

## IF YOUR RIGHTS ARE VIOLATED

You may wish to do any of the following as well as file a lawsuit, depending on your particular encounter or situation. It is best to consult an attorney for advice, but you can:

- A. File a complaint with the ACLU of Arkansas. We are not able to assist with every policing complaint, but even if we cannot take your individual case, letting us know what has happened can help us in advocacy for change.
- B. Contact the department employing the officer and file a written, formal internal affairs complaint. You can ask what actions the department has taken or will take in response to your complaint, and follow up to learn the outcome. Please let us know if you have done this.



## IF YOU HAVE PROBLEMS OR QUESTIONS:

Please visit our webpage:  
[www.acluarkansas.org](http://www.acluarkansas.org)  
and click "Get Help"

or write to us at the address on the back.

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# OBSERVING & RECORDING POLICE

**KNOW YOUR RIGHTS**

IMPORTANT INFORMATION REGARDING YOUR RIGHTS!



## LEGAL PROVISIONS

The Fourth Amendment to the U.S. Constitution guarantees the right of individuals to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. U.S. Constitution, amendment IV.

The Arkansas Constitution also protects a person's right to be free from searches or unwarranted searches and seizures. Arkansas Constitution, article I § 15.

The constitution says you are protected from being stopped on the street by an officer barring special circumstances.

Arkansas state law also protects the right to record police.

## RECORDING & OBSERVING POLICE

Developments in technology have raised questions concerning law enforcement authority to stop members of the public, including suspects and witnesses, from recording or taking photographs of officers or others in public spaces or public view.

Citizens have a right to record matters of public interest, including a right to record police activity under the First Amendment. However, individuals may be lawfully required to move out of the way of police activity so as not to obstruct it or endanger themselves or others. As such, it is to your advantage to keep a safe distance from police activity should you wish to observe or record police activity.

Public officials, including police officers, "have no general privilege to avoid publicity and embarrassment by preventing public scrutiny of their actions." Individuals who are lawfully present in a public space can generally photograph, video, or audio record anything in plain view or hearing, including streets, sidewalks, buildings, parks, and people. You do not have a right to set up an *unattended* audio recorder, but you generally can record a conversation you are a party to or can overhear.

Police may ask you to stop filming, but as long as you are not interfering with police business, you should not be required to stop recording. If an officer asks or tells you to stop filming, you can remain polite and ask the officer why you are being told to stop or where you can move to so that you can record. You are free to go if you are not being detained, but remember that the officer may have a legitimate reason to ask you to move further away to avoid safety or risk obstruction issues. In such cases, it would be to your advantage to comply with the request. This does not mean that their demand is legal, but insisting that your rights to observe or record be respected can lead to other violations of your rights as easily as it could lead to your rights being respected.

Police and private individuals may be filming and recording you, too! Remember this anytime you are in public and/or encountering police.

## POLICE SEIZING OR SEARCHING YOUR DEVICE OR PROPERTY

A police officer needs reasonable suspicion to detain you and your recording device (cellphone, camera) cannot be taken from you unless you are being arrested or the device has captured evidence of a crime. Most often, this would first require the officer to obtain a search warrant in order to search your recording device for the evidence (if you do not consent to the search of the device.)

If the device is not believed to contain evidence of a crime, then your right to privacy is violated if the device is searched without your consent. You can decline consent by simply saying, "I would really rather you not search my device."

Police officers must have a legitimate reason to take personal property. During an arrest property can be taken from individuals for safekeeping, as evidence, or for safety reasons.

Outside of an arrest, however, the law provides that a police officer cannot summarily take your personal property unless it is evidence of a crime or it is illegal for you to be in possession of said property. Otherwise, the Fourth Amendment protects your right to be secure in your personal property and effects, including your recordings and other information on your electronic device.