



## Your Rights if Questioned, Stopped or Arrested by Police

### What are my rights and responsibilities . . .

#### If the police approach me and ask me questions?

Suppose you are outside your home or in a public place when the police arrive and begin asking questions. Law enforcement officers have a duty to protect the community they serve, its citizens and their property. The law gives police certain powers to help them perform that duty.

Police have the power to approach persons and ask them questions. Simply because you are approached and questioned by the police does not mean you are suspected of having committed a crime. All citizens are encouraged to cooperate with the police so those who break the law can be brought to justice, but with one exception, discussed below, you have no legal duty to answer any question, and you may refuse to answer. This is called the *right of silence*. You should never lie to a law enforcement officer, however. If you do, you can get into trouble for “obstructing official business.”

#### If the police “stop” me and ask me questions?

Suppose you are walking down a street when a police officer confronts you and says: “Stop. I need to ask you some questions.” A person is “stopped,” or “detained,” when an officer uses enough force, or a show of authority, to make a reasonable person feel he or she is not free to leave. If, in addition to calling out for you to stop and using his or her authority to make you stop, the officer also pulls out a weapon or uses a threatening tone of voice, it would be even clearer that you have been “stopped.” If the officer interferes with your liberty to move about, he or she should first have a reasonable suspicion that you have been involved in a crime. The officer would need to support this suspicion later (should the matter wind up in court) by referring to specific facts that prompted the suspicion.

The police do not have to tell you that you are a suspect or that they intend to arrest you, but if they use force or a show of authority to keep you from leaving, they probably consider you a suspect, even if you were the person who called the police. If they read or recite your *Miranda* rights, they suspect you have committed a crime.

You have the right, if you are stopped, to refuse to answer any questions for any reason or no reason. You can invoke your right to silence by saying, “I refuse to answer any questions” or “I want to speak to a lawyer” or “I wish to remain silent.” If you do not clearly invoke your right to silence with such a statement, you may subject yourself to continued questioning by police.

There is one exception to your right to silence: According to Ohio law since April 2006, if you are in a public place and under certain circumstances, you must give your name, address and date of birth to a police officer. If you fail to provide this information under such circumstances, you will be committing a fourth-degree misdemeanor and may be arrested.

Also, if you are only being stopped, you can refuse to give your consent for an officer to search your person, vehicle or home. Your refusal will force the police officer to legally justify any search made without your consent. Be aware, however, that Ohio law *does* permit some limited searches (such as patdowns) in “stop” situations in order to search for weapons.

Further, anything you say can be used as evidence against you. Sometimes people think that what they are saying won’t incriminate them, but it *can* provide a link in a chain of information that could incriminate them.

Even if you believe the officer has no grounds to stop and question you, do not argue with or resist the police. Arguing or resisting will not help you, and may make it more likely that the police will arrest you and bring criminal charges against you. It may also give them grounds to bring even more criminal charges against you, which can make it harder for you to get out of jail on bail if you are charged. Once officers no longer have grounds to detain you, they should say you are free to go before asking to search you or your car.

#### If I am arrested?

An arrest is different from a stop. A stop involves brief questioning in the place where you were detained. If the officer wants to hold you longer, or decides to take you elsewhere, such as to the police station, he or she is no longer just stopping you, but is arresting you. An arrest deprives you of your freedom of movement for an even longer period of time than a stop, so the law limits the instances when arrests can be made.

#### When can I be arrested?

You may be arrested by a police officer who personally saw you violate any state statute, city ordinance or federal law. Police arrest powers vary depending on the seriousness of the offense. The important thing is that the officer sees the violation.

1. If the charge is a minor *misdemeanor* for which only a fine is the possible penalty (not time in jail), the officer *may not* arrest you and take you into custody *unless* you fail to give your name, refuse to sign the citation, or have previously failed to appear in court or pay a fine on a similar offense.
2. An officer can generally only arrest you for a *misdemeanor* committed in his or her presence, EXCEPT if: 1) you have an outstanding warrant or long history of failure to appear in court; 2) your medical or mental state might cause you to harm yourself or others; 3) the offense is domestic violence or the officer is concerned you may harm another person; 4) you fail to identify yourself with your name and date of birth. If you refuse to identify yourself, the officer can take you into custody to determine your identity.
3. You may be arrested for a *felony* (a crime for which jail is a possible penalty), even if the police officer did not personally see you commit the felony, IF the officer had *probable cause* to believe you committed the crime. Later, the court system (not the police) will determine if the officer’s belief was reasonable and if you are guilty or innocent.
4. You may be arrested when there is a warrant for your arrest, whether or not you are aware of the warrant. The police cannot cancel an existing warrant. They must serve it and arrest the person named on the warrant.

An arrest warrant is a legal document, issued by a judge or a clerk of the courts, directing the police or the sheriff to arrest you and take you into custody. This document does not have to be on any particular form. The arresting officer is not required to have the warrant in hand

when you are arrested. The officer must show you the warrant within a reasonable time after you are arrested and give you a copy. If the officer fails to do so, tell your attorney later.

Even if you believe the officer has no grounds to arrest you, do not argue with or resist the police. You have no right to argue about why you are being arrested or about your guilt or innocence at the time of the arrest. Arguing or resisting will not help you. It will mean the police can bring additional criminal charges against you, and may make it harder for you to get out of jail on bail if you are charged.

- Again, do not argue with the police.
- Never resist your arrest. Do not run away.
- Never resist the arrest of another person.

### **What are my rights if I am arrested?**

1. An officer who wants to ask you questions other than your name and address must advise you that you have a right not to answer the questions.

2. You have the right to be told why you are being arrested and the nature of the charges against you (the crime for which you are being arrested). If you are arrested on a warrant, you have the right to see the warrant within a reasonable time after your arrest, to read it and make sure your name appears on it, and to see the charge against you.

