

# Real Rights: young people engaging with law enforcement



Billings, Montana



**Site in development - FEEDBACK NEEDED**

The launch of the Real Rights platform as a DRAFT site in order to obtain feedback from people across the globe. The information included herein represents initial research and responses that need review and commentary on a broader scale. We actively encourage any World Congress attendees or reviewers of this site to provide any comments you may have on the website and the content either by clicking on the "Feedback" button in each city page or by emailing [realrights@bakermckenzie.com](mailto: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.
- Do Police Need A Warrant To Arrest You?
- How Do You Know If You Are Under Arrest?
- What To Do After Being Warned of Your Rights
- Police Questioning You
- Reporting Crimes To The Police
- Responding To Bad Treatment By The Police
- How do I Contact A Lawyer and When?
- Do Police Always Have To Tell The Truth?
- How do I make a complaint if I have questions or feel my rights have been violated?
- What can you do if the Police perform an improper search?

## 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?

No, you cannot be arrested simply for refusing to answer a police officer's questions. You have the right to remain silent. If you do not want to answer the questions, you can say, "I do not want to talk to you" and walk away calmly. Or, if you do not feel comfortable doing that, you can ask if you are free to go. If the answer is yes, you can consider just walking away. Do not run from the officer.

Even if you are under arrest, you do not have to answer questions. Ask to speak to a lawyer immediately. It is not a good idea to answer any questions without first talking to a lawyer.

See [Montana Code Annotated 2021, §46-6-107](#). Additional information can be found at <https://www.aclumontana.org/en/know-your-rights/stops-and-arrests-what-do-when-encountering-law-enforcement>

### What if the officers do not identify themselves?

If a police officer stops you while he or she is not in uniform, they are required to inform you as soon as possible that they are a police officer. They must, in any case, identify themselves before questioning you. ([Montana Code Annotated 2019, §46-5-401\(3\)](#))

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

You do not have to answer any questions. You can say, "I do not want to talk to you" and walk away calmly. Or, if you do not feel comfortable doing that, you can ask if you are free to go. ([See Montana Code Annotated 2021, §46-6-107](#))

Additional information can be found at <https://www.aclumontana.org/en/know-your-rights/stops-and-arrests-what-do-when-encountering-law-enforcement>

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

If a police officer stops you while he or she is not in uniform, they are required to inform you as soon as possible that they are a police officer. They must identify themselves before questioning you. ([Montana Code Annotated 2019, §46-5-401\(3\)](#))

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

Yes, you have the right to remain silent. If you are arrested, the officer must tell you about your constitutional right to remain silent, your right to an attorney, and your right to have an attorney appointed if you cannot afford one. You should exercise all these rights, even if the officers don't tell you about them. Do not tell the police anything except your name. Anything else you say can and will be used against you. Ask to see a lawyer immediately. Law enforcement officers are not permitted to listen to a call you make to your lawyer (though they can listen to calls you make to other people). (*Miranda v. Arizona*, 384 U.S. 436 (1966), [Montana Code Annotated 2021, §46-6-107](#))

Additional information can be found at <https://www.aclumontana.org/en/know-your-rights/stops-and-arrests-what-do-when-encountering-law-enforcement>;

### If I sit down, am I resisting?

No, just sitting down is not resisting arrest. A person resists arrest if they try to prevent the officer from making an arrest by using or threatening to use physical force, or if they do something else that puts the officer or someone else at risk of being hurt. ([Montana Code Annotated 2019, 45-7-301](#))

To reduce risk to yourself, keep your hands where police can see them.

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

Don't run even if others do. Stay calm, be polite, and don't argue or resist, even if you are innocent or you believe that the police are violating your rights. To reduce risk to yourself, make sure to keep your hands where police can see them. You are not required to answer an officer's questions. Ask if you are free to leave. If the officer says yes, calmly and silently walk away. ([Montana Code Annotated 2021, §46-6-107](#))

Additional information can be found at <https://www.aclumontana.org/en/know-your-rights/your-rights-demonstrations-and-protests>.

