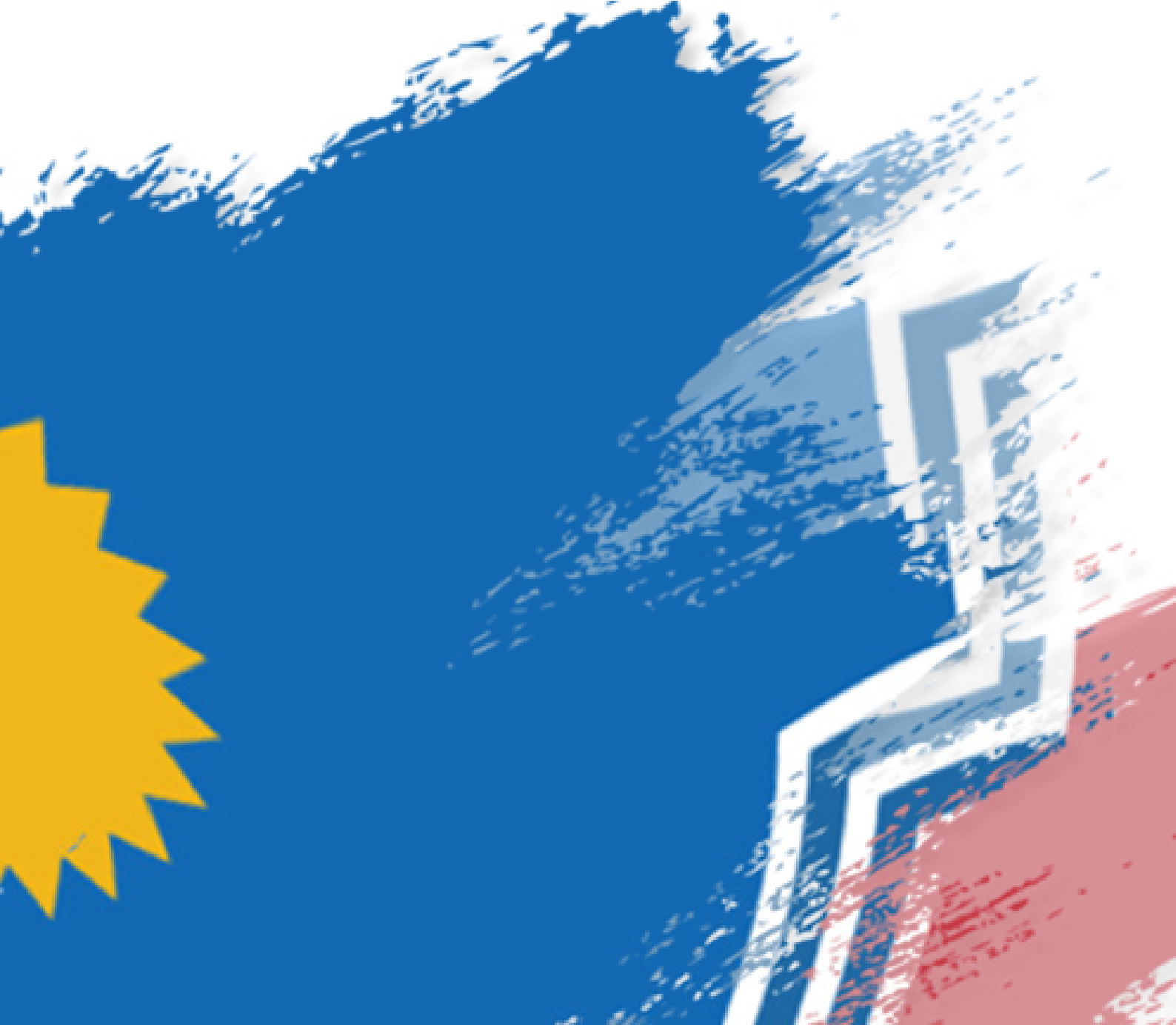


Real Rights: young people engaging with law enforcement

 Sioux Falls, South Dakota



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

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

Rights:

What rights do I have when I encounter law enforcement?

Question Asked

- Stopped By The Police On The Street, Now What?
- When Can Police Search You and Your Surroundings?
- Reasons Police May Detain or Arrest You
- The Difference Between Police TELLING Me What To Do And Asking Me To Do Something
- 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?
- What can I do as a minor without my parent(s) or legal guardian(s)?

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.
See e.g., [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [SDCL § 22-11-6](#); [SDCL § 23A-3-2](#)
- 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.

See e.g., [SDCL § 22-11-4](#); [SDCL § 23A-3-2](#)

Can the police arrest you for refusing to answer questions?

