

## FACT SHEET

# SUMMARY OF CONSTITUTIONAL PROTECTIONS FOR HARM REDUCTION PROGRAMS

## OVERVIEW OF PARAPHERNALIA AND DRUG POSSESSION LAWS

Laws regulating the distribution, possession, and use of objects used with illegal drugs - often referred to as paraphernalia laws - and drug possession are present at the federal, state, and sometimes local levels.

[Federal law](#) prohibits the unauthorized sale, import, and export of drug paraphernalia, as well as its transport via the mail or in interstate commerce. It does not, however, prohibit the simple possession or free distribution of drug paraphernalia. Further, the relevant federal law does not apply to any person authorized by local, state, or federal law to “manufacture, possess, or distribute” the paraphernalia. Therefore, if an activity, such as the distribution of syringes or smoking equipment from a syringe services program (SSP) is permitted under state or local law, it does not violate the federal paraphernalia law.

State laws are more nuanced. In some states, there are no laws prohibiting the possession or free distribution of paraphernalia; in others, syringes or other equipment are exempt from the law’s prohibitions, while in others distribution and possession are permitted in some circumstances but not others. For a summary of state laws, see Drug Policy Alliance’s [Interactive Map](#).

Both federal and state law generally criminalize the possession of a controlled substance unless the substance was obtained under a legitimate prescription or via other lawful means. Specifically, [federal law](#) makes it unlawful for:

“any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this chapter...”

A conviction under this statute carries up to a one-year sentence and \$1,000 fine for the first conviction, with more severe penalties for additional convictions. In practice, prosecutions for simple possession are rare under federal law, and typically occur in conjunction with more serious charges. Although federal law contains no lower limit on the amount of drugs necessary to be convicted, to the authors’ knowledge no harm reduction program operator has ever been federally arrested, charged, or prosecuted for residual amounts of drugs contained in a returned syringe or other object, or for possession of small amounts of drugs incidental to drug checking.

Unlawful possession of a controlled substance is a criminal offense under every state’s law. The circumstances and severity differ by state. For a summary of state laws, see Drug Policy Alliance’s [Interactive Map](#). The [Harm Reduction Legal Project](#) and Drug Policy Alliance are happy to provide specific, up-to-date information on the law in your state.

## OVERVIEW OF RIGHTS UNDER THE 4<sup>TH</sup> AND 5<sup>TH</sup> AMENDMENTS

While numerous laws at both the federal and state levels provide protections for individuals when interacting with law enforcement and other government officials, at the most basic level your rights when interacting with government officials are guaranteed primarily by the Fourth and Fifth Amendments of the U.S. Constitution. Below is a brief summary of these rights.

The Fourth Amendment prohibits “unreasonable searches and seizures” by the government. That means government agents, including law enforcement officers employed by federal, state, and local government, cannot enter private property or take personal belongings without your permission unless specifically [authorized by a court warrant](#) or an exception applies. The Fourth Amendment’s protections are strongest in private homes. Organizations like businesses and nonprofits are also protected, but to a lesser degree.

Fourth Amendment protections turn on the “reasonable expectation of privacy.” If an area is held open to the public, it is also open to the police, because open access reflects low expectations of privacy. However, if access to an area is restricted—for example, behind a locked door, or requiring some credential or registration to enter—then the Fourth Amendment’s warrant requirement is more likely to apply. Note that the display of signs (like “Authorized Entry Only” or “Restricted Area”) does not guarantee legal protection. If the signs reflect actual practices, though, they could be helpful evidence in support of establishing an expectation of privacy in a court proceeding.

Police do not need permission to search through anything that is openly visible—in “plain view”—such as documents sitting on a desk or material in an open trash can, so long as they are in an area the officer is legally permitted to be. But the warrant requirement does apply to anything in its own container and not generally accessible to the public; for example, an individual’s backpack or purse, a filing cabinet or closet only accessible by staff, or anything behind a lock.

There is a major exception to these rules: consent. If the police are granted valid *permission* to enter a private space, or to look through a private container, they can do so without a warrant. Police often request consent to search, and they might apply pressure to get it, but there is no requirement to grant it to them. The officer’s request for consent to search may be covert, confusing, or indirect (e.g., “I’m going to look in this bag now, ok?”). It is a best practice to clearly state something like: “I do not consent to entry in our private spaces,” or, “I do not consent to a search.”

