

WHAT DO I DO IF I AM ARRESTED?



An information leaflet
by Centre for Justice



Talking to the Police

A police officer may speak with any member of the public at any time and is entitled to ask questions such as:

- What are you doing?
- Why are you in an area?
- Where are you going?

Generally, you do not need to answer to, or speak with, a police officer in these circumstances.

However, there are certain requirements to provide information when asked by an officer. For example, you must provide your name or address to a police officer who stops you on the road if he has reason to suspect you have committed a traffic offence (section 33 of the Road Traffic Act 1947).

Being stopped and searched

The following table summarises the powers of stop and search which the police have. It has been excerpted from p 19, Annex A of PACE Code of Practice A:

Object of search	Power	Extent of search	Where exercisable
Uncustomed goods	Revenue Act 1898 s 2 and s 96	Persons	Within a Customs area, subject to s 96
Stolen or prohibited articles	Police & Criminal Evidence Act 2005, s5	Persons, vehicles, vessels & aircraft	In place to which public have access
Road traffic offenders & witnesses; persons unlawfully at large	Police and Criminal Evidence Act 2005, s101	Vehicles	Anywhere within the locality authorized
Offensive weapons	Criminal Code Act 1907 s 315(3)	Persons	Public place

Articles with blades or sharp points, and offensive weapons	Criminal Code Act 1907 s 315E	Persons	School premises
Offensive weapons & dangerous instruments	Criminal Code Act 1907 s 315F	Pedestrians, vehicles & passengers in vehicles	Anywhere within the locality authorized
Stolen or unlawfully obtained property	Criminal Code Act 1907 s 459	Persons, vehicles, boats	Anywhere
Firearms and ammunition unlawfully held	Firearms Act 1973 s 27(2)	Persons, vehicles and vessels	Anywhere
Prohibited drugs, money or articles liable to forfeiture under the Act and evidence of offences under the Act	Misuse of Drugs Act 1972 s 25(2)	Persons, vehicles & vessels	Anywhere
Explosive substance unlawfully held	Explosive Substances Act 1974 s 19(2)	Persons, vehicles and vessels	Anywhere
Anything liable to seizure under the Act (live animal imported without a permit)	Care & Protection of Animals Act 1975 s 5(1)	Persons, ships, aircraft or vehicles	Anywhere

You may also be stopped and searched in certain areas that have been designated by the police as a place where the police suspect serious violence may take place or where persons are carrying dangerous instruments or weapons (section 315F of the Criminal Code Act 1907). In an area which has been designated by the police:

- you can be stopped even if the officer has no reasonable suspicion you have committed a crime or will have weapons;
- you can only be stopped by an officer in uniform;
- you can be arrested and charged for refusing to comply;
- the officers may seize any dangerous item or weapon found;
- you are entitled to a written record saying you were searched either at, or within 12 months of, the time of search; and
- vehicles may be searched too (including driver and passenger).

Before you are searched, the police officer must prove to you that he is an officer if not in uniform. A police officer must tell you (section 6 of PACE):

- his name, service number and police station;
- what he is looking for e.g. drugs or firearms;
- the reason he wants to search you, e.g. 'looks like you're hiding something';
- why he is legally allowed to search you; and
- that you can get a record of the search and if not possible at the time, how you can get a copy within 12 months of the search.

While you are entitled to ask the officer about these matters, it is important not to obstruct the officer who is searching you as this can be a criminal offence.

Being searched does not mean you are being arrested.

Being arrested

The police can arrest you if they have reasonable grounds for suspecting that you are involved in an 'arrestable offence' and that your arrest is necessary. Generally, an arrestable offence is one that can get you a maximum sentence of 3 months or more in prison (section 23 of PACE).

The police may arrest you anywhere at any time. They may enter any premises you are in so that you can be arrested (section 17 of PACE).

If you are arrested, the police must:

- tell you that you are being arrested;
- tell you what offence you are suspected of committing;
- explain why it is necessary to arrest you; and
- caution you with words to the effect that:

"You do not have to say anything unless you wish to do so, but anything you do say may be given in evidence."

Search on arrest

If you are arrested, the police may search you if they have reasonable grounds for believing: you present a danger to yourself or others, you have something which may assist you escaping, or you might have evidence relating to an offence.

- They may search you to find things which may help you escape or which may be evidence in the case against you.
- They may not ask you to remove any clothing in public but may ask you to remove an outer coat, jacket, head gear, helmet or gloves.
- They may search inside your mouth.
- They may also enter and search any premises you were in either at or immediately before your arrest for evidence relating to the offence for which you were arrested (section 31(2)(b)).

