

KNOW YOUR FOURTH AND FIFTH AMENDMENT RIGHTS

The Fourth Amendment: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

The Fifth Amendment Self-incrimination Clause: "...No person... shall be compelled in any criminal case to be a witness against himself or be deprived of life liberty or property without due process of law..."

Keep Private Items Out of View. Always keep any private items that you don't want others to see out of sight. Legally speaking, police do not need a search warrant in order to confiscate any illegal items that are in plain view.

Say "No" if the police request they Search the car or you personally. If the police ask your permission to search, you are under no obligation to consent. The only reason he's asking you is **because he doesn't have enough "probable cause" to search without your consent.** If the police had sufficient probable cause, they would not be asking, they would immediately proceed to search you and your vehicle, seize anything illegal, and arrest you and possibly your passengers. If the police do not have probable cause to search you, but you consent to a search, the police WILL search you and your car. Again, if you they find anything illegal, you may be arrested and thrown in jail depending on what they found. **YOU DO NOT HAVE TO CONSENT TO ANY KIND OF SEARCH.** This is the one area where most people fall victim to not asserting their Fourth Amendment Rights. They feel that because it's a police officer who's asking, they are compelled to consent to a search, or, if they don't consent, the police will find "it" anyway and their situation will be worse. This is false. **YOU DO NOT HAVE TO CONSENT TO ANY KIND OF SEARCH – ESPECAILLY IF YOU HAVE SOMETHING THAT YOU DO NOT WANT THE POLICE TO FIND.**

If the police request your consent to search, and you refuse, but they go ahead and search anyway and find some illegal item(s), you would, under these simple circumstances, have grounds to suppress whatever they found due to a violation of your Fourth Amendment rights.

A majority of avoidable police searches occur because citizens naively waive their Fourth Amendment rights by consenting to warrantless searches. As a general rule, if a person consents to a warrantless search, the search automatically becomes reasonable and therefore legal. Consequently, whatever an officer finds during such a search can be used against you to convict you.

Don't expect the police to tell you that you have a right to refuse consent. The police are not required to inform you of your rights before asking you to consent to a search. The police are actually trained to use their authority to get people to consent to a search.

If, for any reason you don't want the officer digging through your belongings, you should refuse to consent by saying something like, **"Officer, I know you want to do your job, but I do not consent to any searches of my private property."** If the officer still proceeds to search you and finds illegal contraband, your attorney can argue that the contraband was discovered through an illegal search and hence should be thrown out of court. You should never hesitate to assert your constitutional rights.

Do Not Answer Questions without Your Attorney Present. Anything you say can, and probably will, be used against you. In just about any case imaginable, a person is best off not answering any questions about his involvement in anything illegal. Assert your Fifth and Sixth Amendment rights by saying: **"Officer, I have nothing to say until I speak with a lawyer."** **If you do choose to answer any of the officer's questions, always be honest. Police are not easily tricked. If you feel it is best not to answer truthfully, then don't say anything at all.**

Do Not Physically Resist. If the police proceed to detain, search, or arrest you despite your wishes—do not physically resist. You may state clearly but non-confrontationally: "Officer, I am not resisting arrest and I do not consent to any searches." Or you may assert your rights by simply saying nothing until you can speak with an attorney.

Frequently Asked Questions

1. When are police legally allowed to search me?

Searches with a Warrant: Police are legally allowed to search your home or your property if they obtain a search warrant. To obtain a warrant, the police or an informant must sign an affidavit -- a written statement under oath -- to convince a judge that the police have probable cause that criminal activity is occurring at the place to be searched or that evidence of a crime may be found there.

No Search Warrant: Most searches occur without warrants because the police take advantage of many legal exceptions to the Fourth Amendment's requirement:

- **Consent Searches** If the police ask your permission to search you, your bike, your home, purse, or other property, and you freely consent, their warrantless search automatically becomes reasonable and therefore legal. Consequently, whatever an officer finds during a consent search can be used to convict you.

- **Plain View Rule:** Any object police see in their plain view is fair game. For example, if you have illegal contraband on the front seat of your car and the police can plainly see it while they have pulled you over and are questioning you, they can question you about it and seize it if they feel it is illegal. So it's common sense: keep private items you don't want others to see out of sight.
- **Searches Made in Connection with a Legal Arrest** Police do not need a warrant to make a search "incident to an arrest." After a legal arrest, police can legally protect themselves by searching the person and the immediate surroundings for weapons that might be used to harm the officer. Consequently, whatever an officer finds during such a search can be used to convict the person.
- **Exigent Circumstances.** Police may conduct a warrantless search or seizure if "exigent circumstances" exist. Exigent circumstances are emergency situations requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence.

NOTE: If you ever face a real-life police encounter where the officer is urging you to consent to a search, do not try to figure out whether or not the search is legally permissible. You must assume that the search is *not* legally permissible and that the search will only be legal if you consent. If an officer is in fact legally allowed to search you, you have nothing to lose by refusing consent.

2. What is "probable cause"?

Many factors contribute to police authority in a given situation and making up what is probable cause. Understanding the what, when, why, and how of police conduct during a stop is complex and varying standards of proof exist to justify varying levels of police authority during citizen contacts.

