

The Law Office of David S. Albrecht

Your Rights if Questioned, Stopped or Arrested by the Police

What are my rights...

If the police approach me and ask me questions?

Suppose you are outside your home or in a public place when the police arrive and begin to ask questions. Law enforcement officers have a duty to protect the community they serve, its citizens and their property. The law gives police certain powers to help them perform that duty.

They have the power to approach persons and ask them questions. Simply because you are approached and questioned by the police don't mean you are suspected of having committed a crime. All citizens are encouraged to cooperate with the police to see that those who break the law are brought to justice, and the police rely on law-abiding citizens to do so. But you are not required to incriminate yourself. **YOU MAY REFUSE TO ANSWER ANY QUESTION IF THE ANSWER WOULD TEND TO INCRIMINATE YOU.**

If the police "stop" me and ask me questions?

Suppose you are walking down a street when a police officer confronts you and announces: "Stop. I need to ask you some questions." A person is "stopped" when an officer uses enough force, or a show of authority, to make a reasonable person feel he or she is not free to leave. In this example, the officer called out for you to stop, and may have used his or her authority to make you do so. If the officer pulled out a weapon or used a threatening tone of voice, it would be even clearer that a stop has taken place. Because the officer is interfering with your liberty to move about, he or she should first have a reasonable suspicion that you have been involved in a crime. This suspicion would need to be supported later (if the matter should wind up in a court) by the officer's reference to specific facts prompting such a suspicion.

The police do not have to tell you that you are a suspect or that they intend to arrest you, but if they use force or a show of authority to keep you from leaving, it is likely they consider you a suspect. They may consider you a suspect even if you were the person who called the police. If they read or tell you your Miranda rights, they suspect you have committed a crime.

Just as when an officer merely approaches and questions you, you have the right, if you are stopped, to refuse to answer any questions if the answer would tend to incriminate you. Also, if you are only being stopped, you can refuse to allow an officer to search your person.

Further, anything you say can be used as evidence against you. Sometimes people think that what they are saying won't incriminate them, when in fact, what they say provides a link in a chain of information that could incriminate them.

Even if you believe the officer has no grounds to stop and question you, do not argue with or resist the police. Arguing or resisting the police will not help you; it may increase your chances that the police will arrest you and bring criminal charges against you. It probably also will give them grounds to bring even more criminal charges against you, and it may make it harder for you to get out of jail on bail if you are charged. Once officers no longer

have grounds to detain you, they should tell you that you are free to go before asking if they can search you or your car.

What if I am arrested?

An arrest is different from a stop. A stop involves brief questioning in the place where you were detained. If the officer wishes to hold you for a longer period of time, or decides to take you elsewhere, such as to the police station, he or she is no longer just stopping you, but is arresting you. Because an arrest deprives you of your freedom of movement for an even longer period of time than a stop, the law limits the instances when arrests can be made.

When can I be arrested?

1. You may be arrested by a police officer who personally saw you violate any state statute, city ordinance or federal law. The law may be a serious crime (a felony) or a lesser offense (a misdemeanor). The important thing is that the officer sees the violation.

If the charge is a minor misdemeanor in which only a fine is the possible penalty (not time in jail), the officer may not arrest you and take you into custody unless you fail to give your name, refuse to sign the citation, or have previously failed to appear in court or pay a fine on a similar offense.

2. You may be arrested for a felony; even if the police officer did not personally see you commit the felony, so long as the officer had probable cause to believe you committed the crime. Later, the court system (not the police) will determine if the officer's belief was reasonable and if you are guilty or innocent.

3. You may be arrested when there is a warrant for your arrest, whether or not you are aware of the warrant. The police cannot cancel an existing warrant. They must serve it and arrest the person named on the warrant.

An arrest warrant is a legal document, issued by a judge or a clerk of the courts, directing the police or the sheriff to arrest you and take you into custody. This document does not have to be on any particular form. The arresting officer is not required to have the warrant in hand at the time you are arrested. The officer must show the warrant to you within a reasonable time after you are arrested and give you a copy. If the officer fails to do so, tell your attorney later.

Even if you believe the officer has no grounds to arrest you, do not argue with or resist the police. You have no right to argue about why you are being arrested or about your guilt or innocence at the time of the arrest. Arguing or resisting the police will not help you. It will mean the police can bring additional criminal charges against you, and it may make it harder for you to get out of jail on bail if you are charged.

- Again, do not argue with the police.
- Never resist your arrest. Do not run away.
- Never resist the arrest of another person.

What are my rights if I am arrested?

1. If an officer wants to ask you questions other than your name and address, he or she must advise you that you have a right not to answer the questions.

2. You have the right to be told why you are being arrested and the nature of the charges against you (the crime for which you are being arrested). If you are arrested on a warrant, you have the right to see the warrant within a reasonable time after your arrest, to read it and make certain your name appears on it, and to see the charge against you.

3. You have the right to be told your constitutional rights (commonly called Miranda rights) before you are questioned—not before you are arrested.

These constitutional Miranda rights are:

- The right to remain silent and not answer any questions at all.
- The right to know that if you waive (give up) your right to remain silent and do answer questions, the police can use your answers against you in a court to get you convicted.
- Even if you begin to answer questions, you have the right to stop answering questions at any time and to speak with an attorney.
- You have the right to speak privately with an attorney before you answer any questions or sign anything.
- If you cannot afford an attorney and if the crime for which you have been arrested has jail time as a possible penalty, you have a right to have an attorney appointed for you to represent you at no cost to you before being questioned, and to have that attorney present with you during any questioning to which you may later agree to submit.