No, you are not required to speak with police. You have the right to remain silent. However, you must provide your driver's license (ID) to the officer if you were stopped while operating a motor vehicle. See e.g., [5th Amendment](#); [Malloy v. Hogan, 378 U.S. 1, pg. 1 \(1964\)](#); [SDCL § 32-12-39](#)

What if the officers do not identify themselves?

South Dakota police officers must identify themselves when making an arrest. Otherwise, you can ask if they are police and to show their identification cards, to which they must provide their identification under the Sioux Falls Police Department (SFPD). See e.g., [SDCL § 23A-3-4](#)

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

You are not required to speak with the police. If an officer begins speaking to you, you do not need to respond. You have the right to remain silent. See e.g., [5th Amendment](#); [Malloy v. Hogan, 378 U.S. 1, pg. 1 \(1964\)](#)

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

South Dakota police officers must identify themselves when making an arrest. Otherwise, you can ask if they are police and to show their identification cards, to which they must provide their identification under the Sioux Falls Police Department (SFPD). See e.g., [SDCL § 23A-3-4](#)

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

Yes, you have the right to have a lawyer present during questioning, and one can be provided to you if you can't afford one. Any information you talk with your lawyer about will be kept private by your lawyer. See e.g., [6th Amendment](#); [Gideon v. Wainwright, 372 U.S. 335 \(1963\)](#)

In addition, you are not required to speak with police. You have the right to remain silent. See e.g., [5th Amendment](#); [Malloy v. Hogan, 378 U.S. 1, pg. 1 \(1964\)](#)

If you are under arrest, the police must tell you immediately that you are arrested, and the reason for your arrest. If the police start questioning you without telling you your **rights** (known as a **Miranda Warning**), then they can't use anything you say as direct evidence against you in court. See e.g., [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [SDCL § 23A-3-4](#)

If I sit down, am I resisting?

Yes. You cannot sit down to avoid arrest or prevent the officer from doing his job in any way. The officer may view this as passively obstructing to resist arrest. See e.g., [SDCL § 22-11-6](#); [SDCL § 22-11-4](#)

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

No, you cannot run from the officer if you think you are about to be arrested, even if others in your group run. Even if you are not being arrested, running from law enforcement is a bad idea. Doing so could give the officer the belief that you have been, are, or will be involved in criminal activity. See e.g., [SDCL § 22-11-6](#); [SDCL § 22-11-4](#); [SDCL § 23A-3-2](#)

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

No, you cannot tell someone else to run from the police. This may be viewed as interfering with an arrest. In addition, doing so could give the officer the belief that you have been, are, or will be involved in criminal activity. See e.g., [SDCL § 22-11-6](#); [SDCL § 22-11-4](#); [SDCL § 23A-3-2](#)

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

Yes, you can tell the officer that the officer's language is not your first language. This will not waive your rights if you tell the officer immediately after that you wish to remain silent. You are entitled to an interpreter for interactions between you and the police/court. See e.g., [5th Amendment](#); [Malloy v. Hogan, 378 U.S. 1, pg. 1 \(1964\)](#); [SDCL § 19-3-7](#)

You also have the right to have an attorney present during questioning, and one can be provided to you if you can't afford one. Any information you talk with your lawyer about will be kept private by your lawyer. See e.g., [6th Amendment](#); [Gideon v. Wainwright, 372 U.S. 335 \(1963\)](#)

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

For a police officer to stop you, they must have a **reasonable** suspicion that you have been, are, or will be involved in criminal activity. Whether or not there is a reasonable suspicion depends on the situation, so it can be hard to determine if police are allowed to do so. Regardless of whether the officer is allowed to stop you or not, it is a bad idea to resist. See e.g., [Terry v. Ohio, 392 U.S. 1 \(1968\)](#); [SDCL § 22-11-6](#); [SDCL § 22-11-4](#); [SDCL § 23A-3-2](#)

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 yourself.
- You have the right to say no to **searches** of your car, house, or other things you own or control.
- You cannot be arrested for refusing to **consent** (give permission) to a search without a **warrant**.
- A **warrant** is an official document from the court that allows police to search you or your belongings without your consent.

See e.g., [4th Amendment](#); [SDCL § 23A-35-1](#)

- Police can conduct a brief **search** and can continue to conduct the search.

See e.g., [Riley v. California, 573 U.S. 373, pg. 28 \(2014\)](#); [SDCL § 23A-35-1](#); [State v. Meyer, 2015 S.D. 64](#)

What if a police officer wants to search my phone?

Officers are prohibited from conducting **unreasonable** searches and seizures. **Unreasonable** can refer to anything that is inappropriate, aggressive, over the top, or harmful to you or anyone involved. See e.g., [4th Amendment](#); [South Dakota State Constitution, Article VI § 11](#)

When related to an arrest, South Dakota police must obtain your permission, a **warrant** from the court, or have an **exigent circumstance** for a search before a phone or another hand-

held device can be opened and searched. See e.g., [Riley v. California, 573 U.S. 373, pg. 28 \(2014\)](#); [SDCL § 23A-35-1](#); [State v. Meyer, 2015 S.D. 64](#)

When can the police search you or your surroundings?

