

Arrests and Interrogations

There are several constitutional protections that you can invoke during police interrogations.

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 non serious 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.

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.

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 questioning, the police will not be able to use the weapon as evidence unless the police can prove that they would have found the weapon without your statements.

What's the best way to assert my right to remain silent if I am being questioned by the police?

If you're taken into custody by the police, you don't have to use any magic words to let police officers know that you want to remain silent. You can simply say nothing in response to police questions. Or, after an officer gives you a Miranda warning, you can stop the questioning by saying something like:

- I want to talk to an attorney.
- I won't say anything until I talk to an attorney.
- I don't have anything to say.
- I don't want to talk to you anymore.
- I claim my Miranda rights.

If the police continue to question you after you have asserted your right to remain silent, they have violated Miranda. As a result, anything you say after that point -- and any evidence gleaned from that conversation -- will not be admissible at your trial.

How heavy-handed can the police get when asking questions?

Information that you voluntarily disclose to a police officer (after you have been properly warned) is generally admissible at trial. The key word is "voluntary." Police officers are not allowed to use physical force or psychological coercion to get you to talk to them. The days of the rubber hose, protracted grilling under bright lights, and severe sleep deprivation are pretty much over. If police officers obtain information through any of these illegal means, the information cannot be used by the prosecutor at trial. In addition, under the rule known as "the fruit of the poisonous tree," any evidence that the police obtain as the result of a coerced statement is equally inadmissible.

Defendants often claim that police officers coerced them into talking. And it's just as common for police officers to say that the defendants spoke voluntarily. If the police physically coerce a defendant into talking, the defendant can support his coercion claims with photos of marks and bruises. But actual police brutality is unusual, and a defendant cannot usually offer independent evidence to support his claims of psychological coercion. Judges, believing that defendants have a greater motivation to lie than do police officers, usually side with the police and conclude that no coercion took place.

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.

I was pulled over at a roadblock and asked to wait and answer a police officer's questions. Is this legal?

Yes, as long as the police use a neutral policy when stopping cars (such as stopping all cars or stopping every third car) and minimize any inconvenience to you and the other drivers. The police can't single out your car at a roadblock unless they have good reason to believe that you've broken the law.