

# Real Rights: young people engaging with law enforcement



Miami, Florida



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](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
- 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 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?**

Generally, you have a constitutional right to remain silent and do not have to answer questions posed by police officers. However, you must provide your name to officers if the officers have a reasonable suspicion that you are involved in a crime. If you are driving and you are pulled over, police officers can also require you to show your license, registration and proof of insurance.

Sources:

[U.S. Const. Amend. V](#); [Fla. Stat. § 901.151 \(2022\)](#); [Fla. Stat. § 322.15 \(2022\)](#); [Fla. Stat. § 320.02 \(2022\)](#); [Fla. Stat. § 316.646 \(2022\)](#); [Know Your Rights: If You Are Approached or Arrested by Law Enforcement \(Police, Immigration Agents, or FBI\) | ACLU of Florida \(aclufl.org\)](#); [What to Do When Stopped by Law Enforcement](#).

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

Non-uniformed police officers should identify themselves when instigating contact with you by displaying their police insignia or departmental credentials. If you are unsure if someone is a police officer, you should ask them for their credentials.

Source:

[MPD Departmental Order 11 § 1.7](#).

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

You have the right to remain silent. If a police officer is making conversation with you, you can decide whether or not to engage in the conversation. However, you should keep calm and not run. If a police officer suspects that you are involved in a crime, you must identify yourself.

Sources:

[U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [Fla. Stat. § 901.151 \(2022\)](#); [Know Your Rights: If You Are Approached or Arrested by Law Enforcement \(Police, Immigration Agents, or FBI\) | ACLU of Florida \(aclufl.org\)](#).

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

Non-uniformed police officers should identify themselves when instigating contact with you by displaying their police insignia or departmental credentials. If you are unsure if someone is a police officer, you should ask them for their credentials.

Source:

[MPD Departmental Order 11 § 1.7](#).

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

Yes. You can inform a police officer that you do not want to speak under the Fifth Amendment of the United States Constitution, and that under the Sixth Amendment of the United States Constitution, you would like to speak to an attorney. However, if you are stopped on suspicion of a crime, and asked to identify yourself, you must comply. If you are stopped during a traffic stop, police officers can also ask for your license, proof of insurance and registration.

If you do not want to speak without a lawyer, you should tell the police officers that you want to remain silent and would like to speak to a lawyer immediately. You do not have to give any further explanation. If you cannot pay for a lawyer, and you have been arrested on suspicion of a crime, one will be provided to you. If you have been arrested for immigration or deportation proceedings, a lawyer will not be provided free of charge. However, you have

the right to hire a lawyer. If you cannot afford a lawyer, ask for a list of pro bono legal service providers.

Sources:

[Fla. Stat. § 27.40 \(2022\)](#); [Fla. Stat. § 901.151 \(2022\)](#); [Fla. Stat. § 322.15 \(2022\)](#); [Fla. Stat. § 320.02 \(2022\)](#); [Fla. Stat. § 316.646 \(2022\)](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [Know Your Rights: If You Are Approached or Arrested by Law Enforcement \(Police, Immigration Agents, or FBI\) | ACLU of Florida \(aclufl.org\)](#); [What to Do When Stopped by Law Enforcement.](#)

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

Sitting down may be considered resisting a police officer, which is a chargeable offense in Florida. If you would like to sit down, you should ask the police officer if you can sit down, and if they say no, do not disobey. It is important that the police officers do not perceive your actions as resisting or obstructing their police functions.

Sources:

[Fla. Stat. § 843.01 \(2022\)](#); [Fla. Stat. § 843.02 \(2022\)](#); [Know Your Rights: If You Are Approached or Arrested by Law Enforcement \(Police, Immigration Agents, or FBI\) | ACLU of Florida \(aclufl.org\).](#)

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

If you are asked to stop by a police officer, you should not run. While you have the right to remain silent, do not argue, resist or obstruct the officer. If you would like to run, ask the officer if you are free to leave so that your running is not perceived as fleeing a potential crime scene. If you run away after a police officer has asked you to stop, that could be a third-degree felony for fleeing from or eluding a police officer.

Sources:

[U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [Fla. Stat. § 843.01 \(2022\)](#); [Fla. Stat. § 843.02 \(2022\)](#); [C.E.L. v. State, 24 So. 3d 1181 \(Fla. 2009\).](#)

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

No. You should not tell others to run. Florida law prohibits anyone from resisting a law enforcement officer. Telling others to run when an officer has made an opposite request could be considered resisting the requests of an officer and be punishable under Florida law.

