

**Baker  
McKenzie.**

# Real Rights: young people engaging with law enforcement

 Wilmington, Delaware



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?
- 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?**

Police cannot arrest you for refusing to answer questions. Under Delaware's "stop and identify" law you may be detained for up to two hours if you do not disclose: your name, your address, where you are going and what you are doing. You may be detained for failing to answer questions.

[Delaware Code, Section 1902](#)

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

Unless their identity is obvious, officers are required to identify themselves by displaying a badge and/or digital photo identification card prior to taking any police action. If the officers do not identify themselves, you have the right to ask them to provide their name and badge number.

[Wilmington Police Directive 7.2.H](#)

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

Under Delaware's "stop and identify" law you only need to disclose your name, address, what you're doing, and where you're going. You do not need to give the officer any information that could incriminate you or make you a suspect of a crime.

[Delaware Code, Section 1902](#)

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

You can ask if the individual is a police officer. Unless it is impractical, not feasible, or it is obvious (like if the officer is wearing a uniform), a police officer must give you their name and badge number if you request it. Remember to make this request in a respectful manner.

[Wilmington Police Directive 7.2.H](#)

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

Yes. You have the right to tell the officer you want an attorney.

[Know Your Rights - Office of Defense Services - State of Delaware](#)

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

Potentially, if you are performing a "physical act" that "interferes with" or "hinders" an officer in the performance of their duties. For example, if the officer asks you to stand up so that they may search the public area you are sitting on and you refuse, that may be regarded as resisting.

[Wilmington Code of Ordinances, section 36-195.](#)

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

No. If you are stopped in a group, and you are being detained, you do not have a right to leave. If you do not know if you are being detained, you may ask the officer if you are free to go. If the answer is yes, you can consider walking away. Fleeing detention may be considered a misdemeanor.

[Del. Code, Title. 11, Sec. 1257.](#)

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

No. It is unlawful to intentionally prevent or attempt to prevent a police officer from arresting or detaining another person. If you are in a group and a police officer stops the group in an attempt to detain or arrest someone in your group (but not you), you could be found guilty of

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a misdemeanor if you are found to have intentionally prevented the officer from detaining or arresting the other person in your group (for example, by telling them to run).

[Del. Code, Title. 11, Sec. 1257.](#)

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

Yes, but anything you say after telling the officer that their language is not your first language could still be used against you in a court of law. A waiver (giving up your rights) must be knowing, intelligent, and voluntary. You must first be able to understand your rights before you can waive them. While a person's understanding of the English language is a factor that is considered by a court in determining if a person validly waived their rights, it alone might not be enough to prove that the person's waiver was involuntary. You may tell an officer that their language is not your first language, and you can also decide at any time to stop answering questions.

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

[Liu v. State, 628 A.2d 1376, 1380 \(Del. 1993\)](#)

If your attorney does not speak your first language, you may be entitled to an interpreter service free of charge from the Delaware Office of the Public Defender.

<https://ods.delaware.gov/interpreter-services/>

## **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?**

The police generally cannot search your phone unless you consent, or they have a warrant. If you are arrested, in some limited circumstances, if the police believe evidence on the phone may be in danger of being destroyed, they may search the phone without a warrant.

[Riley v. California, 134 S.Ct. 2473, 2493 \(2014\).](#)

[Delaware Code, Section 2301.](#)

[Know Your Rights - Office of Defense Services - State of Delaware](#)

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

The police cannot require you to provide the password for your phone without a warrant.

[Know Your Rights - Office of Defense Services - State of Delaware](#)

<https://www.aclu-de.org/en/know-your-rights/if-you-are-stopped-or-detained-taking-photographs>

<https://uclawreview.org/2020/01/28/smartphones-and-the-fourth-amendment-when-is-access-to-password-protected-information-permitted/>

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

The police cannot require you to provide your password without a warrant. So, if they ask for your password without a warrant, you can respectfully refuse. However, they can take your phone, and you may be detained.

