

# Real Rights: young people engaging with law enforcement

 Philadelphia, Pennsylvania



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 are 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 just for refusing to answer questions, but you could still be detained or arrested for other reasons. When stopped by the police on the street, you can always refuse to answer any of their questions, and you may ask if you are being detained. If officers respond that you are not being detained, you may stop the conversation altogether and walk away.

<https://constitution.congress.gov/constitution/amendment-5/>

If you answer questions, you may be asked to consent to a search. Police typically need reasonable suspicion to stop an individual. However, police may also engage with you and attempt to gain your consent to a search. Continuing to stay in a police interaction is typically considered consenting. You do not need to consent to a search.

*U.S. v. Mendenhall*, 446 U.S. 544 (1980),  
<https://www.law.cornell.edu/supremecourt/text/446/544>

## What if the officers do not identify themselves?

You can ask them if they are a police officer. They are legally required to show ID when asked.

[37 Pa. Code § 42.21](#)

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

The police can stop and detain you to inquire about a suspected crime where they have a "reasonable suspicion" that a crime has taken place (*Terry v Ohio*, 392 US 1 (1968)) (*Fourth Amendment*). A mere stop or detention is not the same as being under arrest and, where police investigate and no longer have a reasonable suspicion, you should be allowed to end the encounter and leave the detention.

To learn more about your US law Miranda rights to find their equivalents in all jurisdictions, visit: [www.mirandawarning.org](http://www.mirandawarning.org).

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

You can ask them if they are a police officer. They are legally required to show ID when asked.

Police officers shall be prepared to display their official identification upon request. Police officers shall honor these requests when the request is reasonable and the police officer's safety has been ensured. If the police officer does not carry official identification, the police officer may not attempt to stop traffic law violators, unless there is immediate threat to public safety.

[37 Pa. Code § 42.21](#)

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

Under *Miranda v. Arizona*, statements you make when you are being interrogated by police (asked questions after being placed in custody of police, such as after being placed in a police car) will not be admissible in court against you if the police did not inform you of your *Miranda* rights, or the right to remain silent, to speak to a lawyer, or to have a lawyer appointed for you if you cannot afford one. As such, if you are placed in police custody or are being interrogated, evoke your *Miranda* rights and ask to speak to a lawyer.

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

You can sit as long as it's not with intent to resist arrest, and as long as the act of sitting does not create risk of bodily injury to the officer or anyone else.

Philadelphia Resisting Arrest Charges, <https://goldsteinmehta.com/philadelphia-resisting-arrest-charges#:~:text=In%20order%20to%20convict%20someone,of%20bodily%20injury%20to%20the>

§ 5104. Resisting arrest or other law enforcement.

A person commits a misdemeanor of the second degree if, with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

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

As a general rule, **running or walking away when approached by police or running after seeing an officer or patrol car is not, in and of itself, reason to justify a police chase and stop/frisk (pat down) of the person.** In other words, an officer cannot say that walking away or running away justifies chasing after that person and then conducting a stop and frisk. There must be some other fact that supports reasonable suspicion to (1) chase someone who is running away, and (2) stop and frisk the person. See *Commonwealth v. Matos*, a **1996 Pennsylvania Supreme Court case** which held that police who chase after someone who is running away must have reasonable suspicion that justifies the chase in order to retrieve contraband dropped by the suspect during the chase.

However, state and federal laws are clear that **being in a high crime area and running or walking away when police approach does justify a stop and search.** See *Illinois v. Wardlow*, a **2000 U.S. Supreme Court case** which upheld a conviction where police officers chased, stopped and frisked a defendant who fled in a high crime area. Likewise, in *Commonwealth v. Jefferson* (2004), the PA Superior Court upheld a drug conviction where the defendant, who was in a high crime area, fled after he noticed a police officer.

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

As a general rule, **running or walking away when approached by police or running after seeing an officer or patrol car is not, in and of itself, reason to justify a police chase and stop/frisk (pat down) of the person.** In other words, an officer cannot say that walking away or running away justifies chasing after that person and then conducting a stop and frisk. There must be some other fact that supports reasonable suspicion to (1) chase someone who is running away, and (2) stop and frisk the person. See *Commonwealth v. Matos*, a **1996 Pennsylvania Supreme Court case** which held that police who chase after someone who is running away must have reasonable suspicion that justifies the chase in order to retrieve contraband dropped by the suspect during the chase.