Sources:

[Fla. Stat. § 843.01 \(2022\)](#); [Fla. Stat. § 843.02 \(2022\)](#); [C.E.L. v. State, 24 So. 3d 1181 \(Fla. 2009\).](#)

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

Yes. You can inform a police officer that the officer's language is not your first language without waiving your rights. If your intention is to remain silent, you do not need to have any further communication with the officer.

Sources:

[U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\).](#)

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

Yes. A law enforcement officer can stop and detain a person under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime. However, there are several other reasons why a police officer may stop you: the

officer may want to warn you about a potentially dangerous situation; the officer might think you are in trouble and need help; or you may have witnessed a crime.

Sources:

[Fla. Stat. § 901.151 \(2022\); What to Do When Stopped by Law Enforcement | South Miami, FL - Official Website \(southmiamifl.gov\).](#)

## 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.
- 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 can take your phone from you during an arrest, but they cannot search the contents of your phone without approval from a judge, known as a warrant. If police officers do not have a warrant, you may also give the officers your consent to search the contents of your phone.

Usually, the officer will ask if they can search your phone. You can either grant your consent or, if you do not want the officer to search your phone, you can politely say that you do not give them permission to search your phone. If the officer wants to hold on to your phone, do not resist, but calmly state that you do not want them to search the contents of your phone and would like to talk to a lawyer.

Sources:

[U.S. Const. Amend. IV; Riley v. California, 134 U.S. 373 \(2014\).](#)

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

You do not have to give police officers the password to your phone, unless they have a warrant. Police officers need a warrant to search the contents of your phone. Without a warrant, you do not have to allow the officers to search the contents of your phone. However, the officers can hold on to your phone until they obtain a warrant. If the police obtain a warrant, they can force you to unlock the phone. You should not give the officers the password to your phone until you confirm they have a warrant for it.

Sources:

[U.S. Const. Amend. IV; Riley v. California, 134 U.S. 373 \(2014\).](#)

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

Police officers can take your phone and hold on to it if they have probable cause, i.e., more than a reasonable suspicion, that you are involved in criminal activity. You should not resist an officer taking your phone physically from you, but you do not have to give that officer permission to search the contents of your phone. Tell the police officer calmly that you do not give them permission to search your phone, and that you will not give them your password without a warrant.

Sources:

[U.S. Const. Amend. IV; Riley v. California, 134 U.S. 373 \(2014\).](#)

**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?**

No. You do not have to give police officers the device password, unless they have a warrant that forces you to give it to them. Even if you are under arrest, you do not have to give police officers the password to your phone. If they ask for the password without a warrant, you can politely decline and say that you do not give them permission to search your phone.

Sources:

[U.S. Const. Amend. IV; Riley v. California, 134 U.S. 373 \(2014\).](#)

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

Police officers may record you using body-worn-cameras during enforcement activities. However, body-worn-cameras may not be used in places where you have a reasonable expectation of privacy, such as a dressing room or restroom. Police officers are not required to inform you that you are being recorded using these devices.

Police officers can also take your finger prints and photograph if you have been charged with a crime or if they have probable cause that you are involved in a crime.

Sources:

[Fla. Stat. § 985.11 \(2022\); MPD Departmental Order 11 § 26.](#)

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

Yes. If a police officer has reason to believe you are armed or pose a danger to yourself or others they can search your backpack or other items on you without a warrant. If an officer asks to search your bag, you can tell them politely and calmly that you do not consent to the search. However, do not resist the officer's request; simply state that you do not agree with the search. Juvenile offenders, once in police custody, must be searched by officers of the same gender.

Sources:

[Fla. Stat. § 901.151 \(2022\); MPD Departmental Order 11 § 25.5.12.](#)

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

Police officers can take pictures and videos of you in public. However, police officers cannot take a picture or video of you in a private place, like your residence. Police officers will also need your consent to record a phone conversation with you in a private place, unless the officers have a warrant.

Sources:

[Fla. Stat. § 934.03 \(2022\); MPD Departmental Order 11 § 26.](#)

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

You have the right to remain silent. If you want to remain silent, tell the police officers that clearly and calmly. The officers may ask where you are going and why, but you do not have to answer. However, you must identify yourself if you are stopped on suspicion of a crime or traffic violation.

Sources:

[U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [Know Your Rights: If You Are Approached or Arrested by Law Enforcement \(Police, Immigration Agents, or FBI\) | ACLU of Florida \(aclufl.org\)](#); [Know Your Rights | Stopped by Police \(aclu.org\)](#).

