

YOUR RIGHTS

The following information is intended as a brief summation of your constitutional rights and is meant to offer helpful hints at how to effectively assert and protect those rights within the context of a police encounter. Of course, this information is no substitute for consultation with an experienced attorney.



The Fourth Amendment to the Bill of Rights of the United States Constitution states:

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 reads, in part, "No person shall be... compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...." These amendments provide the foundation for the rights that protect all U.S. Citizens from intrusive law enforcement practices. If an officer violates your rights then any evidence discovered as a result of that violation must be suppressed from the evidence at trial. This is accomplished by filing a motion to suppress with the trial judge. Even if an officer obtained a warrant prior to searching, if that warrant is defective or not supported by probable cause, then the evidence must be suppressed. Often times, after the fruits of an illegal detention, interrogation or search are suppressed, the government is left with very little evidence and the charges are dismissed.

1. Don't Leave Contraband in Plain View

Although law enforcement officers must obtain a warrant before they can conduct a privacy-invading search, any illicit material that can be plainly seen by any person from a non-intrusive vantage point is subject to confiscation. An arrest and a valid warrant to search the rest of the area is likely to ensue. A "roach" in the ashtray, a pipe or baggie on the coffee table, or a joint being smoked in public are common mistakes which all too-frequently lead to arrests.

2. Never Consent

Many individuals arrested on marijuana charges could have avoided that arrest by exercising their Fourth Amendment rights. If a law enforcement officer asks for your permission to search, it is usually because: (1) there is not enough evidence to obtain a

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search warrant; or (2) the officer does not feel like going through the hassle of obtaining a warrant. Law enforcement officers are trained to intimidate people into consenting to searches. If you do consent, you waive your constitutional protection and the officers may search and seize items without further authorization. If officers find contraband, they will arrest you.

If you do not consent to a search, the officer must either release you or detain you and attempt to get a warrant. The fact that you refuse to consent does not give the officer grounds to obtain a warrant or further detain you.

An officer can obtain a search warrant only from a judge or magistrate and only upon a showing of "probable cause." Probable cause requires an officer to articulate information that would cause a reasonable person to believe that a crime has been or is being committed and that evidence of that involvement can be found within the object of the search.

There are exceptions to the search warrant requirement which permit an officer to search an area without a warrant or consent under certain circumstances. **The important thing for you to remember is never to consent to a search or talk with an officer if you want to preserve your rights.**

If an officer asks to search you or an area belonging to you or over which you are authorized to control, you should respond:

"I do not consent to a search of my [person, baggage, purse, luggage, vehicle, house, blood, etc.] I do not consent to this contact and do not want to answer any questions. If I am not under arrest, I would like to go now (or be left alone)."

3. Don't Answer Questions Without Your Attorney Present

Whether arrested or not, you should always exercise the right to remain silent. Anything you say to law enforcement officers, reporters, cell mates, or even your friends can be used as evidence against you. You have the right to have an attorney present during questioning. Your right to remain silent should always be exercised.

4. Determining if You Can Leave

You may terminate an encounter with officers unless you are being detained under police custody or have been arrested. If you cannot tell whether you may leave, you can ask officers, "Am I under arrest or otherwise detained?" If the answer is, "No," you may leave.

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An officer can temporarily detain you without arresting you if he has "reasonable suspicion" that you are involved in criminal activity. An officer must be able at a later time to articulate to a judge objective facts that would have caused a reasonable person to suspect that you were involved in criminal activity at the point that you were detained. Also, the officer may perform a "pat down" or "frisk" on you during the detention if he has reasonable suspicion that you are armed. However, an officer may only reach into your pockets if he pats something that feels like a weapon.

When an officer attempts to contact or question you, you should politely say:

"I do not consent to this contact and I do not want to answer any questions. If I am not under arrest I would like to go now (or be left alone)."

If arrested, you should again refuse a search of any kind and refuse to answer any questions. At this point you should insist on speaking to an attorney as soon as possible.

5. Do Not Be Hostile; Do Not Physically Resist

There are times when individuals politely assert their rights and refuse to consent to a search but the officers nonetheless proceed to detain, search, or arrest them. In such cases, it is important not to physically resist. Rather, you should reassert your rights as outlined above in section 2.

6. Informing on Others

The police and prosecutors often try to pressure individuals into providing information that would lead to the arrest and conviction of others. Threats and promises by police and prosecutors should be viewed with caution and skepticism. Decisions should only be made after consulting with an experienced criminal defense attorney and examining one's own conscience.

Finally, consider downloading and carrying NORML's Freedom Card -- a quick reference guide to your rights and obligations when you are stopped by the police.