However, state and federal laws are clear that **being in a high crime area and running or walking away when police approach does justify a stop and search.** See *Illinois v. Wardlow*, a **2000 U.S. Supreme Court case** which upheld a conviction where police officers chased, stopped and frisked a defendant who fled in a high crime area. Likewise, in *Commonwealth v. Jefferson* (2004), the PA Superior Court upheld a drug conviction where the defendant, who was in a high crime area, fled after he noticed a police officer.

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

If you do speak with the police, you can request that the police provide access to someone that speaks your language. This can be in person or over the phone.

## When Can 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?

In Pennsylvania, the police cannot search your phone without a warrant.

In Pennsylvania, this is true even if you do not have your phone protected by a passcode, pattern lock, fingerprint, or facial recognition. In the 2018 case of *Commonwealth v. Fulton*, the Pennsylvania Supreme Court ruled that any means of access to cell phone data by law enforcement without a warrant violates the owner's Fourth Amendment rights

(*Commonwealth v. Alexander*; <https://www.thefishmanfirm.com/search-cell-phone/>).

A warrantless cell phone search violates the Fourth Amendment right to privacy. The warrantless search exception following an arrest (i.e., the search incident to arrest) exists for the purposes of protecting officer safety and preserving evidence, neither of which is at issue in the search of digital data on a cell phone (*Riley v. California*, Oyez, [www.oyez.org/cases/2013/13-132](http://www.oyez.org/cases/2013/13-132)).

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

You are not required to provide your password or passcode to your phone. But police do not need your permission to use your fingerprint or other biometric information to open your phone, if they already have your phone in hand. It is a good idea to give your phone to the police but not a good idea to volunteer to unlock your phone.

The Pennsylvania Supreme Court has made the distinction in *Commonwealth v. Davis*, Case No. J-42-2019 (May 14, 2019), between providing a password or passcode, which they have likewise recognized to be testimonial and a potential violation of the Fifth Amendment, and providing biometric characteristics like fingerprints or face ID

(<https://www.eff.org/document/commonwealth-v-davis-majority-opinion>).

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

You are not required to provide your password or passcode to your phone. But police do not need your permission to use your fingerprint or other biometric information to open your phone, if they already have your phone in hand. It is a good idea to give your phone to the police, but not volunteer to unlock your phone. Forced disclosure of a passcode or pattern lock amounts to a violation of the Fifth Amendment privilege against self-incrimination (<https://www.thefishmanfirm.com/search-cell-phone/>; <https://www.eff.org/document/commonwealth-v-davis-majority-opinion>).

## **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 should politely decline if they ask for your password. Unless the police have a warrant specifically authorizing access to your cell phone, you do not have to comply. If you voluntarily give them your password, then these rights go away.

[Commonwealth v. Alexander](https://www.thefishmanfirm.com/search-cell-phone/); Can the Police Search Your Cell Phone in Pennsylvania?, <https://www.thefishmanfirm.com/search-cell-phone/>

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

Police generally can use some technology on you, such as facial recognition and hidden cameras.

[Commonwealth v. Alexander](#)

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

You generally have the right to say no to searches of your person under the [Fourth Amendment](#) to the U.S. Constitution. However, police may pat down your clothing if they suspect you have weapon.

You cannot be arrested for refusing to consent to a search without a valid warrant. Remember, police may be entitled to pat you down during a stop if they suspect you have a weapon on your person ([Terry v Ohio, 392 US 1 \(1968\)](#)).

A warrant is a court order so you generally have to allow police search the items or places covered by the warrant. That said, police must generally keep their searches and seizures within the scope of the warrant (i.e. if they have a warrant that states they can search the bedroom of your house, they are generally not permitted to search a garage that is detached from the house) (see [Fourth Amendment](#) to the U.S. Constitution).

[Terry v Ohio, 392 US 1 \(1968\)](#), Under the *Fourth Amendment* of the U.S. Constitution, a police officer may stop a suspect on the street and frisk him or her without probable cause to arrest, if the police officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime and has a reasonable belief that the person "may be armed and presently dangerous." Where a police officer is looking to search your home, hotel room, or backward, they generally require a search warrant under the [Fourth Amendment](#) to the U.S. Constitution.