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

No, you should not tell others to run. This could be seen as preventing the police from doing their job. Stay calm, be polite, and don't argue or resist, even if you are innocent or you believe that the police are being unfair. To reduce risk to yourself, make sure to keep your hands where police can see them. You are not required to answer an officer's questions. Ask if you are free to leave. ([Montana Code Annotated 2021, §46-6-107](#))

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

If you don't understand what the officer is saying, you can ask for an interpreter. The police should provide an interpreter as soon as possible, and before interrogation. This is also the case for those who are hard of hearing and in need of a sign language interpreter. ([Montana Code Annotated 2021, §49-4-503](#)) However, the interpreter will be one assigned by the police department - you will not be able to use your own personal interpreter.

If you wish to remain silent, you can say, "I wish to remain silent."

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

Yes. Police officers have the authority to stop you if they have a reasonable suspicion that you are involved in or is about to commit a criminal activity ([Terry v. Ohio, 392 U.S. 1 \(1968\)](#) and [Montana Code Annotated 2019, §46-5-401](#)). For example, if there is any reason for an officer to believe that you are armed and dangerous, that officer can legally stop you.

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When can the Police Search You and Your Surroundings?

Proposed Information

It is important to follow this advice:

- You have the right to say no to searches of your person.
- You have the right to say no to searches of your car, house or other surroundings.
- You cannot be arrested for refusing to consent to a search without a warrant.
- A warrant is a court order so you have no choice but to consent.

What if a police officer wants to search my phone?

Police officers are generally required to obtain a search warrant before conducting a search of digital information contained in your phone. The United States Supreme Court unanimously held in the 2014 case (Riley v. California, 573 U.S. 373) that law enforcement agents cannot randomly search your cellphone data without having a warrant. Thus, you do not need to hand over your phone and/or password otherwise.

Further, under the Fifth Amendment, you do not have to give a self-incriminating statement about yourself. Passwords to digital devices such as phones and computers have been generally accepted as a form of statement in a court of law. Therefore, you cannot usually be forced to hand over passwords, even where a warrant is in force, unless a court has directed otherwise. Note that in Montana, there are a few exceptions as outlined below.

Exceptions:

- Police officers have a warrant allowing them to search digital information in your phone.
- Police officers can search physical aspects of your phone, e.g. removing the battery or case, in your possession at the time of arrest.
- When the police officers, in good faith, believes that exigent, or emergency, circumstances are present that requires immediate disclosure of communications relating to the emergency. There is an emergency situation if, for example, the warrantless search of your phone can prevent injury to someone or can prevent the imminent destruction of evidence.
- You (or the authorized user of your phone) give consent to search the content of your phone.
- If you have voluntarily and publicly disclosed the stored data.
- in order to respond to the user’s call for emergency services.
- for any electronic devices found within the confines of an adult or youth correctional facility.

(Montana Code 46-5-112 Electronic data privacy; 13-132 Riley v. California (06/25/2014) (supremecourt.gov))

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

You do not have to provide the password to your phone. Police officers are generally required to obtain a search warrant before conducting a search of digital information contained in your phone. The United States Supreme Court unanimously held in the 2014 case (Riley v. California, 573 U.S. 373) that law enforcement agents cannot randomly search your cellphone data without having a warrant. Thus, you do not need to handover your phone and/or password otherwise.

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

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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?

You do not have to provide the password to your phone. Police officers are generally required to obtain a search warrant before conducting a search of digital information contained in your phone. The United States Supreme Court unanimously held in the 2014 case (Riley v. California, 573 U.S. 373) that law enforcement agents cannot randomly search your cellphone data without having a warrant. Thus, you do not need to handover your phone and/or password otherwise.

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

It is important to follow this advice:

