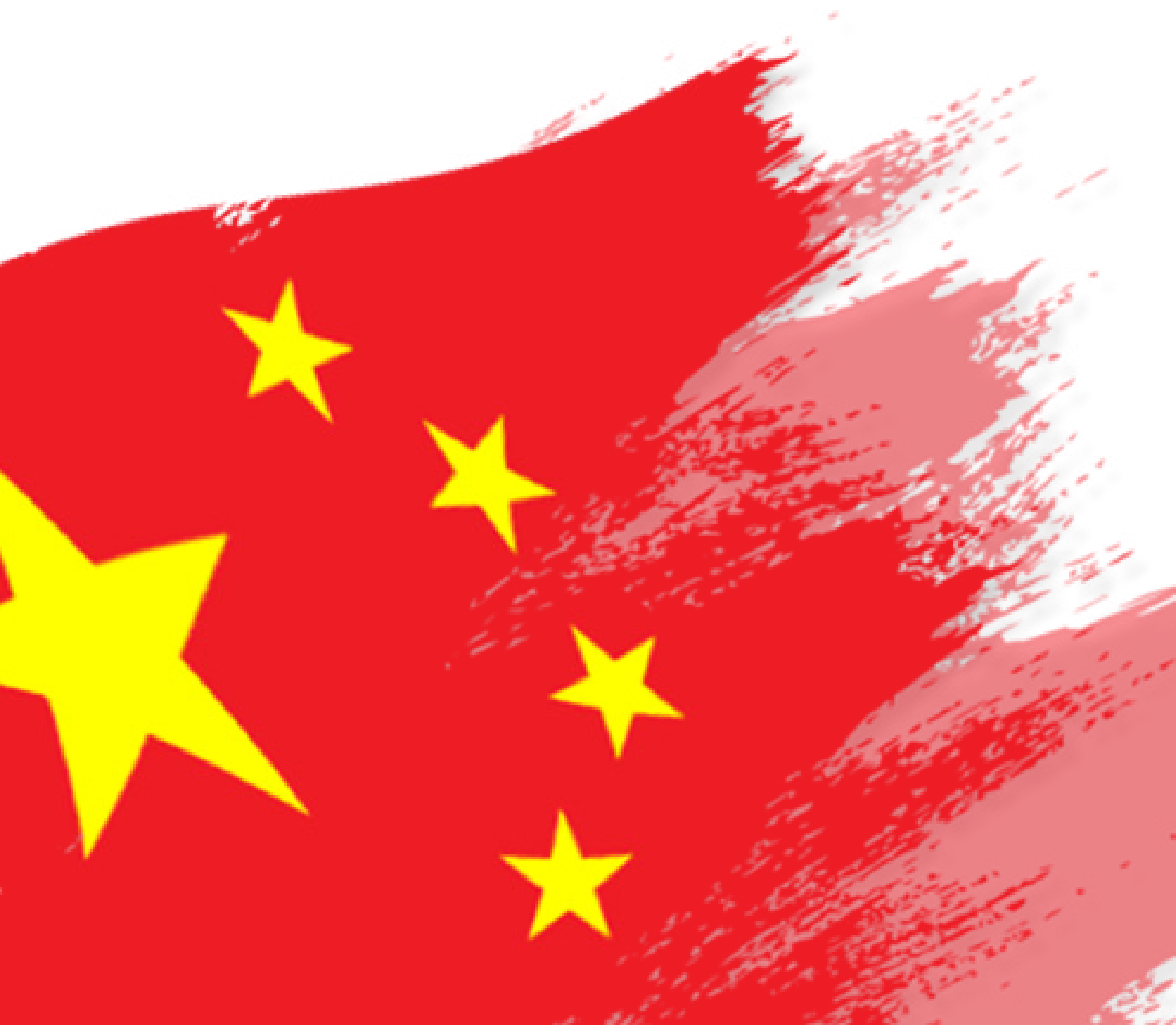


Real Rights: young people engaging with law enforcement



Beijing, China



The Real Rights project has been developed by Baker McKenzie and the Global Initiative on Justice with Children to provide young people – especially young people of colour, minority and vulnerable populations – with specific guidance for interactions with law enforcement. Thanks to the Real Rights project and the pro bono work of over 1,500 volunteer professionals, we have created a clear and accessible data base of answers to child questions when they are in contact with the police – from initial contact, questioning, to stop and report.

If you are interested to support us in this project, click on the "Feedback" button provided in each city page or email realrights@bakermckenzie.com.

Rights:

What rights do I have when I encounter law enforcement?

Question Asked

- Stopped By The Police On The Street, Now What?
- When Can Police Search You and Your Surroundings?
- Reasons Police May Detain or Arrest You
- The Difference Between Police TELLING Me What To Do And Asking Me To Do Something
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- How do I make a complaint if I have questions or feel my rights have been violated?
- What if I feel I was a victim of discrimination or racism?
- How can I respond to circumstances involving discrimination?
- What can you do if the police perform an improper search? Or I was improperly detained?

Stopped By The Police On The Street, Now What?

Proposed Information

It is important to follow this advice:

- Stay calm. It is not a good idea to run. Speak carefully and clearly. Anything you say can be used against you in a court of law.
- It is not a good idea to touch the officers. Keep your hands where the police can see them.
- It is not a good idea to resist, even if you're innocent or if you think the police are acting unfairly or unlawfully.

Can the police arrest you for refusing to answer questions?

