

## WHAT TO DO WHEN STOPPED BY THE POLICE

Most of the situations in which the police stop someone fall place into one of three categories, namely: 1) a traffic stop, possibly including a field sobriety test followed by a chemical sobriety test; 2) an investigatory stop, possibly leading to questioning; or 3) an arrest. Many interactions between the police and a citizen are combinations of these categories. In each instance, there are usually things a person can do to either bring a tense situation to a successful conclusion or keep a bad situation from getting worse.

**TRAFFIC STOP.** Just about everyone is familiar with that sinking feeling that occurs upon seeing flashing emergency lights in the rearview mirror. However, there are things you can do that may improve the situation.

**Before the Officer Approaches the Car.** Traffic stops are inherently stressful to both the citizen and the officer. There are a few basic things you can do to minimize the stress on both.

- As soon as safely possible, turn off your cell phone and radio, signal and move your vehicle to the right, well off the roadway. Keep your hands on the wheel at the 10 and 2 positions until the officer requests you do otherwise. Do not attempt to retrieve your driver's license or registration until asked. Excessive movement not only makes the officer concerned about his or her own safety, but can provide a basis for a search.
- In low light conditions, try to park underneath a street lamp or turn on your dome light.
- Stay in the car and roll down your window. Do not exit the vehicle. Wait for the officer to approach the vehicle.
- When the officer approaches the vehicle, let him speak first.

**When the Officer Reaches the Car,** you are probably under investigation. There are a few things you can do to reduce the odds you will be issued a citation or arrested.

- Be polite. The officer may not have decided what they are going to do. Your demeanor may influence his or her decision. Aggressive, loud, or argumentative behavior rarely convinces an officer to give you a break. It can provide a basis to further detain you. If you are issued a citation, your comments may be repeated to the Judge hearing your case.
- When asked, identify yourself and provide the officer with your driver's license and registration.
- Do not engage in speculation. If the officer asks "Do you know why I pulled you over?", do not engage in speculation. Often, an officer will ask you this in order to gain your admission to misconduct. Use common sense. If you are not absolutely sure why you were stopped, do not assume what is in the officer mind. On the other hand, if you are absolutely sure why you were stopped, you may want to suggest a reason.
- Pay attention. Try to remember the officer's name or badge number. Listen to the reasons given for stopping you. Afterwards, write down as much as possible. Be sure to include the time, date, and general traffic conditions.
- A traffic stop may provide a basis to search your vehicle. Even if you believe the officer is exceeding their authority, resisting the officer can lead to criminal charges.

**Field Sobriety Test.** If the officer has a reasonable basis to believe you are under the influence of alcohol or other intoxicants, he or she can ask you to perform a field sobriety test. The officer will ask you to complete a series of activities design to test your balance and coordination. If you have any physical limitations that may prevent you from completing that test, calmly explain those limitations to the officer. If the officer decides the test indicates you may be under the influence of intoxicants, he may then request you submit to Preliminary Breath Test, or other chemical sobriety test.

**Chemical Sobriety Test.** Wisconsin has an implied consent law which means that any officer who stops you while you are operating a motor vehicle on a public highway who suspects you may be under the influence of intoxicants can require you to undergo a chemical sobriety test. First, he or she must read you the following:

"You have either been arrested for an offense that involves driving or operating a motor vehicle while under the influence of alcohol or drugs, or both, or you are suspected of driving or being on duty time with respect to a commercial motor vehicle after consuming an intoxicating beverage. This law enforcement agency now wants to test one or more samples of your breath, blood or urine to determine the concentration of alcohol or drugs in your system. If any test shows more alcohol in your system than the law permits while driving, your operating privilege will be suspended. If you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties. The test results or the fact that you refused testing can be used against you in court. If you take all the requested tests, you may choose to take further tests. You may take the alternative test that this law enforcement agency provides free of charge. You also may have a test conducted by a qualified person of your choice at your expense. You, however, will have to make your own arrangements for that test. If you have a commercial driver license or were operating a commercial motor vehicle, other consequences may result from positive test results or from refusing testing, such as being placed out of service or disqualified."

After being read the warning, if a person refuses an officer's request to submit to a chemical sobriety test, they can be issued a citation for refusal. The procedure that follows is very much like a prosecution for drunk driving. However, the penalties imposed for refusal tend to be maximum penalties that could be imposed on an OWI.

**INVESTIGATORY STOP.** As a rule, the police may not detain a person without a warrant. An exception to this rule exists if the police have a good faith reason to believe that person might be committing a crime. In these cases, the police can temporarily stop and question a person. If you do not identify yourself, that could provide a basis to further detain you or take you to jail. In most cases, the best course of action is to identify yourself and provide a very limited response. Be polite, do not speculate, and do not tell the police anything untrue.

Depending on the circumstances, the officer may or may not be allowed to search you. As a rule, warrantless searches are not allowed, but one exception exists to the rule for officer safety. If stopped, try to be polite and calm, control any excitement, and do not raise your voice or move around excessively. Keep your hands out of your pockets.

The police sometimes will ask your permission to search your person, car, or house. Sometimes, they do this because they are uncertain as to whether the circumstances justify the search. It is often advisable to politely decline to give them permission to search you. If they ask you why, you should simply say that you do not give them permission to search you. You do not have to provide any further explanation. Likewise, you have an absolute right to remain silent. However, exerting these rights might extend the time the police are allowed to detain you, or provide a basis to take you into custody.

After a few minutes, the police should either arrest you or tell you that you are free to go. If not, you should ask the officer if you are free to leave. If you are told yes, then thank the officer and slowly and calmly walk away. If they say no, it is probably best to tell the officer you are going to exercise your right to remain silent until you have been provided with an attorney. The officer may ask you why you want an attorney if you haven't done anything wrong. You should say that if you are not free to go, then you are going to remain silent until you have an attorney present. If this happens, you should anticipate being arrested.

**Questioning** The police investigate crimes. In the process of doing so, they speak to many people. Only later, will the police decide whether those people are victims, witnesses, criminal, or some combination of the three. Quite often, those decisions are not made until days later. Typically, the police officers prepare reports to their supervisors. The police may recommend charges, but the District Attorney typically makes the decision whether to prosecute or press charges. Any time the police talk to you, you should be careful. It is always best to be polite. Do not speculate. Tell the truth or remain silent. You have an absolute right not to consent to a search of your person or property. In some cases, the police will not need your permission. If you believe the police are searching you or your property without authorization, you do not have a right to resist. Rather, pay attention to who is doing what, the time, date, and circumstances. Write them down as soon as possible, and then seek the assistance of an attorney.

**ARREST** Once a person has a reasonable belief the police will not let them go, they are under arrest. Once you are under arrest, the police may seek to question you. Typically, the best course of action is to exercise your right to remain silent. If the police try to question you as to why you remain silent, just tell them you do not want to speak to them until your attorney is present. If the situation reaches this stage, the best course of action is to have an attorney. If you cannot afford one, you should contact the State Office of the Public Defender or request the Court appoint an attorney to represent you.