## 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, must I speak with the police and answer questions?

You have the right to remain silent and do not have to answer questions. You are only expected to identify yourself when you are stopped on suspicion of a crime or traffic violation. You do not have to answer any other questions and can, calmly and politely, inform police officers that you do not wish to answer questions.

Sources:

[U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [Fla. Stat. § 901.151 \(2022\)](#); [Know Your Rights: If You Are Approached or Arrested by Law Enforcement \(Police, Immigration Agents, or FBI\) | ACLU of Florida \(aclufl.org\)](#).

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

You do not have to correct police officers if they tell you something they are investigating is wrong. Since you have the right to remain silent, it is your choice if you want to tell them anything. Also, it is best to be aware that police officers can lie to you (see answer to 10(a)).

Sources:

[U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [Know Your Rights: If You Are Approached or Arrested by Law Enforcement \(Police, Immigration Agents, or FBI\) | ACLU of Florida \(aclufl.org\)](#).

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

You can speak to the police officer, or remain silent. It is your choice. However, you should remain calm and do not run. If you wish to remain silent, politely inform the officer that you would like to remain silent.



Sources:

[U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [Know Your Rights: If You Are Approached or Arrested by Law Enforcement \(Police, Immigration Agents, or FBI\) | ACLU of Florida \(aclufl.org\)](#).

**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 about to get arrested, officers must read you your Miranda rights. Your Miranda rights include your right to remain silent and right to an attorney. Anything you say to police officers before, during or after an arrest can be used against you in a court of law.

Sources:

[U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#).

## **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?**

**Police deciding to search you:**

Police officers cannot decide to search you on a whim. If the officers have reasonable suspicion that you committed a crime or are in the process of committing a crime, then the police are allowed to stop you and ask you questions. The officers may also search you, including your backpack or pockets on your clothing, if the officers believe you have a dangerous weapon. In other words, if the officers do not have a reasonable suspicion that you committed a crime or are in the process of committing a crime, then the officers cannot search you. This is commonly known as a "stop and frisk."

Source:

[Fla. Stat. § 901.151 \(2022\)](#).

The police may also search you at any time if the police have probable cause (i.e., justified reasons based on facts) to believe they will find evidence of a crime on your person or items in your possession. The officers may search you, including your backpack, for not only weapons but also for any evidence of a crime. This is commonly known as "search incident to a lawful arrest."

Source:

[Fla. Stat. § 901.21 \(2022\)](#).

You have more protection from officers searching the contents of electronic devices such as your phone. Police officers can ask to search your phone during a stop or take your phone from you during an arrest, but, with limited exceptions, they cannot search the contents of your phone without approval from a judge, known as a warrant. This is because the U.S. Constitution has protections against "unreasonable searches and seizures." In other words, the police must have a good reason to search your phone, and usually must get a warrant, to do so.

The important takeaway for searches of your phone is that if the police do not have a warrant to search your phone, do not give approval to the officers to search the contents of your phone (and do not give them your password to access your phone). Usually the officer will ask if they can search your phone, and if you do not want them to, politely say that you do not give them permission to search your phone. Then, politely say that you want to talk to a lawyer.

[back to top](#)



If the officers want to hold on to your phone, do not resist, but calmly state that you do not wish for them to search your phone and would like to talk to a lawyer.

Sources:

[U.S. Const. Amend. IV](#); [MDPD Handbook - Legal Guidelines - Search and Seizure](#); [Riley v. California 134 U.S. 373 \(2014\)](#).

### **You agreeing to a search:**

You can waive your Constitutional Fourth Amendment right against unlawful search and seizure by agreeing to a search. The officer does not have to have reasonable suspicion, probable cause or a warrant to ask for your consent (agreement to be searched).

Your consent must always be freely and voluntarily given. If there is any evidence of coercion (i.e., the officer makes physical or improper threats), then the search is not legal.

The important takeaway is you can politely say "no" to a police officer when they ask if they may search you, and they do not have a legal basis to search you (legal basis means reasonable suspicion you were involved in a crime, probable cause you committed a crime or the officer has a warrant for your arrest).

Sources:

[U.S. Const. Amend. IV](#); [MDPD Handbook - Legal Guidelines - Search and Seizure](#).

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

You have the right to remain silent and cannot be punished for refusing to answer questions. If you want to remain silent, tell the officers out loud. However, you are expected to identify yourself to Florida law enforcement officers when you are stopped on suspicion of a crime or a traffic violation.

