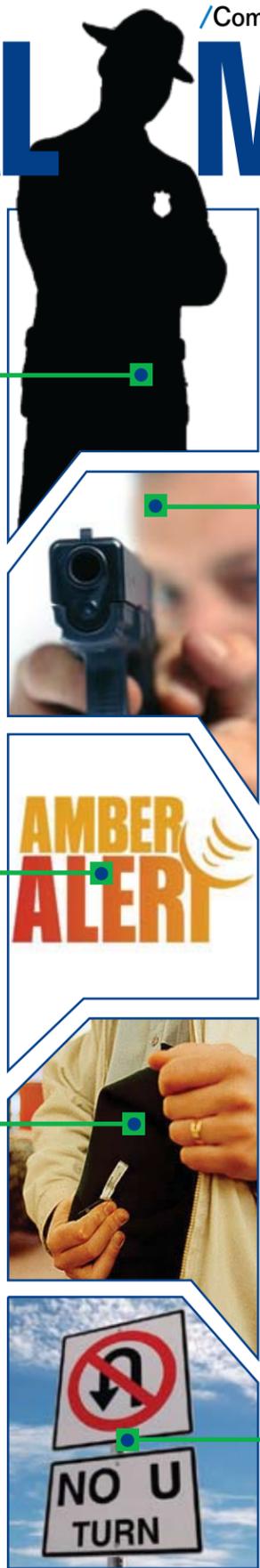


/Compiled by the DOCJT Legal Staff

LEGAL MYTHS



MYTH: Undercover officers must tell the truth if they are asked if they are law enforcement.

FACT: Just the opposite is true. In *Illinois v. Perkins*, 496 U.S. 292 (1990), the Court ruled that officers working undercover and incarcerated with other inmates did not have to reveal their status as an officer. Further, any information a person shares with an officer who isn't identified, even if given in response to interrogation, is admissible, since they would be considered no different than any other person with whom a subject shared incriminating information.

MYTH: Every missing child will result in an Amber Alert.

FACT: In Kentucky, Amber Alerts may only be issued if certain specific criteria are met. Those criteria require law enforcement to confirm that a child has been abducted, the circumstances surrounding the abduction, that there is an indication that the child is at immediate risk of bodily harm and there is sufficient information concerning the child, the abductor and any vehicle involved. If the case does not satisfy those criteria, an Amber Alert will not be issued, even if the child is missing.

MYTH: A subject must actually leave the store to be arrested for shoplifting.

FACT: KRS 433.234 states that "willful concealment of unpurchased merchandise" is prima facie evidence of the intent to shoplift. In other words, deliberately placing an item under a coat, in a pocket or in a bag is enough to charge with theft by shoplifting.

MYTH: A person can't be stopped unless the police have probable cause.

FACT: Probable cause is required to make an arrest, but people may be stopped on reasonable suspicion under *Terry v. Ohio*, 392 U.S. 1 (1968) and cases that follow. A *Terry* stop requires the officer to have reasonable suspicion that, to paraphrase Sherlock Holmes, the crime is afoot. A variation of this belief is the misconception that a person can't be handcuffed unless they are under arrest, which is also incorrect.

MYTH: Officers have to warn before they shoot.

FACT: No, they don't. And in fact, tactically, that might be an inappropriate thing to do. In fact, officers might be guilty of Wanton Endangerment if they fire a weapon without appropriate justification just to warn someone. (KRS 508.060 and .070)

MYTH: A person can't be convicted on just circumstantial evidence.

FACT: Circumstantial evidence is perfectly valid evidence, although the prosecution must still meet the cumulative burden of proof "beyond a reasonable doubt."

MYTH: You must wait at least 24 hours before a report can be made about a missing adult.

FACT: Kentucky law places no such restriction, and in fact, the opposite is true. A missing person report may be made at any time, and in fact, certain criteria, such as Alzheimer's, dementia or mental handicap, may require that an immediate report be made by law enforcement to emergency management. (KRS 39F.180).

MYTH: If the police don't read a suspect his or her Miranda rights immediately, the arrest will be illegal, or anything they say will be dismissed.

FACT: Miranda warnings (or "rights"), pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966) are only required to be read to an adult subject when they are both in custody (most commonly by being arrested) and they are being interrogated. If the subject is not going to be interrogated, then it is not necessary to provide those rights. Conversely, if a subject is being interrogated, but is not legally in custody, again, *Miranda* rights are not required. Juveniles, however, under Kentucky law, must be given their constitutional rights (i.e. *Miranda*) immediately upon being taken into custody. (KRS 610.200)

MYTH: It is illegal to make a U-turn.

