



KNOW YOUR RIGHTS

THE FOURTH AMENDMENT

This is one in a series of Memo's entitled: *Know Your Rights*, by 40 Days for Life's Institute of Law & Justice. We hope that these Memos help you to peacefully, prayerfully and lawfully end abortion where you live and around the Globe. Thank you.

As 40 Days for Life Vigil participants, we often focus on our rights under the First Amendment to the U.S. Constitution. It is the First Amendment for a reason and the foundation of our Country: Freedom of Religion, Speech and Assembly. This Memo addresses some of the most common situations and questions that we receive from Vigil participants about contact with law enforcement ("LE"). Some of the answers are based on state laws and states may give you more rights, but not less than the U.S. Constitution.

Most interactions with law enforcement ("LE") concern the **Fourth Amendment** to the *United States Constitution*:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Scope

This Memo addresses some of the most common situations and questions that we receive from Vigil participants.

Some of the answers are based on state laws and states may give you more rights, but not less than the U.S. Constitution.

When Does the Fourth Amendment Apply?

The Fourth Amendment only applies to interactions between government officials, agents or officer and private citizens.

The Fourth Amendment does not apply to citizen-citizen contact, unless one party was directed by the government.

The Fourth Amendment protects our freedom from unwarranted governmental intrusion.

This is based on the plain language of the Amendment and many cases interpreting the Amendment's practical application.

In general, LE needs a warrant to lawfully search a citizen any time that the citizen has a "reasonable expectation to privacy (e.g., in your home, the contents of your clothing, phone, car, etc.).

Can States & Localities Take Those Protections Away?

No. The U.S. Constitution is the highest law in the land and no state or local government can reduce those protections granted by the U.S. Constitution. But a state or local government may grant citizens greater protections.

EXAMPLE:

The Fourth Amendment may allow LE to make a traffic stop for any traffic infraction (e.g., not wearing your seatbelt), but a state or local government can pass a law or ordinance prohibiting stops for some violations (e.g., LE cannot make a traffic stop solely on the basis that a vehicle occupant is not wearing her seatbelt.

The Fourth Amendment protections against unwarranted governmental intrusion/searches and seizures, are generally broken down into these categories:

CONSENSUAL ENCOUNTERS: The Fourth Amendment does not apply to encounters in which a citizen consents to questioning, searches, etc. As with any right, you can waive your protections by agreeing to cooperate. But you do not have to.

EXAMPLE: A LE official walks up to you on the street and asks for your ID, what you are doing and if s/he can search you. You can say "No," but if you say "Yes," LE can lawfully proceed and use what s/he finds against you. You consented and waived your Fourth Amendment rights.

PLAIN SIGHT: The Fourth Amendment does not apply to anything in plain sight, hearing or smell from a public place. LE can also use equipment like binoculars and dogs to enhance their senses, just like you can.

EXAMPLE: A LE officer walks up to you and smells marijuana on your person (in the locations where it is still illegal). S/he can affect a Terry Stop to investigate further.

CHECKPOINTS: Under very limited circumstances and for very short durations (a few hours) LE can stop vehicles on public roadways (e.g., to check for drunk drivers). These are based on pre-filed, written, pre-approved plans. But LE can also use other "evidence" that LE lawfully discovers during the stop (e.g., they see illegal weapons or drugs in your car through the windows).

TERRY STOPS: LE may briefly (20 minutes or less) detain citizens at the “scene” (no transportation) under very limited circumstances in which LE has “reasonable and articulable suspicion that crime is afoot.” LE can even do a pat down of your outer clothing to check for weapons.

EXAMPLE: A LE officer gets a call that you are trespassing. They arrive at the scene and see you standing on the grass near a sidewalk. They can briefly detain you at the scene to determine the property lines. After about 20 minutes though, they have to charge (if they have probable cause) or release you - even if they need more time.

REASONABLE SUSPICION: LE officers can stop you and question you and depending on the charge, search you if they have reasonable and articulable suspicion that you are committing a crime. This has to be more than a hunch and they can only question and search for evidence of that crime. If they don’t find anything arising to probable cause, they have to release you.

EXAMPLE: A LE officer sees you arguing with someone on the sidewalk and you are waving around what appears to be a weapon. S/he can stop you and question and search you to determine if you are armed. If the LE officer finds out that it was just a cell phone – you get released. But if s/he finds a weapon, you may get charged for assault, illegal possession of a weapon and/or brandishing.