If you are arrested, do not resist the arrest. Tell the officers you want to remain silent and ask for a lawyer immediately. Do not give any explanation or pretext. If you cannot pay for a lawyer, and you have been arrested on suspicion of a crime, one will be provided to you. If you have been arrested for immigration or deportation proceedings, a lawyer will not be provided. However, you have the right to hire a lawyer. If you cannot afford a lawyer, ask for a list of pro bono legal services providers. Do not say anything, sign anything or make any decision without a lawyer.

Sources:

[U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [Know Your Rights: If You Are Approached or Arrested by Law Enforcement \(Police, Immigration Agents, or FBI\) | ACLU of Florida \(aclufl.org\)](#).

## **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 or not the act was done in front of them.

[back to top](#)

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

Yes. A law enforcement officer can stop and detain a person under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime. However, there are several other reasons why you may be stopped by a police officer: the officer may want to warn you about a potentially dangerous situation; the officer might think you are in trouble and need help; or you may have witnessed a crime.

Sources:

[Fla. Stat. § 901.151 \(2022\); What to Do When Stopped by Law Enforcement | South Miami, FL - Official Website \(southmiamifl.gov\).](#)

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

You can politely ask for the reason you were stopped, but the officer is not obligated to provide the reason at that time. However, if you are being arrested, the officer must inform you of the cause of arrest, unless (i) you flee or forcibly resist before the officer has the opportunity to inform you; or (ii) giving you the information will imperil the arrest.

Sources:

[Fla. Stat. § 901.17 \(2022\); What to Do When Stopped by Law Enforcement | South Miami, FL - Official Website \(southmiamifl.gov\).](#)

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

The best approach is to remain quiet, cooperate with instructions and avoid becoming argumentative. If the other person contests the violation, they will have an opportunity to address the matter in court.

You also have the right to remain silent and cannot be punished for refusing to answer questions. However, you are expected to identify yourself to Florida law enforcement officers when you are stopped on suspicion of a crime or a traffic violation. You can also ask the police officer if you are free to leave. If the officer says yes, remain silent or leave quietly. If the officer says no, you still have the right to remain silent.

Sources:

[U.S. Const. Amend. V; Miranda v. Arizona, 384 U.S. 436 \(1966\); Know Your Rights: If You Are Approached or Arrested by Law Enforcement \(Police, Immigration Agents, or FBI\) | ACLU of Florida \(aclufl.org\); What to Do When Stopped by Law Enforcement | South Miami, FL - Official Website \(southmiamifl.gov\).](#)

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

You have the right against unreasonable search and seizure under the Fourth Amendment of the United States Constitution. In order for police officers to stop you, they must have probable cause or a good basis for suspecting that you committed, are committing or are about to commit a crime.

If you think the stop is unjustified, you can (1) file a complaint against the officer, (2) sue the officer, the agency or the community employing the officer, or (3) contact the Florida Attorney General to pursue an action against the officer.

### **(1) File a complaint**

Every law enforcement agency and correctional agency is required to establish and put into operation a system for receiving, investigating and taking action on complaints. The process will be specific to each department employing the officer. The office must, within 5 business days, forward the complaint to the employing agency of the officer who is the subject of the complaint for review or investigation.

[back to top](#)

Sources:

[Fla. Stat. § 112.533\(1\)\(b\)\(1\) \(2022\); Fla. Stat. § 112.533\(1\)\(a\) \(2022\).](#)

## **(2) Sue the officer, the agency or the community**

You may sue a police officer if the officer engaged in misconduct that violated your constitutional rights. Examples of police behavior that might be classified as misconduct include police brutality, racial profiling, false arrest, coercion, imprisonment, abuse of authority and sexual or physical assault.

Harassment is a common type of misconduct claim. Harassment includes a pattern of behavior on the part of the officers or the entire department, such as surveilling or spying on you illegally, making racist, homophobic or sexist comments or racial profiling.

A second common type of police violation is a Fourth Amendment violation. Your Fourth Amendment rights include protection from unreasonable searches or seizures. Police officers are classified as agents of the government and therefore, must adhere to everything listed in the Fourth Amendment. When an officer violates your Fourth Amendment rights, such as arresting you without probable cause or searching your home without a valid warrant, it may impact the remainder of any criminal case against you and can be the subject of its own lawsuit.

Another common type of police misconduct case is discrimination. Discrimination is similar to harassment, but the misconduct will be on the basis of sex, gender, ethnicity, race or sexual orientation, indicating that this behavior is part of an overall pattern.

Most cases involving the use of excessive force by the police are brought in federal court under the federal statute 42 U.S.C. § 1983. In some jurisdictions, you may have a claim against the police officer's supervisor for their subordinate's use of excessive force. This is called "supervisory liability." Although the Supreme Court has suggested that supervisory liability may not exist under section 1983, most lower courts still recognize at least some narrow form of the theory. But they differ widely in their views (and, in some states, judges on the same bench disagree with each other).