The police may arrest you if you refuse to answer their questions, or the police determine that your refusal to answer their question prevents the police from performing their duties. Article 34 and Article 35, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#)

If you are under 16 years old, the police cannot interrogate you for public security administration violations without your parents or guardians being present. Article 84, [Public Security Administration Punishments Law of the People's Republic of China \(2012 Amendment\)](#)

If you are under 18 years old, the police cannot interrogate you for criminal investigations without your parents or guardians being present. Article 281, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#)

What if the officers do not identify themselves?

If police officers do not identify themselves, you can ask them to identify themselves by showing their badge/certificate of the people's police.

Articles 9 and 23, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#)

Article 9: People's policemen must produce appropriate certificate before interrogation.

Article 23: People's policemen must be dressed according to relevant regulations, must wear the insignia of the people's police, or hold the certificate of the people's police, maintain serious and neat appearance while bearing and carrying themselves with dignity.

What if an officer just begins speaking to me but does not order me to do anything?

You likely do not need to respond and should just listen to the officer. If the officer later asks questions relating to the investigation of a case or obtaining of evidence, you should answer truthfully to the extent of your knowledge.

If an officer is performing his/her duties according to law, citizens and organizations shall give them support and assistance. If you refuse or obstruct an officer from the performance of his/her duties according to law, by, for example, refusing to answer their questions relating to the investigation of a case or the obtaining of evidence, then you may be punished for violating the administration of public security. Possible punishments include warning, fines, administrative detention, or ordering foreigners to exit China within a relevant time limit for serious cases.

Article 34 and Article 35, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#); Article 10, [Public Security Administration Punishments Law of the People's Republic of China \(2012 Amendment\)](#).

What if the officer is not in uniform or identified as an officer but I think it is one?

If they do not identify themselves and they are giving you specific orders, you may ask them if they are policemen and they are required to identify themselves as such.

Articles 9 and 23, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#)

Article 9: People's policemen must produce appropriate certificate before interrogation.

Article 23: People's policemen must be dressed according to relevant regulations, must wear the insignia of the people's police, or hold the certificate of the people's police, maintain serious and neat appearance and bearing, and carry themselves with dignity.

Can I tell police I do not want to speak without a lawyer?

You may tell the police that you would like to appoint a lawyer; however, it would be better to not remain silent or refuse to answer questions, because the police may deem your silence or refusal to answer their question as prevention of the police from performing their legal duties.

It should be noted that there is no "right to remain silent" under Chinese law. On the contrary, if an officer is performing his/her duties according to law, citizens and organizations shall give them support and assistance. If you refuse or obstruct an officer from performance of his/her duties according to law, by, for example, refusing to answer their questions relating to the investigation of a case or obtaining of evidence, then you may be punished for the violating the administration of public security. Possible punishments include warning, fines, administrative detention, or ordering foreigners to exit China within a relevant time limit for serious cases.

Articles 34 and 35, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#): a criminal suspect shall have the right to retain a defender from the day when the suspect is interrogated by a criminal investigation authority for the first time or from the day when a compulsory measure is taken against the suspect. If the suspect is unable to do so because of financial difficulties or any other reasons, the suspect or his/her close relative may apply for legal aid.

Article 34 and Article 35, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#): If an officer is performing his/her duties according to law, citizens and organizations shall give them support and assistance. If you refuse or obstruct an officer from performance of his/her duties according to law, by for example refusing to answer their questions relating to the investigation of a case or obtaining of evidence, then you may be punished for violation of administration of public security.

If I sit down, am I resisting?

If you are sitting down while the police

- are attempting to arrest you; or
- search you; or
- are giving you an order to move

you might be resisting arrest or obstructing the police officer's duty.

Article 35, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#): Obstruction of police's duty is defined as follows:

Whoever refuses or obstructs the people's policemen's performance of duties according to law, by committing any of the following acts, shall be punished for violation of administration of public security:... (2) to obstruct the people's policemen from investigating a case and obtaining evidence;...or (5) to commit other acts to refuse or obstruct the people's policemen's performance of duties.

If I am stopped in a group, and some kids run, can I run?

It would be better not to run, since running from the police could be considered obstruction of justice, and obstructers can be investigated for criminal liability.

Article 35, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#): Whoever refuses or obstructs the people's policemen's performance of duties according to law, by committing any of the following acts, shall be punished for violating the administration of public security:

- (1) to openly insult the people's policemen who are performing duties;

- (2) to obstruct the people's policemen from investigating a case and obtaining evidence;
- (3) to refuse the people's policemen who are carrying out pursuit and capture, search, rescue, or other tasks to enter the relevant residences or places or obstruct them from doing so;
- (4) to put up obstacles deliberately for the police cars that are carrying out urgent tasks such as providing rescue to people, dealing with emergencies, pursuit and capture, or guard duty; or
- (5) to commit other acts to refuse or obstruct the people's policemen's performance of duties.

Whoever commits any of the above-mentioned acts, by resorting to violence or intimidation, if such act constitutes a crime, shall be investigated for criminal responsibility in accordance with the law.

Can I tell others (siblings, for example) to run?

It would be better not to run or tell others to run, since running from the police (or telling others to run from the police) could be considered obstruction of justice, and obstructers can be investigated for criminal liability.

