

KNOW YOUR RIGHTS: Police Stops

What if You are Stopped by the Police for Questioning?

The police may **STOP FOR QUESTIONING** any person who they believe is committing or has committed a crime, but that stop usually must be very brief. The person stopped need not give any information at all, except that the driver of a car, if stopped, must produce a license and registration. The police have no legal right to stop just anyone: only persons they have reason to believe have committed a crime, or persons they suspect are carrying weapons, may be stopped for questioning. The stop must be brief, unless the police are prepared to make an arrest. An arrest is justified only when the police have **PROBABLE CAUSE** to believe the person is committing or has committed a crime. Sometimes it is permissible for the police to detain a suspect long enough for a person at the scene of a crime to see if they can identify the suspect.

Anything said to a police officer may be used in court, whether it is an oral statement or a written statement. Some people think that as long as they do not sign anything, nothing they say can be introduced as evidence in court against them: **this is not true**. A **STATEMENT** is sometimes another word for **CONFESSION**.

Often, defendants give statements to the police because they believe they can “talk their way out” of difficulty. That is highly unlikely to be true. Once police have made an arrest, or believe they have cause to arrest a person, a statement is unlikely to do a defendant any good. In fact, it can do a defendant a lot of damage when the case gets to court. Similarly, defendants sometimes believe that if they “cooperate,” less harm will come to them. That is just as untrue. Once a formal charge is made in court, only the Court or prosecutor may dismiss the case. No matter what a defendant tells the police, the police have no power to drop a formal charge.

The police cannot deliver on any promises of particular sentences, although they sometimes make recommendations to the prosecutor or the judge. Neither can the police insure that a defendant will not be prosecuted once s/he is charged. It is true that the police themselves determine whether a person will be arrested, but it is highly unlikely that anything the defendant says will influence that decision. If there is enough evidence to arrest, the defendant will be charged. If police do not yet have enough evidence, the defendant runs the risk that the statement s/he gives will provide that evidence.

Persons stopped while driving a car must show the police a license and registration. There are very special rules for when a car may be searched if a person in the car is stopped or arrested. As a general rule of thumb, police can search any item within the car itself if it might contain weapons. Nothing in a car is absolutely guaranteed to be secure against a police search, but items in a locked trunk are protected more than items strewn about the seats; and items kept in a locked container of any sort are more protected than items kept in the open.

Persons stopped on the street need not show police anything. The police may not search a person stopped on the street, unless they are willing to make an arrest, with one exception: if there is a **reason to believe** the person is armed, police may **“FRISK”** the person (pat down the outside of your clothing). Often if the police believe they have found some incriminating article on

a person, they will ask him or her to take it out and give it to them. **No one is obligated to do this.** If the police are entitled under the law to take the article, the police should take it themselves. A defendant who voluntarily gives police an item may find that even though the police were not legally entitled to have it to begin with, the defendant's action of handing it over may constitute **CONSENT**. Usually, anything the police take illegally may not be used against a defendant in court: it will be **SUPPRESSED** from evidence. If, however, a defendant turns over an item or consents to the police taking it, the item may be used in court even if the police were not entitled to take the item forcibly.

If a person is merely stopped, rather than arrested, the police have no right to make him or her open packages or boxes on his or her person; they have no right, for example, to look inside a cigarette pack to see if there are drugs.

As a general matter, it is always better not to voluntarily permit any searches of your person, car or belongings. If the law gives police the right to search, they will do so without your agreement. If the law does not give them the right to search, your voluntary cooperation will give them that right.

With **very rare exceptions, homes may not be searched without a search warrant**, signed by a judge, giving the police the right to enter the home and look for particular, specified objects. Also, police may usually not enter a home without permission in order to make an arrest, unless they have an arrest warrant for a specific person located in the home. A person who lives in the home or is visiting there with permission cannot generally be arrested inside the home unless the police have either a search warrant or an arrest warrant, signed by a judge. The police are obligated to show that warrant.

An **ARREST** allows the police to keep a defendant in custody until court. Arrested persons are taken to the police station for **BOOKING**, and will be fingerprinted and photographed. Arrested persons will be required to identify themselves, and it is a crime to give a false identity. Police may completely search the person of an arrested person and they may use anything they find against you in court. Police can often impound the vehicle of a person arrested, if the person was the driver. An **INVENTORY SEARCH** requires the defendant to empty pockets. Wallets, keys and other items will be taken. These items, as long as they are not evidence of a crime, will be returned when the person leaves the station.

Police may insist that an arrested person participate in a **LINEUP**. Persons who are not arrested or not legally detained do not have to participate in a lineup, and should not do so. A lineup is when the police literally put the defendant in a line with other people to see if the victim or witness can identify anyone in the line as having participated in a crime. A lineup identification can be very damaging in court. Only persons formally charged are entitled to be represented by an attorney at a lineup. If a person is represented by the Public Defender, a Public Defender attorney will come down to the police station during the lineup.

Persons required to appear in a lineup should be careful not to wear any distinctive clothing which might itself cause the witness to make a positive identification. The witness is supposed to make an identification, if s/he can, by face and physical characteristics, not by anything else. A defendant may be required to speak or say certain words at a lineup and to put on certain clothing.