Generally, police can only search your phone if you give them permission to do so, or if they have a valid warrant for the search. Recall, the Supreme Court in [Terry v Ohio, 392 US 1 \(1968\)](#) allows police to search you for dangerous objects without your consent; however, beyond dangerous objects, police officers generally require your consent or a warrant if they want to search your home or belongings like a phone under the U.S. [Fourth Amendment](#).

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

Pennsylvania law forbids audio recordings of what people say without their **permission if they have a reasonable expectation of privacy** ([Commonwealth v. Alexander](#)).

Juveniles may only be photographed by police personnel in conformance with this directive and Section 6308 of the Juvenile Act as amended by Act 12 of 1980.

Law enforcement officers shall have the authority to take or cause to be taken the fingerprints or photographs, or both, of any child who is alleged to have committed an act designated as a misdemeanor or felony under the laws of this Commonwealth or of another state if the act occurred in that state or under Federal law.



EXCEPTIONS: Juveniles who have sustained injuries may be photographed for evidentiary purposes in criminal investigations when they are victims of a crime and to assist in identifying juveniles who are unable to identify themselves  
(<https://www.phillypolice.com/assets/directives/D5.5-JuvenilesInPoliceCustody.pdf>).

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

Yes, a police officer can stop and ask you where you are going and why as long as the police office has a reasonable suspicion of a crime ([Terry v. Ohio](#)).

## **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 walk away unless you are formally under arrest (US Constitution, [Fourth Amendment](#)).

To ask if you are being detained or arrested, you can ask the police officer "Am I free to go? Or am I being detained or arrested?" If you are not being detained or arrested, you can walk away and not answer any questions ((US Constitution, [Fourth Amendment](#)); See also Interactions with Law Enforcement, <https://upagainsthelaw.org/interactions-with-law-enforcement/>; Know Rights When Talking to Police, <https://pa.cair.com/releases/KYR-Police.pdf>).

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

No. Regardless of whether you're detained or not, you have the right not to say anything and ask that you speak with your parents and/or a lawyer (you need to tell the officers that you're exercising these rights if you want to). Then you should mention anything wrong with the investigation to your parents and/or a lawyer.

[Fifth Amendment](#)

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

You should ask the officer whether you can go.

- If the officer says yes, then you have the right to remain silent and leave without saying anything else.
- If the officer says no, then you still have the right to remain silent. If you wish to exercise your right to remain silent, say so out loud (in some states, you may be required to provide your name if asked to identify yourself, and an officer may arrest you for refusing to do so). You may also speak with your parents and/or a lawyer (if you wish to do so, you can state this to the officer).

#### Fifth Amendment

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

If you talk to the police prior to being under arrest, your statements to the police may be used against you in trial because they were "voluntarily" made. If you are under arrest, your statements to the police may be used against you in trial only after the police has read your "Miranda" warning and you chose to talk to the police anyway.

[Miranda v. Arizona, 384 US 436 \(1966\); Fourth Amendment](#)

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

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

If you agree or consent to the police searching you or your belongings, then the police can proceed with the search and anything found may be used against you in court (*In Interest of Jermaine*, 399 Pa. Superior Ct. 503 (1990), 582 A.2d 1058, *In the Interest of Kathleen JERMAINE*, Appeal of COMMONWEALTH, <https://law.justia.com/cases/pennsylvania/supreme-court/1990/399-pa-super-503-1.html>). If you do not agree or consent to a search but the search is reasonable under the circumstances, then what is found during the search may be used in court (*In Interest of FB*, 442 Pa. Superior Ct. 216 (1995) 658 A.2d 1378, *In the Interest of F.B.* Appeal of F.B., Superior Court of Pennsylvania, <https://law.justia.com/cases/pennsylvania/superior-court/1995/442-pa-super-216-2.html>). However, if you do not consent to a search and there is no probable cause or such search is not reasonable under the circumstances, then the results of the search would not be allowed to be used in court (*Com. v. Banks*, 540 Pa. 453 (1995), COMMONWEALTH of Pennsylvania, Appellee, v. Marlon BANKS, Appellant, Supreme Court of Pennsylvania, <https://law.justia.com/cases/pennsylvania/supreme-court/1995/540-pa-453-1.html>).

