

CLC PRACTICE POINT

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Interacting with the Police

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Juveniles may encounter police in many different ways. Police may interact with both juvenile suspects and victims as they respond to dispatched calls for police service, or police may initiate encounters with those they suspect of mischief. Youths also frequently encounter police officers through routine traffic stops. Because of these interactions, police may take some youths into custody and question them at the police station. In each situation, whether stopped for questioning, stopped as a result of a traffic violation, or taken into custody, a youth is entitled to specific rights.

Because of their age and maturity level, however, many juveniles do not understand the meaning of their rights or the profound consequences of waiving those rights. The result is that most suspects in this situation give some kind of inculpatory statement to the police, essentially negating any bargaining power they may have had.¹ Like other youths, CLC clients may also find themselves in this situation. Therefore, it is vital to inform your client of not only the existence of these rights, but also how to invoke them properly before making an incriminating statement.

WHEN STOPPED FOR QUESTIONING

In order for a police officer to stop someone, he must first have a specific reason to suspect that person's involvement in a specific crime. This is known as reasonable suspicion, which permits an officer to stop and question someone on foot. Even with reasonable suspicion, however, an individual is not required to answer a police officer's questions. If a police officer stops someone on the street and asks to speak with them, it is perfectly within that person's right to invoke his right to remain silent and say to the police "I do not wish to speak with you." Inform your clients that at this point, they should be free to go. If, however, the officer instead asks for identification, your client should tell the officer where it is and ask permission to reach for it. Your clients should never answer any question except name, address, and age until they have consulted with a lawyer. They should always repeat, "Am I free to go?" then leave when the police officer permits it.

For the safety of police officers, the law does allow the police to pat down the outer clothing of a suspect to determine if they have any weapons. If the police officer feels something that he believes is a weapon, then he may go into the suspect's pockets and remove the object. There is no law, however, that requires a suspect who has been stopped for questioning to empty their pockets when a police officer asks.

¹ Although there are no nationwide statistics, some local studies are suggestive. In a study published in 1996, Richard Leo studied 182 police interrogations in major urban police departments and reported that 64.29% of the suspects gave incriminating information of some type and that 41.76% either confessed or made partial admissions. In 1994, Paul Cassell studied data on confessions and incriminating statements in cases in the Salt Lake County Attorney's Office. He found that in 33.3% of cases, the suspect confessed, gave incriminating statements, or was locked into a false alibi.

WHEN POLICE COME TO THE HOME

If the police knock on your client's residence, your client does not have to let the officer in unless the officer has a signed warrant, or it is an emergency situation (e.g. a police chase or there is an apparent cry for help coming from inside the house).

WHEN STOPPED IN A VEHICLE

Reasonable suspicion also permits an officer to stop someone for a traffic violation, such as speeding. The first consideration in a traffic stop is your client's safety. Inform your clients that the first thing they should do is pull over to a safe spot, turn off the ignition, stay in their car and keep their hands on the steering wheel. At night, they should also turn on the interior lights. They should not reach for their license, registration, and proof of insurance until asked, as any sudden movements, ducking down, looking nervous or appearing to be searching for something under the seat or in the glove box is dangerous in that the officer could assume your clients are looking for a weapon. They should sit up naturally and wait for the officer to approach them.

Never Talk to a Police Officer

Both drivers and passengers have the right to remain silent. The only questions your client should answer are name, address, and date of birth. Rather than answering personal questions, such as "where are you headed," your client (whether the driver or the passenger) should give the officer his driver's license or identification card and should exercise his right to remain silent by asking, "Am I free to go?" Remind your clients that anything they say or do can be used against them at any time by the police, so they should always remain silent. However, they have to verbally ask the officer if they are allowed to leave or verbally tell the officer they are choosing to remain silent, otherwise courts will presume that they wanted to stay and talk to the officers of their own free will.

Just Say "No" to Police Searches

Additionally, you should also inform your client that just because they are stopped for a traffic violation does not allow a police officer to search their car. The officer must first have probable cause to search the car. Probable cause means that apparent facts exist that, through logical inquiry, would lead a reasonably intelligent person to believe that an accused has committed a crime. It is a stronger standard of evidence than reasonable suspicion. The proper response to a request to search is "I don't consent to searches" and "Am I free to go?" Denying a police officer's request to search your car is not an admission of guilt.

