

RIGHTS TOWARDS THE POLICE

These notes were produced as part of a collaboration between the Coordination asile.ge and the Law Clinic of the University of Geneva. They are intended for unaccompanied minors and unaccompanied young adults living in Geneva. Their purpose is to inform about certain rights in understandable terms to make them accessible to everyone. For more detailed information, you can consult the Law Clinic's brochure on the rights of young unaccompanied migrants.

What is my legal situation if I am in Switzerland without a residence permit and what are the risks?

If you do not have a residence permit, you are already breaking the law by your mere presence in Switzerland. If the authorities find out about it, you risk an interdiction on staying in the country, deportation, and detention with the purpose of deportation.

Under what circumstances can the police check my identity?

The police have the right to check your identity, but only if they suspect you have committed an offence. Police officers must be identifiable.

Identity checks should not occur without reason. Your skin colour or your ethnic origin should not constitute specific grounds to suspect you of any offense or being an illegal resident.

→ **Practical advice : do not oppose an identity check because it constitutes an offence.**

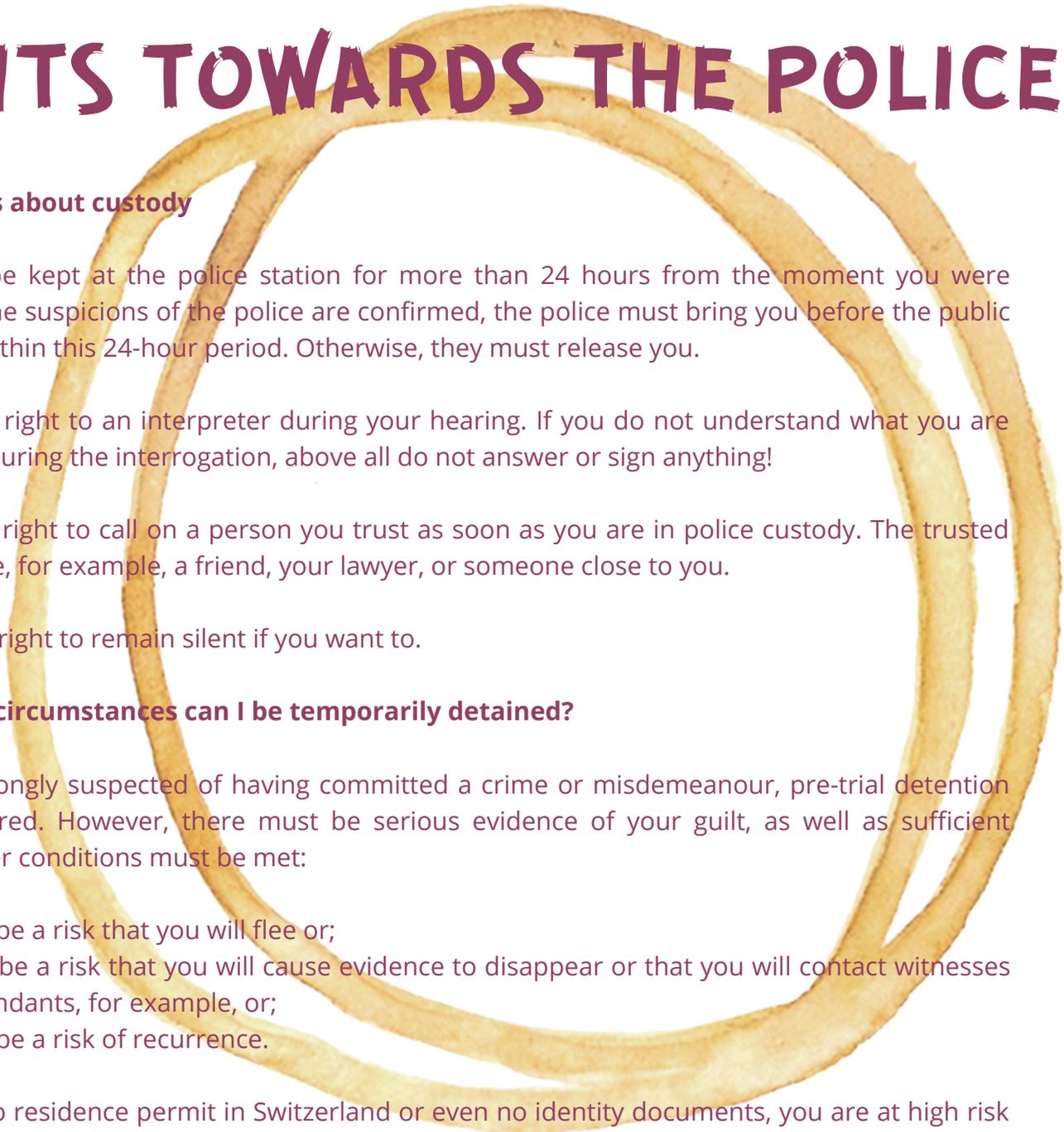
If you are the victim of a control that does not follow the law, do not resist because you risk a fine or even being subjected to violence from the police. Once the control is over, you can take legal action and file a complaint. If you find yourself in this situation, you are strongly advised to contact a legal professional.