FACT: There is no general prohibition of U-turns in Kentucky, except on "limited access facilities" — in other words, expressways. (KRS 177.300) In fact, Kentucky law specifically permits it on most roadways, so long as it can be done safely and without interfering with other traffic. (KRS 189.330)

MYTH: Officers must stop at the city, county or state line during a pursuit.

FACT: Just the opposite. In Kentucky, officers in pursuit may cross intra-state jurisdictional boundaries. (KRS 431.045.) In addition, Kentucky officers may pursue a subject into another state, but their actions in that state will not be governed under Kentucky law, but by the laws of that state.

MYTH: It is illegal to drive barefoot.

FACT: There is no legal requirement to wear shoes while driving, although it certainly might be safer and more practical to do so.

MYTH: A person must provide identification upon request when asked to do so by law enforcement.

FACT: Although there are such requirements in a few states for specific circumstances, there is no such requirement in Kentucky for someone who is not driving a vehicle. (If they are driving, of course, the driver is required under KRS 186.620 to produce an operator's license.) They are not permitted to lie about their identity, under KRS 523.110, but they can simply refuse to identify themselves without any legal penalty.

MYTH: A person can't be charged with trespassing on publicly-owned property.

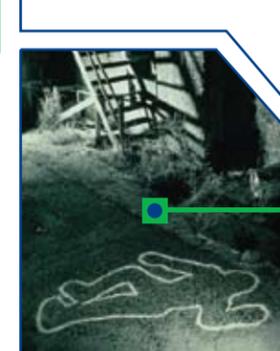
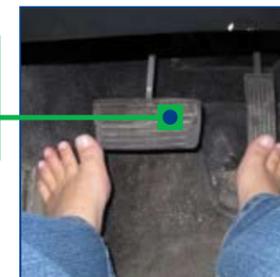
FACT: Even publicly-owned, open places, such as parks, often have closed times, and certainly public buildings, such as schools, city hall and even the police station all have portions of the building not open to public use, either all the time or at certain times. Entry into those areas would be trespassing, and even burglary, depending upon the circumstances. In situations such as public parks, the appropriate charge may be a violation of a local ordinance, however.

MYTH: An arrested subject has a constitutional right to a phone call.

FACT: Even discounting the simple fact that telephones didn't exist when the U.S. or Kentucky Constitution was ratified, there is no legal requirement that an arrested subject be permitted to call anyone. Most jails do provide telephones, of course, but they often charge a fee or require a collect call for their use, so that the subject may contact an attorney or a family member. However, it is not actually required.

MYTH: Any violation of the chain of custody will cause a case to be lost.

FACT: Although the ideal is to have a perfect chain of custody, if the chain of custody is flawed, it goes to the weight of the evidence, not the admissibility. The jury will be instructed that it may take under consideration any demonstrated flaws in the chain of custody of the evidence that may be used to decide upon the validity (the weight) of that evidence.



MYTH: A person has to talk to the police — failure to do so is obstruction of justice.

FACT: There is no legal requirement that anyone talk to law enforcement when officers come knocking. It is, however, unlawful to make a false report of an incident (KRS 519.040), which would include, among other things, knowingly giving false information to a law enforcement officer to implicate another. It is also unlawful to make a material false written statement (Unsworn Falsification to Authorities, KRS 523.100) with the intent to mislead a public servant, including law enforcement. It is never, however, illegal to simply not talk to a law enforcement officer.

MYTH: Switchblades are illegal.

FACT: Although switchblades (knives which have a blade that springs open at the press of a button) are regulated under federal law and cannot be sent through interstate commerce under the federal Switchblade Act (15 U.S.C. §1241-1245), except under specified conditions, they are not actually illegal in Kentucky. They are, however, likely not going to be considered an "ordinary pocketknife" and as such will be regulated as would any other deadly weapon. (This also means that a holder of a concealed weapons license may lawfully carry a switchblade while in Kentucky in the same way they might carry a firearm.)

MYTH: If a citizen shoots someone on their front porch, they should drag them inside before calling the police.

FACT: Under Kentucky law, a porch with a roof is now considered part of the dwelling for deadly force purposes. (KRS 503.010) However, if the person is trying to get inside the dwelling, even if through a window, for example, deadly force arguably would be justified, even if they are still physically outside. Either way, however, moving the body would be tampering with physical evidence (KRS 524.100) and would just be making a bad situation worse.

MYTH: The prosecutor must have a dead body to prosecute someone for homicide.

FACT: This misconception likely stems from the term "corpus delicti" or "body of crime." However, that phrase actually means the body of evidence that constitute the proof of a particular crime. Although certainly more difficult to prosecute a homicide without an actual body, it is legally possible, so long as other evidence, such as a credible witness or physical evidence, supports that the crime actually occurred and that the victim is, in fact, deceased.