- Police officer can record the encounter with you if you are questioned in a place of detention. In doing so, police officers must advise you of your rights to remain silent, your right to a lawyer, the fact that the recording is taking place and when the recording has stopped. ([Montana Code Annotated 2019, §46-4-408](#))
- Police can also take fingerprints from you and take photographs if you are arrested and they have a search warrant. ([Montana Code Annotated 2019, §41-5-1206](#))
- If a court order is obtained in advance, police officers can use a pen register or trap and trace device to track your phone calls. Such device that has the ability to record conversations is prohibited. ([Montana Code Annotated 2019, §46-4-402](#))
- Police can also use unmanned aerial vehicles (such as drones) with a warrant and in instances where certain requirements are met (for example, during the investigation of a motor vehicle crash scene). ([Montana Code Annotated 2019, §46-5-109](#))
- Police can also obtain location information of an electronic device with a warrant and in certain other instances (for example, when the device is reported stolen by the owner, consent of the owner or user of the device, in a possible life-threatening situation, etc.) ([Montana Code Annotated 2019, §46-5-110](#)).
- Police can also use license plate reader and similar devices to identify a vehicle in certain instances, such as when the vehicle is stolen, associated with a wanted, missing or endangered person, etc. ([Montana Code Annotated 2019, §46-5-117](#)).

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

It is important to follow this advice:

1. With a valid search warrant (a legal document signed by a judge which specifically describes the item to be searched and items that they are looking for) OR
2. Without a warrant, but only in certain situations where:
  - a. You consented to the search or
  - b. police officers have reasonable grounds to believe that you have or are about to commit a crime, in which case, the police officers may stop you. If the officer reasonably suspects that you are armed and dangerous to the officer or another person present, the officer may "frisk you" (i.e., pat you down). The officer may take any object found during the course of the frisk if the officer has probable cause to believe that the object is a deadly weapon or
  - c. You are legally arrested and the search is for the purpose of:
    1. protecting the officer from attack;
    2. preventing you from escaping;
    3. finding anything obtained as a result of a crime; or
    4. finding anything which may have been used in a crime or which may be an evidence of an offense; or
  - d. the police have probable cause or good reason to believe that the item you are carrying was involved in a crime, for example, if they saw drugs or a weapon being put inside in plain view or
  - e. in emergency situations. There is an emergency situation if, for example, the search of your belonging can prevent injury to someone or can prevent the imminent destruction of evidence.

([Montana Code Annotated 2019, §46-5-101; Montana Code Annotated, 2019 §46-5-102; Montana Code Annotated 2019, §46-5-401; Terry v. Ohio, 392 U.S. 1 \(1968\)](#))

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### Can they take my picture or record me?

Yes, police officers can record the encounter with you if you are questioned in a place of detention. In doing so, police officers must advise you of your rights to remain silent, your right to a lawyer, the fact that the recording is taking place and when the recording has stopped. ([Montana Code Annotated 2019, §46-4-408](#))

Police can also take fingerprints from you and take photographs if you are arrested and they have a search warrant. ([Montana Code Annotated 2019, §41-5-1206](#)).

### Can they ask me where I am going and why?

Yes, police officers have the authority to stop you if they have a reasonable suspicion that you are involved in or are about to commit a criminal activity ([Terry v. Ohio, 392 U.S. 1 \(1968\)](#) and [Montana Code Annotated 2019, §46-5-401](#)). For example, if there is any reason for an officer to believe that you are armed and dangerous, that officer can legally stop you. During such stop, the police may request your name and current address and an explanation of your actions (which could include questions around where you are going and why).

## 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 arrested, you may be charged with a felony for a more serious crime (with potential jail time of one year or more), a misdemeanor for a less serious crime (with jail time of less than one year) or a violation.
- 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, do I have to speak with the police and answer questions?

No. You are not required to make a statement, answer police questions or participate in a police investigation, and you never have to go anywhere with the police unless they have arrested you.

If you have not been arrested, and are not in custody, you may have the right to walk away. It may be a good idea to ask the questioning officer whether you are free to leave. Do not run to try to leave without permission as this may be seen as guilty conduct or aggravate the officers.

If the police ask to speak to you about an investigation, it is a good idea to request to speak to your lawyer and have your parents/guardian present.

If you tell the police you want a lawyer with you during questioning, they will have to stop questioning you until your lawyer arrives or (if you cannot afford your own lawyer) the court has appointed you a lawyer.

If you start answering questions and then change your mind, you can still ask for a lawyer and the police should stop asking you questions until your lawyer arrives. However, everything you have said can still be used as evidence against you in court.

### What if they tell me something they are investigating that is wrong? Do I have to correct them?

No. You are not required to make a statement, answer police questions or participate in a police investigation.

