

ACLU

Kentucky

2024

KNOW YOUR RIGHTS WHEN TALKING TO LAW ENFORCEMENT



KNOW YOUR RIGHTS

WHEN TALKING TO LAW ENFORCEMENT

This booklet addresses what rights you have when you are stopped, questioned, arrested, or searched by law enforcement officers. This booklet is for both citizens and non-citizens, with extra information for non-citizens.

This booklet tells you about your basic rights and is not a substitute for legal advice. You should contact an attorney if you have been arrested or believe that your rights have been violated.

AT THE OUTSET, WE MUST SAY:

- The police have a lot of power. The safest way to interact with police is to avoid interacting with police in the first place.
- If you must interact with a police officer, we recommend the following:
 - » **Stay calm.**
 - » **Don't run.**
 - » **Do not obstruct the officer.**
 - » **Do not lie or give false documents.**
 - » **Keep your hands where the police can see them.**
- Do not rely on lawsuits. Lawsuits are costly, time consuming, and are unlikely to be successful in bringing you justice.

KNOW YOUR RIGHTS
RIGHTS

KNOW YOUR RIGHTS

DEFINITIONS

Stop: A stop occurs when you interact with an officer and feel that you cannot terminate the encounter. The Supreme Court has said a stop occurs when an officer “restrains [your] freedom to walk away.”¹ It is more than a friendly exchange of pleasantries.² A stop is synonymous with being ‘detained’ or being subject to ‘seizure.’ If you are unsure whether you’re being stopped, simply ask the officer. If they give a run-around answer, ask again until you get a yes or no.

Search: A search occurs when an officer touches, feels, or looks beyond what is already in their plain view. To search a person, an officer must have reasonable suspicion that the suspect is armed and dangerous. The pat-down must be limited to frisking for weapons and cannot be pretext for a more invasive search.

Public Defender: Public defenders are government employees who assist individuals, for free, with criminal matters after they have been arrested.

Prosecutor: Prosecutors are government employees who enforce criminal and civil laws.

Jail vs Prison: Jails generally refer to facilities holding people who are pre-trial or have been sentenced to relatively shorter terms (i.e., less than a year). Prisons generally hold individuals serving sentences for over one year.

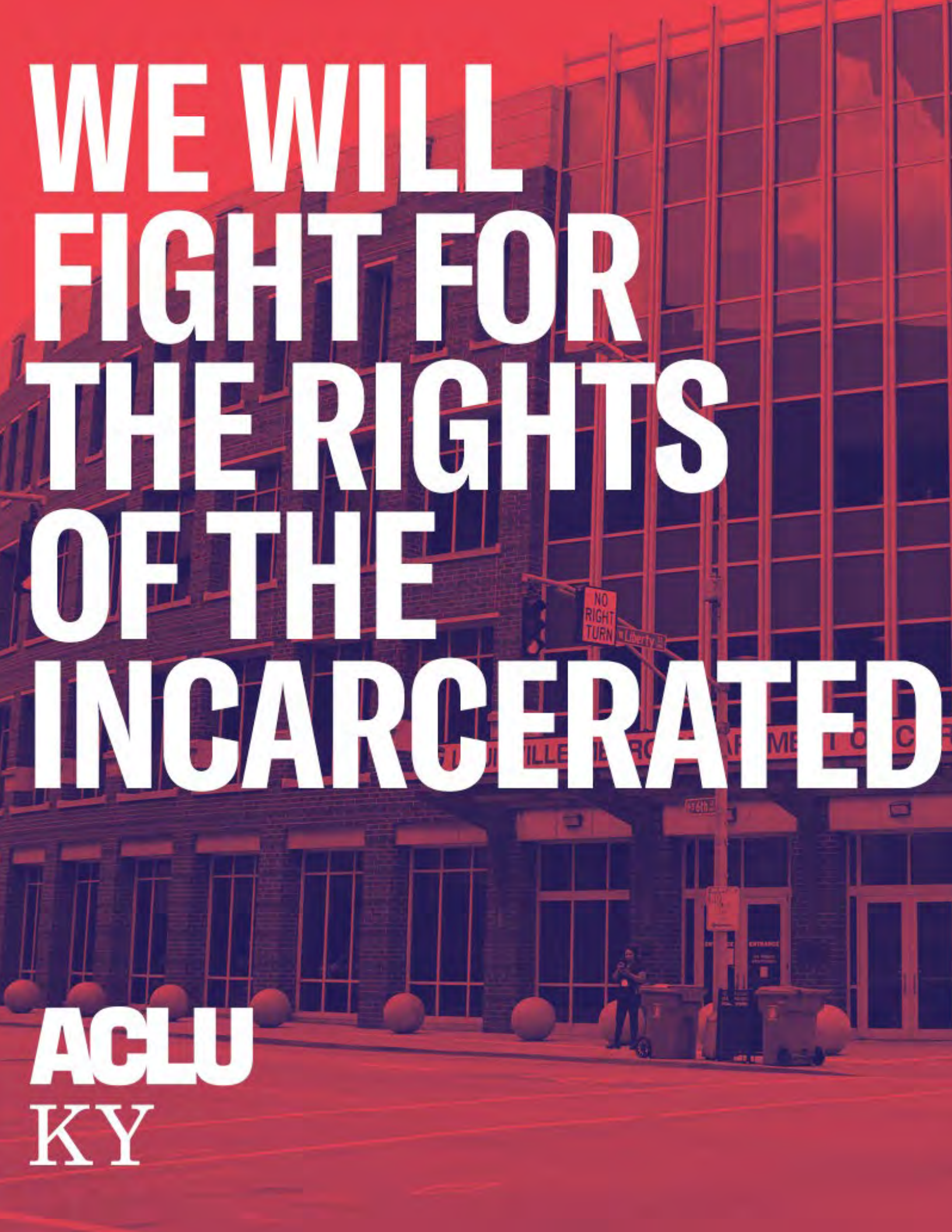
Warrant: A warrant is a piece of paper signed by a judge giving law enforcement officers permission to execute a search or arrest. Warrants come in two varieties:

A **search warrant** allows law enforcement officers to enter the place described in the warrant to look for and take items identified in the warrant. A search warrant alone does not give them the right to arrest you (but they can arrest you if they find enough evidence to justify an arrest).

An **arrest warrant** allows law enforcement officers to take you into custody. An arrest warrant alone does not give law enforcement officers the right to search your home (but they can look in places where you might be hiding and they can take evidence that is in plain sight).

A warrant should contain:

- the judge’s name,
- your name and address (or a detailed description of you and your address),
- the date,
- place to be searched,
- a description of any items being searched for,
- and the name of the agency that is conducting the search or arrest.



WE WILL FIGHT FOR THE RIGHTS OF THE INCARCERATED

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ENCOUNTERS ON THE STREET

Q: What if an officer stops me on the street just to “talk?”

A: You do not have to answer any questions. You can simply not respond. You can state, “I do not want to talk” and walk away calmly.³ Or, if you don’t feel comfortable doing that, you can ask if you are free to go. Until you ask if you are free to go, your stop is considered voluntary. If the officer answers “yes,” you can just walk away. Do not run from the officer.

Q: What if the officer says I am not free to go?

A: If the officer says you are not free to go, you are being detained.⁴ Being detained is not the same as being arrested, though arrest could follow.

Pat-downs: The police can pat down the outside of your clothing only if they have “reasonable suspicion” (i.e., an objective or specific reason to suspect that you might be armed and dangerous.)⁵ They cannot reach into the interior of your clothing (such as a jacket pocket) unless they can plainly feel or see you may have a weapon or contraband.⁶ It is best practice to state calmly and clearly, “I do not consent to a search.” If they keep searching anyway, do not physically resist them.

Questions and Identification: You are not required to answer any questions if you are detained or arrested,⁷ but it is best practice to tell officers your name and provide an ID if it is requested. If officers ask additional questions that you do not wish to answer, you should state, “I do not want to speak without a lawyer present.” (Non-citizens should see Section VI for more information on this topic.)

Match the Description of a Suspect: Officers may state that you match the description of a suspect for a crime. In this circumstance, ask the officer whether you are free to go. If they say no, you are being detained. Follow the above directions.

Q: How long can I be detained?

A: There is not a “hard and fast” rule governing the duration of a stop. A stop may be as long or as short as the officer deems necessary to fulfill the purpose of their stop.⁸

Q: Can I film an encounter on my cell phone?

A: Yes, you have the legal right to take pictures or video of things that are plainly visible in public space, including police and other government officials carrying out their duties. If an officer orders you to stop videoing or delete the video, you are not legally required to. However, many officers may see filming or photographing as antagonistic. Some Kentucky officers have retaliated against people for filming them and received qualified immunity for their actions.⁵ **So, exercise judgment when seeking to capture an officer’s badge or license plate on film.**



ENCOUNTERS IN A VEHICLE

Q: What if law enforcement officers stop me in my car?

