

KNOW YOUR RIGHTS: INTERACTING WITH LAW ENFORCEMENT

THIS BROCHURE DESCRIBES SOME OF YOUR RIGHTS UNDER THE LAW WHEN INTERACTING WITH THE POLICE IN NEW MEXICO AND OFFERS SOME STRATEGIES FOR PROTECTING YOUR RIGHTS DURING POLICE ENCOUNTERS.

Knowing your rights is critical to recognizing when your rights have been violated and asserting your rights in the moment can help you assert those rights later in court. However, sometimes asserting your rights in the moment can escalate an encounter with police. Use good judgment and try to remain safe in your encounter even if you believe your rights are being violated. We encourage people to assert their rights calmly and respectfully and to trust their instincts to protect their safety. If you feel your rights have been violated, tell your lawyer or contact the ACLU of New Mexico.

ENCOUNTERS WITH POLICE

IF A POLICE OFFICER APPROACHES AND BEGINS TO QUESTION YOU:

- **Stay calm.** Don't run. Don't argue, resist or obstruct the police, even if you are innocent or police are violating your rights. Keep your hands where police can see them. Even without "reasonable suspicion" police may ask you questions.
- **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. You should not physically resist, but you have the right to refuse consent for any further search. If you do consent, it can affect you later in court.
- **Ask if you are free to leave.** If the officer says yes, calmly and silently walk away. If the officer says "no" then you are being "stopped" or "detained."
- **You have the right to remain silent** and cannot be punished for refusing to answer questions. If you wish to remain silent, tell the officer out loud. In some states, you must give your name if asked to identify yourself.
- Police are not legally required to speak with you in your native or preferred language
- Police are supposed to treat everyone with courtesy, professionalism, and respect and should never make discriminatory or disparaging comments or remarks.

IF THE POLICE STOP OR DETAIN YOU:

- The police can only stop you if they have a "reasonable suspicion" that you have committed, are committing, or are about to commit a crime.
- Once you have been stopped, you no longer have the right to walk away.
- At this point, police will probably ask you for your ID. Unless you are in a vehicle, you do not need to show the police ID. In New Mexico, if police ask for your identifying information (the information that would be found on your ID) you must provide that information. Not carrying ID or not having ID is not a crime in New Mexico, and the police should not take you to the precinct against your will to

verify your identity if you don't show or have ID unless they have probable cause (more evidence than "reasonable suspicion") that you committed a crime. However, as a practical matter, presenting ID may help you avoid an unlawful arrest.

- You may ask why you are being stopped, but the police are not required to tell you unless you are under arrest.
- **You have the right to remain silent.** You are not legally required to provide information beyond your name and address. You do not have to voluntarily tell the police whether you have anything in your pockets, purse, bag, or car.
- **Anything you say can and will be used against you. Saying anything beyond your name may also give the police a reason to arrest you.** Remember, the police are allowed to say anything to you as part of their investigation, including statements that are not true. Undercover officers are not required to disclose that they are police until they are placing you under arrest.
- You do not have to empty your pockets or purse unless an officer has probable cause. Say "I do not consent to this search."

IF THE POLICE FRISK YOU:

- Police officers can legally "frisk" you if they have "reasonable suspicion" to believe that you are armed and they are in danger.
- A "frisk" is a pat down of the outside of your clothing or bag to determine if you are armed AND pose a danger to the officer's safety.
- A "frisk" is a limited search for weapons. Police officers may not reach into your pockets or your bag or purse or require you to empty your pockets to find evidence of criminal activity.
- Because a frisk is supposed to be a limited and quick pat-down to check for weapons for officer safety, an officer of any gender can frisk you. You can ask to be frisked by an officer of a different gender, but the police don't have to honor that request.

IF THE POLICE SEARCH YOU:

- A "search" is any inspection of your person that goes beyond a "frisk." This includes going into your pockets, any bag or closed container you are carrying (including a cell phone), feeling inside of your waistband, taking off your hat, and removing your shoes.
- Police may only "search" you
 - If they have "probable cause" (more evidence than "reasonable suspicion") that the search will reveal evidence that you committed a crime, are armed, or are concealing contraband;
 - If you consent to the search;
 - If they have a warrant; or,
 - If you have been arrested.
- You do not have to consent to a search of your clothes, your home, or your possessions. Say politely, but loudly enough to hear, "I do not consent to this search." This can help if the police didn't have a legal justification to search you and then try to use what they find against you in court.
- You do not have to empty your pockets or open your purse or backpack on the street at the request of an officer. In fact, if you do so you may be unintentionally giving the police your consent to search.