Article 35, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#):

Whoever refuses or obstructs the people's policemen's performance of duties according to law, by committing any of the following acts, shall be punished for violation of administration of public security:

- (1) to openly insult the people's policemen who are performing duties;
- (2) to obstruct the people's policemen from investigating a case and obtaining evidence;
- (3) to refuse the people's policemen who are carrying out pursuit and capture, search, rescue or other tasks to enter the relevant residences or places or obstruct them from doing so;
- (4) to put up obstacles deliberately for the police cars that are carrying out urgent tasks such as providing rescue to people, dealing with emergencies, pursuit and capture or guard duty; or
- (5) to commit other acts to refuse or obstruct the people's policemen's performance of duties.

Whoever commits any of the above-mentioned acts by resorting to violence or intimidation, if such act constitutes a crime, shall be investigated for criminal responsibility in accordance with law.

If the officer's language is not my first language, can I tell them without waiving my rights?

Yes. A suspect, victim or witness who does not understand the local language shall be provided with an interpreter. Further, citizens of all nationalities shall have the right to use their native spoken and written languages in court proceedings.

Article 86, [Public Security Administration Punishments Law of the People's Republic of China \(2012 Amendment\)](#).

Article 9, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#).

If I did not do anything, can they stop me?

Yes. The police may stop you and ask questions relating to the investigation of or obtaining of evidence for a case, although you are not involved in the case. It would be better to cooperate with the police and answer their questions truthfully to the extent within your

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knowledge, because you are required to provide support and assistance to the police for their performance of legal duties.

Article 34 and Article 35, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#).

When Can Police Search Your and Your Surroundings?

Proposed Information

It is important to follow this advice:

- You have the right to say no to searches of your person without a warrant.
- You have the right to say no to searches of your car, house or other surroundings without a warrant.
- You cannot be arrested for refusing to consent to a search without a warrant, except in emergency cases.
- A warrant is issued by the people's procuratorates, the people's courts, or the public security organs, so you have no choice but to consent.

What if a police officer wants to search my phone?

The police likely cannot search your phone except for the needs of national security or for a criminal investigation. The right to privacy is protected by the Constitution of the People's Republic of China.

Article 40 of the [Constitution of the People's Republic of China](#).

What if a police officer asks me for my password to my phone?

The police may ask you for the password to your phone if: (1) there are reasons to suspect that you have violated the law, (2) there are no less than two police officers conducting the search, and (3) they have presented a search warrant to you, unless in emergency cases where they reasonably believe the relevant evidence stored in your phone may be concealed, destroyed or transferred. If the above circumstances have been satisfied, you have to provide the password to your phone to the police; or otherwise the police may deem your refusal as prevention of them from performing their legal duties.

Articles 222 to 224, [Rules on Procedures for Handling Criminal Cases by Public Security Organs \(2020 Amendment\)](#):

Article 222: In order to collect criminal evidence and identify the criminals, with the approval of the head of the public security organs at or above the county level, police officers may search the bodies, articles, and residences of the criminal suspects, and other relevant places that may conceal criminals or criminal evidence.

Article 223: When conducting a search, a search warrant must be presented to the searched person, and there must be no less than two police officers to carry out the search.

Article 224: During the execution of detention or arrest, in case of any of the following emergencies, a search may be conducted without a search warrant:

- (1) where the suspects may carry a weapon;
- (2) where the suspects may carry explosives, toxic and other dangerous goods;
- (3) where the evidence may be concealed, destroyed or transferred;
- (4) where other criminal suspects may be hidden; and

(5) other emergencies.

What if they tell me to give them my password or other access to my phone?

The police may ask you for the password or other access to your phone if: (1) there are reasons to suspect that you have violated the law, (2) there are no less than two police officers conducting the search, and (3) they have presented a search warrant to you, unless in emergency cases where they believe the evidence stored in your phone may be concealed, destroyed or transferred. If the above circumstances have been satisfied, you have to provide the password to your phone to the police, or otherwise the police may deem your refusal as prevention of them from performing their legal duties.

Articles 222 to 224, [Rules on Procedures for Handling Criminal Cases by Public Security Organs \(2020 Amendment\)](#).

Do I have to give them my device password if they demand it from me if I am not under arrest? What if they just ask for it?

If you are not under arrest, the police may demand the password if: (1) there are reasons to suspect that you have violated the law, (2) there are no less than two police officers conducting the search, and (3) they have presented a search warrant to you, unless in emergency cases where they believe the evidence stored in your phone may be concealed, destroyed or transferred. If the above circumstances have been satisfied, you have to provide the password to your phone to the police, or otherwise the police may deem your refusal as prevention of them from performing their legal duties.

Articles 222 to 224, [Rules on Procedures for Handling Criminal Cases by Public Security Organs \(2020 Amendment\)](#).

If you are under arrest, it is more likely that you will have to give your password to the police than if they just ask for it. This is because the police have the authority to collect or obtain evidence from the individuals concerned, and the individuals concerned shall provide truthful evidence.

Article 54, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#):

The People's Courts, the People's Procuratorates and the public security organs shall have the authority to collect or obtain evidence from the units and individuals concerned. The units and individuals concerned shall provide truthful evidence.

Evidence involving State secrets shall be kept confidential. Anyone that falsifies, conceals or destroys evidence, regardless of which side of a case he belongs to, must be investigated under law.

What tools can police use to search me? What technology? (Facial recognition, hidden cameras, finger print searches, etc.)

If the technology is legal and lawfully used, the police are allowed to utilize it to conduct a search. However, if it is considered unlawful then it may not be used as search technology, and anything gathered through it cannot constitute as proof.