A: If an officer pulls you over:

If an officer pulls you over they are limited to the execution of the stop.¹⁰ However, while they execute that mission, they can conduct a few other unrelated checks, such as:

- Asking for a driver's license, registration, and proof of insurance. You must turn those documents over.¹¹
- Conducting a criminal background check.¹²
- Asking other probing questions (ex: Do you have any drugs in the car? Any weapons? What are you doing tonight?), so long as it doesn't prolong the stop.¹³ You are not required to answer these questions, but it is probably good practice to. And if you do have a gun in the car, it is probably best to alert the officer.
- They can have a dog sniff the outside of your car if it does not make the traffic stop any longer than it would have otherwise been to give you the ticket.¹⁴
- If you feel the stop is going on longer than it needs to be, you can always ask the officer, "am I free to go?"
- Keep your hands where the police can see them. Don't give them a reason to make the stop any longer than it has to be.

Q: Can an officer ask me to get out of the vehicle?

A: An officer can ask you to get out of your vehicle, but you do not have to consent. Just like being stopped on the street, ask the officer "am I free to go? If so, I don't consent to getting out."

Q: Can an officer search my vehicle?

A: To search your vehicle, an officer must have:

- A warrant;¹⁵ or
- Your consent;¹⁶ or
- You are being arrested and the officer has reason to believe that there is contraband in your car.¹⁷

If you're arrested for a traffic violation, the officer cannot search your car based on that alone. If you do not want your car searched, clearly state that you do not consent. The officer cannot use your refusal to give consent as a basis for doing a search.

Q: What if I live in my vehicle?

A: Unfortunately, the Supreme Court dictates that vehicles, even if used as a home, should be treated like any other vehicle.¹⁸ Vehicles used as homes do not get the heightened protection another home might get. The above rules apply.



ENCOUNTERS AT HOME SEARCHES AND WARRANTS

Q: Can law enforcement officers search my home or office?

A: Law enforcement officers **can search your home:**

- only if they have a warrant or your consent.¹⁹ In your absence, the police can search your home based on the consent of your roommate²⁰ or a guest if the police reasonably believe that person has the authority to consent.

A: Law enforcement officers **can search your office:**

- only if they have a warrant or the consent of the employer.²¹ If your employer consents to a search of your office, law enforcement officers can search your workspace whether you consent or not.

Q: What about if I live in a tent?

A: Unfortunately, Kentucky courts do not extend the same privacy protections afforded to cars and traditional homes to temporary homes inhabited by folks who are unhoused. This means that officers can enter a tent that is on public land without a warrant or the occupant's consent.

Q: What should I do if officers come to my house?

A: There are multiple steps to take to protect yourself. Instead of opening the door, ask through the door if they have a warrant.

If they have a warrant:

- **Ask the officer to slip it under the door** (or show it through a window in your door, a peephole, or a cracked door that is only open enough to see the warrant).
- If you feel you must open the door, open it, **step outside, and close the door behind you.** Then ask to see the warrant.
- Make sure the search warrant contains everything noted above and inform the officers if there are any mistakes on the warrant (e.g., the officers might be at the wrong address).
- If you tell the officers that the warrant is not complete or not accurate, you should say you do not consent to the search, but you should not interfere if the officers decide to do the search even after you have told them they are mistaken.
- **You do not have to answer questions.** Neither a search nor arrest warrant means you have to answer questions. You still have the right to remain silent.

If they do not have a warrant:

- You do not have to let them into your home.
- You do not have to answer any questions. Officers cannot get a warrant based on your refusal to answer questions.
- **Do not say anything other than “I do not want to talk to you.”**
- **If they insist on entering, you should:**
 - » State that you don't consent to the search;
 - » Do not interfere with the search;

- » Call a lawyer ASAP;
- » Ask to watch the search. If they permit you to watch, take notes, including office names, badge numbers, the agency each officer is from, where they searched, and what they took;
- » If other people are present, have them act as witnesses to watch / document what is happening.

Q: What if law enforcement officers tell me they will come back with a search warrant if I do not let them in?

A: This does not change anything. You can still tell an officer you do not consent to the search, even if they say they are about to get a warrant. If the officer goes to a court for a warrant, they may not receive it and may not be able to search your home. But if you give them consent, they will certainly be able to search your home.

**BRING
ME YOUR
TIRED,
YOUR
POOR,
YOUR
HUDDLED
MASSES
YEARNING
TO BREATHE
FREE.**



ARRESTS

Q: What should I do if law enforcement officers arrest me?