South Dakota police must obtain your permission, a **warrant** from the court, or have an **exigent circumstance** for a search on you or your surroundings to be conducted. See e.g., [Riley v. California, 573 U.S. 373, pg. 28 \(2014\)](#); [SDCL § 23A-35-1](#); [State v. Meyer, 2015 S.D. 64](#)

Police may pat down your clothing if they "reasonably" believe that you have a weapon, and that someone's safety may be at risk because of that weapon. If you are under 18 years old, it is illegal to carry a handgun in public or anywhere else where you do not have permission. See e.g., [Terry v. Ohio, 392 U.S. 1 \(1968\)](#); [SDCL § 23-7-44](#); [SDCL § 23-7-46](#)

If you are arrested, the officer may search you and your surroundings. This may include your backpack if it is within arm's reach, or you are wearing it at the time. This may also include your vehicle if it's within your vicinity at the time of searching, or if you are driving it at the time of searching. See e.g., [United States v. Robinson, 414 U.S. 218, pg. 1 \(1973\)](#); [State v. Steele, 2000 S.D. 78](#)

Officers are prohibited from conducting **unreasonable** searches and seizures. **Unreasonable** can refer to anything that is inappropriate, aggressive, over the top, or harmful to you or anyone involved. See e.g., [4th Amendment](#); [South Dakota State Constitution, Article VI § 11](#)

Can the police touch your clothing when they search you?

Police may pat down your clothing if they "reasonably" believe that you have a weapon, and that someone's safety may be at risk because of that weapon. If you are under 18 years old, it is illegal to carry a handgun in public or anywhere else where you do not have permission. See e.g., [Terry v. Ohio, 392 U.S. 1 \(1968\)](#); [SDCL § 23-7-44](#); [SDCL § 23-7-46](#)

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

If you are not under arrest, you do not have to give the police your password. Police cannot force you to give them your password, fingerprint, or face scan to unlock your phone. You can refuse to give them this information. However, it is important to note that if you do give them your phone or password, they have the right to search. You may revoke this consent at any time. See e.g., [Riley v. California, 573 U.S. 373, pg. 28 \(2014\)](#); [SDCL § 23A-35-1](#)

In addition, officers are prohibited from conducting "unreasonable" searches and seizures. Unreasonable can refer to anything that is inappropriate, aggressive, over the top, or harmful to you or anyone involved. See e.g., [4th Amendment](#); [South Dakota State Constitution, Article VI § 11](#)

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

Police may use any tools that are not considered "unreasonable" to search you for evidence, as officers are prohibited from conducting "unreasonable" searches and seizures. Unreasonable can refer to anything that is inappropriate, aggressive, over the top, or harmful to you or anyone involved. See e.g., [4th Amendment](#); [South Dakota State Constitution, Article VI § 11](#)

Police can, with a warrant, reasonable belief, or upon arrest, take fingerprints of you and cross check them against a database. See e.g., [Davis v. Mississippi, 394 U.S. 721, 727 \(1969\)](#); [SDCL § 23-5-4](#)

The Sioux Falls Police Department (SFPD) is required to record all public interactions using body cameras. Police may also use hidden surveillance cameras in certain locations around cities, particularly in intersections. See e.g., [Duty to Intervene, Sioux Falls Police Department 0100 § 4.2.4.2](#), [Audio / Video Recording Equipment, Sioux Falls Police Department 1000 § 4.8](#)

NOTE: As of October 2022, The U.S. Supreme Court has yet to decide whether the 4th Amendment prohibits the use of body and surveillance cameras. However, lower courts that have heard the case have ruled in favor of the federal government's support of them. See e.g., [United States v. Tuggle, 4 F.4th 505 \(7th Cir. 2021\)](#); [United States v. Mancari, 463 F.3d 590 \(7th Cir. 2006\)](#); [Bills v. Aseltine, 958 F.2d 697 \(6th Cir. 1992\)](#); [United States v. Taketa, 923 F.2d 665 \(9th Cir. 1991\)](#)

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

The police cannot search your backpack or any other item you're carrying without your permission or permission from the court, known as a warrant. You can withdraw your consent at any time, but until you do, the police can continue to conduct the search. See e.g., [4th Amendment](#); [SDCL § 23A-35-1](#)

Police may pat down your clothing if they "reasonably" believe that you have a weapon, and that someone's safety may be at risk because of that weapon. If you are under 18 years old, it is illegal to carry a handgun in public or anywhere else where you do not have permission. See e.g., [Terry v. Ohio, 392 U.S. 1 \(1968\)](#); [SDCL § 23-7-44](#); [SDCL § 23-7-46](#)

If you are arrested, the officer may search you and your belongings. This may include your backpack if it is within arm's reach, or you are wearing it at the time. This may also include your vehicle if it's within your vicinity at the time of searching, or if you are driving it at the time of searching. See e.g., [United States v. Robinson, 414 U.S. 218, pg. 1 \(1973\)](#); [State v. Steele, 2000 S.D. 78](#)

Can they take my picture or record me?