If the police ask to speak to you about an investigation, it is a good idea to request to speak to your lawyer and have your parents/guardian present.

If you tell the police you want a lawyer with you during questioning, they will have to stop questioning you until your lawyer arrives or (if you cannot afford your own lawyer) the court has appointed you a lawyer.

If you start answering questions and then change your mind, you can still ask for a lawyer and the police should stop asking you questions until your lawyer arrives. However, everything you have said can still be used as evidence against you in court.

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

Stay calm. It is not a good idea to run. Speak carefully and clearly. Remember that 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.

**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?**

If you are not under arrest, then you are just being stopped for questioning and potential frisking ("pat-down"). ([Montana Code Annotated 2019, §46-5-401](#)). You are not required to make a statement, answer police questions or participate in a police investigation, and you are not legally in "custody" if you are stopped as noted above.

However, if you are under arrest, legally, you are in "custody." Police officers are required to provide you with a Miranda warning before questioning you (i.e., police officers must tell you that you have the right to remain silent, that anything you say can be used against you in a court of law, that you have the right to speak to an attorney and to have an attorney present during your questioning, and that if you cannot afford an attorney, one will be provided to you at no cost. ([Montana Code Annotated 2019, §46-6-107](#)). If you are under arrest, you are not free to walk away.

**The difference between police Telling me what to do and asking me to do something**

**Proposed Information**

It is important to follow this advice:

A police officer's tone and word usage is a good indicator of whether the officer is demanding or asking something.

If an officer orders you to do something you should comply, even if you are innocent or you believe your rights are being violated.

If you feel like your rights are being violated due to police misconduct:

1. It is not a good idea to physically resist officers or threaten to file a complaint. It is not a good idea to challenge police conduct on the street.
2. Write down everything you remember, including officers' badge and patrol car numbers, which agency the officers were from, and any other details. Get contact information for witnesses. If you are injured, take photographs of your injuries (but seek medical attention first).
3. File a written complaint with the agency's internal affairs division or civilian complaint board. In the case of a complaint against police officers, a Complaint or Commendation may be filed by faxing (406-657-8417), mailing (P.O. Box 1554, Billings, MT 59103), or bringing your form to the Police Department. If you fax or mail your form in, you should address it to the Chief of Police.

For additional information, you can also contact the Montana ACLU (406) 443-8590 or [aclu@aclumontana.org](mailto:aclu@aclumontana.org) or visit [www.aclu.org/profiling](http://www.aclu.org/profiling).

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

If you agree to the search, then the police officers are free to search you and your belongings.

If you do not agree to the search, then the police officers can only search you and your belongings in exceptional cases as outlined below:

1. With a valid search warrant (a legal document signed by a judge which specifically describes the item to be searched and items that they are looking for) OR
2. Without a warrant, but only in certain situations where:
  - a. police officers have reasonable grounds to believe that you have or are about to commit a crime, in which case, the police officers may stop you. If the officer reasonably suspects that you are armed and dangerous to the officer or another person present, the officer may "frisk you" (i.e., pat you down). The officer may take any object found during the course of the frisk if the officer has probable cause to believe that the object is a deadly weapon or consented to the search or

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- b. you are legally arrested and the search is for the purpose of
  1. protecting the officer from attack;
  2. preventing you from escaping;
  3. finding anything obtained as a result of a crime; or
  4. finding anything which may have been used in a crime or which may be an evidence of an offense; or
- c. the police have probable cause or good reason to believe that the item you are carrying was involved in a crime, for example, if they saw drugs or a weapon being put inside in plain view or
- c. in emergency situations. There is an emergency situation if, for example, the search of your belonging can prevent injury to someone or can prevent the imminent destruction of evidence.

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

If you provide answers voluntarily, remember that anything can be used as evidence against you in court. ([Miranda v. Arizona](#), 384 U.S. 436 (1966)).

If you have not been arrested, and the police officers are just asking you to give information, you are not required to make a statement, answer police questions or participate in a police investigation, and you never have to go anywhere with the police unless they have arrested you.

If the police ask to speak to you about an investigation, it is a good idea to request to speak to your lawyer and have your parents/guardian present.