A: The officer must advise you of your *Miranda* rights, including: right to remain silent; right to an attorney; and right to have an attorney appointed if you cannot afford one.²² **You should say:**

1. “I’m exercising my right to remain silent and not be questioned.”
2. “I want a lawyer.”
3. “I won’t answer any questions without my lawyer.”

Repeat these statements to every officer that you see.

Q: Do I have to answer questions if I have been arrested?

A: **No.** If you are arrested, you do not have to answer any questions or volunteer any information. **You should say:**

1. “I’m exercising my right to remain silent and not be questioned.”
2. “I want a lawyer.”
3. “I won’t answer any questions without my lawyer.”

Q: What if I am treated badly by law enforcement officers?

A: Document as much as you can and report to your lawyer and to the law enforcement office responsible.

- Write down any identifying information: name, badge number, etc. You have a right to ask the officer for this information.

- Try to find witnesses and their names and phone numbers.
- If you are injured, seek medical attention and take pictures of the injuries as soon as you can.
- Call a lawyer when you can.
- Make a complaint to the law enforcement office responsible for the treatment.

Q: How long can I be held in jail?

A: Following arrest, individuals will be held until “arraignment,” where a person goes before a judge to state whether they are guilty or not guilty. This usually takes about 24 hours, depending on where the person is arrested. If you’re held for longer, ask the jail staff to use the phone or to speak with a public defender.



TRESSPASSING & LOITERING

Q: What is trespassing?

A: Trespassing occurs when a person knowingly enters or remains unlawfully in a dwelling, enclosed area, or land, regardless of whether there is signage.²³

- If the area entered constitutes a “dwelling” (e.g., a home), the offense is a Class A misdemeanor.²⁴
- If it constitutes a “building” (e.g., a business), or fenced or enclosed premises, the offense is a Class B misdemeanor.²⁵
- If it constitutes “any real property” (e.g., land), the offense is a Class B misdemeanor.²⁶

Q: What if I receive a verbal warning that I’m “trespassing?”

A: Whether or not you are trespassing is a legal question. But if an officer tells you that you’re trespassing, they have the power to arrest you. If you’re concerned that an officer might escalate the situation, it is likely safest to move along.

Whether or not you are trespassing will depend on the facts of the circumstances, such as the hours of park you’re in, the hours of the business you’re standing close to, whether the business owns the sidewalk you’re on, and many other potential factors.

Q: Can I sleep in a park during the day or night?

A: While it is illegal in Kentucky to sleep in a public place currently, it appears that the city of Louisville is focused on clearing larger communal encampments, not arresting individuals who find

places to sleep in parks. But if an officer tells you that you’re trespassing and you fear they may escalate things, it may be wisest to move along.

Q: What is loitering?

A: Loitering occurs when a person:

- “Loiters or remains in a public place for the purpose of gambling with cards, dice, or other gambling paraphernalia;
- Loiters or remains in a public place for the purpose of unlawfully using a controlled substance;
- Loiters or remains in or about a school, college, or university building or ground [without any reason or permission to be there]; or
- Loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade, or commercial transactions involving the sale of merchandise or services.”²⁷

Q: Can an officer tell me to move along for standing on the sidewalk?

A: Again, there may be strong legal arguments that standing on the sidewalk is not loitering, but please do what you can to keep yourself safe.



ADDITIONAL INFORMATION FOR NON-CITIZENS

In the United States, non-citizens are defined as persons who do not have U.S. citizenship, including lawful permanent residents, refugees and asylum seekers, persons who have permission to come to the U.S. for reasons like work, school or travel, and those without legal immigration status of any kind.

Non-citizens who are in the United States—no matter what their immigration status—**generally have the same constitutional rights as citizens** when law enforcement officers stop, question, arrest, or search them or their homes.

However, there are some special concerns that apply to non-citizens.

Q. What do I do if law enforcement officers stop me on the street?

A: You have the same right to be silent that U.S. citizens have, so the general rule is that **you do not have to answer any questions that a law enforcement officer asks you.**

Q: Do I have to answer questions about whether I am a U.S. citizen, where I was born, where I live, where I am from, or other questions about my immigration status?

A: You do not have to answer any of the above questions if you do not want to answer them, but **do not falsely claim U.S. citizenship.**

Additionally:

- It is almost always good to speak with a lawyer before you answer questions about your immigration status. If you're arrested, you have the same right to a criminal attorney (public defender) as anyone else.
- Always remember that even if you have answered some questions, you can decide to stop answering questions at any time.