The Sioux Falls Police Department (SFPD) is required to record all public interactions using body cameras. Police may also use hidden surveillance cameras in certain locations around cities, particularly in intersections. See e.g., [Duty to Intervene, Sioux Falls Police Department 0100 § 4.2.4.2](#), [Audio / Video Recording Equipment, Sioux Falls Police Department 1000 § 4.8](#)

Under South Dakota law, you can be photographed upon arrest. See e.g., [4th Amendment](#); [SDCL § 23-5-7](#)

NOTE: As of October 2022, The U.S. Supreme Court has yet to decide whether the 4th Amendment prohibits the use of body and surveillance cameras. However, lower courts that have heard the case have ruled in favor of the federal government's support of them. See e.g., [United States v. Tuggle, 4 F.4th 505 \(7th Cir. 2021\)](#); [United States v. Mancari, 463 F.3d 590 \(7th Cir. 2006\)](#); [Bills v. Aseltine, 958 F.2d 697 \(6th Cir. 1992\)](#); [United States v. Taketa, 923 F.2d 665 \(9th Cir. 1991\)](#)

Can they ask me where I am going and why?

Yes, police can ask where you are going and why. You can exercise your right to remain silent. Responding to these questions means that you are consenting to the officer's requests. See e.g., [5th Amendment](#); [Malloy v. Hogan, 378 U.S. 1, pg. 1 \(1964\)](#)

You must also provide your driver's license if in a motor vehicle while interacting with police, upon request. See e.g., [SDCL § 32-12-39](#)

It should be noted that, because of the possibility of resisting arrest, you risk arrest if you fail to **identify** yourself in a situation where the police reasonably believes that you are involved in criminal activity or if they believe that you are a threat to public safety. However, you can

tell the officer you wish to **exercise** your **right** to remain silent under the [5th Amendment](#). See e.g., [Hiibel v. Sixth Judicial District Court of Nevada, Humboldt City, 542 U.S. 177, pg. 1 \(2004\)](#); [SDCL § 23A-3-4](#); [SDCL § 22-11-6](#)

Reasons Police May Detain or Arrest You

Proposed Information

It is important to follow this advice:

- The police may arrest or detain 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.

See e.g., [Terry v. Ohio, 392 U.S. 1 \(1968\)](#); [SDCL § 23A-3-2](#)

- Sometimes police have a warrant from the court, giving law enforcement the ability to search or arrest you, depending on what the warrant is for.
- It is a good idea to review any paper from police/warrant carefully, to ensure you understand what exactly is covered.

See e.g., [SDCL § 23A-3-2](#); [SDCL § 23A-2-2](#)

- 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.

See e.g., [United States v. Robinson, 414 U.S. 218, pg. 1 \(1973\)](#); [State v. Steele, 2000 S.D. 78](#)

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

No, you are not required to speak with police. You have the right to remain silent. See e.g., [5th Amendment](#); [Malloy v. Hogan, 378 U.S. 1, pg. 1 \(1964\)](#)

You also have the right to have an attorney present during questioning, and one can be provided to you if you can't afford one. Any information you talk with your lawyer about will be kept private by your lawyer. See e.g., [6th Amendment](#); [Gideon v. Wainwright, 372 U.S. 335 \(1963\)](#)

It should be noted that, because of the possibility of resisting arrest, you risk arrest if you fail to **identify** yourself in a situation where the police reasonably believes that you are involved in criminal activity or if they believe that you are a threat to public safety. However, you can tell the officer you wish to **exercise** your **right** to remain silent under the [5th Amendment](#). See e.g., [Hiibel v. Sixth Judicial District Court of Nevada, Humboldt City, 542 U.S. 177, pg. 1 \(2004\)](#); [SDCL § 23A-3-4](#); [SDCL § 22-11-6](#)

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

No, you are not required to speak with police. You have the right to remain silent. However, you should correct the officer whenever the officer misunderstands anything you say, or you tell the officer something that is incorrect. Failing to do so is illegal and punishable under state law. See e.g., [5th Amendment](#); [SDCL § 22-11-9](#)

You also have the right to have an attorney present during questioning, and one can be provided to you if you can't afford one. Any information you talk with your lawyer about will

be kept private by your lawyer. See e.g., [6th Amendment](#); [Gideon v. Wainwright, 372 U.S. 335 \(1963\)](#)

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

You are not required to speak with the police. If an officer begins speaking to you, you do not need to respond.