Tools or technology used for the purposes of monitoring one's whereabouts or tracks, communications, residence, offices, or other places are prohibited if without sufficient approval. In other words, tools or technology (such as hidden cameras) are not allowed if they are used to monitor individual's whereabouts, communications, or its residence, offices, or other relevant places, unless with sufficient approval.

Article 79, [Public Security Administration Punishments Law of the People's Republic of China \(2012 Amendment\)](#): The public security organs and the people's policemen shall investigate into public security cases in compliance with the law. It is strictly prohibited for anyone to collect evidence by illegal methods, such as making an interrogation by torture or

extorting a confession from the interrogated, or threatening, enticing or cheating the interrogated. Any proof gathered by illegal means shall not be the basis for punishment.

Articles 263, 264, 265, and 270 of the [Rules on Procedures for Handling Criminal Cases by Public Security Organs \(2020 Amendment\)](#):

Article 264: Technology investigation measures refer to measures to monitor records, whereabouts or tracks, communications, or residence, offices or other relevant places of suspects, defendants, or other personnel directly related to crimes.

Article 263: Technology investigation measures can only be adopted against types of crimes that significantly endanger society and are expressly listed as follows:

- (1) crimes endangering national security, terrorist activities, organized crimes of underworld nature, and major drug crimes;
- (2) intentional homicide, intentional injury causing serious injury or death, rape, robbery, kidnapping, arson, explosion, releasing dangerous substances, and other serious violent criminal cases;
- (3) group, serial and trans-regional major criminal cases;
- (4) major criminal cases committed by telecommunications, computer networks, delivery channels, etc., and major criminal cases committed against computer networks; and
- (5) other criminal cases that seriously endanger society that may be sentenced to fixed-term imprisonment of no less than seven years according to law.

Article 265: Technology investigation measures must be approved in advance in writing by the heads of the public security organs at or above the level of city with several districts.

Article 270: The investigators shall keep confidential the state secrets, commercial secrets, and personal privacy they have access to in the process of taking technology investigation measures.

Can they search my backpack or other item I am carrying?

Yes, the police may search your backpack or other items when they suspect illegal activities.

Article 9, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#): In order to maintain public order, the people's policemen of public security organs may, upon producing an appropriate certificate, interrogate and inspect the person suspected of having violated law or committed a crime.

Articles 222 to 224, [Rules on Procedures for Handling Criminal Cases by Public Security Organs \(2020 Amendment\)](#): In order to collect criminal evidence and identify criminals, police officers may search the bodies, articles, and residences of the criminal suspects. A search warrant must be presented to the searched person unless the police may reasonably believe relevant evidence may be concealed, destroyed or transferred. There must be no less than two police officers to carry out the search.

Can they take my picture or record me?

The police can take pictures and recordings of people they suspect to be involved in illegal activities for visual identification.

Article 217, [Rules on Procedures for Handling Criminal Cases by Public Security Organs \(2020 Amendment\)](#): In order to determine some characteristics of criminal suspects, the people's police may inspect the bodies of criminal suspects and collect biometric information such as portraits and fingerprints and biological samples such as blood and urine in accordance with law. Where the suspects refuses to such inspection, the people's police

may, if necessary and with the approval of the person in-charge-of the case-handling organ, force or compel the inspection.

Can they ask me where I am going and why?

If the police suspect you of illegal activity, they have the power to ask you questions including where you are going and why.

Article 9, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#): In order to maintain public order, the people's policemen of public security organs may, upon producing an appropriate certificate, interrogate and inspect the person suspected of having violated law or committed a crime.

Reasons Police May Detain or Arrest You

Proposed Information

It is important to follow this advice:

- The police may arrest you because they suspect you of committing (or having committed) a violation of the law, or if they suspect that you currently have evidence of a crime.
- Sometimes police have a warrant for an arrest. You should be clear on what kind of warrant is being presented to you if that is the case.
- It is a good idea to review any paper from police/warrant carefully, to ensure you understand what exactly is covered.
- If the police arrest you, they also have the right to search you. Anything found during this search may be used as evidence against you.

What if I did not do anything illegal, must I speak with the police and answer questions?

Yes, as a citizen you should cooperate with the police when they conduct their investigation. Article 34, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#).

However, if they have informed you that they are investigating you as a criminal suspect, you have the right to retain a lawyer, and if you are under age 18, you have the right to ask that your parent or guardian(s) accompany you when you speak with the police or answer their questions. Articles 34 and 281, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#).

What if they tell me something they are investigating that is wrong? Must I correct them?

Yes, you should correct them as you have an obligation to cooperate with the police's investigation, including telling them what you know. Article 34, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#).

What if an officer just begins speaking to me but does not order me to do anything?

You likely do not need to respond and should just listen to the officer. If the officer later asks questions relating to the investigation of a case or obtaining of evidence, you should answer their questions truthfully to the extent of your knowledge.

If an officer is performing his/her duties according to law, citizens and organizations shall give them support and assistance. If you refuse or obstruct an officer from the performance of his/her duties according to law, by, for example, refusing to answer their questions relating to the investigation of a case or obtaining of evidence, then you may be punished for violating the administration of public security.

Article 34 and Article 35, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#).

What is the legal difference between talking to them if they do not tell me I am under arrest, versus after they inform me that I am under arrest?

You will be considered a suspect after they tell you that you are under arrest, therefore, it is advised to be especially careful with what you say after you are placed under arrest and you should seek legal representation. Articles 34 and 66 of the [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#).

