

Real Rights: young people engaging with law enforcement



Developed by Baker McKenzie and the Global Initiative on Justice with Children, Real Rights provides young people – especially young people in vulnerable populations – with legal information for when children encounter police in public settings. Thanks to the pro bono work of over 1,500 volunteer professionals, this database provides answers for children in contact with the police from initial contact to searches and questioning.

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

Can the police arrest you for refusing to answer questions?

No, they cannot. If arrested, the police must identify themselves and give you the order of detention. If this does not happen, you can request such.

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Article 4.1 of the Cuban Criminal Procedure Code establishes that no person may be deprived of liberty except in the cases and with the formalities established in this Law. The refusal to answer questions is not a criminal offense.

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What if the officers do not identify themselves?

The officer has the obligation to identify themselves, if they do not do so, try to remember the distinctive physical features of the agent (if he has tattoos, moles, etc.) and the number above the shirt pocket (if in uniform).

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

Only give your personal information. Even though you do not have the obligation to reply to them, it is suggested to reply to them just what they asked.

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

You can ask to them to identify themselves or ask them to show you their ID. You may choose not to reply to them if they refuse.

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

Yes

If I sit down, am I resisting?

No, you are doing nothing illegal. The Cuban law does not establish anything regarding this matter.

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

It is advisable to resist, even if you are innocent or if you think the police are acting unfairly or unlawfully.

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

It is never a clever idea to run because you give them a reason to detain you.

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

You will always have your rights. Your rights do not change because you are a stranger or do not know the language.

Article 130 de Criminal Procedure Code establishes people's rights.

<https://www.tsp.gob.cu/sites/default/files/documentos/del%20proceso%20penal.pdf>

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

They can stop you and ask some questions in order to investigate a specific case. However, you cannot be arrested unless there exists an accusation, presumption of involvement in a crime or if caught while committing the crime (flagrante delicto).

Article 126 d) - Criminal Procedure Code

<https://www.tsp.gob.cu/sites/default/files/documentos/del%20proceso%20penal.pdf>

When can police search you and your surroundings?

Proposed Information

It is important to follow this advice:

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- You have the right to deny to personally being searched.
- You have the right to deny searches of your car, house, property or other surroundings.
- You cannot be arrested for refusing to consent to a search without a warrant.
- A warrant is a court order that must be complied with.

As Stated in Article 300.2 of the [●], in the absence of consent of the person, the practice of this diligence requires the authorization of the prosecutor or warrant.

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What if a police officer wants to search my phone?

The police may request access, but you are not obliged to comply. If you deny access, they must ask for authorization from a court of law.

As established in Article 50 of the National Constitution of Cuba, correspondence and other forms of communication between persons are inalienable. They may only be intercepted or recorded by express order of a competent authority, in the cases and with the formalities established by law.

https://siteal.iiiep.unesco.org/sites/default/files/sit_accion_files/11168.pdf

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

You may refuse to give you password.

As established in Article 50 of the National Constitution of Cuba, correspondence and other forms of communication between persons are inalienable. They may only be intercepted or recorded by express order of a competent authority, in the cases and with the formalities established by law.

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

The police may request access, but you are not obliged to comply. If you deny access, they must ask for authorization from a court of law.

As established in Article 50 of the National Constitution of Cuba, correspondence and other forms of communication between persons are inalienable. They may only be intercepted or recorded by express order of a competent authority, in the cases and with the formalities established by law.

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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?

The police may request access, but you are not obliged to comply. If you deny access, they must ask for authorization from a court of law.

Article 50 – National Constitution

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

They can use all the technology that they have to carry out the investigation as they may implement all indispensable actions for such.

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Article 126 d) of Criminal Procedure Code grants the police broad capacities to carry out the indispensable actions and proceedings to obtain elements of proof, to determine the presumed evidence and determine the alleged perpetrators.

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

The search must always be done voluntarily. If you refuse a voluntary search, the police will require the approval of a Court of law. There is an exception when a person has been caught in the act of committing a crime, in which case the police can search without any approval.

According to Article 126 g) of the Criminal Procedure Code, the Police may to conduct searches of persons, luggage, belongings and vehicles; to carry out the inspections necessary for the investigation, with the formalities prescribed by this Law, and request the and to request the approval of the competent authority to carry out the search of a person, when the latter refuses to do so.