### **Can the police in Philadelphia stop and frisk you without a good reason?**

No. A stop-and-frisk refers to a brief non-intrusive police stop of a suspect. The Fourth Amendment requires that before stopping the suspect, the police must have a reasonable suspicion that a crime has been, is being, or is about to be committed by the suspect. If the police reasonably suspect that the suspect is armed and dangerous, the police may frisk the suspect, meaning that the police will give a quick pat-down of the suspect's outer clothing. The frisk is also called a Terry Stop, derived from the Supreme Court case [Terry v. Ohio, 392 U.S. 1 \(1968\)](#).

Search of your person: You **do not have to consent** to a search of yourself or your belongings, but police may pat down your clothing if they suspect a weapon. Note that refusing consent may not stop the officer from carrying out the search against your will, but making a timely objection before or during the search can help preserve your rights in any later legal proceeding.



If police have reasonable suspicion that you are involved in or about to commit criminal activity, they can stop you, and if they have reasonable suspicion that you are armed, they can also frisk your outer clothing to search for weapons.

Police can search bags and containers without probable cause if you are entering what has been marked a secure area. But you can choose to refuse the search and not enter the secure area. Otherwise, police can only search bags if they have probable cause that it contains contraband, weapons, or evidence of illegal activity.

When your rights have been violated:

- 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.

#### Fifth Amendment

**What if they tell me to give them information versus them asking and me providing answers voluntarily? Do I have to show ID when police demand it?**

Not in Pennsylvania. If you are detained or arrested, you may choose to show ID when police demand it. If you choose not to show ID, you could be detained for a longer time while police attempt to identify you.

## **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.

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

Yes. An officer who lacks probable cause to arrest may make a brief stop of a suspicious individual in order to determine his identity or to keep the current situation momentarily while obtaining more information (*Adams v. Williams*, 407 U.S. 143, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972); <https://law.justia.com/cases/pennsylvania/superior-court/1981/291-pa-super-271-2.html>).

**Can I ask for the reason they stopped me? Do police have to tell you why they pulled you over before asking for ID?**

Terry v Ohio, 392 US 1 (1968): Under the *Fourth Amendment* of the U.S. Constitution, a police officer may stop a suspect on the street and frisk him or her without probable cause to arrest, if the police officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime and has a reasonable belief that the person "may be armed and presently dangerous." Where a police officer is looking to search your home, hotel room, or backward, they generally require a search warrant under the Fourth Amendment to the U.S. Constitution. Generally speaking, no. Police do not have to tell you why they are stopping you before asking for ID in a traffic stop, though it may be a standard practice in many areas. The officer must have a reason—i.e., probable cause—for the stop, but they are not legally required to tell you.

## **Are the police required to inform you of the reason for the arrest? Are the police required to issue Miranda warnings as soon as you were arrested?**

Terry v Ohio, 392 US 1 (1968): Under the Fourth Amendment of the U.S. Constitution, a police officer may stop a suspect on the street and frisk him or her without probable cause to arrest, if the police officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime and has a reasonable belief that the person "may be armed and presently dangerous." Where a police officer is looking to search your home, hotel room, or backward, they generally require a search warrant under the Fourth Amendment to the U.S. Constitution. Generally speaking, no. Police do not have to tell you why they are stopping you before asking for ID in a traffic stop, though it may be a standard practice in many areas. The officer must have a reason—i.e., probable cause—for the stop, but they are not legally required to tell you.

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

Generally speaking, yes. You can advocate by letting the other young person know their rights, including determining whether you are being arrested or whether you are free to leave. Do not attempt to argue with police, but be sure to write down everything you remember as soon as possible to help the other young person.

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

Even if you think the stop is unjustified, you should not run, resist, fight or get into an argument with the police. You should stay silent (other than stating that you are exercising your right to stay silent), try to write down everything you remember about what happened as soon as you can, record what you can from the arrest without interfering with the officers, and then mention to your lawyer and parents. Then you can decide what actions to take for the unjustified stop ([37 Pa. Code 42.21](#); <https://www.acba.org/public/Legal-Briefs-102507>).

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

Try to get the officers' names, badge numbers and/or patrol car numbers. If the names or badge numbers are not visible, you may ask the officer for the information.