There are other exceptions to the requirement to get a warrant. One exception is in “exigent circumstances” which permits police to enter private areas even without permission in certain emergencies. Read more about this in the FAQs below.

The Fifth Amendment provides various protections in the criminal legal system, including the right against self-incrimination (also known as the “right to remain silent”) and the right to have a lawyer present when questioned while under arrest. These rights protect individuals from being compelled to give information against their will.

In the heat of the moment during a police encounter, it may be difficult to separate innocuous questions from potentially incriminating ones. You generally do not need to answer questions asked by law enforcement, and it is generally best practice to calmly decline to answer *any* questions. It may be helpful for an organization to prepare a few scripted responses to be used in case of high-pressure encounters: declining consent to

searches; asserting the right to remain silent; and requesting a lawyer's presence if under arrest. Note that if the police unfairly threaten or coerce someone into cooperation, legal relief may be available from a court later on.

Understanding these legal doctrines is an important first step, but it is also important to understand the practical realities. The existence of these rights or your assertion of them does not guarantee your protection. During a police encounter, aside from calmly asserting these rights and recording evidence (e.g., officer names and badge numbers), it is best to practice de-escalation, not engage in conflict, and pursue legal relief afterwards. Whether your rights were violated, and any remedy for that violation, can only be determined after an incident concludes, so building a relationship with a lawyer or a legal organization to call during or after an emergency is an important practice alongside knowing one's rights.

Sample Statements/Questions During an Encounter with a Law Enforcement Officer:

- I do not consent to a search.
- Am I being detained/under arrest? Am I free to go?
- Do you have a warrant?
- I wish to remain silent. I want to speak with an attorney.

**Important!** Calmly assert your rights, but do not get in an officer's way if they insist on searching your property, even if you believe the search is unlawful. Safety is the priority.

## **WHAT CAN I DO NOW TO PREPARE?**

Programs should consider the following steps to prepare for possible law enforcement intervention:

- Create a protocol for responding to law enforcement and train staff/volunteers on the protocol
- Designate staff who are points of contact with law enforcement
- Provide staff, volunteers, and participants with know your rights information
- Establish a relationship with a local criminal defense attorney
- Meet with local policymakers to inform them of your program's success and raise any concerns about law enforcement interactions
- Consider changes to program structure to increase privacy (e.g., adding locks, moving services to a restricted area)

Programs may also want to consider establishing a relationship with law enforcement to help prevent harassment and crises. This is heavily context-dependent, but some programs have developed amicable relationships with law enforcement, helping to decrease the chances of negative interactions between the program and participants with police.

## **WHEN SHOULD I CONTACT AN ATTORNEY?**

All programs should consider establishing a relationship with an attorney who may be able to assist you should the need arise, advise you on federal, state, and local laws, and help develop a plan for responding to law enforcement. Having a relationship with an attorney can reduce time and stress during a crisis and may be helpful in avoiding circumstances that lead to or intensify crises. If you do not have an established connection, consider making a list of possible attorneys that you can use in case of emergency.

The immediate priority after an arrest is to limit the time in custody for the arrestee. One way programs may wish to be prepared is by developing policies and procedures to pay bail/bond for employees and volunteers. There are various ways to do this that could be as simple as having a dedicated amount of money set aside for these kinds of emergencies. Establishing a relationship with a local bail fund is another option. If your organization finds an attorney to partner with, ensure that a variety of staff members have that attorney's contact information for emergencies and there is a clear protocol for contacting the attorney.

## **HOW DO I FIND AN ATTORNEY?**

It is a good idea to research and potentially meet with local criminal lawyers that may be willing to represent your program, its staff, and volunteers or make a connection with your local public defender's office before law enforcement interactions occur.

Outside of an emergency situation, you can reach out to the Harm Reduction Legal Project and/or the Drug Policy Alliance for potential assistance connecting with local attorneys. Your [state or county bar association](#) likely maintains a lawyer referral service, which can help connect you with an appropriate attorney. For civil legal services, you can also use the [Legal Services Corporation](#) website to find a legal aid provider near you. You may also try reaching out to your [local ACLU affiliate](#).