You may be able to recover from the local governing body — typically, a city — that employed the police officer. These are called Monell claims. To have a Monell claim, you must show that a city policy or custom is the "moving force" behind the use of excessive force.

Sources:

[Fla. Stat. § 768.28 \(2022\); Fla. Stat. § 760.01, et seq. \(2022\); Fla. Stat. § 760.51 \(2022\).](#)

## **(3) Contact the Florida Attorney General**

The Attorney General may bring a civil or administrative action for damages, injunctive relief or other appropriate relief for violations. Any civil actions will be brought in the name of the state and may be brought on behalf of the injured person. Any damages recovered shall accrue to the injured person.

Source:

[Fla. Stat. § 760.51 \(2022\).](#)

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

You can ask for an officer's credentials, as it is department procedure for officers to identify themselves when instigating contact with you. However, it is not clear whether you can request any other identifying information or whether the police department can later keep the identify of officers confidential.

Marsy's Law is a constitutional amendment passed by Florida voters in 2018. The law gives crime victims and their families the right to hide their names and information from the public. Whether Marsy's law can be applied to keep the identity of officers confidential is currently being evaluated by the Florida Supreme Court. Before Marsy's Law was passed, if there was an incident involving a police officer, anyone could request a copy of the police report with the officer's name. From there, you could find that officer's disciplinary history, civilian complaints, if they had shot anyone in the past and other identifying information. However, now the names of officers and other corresponding details are being hidden.

Sources:

[Fla. Const. Art. 1 § 16\(b\)](#); [Petitioner News Media Coalition's Reply Brief on the Merits](#); [Victim Rights & Marsy's Law](#); [MPD Departmental Order 11 § 1.7](#).

## 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?

If you have been detained and do not know if you are under arrest, you have the right to remain silent. However, you may still need to provide your name if an officer believes you are involved in criminal activity.

An officer making an arrest must tell you they have the authority to arrest you or that a warrant has been issued for your arrest. The officer must also tell you the cause of arrest; however, the officer does not need to inform you of the cause of the arrest if you flee, forcibly resist or giving you the information would imperil the arrest. If you are being arrested pursuant to a warrant, the officer need not have the warrant in their possession at the time of arrest but must show it to you as soon as practical if you ask.

Your right to remain silent is very important. The statements that individuals made to officers prior to an arrest are often used against defendants in court. Voluntarily opting not to speak to police about a criminal matter is not a crime – no matter how much pressure you might feel.

Even if you are entirely innocent, it is often still wise to stay silent until you talk to an attorney. This is especially true in any situation where you have any reason to believe you might be a potential suspect.

Sources:

[U.S. Const. Amend. V](#); [Fla. Stat. § 901.151 \(2022\)](#); [Fla. Stat. § 901.151 \(2022\)](#); [Fla. Stat. § 901.17 \(2022\)](#); [Fla. Stat. § 901.21 \(2022\)](#); [Fla. Stat. § 901.24 \(2022\)](#).

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

### **Detention**

With a detention, you are not under arrest, but you are either not free to leave or you believe you are not free to leave. A police officer may temporarily detain you if they reasonably believe you have committed, are committing or are about to commit a crime. They may ask for your name and have you remain at the scene, possibly in a police car. However, the officer can only detain you for as long as is reasonably necessary to investigate the circumstances which led them to have this belief.

If the officer reasonably believe you are armed with a dangerous weapon, they may search you, but only to the extent needed to determine if you are armed. The officer may seize any weapon found during this search. If you pose a safety risk to yourself or others, you may be handcuffed. This does not mean you have been arrested.

The police officer may not remove you from the area unless they have probable cause to arrest you, or you agree to leave voluntarily. You are not required to leave with the officer if you have not been arrested. After the investigation, if there is probable cause for arrest, the officer may arrest you. If there is no probable cause for an arrest, you will be released.

### **Arrest**

With an arrest, a police officer will take you into custody. The officer must clearly inform you of their authority to arrest you and clearly inform you that you have been arrested, unless you flee or forcibly resist arrest before they can do so.

At the time of an arrest, the police officer is required to read you your Miranda rights. Your Miranda rights include your right to remain silent, right to an attorney, and the notice that anything you say may be used against you in court. You also have the right to know the crime or charges against you. After an arrest, the police officer may remove you from the scene.