[37 Pa. Code 42.21](#)

## **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:
  - 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 can ask! 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 (See also [\*Miranda v. Arizona\*, 384 US 436 \(1966\)](#)), which requires police officers to inform you of your Miranda Rights when you are arrested or placed in police custody, and before being asked any questions that could reasonably elicit an incriminating response.

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 (see [\*Miranda v. Arizona\*, 384 US 436 \(1966\)](#)). 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. Generally, under [\*Miranda v. Arizona\*](#), police will warn you of your right to remain silent when being asked questions by police and your right to consult a lawyer before answering any questions.

## What is the difference between detention and arrest?

The police can stop and detain you to inquire about a suspected crime where they have a "reasonable suspicion" that a crime has taken place ([\*Terry v Ohio\*, 392 US 1 \(1968\)](#)) ([\*Fourth Amendment\*](#)). A mere stop or detention is not the same as being under arrest and, where police investigate and no longer have a reasonable suspicion, you should be allowed to end the encounter and leave the detention.

To learn more about your US law Miranda rights to find their equivalents in all jurisdictions, visit: [www.mirandawarning.org](http://www.mirandawarning.org).

## If I am handcuffed, am I arrested?

The police may put someone in handcuffs for various reasons, including for safety reasons or to formally arrest you. Whether you are under arrest depends on whether you believe based on the circumstances you are being restrained and cannot leave. If you believe or know the restraint is temporary and brief, then it would not be considered an arrest. Being put in handcuffs is a factor that has been used to find that a reasonable person would believe they are under arrest (*United States v. Newton*, 369 F.3d 659, 676-77 (2d Cir. 2004); Legal Digest: When Does Handcuffing Constitute Custody for Purposes of Miranda?, <https://leb.fbi.gov/articles/legal-digest/legal-digest--when-does-handcuffing-constitute-custody-for-purposes-of-miranda#:~:text=Use%20of%20Handcuffs%20May%20Constitute,arrest%20has%20not%20been%20made>).

Under [\*Miranda v. Arizona\*, 384 US 436 \(1966\)](#), police officers have a duty to inform you about your right to remain silent and your right to consult a lawyer when placed under arrest and before answering any questions from police. If you believe that you have been placed under arrest (e.g. you have been handcuffed or placed in the back of a police car), but have not been read your rights under [\*Miranda v. Arizona\*](#), ask police officers if you are under arrest and stop answering questions from police until you are given an opportunity to consult a lawyer.

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

Whether you are under arrest depends on whether you believe based on the circumstances you are being restrained and cannot leave. If you believe or know the restraint is temporary and brief, then it would not be considered an arrest. Courts will consider many factors in determining if it is reasonable to believe you are under arrest, such as being at the total mercy of the policy, being put in handcuffs, or being forced into a police car (*United States v. Newton*, 369 F.3d 659, 676-77 (2d Cir. 2004); Legal Digest: When Does Handcuffing Constitute Custody for Purposes of Miranda?, <https://leb.fbi.gov/articles/legal-digest/legal-digest--when-does-handcuffing-constitute-custody-for-purposes-of-miranda#:~:text=Use%20of%20Handcuffs%20May%20Constitute,arrest%20has%20not%20been%20made>).

# 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 your rights by the police, you are under arrest. At that point you are protected by constitutional rights. Two important rights are the right to remain silent and the right to have an attorney. After your arrest, you aren't required to say anything else to police or investigators, until you have an attorney present. You must be given the opportunity to contact an attorney.

1. If you would like to exercise your right to remain silent, do not make any statements. You have the right to remain silent and to talk to a lawyer before you talk to the police. Tell the police nothing except your name and address. Don't give any explanations, claims of innocence, excuses, or stories.
2. If you would like to exercise your right to see an attorney, ask immediately. If you can't pay for a lawyer, you have a right to a free one, and should ask the police how the lawyer can be contacted. Don't say anything without a lawyer.
3. Within a reasonable time after your arrest, or booking, you have the right to make a local phone call to a lawyer, bail bondsman, a relative, or any other person. The police may not listen to the call to the lawyer.

<https://www.acba.org/public/Legal-Briefs-102507>

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

If the police read you your rights you should assume that you are in custody, regardless of the location. Don't make any statements and ask to speak to your lawyer.