Minors (under 18) under arrest enjoy special rights, e.g., detained separately from adult suspects, must be accompanied by a legal custodian when answering inquiries, etc. Chapter 10, Section 1 of the [Rules on Procedures for Handling Criminal Cases by Public Security Organs \(2020 Amendment\)](#).

The Difference Between Police TELLING Me What To Do And Asking Me To Do Something

What is the difference between the police deciding to search me or my belongings (phone, person, backpack) and me agreeing to the search?

There is likely no difference. Unless under an emergency where the police officers reasonably believe that the evidence may be concealed, destroyed or transferred, the police are not allowed to search you without a search warrant. Therefore, even if you agree for them to conduct the search, they are not legally allowed to conduct it without a formal search warrant. Articles 136 to 141, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#); Articles 222 to 224, [Rules on Procedures for Handling Criminal Cases by Public Security Organs \(2020 Amendment\)](#).

What if they tell me to give them information versus them asking and me providing answers voluntarily?

You have an obligation to cooperate when it is related to an investigation or obtaining of evidence, but the word "cooperate" is not defined. You should cooperate with the police when it is related to an investigation or the obtaining of evidence. Article 34, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#).

Do Police Need A Warrant To Arrest You?

Proposed Information

It is important to follow this advice:

- Yes. Police officers must have a warrant, or be otherwise legally approved by the people's procuratorate or the people's court to arrest you.
- However, police officers can legally arrest or detain you without a warrant in several circumstances:
 - When you are preparing to commit a crime, are committing the crime, or are discovered immediately after committing a crime;
 - When a victim or an eyewitness onsite identifies you as the one committing the crime;
 - When criminal evidence is discovered from your body or residence;
 - When the person attempts to commit suicide or escape after committing a crime, or is fugitive;

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- When the person may destroy or forge evidence or make a false confession in collusion;
- When the identity of the person is unknown because the person refuses to disclose his or her true name and residence address; or
- When the person is a strongly suspected of committing crimes from place to place, repeatedly, or in a gang. Articles 80 and 82, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#).

If I did not do anything, can they stop me?

Yes. The police may stop you and ask questions relating to the investigation of or the obtaining of evidence for a case, although you are not involved in the case. It would be better to cooperate with the police and answer their questions truthfully to the extent within your knowledge, because you are required to provide support and assistance to the police for their performance of legal duties. Article 34 and Article 35, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#).

In order to stop and search an individual, a search warrant must be shown to the person to be searched. However, if the arrest or detention is being made in an "emergency" situation, a search may be conducted without a search warrant. Article 138, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#).

Can I ask for the reason they stopped me?

Most likely yes. Subject to a few exceptions, a public security organ must produce a warrant when making an arrest or detention. Further, within 24 hours after a person has been arrested or detained, his family or the unit to which he belongs shall be notified of the reasons for the arrest / detention and the place of custody, unless such notification is impossible or such notification may obstruct criminal investigation in a case involving national security or terrorist activities. Articles 80 and 85, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#).

Can I advocate for another young person stopped by police if we are stopped together?

Probably not. A person whose personal freedom is under restriction (such as under arrest or detention) cannot serve as a defender to advocate for a criminal suspect. Therefore, if you and the young person are stopped by the police for the purposes of arrest or detention, you may not advocate for the young person as you are also under arrest or detention.

Article 33, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#): the following persons may serve as a defender of a criminal suspect:

- (1) the criminal suspect may defend him or herself;
- (2) a licensed lawyer under Chinese law;
- (3) a person recommended by a people's organization or the employer of the criminal suspect; and
- (4) a guardian, relative, or friend of the criminal suspect.

A person who is serving a criminal sentence or whose personal freedom is deprived of or restricted according to law shall not serve as a defender.

If I think the stop is unjustified, what can I do?

You may ask the officer to produce a search warrant or certificate. In order to stop and search an individual, a search warrant must be shown to the person to be searched. However, if the arrest or detention is being made in an "emergency" situation, a search may be conducted without a search warrant.

Article 138, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#); Articles 223 and 224, [Rules on Procedures for Handling Criminal Cases by Public Security Organs \(2020 Amendment\)](#); Article 9, [People's Police Law of the People's Republic of China \(2012 Amendment\)](#).

Can I get the officer's identifying information for a future complaint?

Yes you may. The police officer is required by law to show their identifying information when questioning you, and according to the [Public Security Administration Punishments Law of the People's Republic of China \(2012 Amendment\)](#), if you have any questions or concerns for the law enforcement, you have the right to report to relative agencies such as the Ministry of Justice of the People's Republic of China, Public Safety Agency, and People's Procuratorate.

Article 85: To interrogate the victim or any other witness at any place other than the public security organ, the people's policeman shall show his working certificate.

Article 114: A public security organ and their policemen thereof shall be ready to accept the supervision of the general public and citizens in handling public security cases.

Where, in the process of handling any public security case, a public security organ or any of its people's policemen fails to enforce the law strictly or violates any law or discipline, any entity or individual shall be entitled to expose or charge against them in the public security organ or administrative oversight organ, which shall timely deal with the case according to its functions.

Article 46 of the [People's Police Law of the People's Republic of China \(2012 Amendment\)](#) and Articles 14 and 117 of the [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#) also have similar provisions.

How Do You Know If You Are Under Arrest?