If you have been lawfully arrested, the police officer may search you and the area immediately around you to protect themselves from attack, prevent you from escaping and look for evidence of a crime. The officers may seize anything discovered during this search.

Sources:

[U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [Fla. Stat. § 901.151 \(2022\)](#); [Fla. Stat. § 901.17 \(2022\)](#); [Fla. Stat. § 901.21 \(2022\)](#); [Fla. Stat. § 901.24 \(2022\)](#).

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

Not necessarily. An officer may handcuff you if they believe you are an immediate threat to the safety of yourself or those around you.

An officer making an arrest must tell you of their authority to arrest you or that a warrant has been issued for your arrest. The officer must also inform you of the cause of the arrest, unless (i) you flee or forcibly resist before the officer has the opportunity to inform you; or (ii) giving you the information will imperil the arrest. If you are being arrested pursuant to a warrant, the officer need not have the warrant in their possession at the time of arrest but must show it to you as soon as practicable if you ask.

Sources:

[Fla. Stat. § 901.151 \(2022\)](#); [Fla. Stat. § 901.17 \(2022\)](#); [Fla. Stat. § 901.21 \(2022\)](#); [Fla. Stat. § 901.24 \(2022\)](#).

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

Not necessarily. A police officer may temporarily detain you if they reasonably believe you have committed, are committing or are about to commit a crime. They may ask for your name and have you remain at the scene, but for only as long as is reasonably necessary to investigate the circumstances which led them to have this belief. After the investigation, the police officer must either arrest you or release you. The officer may not remove you from the scene unless you have been arrested.

A police officer making an arrest must tell you of their authority to arrest you or that a warrant has been issued for your arrest. The officer must also inform you of the cause of arrest, unless (i) you flee or forcibly resist before the officer has the opportunity to inform you; or (ii) giving you the information will imperil the arrest. If you are being arrested pursuant to a warrant, the officer need not have the warrant in their possession at the time of arrest but must show it to you as soon as practicable if you ask.

Sources:

[Fla. Stat. § 901.151 \(2022\)](#); [Fla. Stat. § 901.17 \(2022\)](#); [Fla. Stat. § 901.21 \(2022\)](#); [Fla. Stat. § 901.24 \(2022\)](#).

## **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 have been arrested, you have your Miranda rights whether they have been read to you or not. These include the right to remain silent and the right to an attorney. You must affirmatively state you are invoking your right to remain silent and you must ask for an attorney. If you are read your Miranda rights and you chose to speak with the police, any statements you make can be used as evidence against you.

Sources:

[U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#).

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

No. However, if you are arrested and you are not read your rights, any statements you make between the time of the arrest and when you are read your rights may not be admissible in court.

Sources:

[U.S. Const. Amend. IV](#); [U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [MDPD Handbook - Legal Guidelines - Search and Seizure](#).

## 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, caretaker or legal guardian.

### Am I required to make a statement?

No. If police officers reasonably believe you committed, are committing or are about to commit a crime, you must identify yourself. Otherwise, you can remain silent.

Sources:

[U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [Fla. Stat. § 901.151 \(2022\)](#).

### Must police notify my guardian?

Generally, notifying and obtaining the consent of a juvenile's parent or guardian is recommended practice. However, the police may interrogate a juvenile without obtaining parent or guardian consent if the juvenile is able to understand their rights. The custodial interrogation of a juvenile may also have a different standard of affording Miranda warnings to the juvenile in custody.

Sources:

[J.D.B. v. North Carolina, 131 S.Ct. 2394 \(2011\)](#); [MDPD Handbook - Legal Guidelines - Juveniles](#).

### Must I confess?

No. You have the right to remain silent and cannot be punished for refusing to answer questions. However, you are expected to identify yourself to Florida law enforcement officers when you are stopped on suspicion of a crime or a traffic violation. If you want to remain silent, tell the officer out loud.

If you choose to give information to a police officer related to any crime, you cannot lie. Knowingly giving false information concerning the alleged commission of any crime is a misdemeanor. If you chose to give information to a police officer who is investigating a missing persons case or a felony crime, knowingly providing false information with the intent to mislead the officer or impede the investigation is a first degree misdemeanor.

If you provide false information, you may be charged with perjury and be subjected to fines and/or imprisonment. The fines and/or time of imprisonment depend on the type of crime being investigated. Recantation is a defense only if it occurs during the same continuous proceeding and the false statement has not substantially affected the proceeding or is done before it becomes clear the false statement has been or will be exposed.