You have the right to remain silent. If you are being arrested, that officer must tell you the reason for doing so. See e.g., [5th Amendment](#); [SDCL § 23A-3-4](#)

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?

In either scenario, you are not required to speak with the police, and have a right to remain silent. If you are under arrest, the police must tell you immediately that you are arrested, and the reason for your arrest. If the police start questioning you without telling you your **rights** (known as a **Miranda Warning**), then they can't use anything you say as direct evidence against you in court. See e.g., [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [SDCL § 23A-3-4](#)

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

Proposed Information

It is important to follow this advice:

- The Constitution prevents you from being searched in unreasonable circumstances. See e.g., [4th Amendment](#); [Mapp v. Ohio, 367 U.S. 643, IV-V](#)
- You can refuse to consent to a search, despite what a police officer may say. See e.g., [SDCL § 23A-35-1](#)

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

The police cannot search your belongings or any other item you're carrying without your permission or permission from the court, known as a warrant. You can withdraw your consent at any time, but until you do, the police can continue to conduct the search. See e.g., [4th Amendment](#); [SDCL § 23A-35-1](#)

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

In either case, you are not required to speak with or provide any information to police. You have the right to remain silent. See e.g., [5th Amendment](#); [Malloy v. Hogan, 378 U.S. 1, pg. 1 \(1964\)](#)

You also have the right to have an attorney present during questioning, and one can be provided to you if you can't afford one. Any information you talk with your lawyer about will be kept private by your lawyer. See e.g., [6th Amendment](#); [Gideon v. Wainwright, 372 U.S. 335 \(1963\)](#)

It should be noted that, because of the possibility of resisting arrest, you risk arrest if you fail to **identify** yourself in a situation where the police reasonably believes that you are involved in criminal activity or if they believe that you are a threat to public safety. However, you can tell the officer you wish to **exercise** your **right** to remain silent under the [5th Amendment](#). See e.g., [Hiibel v. Sixth Judicial District Court of Nevada, Humboldt City, 542 U.S. 177, pg. 1 \(2004\)](#); [SDCL § 23A-3-4](#); [SDCL § 22-11-6](#)

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.
 - when the officer has a reason to believe that you committed a felony, regardless of if the act was done in front of them.

See e.g., [SDCL § 23A-3-4](#)

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

Advocating for another young person stopped by police is risky, as you can be arrested for interfering with law enforcement in any way. See e.g., [SDCL § 22-11-6](#); [SDCL § 22-11-4](#); [SDCL § 23A-3-2](#)

However, you do have the right to observe and record what is taking place if you are involved in the interaction, so long as it does not interfere with law enforcement in any way. See e.g., [SDCL § 23A-35A-20](#)

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

If you believe your rights have been violated during your interaction with law enforcement, you can file a written complaint with the [Sioux Falls Police Department, File a Complaint Form](#). In addition, you are not required to speak with police or answer any questions they might ask you. See e.g., [5th Amendment](#); [Malloy v. Hogan, 378 U.S. 1, pg. 1 \(1964\)](#)

However, resisting police is never a good idea, as you can be arrested for interfering with law enforcement in any way. See e.g., [SDCL § 22-11-6](#); [SDCL § 22-11-4](#); [SDCL § 23A-3-2](#)

It should be noted that, because of the possibility of resisting arrest, you risk arrest if you fail to identify yourself in a situation where the police reasonably believes that you are involved in criminal activity or if they believe that you are a threat to public safety. However, you can tell the officer you wish to exercise your right to remain silent under the [5th Amendment](#). See e.g., [Hiibel v. Sixth Judicial District Court of Nevada, Humboldt City, 542 U.S. 177, pg. 1 \(2004\)](#); [SDCL § 23A-3-4](#); [SDCL § 22-11-6](#)

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

South Dakota police officers must identify themselves when making an arrest. Otherwise, you can ask if they are police and to show their identification cards, to which they must provide their identification under the Sioux Falls Police Department (SFPD). If you believe your rights have been violated during your interaction with law enforcement, you can file a written complaint with the [Sioux Falls Police Department, File a Complaint Form](#). See e.g., [SDCL § 23A-3-4](#)

How Do You Know If You Are Under Arrest?

Proposed Information

It is important to follow this advice:

- You are likely under police custody if you do not feel free to leave an officer's presence, or if a person in your shoes would not reasonably 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.

See e.g., [SDCL § 23A-3-5](#)

- an officer warns you about your rights.
- An officer must only warn you of your rights before the police question you. This means an officer can arrest you before warning you of your rights.
- An arrest without a Miranda Warning is still a valid arrest; it just may mean that evidence collected from it is not admissible in court later.

