

DEALING WITH THE POLICE

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OBTAIN LEGAL ADVICE AT THE EARLIEST POSSIBLE
OPPORTUNITY.



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It can be extremely intimidating to deal with police, particularly if you have been questioned or detained on suspicion of a crime. While the police have many powers, all governed by legislation, you also have many rights that are designed to protect you – that is why it is highly advisable to seek the assistance of legal representation when dealing with police, so that your responsibilities are understood by you and your rights are protected.

It is important to obtain legal advice at the earliest possible opportunity. Ideally this should be before you participate in a record of interview with the police.

- Do you need to give your name and address when asked by the Police?
- Do you need to answer questions when approached by Police?
- You have the right to remain where you are.
- Options when the Police have given unreasonable direction
- Can I be with someone when questioned by the police on the street?
- Should I go with the police when I am not arrested?
- Do I need to answer questions after been arrested?
- What is ERISP?
- Am I required to let the Police take my DAN, Photo and Fingerprints after my arrest?
- When can the Police arrest you?
- Degree of force to be used in arresting you
- What are your rights when arrested
- How long can the Police hold you in custody
- Lawyers' legal advice Your Rights



When dealing with the police, your rights extend to:

- Being informed of your rights.
- Being informed that you are under arrest and having the charge explained to you
- Except when required to give your name and address, you have the right to silence.
- You are not required to give blood samples, body samples, photographs, or any other samples, unless a court order has been obtained for this purpose.
- You do not have to accompany police to a police station, unless you have been placed under arrest.
- You do not have to let the police make a search of your property, unless they have obtained a warrant or they reasonably expect to find illicit substances.
- You do not have to participate in a reconstruction of a crime You do not have to participate in an identification line-up.
- You do not have to supply voiceprints.
- You have the right to an interpreter.
- You have the right to communicate with lawyers, family or friends prior to any questioning, unless the police believe that to allow so will be detrimental to an ongoing investigation or the safety of others.

Do you need to give your name and address when asked by the Police?

Normally, you don't give your name and address when approached by the police. However, there are situations when this information must be provided to the police like:

- a. When you are a suspect committing a traffic offence or
- b. When you refuse a breath test.



Do you need to answer questions when approached by Police?

No. under normal circumstances, you do not need to answer any questions asked by the police. However, there are certain situations that you need to answer the questions, especially under the Traffic Act when you are a suspect of a traffic offence.

Also under the National Parks and Wildlife Act, you are required to answer questions asked by park officers or rangers. You are also required to answer the questions asked by the Council officers or police if you are suspected of breaching council laws and regulations, under the Local Government Act. And for certain terrorism related offences, you are also required to provide information when asked and must cooperate fully with the police in their investigation.

You have the right to remain where you are

You have the right to remain where you are, or to hang out anywhere you like and be with people you like to hang out with. Police cannot stop you from doing these things except when you are obstructing traffic, harassing or intimidating people, or acting in any way causing fear to other people or in possession of drugs or intend to sell the same.

The police can only give "reasonable direction " to stop a person from doing something or to move on, only if they reasonably believe that a person is doing of the things mentioned above and it is aimed at stopping an offensive behavior.

Before giving the reasonable direction, the police officer must exhibit four things:

1. If not in uniform, must show evidence that he is a police officer.
2. Inform the person approached from what police station he is from.
3. The reason why he is giving the reasonable direction.
4. And that it is an offence to disobey the same.



If you fail to obey the direction given right away, the police officer will have to repeat the giving of the reasonable direction before charging you or subject you to the on the spot fine. If charged or fined, it is the court now which will determine whether you are guilty or not and take into consideration whether the direction was reasonable and whether the police has complied with the four steps. Options when the Police have given unreasonable direction

If the police have not followed the rules on the giving of reasonable direction or when the direction was unreasonable, you have two options to choose from in response to this. And these are: Obeying the direction and complain later or refuse to obey. If you opt to choose the latter, then be prepared to defend yourself in court.

Can I be with someone when questioned by the police on the street?

Yes . The police may direct your friend or family to stay away but they can choose to be with you. And you can be with someone else when questioned by a police as long as your company does not interfere during the questioning and if you have not yet been arrested.

Should I go with the police when I am not arrested?

No . You don't need to go with the police or to the police station when you are not yet arrested. If you are in doubt if you are being arrested or not, ask the police. There is no offence in refusing to go to the police station when you are not arrested yet.



Can I be arrested for questioning?

No . police cannot arrest you to question you. Those who are suspected of an offence can be arrested. When you are requested to attend a police interview for information you knew in connection with a crime, you do not need to go. However, if a subpoena was issued by a court requiring you to attend and testify in court in connection with a case or to produce documents needed to decide the case in court, then you need to go. Do I need to answer questions after been arrested?.