Under what circumstances and for how long can the police take me into custody?

If the police suspect you of having committed a crime or offence, they can arrest you temporarily and take you to the police station (custody). But there must be specific grounds to suspect you of having committed an offence. For example, you must have been caught in the act, or there must be clues that point in this direction.

If you do not have a valid residence permit, the police can take you to the police station.

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Informations about custody

You cannot be kept at the police station for more than 24 hours from the moment you were detained. If the suspicions of the police are confirmed, the police must bring you before the public prosecutor within this 24-hour period. Otherwise, they must release you.

You have the right to an interpreter during your hearing. If you do not understand what you are being asked during the interrogation, above all do not answer or sign anything!

You have the right to call on a person you trust as soon as you are in police custody. The trusted person can be, for example, a friend, your lawyer, or someone close to you.

You have the right to remain silent if you want to.

Under what circumstances can I be temporarily detained?

If you are strongly suspected of having committed a crime or misdemeanour, pre-trial detention may be ordered. However, there must be serious evidence of your guilt, as well as sufficient charges. Other conditions must be met:

- there must be a risk that you will flee or;
- there must be a risk that you will cause evidence to disappear or that you will contact witnesses or other defendants, for example, or;
- there must be a risk of recurrence.

If you have no residence permit in Switzerland or even no identity documents, you are at high risk of being temporarily detained because the authorities will be afraid that you may flee during the procedure. For pre-trial detention, there is no maximum duration of detention.

Do I have the right to a lawyer and at what stage?

You have the right to a lawyer from the very first police hearing. If you don't have enough money to pay your court fees and a lawyer, and there's a chance you'll win your case and your interests warrant it, you have the right to ask for and receive legal assistance from the first interrogation.

If you commit an offence punishable by more than one year of imprisonment and you do not have the means to be defended, you have the right to a court-appointed defence attorney. This means that the authority will appoint a lawyer for you. In this case, if you do not have the necessary means (enough money), then you can obtain legal assistance from the first interrogation.

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Under what circumstances can the police conduct a search?

A search is when the police come to your home to search your room, or your apartment in general. Except for emergencies, the police must have a written warrant to be able to enter your home. The mandate must indicate precisely:

- the name of the person to be searched or the premises, documents, or objects to be examined
- the purpose of the search
- the authorities or persons responsible for the execution of the search warrant

However, if the situation is considered urgent, the police can also obtain a search warrant by telephone to come and search your room.

→ → **Practical advice: if your place is about to be searched, you should ask the police if they have a warrant and check that it is in order.**

The authorities can only search your place if they have received a warrant. For example, if the police have a warrant against a specific person, they cannot search other persons who are also on the premises.

What can I do if I am a victim of police violence?

If you are abused, you can file a criminal complaint with the public prosecutor. For this, you must first seek a doctor's consultation and obtain a certificate proving the abuse you have been subjected to. If the police refuse to allow you to consult a doctor, you must have this noted in the record and consult a doctor on your side as soon as possible. You should know that in general, when a complaint is filed against the police, the police in turn files a complaint for defamation.

If you do not want to file a complaint, you can also write a letter to the chief of police describing the facts and asking for explanations. This leaves a written record and forces the chief of police to take note of your situation and provide a response.

→ **Practical advice: police testimonies are of decisive value. This means that the testimony of the police constitutes evidence in itself before the courts. That's why it's important for you to collect all possible evidence on your side, such as a video. Make sure to file a medical report as soon as possible.**

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Where can I go when I am the victim of a crime?

If you are the victim of an offence, you have 3 months to file a complaint. You can file a complaint in writing or orally. If you want to make an oral complaint, you can go to a police station and your complaint will be recorded in a report by the police.

You can also make a written complaint by sending a registered letter to the Public Prosecutor's Office.

⚠ Caution: If you do not have legal status, going to the criminal authorities can backfire against you.

→ Practical tip: read the report carefully once you have filed a complaint, and make sure that you have said everything that is written. You can ask for changes in the report if something is written that you have not said.

You can also contact the LAVI centre, which is the Geneva consultation centre for victims of crime. You will find their number and address below. This centre can provide you with psychological, legal, social, medical and/or material help. The centre can accompany you through the criminal proceedings (e.g. to file a complaint).

Addresses

Legal consultation service at SILURE

(Free, without appointment, saturday 10:30 a.m. to 12:30 p.m.), pjsilure@protonmail.com, Sentier des Saules 3.

Legal consultation service for students

(Free, by appointment), info@pje-ge.ch

Legal consultation office of Plainpalais

(By appointment), info@pj-plainpalais.ch, +41 22 502 76 56, 13 Boulevard Georges-Favon.

Geneva Consultation Centre for Victims of Offences (LAVI), +41 22 320 0102, Boulevard de Saint-Georges 72.