Proposed Information

It is important to follow this advice:

- You are under police custody if you do not feel free to leave an officer's presence, or if a reasonable person in your shoes would not feel free to leave.
- If the following happens, you are likely under arrest under the law:
 - an officer handcuffs you;
 - an officer forcibly holds you down;
 - an officer puts you into the back seat of a police car; or
 - an officer warns you about your rights.
- An officer only has to warn you of your rights before the police question you. This means an officer can arrest you before warning you of your rights.
- An arrest without a rights warnings is still a valid arrest.

What if I do not know if I am under arrest?

You can ask if you are under arrest, as the police must produce an arrest warrant when arresting a person. Further, your family or the unit to which you belong must be notified within 24 hours after you are arrested.

Article 85, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#).

What is the difference between detention and arrest?

If the police suspect that an individual has committed a crime, they will detain them for further questioning. To detain someone, the police must produce a detention warrant. Within 24 hours after a person has been detained, the person's family or unit to which they belong will be notified, unless such notification is impossible or such notification may obstruct criminal investigation in a case involving national security or terrorist activities. Furthermore, within 24 hours after detention, the individual will be interrogated to uncover whether they are truly guilty of a crime or if the detention was incorrect. If the police determine that a person should not have been detained, the person must be released immediately with a certificate of release in writing. If the police determine that the detained individual is guilty of the crime, they will be either arrested or subject to other criminal compulsory measures, such as bail and residential confinement. Chapter VI Sections 66 and 85--86, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#).

If I am handcuffed, am I arrested?

Not necessarily. Arrest is just one of the circumstances of being handcuffed. Police may also use handcuffs in other circumstances, e.g. detain, escort, interrogate, summon, etc.

Article 8, [Regulations on the Use of Police Apparatuses and Weapons by the People's Police \(1996\)](#)

If my liberty is restricted, am I under arrest?

Not necessarily. The police can restrict your liberty in multiple ways without it amounting to an arrest. For example, the police can detain you for further questioning without placing you under arrest. The police may also place a criminal suspect under bail or residential confinement awaiting for trial. Under bail or residential confinement, the police may restrict the criminal suspect from entering particular places, meeting or communicating with particular persons, and engaging in particular activities. The policy may also order the criminal suspect to submit his or her passport or other international travel credentials and driver's license to the police for preservation.

Chapter VI Articles 66-79, [Criminal Law of the People's Republic of China \(2020 Amendment\)](#).

What To Do After Being Warned of Your Rights

Proposed Information

It is important to follow this advice:

- You can use your rights (e.g., the right to an attorney) by saying that you want to use that right.
- It should be noted that there is no right to remain silent under Chinese law.
- You are also able to waive your rights (that is, not use them) by, for example, saying 'Yes, I understand my rights to retain a defender but I am going to defend myself.'
- Make sure you know what you're doing in giving up your rights

How do things change if I am read my rights by police?

1. The law does not give the suspect the right of silence, but does provide the right to refuse irrelevant questions to the case.

Article 120, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#): When interrogating a criminal suspect, the investigators shall first ask the criminal suspect whether or not he has committed any criminal act, and let him state the circumstances of his

guilt or explain his innocence; then they may ask him questions. The criminal suspect shall answer the investigators' questions truthfully, but he shall have the right to refuse to answer any questions that are irrelevant to the case.

2. The law gives the suspect the right to leniency if he or she truthfully confesses to his or her crime.

Article 120, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#): The investigators shall, when interrogating a criminal suspect, inform the criminal suspect of his or her procedural rights and the law on leniency if he or she truthfully confesses to his or her crime as well as the "acknowledgment of guilt and acceptance of punishment" leniency system.

3. The law gives the suspect the right to retain an attorney for the first interrogation.

Article 34, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#): A criminal suspect shall have the right to retain a defender from the day when the criminal suspect is interrogated by a criminal investigation authority for the first time or from the day when a compulsory measure is taken against the criminal suspect; during the period of criminal investigation, a criminal suspect may only retain a lawyer as a defender.

4. The law gives the suspect the right to be provided with an attorney.

Article 35, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#): Where a criminal suspect or defendant has not retained a defender for financial hardship or other reasons, the criminal suspect or defendant or his or her close relative may file an application with a legal aid agency. If the legal aid conditions are met, the legal aid agency shall designate a lawyer to defend him or her.

Where a criminal suspect or defendant suffers vision, hearing, or speech impairment or is a mental patient who has not completely lost the ability to recognize or control his or her behavior, if he or she has not retained a defender, the people's court, people's procuratorate, and public security authority shall notify a legal aid agency to designate a lawyer to defend him or her.

Where a criminal suspect or defendant who may be sentenced to life imprisonment or death penalty and has not retained a defender, the people's court, people's procuratorate, and public security authority shall notify a legal aid agency to designate a lawyer to defend him or her.

5. The law gives the suspect the right to consult with an on-site duty attorney.

Article 36, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#): Legal aid agencies may appoint on-site duty lawyers at the people's courts, jails, and other relevant places. If a criminal suspect or defendant does not appoint a defender, nor does a legal aid agency designate a lawyer to defend him or her, an on-site duty lawyer shall provide the criminal suspect or defendant with legal assistance including but not limited to legal advice, recommendations on the selection of procedures, application for the modification of compulsory measures, and offering opinions on the handling of the case.

A people's court, people's procuratorate, or jail shall inform a criminal suspect or defendant of his or her right to a scheduled meeting with a duty lawyer, and facilitate the scheduled meeting between the criminal suspect or defendant and a duty lawyer.