If you tell the police you want a lawyer with you during questioning, they will have to stop questioning you until your lawyer arrives or (if you cannot afford your own lawyer) the court has appointed you a lawyer.

If you start answering questions and then change your mind, you can still ask for a lawyer and the police should stop asking you questions until your lawyer arrives. However, everything you have said can still be used as evidence against you in court.

**Do Police Need A Warrant To Arrest You?**

**Proposed Information**

It is important to follow this advice:

No. Police officers can legally arrest you without a warrant in several circumstances:

- When the crime is committed in front of the police officers; or
- When the officer has probable cause (reason to suspect) that the suspect is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(Montana Code Annotated 2019, §46-6-311).

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

Yes. Police officers have the authority to stop you if they have a reasonable suspicion that you are involved in or are about to commit a criminal activity ([Terry v. Ohio, 392 U.S. 1 \(1968\)](#) and [Montana Code Annotated 2019, §46-5-401](#)). For example, if there is any reason for an officer to believe that you are armed and dangerous, that officer can legally stop you.(them) to remain silent or to speak to an attorney. You could say something like: "Yes, I understand my rights but I am ready to talk to you.

**Can I ask for the reason they stopped me?**

You may ask, but police are generally not obligated to tell you the reason if you are detained under an "investigative stop and frisk" where the police have a reasonable suspicion that a crime occurred or will likely occur, unless you are stopped in a motor vehicle. In such vehicle stops, police are required to promptly tell you the reason why they stopped you, unless emergency circumstances exist or the officer has reasonable cause to fear for the officer's own safety or for the public's safety. ([Montana Code Annotated 2019, §46-5-401](#)).

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

Being stopped together may mean the police are also considering you part of the incident or crime, so advocating for someone else may carry the risk of either implicating yourself further or being charged with obstruction of justice, if you knew the other person is an offender but you purposely deceive anyone so that the other person does not get arrested or purposely aids the other person to avoid being arrested. ([Montana Code Annotated, 2019 §45-7-303](#)). Remember that anything you say can be used against you in a court of law.

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

Follow police directions and if they arrest you, do not resist.

- Write down everything you remember, including officers' badge and patrol car numbers, which agency the officers were from, and any other details.
- Get contact information for witnesses.
- File a written complaint with the agency's internal affairs division or civilian complaint board. In most cases, you can file a complaint anonymously if you wish.

The ACLU's website provides additional helpful details: <https://www.aclu.org/know-your-rights/stopped-by-police/#ive-been-arrested-by-the-police>.

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

Yes. If you're able to, write down or remember the officer's name or badge number if they are visible. Police are not required by law to give you their badge number or name.

The ACLU's website provides additional helpful details: <https://www.aclumontana.org/en/know-your-rights/stops-and-arrests-what-do-when-encountering-law-enforcement>.

## 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 rights warnings is still a valid arrest; it just may mean that evidence collected from it is not admissible in court later.

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

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. (*U.S. v. Mendenhall*, 446 U.S. 544 (1980), *State v. Roberts*, 1999 MT 59 (1999)) You may be able to determine whether you are free to leave (for example, whilst being questioned) by asking non-confrontational questions, e.g. can I go and get some food? or can I go to the bathroom?

If the following happens, you are likely under arrest under law:

- an officer handcuffs you (however, being put in handcuffs does not definitely mean you are under arrest; police officers have discretion to handcuff someone who is not under arrest if they have a sufficient and reasonable concern for their safety which justifies the use of handcuffs);
- 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 (either at the time of your arrest or later, prior to questioning). 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. (*Montana Code Annotated 2021, §46-6-107*)

Remember that anything you say can and will be used against you. It is a good idea to ask to see a lawyer immediately. If you are arrested, you do not have to answer any questions or volunteer any information. Ask for a lawyer right away. Repeat this request to every officer who tries to talk to or question you. You should always talk to a lawyer before you decide to answer any questions.

Within a reasonable amount of time after your arrest or booking, you have the right to a phone call. Law enforcement officers may not listen to a call you make to your lawyer, but they can listen to calls you make to other people. You must be taken before a judge as soon as possible—generally within 48 hours of your arrest at the latest. (*County of Riverside v. McLaughlin*, 500 U.S. 44 (1991)).