Sources:

[U.S. Const. Amend. V](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [Fla. Stat. § 837.05 \(2022\)](#); [Fla. Stat. § 837.055 \(2022\)](#); [Fla. Stat. § 837.07 \(2022\)](#); [Fla. Stat. § 901.36 \(2022\)](#); [Know Your Rights: If You Are Approached or Arrested by Law Enforcement \(Police, Immigration Agents, or FBI\) | ACLU of Florida \(aclufl.org\)](#).

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

You can ask to have your legal guardian and attorney present. If you are taken into custody, your legal guardian and attorney should be involved at every step of the process, if possible.

Source:

[MDPD Handbook - Legal Guidelines - Juveniles](#).

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

When a child is taken into custody, the person taking the child into custody must attempt to notify the parent, guardian or legal custodian of the child. The person taking the child into custody shall continue such attempt until the parent, guardian or legal custodian of the child is notified or the child is delivered to the department under Fla. Stat. §§ 985.14 and 985.145, whichever occurs first. If the child is delivered to the department before the parent, guardian, or legal custodian is notified, the department shall continue the attempt to notify until the parent, guardian, or legal custodian of the child is notified. Following notification, the parent or guardian must provide identifying information, including name, address, date of birth, social security number, and driver license number or identification card number of the parent or guardian to the person taking the child into custody or the department.

Source:

[Fla. Stat. § 985.101 \(2022\)](#).

## **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?**

Witnesses are typically permitted to meet and communicate with lawyers before and after they testify. Additionally, while there is no actual Florida law that prohibits the witness from communicating with a lawyer during their testimony, there are mixed feelings about doing so. Some find this to be unethical, alleging that the attorney is coaching the witness. Thus, reaching out to a lawyer during testimony should be taken on a case-by-case basis depending on the reason why the witness needs to reach out.

Source:

[Restrictions on Lawyers Communicating With Witnesses During Testimony: Law, Lore, Opinions, and the Rule.](#)

## 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. Police officers can lie to you, to an extent. They can lie to you about the facts of a situation, but they cannot create false physical evidence in support of a lie.

To help explain, police officers can lie to you about (i) whether someone arrested with you confessed; (ii) whether they have spoken to your friends or family; (iii) whether they can make things easier for you; and (iv) the existence of evidence.

Police officers cannot create false evidence and present it to you. For example, a police officer may tell you they found your prints at the scene, but they cannot show you a fingerprint card and tell you those are your prints from the scene.

Sources:

[Frazier v. Cupp, 394 U.S. 731 \(1969\); State v. Cayward, 552 So. 2d 971 \(Fla. Dist. Ct. App. 1989\).](#)

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

Yes. If you choose to give information to a police officer related to any crime, you may not lie.

You always have the right to remain silent and cannot be punished for refusing to answer questions. However, you are expected to identify yourself to Florida law enforcement officers when you are stopped on suspicion of a crime or a traffic violation. If you want to remain silent, tell the officer out loud.

If you choose to give information to a police officer related to any crime, you cannot lie. Knowingly giving false information concerning the alleged commission of any crime is a misdemeanor. If you chose to give information to a police officer who is investigating a missing persons case or a felony crime, knowingly providing false information with the intent to mislead the officer or impede the investigation is a first degree misdemeanor.

If you provide false information, you may be charged with perjury and be subject to fines and/or imprisonment. The fines and/or time of imprisonment will depend on the type of crime being investigated. Recantation is a defense only if it occurs during the same continuous proceeding and the false statement has not substantially affected the proceeding or is done before it becomes clear the false statement has been or will be exposed.

Sources:

[U.S. Const. Amend. V; Miranda v. Arizona, 384 U.S. 436 \(1966\); Fla. Stat. § 837.05 \(2022\); Fla. Stat. § 837.055 \(2022\); Fla. Stat. § 837.07 \(2022\); Fla. Stat. § 901.36 \(2022\); Know](#)

## 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:

You may submit a complaint about the Miami Police by visiting or calling any Miami Dade police station. You can also email the Department at [pcbinfo@mdpd.com](mailto:pcbinfo@mdpd.com) or mail a complaint to:

Miami Dade Police Department  
Professional Compliance Bureau  
18805 NW 27th Avenue  
Miami Gardens, FL 33056-3154.

All complaints may be submitted anonymously.

Source:

[Miami-Dade Police Department Professional Compliance Bureau Brochure.](#)

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

### Proposed Information

It is important to follow this advice:

See answers to numbers 11 and 13.

## How can I respond to circumstances involving discrimination?

### Proposed Information

It is important to follow this advice:

Police officers cannot discriminate against you based on your race, gender or sexual orientation. If you believe that you have been the subject of, for instance, traffic stops or detentions (even if they do not result in your arrest) because of your race, gender, sexual orientation or other identifying characteristics, you may be entitled to sue the police department.

