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Police Questioning Prior to Arrest

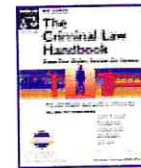
If you haven't been arrested, but a police officer wants to question you about a crime, what should you do? Here are some tips.

Refusing to answer a police officer's questions is not a crime. Of course, people often voluntarily assist the police by supplying information that might help the police make an arrest. But the Fifth Amendment to the U.S. Constitution guarantees the "right of silence." A police officer generally cannot arrest a person simply for failure to respond to questions. This means that unless a police officer has "probable cause" to make an arrest or a "reasonable suspicion" to conduct a "stop and frisk," a person approached by the police officer has the legal right to walk away. But the fact that there may be a legal right to walk away doesn't mean this is a wise move. This is because there is no real way to tell what information the officer is using as a basis for his or her actions. In fact, the officer may have information that gives him or her a valid legal basis to make an arrest or to conduct a "stop and frisk," even if the individual is, in truth, innocent of any wrongdoing. If that is the case, an officer may forcibly detain an innocent individual who starts to leave the scene of an interview.

Common sense and self-protection suggest that people who intend to walk away from a police officer make sure that the officer does not intend to arrest or detain them. A good question might be, "Officer, I'm in a hurry, and I'd prefer not to talk to you right now. You won't try to stop me from leaving, right?" If the officer replies that the person is not free to leave, the person should remain at the scene and leave the question of whether the detention is correct to the courts at a later time.

Even though, as a general rule, a person doesn't have to respond to a police officer's questions, this may not hold true if the officer suspects the person of loitering. Laws in effect in many states generally define loitering as "wandering about from place to place without apparent business, such that the person poses a threat to public safety." Under these laws, if a police officer sees a person loitering, the officer can demand identification and an explanation of

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In two cases decided in the 2000 term, the U.S. Supreme Court interpreted the "stop and frisk" rule. In one case, the Court ruled that running away from the police is enough of a reason for the police to stop and frisk the defendant. (See [You Can Run, But You Can't Hide](#).) In another case the Court ruled that an anonymous tip that a suspect might be armed was insufficient justification for the police to conduct stop and frisk, absent other facts demonstrating the reliability of the tip. ([Florida v. J.L., No. 98-1993 \(March 28, 2000\)](#).)

How a Frisk Becomes a Legal Search -- And Possibly an Arrest

When frisking a person for weapons, the police are attuned not only to the feel of possible weapons under clothing, but also to the feel of packaged drugs. Although a frisk may not turn up a weapon, it may turn up a suspicious package that the officer knows is commonly used to carry illegal drugs or some other illegal substance. This suspicion may turn into sufficient cause for a more intensive search of the person's clothing. The lesson here is that a frisk often leads to a search. And if a search produces an illegal substance, it may result in an arrest.

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An arrest occurs when a police officer armed with an arrest warrant utters the magic words "you're under arrest," or when a police officer significantly restrains your freedom of motion. The restraint must be more than a mere detention on the street (discussed above). Although in most situations the police will take you to the police station for booking (photographs and fingerprinting), it is also possible for an officer to arrest and book you at the crime scene, and then release you when you give a written promise to appear in court at a later time. After the police arrest you, they will often question you in order to find out more about the crime, your role in it and whether

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Police Questioning After Arrest

What really happens if the police fail to read a suspect his rights or use coercion to extract information from a suspect.

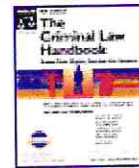
Many people believe that if they are arrested and not "read their rights," they can escape punishment. Not true. But if the police fail to read a suspect his or her rights, they can't use anything the suspect says as evidence against the suspect at trial.

Popularly known as the Miranda warning (ordered by the U.S. Supreme Court in *Miranda v. Arizona*) a defendant's rights consist of the familiar litany invoked by TV police immediately upon arresting a suspect:

- You have the right to remain silent.
- If you do say anything, what you say can be used against you in a court of law.
- You have the right to consult with a lawyer and have that lawyer present during any questioning.
- If you cannot afford a lawyer, one will be appointed for you if you so desire.
- If you choose to talk to the police officer, you have the right to stop the interview at any time. (This part of the warning is usually omitted from the screenplay.)

It doesn't matter whether an interrogation occurs in a jail or at the scene of a crime, on a busy downtown street or the middle of an open field: If a person is in custody (deprived of his or her freedom of action in any significant way), the police must give a Miranda warning if they want to question the suspect and use the suspect's answers as evidence at trial. If a person is not in police custody, however, no Miranda warning is required and anything the person says can be used at trial if the person is later charged with a crime. This exception most often comes up when the police stop someone on the street to question him or her about a recent crime or the person

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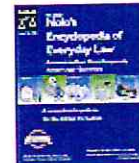
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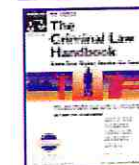


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Can a person who is charged with a crime be forced to give bodily samples?

Yes. You might think that being forced to give bodily samples-such as blood, hair or fingernail clippings-is a violation of the U.S. Constitution's protection against self-incrimination, found in the Fifth Amendment. But the U.S. Supreme Court thinks otherwise. It has ruled that the Fifth Amendment protects communications only, and that bodily samples are physical evidence and therefore not covered by the Constitution.

