



What Arkansans Need to Know When Dealing with the Police

You have power when confronted by the police. Exercise it. Do not be scared, be smart, be secure and be strong. Pull your shoulders back, put your head up and look the officer in the eye.

The following are some answers to frequently asked questions about interactions with the police. It is not meant to serve as a substitute for a lawyer. The criminal laws and rules are thousands of pages long; this is just a brief summary of some relevant material. The suggestions are just that, suggestions. Take everything with a grain of salt, look up the laws on the Internet and let this be just the beginning of your coming to understand the laws that control your freedom.

When can a police officer enter/search my house?

An officer may enter your house *if*

1. The officer has a warrant;
2. The officer has consent from you are a household member¹;
3. There is an emergency (i.e. a fire in your house or a person runs into your house while running away from the police);
4. The officer sees contraband (like drugs or weapons) in plain view; or
5. You or a household member is on probation or parole.

What can a police officer do during a traffic stop?

During a traffic stop an officer may do the following:

1. Ask you and your passengers for your license and registration (passengers may refuse to give id);
2. Order you out of the car;
3. Search your outer clothing and surroundings **only if** (See Arkansas Code of Criminal Procedure s. 3.4)
 - a. The officer believes you are armed and presently dangerous *and*
 - b. The search is only for weapons (not drugs!).
4. Search your car *if* (See Arkansas Code of Criminal Procedure s. 12.4 and 14.1)
 - a. The officer sees contraband (like drugs or guns) in plain view;
 - b. You give the officer consent; or
 - c. The officer stops your vehicle, places you under arrest *and*
 - i. You are in or around the vehicle;
 - ii. The officer believes that evidence of a crime is in the vehicle
 1. The officer may search passengers of the vehicle in this circumstance as well.

What to do during a traffic stop:

1. Ask if you are being detained
 - a. If the officer says no
 - i. Then tell the officer you are leaving if you are not being detained and leave;
 - b. If the officer says yes
 - i. Give the officer your identification;
 - ii. Ask the officer why you are being detained (**They are required to tell you why you are being detained**) See Arkansas Code of Criminal Procedure s. 23)
 - iii. Do not give the officer consent to search your vehicle (unless you want to be convicted of a crime); and
 - iv. Do not say anything
 1. If you want to talk to the police then ask to speak with your lawyer.

¹ The person giving consent doesn't have to be a household member if the police officer genuinely believes the person giving consent is a household member.



What should I do if I don't want to talk to a police officer?

Request an attorney and say nothing else. Officers are legally required to stop asking questions to an arrested person once you say you don't want to talk to them. If you are under arrest, tell the police officer you don't want to talk and the police officer continues to ask you questions then that officer is breaking the law. (See Arkansas Code of Criminal Procedure s. 4.5). If you are not under arrest, again you don't have to talk to the police.

When can a police officer stop and frisk me?

An officer may stop you on the street *only if* (See Arkansas Code of Criminal Procedure s. 3.1)

1. The officer is lawfully present; and
2. The officer *reasonably* suspects you committed, are committing or are about to commit a crime; or
3. The officer finds you near the scene of a crime and believes you have information about the crime.

Once detained an officer **may only detain you for 15 minutes** (i.e. the officer must let you go after 15 minutes) *unless* (See Arkansas Code of Criminal Procedure s. 3.1)

1. You are under arrest; or
2. It is reasonable for the officer to detain you for more time under the circumstances.

What to do when detained or arrested by the police

1. Have a friend record the interaction (it is legal to do this)²
2. Ask if you are being detained
 - a. If you are being detained
 - i. Give the police officer your identification;
 - ii. Ask why you are being detained. The police are required to tell you. (See Arkansas Code of Criminal Procedure s. 23).
 - b. If you are not being detained then
 - i. Walk away.

What not to do when detained or arrested by the police

1. Talk beyond giving your name & address (if you don't want to be convicted of a crime)
 - a. IF YOU WANT TO TALK invoke your right to speak to a lawyer and consult your attorney before you talk to the police
2. **Do not run**
 - a. If you run then the police will have authority to detain you and could search you
3. **Do not fight** unless the officer is using unlawful, deadly force against you

² According to the United States Department of Justice "The First Amendment "prohibit[s] the government from limiting the stock of information from which members of the public may draw." First Nat'l Bank v. Bellotti, 435 U.S. 765, 783 (1978). Applying this principle, the federal courts of appeal have held that the First Amendment "unambiguously" establishes a constitutional right to videotape police activities. Glik v. Cunniffe, 655 F.3d 78, 82 (1st Cir. 2011); see also ACLU v. Alvarez, 679 F.3d 583, 600 (7th Cir. 2012) (issuing a preliminary injunction against the use of a state eavesdropping statute to prevent the recording of public police activities); Fordyce v. City of Seattle, 55 F.3d 436, 439 (9th Cir. 1995) (recognizing a First Amendment right to film police carrying out their public duties); Smith v. City of Cumming, 212 F.3d 1332, 1333 (11th Cir. 2000) (recognizing a First Amendment right "to photograph or videotape police conduct"). Indeed, as the ability to record police activity has become more widespread, the role it can play in capturing questionable police activity, and ensuring that the activity is investigated and subject to broad public debate, has become clear. Protecting civilian recording of police activity is thus at the core of speech the First Amendment is intended to protect. Cf. Branzburg v. Hayes, 408 U.S. 665, 681 (1972) (First Amendment protects "news gathering"); Mills v. Alabama, 384 U.S. 214, 218 (1966) (news gathering enhances "free discussion of governmental affairs"). "In a democracy, public officials have no general privilege to avoid publicity and embarrassment by preventing public scrutiny of their actions." Walker v. City of Pine Bluff, 414 F.3d 989, 992 (8th Cir. 2005)."



An officer may search your person and the immediate area surrounding you *only if*

1. You are on probation or parole (new law passed in 2015 Act 895)
2. The officer has a warrant;
3. The officer has probable cause to arrest you; OR
4. The officer is conducting an investigatory stop *and* (See Arkansas Code of Criminal Procedure s. 3.4)
 - a. Reasonably suspects you are armed and presently dangerous to the officer or others.
 - b. "In no event shall this search be more extensive than is reasonably necessary to ensure the safety of the officer and others."

Do I have any 4th amendment rights if I'm on probation or parole?

Basically no (Act 895 2015). If you are on **probation or parole** the officer can search your person, your car or your house anytime they want (contact *Seeds* if you'd like to learn how to change this law).

What do I have to do if I am a victim or witness to a crime?

If you are a **victim or witness** to a crime AND

1. The police find you at or near the scene of the crime (See Arkansas Code of Criminal Procedure s. 3.5)
 - a. An officer may stop and detain you for 15 minutes;
 - b. You are required to give the officers
 - i. Your name
 - ii. Your address
 - iii. Information regarding the crime
 1. **BUT IF YOU DON'T REMEMBER ANYTHING THEN SAY SO; IT IS NOT A CRIME TO HAVE A BAD MEMORY. People go to jail for lies not bad memories.**
2. But if the police don't find you at or near the scene of the crime (See Arkansas Code of Criminal Procedure s. 2.2(b))
 - a. You are not required to cooperate or talk to the police or the prosecutors. **IN CRIMINAL MATTERS, ONLY THE COURT CAN ORDER WITNESSES TO DO ANYTHING. IF YOU DON'T HAVE AN ORDER (OR SUBPOENA FROM THE COURT) YOU DON'T HAVE TO DO IT.**

An officer *must* tell you that are not required to go to a police station, prosecuting attorney's office or other similar place if you are not under arrest (See Arkansas Code of Criminal Procedure s. 23)