

Know Your Rights During Police Encounters

Miranda Rights

Miranda v. Arizona 384 U.S. 436 (1966) is a famous Supreme Court case that gives you certain rights when you are approached and questioned by the police.

Your **Miranda Rights** are:

- The **right to remain silent**.
- That **anything you say can be used against you** in court.
- That you have the **right to talk to a lawyer** and have the lawyer with you when police question you.
- **Asking to speak to a lawyer** (not a parent/guardian) stops further questions from the police.
- **If you cannot afford a lawyer, one will be appointed** to represent you prior to questioning (if you wish).

The Interested Adult Rule

The interested adult rule **mandates that young people have a right to have an interested adult present when questioned by police**. An adult must be *physically present* and may be a parent/guardian, another party acting in *loco parentis* as a caretaker or legal counsel.

- **If a child is under 14**, an interested adult **must** be present **and** the interested adult must understand Miranda warnings **and** have the opportunity to explain these rights to the child, so they understand the significance of waiving those rights.
- **If a child is 14-17**, there must be meaningful consultation with a parent, interested adult, or attorney. If a statement is taken without an interested adult, the record has to establish that the youth displayed a high level of intelligence, knowledge, or sophistication.

What to Do if Police Stop You for Questioning

Stay calm. Do not run, argue or obstruct police. Follow the directions you are given.

Keep your hands visible. Do not make any sudden movements.

Ask if you are free to leave. If the officer says yes, calmly walk away. If the officer says no, calmly ask why you are being detained. Avoid running or otherwise drawing more attention to yourself. Suspicious behavior may give the police the right to detain or question you more.

Politely assert your rights. You have the right to remain silent and cannot be punished for refusing to answer questions. If you choose to remain silent, tell the officer. If you are told that you are not free to leave, then you are in "custody". At that point, you can assert that you will not speak, and that you want an attorney.

Are you in custody?

Custodial interrogation is any "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

- During a custodial interrogation, if the "accused" states that he wants to remain silent the questioning must cease and, if counsel is requested, questioning must cease until an attorney is present. *Edwards v. Arizona*, 451 U.S. 477, 481 (1981).

In determining whether there was custodial interrogation, courts consider four factors established in *Commonwealth v. O'Brien*, 432 Mass. 578: 1) Place of the interrogation; 2) Whether the police communicated their belief that the person is a suspect and whether this belief influenced their perception of the situation. 3) The nature of the interrogation 4) Whether the person is free to end the questioning by leaving the place of the interrogation or ask the police to leave?

If you are a non-US citizen, do not discuss your immigration status with anyone but your lawyer. This includes law enforcement. If an immigration agent or officer questions you, **do not answer questions or sign anything** before talking to a lawyer. If you do not understand any papers you are given, state that you need an interpreter.

What If You Are Asked for Identification

There is no Massachusetts law requiring a pedestrian who is approached by a police officer and asked to identify themselves to do so. If you are a pedestrian and you are stopped and asked to identify yourself to the police, **you do not have to give them your name.**

- *United States Supreme Court Precedent Illinois v. Wardlow, 528 U.S. 119, 120 (2000)*: “an individual, when approached, has a right to ignore the police and go about his business.

If you are stopped and asked to identify yourself to the police, you are free to decline. However, you should ask the officer why you are being questioned, if you are free to leave, and whether you are under arrest.

- If you are not under arrest and otherwise free to leave, you can walk away.
- It is *important that you remain calm* when approached. If you choose to exercise your right to walk away, avoid running or otherwise drawing more attention to yourself. Suspicious behavior may give the police the right to detain or question you more

What to Do if Police Stop You: Searches/Frisks

A “Terry Stop” is a brief police stop that must be based on **reasonable suspicion** that a crime has been, is being, or about to be committed.

- If there is reasonable suspicion that the suspect is armed and dangerous, the officer can frisk or pat down the suspect’s outer clothing.
- Publicly referred to as “stop and frisk”, “stop, question and frisk” and “field interrogation and observation” among other terms in recent years.
- Anything beyond a pat down of the outer clothing constitutes a search

You do not have to consent to a search of yourself or your belongings. Even if police are justified in performing a limited pat down and frisk, **you have the right to refuse consent for a further search of your person or belongings.** Calmly and clearly state “I do not consent to a search of my person or belongings”.

If police say that they have a search warrant, you have the right to see it. With or without a warrant, protect your rights. **Firmly state that you do not agree to any search.** If police continue their search anyway, do not resist. If they search after not allowing you to see a warrant, make sure to inform your lawyer.

What to Do if You are Arrested

Do not resist arrest, even if you feel the arrest is unfair. Go with the police officer. Otherwise, this can lead to additional charges.

Say you wish to remain silent and ask for a lawyer immediately. Do not say or sign anything or make any decisions without a lawyer present. Even if questioning continues, state that you will not speak without a lawyer. Remember **you have the right to a free lawyer**, even if you cannot afford one.

You have the right to make a local phone call, including a call to a lawyer after you are taken into custody.

- **If you are speaking to a lawyer, police cannot listen to your call.**

If you are under 18, **police are required to contact your parent or legal guardian after your arrest.**

- *M.G.L. c. 119 § 67*: Whenever a child between 12 and 18 years of age is arrested with or without a warrant, as provided by law, and the court or courts having jurisdiction over the offense are not in session, the officer in charge **shall immediately notify at least one of the child's parents, or, if there is no parent, the guardian or custodian with whom the child resides** or, if the child is in the custody and care of the department, the Department of Children and Families.

School-based Encounters with Police

Students have a Constitutional right to privacy under the 4th Amendment in public schools, but not in private schools.

- However, due to school officials need to “maintain order in schools”, courts have held that students have a lower expectation of privacy there than when they are out in the general public.
- The burden of proof lies with the student to demonstrate that they have a reasonable expectation of privacy.

Searches by **school officials** must be “justifiable at its inception” and reasonable in scope

- *New Jersey v. TLO*: “When there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or rules of the school.

School Administrator actions vs SRO/police officer actions: A school administrator must have reasonable suspicion to search, while a police officer must have **probable cause**.

- If a school administrator is **acting with or for** law enforcement, they are subject to the probable cause standard for searches.
- A school administrator can question without providing Miranda warnings, but once a law enforcement officer enters the picture, that changes. When an administrator is working with or for law enforcement in questioning a student, then Miranda warnings apply.

Police Accountability: The Legal Right to Record Police

You have the right to record the actions of the police in public. It is important to have people recording the actions of police to ensure accountability.

- *Martin v. Gross (2018)*, United States District Court ruling that that citizens have every right under the First Amendment to secretly record police officers carrying out their duties in public.
- *Martin v. Rollins (2020)*, United States Court of Appeals upheld the District Court case, finding that the ability to record police is important for “informing the public about how police are conducting themselves, whether by documenting their heroism, dispelling claims of their misconduct, or facilitating the public’s ability to hold them to account for their wrongdoing.”

Have Your Rights Been Violated?

If you think your rights were violated, **file a written complaint** with the internal affairs division of your local police department. **Identify the officer who violated your rights.** Get the officer’s badge number and the number of the police vehicle. Record the data, time and location of the interaction.