

Interactions With Federal Law Enforcement Officers (Excluding Stops and Arrests)¹

What does it mean to be advised of your rights?

Being advised of your rights means a law enforcement officer (LEO) informs you of your constitutional rights. These include your right to remain silent and an explanation that anything you say can be used against you. You will also be advised of your right to consult with an attorney before answering questions.

Importantly, being advised of your rights does not mean a LEO must immediately provide you with an attorney or allow you to speak with one right away. The purpose is simply to let you know that you do not have to answer questions until you have consulted with an attorney, if you choose to exercise that right.

When do you have to be advised of your rights?

A LEO is required to advise you of your rights only if **both** of the following are true:

1. You are detained (which includes being arrested), and
2. You are questioned.

If you are detained but not questioned, you may not be advised of your rights. If you are questioned but not detained—for example, during a voluntary conversation—you may also not be advised of your rights. This handout focuses on interactions that are not stops or arrests.

What are some basics about interacting with a LEO?

It is important to know that a LEO may legally use certain forms of deception during questioning. If you want to speak to a lawyer before answering questions, act expeditiously. The [Hawai'i State Bar Association](#) provides resources to locate a lawyer. Additionally, under some circumstances, the [Federal Public Defender, District of Hawai'i](#) can represent individuals.

¹ Stops and arrests were discussed in the earlier part of this presentation.

What is the Office of the Federal Public Defender (OFPD)?

The OFPD provides competent legal representation to people who are facing federal criminal charges and cannot afford a lawyer. A judge determines financial eligibility based on your financial situation.

The OFPD may represent you even if you have not been formally charged, if you are financially eligible and there is potential federal criminal liability. The OFPD cannot represent you in civil or immigration matters, nor can it represent businesses.

What are some circumstances where you might interact with a federal LEO?

Non-Exhaustive list of interactions with federal LEOs:

- Investigative interview
- Target letter
- Subject letter
- Grand jury subpoena *ad testificandum*
- Subpoena *duces tecum*
- Search warrant

What is an investigative interview?

An investigative interview occurs when a LEO approaches you without stopping, detaining, or arresting you. These may occur:

- In public (“walk and talk”),
- At your home (“knock and talk”), or
- By phone, if a LEO calls to ask questions.

The key feature of an investigative interview is that you are free to leave. If you ask, “Am I free to leave?” the LEO must answer truthfully. If you want to speak to a lawyer before answering any questions, clearly state, “I am going to contact a lawyer before answering any questions.” Then contact an attorney as soon as possible.

The OFPD may represent you if you are financially eligible and there is potential federal criminal liability.

What is a target letter?

A target letter informs you that you are the target of a federal criminal investigation. This almost always means you will also be charged with a crime.

A target letter typically includes:

- The investigating agency (e.g., FBI),
- A general description of the suspected offense,
- Contact information for the U.S. Attorney's Office, and
- Contact information for the OFPD.

If you receive a target letter, you should speak to an attorney as soon as practicable. The OFPD may represent you if you are financially eligible.

What is a subject letter?

A subject letter informs you that your actions fall within the scope of a federal investigation, but you may not be the focus. You may or may not be charged with a crime. If you receive a subject letter, speak to a lawyer promptly. The OFPD may represent you if you are financially eligible.

What is a grand jury subpoena *ad testificandum*?

A subpoena *ad testificandum* is a court order requiring you to appear and testify at a court proceeding. A federal grand jury consists of 16–23 community members who investigate federal crimes and determine whether probable cause exists to charge someone with a federal crime. Therefore, a grand jury subpoena *ad testificandum* requires you to appear and testify at a grand jury proceeding.

The subpoena will list the date, time, and location of your required appearance. If you want to speak to a lawyer, you must do so *before* that date. You must appear as ordered, and you may be required to answer questions under oath even if you prefer not to. If you believe your answer will incriminate you, you have a Fifth

Amendment right to not testify, but to determine this, you should speak to an attorney.

The OFPD may be able to represent you depending on financial eligibility and whether there is potential federal criminal liability.

What is a subpoena *duces tecum*?

A subpoena *duces tecum* requires you to produce specific documents or records. These are frequently served on business owners or record custodians.

If the subpoena is directed to a business or other entity, the OFPD cannot assist, as it does not represent businesses.

What is a search warrant?

A search warrant is a court order authorizing a LEO to search a person or place for evidence of a federal crime. You will not be able to consult a lawyer before the search occurs.

You do not have to answer questions during the execution of a search warrant.

Federal rules require officers to leave:

- A copy of the warrant, and
- An inventory of items taken.

If a search warrant is executed on you, your home, your vehicle, or other property associated with you, you should consult a lawyer as soon as possible afterward. The OFPD may be able to represent you depending on financial eligibility and potential federal criminal liability.