## **ADDITIONAL RESOURCES**

Legal Action Center - [Responding to Immigration Enforcement: A Guide for Substance Use Disorder Treatment Programs](#)

Protect Democracy - [Nonprofit Toolkit: Resources for Organizations Facing Government Investigations](#)

National Homelessness Law Center - [ICE Raid Guidance for Homeless Service Providers](#)

Public Counsel - [FAQs: Nonprofit and Small Business Rights with Respect to Immigration Enforcement](#)

Protect Democracy - [Search Warrant Primer](#)

National Immigration Law Center - [Warrants and Subpoenas: What to Look For and How to Respond](#)

ACLU - [Know Your Rights](#)

## **CONTACTS**

Drug Policy Alliance: Kellen Russoniello, [krussoniello@drugpolicy.org](mailto:krussoniello@drugpolicy.org)

Harm Reduction Legal Project: [harmreduction@networkforphl.org](mailto:harmreduction@networkforphl.org)

## FREQUENTLY ASKED QUESTIONS

### ***What should we do and say during a police encounter? Should we make demands? Should we resist actions we think are unlawful?***

Best practices vary widely depending on the facts of each situation, so it is difficult to give universal advice. In general, as discussed above, we recommend calmly and clearly asserting your rights (e.g., declining consent to searches, declining to answer questions) and recording the encounter as much as possible, if safe to do so. In some circumstances, it may make sense to politely assert a demand to police (e.g., to leave the premises, or to not enter a restricted area). Other than these limited actions, it is best to avoid conflict and deescalate the situation as much as possible. If your rights are violated or you wish to challenge any actions by the police as unlawful, you can do so after the fact by contacting a lawyer.

### ***Is it true that police cannot enter our space without showing us a warrant? What does a valid warrant look like?***

Whether the police can lawfully enter your space, including based on a purported judicial warrant, depends on the facts of each scenario and, to some extent, the law in your state. While law enforcement officers are generally required to knock and announce their presence and request entry even if they have a warrant, they are not generally required to provide a physical copy of the warrant before entering. It is, however, a good idea to ask to see it, and officers are generally required to provide a copy of the warrant and an inventory of anything taken within a reasonable amount of time after conducting a search.

Regardless, it remains best practice to assert your rights (e.g., “I do not consent to a search”) and safely record an encounter even when a search is purportedly authorized by a warrant. There are still legal limitations on the warranted search, and you could be treated as consenting to a broader search if you do not clearly state otherwise. However, do not obstruct officers who claim to have a valid warrant - this may lead to you being arrested, and the validity of the search can be contested later.

We recommend reviewing the resources listed above (“Additional Resources”) for more specific guidance on judicial warrants. Protect Democracy’s [“Search Warrant Primer”](#) resource explains the basics and includes a [link](#) to an example of a federal search warrant. The National Immigration Law Center’s [“Warrants and Subpoenas”](#) resource explains different types of warrants, and how to distinguish a judicial search warrant from other types of legal documents, especially in immigration enforcement.

### ***What qualifies as “exigent” or emergency circumstances, meaning police can enter and search even without a warrant? What about “hot pursuit”?***

One major exception to the Fourth Amendment’s general rule that police may only enter private spaces pursuant to a valid warrant or with permission is in “exigent circumstances.” Courts have held that in certain emergencies, it becomes objectively reasonable for police to enter or search a space even without prior permission. Whether a given circumstance is enough of an emergency to authorize police entry is decided on a case-by-case basis, but some examples may include to provide emergency first aid, to prevent serious injury or death to others, or to prevent the imminent destruction of evidence.

The “hot pursuit” rule is another example of this same exception: courts have ruled that police may lawfully enter private spaces without authorization if necessary to remain in pursuit of a fleeing suspect. Like the others, this rule is very dependent on the facts of the situation: the seriousness of the crime at issue; the

strength of the evidence against the fleeing suspect; the necessity to enter the private space to maintain the pursuit; etc.