WHEN ARRESTED

If the officer decides to hold the suspect for a longer period than necessary to complete the initial stop, or decides to move the suspect to another location, then the suspect has been taken into custody. If your client is in custody and the officer wants to ask your client questions beyond simple booking information like name and address, then your client must be advised of her rights. These rights are: the right to remain silent and not answer any questions; that if your client chooses to waive those rights anything they say can be used in court to obtain a conviction; the right to stop answering questions at any time; and the right to speak privately to an attorney before your client answers any questions, even if she has already begun to answer questions.² Additionally, if your client cannot afford private counsel and the charge for which she has been arrested is greater than a petty misdemeanor (e.g. misdemeanor, gross misdemeanor, and/or felony), she has the right to have an attorney appointed to her at no personal cost.

² In addition to his Miranda rights, your client has the right to refuse to answer questions. She also has the right to be told why she was arrested and the nature of the charges against her. If arrested on a warrant, your client has the right to see the warrant within a reasonable time after the arrest, to read it and to make certain her name appears on it.

If your client is arrested and their car is towed, the police are allowed to take an inventory of the contents of her car. If any illegal items are found, the police will get a warrant and may charge her with another crime.

Although you will not represent your client in any arising proceeding, it is important to promote open communication by letting your client know that you are available for support if she is arrested. Counsel your client to obtain a public defender as soon as possible and get your client's permission to talk to that public defender. As the child's attorney, you should reach out to the public defender to explain the child's involvement in a child protection matter. If a public defender is not yet available for your client, contact CLC for assistance.

HOW TO TALK TO YOUR CLIENTS ABOUT INTERACTING WITH POLICE

The information below has been adapted from the American Civil Liberties Union of Minnesota information card entitled "What To Do If You're Stopped By The Police". Many thanks to the ACLU for sharing this information with CLC.

If You Are Stopped for Questioning

- i Stay calm. Don't run, argue, resist, or obstruct the police, even if you are innocent or the police are violating your rights. Think carefully about your words, movement, body language, and emotions. Keep your hands where police can see them. Always greet policemen and policewomen as "officer." Under no circumstances should you ever talk back, raise your voice, or use profanity with a police officer.
- i Determine if you are free to go. Before answering an officer's questions, you may courteously ask, "Officer, am I free to go?" If the officer lets you leave, do so immediately. If the officer's answer is unclear, or if he asks additional questions, persist by repeating "Officer, am I free to go?"
- i Remain silent. Because anything you say can and will be used against you in court, the less you say the better. The only questions you need to answer are your name, address and date of birth. If you wish to remain silent, you must tell the police officer "I'm going to remain silent" and then stay quiet.
- i You do not have to consent to a search of yourself or your belongings, but police may "pat down" your clothing if they suspect a weapon. If police detain and frisk you, you have the right to state clearly your refusal to consent to the search. For example, you may say, "Officer, I know you're just doing your job, but I don't consent to searches." You should only verbally refuse. Never physically resist.

If The Police Come to Your Home

- i You do not always have to let the police into your home. If the police knock on your door, you do not have to let the officer in, unless the officer has a signed warrant or it is an emergency situation, such as the police are chasing someone into your house or there is a cry for help coming from inside the house.

If You Are Stopped in Your Car

- i Stop the car in a safe place as quickly as possible. Turn off your car, and place your hands on the wheel. Police like to see your hands for their own safety—so wait until they request your driver's license, registration and proof of insurance before reaching for it. At night, it's also a good idea to turn on the dome light.
- i If an officer asks to look inside your car, you can refuse to consent to the search. An officer may ask you something like "You don't mind if I have a look in your car?" In response to such a request, you may politely decline by saying, "Officer, I know you're just doing your job, but I don't consent to searches." If necessary, repeat your refusal.
- i Both drivers and passengers have the right to remain silent. If you are a passenger, you can ask if you are free to leave. If the officer says yes, sit silently or calmly leave. Even if the officer says no, you have the right to remain silent.

- i If you are suspected of drunk driving (DWI) and refuse to take a blood, urine, or breath test, your driver's license may be suspended.

If You are Arrested

- i Do not resist arrest, even if you believe the arrest is unfair.
- i Say you wish to remain silent and ask for a lawyer immediately. Tell the police your name and address, then say "I'm going to remain silent. I would like to see a lawyer." Don't say anything, sign anything, or make any decisions without a lawyer. Remember that anything you say can and will be used against you in court. You can always talk to the police later, after you talk to your lawyer, if you decide it is in your best interests.
- i You have the right to make a local phone call. The police cannot listen if you call a lawyer.

If you have any questions or require any help with these issues, please call
Children's Law Center of Minnesota at 651.644.4438.