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Additional information can be found at <https://www.aclumontana.org/en/know-your-rights/stops-and-arrests-what-do-when-encountering-law-enforcement>

### What is the difference between detention and arrest?

Being detained is not the same as being arrested, though an arrest could follow. You are under police custody, or detained, 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. (*U.S. v. Mendenhall*, 446 U.S. 544 (1980), *State v. Roberts*, 1999 MT 59 (1999))

Arrest gives the police more power to search you. The police can pat down the outside of your clothing only if they have "reasonable suspicion" (i.e., an objective reason to suspect) that you might be armed and dangerous. (*Terry v. Ohio*, 392 U.S. 1 (1968)) If they search any more than this, say clearly, "I do not consent to a search." If they keep searching anyway, do not physically resist them. Police can also subject you to confiscation of personal possessions, photographing, fingerprinting, and potentially other steps to collect evidence. Anything found during this search may be used as evidence against you.

You do not need to answer any questions if you are detained or arrested, except that the police may ask for your name once you have been detained, and you can be arrested in some states for refusing to provide it.

Additional information can be found at: <https://www.aclumontana.org/en/know-your-rights/stops-and-arrests-what-do-when-encountering-law-enforcement>

### If I am handcuffed, am I arrested?

No, being put in handcuffs does not definitely mean you are under arrest. Police officers have discretion to handcuff someone who is not under arrest if they have a sufficient and reasonable concern for their safety which justifies the use of handcuffs. (*State v. Stevens*, 2019 MT 36 (2019))

### If my liberty is restricted, am I under arrest?

No. Restrictions on your liberty does not automatically mean that you are under arrest. (*State v. Stevens*, 2019 MT 36 (2019)) You are under police custody, or detained, 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. (*U.S. v. Mendenhall*, 446 U.S. 544 (1980), *State v. Roberts*, 1999 MT 59 (1999)) You may be able to determine whether you are free to leave (for example, whilst being questioned) by asking non-confrontational questions, e.g. can I go and get some food? Or can I go to the bathroom?

## What To Do After Being Warned of Your Rights?

### Proposed Information

It is important to follow this advice:

- You can use your right to remain silent or any of your other rights (e.g., the right to an attorney) by saying that you want to use that right.
- You are also able to waive your rights (that is, not use them) by, for example, saying 'Yes, I understand my rights but I am ready to talk to you.' This is not a good idea without a lawyer present.
- 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?

If you are read the Miranda rights, that generally means that you have been arrested, are in custody, or are under interrogation. Police must read your rights before questioning you while you are in custody.

If you are in custody and NOT read your rights, only your voluntary statements may be used as evidence in court. For example, if you start making statements justifying why you committed a crime, only these statements can be used at trial. Any response from you derived from the police asking you questions cannot be used against you in court.

You can invoke your rights against self-incrimination and to seek legal representation by clearly stating that (i) you are "invoking the Fifth Amendment right to stay silent"; (ii) you would like to "speak to an attorney first"; and (iii) if you are a minor, you would like "your guardian/parent to be present". If the police continue to question you after you have invoked your Fifth Amendment rights, you should not answer any questions. If you start answering questions, the rights you previously mentioned (the Fifth Amendment) may be considered waived (i.e. given up).

Police cannot question you unless you sign a Miranda waiver, which is a document saying you are willing to give up your right to remain silent or have a lawyer present. If you are 16 or older, a Miranda waiver has to be signed before the police begin

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questioning, and if you are 15 or younger, your parent or guardian must be present to sign the Miranda waiver. [Montana Code Annotated 2021, §41-5-331; In re S.M.S.](#), 2010 MT 18 (2010).

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

No, it does not matter. If you are in custody (meaning you are not free to leave), the police must read you your rights wherever you are.

## Police Questioning You

### Proposed Information

It is important to follow this advice:

- You are not required to make a statement, answer police questions or participate in a police investigation, and you never have to go anywhere with the police unless they have arrested you.
- If police have arrested you and if you are under the age of 18, police are required to immediately notify your parent, care-taker or legal guardian.

### Am I required to make a statement?

No. You are not required to make a statement, answer police questions or participate in a police investigation, and you never have to go anywhere with the police unless they have arrested you.