See e.g., [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#)

What is the difference between detention and arrest?

Detention refers to when law enforcement holds you under reasonable suspicion for the purposes of questioning or conducting a brief search of you and your possessions if they believe you are a threat to public safety. If you are being detained, that officer must tell you the reason for keeping you upon request. See e.g., [Stop, Arrest, and Search of Persons, Sioux Falls Police Department 1000 § 4.2](#)

Arrest refers to when law enforcement holds you under **probable cause**, meaning that the officer has evidence of or more than a reasonable belief that you have been, are, or will be involved in criminal activity. When under arrest, the officer must identify themselves and the reason for arrest. See e.g., [SDCL § 23A-3-4](#); [SDCL § 23A-3-2](#)

If I am handcuffed, am I arrested?

Not necessarily. An officer may use nondeadly force (which presumably includes handcuffs) to stop and detain a person, including a brief detention. See e.g., [Stop, Arrest, and Search of Persons, Sioux Falls Police Department 1000 § 4.2](#); [SDCL § 23A-3-5](#)

If my liberty is restricted, am I under arrest?

If the restriction on liberty is significant, likely yes. You are deemed to be in custody when you are deprived of your freedom of action in any significant way. See e.g., [SDCL § 23A-3-4](#); [SDCL § 23A-3-2](#)

However, your liberty can also be restricted if you are being detained by police, not arrested. This detainment can take many forms. See e.g., [United States v. Hensley, 469 U.S. 221 \(1985\)](#)

For example, because of the possibility of resisting arrest, you risk arrest if you fail to **identify** yourself in a situation where the police reasonably believes that you are involved in criminal activity or if they believe that you are a threat to public safety. However, you can tell the officer you wish to **exercise** your **right** to remain silent under the [5th Amendment](#). See e.g., [Hiibel v. Sixth Judicial District Court of Nevada, Humboldt City, 542 U.S. 177, pg. 1 \(2004\)](#); [SDCL § 23A-3-4](#); [SDCL § 22-11-6](#)

Police can also detain you and pat down your clothing if they reasonably believe that you have a weapon, and that someone's safety may be at risk because of that weapon. If you are under 18 years old, it is illegal to carry a handgun in public or anywhere else where you do not have permission. See e.g., [Terry v. Ohio, 392 U.S. 1 \(1968\)](#); [SDCL § 23-7-44](#); [SDCL § 23-7-46](#)

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). This is not a good idea without a lawyer present.
- Make sure you know what you're doing in giving up your rights.

See e.g., [5th Amendment](#); [6th Amendment](#); [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#)

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

If the police start questioning you but haven't read you your **Miranda Rights** (right to remain silent, right to an attorney, etc.), then they can't use anything you say as direct evidence against you in court. Only after they read you your rights can they use anything you say against you in court. See e.g., [5th Amendment](#); [6th Amendment](#); [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. You must be read your rights prior to questioning, no matter where you are being arrested. See e.g., [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#)

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.

See e.g., [5th Amendment](#); [Malloy v. Hogan, 378 U.S. 1, pg. 1 \(1964\)](#); [Juvenile Investigations, Sioux Falls Police Department 800](#)

- If police have arrested you and you are a minor, police are required to immediately attempt to notify your parent, caretaker, or legal guardian.

See e.g., [N.C. Gen. Stat. § 7B-500](#); [N.C. Gen. Stat. § 7B-501](#); [Juvenile Investigations, Sioux Falls Police Department 800 § 4.1.1](#)

Am I required to make a statement?

No, you are not required to make a statement. You have the right to remain silent. See e.g., [5th Amendment](#); [Malloy v. Hogan, 378 U.S. 1, pg. 1 \(1964\)](#)

You also have the right to have an attorney present during questioning, and one can be provided to you if you can't afford one. Any information you talk with your lawyer about will be kept private by your lawyer. See e.g., [6th Amendment](#); [Gideon v. Wainwright, 372 U.S. 335 \(1963\)](#)

Must police notify my guardian?

If you are taken into custody, the police must try to notify your parent(s), custodian(s), or guardian(s) using all means available to them. e.g., [SDCL § 26-7A-15](#); [Juvenile Investigations, Sioux Falls Police Department 800 § 4.1.1](#)

Must I confess?

No, you are not required to confess to police, nor can police force you to do so. You have the right to remain silent. See e.g., [5th Amendment](#); [Malloy v. Hogan, 378 U.S. 1, pg. 1 \(1964\)](#)

You also have the right to have an attorney present during questioning, and one can be provided to you if you can't afford one. Any information you talk with your lawyer about will be kept private by your lawyer. See e.g., [6th Amendment](#); [Gideon v. Wainwright, 372 U.S. 335 \(1963\)](#)

If you are under 18 years old, law enforcement cannot interrogate you prior to attempting to contacting a parent, guardian, attorney, or custodian, unless you willingly give up your rights. See e.g., [Juvenile Investigations, Sioux Falls Police Department 800 § 4.1.1](#)

What adults can I ask to be with me?

