

# You're Under Arrest



## POLICE STOPS

Now that you are 18, juvenile law no longer applies to you. Therefore, the stakes are much higher. If you get in trouble with the law, you need to be better informed about your rights.

When can a police officer stop an individual? There are three types of encounters with police: (1) a consensual stop, where a police officer can ask some general questions; (2) an investigatory stop, where a police officer has a reasonable suspicion that a crime has been committed, is being committed, or is about to be committed; and (3) an arrest, where a police officer has probable cause to believe a crime was committed and the person who has been arrested committed the crime. Regardless of the reason that the police have stopped you, treat the officer with respect.

Does a police officer have the right to stop an individual to ask general questions if the officer does not suspect criminal activity? Yes, a police officer may stop a person and ask for that person's name, address, telephone number, and what that person is doing, even if there is no suspicion of criminal activity.

What if a police officer stops you to ask more specific questions about the possibility of criminal activity and your part in it; must you stay and answer those questions? Unless you are in custody, you are free to leave. Ask the police officer if you are being placed in police custody, if you are being held or placed under arrest, or if you are free to leave. If you are not being held, you do not need to stay and answer questions. You may stay and answer questions if you like; however, anything you say will be on record and may be used against you in court. If you are in custody, the police must give you a "Miranda warning" to advise you of your rights.

## SEARCH WARRANTS

Generally, a police officer must have a search warrant before searching a particular person or place. A search warrant is an order issued by a judge, based on sworn testimony, which establishes probable cause.

However, there are some instances when a police officer does not need a search warrant:

- When you are lawfully arrested, police officers may search you and the area immediately surrounding you, including the interior of your car and trunk.
- Police officers may search you or your property without a search warrant if you consent to the search.
- Police officers may pat down your outer clothing or search certain parts of your car if they have a reasonable belief that you are armed.
- Police officers sometimes may search without a search warrant when there is not enough time to get a judge's approval because of emergency circumstances or because evidence may be removed or destroyed.

If stopped by the police, you are under no obligation to consent to a search, even if you are being pressured to consent. If you do not consent to a search, do not interfere with whatever search may take place. Ask the police officer to note it for the record that you do not consent. If you voluntarily consent to a search, anything the police finds can be used as evidence against you.

## ARRESTS

Do not ever struggle with the police if you are arrested. Do not fight, swear, or argue even if you think the arresting officers are making a mistake. Resisting arrest and assaulting a police officer are separate crimes, which can be charged and proven, even if it turns out you were arrested in error. You will help yourself more by remembering the details of the arrest, including the officers' names and statements, and informing your attorney of those details.

Tell the police your name, address, and phone number. You may answer questions and discuss your situation with them if you like; however, anything you say may be entered as part of the record and may be used against you in court. Police officers cannot use threats to force you to answer questions and cannot bargain leniency in exchange for your statement. You have a right to call an attorney or a trusted family member for advice.

If you are under arrest or are in the presence of the police and not free to leave, the police must read to you what are known as your “Miranda rights” before they can question you. These are:

- the right to remain silent;
- that anything you say can and will be used against you in a court of law
- the right to have an attorney represent you
- the right to have an attorney present before any questioning
- the right to have an attorney provided for you, if you cannot afford to provide your own.



## CRIMES

Crimes are divided into two categories: felonies and misdemeanors.

Felonies committed after July 1, 1993 have penalties that may include a state prison sentence of one year and one year probation, up to a sentence of death, and/or a fine of up to \$1 million dollars.

There are three classes of misdemeanors in Colorado. Class 1 misdemeanors are more serious, carrying a possible maximum jail sentence of eighteen months or a fine of up to \$5,000, or both. Class 2 misdemeanors carry a possible maximum jail sentence of up to twelve months or \$1,000, or both. Class 3 misdemeanors carry a possible maximum six-month jail sentence or fine of up to \$750, or both. Jail sentences for misdemeanors are served in non-state correctional institutions unless served concurrently with a term for conviction of a felony.

If you are arrested, you can expect to be thoroughly searched, handcuffed, and taken to the police station.

You must be taken before a judge or magistrate without “unnecessary delay” after being arrested. In most cases, this will be done within twenty-four hours, but the delay may be longer on weekends or holidays. This appearance is called an “arraignment.”

At the arraignment, you appear in court and are formally charged with a crime. You must plead guilty or not guilty. The arraignment is a very important step. If you plead guilty, you will be sentenced. If you plead not guilty, a trial will be scheduled where the prosecution must prove your guilt beyond a reasonable doubt. You should fully understand the charges and your rights before pleading. Do not hesitate to ask the judge to explain the proceedings. You may want to consult an attorney at this point if you have not already done so.

In most cases, you will be released on bail after arrest. At the bail hearing, the judge will set an amount of money to be paid to the court. This money “guarantees” your appearance at all hearings and the trial. The judge may impose other conditions on your bail, such as placing restrictions on travel out of state.

Before trial, you and your attorney gather evidence to present to the court. At trial, evidence will be presented to the judge or jury, who will weigh the evidence, apply the law, and decide if you are guilty or not guilty. If you are found not guilty, the case is ended and all charges against you are dropped. If you are found guilty, the judge imposes a sentence, which may include imprisonment, a fine, probation, community service or restitution to the victim. A guilty verdict may be appealed if it is believed to be erroneous.

## LEGAL REPRESENTATION

You can find an attorney by looking in the yellow pages of the telephone book, in the Legal Directory published by McGraw-Hill, or you can ask friends or family to recommend an attorney. Some attorneys offer a free consultation. Remember, if you meet with an attorney and do not wish to hire that attorney, you can always call another attorney. If you later choose not to hire the attorney with whom you had met and discussed your case, that attorney cannot disclose whatever you may have said without your permission.

If you cannot afford an attorney, the court will appoint one for you. If you do not qualify for a court-appointed attorney, there are agencies and programs to help you. You may contact the Colorado Legal Services, the Student Law Office at the University of Denver College of Law, or the University of Colorado School of Law. For a direct referral to a lawyer in the Colorado Front Range area, call the Metropolitan Lawyer Referral Service at (303) 831-8000. If outside the Denver metropolitan area, your local bar association may make referrals.