<https://www.aclu-de.org/en/know-your-rights/if-you-are-stopped-or-detained-taking-photographs>

<https://uclawreview.org/2020/01/28/smartphones-and-the-fourth-amendment-when-is-access-to-password-protected-information-permitted/>

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

You are not required to provide your cell phone password to the police unless they have a warrant to search the phone. If they ask for the password, but do not have a warrant, you can politely decline. However, the police may seize the phone to obtain a warrant if they believe it contains evidence of a crime.

<https://uclawreview.org/2020/01/28/smartphones-and-the-fourth-amendment-when-is-access-to-password-protected-information-permitted/>

[Riley v. California, 573 U.S. 373 \(2014\).](#)

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

Police can use a mobile fingerprint scanner to try to identify you and help them conduct a search. In order to use the fingerprint scanner, police officers must have a reasonable suspicion that you committed a crime and that your fingerprints can help confirm or rule out your connection to a crime.

If the fingerprint scanner confirms your connection to a crime, the officer can take appropriate action, including a legal search of your belongings.

[https://cdn.muckrock.com/foia\\_files/2015/09/18/McEachen\\_FOIA\\_Response.pdf](https://cdn.muckrock.com/foia_files/2015/09/18/McEachen_FOIA_Response.pdf)

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

You have the right to refuse a search. The police can pat down the outside of your clothing only if they have "reasonable suspicion" (for example, a reason to suspect that you might be armed and dangerous). They are not allowed to search any more than this (including any items you are carrying) without your consent.

<https://ods.delaware.gov/know-your-rights/>

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

Yes, police officers are required to activate their body-worn cameras any time they are exercising their official police powers, which would include any time they are interacting with or questioning a citizen. A police officer is not required to notify you that you are being recorded. If you are unsure whether or not you are being recorded, you can ask the police officer if you are being recorded.

[Wilmington Police Department, Directive 6.93](#)

If you are arrested, you will be photographed with an identification number and the date of the photograph.

[Wilmington Police Department, Directive 6.11.C.4.](#)

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

Yes, under Delaware law, officers are allowed to ask where you are going, and if you do not answer to their satisfaction, they can detain you for further questioning for up to 2 hours. This detention is not an arrest, and at the end of the detention period, you must be either released or arrested.

[Delaware Code, Title 11, Section 1902](#)

Officers must also contact parents or guardians prior to questioning a juvenile, and must inform you of your rights in front of an interested adult prior to engaging in any further questioning.

[Wilmington Police Department, Directive 6.16.H](#)

## **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?**

Police cannot arrest you for refusing to answer questions. Under Delaware's "stop and identify" law you may be detained for up to two hours if you do not disclose: your name, your address, where you are going and what you are doing when stopped by a police officer. You may be detained for failing to answer questions.

You have the right to remain silent regardless of whether you have been arrested.

[Delaware Code, Title 11, Section 1902](#)

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

You have a right to remain silent. If you attempt to "correct" the officer's statements, this may be viewed as you volunteering information and may be used against you in a court of law.

[What to Do When Encountering Law Enforcement | ACLU Delaware \(aclu-de.org\)](#)

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

You have the right to remain silent. To use this right, you must inform the officer that you do not wish to speak with the officer.

[Know Your Rights - Office of Defense Services - State of Delaware](#)

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**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?**

Once you are arrested, the officer must advise you of your rights to remain silent, to an attorney, and to have an attorney appointed if you cannot afford one. However, even if you are not arrested, anything you say to the police can be used against you in court.

[Know Your Rights - Office of Defense Services - State of Delaware](#)

## **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?**

The police can only search you with your consent or with probable cause. If you agree to the search, you are waiving your 4th Amendment rights against search and seizure, and anything seized by police in that search can be used as evidence against you in a criminal case. You have the right to refuse to be searched or have your property searched. If the officer searches you anyway, you cannot resist the search, but any evidence that the police seized or learned about as a result of an illegal search cannot be used as evidence against you in a criminal case.

If the officer has a warrant to search your property they can search the property at will with or without your consent (you have to consent, if they have a warrant).