- If a search goes beyond a frisk, you can request that the search be conducted by an officer of your gender, however doing so may prolong your encounter and you may be transported to a precinct for the search.

IF YOU ARE ARRESTED:

- Do not resist arrest, even if you believe the arrest is unfair.
- Say you wish to remain silent and ask for a lawyer immediately. Don't give any explanations or excuses. If you can't pay for a lawyer, you have the right to a free one. Don't say anything, sign anything or make any decisions without a lawyer.
- You have the right to make a local phone call. The police cannot listen if you call a lawyer.
- Prepare yourself and your family in case you are arrested. Memorize the phone numbers of your family and your lawyer. Make emergency plans if you have children or take medication.
- You are required to give your name and address and any other information shown on a New Mexico driver's license. Beyond this information, you have the right to remain silent! Use it! Say it out loud! Say: "I'm going to remain silent. I want a lawyer."
- Don't talk about anything that has to do with your arrest to anyone without having a lawyer present. Do not talk to police officers or district attorneys, even if they say they are trying to help you. Anything you say can and will be used against you if you are charged with a crime.
- Do not sign anything without a lawyer present. You may be waiving your rights or confessing to a crime.
- You will be handcuffed, searched, photographed, and fingerprinted for most offenses. Once at the precinct, you should be searched by an officer of the same gender or of the gender you request. If this does not happen, ask the police to explain why in their police log.
- If you have children with you, you can ask the police to call a family member or friend before they take you away.

IF THE POLICE ASK YOU QUESTIONS AFTER YOU HAVE BEEN ARRESTED ("INTERROGATE" YOU):

- Ask for a lawyer. Once you do, all questions should stop.
- Whether or not the police read you your "Miranda" rights, you have the right to remain silent. If you are arrested, state clearly: "I'm going to remain silent. I'd like to speak to a lawyer."
- Even if the police don't read you your Miranda rights, what you say may be used against you. Any time you are questioned while in police custody, you should say out loud: "I'm going to remain silent. I'd like to speak to a lawyer."
- Even if you make a mistake and start talking to the police, it's not too late to use your rights. Once you do, the police **must** stop interrogating you.

IF YOU ARE IN A CAR:

- A car can be stopped if the police have a reasonable suspicion that the driver committed a traffic violation or that the car is involved in criminal activity.

- **Stop the car in a safe place as quickly as possible.** Turn off the car, turn on the internal light, open the window part way and place your hands on the wheel.
Upon request, **show police your driver's license, registration, and proof of insurance.**
- **If an officer or immigration agent asks to look inside your car, you can refuse to consent to the search.** But if police believe your car contains evidence of a crime, your car can be searched without your consent. If they try to search your trunk, calmly say out loud: "I do not consent to this search."
- **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.
- If the police stop you, they will probably look into the car through the window and might even shine a flashlight inside. If they don't see anything they may not search you or the car. If they search anyway, say out loud: "I do not consent to this search."
- They can order the driver and passengers out of the car for officer safety. They can also frisk the driver and passengers and search the glove compartment if they have a reasonable suspicion that someone is armed.
- If the car is impounded, they can search it.

IF THE POLICE COME TO YOUR HOUSE:

- In most cases, you do not need to let the police into your house or apartment unless they have a warrant signed by a judge.
- Ask them to slip the warrant under the door and check it! If the police don't have a warrant with the correct name and address, or a judge's signature, don't open the door.
- Warrants should be executed within 10 days after they are issued. If the warrant is more than 10 days old, don't open the door.
- If you are arrested in your home or office, the police can only search you and the area immediately around you "in plain view."

IF YOU ARE UNDER 16:

- If you are arrested, police have to make a reasonable effort to reach your parent/guardian before they can try to ask you questions. Your parent/guardian is allowed to be in the room with you while the police question you. You should always assert your right to remain silent and ask for a lawyer. Do not answer any questions until a lawyer is present.
- You also have these rights in school if the police, including school safety officers, try to interrogate you.

SEXUAL HARASSMENT:

- Sexual harassment or sexual assault by police officers is never ok! If you feel that you are being spoken to or touched inappropriately, you can ask for a supervisor to be called to the scene.
- You don't have to give an officer your phone number.
- If an officer says they will let you go if you do something for them, think twice. They may arrest you anyway. Remember, officers are allowed to lie to you.

