proudly serving our Flag, and the freedoms and rights afforded by our Constitution; and so that no one would not be deprived of basic human rights, protections, or dignity.

We continue to strive to make sure that all those legally within the boundaries of the United States of America would flourish, live freely, and not be violated.

We are the same country. We have the same fundamental values. We have the same rights if not more protections ever before afforded in our Country's history. The US Constitution has not regressed.

The problem is not with the laws themselves, but the violations of those laws.

If a person wishes to commit a crime, or an injustice upon another, they will have little regard for the laws. Their actions will be driven by impulse, provocation, threat, emotional instability, fear, criminal intent, or other motive.

When it comes to victim injustice, or brutality, they are not being mindful of the laws in that instance.

Human behavior must change.

Human and procedural modifications can be further explored as they relate to public trust, and law enforcement activities.

More emphasis should be placed on education, training & retraining, accountability, monitoring, supervision, detention and law enforcement surveillance, disciplinary actions, and more legal remedies for victims.

There is much work to be done to improve relationships, and increase public trust within our law enforcement communities. But I am hopeful

that we can and will overcome this difficult and turbulent time if we approach and deal with it constructively.

I extend my deepest gratitude to Eyitayo Ogunyemi, Human Rights Attorney in Lagos Nigeria for his valued contributions to this article. We hope you will stay with us for **Part II** of our discussion.

Excerpts from Part II

"I have even had course to share comparative experiences with colleagues in other countries which clearly revealed that the mistrust that the public has against police institution is universal even though it is on different levels... I humbly encourage you to re-share this post with the hope that it will go a long way in sensitising the public on simple ways to hold the police institution to account and also create the much sort after change that we desire." – Eyitayo Ogunyemi

Eyitayo Ogunyemi is an Associate at Falana & Falana's Chambers in Lagos Nigeria. He is the President of Paralegal Academy which teaches elementary principles of law to the public.

Eyitayo Ogunyemi is the Initiator of **"The People's Parliament"** in Nigeria.

Legal Advocate, Eyitayo Ogunyemi is dedicated to raising awareness and educating the great people of Nigeria regarding their human and civil rights, and providing legal advocacy within.

Eyitayo Ogunyemi arms himself with the message that one person *can* and *will* make a difference in progressing, evolving, and improving human rights in Nigeria.