Your Rights and the Police

Frequently Asked Questions About What to Do If You Are: Stopped, Arrested, Brought Before a Judge

IF YOU ARE STOPPED BY THE POLICE

Q: What should I do if a police officer stops me while I’m walking or driving?

A: First, keep your cool—don’t flee and don’t insult the officer. If you ignore the officer’s request to stop or if you become combative, you can be arrested. If you are stopped while on foot, you should give your name and address if asked. You are not required to answer any other questions, and you may want to consult a lawyer before doing so.

If you are stopped while driving your car, you are required to show the police your license, vehicle registration and insurance, and, if requested to do so, to get out of your car. You are not required to answer any other questions. In addition, as a passenger in a vehicle, you are not required to carry identification, but you might be asked to present it to the officer or to provide your name and address.

Q: Do I have to go with the police if they stop me to take me to the station for questioning?

A: The key question to ask is whether you are under arrest. If you aren’t, you don’t have to go to the station simply because the police would like to talk with you. If police ask you to go voluntarily, you should generally not do so without first talking with a lawyer. If you decide to go there voluntarily, you are free to leave any time you want unless the police indicate that you are really under arrest.

Q: Can a police officer search me or my car if I’m not under arrest?

A: Police officers are not allowed to search you if you are free to leave at any time. If you are under arrest, the police are limited to frisking the outside of your clothing if they have a reasonable suspicion to believe you may be carrying a weapon. They may search your car only if they have grounds to believe it contains a weapon or evidence of a crime. They are also allowed to seize anything in plain view, but only if they believe that it is, or contains, a weapon or evidence of a crime. Beyond that, police generally need a search warrant.

Q: When can the police search my home?

A: As a general rule, the police can search only if they have your consent or a warrant issued by a judge for the search of your home. If the police claim to have a search warrant, ask to see it and check that it is valid; to be valid, it must specify the date and location of the search. The police may only search for any articles listed in the warrant, but they can seize any other item if it is in plain view and if they have probable cause to believe that it is, or contains, a weapon or evidence of a crime.

If an officer tries to search any further, or forces him/herself into your home without a warrant, make it clear that you do not agree to the search, but don’t physically resist. You should tell your lawyer immediately about it, because evidence obtained by an illegal search sometimes can’t be used against you in court.

Q: What should I do if the police harass me?

A: Police harassment is wrong, and you should consider reporting it or any form of police misconduct in writing to the Internal Affairs division of the police department and to the ACLU. Most police departments are required to provide on their website information on how to file a complaint about officer misconduct. If you aren’t sure how to file a complaint, you can contact the police department or use the complaint form available on the ACLU’s website, www.riaclu.org. Before doing so, however, you should consult your lawyer if there are criminal charges pending against you.
If there are witnesses to the misconduct, try to get their names and addresses. If you are injured, you should see a doctor as soon as possible for aid and to preserve medical evidence. If there are visible injuries or other damage, take color photographs right away. However, you should beware of fighting back. It is a crime to resist an arrest, even if that arrest is unlawful, and if you hit a police officer, you are likely to be charged with assault.

You can record the actions of police officers while they are on duty as long as you do not interfere with their work. If an officer forces you to stop recording, confiscates your recording device, or destroys the recording, contact the ACLU.

IF YOU ARE ARRESTED

Q: What should I do if I am arrested?
A: Keep your cool—don’t run away or resist arrest. Whether you are guilty or innocent, it is a crime to resist arrest. If you do try to resist arrest, the police officer has the right to use reasonable force. If the police do anything improper, try to remember the officer’s name and badge number. If you cannot remember this information, you can still file a report of misconduct. Document what you can remember, and report it to your lawyer or the ACLU.

Q: What kinds of searches can the police do after an arrest?
A: After a lawful arrest, you can be subjected to a thorough search; the police may ask that you empty your pockets or they may check your pockets themselves. They may confiscate your cellphone, but they generally cannot look at its contents without a warrant. If you are arrested in your car, the police may search the inside of your car. If the police come to your home to arrest you, you don’t have to let them in unless they have a warrant for your arrest; they may then search your immediate surroundings and seize anything in plain view if they have probable cause to believe that it is, or contains, a weapon or evidence of a crime.