Q: Do I have to show officers my immigration documents?

A: The law requires non-citizens who are 18 or older and who have been issued valid U.S. immigration documents to carry those documents with them at all times. These immigration documents are often called “alien registration” documents. The type you need to carry depends on your immigration status. Some examples include an unexpired permanent resident card (“green card”), I-94, Employment Authorization Document (EAD), or border crossing card. **Failure to comply carry these documents can be a misdemeanor crime.**

If you have your valid U.S. immigration documents and you are asked for them, it is usually a good idea to show them to the officer because it is possible you will be arrested if you do not do so. Keep a copy of your documents in a safe place and apply for a replacement immediately if you lose them or if they are going to expire.

If you are arrested because you do not have your U.S. immigration documents with you, but you have them elsewhere, ask a friend or family member (preferably one who has valid immigration status) to bring them to you.

It is *never* a good idea to show an officer fake immigration documents or to pretend that someone else's immigration documents are yours. If you are undocumented and do not have valid U.S. immigration documents, **you can**

decide not to answer questions about your citizenship or immigration status or whether you have documents.

Q: What should I do if immigration officers arrest me?

A: Assert your rights. Non-citizens have rights that are important for their immigration cases. **You do not have to answer questions.** You can tell the officer you want to speak with a lawyer. You do not have to sign anything giving up your rights. **Never sign anything without reading, understanding and knowing the consequences of signing it.**

Q: Do I have the right to talk to a lawyer before answering any officers' questions or signing any immigration papers?

A: In part.

- **You DO have the right to an attorney in a criminal proceeding. You DO NOT have the right to an attorney in an immigration proceeding** (although immigration officials must provide you with a list of free or low-cost lawyers).
- You have the right to call a lawyer or your family if you are detained, and you have the right to be visited by a lawyer in detention.
- You have the right to hire your own immigration attorney.
- You have the right to have your attorney with you at any immigration hearing.

Q: Can I call my consulate if I am arrested?

A: Yes. **Non-citizens arrested in the U.S. can request during arrest or detainment to contact their consulate.** Law enforcement must let your consulate visit or speak with you if consular officials decide to do so. Your consulate might help you find a lawyer or offer other help.

Please consider consulting additional Know Your Rights materials:

Know Your Rights | Immigrants' Rights | ACLU | www.aclu-ky.org/issues/immigrants-rights

Know Your Rights | National Immigration Law Center | www.nilc.org

AILA | Know Your Rights Handouts: If ICE Visits a Home, Employer, or Public Space | www.aila.org



REFERRAL CONTACT INFORMATION

American-Arab Anti-Discrimination Committee (ADC)
(202) 244-2990
<http://www.adc.org/>

American Immigration Law Foundation (AILF)
(202) 742-5600
<http://www.ailf.org/>

American Immigration Lawyers Association (AILA)
(800) 954-0254
<http://www.aila.org/>

Asian American Legal Defense and Education Fund (AALDEF)
(212) 966-5932
<https://www.aaldef.org/>

Council on American-Islamic Relations (CAIR)
(202) 488-8787
<http://www.cair.com/>

Mexican American Legal Defense and Educational Fund (MALDEF)
(213) 629-2512
<http://www.maldef.org/>

National Lawyers Guild (NLG)
(212) 679-5100
<http://www.nlg.org/>

National Immigration Law Center (NILC)
(213) 639-3900
<http://www.nilc.org/>

National Immigration Project
(617) 227-9727
<http://www.nationalimmigrationproject.org/>

Puerto Rican Legal Defense and Education Fund (PRLDEF)
(800) 328-2322
<http://www.prldef.org/>

U.S. Commission on Civil Rights (USCCR)
(800) 552-6843
<http://www.usccr.gov/>

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THE AMERICAN CIVIL LIBERTIES UNION OF KENTUCKY is freedom's watchdog, working daily in courts, legislatures and communities to defend the individual rights and liberties guaranteed to all people by the Constitutions of the United States and the Commonwealth of Kentucky.

¹In a case challenging a Nevada law that required people stopped on the street to disclose their name during a stop: “[a]lthough it is well established that an officer may ask a suspect to identify himself during a Terry stop, see, e.g., *United States v. Hensley*, 469 U.S. 221, 229, 105 S.Ct. 675, 83 L.Ed.2d 604 ... Terry principles permit a State to require a suspect to disclose his name in the course of a Terry stop ... [t]he Nevada statute is consistent with Fourth Amendment.” *Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County*, 542 U.S. 177, 178 (2004). Kentucky has no such law.

