**Investigation and Arrest**

***The Law***

**SUPPOSE A CRIME HAS BEEN COMMITTED. WHAT DO THE POLICE DO?**

The police begin to investigate the situation by gathering physical evidence and questioning persons who might have knowledge of the crime. Police are free to approach people and question them, and the people are free to refuse to answer the questions.

**WHAT IF THE POLICE SUSPECT AN INDIVIDUAL WAS INVOLVED IN THE CRIME?**

Police have the authority to briefly detain a person for investigative purposes if they have a reasonable suspicion that the person was involved in the crime. To be valid the investigatory stop must be relatively brief and no longer than is necessary to verify the officer’s suspicions.

**IF I AM WITH MY FRIENDS ON A CORNER, HAVING FUN AND MAKING SOME NOISE AND I SEE A COP COMING, SHOULD WE RUN?**

No. Never try to run from the police. They will think that you are involved in something suspicious. They will catch you and might be angry. You might even get hurt.

**CAN THEY ASK FOR OUR NAMES AND IDENTIFICATIONS?**

Yes. They can ask you any questions they want. You are not required to provide them with any information (unless you are driving, then you need to provide your license), but if you don’t they might take you to the police station to identify you. Never lie. That is a crime.

**IF THE POLICE STOP ME FOR A TRAFFIC STOP, CAN THEY SEARCH ME AND PUT ME IN THE SQUAD CAR?**

Yes. They may put you in the squad car while they conduct a brief investigation. If they do, they may also pat you on the outside of your clothes to be sure you have no weapons if they have reasonable suspicion that you may be “armed and dangerous.” This is called a “pat-frisk” search.

**WHAT SHOULD I DO IF THE POLICE START ASKING ME ABOUT MY FRIENDS?**

It is probably not a good idea to talk to the police about your friends without first speaking with a lawyer. Tell the police that you do not want to talk until you have talked to a lawyer. However, this might make the police more suspicious and more likely to detain you further or arrest you.

**IF THE POLICE ASK TO LOOK INTO MY BACKPACK, SHOULD I LET THEM?**

Probably not. In most cases, the police will need a search warrant to do a search without your consent. If you say yes, that is consent and anything the police find in your backpack can be used against you. There are some exceptions to the search warrant requirement. See the lesson on “Search and Seizure.”

**WHAT IF THE POLICE GRAB MY BACKPACK AND SEARCH IT ANYWAY AND THEN START TO PUSH ME AROUND?**

Never try to physically stop the police officer. You could get hurt and will get charged with a crime such as obstruction of justice, assault, etc. Make a note of the officer’s badge number. Later you can file a complaint with the police department or the civilian review board or file a lawsuit.

**WHEN CAN A PERSON BE ARRESTED?**

Once the officer develops probable cause to believe that the person committed a crime, the detention becomes an arrest if a reasonable person would not feel free to leave. If there is no warrant for a person’s arrest, an officer may arrest him or her if:

* the offense was committed in the officer’s presence, or
* if the officer has probable cause to believe that a felony was committed and the arrested person committed it, or
* a charge has been made upon probable cause by someone else to the officer that a crime was committed and the arrested person committed it (e.g. shoplifting, domestic abuse, driving under the influence).

**WHAT IS PROBABLE CAUSE?**

Probable cause exists when there is enough evidence for a reasonable police officer to think that a person has committed a crime. The evidence must be from trustworthy sources. It is what the police need to make an arrest. Probable cause is an honest and strong suspicion that a crime has been committed.

**WHAT IS THE DIFFERENCE BETWEEN DETENTION AND ARREST?**

**Detention**

* Usually for a limited time to conduct investigation
* Traffic stop
* Stop and Identify
* Witness to a crime

**Arrest**

* When police have a warrant signed by a judge or
* When you are taken to the police station and held
* When you are not free to go
* When words or actions cause you to fear force will be used if you do not submit.

**WHEN IS A PERSON GIVEN THE MIRANDA WARNING?**

Once a person is in police custody, he or she must be given the Miranda warning before being interrogated. A person is considered to be in police custody if he or she is not free to leave. The question to consider in determining if a person is in custody is “whether, considering the totality of the circumstances, a reasonable person in the defendant’s place would have felt himself restrained to a degree comparable to that associated with a formal arrest.” The Miranda warning requires that a person be clearly informed that:

* He or she has the right to remain silent
* Anything said can be used against him or her in court
* He or she has the right to an attorney
* If he or she cannot afford an attorney one will be provided.

**WHAT HAPPENS IF I AM NOT GIVEN MIRANDA?**

If you are in custody and the police interrogate you, in other words ask you questions, any evidence obtained in violation of the Miranda rule will be excluded from the trials. This is called the exclusionary rule. However, if a person volunteers information that is not in response to police questions, the information can be used against him or her.

**WILL I BE GIVEN MIRANDA IF I AM PLACED IN A SQUAD CAR?**

Not if you are placed in the squad car for a brief investigation. Being briefly detained in the squad car may not be considered “in-custody”. The police may try to question you regarding your car, insurance, and other items. Remember that whatever you say may be admissible even though no Miranda warning is given because you have not been arrested.

**IF I AM ARRESTED CAN I BE SEARCHED BY THE POLICE?**

In general, police need search warrants before they can perform legal searches. However, there are several exceptions to this rule. See “Search and Seizure” for more information.