If you have not been arrested, and are not in custody, you may have the right to walk away. In this case, it may be a good idea to ask the questioning officer whether you are free to leave. Wait for the officer to answer. Repeat the question if you do not get an answer. Do not run or try to leave without permission as this may be seen as guilty conduct or aggravate the officers.

If the police ask to speak to you about an investigation, it is a good idea to request to speak to your lawyer and have your parents/guardian present. Remember that you have the right to ask that a lawyer be present. If you decide to start answering questions on your own and then change your mind, you can still ask for a lawyer and the police should stop asking you questions until your lawyer arrives. If you cannot afford your own lawyer, the court will appoint you a lawyer. However, everything you have said earlier can still be used as evidence against you in court.

[Miranda v. Arizona](#), 384 U.S. 436 (1966).

### Must police notify my guardian?

No. You are not required to make a statement, answer police questions or participate in a police investigation, and you never have to go anywhere with the police unless they have arrested you.

If you have not been arrested, and are not in custody, you may have the right to walk away. In this case, it may be a good idea to ask the questioning officer whether you are free to leave. Wait for the officer to answer. Repeat the question if you do not get an answer. Do not run or try to leave without permission as this may be seen as guilty conduct or aggravate the officers.

If the police ask to speak to you about an investigation, it is a good idea to request to speak to your lawyer and have your parents/guardian present. Remember that you have the right to ask that a lawyer be present. If you decide to start answering questions on your own and then change your mind, you can still ask for a lawyer and the police should stop asking you questions until your lawyer arrives. If you cannot afford your own lawyer, the court will appoint you a lawyer. However, everything you have said earlier can still be used as evidence against you in court.

[Miranda v. Arizona](#), 384 U.S. 436 (1966).

### Must I confess?

You should not confess to anything without being advised by a lawyer. You are not required to make a statement, answer police questions or participate in a police investigation, and you never have to go anywhere with the police unless they have arrested you.

[Miranda v. Arizona](#), 384 U.S. 436 (1966).

### What adults can I ask to be with me?

If you are a minor, you can ask to have a parent, legal guardian, legal custodian and/or a lawyer join you before you answer any questions raised by law enforcement. Wait to speak until they arrive.

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

If you are a minor and are taken into custody, police must notify your parent, guardian or legal custodian the reason for the custody and where you will be as soon as possible. ([Montana Code Annotated 2021, §41-5-331\(1\)\(b\)](#)).

## How do I Contact A Lawyer and When?

### Proposed Information

It is important to follow this advice:

- You should always contact a lawyer before making any statements to anyone in a criminal case or investigation.
- This applies even if you are told that (i) police officers only want to question you and/or (ii) you are only a witness.
- 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. If you are arrested, you have the right to remain silent and to not speak until your lawyer is present.

### What if I am just a witness?

Even as a witness to a potential crime, you can ask for a lawyer. As a witness to a possible crime, in general, you are not required to report or speak with law enforcement. You are only required to report a crime where you are a “mandatory reporter” (i.e., have a specified profession, such as being a social worker, teacher, physician, child care provider, etc., in which case, you must report a known or suspected instances of child abuse and neglect), or the crime is “treason against the state” (such as where you witnessed someone levying war against it). Even if you have information that the police want, it may not be a good idea to share it without a lawyer being present. Lawyers can help you answer police officers’ questions precisely and caution you against self-incrimination.

## Do Police Always Have To Tell The Truth?

### Proposed Information

It is important to follow this advice:

- No. The police may lie to you during the course of an investigation, including lying about the strength of the case they have against you and particular evidence they have in their possession.
- Sometimes police will lie to try and get you to talk more.

### Can the police lie to me?

Yes they can. Police officers do not have to tell the truth and can lie to you in the course of their interaction with you. Police officers may often use this as a method of extracting confessions or admissions from suspects.

Therefore, if you speak, do so carefully. You are allowed to stay silent, and to request the use of a lawyer to support you.

### Do I have to tell the police the truth?

No. But also you should know that it is never a good idea to give false information to the police. Even if you are responsible for something or have information that they want, it may not be a good idea to speak about it without a lawyer being present and helping you.

