

Do the Police need to read me my rights?

It depends. The rights you always hear on TV (You have the right to remain silent, ...) are rights related to the Fifth and Sixth Amendments to the Constitution and sometimes called Miranda Rights,

- The police are required to read you Miranda rights **ONLY IF** you are being subjected to interrogation while in custody.
- The police do not have to read you Miranda rights before asking questions in relation to the investigation of a crime.
- If you have not been arrested and/or your freedom to walk away from the officer has not been taken away, you are not entitled to a reading of Miranda rights.
- If you make voluntary statements to the police before they ask you any questions, they are not obligated to stop you and tell you your right to remain silent.
- If you confess a crime to a police officer without being asked any questions by him, or at any point during a preliminary investigation, the police may use that confession against you.
- If you choose to exercise your right to remain silent and then later voluntarily begin talking to the police, you will have waived your right to remain silent.
- Anytime you waive your right to remain silent, it is up to you to reassert it by again stating that you wish to remain silent and that you will not speak until an attorney is present.
- A violation of your Miranda rights does not necessarily mean your case gets dismissed.



Do the police need to inform me of my right to refuse a search of my residence without a warrant?

No. The police are not required to inform you of your Fourth Amendment rights. It is up to you to remember and insist upon them. If you do not they will likely claim you consented to search.

What's the most important thing to remember about the Fourth Amendment?

There are so many exceptions to the Fourth amendment that it is very important that you seek legal counsel if you feel your rights have been violated. Each case must be examined individually. The facts and circumstances of each must be examined to determine if a violation of your rights has in fact occurred. That being said it is important to exercise your Fourth Amendment rights and explicitly not consent to search.

THIS PAMPHLET DOES NOT CONSTITUTE LEGAL ADVICE.

STUDENTS WHO ARE CONFRONTED WITH LEGAL PROBLEMS OR WHO NEED SPECIFIC ADVICE ARE ENCOURAGED TO SEEK ASSISTANCE FROM A LICENSED ATTORNEY AT STUDENT LEGAL SERVICE.

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STUDENT AFFAIRS

324 Illini Union

8:30a.m.-12:00, 1:00-4:30p.m., M-F

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What you should know about

SEARCH AND SEIZURE



Fourth Amendment:

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 person or things to be seized.

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Search and Seizure Primer

This Brochure is only an overview of your 4th Amendment Rights and is NOT case specific. Please speak to a lawyer if you have further concerns.

What does the Fourth Amendment to the Constitution say?

The Fourth Amendment says people have the “right to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

What is a “Search and Seizure” under the Fourth Amendment?

“Search and Seizure” is the practice where the police search a person or a place for evidence in the investigation and prosecution of a crime. If the evidence is uncovered in a lawful search it will be seized by the police for use in prosecution of that crime. Seizure also applies to persons that have been stopped by the police and are being detained.

Can the Police search my home without a search warrant?

Generally, police need a search warrant issued by a judge to search your home for evidence of crime. However, there are several exceptions allowing a search of your home without a warrant.

Can I be arrested without a warrant?

Yes. Most arrests are made without warrants, where the arrest is made in public and the police have probable cause that a crime has been committed by the person.

In Illinois, **you have no legal right to resist arrest, even an unlawful one.** To avoid a charge of resisting arrest you should cooperate with police commands.

Do not resist the arrest but always remember that you have the right to remain silent, a right to an attorney and a right not to consent to search all of which you should affirmatively tell the arresting officer.

Warrant Exceptions

There are numerous exceptions to the Fourth Amendment prohibition against searches and seizures without a

warrant. The following are the most common:

Consent:

If you give police permission to search, a warrant is not needed. If the police request that you give them something from your person and you comply, you have consented to search. If the police do not have a warrant to enter your residence, you are not required to allow them entry. It is best to state you do not consent to search or entry even if the police enter your home or search you. Do not attempt to resist their actions however.

Plainview:

If evidence is in a place where the police are legally allowed and can be seen, that evidence may be seized without a warrant. Police are not required to look away and pretend not to see.

Search Incident to Arrest:

If you are lawfully arrested, police may search you. They may remove anything found on your person that may be reasonably suspected as a weapon and any evidence of illegal activity. Police may also search the area surrounding you in your control for weapons or evidence. In certain cases, the police may search areas outside of your immediate control if they have reasonable suspicion other persons are in the vicinity who pose a safety threat. This can turn into a search of your entire premises.

Stop and Frisk:

You may be stopped and patted down solely for weapons when the police have reasonable suspicion that you may have been involved in a crime. The officer may pat you down for weapons. He may then remove anything from your pockets that he could reasonably believe was a weapon.

Emergencies:

Police in pursuit of a fleeing felon may enter any residence in order to apprehend. They may also enter to capture an individual fleeing from lawful police custody. If the police can show that an occupant of a residence is in imminent threat of death or serious injury, they may enter in order to prevent such injury. The police may also be allowed to enter a residence to prevent the destruction of evidence, usually narcotics.

Exceptions Based on Location

Automobiles:

There is less expectation of privacy in a car as in a

residence. If stopped by the police in a car, the police may search virtually any portion of the vehicle without a warrant if they have probable cause to believe that incriminating evidence may be there. Any evidence obtained during that legal search may then be seized. The police may even be able to open containers in the car, in the trunk, and in the glove compartment as part of a vehicle search. The police can also use a drug dog to “sniff” around the vehicle without a warrant. Police however need a warrant to place a GPS tracking device on your vehicle.

Digital Devices:

Police cannot search your mobile phone, laptop, etc... without a warrant even if lawfully under arrest. However law enforcement can potentially access the same data that is in possession of a third party, e.g. Facebook, which is not protected. If your phone is passcode protected or has biometric unlocking features, police may not be able to gain access to your data depending on if you use a passcode or biometrics. The law is not settled on this issue. Also, a warrant is required for police to access cell site location data of your phone.

Border Searches:

You may be stopped, questioned, and searched, when crossing an international border, including airports. Law enforcement does not need a reason to perform “routine” searches. A drug dog “sniff” can be performed here without warrant also. However, searches that are highly intrusive, impact the dignity and privacy interests of individuals or are carried out in a particularly offensive manner require some level of individualized suspicion. Law on searching digital devices at the border is in flux with some courts allowing searches with no suspicion requirement.

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