[Delaware Code, Title 11, Section 1902](#)

[State v. Rollins, 922 A.2d 379 \(Del. 2007\);](#)

[State v. Watson, 2009 Del. Super. LEXIS 518 \(Del. Super. Ct. May 1, 2009\).](#)

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

Even if the police demand information from you (instead of ask you), you have the right to remain silent and not to share incriminating information. If you do not volunteer the answers, police cannot require you to do so.

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

## **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. Even if you did not do anything, an officer may stop you if the officer reasonably suspects you are committing, have committed or are about to commit a crime.

[Delaware Code, Title 11. Sec. 1902\(a\)](#)

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You may not know what information the officer has in their possession and, as a result, you may be unable to determine whether the officer "reasonably suspects" anything.

For example, if an officer receives a tip from a reliable source that a person in the park with a red sweater is carrying illegal drugs in a backpack, and merely by coincidence you are wearing a red sweater and carrying a backpack in the park, this may be enough for the officer to "reasonably suspect" you of being that person, even if you haven't done anything wrong.

[Wilmington Police Department, Directive 6.75.C.](#)

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

Yes, you may ask an officer why you were stopped.

[If-the-police-stop-you-on-the-street.pdf \(delaware.gov\)](#)

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

Yes, however, if you are seen attempting to stop a police officer from arresting or detaining another person that is considered a misdemeanor.

[Del. Code, Title. 11, Sec. 1257](#)

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

You can ask the officer if you are free to leave. If they say that you are free to leave, you can walk away. Before you walk away, it may be helpful to announce your intention to do so ("I am going to leave now"), to avoid any sudden movements in front of the officer.

[What To Do If Police Stop You: These Are Your Rights: Life Kit: NPR](#)

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

Yes. Unless their identity is obvious, officers are required to identify themselves by displaying a badge and/or digital photo identification card prior to taking any police action. If the officers do not identify themselves, you have the right to ask them to provide their name and badge number.

[Wilmington Police Directive Chapter 7.2.H.](#)

## **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.

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- 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 the officer:

- Am I under arrest?
- Am I free to go?
- Am I being detained?

If you are being detained, you can be held for up to two hours. After that, you will either be let go or arrested and charged with a crime.

[Delaware Code, Title 11, Section 1902](#)

[What To Do If Police Stop You: These Are Your Rights: Life Kit: NPR](#)

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

Being detained is not the same as being arrested. Even if you have done nothing wrong, an officer may detain you for up to two hours if the officer has a reasonable belief or suspicion that you committed, are committing or will commit a crime. After the two hours, the officer has to let you go or arrest and charge you with a crime. Being arrested means you are taken into custody to answer for the commission of a crime. If an officer has *arrested* you, they must read you your rights, including the right to remain silent and be represented by an attorney (sometimes, these are called "Miranda Rights," after the case *Miranda v. Arizona*).

[Delaware Code, Title 11, Section 1902](#)

[Miranda Rights](#)

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

Not necessarily. Officers can in limited circumstances forcibly detain you (such as handcuff you) even if you are not under arrest.

[Delaware Code, Title 11, Section 1902](#)

For example, during an investigatory stop an officer may handcuff you to effectuate the stop and keep the officer safe.

[Cannon v. State, 53 Del. 284, 168 A.2d 108, 1961](#)

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

Not necessarily. It is possible that you may be detained. If you are detained, the police may "restrict your liberty" for up to two hours. At the end of a detention, you will either be arrested or free to go.

If you are unsure whether you are under arrest or being detained, you can ask the officer:

- Am I free to leave?
- Am I being detained?

[Delaware Code, Title 11, Section 1902](#)

[What To Do If Police Stop You: These Are Your Rights: Life Kit: NPR](#)

## 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?

Once you have been read your rights and you later share information, there is an increased likelihood that your waiver of your rights will be treated as knowing, voluntary, and intelligent. If you continue to share information after having been warned against your rights, any information shared can be used against you as evidence in court.

If you are under the age of 18, officers must explain these rights in the presence of a parent, guardian, lawyer or someone interested in your well-being. If no such person is present, you have the right to request that they be present. You also have the right to ask what you should expect during any later interrogation process.