Remember that you have the right to remain silent. If you want to exercise this right, say it out loud.

Also, keep in mind that certain false reports to law enforcement authorities can lead to fines and jail time, including:

1. giving false information to implicate another person;
2. reporting an offense or incident that didn’t occur;
3. pretending to provide officers information about an offense or incident, or knowing that you don’t have any information about the offense or incident ([Montana Code Annotated 2019, §45-7-205](#))

# Remedies:

## How can I raise concerns about my encounter with law enforcement?

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

When you can, write down everything you remember, including the officers' badge and patrol car numbers and the agency they work for. Get contact information for witnesses. If you're injured, seek medical attention immediately and take photographs of your injuries.

Then, you can file a written complaint with the agency's internal affairs division or civilian complaint board. A Complaint may be filed by faxing (406-657-8417), mailing ( P.O. Box 1554 , Billings , MT 59103 ), or bringing your form to the Police Department. If you fax or mail your form in, you should address it to the Chief of Police. Information can be found at: [https://www.ci.billings-](https://www.ci.billings.mt/)

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

If you feel like you were the victim of discrimination or racism in connection with a police stop:

1. It is not a good idea to physically resist officers or threaten to file a complaint. It is not a good idea to challenge police misconduct on the street.
2. Write down everything you remember, including officers' badge and patrol car numbers, which agency the officers were from, and any other details. Get contact information for witnesses. If you are injured, take photographs of your injuries (but seek medical attention first).
3. File a written complaint with the agency's internal affairs division or civilian complaint board. In the case of a complaint against police officers, a Complaint or Commendation may be filed by faxing (406-657-8417), mailing ( P.O. Box 1554, Billings, MT 59103 ), or bringing your form to the Police Department. If you fax or mail your form in, you should address it to the Chief of Police.
4. You can also contact the Montana ACLU (406) 443-8590 or [aclu@aclumontana.org](mailto:aclu@aclumontana.org) or visit [www.aclu.org/profiling](http://www.aclu.org/profiling)

### How can I respond to circumstances involving discrimination?

You can file a complaint as noted below:

- In the case of a complaint against police officers, a Complaint or Commendation may be filed by faxing (406-657-8417), mailing ( P.O. Box 1554 , Billings , MT 59103 ), or bringing your form to the Police Department. If you fax or mail your form in, you should address it to the Chief of Police.
- You can also contact the Montana ACLU (406) 443-8590 or [aclu@aclumontana.org](mailto:aclu@aclumontana.org) or visit [www.aclu.org/profiling](http://www.aclu.org/profiling).

Keep in mind the following.

1. It is not a good idea to physically resist officers or threaten to file a complaint. It is not a good idea to challenge police misconduct on the street.
2. Write down everything you remember, including officers' badge and patrol car numbers, which agency the officers were from, and any other details. Get contact information for witnesses. If you are injured, take photographs of your injuries (but seek medical attention first).

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

You may have a legal claim that your rights have been violated (i.e. not respected) if you have been or will be injured and each of the conditions listed below are met:

- The police officer searches or seizes your body (e.g. you are taken into custody and/or searched); house (including the porch, garden etc.) or hotel room; papers; or any other personal belongings.
- The police officer physically entered your house, touched you, took your papers and/or personal belongings, or the officer did not respect what you reasonably expect your privacy to be.
- It must be your rights that were violated, not the rights of any other person. You must also have a reasonable expectation of privacy in the area from which your property was seized.
- The police officer did not have a warrant (or the warrant was not proper e.g. did not cover the search).

You may have a legal claim that your rights have been violated (i.e. not respected) if you have been or will be injured and each of the conditions listed below are met:

- write down everything you remember, including the officer's name, badge and patrol car numbers and the agency they work for;
- get contact information from witnesses; and
- take photos of any injuries.

Once you have all this information, file a written complaint with the agency's internal affairs division or a civilian complaint board. In the case of a complaint against police officers, a Complaint or Commendation may be filed by faxing (406-657-8417), mailing (P.O. Box 1554, Billings, MT 59103 ), or bringing your form to the Police Department. If you fax or mail your form in, you should address it to the Chief of Police.

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Law is generally described as of November 2021.

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