<https://www.hq.org/legal-articles/you-do-not-have-the-right-to-remain-silent-if-it-is-in-china-51128>

Does it matter where I am when the police read me my rights? (street, station, police car, etc.)

There is likely no difference where you are when the police notify you of your rights. The relevant Chinese laws and regulations focus on when the police shall notify you of your rights, rather than where your rights should be notified. For example, the police shall notify you of the right to retain a defender, the right to apply for legal aid, the right to appoint a meeting with on-site duty lawyers, and the right to leniency if he or she truthfully confesses to his or her crime when the criminal suspect is interrogated for the first time or in a timely manner. Articles 34-36 and 120, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#).

Police Questioning You

Proposed Information

It is important to follow this advice:

- You may be required to make a statement, answer police questions or support a police investigation; however, you never have to go anywhere with the police unless they have detained or arrested you.
- If you are under 16 years old, the police cannot interrogate you for public security administration violations without your parents or legal guardians being present.
- If you are under 18 years old, the police cannot interrogate you for criminal investigations without your parents or guardians being present, and the interrogation shall not be exceed four hours. When Interrogating a female juvenile criminal suspect, at least one female staff should be present.

Am I required to make a statement?

Most likely yes, if it is pursuant to an investigation or the obtaining of evidence. A suspect has no right to remain silent and has a duty to answer questions truthfully when asked by investigators, but may refuse to answer questions that are irrelevant to the case at hand. Article 120, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#).

However, for juveniles, this is inconsistent with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. Per these rules, the right to remain silent is a right guaranteed at all stages of proceedings.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Section 7.1

<https://www.ohchr.org/en/professionalinterest/pages/beijingrules.aspx>

Must police notify my guardian?

Yes. For public security administration violations, the police must notify the parent or legal guardian before interrogating minors under 16 and ask them to appear during the interrogation. Article 84, [Public Security Administration Punishments Law of the People's Republic of China \(2012 Amendment\)](#).

For criminal investigations, it is the police's obligation that when a minor criminal suspect or defendant (under 18) is being interrogated or questioned, guardians/legal representatives must be notified and appear during interrogation/questioning. Article 281, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#).

Must I confess?

No not necessarily, although a criminal suspect is required to answer the questions of the police truthfully. In addition, if the criminal suspect truthfully confesses to his or her crime, the

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criminal suspect may be subject to a lighter or mitigated punishment. Article 120, [Criminal Law of the People's Republic of China \(2020 Amendment\)](#).

What adults can I ask to be with me?

1. Parents or guardian, or other representatives of government authorities or public organizations with a legal duty to protect the minor (collectively "Legal Representatives"); or
2. the minor's other adult relatives, or representatives of the minor's school, a grassroots organizations of the minor's residence, or juvenile protection organizations, if the Legal Representatives are unable to be present.

Article 281, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#);
Article 110, [Law of the People's Republic of China on the Protection of Minors \(2020 Amendment\)](#)

Who do police have to contact if I am a legal minor?

1. Parents or guardian, or other representatives of government authorities or public organizations with a legal duty to protect the minor (collectively "Legal Representatives"); or
2. the minor's other adult relatives, or representatives of the minor's school, a grassroots organizations of the minor's residence, or juvenile protection organizations, if the Legal Representatives are unable to be present.

Article 281, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#);
Article 110, [Law of the People's Republic of China on the Protection of Minors \(2020 Amendment\)](#)

How do I Contact A Lawyer and When?

Proposed Information

It is important to follow this advice:

- **Under the relevant Chinese laws, you have the right to retain a lawyer when you are interrogated by the police in a criminal case or investigation for the first time.**
- While you do have to wait until you attend court to get a lawyer appointed if you cannot afford your own lawyer, you should still ask for a lawyer as soon as you are questioned or arrested by the police.
- Under Chinese law, you do not have the right to remain silent and not speak until your lawyer is present.

What if I am just a witness?

For adults:

You do not have the right to contact a lawyer if you are only a witness. You have the obligation to testify if you know or have information regarding a case. Article 62, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#)

For minors:

If you are a minor under 18 years old, you can have your parents, legal guardian, or other adult relatives or representatives from your school or juvenile protection organizations to accompany you when being asked questions by police. If you are a female, a female police officer will ask you questions. You will not be required to appear in court to testify; if it is necessary for you to appear in court, the court will take relevant measures to protect your privacy, psychological intervention, and other protective measures. Article 281, [Criminal](#)

Do Police Always Have To Tell The Truth?

Proposed Information

It is important to follow this advice:

Yes. Under relevant Chinese laws and regulations, the police shall not collect evidence by threats, enticements, deceit or lying, or other illegal methods.

Can the police lie to me?

No, police are prohibited from collecting evidence by threats, enticements, lying, deceit, or other illegal means.

Article 27, [Provisions on the Procedures for Handling Administrative Cases by Public Security Organs \(2020 Amendment\)](#); Article 8, [Rules on Procedures for Handling Criminal Cases by Public Security Organs \(2020 Amendment\)](#).

Do I have to tell the police the truth?

Yes, you should tell the police the truth no matter, whether as a witness, a suspect for administrative violations, or a criminal suspect. Otherwise, you may be subject to legal liabilities including forging, concealing, destroying evidence, or providing false testimony.