PROBABLE CAUSE: LE can only arrest someone if they have probable cause (a crime was probably committed and the arrestee probably did it). They need a warrant, unless it is an emergency. But even then LE must take the arrestee straight to a magistrate to get a warrant. And if the magistrate refuses to find probable cause, you get released.

EXAMPLE: An abortionist calls LE and says that you are trespassing. LE arrives and arrests you. LE takes you to a magistrate who asks the LE officer to show evidence of the property lines. The LE officer says he has none and just went on the abortionist’s word. The magistrate may refuse to issue the warrant.

BEYOND A REASONABLE DOUBT: This is the highest standard in all of law. After a person is charged, a judge or jury must find (usually unanimously) that there is no reasonable doubt that the person committed the charged crimes. If so, you get sentenced. If not, you get released.

FAQ’s

Can LE just come up to me on the street and start asking you questions?

Yes, LE has the same rights as any citizen to approach anyone in public and question them. Just like you can walk up to a stranger and ask for the time or for directions.

But you do not have to answer.

Can I ask them questions?

Yes, but they do not have to answer.

Do I have to identify myself or produce ID to LE?

Unless you are arrested, not usually. But some states have stop and identify laws that allow LE to require citizens to identify themselves in certain places and under certain, limited circumstances.

You can always ask: "Do I have to?"

Does LE have to identify themselves?

Yes. LE must be in uniform and display their badge of authority, or produce it if they are in plainclothes.

Can I record the interaction?

Yes, but it is best to announce that or make it obvious, but holding up the recording device. Some states may have limits on recording LE conducting official acts.

Can LE make me leave?

No, not if you are lawfully assembled in public (unless there is an emergency, crime scene, or a few other extraordinary exceptions).

Can LE detain me for questioning?

Only if they have reasonable suspicion that crime is afoot and that you are a suspect.

Even then, the detention must be brief (20 minutes or so and at the scene and they can't transport you).

This is also known as a *Terry Stop* from the Supreme Court case of *Terry v. Ohio*, 392 U.S. 1 (1968). The officer must have "a reasonable and articulable suspicion that the person seized is engaged in criminal activity."

Can LE search me during a detention?

Yes, they can pat down your outer clothing if they have reason to suspect that you are armed and dangerous. But they can't reach into your pockets or clothing or belongings without additional probable cause of a crime. This is known as a "frisk."

Can LE have a canine search me or my belongings?

Yes, a dog is allowed to sniff anything in public, just like you are. His nose is just much better.

If I am sitting in my car, can they search my car?

No, not unless they have probable cause or you are under arrest.

Can a LE canine sniff around my car?

Yes, odors are public.

Can LE make me move my car?

Not if you are legally stopped/parked, unless you are obstructing traffic or there is a special event.

Can LE ask me to accompany them to "the station."

Yes, but you don't have to go unless they arrest you.

When can LE arrest me?

LE can only arrest a person when they have probable cause that a crime was probably committed and that the person being arrested probably committed it.

Probable Cause is a higher standard than Reasonable Suspicion.

Even then, they need a warrant unless they believe that you are dangerous or a flight risk.

Even then, they have to take you straight to a magistrate to get a warrant after arrest.

How do I know if I have been arrested?

If you are not free to leave after a brief detention, you are under arrest. Same if you have been physically restrained, cuffed and/or transported. They do not have to say: “You are under arrest.”

Can LE question me after arrest?

Yes, but they have to read you your Rights and you do not have to answer.

Do I have the right to a lawyer?

Not during a Detention, but you do upon arrest.

Just say: “I want a lawyer” and all questioning must stop.

Can LE question me because someone called in a complaint?

Yes, but they can't arrest you unless LE corroborates the complaint themselves or it is a violent felony.

EXAMPLE: An abortion clinic calls LE and says that you are trespassing. There is no video and when LE arrives you are on public property. They question you and you say nothing or state that you did not trespass. LE cannot arrest you.

Can the complaint be anonymous?

Yes, but if it is , LE must get even more corroboration because the complaint is less reliable.

Can I consent to LE contact?

Yes, of course. And you can end the contact at any point.

But LE can use anything that you say or do or show them against you if you are charged.

What if LE tells me that I am on private property and that I need to leave/move, but I think that I am in public?

Move and call for legal advice.

CONSIDERATIONS

- 1) Don't be afraid to ask questions but be respectful;
- 2) You have the right to remain silent but you are typically required to identify yourself;
- 3) You have the right to counsel;
- 4) Know your local ordinance and laws so you don't unknowingly commit an offense, like writing on the sidewalk with chalk or placing your signs in a prohibited location; and
- 5) If you consent to contact or a search of your person, property or vehicle, you have waived your rights.