Generally, before the police find probable cause, they look for **Reasonable Suspicion:** facts or circumstances which would lead a reasonable person to suspect that a crime has been, is being, or will be committed. At this stage, police may detain a suspect for a brief period and perform a frisk. In some cases, drug-sniffing dogs may be called, although officers must cite a reason for suspecting the presence of drug evidence in particular. Refusing a search does not create reasonable suspicion, although acting nervous and answering questions inconsistently can. For this reason, it is best *not* to answer questions if you have to lie in order to do so. Police authority increases if they catch you in a lie, but not if you refuse to answer questions. As a general rule, reasonable suspicion applies to situation in which police have reason to believe you're up to something, but they don't know what it is.

If the police find Reasonable Suspicion, then they most likely have **Probable Cause:** facts or evidence that would lead a reasonable person to believe that a crime has been, is being, or will

be committed ***and the person arrested is responsible***. At this stage, police may perform a search, and often an arrest. Probable cause generally means police know what crime they suspect you of and have discovered evidence to support that belief. Common examples include seeing or smelling evidence which is in plain view, or receiving an admission of guilt for a specific crime.

3. Is refusing to let the police search me an admission of guilt?

No. If the police ask your permission to search, you are under no obligation to consent. Refusing a request to be searched does NOT give the police reasonable suspicion or probable cause, as those phrases are discussed above. If charges are eventually brought against you, the fact that you initially refused consent is no basis for any additional charges, i.e., asserting your Fourth Amendment rights is not a crime.

4. Are police required to read me my rights, and if they don't, can I go free?

No. The police do not have to automatically read a person his or her Miranda Rights as part of performing an arrest. From the police perspective, the time when they *should* read a person his or her Miranda rights is when: 1) the person has been taken into custody, 2) the police then questions the person about a crime, and 3) the information obtained is sought to be used against them in court, or, the information leads to new information about other evidence or other crimes. If you are taken into custody and the police do not read you your rights and you make certain statements that are later sought to be used against you, you *may* have grounds to make a *motion to suppress* those statements and any evidence obtained as a result of making those statements. If the motion to suppress is successful, it does not necessarily mean the case against you is dismissed, just that the evidence illegally obtained can't be used. The police can always use legally obtained evidence to convict you.

This is not a guarantee, representation or warranty of any outcome of any case. The forgoing paragraphs are but short introduction to these issues and should never be construed to obviate the need to seek direct legal advice.

TRAFFIC STOPS

HOW SHOULD YOU ACT WHEN STOPPED BY A COP? What should you say or not say? To increase your chances of getting away with a warning and not being ticketed, read on.

WHEN YOU SEE LIGHTS FLASHING BEHIND YOU

If a police car pulls up behind you with lights flashing, the next few minutes is key in whether or not you will be ticketed. Keeping things safe for you and the police officer is of most importance. At the minimum:

- Slow down and turn on your right turn signal to the right;
- Pull over to the right shoulder – as far as you can and as safe under the circumstances. The police are trained to leave their vehicle further out into the shoulder/road than yours so as to leave a barrier against passing traffic.
- Stay in your car unless you are told to get out. It's a challenge to the officer if you get off since officers are very cautious because of the high rate of attacks in these situations.
- *Keep your hands in view and on the steering wheel.* If the police ask for your driver's license, registration or insurance card, tell the officer where the items are before you reach for them.
- Look the officer in the eye at all times you are speaking to him/her. Show them the utmost respect and be courteous.
- Do NOT at any time, especially while the police are approaching you, reach for, or PLACE anything in your coat, under the seat, etc. Even if you are trying to hide something, the police are trained to think that you are reaching for a gun and they will draw their guns, pull you out of your car, search you, and possibly arrest you.

The key is to play it cool and keep it safe. The easier and safer you make the process for the officer to approach you the more likely the officer will let you go just with a warning and not assign you a speeding ticket.

What to say/not to say to the police officer

- As the officer approaches you, ask “what’s the problem?” The first thing the police officer will respond or ask you is whether you know why you have been stopped.

- Do NOT admit anything at anytime. Do not admit “I was speeding” or respond “I think I was going 79 miles an hour.” Even if you think you were speeding, you truly and honestly do not really know why you were pulled over. The Police will want you to admit that you were speeding and that is what most drivers do - they admit it and then receive a speeding ticket for their honesty and helping the police. By asserting your right to not incriminate yourself, you are not being dishonest.
- Don't admit that you were speeding but don't deny it either if you really were. When the officer says that you were stopped for speeding you can respond by: "I'm sorry officer, I was not paying attention to my speed. I'm not in any hurry, I was just lost in thought. I'm sorry, I will pay attention, slow down, and take it easy. Do you think you can let me go with a warning?"
- Remain calm and quiet while the officer is reviewing your documents. If the officer writes you a ticket, accept it quietly and never complain. Listen to any instruction on paying the fine or contesting the ticket, and drive away slowly.

Most people get pretty nervous when they got stopped by a cop. The secret is to stay calm, speak to the officer in a respectable tone and politely ask whether the officer can let you go with a warning.

This is not a guarantee, representation or warranty of any outcome of any case. The forgoing paragraphs are but short introduction to these issues and should never be construed to obviate the need to seek direct legal advice.