- Report sexual harassment and abuse by the police or other law enforcement agents to the ACLU.

IF YOU ARE LESBIAN, GAY, BISEXUAL, TRANSGENDER, OR GENDER NON-CONFORMING:

- The police are not allowed to make transphobic or homophobic remarks or discriminate against you based on your gender identity or sexual orientation.
- You have the right to be referred to by names, honorifics, and pronouns that reflect your gender identity (even if it doesn't match the information on your ID). It may be a good idea to carry a copy of your legal name change documents if you have them along with your ID.
- It is illegal for police to frisk you or search you for the purpose of determining your gender. If this happens, be sure to report it.
- If you are in police custody, you should be searched by an officer of the gender you request.
- It is unclear whether you may be held in a sex-segregated facility according to your gender identity. Even where there are concerns for your safety, you may not be held in solitary confinement without a review of that housing assignment for an unreasonable period of time when you first arrive in a facility.

IN PUBLIC HOUSING:

- You have the same constitutional rights as anyone else on the street or in private housing. You should handle this situation as you would any other time police approach you.
- Police can approach you inside the common spaces of public housing if they think you are violating a law. They can ask you for ID and ask questions about what you're doing and where you're going. But, unless they have "reasonable suspicion" that you have, are, or are about to commit a crime, you have the right to walk away and not answer their questions.
- If the police check to verify whether you are a resident or a resident's guest, they are detaining you in a "stop." They cannot do this unless they have a "reasonable suspicion" that you are trespassing or committing another crime.
- If police believe you are trespassing in public housing, they may give you the opportunity to leave before arresting you. If police ask you to leave and you don't, they may arrest you.

IF YOU ARE HOMELESS:

- You have the same right to use public space as anyone else.

IF YOU ARE A NON-CITIZEN:

- **You have the right to remain silent and do not have to discuss your immigration or citizenship status** with police, immigration agents or any other officials. You do not have to answer questions about where you (or any other person) were born, whether you are a U.S. citizen, or how you entered the country. (Separate rules apply at international borders and airports, and for individuals on certain nonimmigrant visas, including tourists and business travelers.)
- **If you are not a U.S. citizen and an immigration agent requests your immigration papers, you must show them if you have them with you.** If you are over 18, carry your immigration documents with you at all times. If you do not have immigration papers, say you want to remain silent.

- **Do not lie about your citizenship status or provide fake documents.**
- With the activation of Secure Communities, when you are fingerprinted the police may send your information to ICE, regardless of whether or not you are convicted of a crime. Therefore, if you are not a citizen, just getting picked up and booked for a crime may lead ICE to ask the police to hold you while they investigate whether or not you are deportable. If you are held for this reason, contact the ACLU. Some courts have held that these "ICE Holds" are unconstitutional.
- Convictions of even minor crimes or violations may have serious immigration consequences. NEVER accept a plea bargain without consulting a criminal immigration expert first.
- If you are arrested and held in jail, you have the right not to speak to immigration (ICE) agents. Tell them you want to speak to your lawyer first.

IF YOU ARE TAKEN INTO IMMIGRATION (OR "ICE") CUSTODY:

- You have the right to a lawyer, **but the government does not have to provide one for you.** If you do not have a lawyer, ask for a list of free or low-cost legal services.
- You have the right to contact your consulate or have an officer inform the consulate of your arrest.
- Tell the ICE agent you wish to remain silent. Do not discuss your immigration status with anyone but your lawyer.
- Do not sign anything, such as a voluntary departure or stipulated removal, without talking to a lawyer. If you sign, you may be giving up your opportunity to try to stay in the U.S.
- Remember your immigration number ("A" number) and give it to your family. It will help family members locate you.
- Keep a copy of your immigration documents with someone you trust.

FOR POLICE WATCHERS

Taking photographs of things that are plainly visible from public spaces is a constitutional right – and that includes federal buildings, transportation facilities, and police and other government officials carrying out their duties. Unfortunately, there is a widespread, continuing pattern of law enforcement officers ordering people to stop taking photographs from public places, and harassing, detaining and arresting those who fail to comply.