* If you are arrested, the police have the right to search you and your wingspan (anything you can reach including the passenger compartment of your vehicle) in a search incident to arrest. If the officer finds evidence of criminal activity, it can be seized.
* In addition if the police have probable cause to believe that your car contains evidence of a crime (contraband), they may search the entire car (interior compartment and trunk) including any package, luggage, or container that might reasonably hold evidence of the crime.

**CAN A MALE POLICE OFFICER SEARCH A FEMALE SUSPECT?**

There is no law against it. However, most police departments will only allow same gender searches in cases of full body searches.

**RULES OF ARREST**

1. A police officer has the right to arrest a person if he or she sees the person committing a crime or if the officer has probable cause to believe that the person committed a crime.
2. If a police officer is making an arrest, you do not have the right to resist, even if the arrest is unlawful.
3. If you are arrested you have the right to remain silent, that means you do not have to answer any questions. But it is a good idea to tell them who you are and provide identification if you have it. Be polite.
4. Anything that you voluntarily say to the police can be used as evidence against you if you are charged with a crime.
5. You have the right to consult an attorney prior to any questioning by police or to have an attorney with you during questioning.
6. If you cannot afford an attorney one will be provided for you free of charge.
7. If you say that you want to remain silent, questioning by police must end.
8. If you say you want to consult with an attorney questioning by police must end.

**DO I HAVE THE RIGHT TO KNOW WHY I AM BEING ARRESTED?**

Yes, the police are required to tell you why you have been placed under arrest and to tell you what the charges are.

**DO I HAVE THE RIGHT TO A PHONE CALL?**

No. You don’t have the constitutional right to a phone call, but you will probably be given the chance to make a phone call if you are taken into custody.

**IF I AM ARRESTED WHEN WILL I BE BROUGHT TO COURT?**

If arrested with a warrant

* Person should be brought to court promptly if court is in session and if court is not in session within 36 hours, excluding day of arrest but including Sundays and Legal Holidays. This is known as the 36-hour rule.

# If arrested without a warrant

* Must have judge determine that probable cause exists for arrest within 48 hours of arrest.
* Time runs from time of arrest, no days are excluded
* Applies to juveniles and adults

**WHAT WILL HAPPEN AT FIRST APPEARANCE?**

You will be advised of your rights and of the charges against you. You will be able to apply for a public defender. You may request a copy of the complaint. If the offense is a misdemeanor, you may enter a plea. You should first talk to an attorney.

**WHAT IF MY ATTORNEY ISN’T HOME?**

In most questioning situations, you don’t have a time limit on how long you get to find an attorney. If you have asked for an attorney, the police can’t talk to you until you find an attorney.

# Investigation and Arrest

***Questions***

1. When must police give a person the Miranda warning?
2. What is probable cause?
3. If I am placed in a squad car for a brief investigation, can I be searched?
4. If I am placed in a squad car for a brief investigation, will I be given the Miranda warning?
5. If I volunteer information about the crime, can it be used against me?
6. If I think the police officers are violating my constitutional rights, what should I do?

**Investigation and Arrest**

***Activity: Police role-play***

**In this role-play, you will play the role of one of the people being stopped by the police or the role of one of the police officers.**

**Madness at the mall**

Police spot a car driving through the shopping mall after all of the stores are closed. The car is being driven in a suspicious manner. It goes very slow, then speeds up and makes a few circles, then slows down, then weaves in and out of the parking spaces. The car appears to have several people in it.

**Call for help**

Police receive a telephone call from a restaurant owner asking for help in dealing with two groups of teenagers who are becoming confrontational with each other. The restaurant owner believes that a fight is about to break out.

**Family Fight**

A neighbor who hears loud quarreling between the husband and wife living next door calls police. The neighbor says the couple has two small children who are at home. The neighbor also says the husband is a gun collector.

**Investigation and Arrest**

***Activity: Case study***

**Police questioning in a school: Is it a case for Miranda?**

**On March 15, a local high school was broken into and damage was done to the equipment in the science lab and in the band room. There was a distinct type of shoe print in the snow outside of the broken window through which the offender entered the building. It was approximately size 12 and came from a Nike Zoom Air basketball shoe, which leaves a distinctive impression.**

**The police chief came to the school to investigate the crime. He walked into the boy’s locker room and saw a student putting on a pair of Nike Zoom Air basketball shoes, in a size similar to the second set of prints. The principal called the student into the principal’s office and closed the door behind him. The student, age 15 years 8 months, was not told that he was free to leave or given his Miranda rights. He also was not told that he was under arrest. He was not handcuffed or restrained in any way.**

**The student denied involvement in the crime. The police chief took the student’s shoe outside to compare it with the shoeprints in the snow. He decided it was a perfect match. He came back to the principal’s office and told the student about the match and again asked if he knew anything about it. The student then admitted that he had broken into the school. He was questioned for a total of 10 to 15 minutes. He was not arrested and was told to return to class.**

**Student now claims his Miranda rights were violated, that being brought to the principal’s office and questioned while in custody.**

**Questions**

1. What factors support the claim that the student was “in custody” at the time of questioning in the principal’s office?
2. What factors support the claim that the student was not “in custody” at the time of questioning?
3. How would you feel if you were in the same situation?
4. Do you think the court agreed with the student?