Remember, you cannot be penalized for refusing to answer an officer's questions. If you try to cooperate by answering questions while you are being held in police custody, you may create difficulties for your lawyer in defending you later on. **ALWAYS ASK TO SPEAK TO A LAWYER.**

4. You also have the following rights:

- The right to contact, by telephone or otherwise, a responsible person, to tell him or her you have been arrested and what the charges are. You are not limited to one telephone call if more calls are needed to contact someone.
- The right to refuse any physical or chemical test (such as a polygraph "lie detector," breathalyzer, intoxilizer, field sobriety tests or physical performance tests such as walking a straight line or making other movements, the look-at-the-pen test, or mental ability tests like reciting the alphabet or doing math), until you can talk to your lawyer.
- The right to have your attorney present at any line-up or other identification procedure in which you are viewed by possible eyewitnesses to a crime.
- The right to reasonable bail or bond to secure your release from jail unless you are charged with a capital crime. Usually a judge sets the bail or conditions of your release. If you are charged with a misdemeanor, and if no judge is available, the police may, at police headquarters, accept bail in accordance with rules established by the judge.
- The right to be brought before a court as soon as is reasonably practicable after your arrest, so that you can request a preliminary hearing to test the basis of your arrest and/or trial to determine your guilt or innocence.

If I am arrested, what will the police do?

If you are arrested, the police will search you for weapons, handcuff you, transport you to jail, and photograph and fingerprint you for identification.

If you are not under arrest or if police do not have a search warrant (a court order allowing them to search), the police may ask you to allow them to search your car, your home and/or your other possessions. **YOU CAN REFUSE TO CONSENT TO THESE SEARCHES.**

You have a right to be free from unreasonable searches and seizures; most of the searches for which an officer might ask your consent would require the officer to first obtain a warrant from a judge, unless you consent and give up this right.

Only a judge can decide whether the search is proper before that search is conducted. There is no penalty for exercising your right to have the judge decide whether to allow the search. Your refusal to consent to a search cannot be used against you.

If you are uncertain about how to respond to any request made by an officer, assert your right to counsel and discuss it with your attorney first before taking further action on the officer's request.

Do's and don'ts during arrests and custody

Do not argue with the police. You cannot talk your way out of being investigated, arrested or prosecuted. Do not try. Any explanation you give the police may give them more information than they already have, so it's often wise to save your explanation and defenses for court.

If you have been arrested, the police believe you committed a crime. Their job is to investigate and gather evidence. Telling the police your side without a lawyer present is usually a bad idea, even if you believe you have done nothing wrong. Only your attorney and the judge have the power legally to make things easier/better for you.

Always pay very close attention to what happens when you first encounter the police and afterwards. Try to memorize who was there to see and hear what happened. Sometimes the court needs to look into what happened to you while you were in custody. It will help you if you can later fully inform your counsel about these events, so be observant.

Do not tell your family and friends all about it or ask non-lawyers for legal advice. It is possible, if not probable, that they may be ordered to appear at trial to repeat what you said.

Rely on your lawyer to advise and defend you no matter what you did or did not do. Legal ethics rules prohibit your attorney from disclosing without your permission any information you give him or her during the attorney-client relationship. However, your attorney may disclose your intention to commit a crime and the information necessary to prevent the crime. Also, your attorney has an ethical duty to keep you from offering testimony that he or she knows is not true.

What are my rights in court?

Within 72 hours after your arrest, the judge must:

1. Tell you the crime of which you are accused and explain it to you if you do not understand it.
2. Give you a copy of the written complaint against you if you do not have one already.

3. Give you a continuance (more time) to get an attorney, or appoint one for you if there is a possibility you could go to jail if convicted and you can't afford to pay an attorney to help you.

4. Tell you the nature and effect of the pleas you may enter and what will happen if you enter them. You may enter a plea of not guilty, no contest or guilty.

- Not guilty means you do not give up any of your rights, including the right to a trial. If you are in doubt, plead not guilty.
- No contest means you admit the facts in the complaint are true, but you deny guilt. The judge may find you guilty or not guilty. (A no contest plea cannot later be used against you in a civil lawsuit for money damages. If someone sues you over the incident, he or she will have to prove you were at fault and violated the law.)

Most no contest pleas result in a guilty finding unless the arresting officer has cited you under the wrong statute or ordinance, or if the arresting officer's written statement of facts fails to sufficiently support the charge.

- Guilty means you admit the crime(s) of which you are accused and waive (give up) your right to a trial at which the prosecution would have to prove you guilty beyond a reasonable doubt. You also give up your right to remain silent. The judge may sentence you immediately or at a later hearing. A guilty plea can later be used to prove you were at fault in a civil lawsuit. A guilty plea to a charge can also lay the basis for a harsher punishment if you are later convicted of another offense.

You are entitled to have a record made by a court reporter or tape recorder of what has happened in the courtroom. Then, if a question later arises, you have evidence of what happened when you were in court.

The information contained in this website is general and should not be applied to specific legal problems without first consulting an attorney.