3. You have the right to be told your constitutional rights (“*Miranda*” rights) before being questioned following your arrest. These *Miranda* rights are:

- The right to remain silent and not answer any questions;
- The right to know that if you *waive* (give up) your right to remain silent and *do* answer questions, the police can use your answers against you in court;
- The right to stop answering questions at any time and talk with an attorney, even if you have begun to answer questions; and
- The right to speak privately with an attorney before answering any questions or signing anything.
- If you cannot afford an attorney and if the crime that prompted your arrest has jail time as a possible penalty, you also have a right to have an attorney appointed to represent you at no cost to you before being questioned, and to have that attorney with you during any questioning to which you may later agree to submit.

You CANNOT be penalized for refusing to answer an officer’s questions. If you try to cooperate by answering questions while you are being held in police custody, you may create difficulties for your lawyer in defending you. ALWAYS ASK TO SPEAK TO A LAWYER.

4. You also have the right to:

- Contact, by telephone or otherwise, a responsible person, to tell him or her you have been arrested and what the charges are. You are not limited to one telephone call if more calls are needed to contact someone.
- Refuse any physical or chemical test (such as a polygraph “lie detector,” breathalyzer, intoxilizer, field sobriety tests or physical performance tests such as walking a straight line or making other movements, the look-at-the-pen test, or mental ability tests

like reciting the alphabet or doing math) until you can talk to your lawyer.

- Have your attorney present at any line-up or other identification procedure in which you are viewed by possible eyewitnesses to a crime.
- Reasonable bail or bond to secure your release from jail unless you are charged with a capital crime. Usually a judge sets the bail or conditions of your release. If you are charged with a misdemeanor, and if no judge is available, the police may, at police headquarters, accept bail in accordance with rules established by the judge.
- Be brought before a court as soon as is reasonably practicable after your arrest, so that you can request a preliminary hearing to test the basis of your arrest and/or trial to determine your guilt or innocence.

### **If I am arrested, what will the police do?**

The police will search you for weapons, handcuff you, transport you to jail, and photograph and fingerprint you for identification.

If you are not under arrest or if police do not have a search warrant (a court order allowing them to search), the police may ask you to let them search your car, your home and/or other possessions. *You can refuse to consent to these searches.*

You have a right to be free from unreasonable searches and seizures. Most of the searches for which an officer might ask your consent would require the officer to first get a warrant from a judge, *unless you consent and give up this right.*

Only a judge can decide whether the search is proper before that search is conducted. There is no penalty for exercising your right to have the judge decide whether to allow the search. Your refusal to consent to a search cannot be used against you.

If you are unsure how to respond to an officer’s request, assert your right to counsel and discuss the request with your attorney before doing or saying anything.

Since July 1, 2011, Ohio law has required that a law enforcement agency must collect and forward a DNA specimen to the Bureau of Criminal Identification and Investigation when the agency arrests a person 18 years or older for a felony.

### **Do’s and don’ts during arrests and custody**

Do not argue with the police. You cannot talk your way out of being investigated, arrested or prosecuted. Any explanation you give the police may give them more information than they already have, so it’s often wise to save your explanation and defenses for court.

If you have been arrested, the police believe you committed a crime. Their job is to investigate and gather evidence. Telling the police your side without a lawyer present is usually a bad idea, even if you believe you have done nothing wrong. Always pay close attention to what happens when you first encounter the police and afterward. Try to memorize who was there to see and hear what happened. Sometimes the court needs to look into what happened to you while you were in custody. It will help you if you can later fully inform your counsel about these events.

Do not tell your family and friends all about it or ask non-lawyers for legal advice. It is possible that they may be ordered to appear at trial to repeat what you said.

Do not talk to another inmate or a corrections officer about your case. A conviction may result from a "jailhouse confession."

Rely on your lawyer to advise and defend you no matter what you did or did not do. Legal ethics rules keep your attorney from disclosing without your permission any information you give him or her during the attorney-client relationship. However, your attorney may disclose your intention to commit a crime and the information necessary to prevent the crime. Also, your attorney has an ethical duty to keep you from offering testimony he or she knows is not true.

#### **What are my rights in court?**

Within 72 hours after your arrest, the judge must:

1. Tell you the crime of which you are accused and explain it to you if you do not understand it.
2. Give you a copy of the written complaint against you if you do not have one already.
3. Give you a continuance (more time) to get an attorney, or appoint one for you if there is a possibility you could go to jail if convicted and you can't afford to pay an attorney to help you.
4. Tell you the nature and effect of the pleas you may enter. You may enter a plea of *not guilty*, *no contest* or *guilty*.
  - *Not guilty* means you do not give up any of your rights, including the right to a trial. If you are in doubt, plead not guilty.
  - *No contest* means you admit the facts in the complaint are true, but you deny guilt. The judge may find you guilty or not guilty. (A *no contest* plea cannot later be used against you in a civil lawsuit for money damages. Anyone who later sues you over the incident must prove you were at fault and violated the law.)

Most no contest pleas result in a guilty finding unless the arresting officer has cited you under the wrong statute or ordinance, or if the arresting officer's written statement of facts fails to sufficiently support the charge.

- *Guilty* means you admit the crime(s) of which you are accused and *waive* (give up) your right to a trial, where the prosecution would have to prove you guilty beyond a reasonable doubt. You also give up your right to remain silent. The judge may sentence you immediately or at a later hearing. A guilty plea can later be used to prove you were at fault in a civil lawsuit. A guilty plea can also lay the basis for a harsher punishment if you are later convicted of another offense.

You are entitled to have a record made by a court reporter or tape recorder of what has happened in the courtroom. Then, if a question later arises, you have evidence of what happened when you were in court.

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