

Interacting with American Police Officers

You're walking down a street in the United States and a uniformed police officer draws near. "Do you mind if I ask you a few questions?", the officer asks with a disarming smile. Should you agree to speak with the officer, politely decline, or simply keep on walking? What are the potential consequences of each action?

There are three levels of police-public contact, and each imposes different obligations on the parties. The most basic interaction is known as an "encounter." Commonly, a law enforcement official will ask an individual to provide information. The official may do so at any time and without any reason. The federal courts have held that there is no obligation to either acknowledge the officer or to respond to questions. Any compliance is therefore purely voluntary.

The next level of interaction is known as a "stop." Under those circumstances, if an officer possesses "reasonable suspicion" that illegal activity has occurred, he may temporarily detain the individual without a warrant. "Reasonable suspicion" is classically defined as a particularized and objective basis, supported by specific and articulable facts. The official may request basic pedigree information: the disclosure of the individual's name and address, supported by identification. If the officer has reason to believe that the individual is in possession of a weapon, the officer may perform what is often referred to as a "Terry pat." To do this, the officer may run his hands along the individual's outer-most garment. If he should feel an object which, based upon his training and experience, is consistent with a weapon, the officer may remove the object from the person. In the 1968 decision *Terry v. Ohio*, the United States Supreme Court held that this practice is designed to protect the law enforcement official, not to acquire evidence against the individual. For example, the contour of a handgun or knife is decidedly different from the feel of a bag of cocaine or a vial of crack. An officer may not rely on the "Terry pat" to subsequently justify the seizure of contraband. If no weapon is found, the officer must terminate the questioning and detention within a reasonable time. Federal courts have declined to offer a bright-line standard to define this period.

The highest level of police-public interaction is known as an arrest. If a law enforcement official has "probable cause" to believe that the individual has engaged in criminal activity, the officer may place the individual under arrest and restrain his liberty through the use of handcuffs and similar devices. "Probable cause", while more than "reasonable suspicion," is easily established by experienced law enforcement agents. Courts have defined the standard as being more than a bare suspicion, but less than legal evidence.

Upon placing an individual under arrest, police generally advise the arrestee of certain Constitutional rights. This advisory, commonly known as a "*Miranda* warning" or "*Miranda* rights," is the result of the Supreme Court's 1966 landmark decision

Miranda v. Arizona. Although no uniform phrasing exists, the warning is often delivered as follows: “You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney and have an attorney present during any questioning. If you cannot afford an attorney, one will be provided for you.”

Some may be surprised to learn that *Miranda* does not require the police to make the advisement. The purpose of the warning is to protect an arrestee from making incriminating statements either voluntarily or in response to questions. Such pre-Miranda statements will be excluded from evidence during a criminal prosecution. Once an individual has been “Mirandized” or chooses to waive her or his *Miranda* rights, all statements are admissible.

It is important to note that *Miranda* rights are only triggered by arrest and subsequent custodial interrogation. Until an individual is placed under arrest, they have no Constitutional protections. Law enforcement officials are under no obligation to affirmatively inform an individual whether the interaction is an encounter, a stop or an arrest. Only by confirming the interaction’s status with the officer can an individual be certain of their rights, if any.

The decision to cooperate with law enforcement rests with the individual. The advisability of such cooperation is situation-specific. It is always sound to immediately contact an attorney upon arrest.

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