If you are taken into custody, you may ask for your parents, guardians, or attorney to be with you. See e.g., [SDCL § 26-7A-15](#); [Juvenile Investigations, Sioux Falls Police Department 800 § 4.1.1](#)

You also have the right to have an attorney present, and one can be provided to you if you can't afford one. Any information you talk with your lawyer about will be kept private by your lawyer. See e.g., [6th Amendment](#); [Gideon v. Wainwright, 372 U.S. 335 \(1963\)](#)

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

If you are taken into custody, the police must try to notify your parent(s), custodian(s), or guardian(s) using all means available to them. e.g., [SDCL § 26-7A-15](#); [Juvenile Investigations, Sioux Falls Police Department 800 § 4.1.1](#)

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 police only want to question you and/or 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 can 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.

See e.g., [6th Amendment](#); [Gideon v. Wainwright, 372 U.S. 335 \(1963\)](#)

What if I am just a witness?

If you are just a witness, police may still question you. To detain you as a witness, the police must **identify** themselves and provide a reasoning for detainment. From there, the police can ask for identification. Because of the possibility of resisting arrest, you risk arrest if you fail to identify yourself in a situation where the police reasonably believes that you are involved in criminal activity or if they believe that you are a threat to public safety. However, you can tell the officer you wish to **exercise** your **right** to remain silent under the

[5th Amendment](#). See e.g., [Hiibel v. Sixth Judicial District Court of Nevada, Humboldt City](#), 542 U.S. 177, pg. 1 (2004); [SDCL § 23A-3-4](#); [SDCL § 22-11-6](#)

However, you do have the right to remain silent, to which you should tell the officer you are exercising this right if so. See e.g., [5th Amendment](#); [Malloy v. Hogan](#), 378 U.S. 1, pg. 1 (1964)

You also have the right to have an attorney present during questioning, and one can be provided to you if you can't afford one. Any information you talk with your lawyer about will be kept private by your lawyer. See e.g., [6th Amendment](#); [Gideon v. Wainwright](#), 372 U.S. 335 (1963)

Furthermore, if you are a witness to a crime, then you may be ordered to come to court to testify. You will be asked to swear under oath that what you say is true. Making a false sworn statement that you do not believe to be true is known as perjury, which is also a crime. See e.g., [SDCL § 19-19-603](#); [SDCL § 19-19-608](#); [SDCL § 19-19-614](#)

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 an investigation. This includes lying about the strength of the case they have against you and evidence they have in their possession.
- Sometimes police will lie to try and get you to talk more.

See e.g., [United States v. Russell](#), 411 U.S. 423 (1973)

Can the police lie to me?

Yes, the police can lie to you. The police cannot physically hurt you, threaten you or use drugs to try to make you confess to something or to obtain information from you. See e.g., [United States v. Russell](#), 411 U.S. 423 (1973)

Do I have to tell the police the truth?

Yes, lying to the police could result in you being charged with a crime. You risk arrest if you provide false information to law enforcement. See e.g., [SDCL § 22-11-9](#); [SDCL § 22-40-1](#); [SDCL § 23A-3-2](#)

However, you do have the right to remain silent, to which you should tell the officer you are exercising this right if so. See e.g., [5th Amendment](#); [Malloy v. Hogan](#), 378 U.S. 1, pg. 1 (1964)

You also have the right to have an attorney present during questioning, and one can be provided to you if you can't afford one. Any information you talk with your lawyer about will be kept private by your lawyer. See e.g., [6th Amendment](#); [Gideon v. Wainwright](#), 372 U.S. 335 (1963)

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:

Complaints about officer behavior can be submitted to the [Sioux Falls Police Department, File a Complaint Form](#). You can also consider reaching out to the Federal Bureau of Investigation (FBI) or the U.S. Department of Justice. Lastly, you can consider reaching out to a local attorney, who may be able to assist you with the process. See e.g., [Contact, Attorney General Marty Jackley](#)

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

Proposed Information

It is important to follow this advice:

If you believe that you were a victim of discrimination or racism, you can file a complaint to the [Sioux Falls Police Department, File a Complaint Form](#). You can also consider reaching out to the Federal Bureau of Investigation (FBI) or the U.S. Department of Justice. Additionally, organizations like the [ACLU](#) specialize in assisting with discrimination claims. Lastly, you can consider reaching out to a local attorney, who may be able to assist you with the process. See e.g., [Contact, Attorney General Marty Jackley](#)

How can I respond to circumstances involving discrimination?