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Can they take my picture or record me?

No.

Article 7 of the Criminal Procedure Code:

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Can they ask me where I am going and why?

Yes, if an ongoing investigation where you may be involved.

Article 126 d) of the Criminal Procedure Code establishes that the Police may carry out the necessary actions and procedures to obtain evidence and determine the alleged perpetrators. evidence and determine the alleged perpetrators

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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.

Article No. 343 and 344 of the Criminal Procedure Code.

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

Yes, they can request your National ID. If the police considers that you are a witness to a crime, they may ask you to testify in court. In which case you must tell the truth.

Art 261/262/263/264 of the Criminal Procedure Code

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

Yes, you must correct them explaining the correct situation.

Article 130 de Criminal Procedure Code

<https://www.tsp.gob.cu/sites/default/files/documentos/del%20proceso%20penal.pdf>

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

You do not need to respond to the officers if they speak to you, you may remain silent and leave but you should consider the situation as it may raise suspicion.

Article 130 de Criminal Procedure Code

<https://www.tsp.gob.cu/sites/default/files/documentos/del%20proceso%20penal.pdf>

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?

There are new rights and obligations that appear after you are informed to be arrested.

Article 130 de Criminal Procedure Code

<https://www.tsp.gob.cu/sites/default/files/documentos/del%20proceso%20penal.pdf>

The difference between police telling me what to do and asking me to do something.

Proposed Information

It is important to follow this advice:

The legal difference is that once you are informed you are under arrest, your Rights and Guarantees included in Article 130 Inc 1 of the Criminal Procedure Code now apply.

Article 189.1 - Criminal Procedure Code

<https://www.tsp.gob.cu/sites/default/files/documentos/del%20proceso%20penal.pdf>

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

It depends on the actual situation and context. However, Article 126 g) of the Criminal Procedure Code, establishes that if the person does not consent of the police searching their belongings, the police must request approval of the competent authority.

Article 126 g) – Criminal Procedure Code establishes that the Police may to conduct searches of persons, luggage, belongings and vehicles; to carry out the inspections necessary for the investigation, with the formalities prescribed by this Law, and request the

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and to request the approval of the competent authority to carry out the search of a person, when the latter refuses to do so.

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

You must provide the officer with your identification, otherwise you will be penalized. Leaving this aside, you can remain in silence.

Decree No. 141/88

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 committed a felony, whether the act was done in front of them.

Article 343 of the Criminal Procedure Code.

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

According to Article 341 of the Criminal Procedure Code, no one can be detained except in the cases and with the formalities established in this Law.

Article 341 of the Criminal Procedure Code

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Can I ask for the reason they stopped me?

Yes, The Police, upon becoming aware of an act with the characteristics of a crime, immediately carry out the necessary procedures and can arrest the alleged intervener.

Article 126 of the Criminal Procedure Code

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

No. According to Article 347.3, in the case of a minor under eighteen years of age, the acting authority immediately notifies their parents or legal representative of the arrest.

Article 347.3 of the Criminal Procedure Code

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

According to Article 351 of the Criminal Procedure Code, if the defendant or his defense attorney shows disagreement with the resolution of the prosecutor who decides the complaint appeal on the imposition or denial of the request for revocation or modification of the precautionary measure of provisional detention, he can request judicial control from the competent court.

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Article 351 of the Criminal Procedure Code

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

According to Article 346.1 of the Criminal Procedure Code, upon the arrest of any person, the applicant immediately issues a record in which the time, date, place and reason for the arrest, circumstances in which it occurs, features and particular signs that allow their identification and any other particular are recorded. that is of interest.

Article 346.1 of the Criminal Procedure Code

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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.
- You are likely under arrest if:
 - 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 questions 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.

Article 346 and 347 of the Criminal Procedure Code

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

You are not under arrest until a charge is filed against you. You are innocent until proven otherwise.

Article 95 c) – National Constitution

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What is the difference between detention and arrest?

Detention is a precautionary measure used while investigating an alleged crime. Article 342.1 of the Criminal Procedure Code establishes that the detention is for 24 hours. In the other hand, you are arrested when it is determined that the suspect could be responsible for the fault. Once the suspect is charged, the arrest proceeds.