If you think the stop is unjustified, you can **(1) file a complaint against the officer; (2) sue the officer, the agency or the community employing the officer; or (3) contact the Florida Attorney General** to pursue an action against the officer.

#### **(1) File a complaint**

Every law enforcement agency and correctional agency is required to establish and put into operation a system for receiving, investigating and taking action on complaints. The process will be specific to each department employing the officer. The office must, within 5 business days, forward the complaint to the employing agency of the officer who is the subject of the complaint for review or investigation.

Sources:

[Fla. Stat. § 112.533\(1\)\(a\) \(2022\); Fla. Stat. § 112.533\(1\)\(b\)\(1\) \(2022\).](#)

## **(2) Sue the officer, the agency or the community**

You may sue a police officer if the officer engaged in misconduct that violated your constitutional rights. Examples of police behavior that might be classified as misconduct include police brutality, racial profiling, false arrest, coercion, imprisonment, abuse of authority and sexual or physical assault.

Harassment is a common type of misconduct claim. Harassment includes a pattern of behavior on the part of the officers or the entire department, such as (i) surveilling or spying on you illegally; (ii) making racist, homophobic or sexist comments; (iii) or racial profiling.

A second common type of police violation is a Fourth Amendment violation. Your Fourth Amendment rights include protection from unreasonable searches or seizures. Police officers are classified as agents of the government and therefore, must adhere to everything listed in the Fourth Amendment. When an officer violates your Fourth Amendment rights, such as arresting you without probable cause or searching your home without a valid warrant, it may impact the remainder of any criminal case against you and can be the subject of its own lawsuit.

Discrimination is another common type of police misconduct. Discrimination is similar to harassment, but the misconduct will be on the basis of sex, gender, ethnicity, race or sexual orientation, indicating that this behavior is part of an overall pattern.

Most cases involving the use of excessive force by the police are brought in federal court under the federal statute [42 U.S.C. § 1983](#). In some jurisdictions, you may have a claim against the police officer's supervisor for their subordinate's use of excessive force. This is called "supervisory liability." Although [the Supreme Court has suggested that supervisory liability may not exist under section 1983](#), most lower courts still recognize at least some narrow form of the theory. But they differ widely in their views.

You may be able to recover from the local governing body — typically, a city — that employed the police officer. These are called Monell claims. To have a Monell claim, you must be able to show that a city policy or custom is the "moving force" behind the use of excessive force.

Sources:

[Fla. Stat. § 768.28 \(2022\)](#); [Fla. Stat. § 760.01, et seq. \(2022\)](#); [Fla. Stat. § 760.51 \(2022\)](#).

## **(3) Contact the Florida Attorney General**

The Attorney General may bring a civil or administrative action for damages, injunctive relief or other appropriate relief for violations. Any civil action will be brought in the name of the state and may also be brought on behalf of the injured person. Any damages recovered under this section shall accrue to the injured person.

Source:

[Fla. Stat. § 760.51 \(2022\)](#).

## **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:

Police officers cannot search you without a valid reason, such as (i) reasonable suspicion you possess a dangerous weapon, (ii) probable cause you committed a crime, (iii) the police officers have an arrest warrant for you, or (iv) you provide consent to the search.

[back to top](#)

Police officers also cannot subject you to a strip search, unless the police officers have probable cause to believe that you are concealing a weapon, a controlled substance or stolen property. Strip searches must also be performed by a person of the same gender as the arrested person and on premises where the search cannot be observed by persons who are neither conducting the search or observing the search. Observers must also be of the same gender as the arrested person. Body cavity searches must be performed under sanitary conditions.

If you believe that you were the subject of an improper search, you can hire an attorney to help you determine if the search was improper. If you have been arrested as a result of the search, you are entitled to an attorney. If you and your parent or guardian cannot afford an attorney, one will be appointed to you.

You can submit a complaint about the Miami Police by visiting or calling any Miami Dade police station. You can also email the Department at [pcbinfo@mdpd.com](mailto:pcbinfo@mdpd.com) or mail a complaint to:

Miami Dade Police Department  
Professional Compliance Bureau  
18805 NW 27th Avenue  
Miami Gardens, FL 33056-3154.

All complaints may be submitted anonymously.

Sources:

[Fla. Stat. § 901.211 \(2022\)](#); [Fla. Stat. § 901.24 \(2022\)](#).

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Law is generally described as of April 2023.

[back to top](#)