Proposed Information

It is important to follow this advice:

Complaints about an officer you believe has exhibited discrimination or racism can be submitted to the [Sioux Falls Police Department, File a Complaint Form](#). You can also consider reaching out to the Federal Bureau of Investigation (FBI) or the U.S. Department of Justice. Additionally, organizations like the [ACLU](#) specialize in assisting with discrimination claims. Lastly, you can consider reaching out to a local attorney, who may be able to assist you with the process. See e.g., [Contact, Attorney General Marty Jackley](#)

In the moment of experiencing potential discrimination, it is important to remember the rest of the advice found in this guide. Try to remain calm in your interaction with the police, even when they become difficult.

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 that an officer improperly detained or searched you, a complaint can be submitted to the [Sioux Falls Police Department, File a Complaint Form](#). You can also consider reaching out to the Federal Bureau of Investigation (FBI) or the U.S. Department of Justice. Lastly, you can consider reaching out to a local attorney, who may be able to assist you with the process. See e.g., [Contact, Attorney General Marty Jackley](#)

What can I do as a minor without my parent(s) or legal guardian(s)?

Proposed Information

It is important to follow this advice:

Minors have the same rights under the law as adults during criminal detainments, arrests, and investigations. As a result, as a minor, you have the right to remain silent and the right to an attorney. See e.g., [5th Amendment](#); [Malloy v. Hogan, 378 U.S. 1, pg. 1 \(1964\)](#); [6th Amendment](#); [Gideon v. Wainwright, 372 U.S. 335 \(1963\)](#)

Your ability to afford a private lawyer is based off the financial situation of your parent(s) or guardian. If they cannot afford one, or if they are not available to you, you must be provided a lawyer by the government. In addition, if you are facing neglect in any way or have no adult figure (parent/guardian) in your life, you have the right to a court-appointed *guardian ad litem*, an advocate that will serve to provide context to the court about your situation. See e.g., [SDCL § 26-8A-20](#)

If you believe that your rights were violated in any way by law enforcement, regardless of if you are a minor or not, you can file a complaint about officer behavior to the [Sioux Falls Police Department, File a Complaint Form](#). You can also consider reaching out to the Federal Bureau of Investigation (FBI) or the U.S. Department of Justice. Additionally, organizations like the [ACLU](#) specialize in assisting with discrimination claims. Lastly, you can consider reaching out to a local attorney, who may be able to assist you with the process. See e.g., [Contact, Attorney General Marty Jackley](#)

Glossary: Sioux Falls, South Dakota

1. Search: An investigation or evaluation of a person, object, space, or vehicle aimed at finding evidence of criminal activity. See e.g., [Cornell Law School](#)
2. Consent: Permission. See e.g., [Stop, Arrest, and Search of Persons, Sioux Falls Police Department 1000 § 3.7](#); [Cornell Law School](#)
3. (Search) Warrant: An official document from the court that allows police to search you or your belongings without your consent. See e.g., [SDCL § 23A-35-1](#)
4. Stop and Frisk: A type of brief search of you and your surroundings with the belief that the person is involved in criminal activity or is a threat to public safety. See e.g., [Terry v. Ohio, 392 U.S. 1 \(1968\)](#); [Stop, Arrest, and Search of Persons, Sioux Falls Police Department 1000 § 3.5](#)
5. Reasonable: Rational or logical in the context of a what is known in a situation. See e.g., [Cornell Law School](#)
6. Unreasonable: Anything that is inappropriate, aggressive, over the top, or harmful to you or anyone involved. See e.g., [4th Amendment](#); [Cornell Law School](#)
7. Exigent Circumstance: A situation where the officer reasonably believes that their intervention against a person is necessary to protect public safety. See e.g., [Cornell Law School](#)
8. Testimony: Evidence that can be used in court. See e.g., [Cornell Law School](#)
9. Right: A power or ability that you have as a person because it is outlined in a constitution, law, or ruling. See e.g., [Cornell Law School](#)
10. Exercise: To use or utilize. See e.g., [FindLaw](#)
11. Detain: To hold in custody by law enforcement under reasonable suspicion. See e.g., [Cornell Law School](#)
12. Miranda Warning: A set of rights you have under the U.S. Constitution that law enforcement must tell you upon arrest. See e.g., [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#); [Cornell Law School](#)
13. Probable Cause: Having a reasonable suspicion that you are, have been, or will be directly involved in criminal activity. See e.g., [Cornell Law School](#); [Stop, Arrest, and Search of Persons, Sioux Falls Police Department 1000 § 3.1-3.2](#)
14. Counsel: A lawyer, an attorney. See e.g., [Cornell Law School](#)

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Law is generally described as of February 2022.

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