YOUR RIGHTS AS A PHOTOGRAPHER:

- **When in public spaces where you are lawfully present you have the right to photograph anything that is in plain view.** That includes pictures of federal buildings, transportation facilities, and police. Such photography is a form of public oversight over the government and is important in a free society.
- **When you are on private property, the property owner may set rules about the taking of photographs.** If you disobey the property owner's rules, they can order you off their property (and have you arrested for trespassing if you do not comply).
- **Police officers may not confiscate or demand to view your digital photographs or video without a warrant.** The Supreme Court has ruled that police may not search your cell phone when they arrest you, unless they get a warrant. Although the court did not specifically rule on whether law

enforcement may search other electronic devices such as a standalone camera, the ACLU believes that the constitution broadly prevents warrantless searches of your digital data. It is possible that courts may approve the temporary warrantless seizure of a camera in certain extreme "exigent" circumstances such as where necessary to save a life, or where police have a reasonable, good-faith belief that doing so is necessary to prevent the destruction of evidence of a crime while they seek a warrant.

- **Police may not delete your photographs or video under any circumstances.** Officers have faced felony charges of evidence tampering as well as obstruction and theft for taking a photographer's memory card.
- **Police officers may legitimately order citizens to cease activities that are truly interfering with legitimate law enforcement operations.** Professional officers, however, realize that such operations are subject to public scrutiny, including by citizens photographing them.
- **Note that the right to photograph does not give you a right to break any other laws.** For example, if you are trespassing to take photographs, you may still be charged with trespass.

IF YOU ARE STOPPED OR DETAINED FOR TAKING PHOTOGRAPHS:

- Always remain polite and never physically resist a police officer.
- If stopped for photography, the right question to ask is, "am I free to go?" If the officer says no, then you are being detained, something that under the law an officer cannot do without reasonable suspicion that you have or are about to commit a crime or are in the process of doing so. Until you ask to leave, your being stopped is considered voluntary under the law and is legal.
- If you are detained, politely ask what crime you are suspected of committing, and remind the officer that taking photographs is your right under the First Amendment and does not constitute reasonable suspicion of criminal activity.

SPECIAL CONSIDERATIONS WHEN VIDEOTAPING:

With regards to videotaping, there is an important legal distinction between a visual photographic record (fully protected) and the **audio** portion of a videotape, which some states have tried to regulate under state wiretapping laws.

- Such laws are generally intended to accomplish the important privacy-protecting goal of prohibiting audio "bugging" of private conversations. However, in nearly all cases audio recording the police is legal.
- New Mexico is a state allows recording with the consent of just one party to the conversation, you can tape your own interactions with officers without violating wiretap statutes (since you are one of the parties).
- In situations where you are an observer but not a part of the conversation, the legality of taping will depend on whether the parties to the conversation have a reasonable expectation of privacy. But no state court has held that police officers performing their job in public have a reasonable expectation of privacy.

- The ACLU believes that laws that ban the taping of public officials' public statements without their consent violate the First Amendment. Fortunately, New Mexico is a "single party consent" state, which means that you do not need to get public officials' consent before recording them.

PHOTOGRAPHY AT THE AIRPORT:

Photography has also served as an important check on government power in the airline security context.

The Transportation Security Administration (TSA) acknowledges that photography is permitted in and around airline security checkpoints as long as you're not interfering with the screening process. The TSA does ask that its security monitors not be photographed, though it is not clear whether they have any legal basis for such a restriction when the monitors are plainly viewable by the traveling public.

As far as we know, there are no local or airport regulations for the Albuquerque Sunport imposing restrictions that the TSA does not. If you are told you cannot take photographs in an airport you should ask what the legal authority for that rule is.

The ACLU does not believe that restrictions on photography in the public areas of publicly operated airports are constitutional.

- Observing police activity can help de-escalate potentially violent and abusive police interactions with our community members.
- You have the right to observe and document police activity as long as you are standing a reasonable distance from the police and are not obstructing them in any way.
- If you decide to observe and/or document the police on your own, remember that you will have less security than you do on a formal team. Use your judgment and stay safe! Decide what you feel is safe or just observe. Either way, you being on the scene and watching may help deter police violence.

IF YOU FEEL YOUR RIGHTS HAVE BEEN VIOLATED

- **Remember: police misconduct cannot be challenged on the street.** Don't physically resist officers or threaten to file a complaint.
- **Write down everything you remember**, including officers' badge and patrol car numbers, which agency the officers were from, and any other details. Get contact information for witnesses. If you are injured, take photographs of your injuries (but seek medical attention first).
- **File a written complaint with the agency's internal affairs division or civilian complaint board.** In most cases, you can file a complaint anonymously if you wish.
- **Contact ACLU-NM at:** PO Box 566, Albuquerque, NM 87103 | (505) 266-5915 | <http://www.aclu-nm.org/contact-us/before-submitting-your-complaint/>