As emphasized above, whether such an exception applies to a given situation can only be decided by a court after an encounter has concluded. In the moment, if police cite emergency circumstances as grounds for some action involving your space, the best practice still applies: calmly and clearly assert your rights, including to decline consent to any search; record the encounter; and contact a lawyer after the situation has concluded.

***Some of our participants experience housing insecurity, sleeping in a car or tent. What are the rules for those circumstances?***

In general, a person is entitled to Fourth Amendment protection in their personal property, meaning police cannot search personal property without permission or court authorization, and that includes a person's car or tent. However, the extent of that protection can vary widely depending on the facts of the situation (whether the law of the relevant state and local jurisdictions prohibits any of the conduct at issue; whether a person is present at the time of the search; etc.). Courts have reached a variety of different outcomes on the extent to which unhoused people have Fourth Amendment protections in "makeshift" sleeping arrangements.

The same general advice applies: the best practice is to calmly assert one's rights, make efforts to safely get through an encounter, and contact a lawyer after the fact. Programs should consider whether they will assist participants with hardships caused by police encounters, including by assisting with obtaining legal advice.

***Is our program covered by HIPAA or other health privacy laws? If we are, do these laws restrict what information police have access to?***

HIPAA and other health privacy laws, including 42 CFR Part 2 (Part 2) and state privacy laws, are a complicated area of law that may require the assistance of an attorney. The Centers for Medicaid and Medicare Services maintains a [website](#) to help determine if your organization is a HIPAA-covered entity. More information about Part 2 applicability can be found [here](#).

HIPAA, Part 2, and possibly state privacy laws limit what information police can obtain from covered entities. For more information, see [here](#). However, the general advice remains the same: calmly and clearly assert your rights, including to decline consent to any search; record the encounter; and contact a lawyer after the situation has concluded.

HIPAA-covered entities should also be aware of filming in their facilities, especially if they plan to video record law enforcement interactions. More information can be found [here](#) and [here](#).

***What if police are looking for or demanding information about specific individuals? What can we say?***

Generally, you do not have to respond to questions from law enforcement. If law enforcement ask you for information on another person, you do not need to respond (e.g., "I am not answering that question, it is against our organization's policy.") This information may also be protected by federal and state health privacy laws (see above question). It is important to have designated point people to interact with law enforcement who are trained on organizational protocols and how to respond to police questioning. If possible, it might be beneficial to choose designated point people who are not on community supervision (e.g., probation or parole), as they may be required by their terms of supervision to fully cooperate with law enforcement. It is also

important to ensure all staff know who these point people are and how to quickly get them in case they encounter law enforcement.

***Police officers camp out near our program and watch our participants come and go. Is that legal?***

Police have the right to be in public places, including on a street outside of your program if it's otherwise accessible to the public, and to observe or surveil activity that is held open to public view. If police are surveilling your program and participants, you may want to consider speaking with the officers directly to see if there is a problem you could help resolve, speak to higher-level officials in the law enforcement agency to ask them to have their officers stop, or speak to local policymakers about the problem and ask them to intervene.

***Our program provides drug checking services. Are there any special considerations for us?***

Federal law does not prohibit the possession and free distribution of paraphernalia, which includes drug checking equipment like fentanyl test strips. Federal law does not recognize an exception to the crime of drug possession for possessing drugs for the purpose of drug checking. However, to our knowledge, no drug checking provider has ever been federally arrested, charged, or prosecuted for residual amounts of drugs contained in a returned syringe or other object, or for possession of small amounts of drugs incidental to drug checking.

State laws on paraphernalia and drug checking equipment differ (see the Harm Reduction Legal Project's [summary of state drug checking laws](#)). Programs should be aware of their state and local laws and contact a local attorney if questions arise about how the laws apply to their program.

**This brief factsheet was created by Michael Abrams, Ashleigh Dennis, Amy Lieberman, and Corey Davis at the Network for Public Health Law Harm Reduction Legal Project and Kellen Russionello at the Drug Policy Alliance as a companion to the webinar "[Rights and Protections for Harm Reduction Programs and Clients in an Increasingly Hostile Environment](#)," which was conducted in December 2025.**

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Support for the Network provided by the Robert Wood Johnson Foundation. The views expressed in this document do not necessarily reflect the views of the Foundation.



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