[Wilmington Police Department, Directive 6.16.H](#)

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

No. Your rights apply to you no matter where you are located.

[Wilmington Police Department, Directive 6.16.H](#)

## 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. Officers cannot force you to make a statement or answer questions. They also cannot threaten you by placing their hands on you, using any piece of equipment to touch you, or pressuring you psychologically.

[Wilmington Police Department, Directive 6.16.H.](#)

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

Yes, if you are under the age of 18, police officers must contact your parent or guardian before any questioning and the parent or guardian must be given an opportunity to understand what the questions will cover and to be present during the questioning.

[Wilmington Police Department, Directive 6.16.H.](#)

## **Must I confess?**

No. Officers cannot force you to make a statement or answer questions. They also cannot threaten to use physical force or psychological pressure to compel you to answer questions or confess.

[Wilmington Police Department, Directive 6.16\(H\)](#)

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

You are entitled to have your parent or guardian present with you during questioning. If a parent or guardian is not available, you can have a teacher or any other interested adult who is interested in your welfare present.

[Wilmington Police Department, Directive 6.16\(H\)](#)

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

If you are a legal minor (meaning you are under 18), the police must contact a parent or guardian in any case where legal action may be taken or if police will commit you to a detention facility or intend to take you into custody or intend to question you on school property to inform them of the incident.

If parents cannot be contacted, the police must contact and can release you to any adult family member, such as a brother or sister, uncle or aunt, or grandparent, if you are in custody.

[Wilmington Police Department, Directive 6.16\(B\)\(2\), \(3\), \(C\)\(2\), \(F\)\(2\)\(c\)](#)

## **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 should contact a lawyer before making any statements to anyone in a criminal case or investigation, even if you are just a witness. You may be eligible for a lawyer through the New Castle County Office of Defense Services.

[Wilmington Police Department, Directive 6.16.H.](#)

## [How Do I Get An Attorney? - Office of Defense Services - State of Delaware](#)

New Castle County  
Office of Defense Services, Intake Unit  
New Castle County Courthouse  
500 N. King St.  
Suite 2400  
Wilmington, Delaware 19801  
(302) 255-0130

## **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. However, Wilmington Delaware Police Officers must follow the Law Enforcement Code of Ethics that states that they will "be honest in (thought) and deed" in both personal and official life.

[Wilmington Police Department, Directive 1.0](#)

Depending on the circumstances, officers who lie would be in violation of the accepted standards of conduct.

[Wilmington Police Department, Directive 7.1](#)

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

If you choose to provide information to police, you should tell the truth. It is illegal to knowingly provide a false statement to the police with the intent to prevent, hinder or delay the investigation of any crime or offense, and when such a statement is relevant to the investigation.

[Delaware Code Title 11, Section 1245A](#)

## **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:

If you have questions about making an official complaint against a Wilmington Police Officer, you can contact the Office of Professional Standards by calling (302) 576-3197 between Monday and Friday from 8:00 a.m. to 4:00 p.m.

If you feel your rights have been violated by a Wilmington police officer, you can file a citizen complaint against the police officer with the Office of Professional Standards. In order to file a complaint, you must complete an official Citizen Complaint Form. The complaint form can be accessed in person, online, or by phone.

If filing a complaint online, you can access a WPD Citizen Complaint form [here](#).

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

### **Proposed Information**

It is important to follow this advice:

If you feel you were a victim of discrimination or racism (for example, because you were stopped or searched by a police officer based on racial, ethnic, or gender-based profiling), you can file a complaint with the police department. If you contact the police department directly to file any complaint of discrimination or racism, the officer must take your name, address and telephone number and report the complaint to their supervisor and the complaint must immediately be investigated.

Wilmington Police Department, Directive 6.75.F.

## **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 think the police performed an improper search or improperly detained you, you can file a citizen complaint against the police officer with the Office of Professional Standards. In order to file a complaint, you must complete an official Citizen Complaint Form. The complaint form can be accessed in person, online, or by phone.

If filing a complaint online, you can access a WPD Citizen Complaint form [here](#).

## Disclaimer

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Baker McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

Law is generally described as of December 2022.

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