No . If you are arrested for an offence, you have the right to remain silent for anything you say will be used against you. And it will be difficult for your lawyer to defend you if you have made statements to the police for the crime charged.

If arrested, avoid issuing statement. Instead remain calm and think clearly and keep your mouth shut and ask for a lawyer to defend you. What you can give to the police after being arrested is your name, address and age, nothing else.

What is ERISP?

It is the abbreviation of Electronically Recorded Interview of Suspected Person made by a police in police station using video recorder or audio recorder or both. During this interview, you can give your name, address and age but do not answer any question unless you are represented by your lawyer and apprised of your rights.

Am I required to let the Police take my DAN, Photo and Fingerprints after my arrest? If you are 14 years of age and over and charged with an offence, police can take photo of your face and take your fingerprints for identity and verification purposes only. If you are under 14 years of age, police need to apply for a court order to allow them take your photo or fingerprints. If you are not arrested and charged, police cannot do these things without your consent.

Regarding your DNA, police cannot just take it without court order. They can apply for a court order to take your DNA if you are suspected of committing a crime or were already charged. If an order was issued by the court to that effect, police can use reasonable force to take your DNA through your saliva or extract of your blood.



When can the Police arrest you?

Police officers can arrest you when you are committing an offence in their presence. They can also initiate arrest when they reasonably suspect that you have committed an offence, or that you are about to commit an offence. If they have a warrant for your arrest (eg for failing to appear at Court, or for a past offence, police officers can also arrest you. In situation that they know or reasonably suspect that you have breached bail conditions, they can also arrest you.

There is also a so-called citizen arrest which can be performed by anyone like security guards, bouncers and other members of the community who are not police officers, if:

- a. You are committing a crime in their presence;
- b. you are committing a 'breach of the peace'; such as obstructing a police officer in his or her duties,
- c. 'creating public alarm or excitement', or committing an assault.
- d. Minor offences like annoyance, foul or offensive languages and other disturbance are not sufficient grounds for citizen arrest.

Degree of force to be used in arresting you

No more than reasonable force can be used by police officers in arresting a person and the reasonableness depends upon the circumstances of making an arrest. For example if you are suspected of a minor, non-violent offence such as shoplifting and you are not resisting arrest, only minimal force can be used in making your arrest like holding your arm or placing a hand on your shoulder. Any greater force used can be a ground for filing a complaint against the arresting officer.

In some instances, when the crime is serious and you violently resisting an arrest, police officers can use a substantial amount of force to subdue you which possibly includes throwing you to the ground, or causing pain by twisting your arm and/or striking. The force used is considered reasonable and must not, however, go beyond that required to subdue you. The police cannot, for example, punch or kick you after you stop resisting them.



What are your rights when arrested

When you are arrested, you still have rights protected by the law. And these are:

- to be informed that you are under arrest, what you have been arrested for, and you have the right to remain silent for anything you will say might be used against you
- to contact a friend, relative or guardian;
- to contact an embassy or consulate (if you are a foreign national);
- to contact a lawyer;
- to have a lawyer present during your investigation/questioning;
- to have an interpreter present during your investigation/questioning (if necessary);
- receive medical assistance (if necessary);
- receive food and water;
- have access to bathroom facilities.

If the arrested persons are foreign nationals who cannot speak English, or a person under 18 years of age or physically or mentally handicapped or vulnerable, there are additional arrest rights afforded to them, which are: to have a support person with them during police investigations/questioning; and have their specific vulnerabilities (eg their inability to speak English) taken into account by police.

If you are under 18 years of age, you are not supposed to be incarcerated unless there are no more available cells where they can place you, or it is impractical to supervise the person outside a cell, or the custody manager believes that the cell is more comfortable than any other part of the police station.



How long can the Police hold you in custody

For a reasonable period, police can hold you in custody and after which they will either charge you with the crime or release you on bail. This reasonable period should not exceed 4 hours unless the arrest was by virtue of a warrant, in such case it can be extended up to 8 hours. The reasonable period shall not include "time outs" which are time taken to:

- take you to the police station;
- arrange, wait for and/or communicate with a support person (for 'vulnerable' persons), lawyer, embassy official, interpreter or doctor;
- be treated by a doctor;
- organise and undertake a police 'line - up' (called an 'identification parade');
- rest, have refreshments or go to the toilet;
- recover from the effects of drugs or alcohol.

The time out period shall not exceed 2 hours. Otherwise, any excess hour shall be counted as part of the 4 hours holding period. And when police finally charged you with the offence, you shall be listed before a 'magistrate', 'justice' or 'Court' as soon as practicable which is usually done the next day if you are denied bail. Lawyers' legal advice