Article 342.1 of the Criminal Procedure Code

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I am handcuffed, am I arrested?

No, you can be temporarily handcuffed during investigations. This does not imply you are under arrest.

Article 157 of the Criminal Procedure Code

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If my liberty is restricted, am I under arrest?

Not necessarily. You can be detained for 24 hours without being under arrest.

Article 157 of the Criminal Procedure Code

<https://www.tsp.gob.cu/sites/default/files/documentos/del%20proceso%20penal.pdf>

What to do after being warned of your rights?

Proposed Information

It is important to follow this advice:

- You may use your right to remain silent or any of your other rights (e.g., the right to an attorney) by simply stating such.
- 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 recommended without a lawyer present.
- Make sure you know what you're doing when giving up your rights (i.e., right to remain silent, among others).

Article 130 of the Criminal Procedure Code establishes people's rights.

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

Nothing changes, your rights remain the same.

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

It does not matter where the police read your rights, however, when the police caught you is relevant as it is not the same if you are caught when you are committing a crime rather than being caught after.

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 the Police have arrested you and you are under the age of 18, the Police is required to notify your parent, caretaker or legal guardian immediately.

Am I required to make a statement?

Article 493.1. The president instructs the accused of his right to testify or to refrain from it;

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Article 493.1 of the Criminal Procedure Code:

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Must police notify my guardian?

Yes.

Article 130.1 of the Criminal Procedure Code:

<https://www.tsp.gob.cu/sites/default/files/documentos/del%20proceso%20penal.pdf>

Must I confess?

According to Article 494.1 of the Criminal Procedure Code, if the defendant chooses to avail himself of the right not to testify and not answer questions, this decision is recorded in the minutes and they are directed to sit down; in no assumption will be exhorted to declare and be truthful.

Article 494.1 of the Criminal Procedure Code:

<https://www.tsp.gob.cu/sites/default/files/documentos/del%20proceso%20penal.pdf>

What adults can I ask to be with me?

Can be accompanied by their parents or their legal representative.

Article 130.1 of the Criminal Procedure Code:

<https://www.tsp.gob.cu/sites/default/files/documentos/del%20proceso%20penal.pdf>

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

Parents or legal guardians.

Article 130.1 of the Criminal Procedure Code:

<https://www.tsp.gob.cu/sites/default/files/documentos/del%20proceso%20penal.pdf>

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 statement 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.
- Even though you do have to wait to attend court to get a lawyer appointed to you if you do not have sufficient means for a private lawyer, it is recommended to 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 or give any statements without a lawyer present.

Article 129.1 of the Criminal Procedure Code:

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What if I am just a witness?

It is always suggested to call a lawyer in order to prevent any misunderstanding of the process. It may be possible that not enough information will be given to you regarding the reason you were detained or the facts of the case.

Do police always have to tell the truth?

Proposed Information

It is important to follow this advice:

Yes

Can the police lie to me?

They should not.

Do I have to tell the police the truth?

Before giving a statement to the police, it is recommended that you speak to your lawyer first.

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:

Remedies:

- Ask for a lawyer
- Talk to your lawyer and present your testimony to determine if you have been a victim of torture, cruel, inhuman, or degrading treatment.
- It is also important to demand responsibility from the State agents participating in this act of harassment.
- Describe when, where and by whom you were detained: the place where you were arrested and where you were taken, the approximate date and time, as well as if you were detained by the police, black berets, red berets, or people in civilian clothes. Report of the charges against him by the authorities.

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

Proposed Information

It is important to follow this advice:

Remedies:

Verbal abuse is also a form of violence and if it is related to the color of your skin, gender, gender identity or sexual orientation it is also humiliating treatment.

Article 61 of the National Constitution

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How can I respond to circumstances involving discrimination?

Proposed Information

It is important to follow this advice:

Remedies:

You should talk with your lawyer and tell them what happened.

Article 99 of the National Constitution

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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:

Remedies:

Ask for the assistance of a lawyer and describe when, where and by whom you were arrested.

It is important to provide your personal details (if the person you are calling does not know you) because several factors such as your age is especially relevant. Demand that the Police show you their arrest record number at that location and the arrest warrant.

Article 99 of the National Constitution

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Law is generally described as of October 2024.

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