Q: What happens after I am arrested?
A: The police will most likely bring you to the station, book you (which requires filling out informational forms), fingerprint and sometimes photograph you. They can require you to participate in a “line-up,” in which you are placed among a group of persons for possible identification.

If you have been arrested for certain “crimes of violence,” the police will perform a cheek swab to collect a DNA sample. They do not need your consent or a warrant to do this, and resisting them can result in additional charges against you. You must be informed at that time of your right to have the DNA information expunged or destroyed at a later date under certain circumstances.

Q: What rights do I have after an arrest?
A: You have a right to remain silent except for providing your name and address. You don’t have to answer any questions or sign any statements. If the police try to question you, you must be advised of your so-called Miranda rights, which are:

* You have the right to remain silent;
* Anything you can be used as evidence against you;
* You have a right to a lawyer;
* If you want a lawyer but can’t afford one, a lawyer will be appointed to you at no cost.

If you ask for a lawyer, the police can’t question you until your lawyer arrives. If no one asks you questions, no lawyer has to be appointed until you are brought to court. If you are under 18, you have the right to have your parent/guardian and your lawyer present when questioned.

You have the right to a telephone call within one hour of your detention. Ask the police for assistance if needed, and call your lawyer or someone else who will call a lawyer for you. If you are sick or hurt, ask to be taken to the hospital.

You must be brought before a judge within 24 hours (48 hours on weekends and in special cases).

Q: What if the police try to make me answer questions or sign a statement before I have spoken with a lawyer?
A: The best rule to follow is not to sign or say anything without the advice of your lawyer. Especially don’t sign something you haven’t completely read or don’t fully understand. Any statement you sign—and anything you say, even if you don’t sign a statement—can and will be used against you. Keep in mind that talking can have the same consequences as signing a statement. The promise of an officer to help you or to make a deal with the court in exchange for a confession is not legally binding. If you are put in a cell, don’t talk to friends or strangers about your arrest or alleged crime, as the police may be listening.

Q: Should I sign anything at the station?
A: Yes. You should sign an inventory of items taken from your possession when you were arrested; if you fail to sign this report it is possible that you may not get all your belongings returned to you.

IF YOU ARE BROUGHT BEFORE A JUDGE

Q: What happens when I appear before the judge?
A: At the hearing before the judge, called the arraignment, the judge will tell you what you are charged with, ask questions related to bail, and then hold you, set bail or your promise to return to court. Your lawyer can explain bail and try to help you get it.

Q: What if the police try to make me answer questions or sign a statement without taking a lawyer present when questioned?
A: You have a right to a lawyer; anything you say can be used against you.

Q: Should I sign anything at the arraignment?
A: Except for certain serious crimes such as capital offenses, weapons charges and certain drug crimes, the judge is likely to release you on bail or your promise to return to court. Your lawyer can explain bail and try to help you get it.

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IF YOU ARE STOPPED OR ARRESTED

- Don’t run away and don’t resist arrest. It’s a crime to resist arrest even if you’re innocent.
- Show the police your license, registration and insurance if you are stopped on the road.
- It is generally best to remain silent except to give your name and address.
- If you, your car or your home is searched against your will, make it clear you don’t agree to the search, but do not physically resist.
- Ask if you are under arrest or if you are free to go. You aren’t free to go if you are under arrest.
- You have the right to telephone a lawyer (you can even ask the police to help you do this), or to have one else who will call a lawyer for you.
- If you are brought before a judge and you don’t have a lawyer yet, ask, for one to soon see you the judge. A lawyer generally must be provided for you if you can’t afford one. You should not plead guilty or “nolo contendere” (no contest) without first talking to a lawyer. Such a plea may result in a criminal record, which can follow you for the rest of your life. You can always enter a “not guilty” plea and then change it to “guilty” or “nolo,” but it is very difficult to change a plea to “not guilty” after you have already pleaded guilty or nolo.

Q: Will I be released after the arraignment?
A: Except for certain serious crimes such as capital offenses, weapons charges and certain drug crimes, the judge is likely to release you on bail or your promise to return to court. Your lawyer can explain bail and try to help you get it.