Whether you are in custody depends on the circumstances and whether a reasonable person would believe themselves to be under arrest. You do not have to be in handcuffs in a police station if under the circumstances you reasonably believe you are not free to leave. Being placed in a police car or taken to a police station is more likely to be viewed as being in custody than if you are being questioned in the street (Philadelphia Police Department, Directive 5.5, <http://www.phillypolice.com/assets/directives/D5.5-JuvenilesInPoliceCustody.pdf>).

# 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.

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- 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. You have the right to remain silent and to talk to a lawyer before you talk to the police. Tell the police nothing except your name and address. Don't give any explanations, claims of innocence, excuses, or stories (<https://www.acba.org/public/Legal-Briefs-102507>; *United States v. Shannon*, No. 13-2389).

### **Must police notify my guardian?**

Yes. If you are a juvenile and taken into custody, the police must notify your parent or guardian (PA Juvenile Act, Sec. 6326, <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/42/00.063..HTM>).

You must also be given the opportunity to talk to your attorney, parent, or other interested adult, prior to waiving your constitutional right to remain silent (*Com. v. Webster*, 291 Pa. Superior Ct. 271 (1981), 435 A.2d 1217; <https://law.justia.com/cases/pennsylvania/superior-court/1981/291-pa-super-271-2.html>).

### **Must I confess?**

No, you do not have to confess, and should not confess or plead guilty without a lawyer's guidance. Under the United States Constitution, you have a 5th Amendment right against self-incrimination. This means you have the right to remain silent and not say anything that can be used against you in court to find you guilty of a crime.

This also means that you have the right to plead not guilty and make the government attorney, known as the prosecutor, prove that you are guilty. Pleading not guilty gives your attorney time to work to defend you or to negotiate a plea deal, if that will benefit you (Substantive Due Process Under the Fifth Amendment, <https://constitution.findlaw.com/amendment5/annotation07.html#1>).

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

You do not have a right to have a parent or guardian present during questioning by police after arrest, but you do have the right to remain silent and to have an attorney present. However, if you confess to a crime during questioning without first having the opportunity to consult with an interested adult, including your parents or an attorney, the confession cannot be used against you.

*Commonwealth v. McCutchen*, 463 Pa. 90, 343 A.2d 669 (1975); *Commonwealth v. Markle*, 380 A.2d, 346, (1977); *Commonwealth v. Smith*, A.2d 797 (1977) (An opportunity to consult with an interested adult is a prerequisite to an effective waiver of a constitutional right by a juvenile)

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

If you are a juvenile and taken into custody, the police must notify your parent or guardian (PA Juvenile Act, Sec. 6326, <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/42/00.063..HTM>).

You must also be given the opportunity to talk to your attorney, parent, or other interested adult, prior to waiving your constitutional right to remain silent (*Com. v. Webster*, 291 Pa. Superior Ct. 271 (1981), 435 A.2d 1217, <https://law.justia.com/cases/pennsylvania/superior-court/1981/291-pa-super-271-2.html>).

## 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?

You do not have the right to a lawyer if you are only a witness. In some situations when you are called as a witness, you could be asked information that could be used against you if you are accused of a crime. You can refuse to answer questions that would require you to give information that can be used against you in a criminal case (*Pennsylvania v. Davis* (2019), <https://law.justia.com/cases/pennsylvania/supreme-court/2019/56-map-2018.html>; *Pennsylvania v. Muniz*, 496 U.S. 582, 588-89 (1990)).

You should contact a lawyer if you think you may be asked to provide information that could be used against you.

## 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?

The police do not always have to tell you the truth. In some situations, if the police lie to you in order to obtain your consent, the consent may not be valid (*Commonwealth v. Danforth*, <https://law.justia.com/cases/pennsylvania/supreme-court/1990/395-pa-super-1-1.html>).

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

If you do not tell the police the truth, it may be considered a misdemeanor (Title 18, Chapter 49, Section 4904, <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=49>).