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When do the police need a warrant to make an arrest?

As long as the police have good reason (called "probable cause") to believe that a crime has been committed and that the person they want to arrest committed the crime, they can, with just one exception, make an arrest without asking a judge for a warrant.

The exception? There are few places where the adage "a man's home is his castle" still applies, and an arrest at home is one of them. The police must have a warrant to arrest a person at home if the arrest is for a nonserious offense-such as a simple assault-and there is no fear that the person they want to arrest will destroy evidence or cause harm to the public.

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How do the police obtain an arrest warrant?

An officer must present sworn evidence to a judge that a crime has occurred and that the police have probable cause to believe that the crime was committed by the person they want to arrest. If the judge agrees, she will issue a warrant. The police are then entitled to seize the person wherever they can find him.

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If the police make an illegal arrest, is the arrested person set free?

No. But if a search of the person or her immediate surroundings is conducted during the arrest and turns up incriminating evidence, the evidence may be kept out of the person's trial on the grounds that it is "fruit of the poisonous tree"-that is, the evidence was found as the result of an improper arrest. Also, if the illegally arrested person makes any statements to the police after being arrested, the

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statements may not be used as evidence. This is true whether or not the arrested person was "read their rights." (See below.)

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If I'm arrested, do the police have to "read me my rights?"

No. However, if they don't read you your rights, they can't use anything you say as evidence against you at trial. What are these rights? Popularly known as the Miranda warning (ordered by the U.S. Supreme Court in *Miranda v. Arizona*), your rights consist of the familiar litany invoked by T.V. police immediately upon arresting a suspect:

- You have the right to remain silent.
- If you do say anything, what you say can be used against you in a court of law.
- You have the right to consult with a lawyer and have that lawyer present during any questioning.
- If you cannot afford a lawyer, one will be appointed for you if you so desire.
- If you choose to talk to the police officer, you have the right to stop the interview at any time. (This part of the warning is usually omitted from the screenplay.)

It doesn't matter whether an interrogation occurs in a jail or at the scene of a crime, on a busy downtown street or in the middle of an open field: If you are in custody (deprived of your freedom of action in any significant way), the police must give a Miranda warning if they want to question you and use your answers as evidence at trial. If you are not in police custody, however, no Miranda warning is required. This exception most often comes up when the police stop someone on the street to question them about a recent crime and the person blurts out a confession before the police have an opportunity to deliver the warning.

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Will a judge dismiss my case if I was questioned without a Miranda warning?

No. Many people mistakenly believe that a case will be thrown out of court if the police fail to give Miranda warnings to the arrested person. What Miranda actually says is that a warning is necessary if the police interrogate a suspect and want to use any of her responses as evidence. If the police fail to give you a Miranda warning, nothing you say in response to the questioning can be used as evidence to convict you. In addition, under the "fruit of the poisonous tree" rule, if the police find evidence as a result of an interrogation that violates the Miranda rule, that evidence is also inadmissible at trial. For example, if you tell the police where a weapon is hidden and it turns out that you gave this information in response to improper

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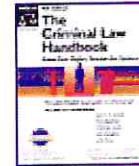
An arrest occurs when police officers take a suspect into custody. An arrest is complete the moment the suspect is no longer free to walk away from the arresting police officer. The U.S. Constitution's Fourth Amendment authorizes arrests only if the police have "probable cause" to believe that a crime was committed and that the suspect did it.

The probable cause requirement restrains the power of the police to deprive people of liberty. It prevents the random roundup of "undesirables" that sometimes occurs in other countries. Some principles of probable cause are well settled:

- To establish probable cause, police officers must be able to point to objective factual circumstances that lead them to believe that a suspect committed a crime. A police officer can't establish probable cause by saying something like, "I just had a hunch that the defendant was a burglar."
- Judges, not police officers, have the last word on whether probable cause exists. A police officer may be sincere in believing that enough factual information to constitute probable cause exists. But if a judge examines that same information and disagrees, then probable cause does not exist - or did not exist, if the question is being decided after the arrest occurred.
- Probable cause to arrest may have existed at the time of the arrest, even if the police later turn out to be wrong. Put differently, an arrest is valid if it is based on probable cause, even if the arrested person is innocent. In this situation, probable cause protects the police against a civil suit for false arrest if the charges are later dismissed or the defendant is acquitted at trial.

These principles leave open the most important issue concerning

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probable cause: How much information do police officers need to convince a judge to issue an arrest warrant or to justify a warrantless arrest? In general, probable cause requires more than a "mere suspicion" that a suspect committed a crime, but not so much information that it proves a suspect guilty beyond a reasonable doubt. In the abstract, a firm definition of probable cause is impossible. The Fourth Amendment doesn't provide a definition, so it's up to judges to interpret the meaning of probable cause on a case-by-case basis, taking into account:

- what the judge thinks the Fourth Amendment's drafters meant by the term probable cause
- previous judges' interpretations in similar fact situations, and
- the judge's views about police rights v. defendants' rights.

Judges help to define the meaning of probable cause each time they issue a warrant or decide a case in which the issue arises.

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