²The Supreme Court has held that “a person has been ‘seized’ [if] a reasonable person would have believed that he was not free to leave.” *United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

³*Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

⁴*Commonwealth v. Banks*, 68 S.W.3d 347, 351 (Ky. 2001).

⁵*Supra*, note i.

⁶See *Commonwealth v. Smith*, 542 S.W.3d 276 (Ky. 2018); *Com. v. Bucalo*, 422 S.W.3d 253 (Ky. 2013); *Turley v. Com.*, 399 S.W.3d 412 (Ky. 2013); see also Leslie W. Abramson, § 18:196 Duration of Detention, *Kentucky Practice Series Criminal Practice and Procedure* (November 2022) (link).

⁷*Williams v. Boggs*, 2014 WL 585373, *6 (E.D. Ky. Feb. 13, 2014).

⁸The Supreme Court has held “that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution’s shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, ‘become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission’ of issuing a ticket for the violation.” *Rodriguez v. U.S.*, 575 U.S. 348, 351 (2015) (citing *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)).

⁹*Carlisle v. Commonwealth*, 601 S.W.3d 168 (Ky. 2020) (“an officer reasonably may ask for the identification and perform a criminal-records check of a driver and any passengers during an otherwise lawful traffic stop to determine an individual’s prior contact with law enforcement. Such a task is an ordinary inquiry related to officer safety.”).

¹⁰*Supra*, note viii at 355.

¹¹*Supra*, note viii at 355.

¹²*Supra*, note viii.

¹³*Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); *Farmer v. Commonwealth*, Ky.App., 6 S.W.3d 144, 146 (1999).

¹⁴*Id.*

¹⁵*Lane v. Com.*, 386 S.W.2d 743, 10 A.L.R.3d 308 (Ky. 1964). Cf. *Com. v. Hagan*, 464 S.W.2d 261 (Ky. 1971) (officer who believes car contains contraband based on previously obtained radio information and observation may search without warrant and without arrest);

Ison v. Com., 471 S.W.2d 712 (Ky. 1971) (warrantless search of car impermissible where officer has no prior information that defendant or car involved in illegal activity and officer observes no contraband in plain view).

¹⁶See California v. Carney, 471 U.S. 386 (1985).

¹⁷“A basic tenet of Fourth Amendment law is that warrantless searches and seizures inside a home are presumptively unreasonable.” Brumley v. Com., 413 S.W.3d 280 (Ky. 2013) (citing Payton v. New York, 445 U.S. 573, 586 (1980)).

¹⁸“In Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), the United States Supreme Court recognized that there is a heightened privacy interest in one’s own home and that the Fourth Amendment generally prohibits warrantless entry, whether to search for objects or to make an arrest. This general prohibition may be overcome by any of the valid exceptions to the warrant requirement, including consent to search, whether obtained from the individual who is the target of the search, see Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973), or from a third party who possesses common authority over the premises.” Colbert v. Com., 43 S.W.3d 777 (Ky. 2001).

¹⁹“The Court long has recognized that the Fourth Amendment’s prohibition on unreasonable searches and seizures is applicable to commercial premises, as well as to private homes.” New York v. Burger, 482 U.S. 691, 699, 107 S.Ct. 2636, 96 L.Ed.2d 601 (1987). “Just like private residences, a search of commercial premises is ‘presumptively unreasonable if conducted without a warrant.’ See v. City of Seattle, 387 U.S. 541, 543, 87 S.Ct. 1737, 18 L.Ed.2d 943 (1967); see also, Marshall v. Barlow’s, Inc., 436 U.S. 307, 311, 98 S.Ct. 1816, 56 L.Ed.2d 305 (1978).” Williams v. Com., 213 S.W.3d 671 (Ky. 2006).

²⁰See, e.g., Elizabeth Schutz, The Fourth Amendment Rights of the Homeless, 60 FDMLR 1003 (1992).

²¹See Leslie W. Abramson, § 19:12 Miranda Warnings, Kentucky Practice Series Criminal Practice and Procedure (November 2022) (link).

²²See KRS § 511.060-80.

²³See KRS § 511.060; KRS § 511.010 (for definition of ‘dwelling’).

²⁴See KRS § 511.070; KRS § 511.010 (for definition of ‘business’).

²⁵See KRS § 511.080; KRS § 511.010.

²⁶See KRS § 525.090.

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DARE TO CREATE A
MORE PERFECT UNION.**

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