## 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:

There are a few ways you can make a complaint if you feel that your rights have been violated. One option is to complete and file a complaint with the Citizens Police Oversight Commission (CPOC), which takes complaints against police officers and sends them to the Internal Affairs Division of the Philadelphia Police Department (PPD). CPOC's website provides a form to complete, which is available in different languages, and which can be filed online, in-person or by email or mail. Once a complaint has been made, a CPOC representative will contact you for a follow up interview before sending the complaint to the Internal Affairs Division of the PPD. You can have a CPOC representative present with you during all police interaction, including interviews (<https://www.phila.gov/services/crime-law-justice/police/file-a-complaint-against-a-philadelphia-police-officer/#:~:text=Crime%2C%20law%20%26%20justice&text=The%20Citizens%20Police%20Oversight%20Commission,services%20as%20an%20impartial%20intermediary;https://www.inquirer.com/philly-tips/police-complaint-philly-philadelphia-police-department-file-20221011.html>).

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

### Proposed Information

It is important to follow this advice:

If you feel that you are the victim of discrimination or racism by a police officer during an encounter, you can file a complaint with either the CPOC or the Internal Affairs Division of the PPD as described above (<https://www.phila.gov/services/crime-law-justice/police/file-a-complaint-against-a-philadelphia-police-officer/#:~:text=Crime%2C%20law%20%26%20justice&text=The%20Citizens%20Police%20Oversight%20Commission,services%20as%20an%20impartial%20intermediary;https://www.phillypolice.com/forms/official-complaint-process;https://www.inquirer.com/philly-tips/police-complaint-philly-philadelphia-police-department-file-20221011.html>).

You can also contact the Philadelphia Commission on Human Relations (PCHR), which is Philadelphia's civil rights agency that enforces anti-discrimination laws. You can fill out an intake form and then PCHR staff will schedule a meeting with you to discuss the information you provide (<https://www.phila.gov/2020-02-05-filing-discrimination-complaints-in-philadelphia/>). You can also contact the Office of Diversity, Equity and Inclusion to discuss your options (<https://www.phila.gov/departments/office-of-diversity-equity-and-inclusion/>).

An alternative option is to make a civil rights complaint directly with the office of the attorney general of Pennsylvania. Depending on the type of complaint, you may need to contact other agencies as well (such as PCHR), but making a complaint to the office of the attorney general gives the attorney general the discretion to investigate and pursue a case (<https://www.attorneygeneral.gov/submit-a-complaint/civil-rights-complaint-2/>).

Lastly, you can seek out and talk to a Philadelphia civil rights lawyer.

## How can I respond to circumstances involving discrimination?

### Proposed Information

It is important to follow this advice:

You can file complaints with (i) the CPOC, (ii) the Internal Affairs Division of the Philadelphia Police Department, (iii) the PCHR, or (iv) the attorney general of Pennsylvania, each as outlined above (<https://www.phila.gov/services/crime-law-justice/police/file-a-complaint-against-a-philadelphia-police-officer/#:~:text=Crime%2C%20law%20%26%20justice&text=The%20Citizens%20Police%20Oversight%20Commission,services%20as%20an%20impartial%20intermediary;https://www.phillypolice.com/forms/official-complaint-process;https://www.inquirer.com/philly-tips/police-complaint-philly-philadelphia-police-department-file-20221011.html;https://www.phila.gov/2020-02-05-filing-discrimination-complaints-in-philadelphia/;https://www.attorneygeneral.gov/submit-a-complaint/civil-rights-complaint-2/>). You can also seek out and talk to a Philadelphia civil rights lawyer about your options.

## 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:

If you believe you are the subject of an improper search or were improperly detained, you may seek a remedy by filing a complaint with (i) the CPOC, (ii) the Internal Affairs Division of the Philadelphia Police Department, (iii) the PCHR, or (iv) the attorney general of Pennsylvania, each as outlined above (<https://www.phila.gov/services/crime-law-justice/police/file-a-complaint-against-a-philadelphia-police-officer/#:~:text=Crime%2C%20law%20%26%20justice&text=The%20Citizens%20Police%20Oversight%20Commission,services%20as%20an%20impartial%20intermediary;https://www.phillypolice.com/forms/official-complaint-process;https://www.inquirer.com/philly-tips/police-complaint-philly-philadelphia-police-department-file-20221011.html;https://www.phila.gov/2020-02-05-filing-discrimination-complaints-in-philadelphia/;https://www.attorneygeneral.gov/submit-a-complaint/civil-rights-complaint-2/>).

You can also seek to speak to a lawyer in Philadelphia who specializes in civil rights or wrongful arrest.

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Law is generally described as of January 2023.

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