Article 28, [Provisions on the Procedures for Handling Administrative Cases by Public Security Organs \(2020 Amendment\)](#); Articles 61 and 203, [Rules on Procedures for Handling Criminal Cases by Public Security Organs \(2020 Amendment\)](#).

How do I make a complaint if I have questions or feel my rights have been violated?

Proposed Information

It is important to follow this advice:

If you have any questions or concerns for law enforcement, you have the right to report to the relevant agencies such as the Ministry of Justice of the People's Republic of China, Public Security Organs, and People's Procuratorate.

A public security organ and their policemen thereof shall be ready to accept the supervision of the general public and citizens in handling public security cases.

Where, in the process of handling any public security case, a public security organ or any of its people's policemen fails to enforce the law strictly or violates any law or discipline, any entity or individual shall be entitled to expose or charge against them in the public security organ or administrative oversight organ, which shall timely deal with the case according to its functions.

Article 114, [Public Security Administration Punishments Law of the People's Republic of China \(2012 Amendment\)](#).

In addition, if a public security organ and its police officers have infringed upon your personal rights (such as the right to freedom or have caused injuries to your body) or property rights in criminal investigations, you may apply for state compensation, subject to certain conditions and procedures. Chapter 3, [State Compensation Law of the People's Republic of China \(2012 Amendment\)](#).

May I get remedies from it?

Yes, if a police officer violates your rights, you could be entitled to a formal apology and compensation (if the police officer caused any damages). Article 117, [Public Security Administration Punishments Law of the People's Republic of China \(2012 Amendment\)](#)..

In addition, you may also obtain state compensation from the public security organ where your personal rights or property rights have been infringed. Article 21, [State Compensation Law of the People's Republic of China \(2012 Amendment\)](#).

What if I feel I was a victim of discrimination or racism?

Proposed Information

It is important to follow this advice:

The [Public Security Administration Punishments Law of the People's Republic of China \(2012 Amendment\)](#) prohibits any kind of mistreatment, even to violators of the law. Victims of discrimination and racism are therefore protected by the law and can seek appropriate recourse:

Article 112: Public security organs and the people's police shall handle cases of public security according to the law and in an impartial, strict and highly efficient manner, and enforce laws with civility, and they shall not engage in malpractices for private gain.

Article 113: During the process of handling a public security administration case, the public security organ and the people's policemen are prohibited from beating, scolding, maltreating or insulting any violator of public security administration.

Article 114: Where a public security organ and people's policeman fail to strictly enforce laws in handling cases of public security or commits an act in violation of laws or rules of discipline, any unit or individual shall have the right to report to or lodge an accusation before a public security organ or the people's procuratorate or an administrative supervisory organ; and the organ that receives such report or accusation shall, without delay, handle it in compliance with its duties.

Will the law enforcer be penalized for being racist towards me?

If a police officer publicly discriminates against you or makes any racist comments, you can be entitled to a formal apology and compensation (if the police officer caused any damages). Article 117, [Public Security Administration Punishments Law of the People's Republic of China \(2012 Amendment\)](#).

How can I respond to circumstances involving discrimination?

Proposed Information

It is important to follow this advice:

For juveniles who have been released after serving the full term of a sentence or who receive community corrections for criminal violations:

If you experience general discrimination, you may report such experience to the relevant administrative departments of education and other governmental departments so that they can take action against the offender.

Article 62, [Law of the People's Republic of China on the Prevention of Juvenile Delinquency \(2020 Revision\)](#)

If you experience discrimination in resumption of study, entering a school of a higher grade, employment, and other respects that is against the Laws of People's Republic of China on the Prevention of Juvenile Delinquency, you may report such experience to the respective entities, or the education, human resources, social security and other governmental departments so that they can take action against the offender.

Article 63, [Law of the People's Republic of China on the Prevention of Juvenile Delinquency \(2020 Revision\)](#)

If the relevant social organizations and institutions for community corrections and their staff members abuse or discriminate against you, you may report such experience to the civil affairs departments, judicial administrative departments and other governmental departments so that they can take action against the offender.

Article 64, [Law of the People's Republic of China on the Prevention of Juvenile Delinquency \(2020 Revision\)](#)

What can you do if the police perform an improper search? Or I was improperly detained?

Proposed Information

It is important to follow this advice:

For improper search:

1. You may report to the people's procuratorate, which may open a supervision investigation against the improper search and order correction or reconduct the search in strict accordance with the law. Article 567, [Rules of Criminal Procedure for People's Procuratorates \(2019 Amendment\)](#)
2. You may report the improper search to the discipline inspection and supervision agencies, which are responsible for handling improper activities of government officials, such as the police, in performing their legal duties. Articles 35, [Supervision Law of the People's Republic of China \(2018\)](#)
3. You may also report the improper search to the public security organ where the police officer who has performed the improper search. Article 114, [Public Security Administration Punishments Law of the People's Republic of China \(2012 Amendment\)](#)

For improper detention:

1. You may request that the police release you immediately and issue you a certificate of release. Article 86, [Criminal Procedure Law of the People's Republic of China \(2018 Amendment\)](#)
2. If they refuse to do so, you may report to the people's procuratorate, which may open a supervision investigation against the improper detention and order correction. Article 567, [Rules of Criminal Procedure for People's Procuratorates \(2019 Amendment\)](#).
3. You may also apply for state compensation for the improper detention. Chapter 3, [State Compensation Law of the People's Republic of China \(2012 Amendment\)](#).

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Law is generally described as of December 2022.

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