While you are entitled to ask the officer about these matters, it is important not to obstruct the officer who is arresting and searching you as this can be a criminal offence.

If you try to obstruct an officer, he may use 'reasonable force' to complete the arrest, e.g. restrain you or handcuff you to prevent you from leaving (section 99 of PACE).

Search of your home

After you are arrested, the police may enter and search any premises 'occupied or controlled' by you (generally, your home or office) if they have reasonable grounds for suspecting that they may find evidence relating to your offence or another offence which is similar or linked to it. They may seize any such evidence unless it relates to legal advice or legal proceedings between you and your lawyer.

Generally, the police may seize and retain anything found in your home or on your person if they have reasonable grounds for suspecting it is evidence of an offence or was obtained in consequence of an offence (sections 19 & 31(9) of PACE).

After you are arrested

After you are arrested, you will be taken to a police station where you will be held in custody while the police carry on their investigation into the crime they believe you committed. During this time, you may be interviewed. Afterwards, you may be released or charged with a crime.

When you arrive at the station, there is a custody officer who will have overall responsibility for making decisions relating to your custody but who will not be involved in investigating the offence for which you have been arrested.

You have the following general rights in the station, and the custody officer must inform you of these rights:

- to remain silent;
- to get legal advice;
- to tell someone where you are;
- to have medical help if you are feeling ill;
- to read the rules the police must follow; and
- to receive a written notice about your rights.

At the station, you will be searched and all your belongings, other than your clothes (unless they are required for evidence or may pose a danger to you or others) will be taken from you and kept by the custody officer while you are detained. A record of all items checked in will be kept.

If you are deaf or are unable to communicate effectively in English, the custody officer will try to have an interpreter present.

If you are 16 years old or less, suffer from a mental disorder or are otherwise vulnerable, the custody officer has an obligation to contact an adult who is responsible for you. The adult should be present throughout, especially when you are being questioned by the police or charged.

How long can you be held in custody?

The general rule is that you can only be kept in custody for up to 24 hours without being charged. Unless the offence for which you have been arrested is of a serious nature, you should be released with or without bail to appear in Magistrates' Court.

Under the Firearms Act 1973, the Supreme Court can order that the police may detain you for up to 14 days (renewable to up to 28 days) for any offence under the Firearms Act or any serious arrestable offence involving a firearm or ammunition.

Your rights when being questioned

The police may have questions for you about the crime they suspect you committed. Your interview will be video-recorded and may be given in evidence at court. You have the right to remain silent. Under the Bermuda Constitution, you are presumed innocent until you are proven guilty or have pleaded guilty. The police must remind you of your right every time you start an interview with words to the effect:

“You do not have to say anything unless you wish to do so, but anything you do say may be put in writing and given in evidence.” (See section 62 of PACE which requires the recording of interviews, and Code E of PACE Codes of Practice.)

Giving fingerprints, photographs and samples

The police have the right to take photographs of you (section 71 of PACE).

If the offence you are suspected of committing is a 'recordable offence', (generally, any offence which you can go to prison for), the police have the right to take fingerprints and/or impressions of your shoes (sections 64 & 64A of PACE and rule 3 of the Police and Criminal Evidence (Recordable Offences) Regulations 2008).

Under section 66 of PACE, the police may take non-intimate samples (e.g. a mouth swab) from you if:

You give permission in writing;

OR

You are charged with a 'recordable offence' (see above); &

The police either do not have, or are unable to use, a previous sample.

OR

You are in custody on the authority of the court; &

An officer of the rank inspector or higher approves it.;

OR

You have been convicted of a 'recordable offence'.

If the police want intimate samples (e.g. blood or urine), they need both your permission in writing and the authority of a senior police officer of the rank inspector or higher. HOWEVER, if you do not give permission to give a sample, a court may later draw such as inferences from this as appear proper (section 65 of PACE).

Participation in an identification procedure

The police may require you to participate in an identification procedure. The victim or a witness to the crime may be asked to view pictures or videos of you together with other individuals to see if they can pick you out or to eliminate you from the investigation.

You may request an identification procedure if you think you were identified wrongly. However, the police do not need to hold one if it is not practicable to do so, or it would serve no useful purpose in the investigation (para 3.13 of Code D of PACE).

Remember: you are free to consult the PACE Codes of Practice at any point in time. If you ask for them, the police must give you a copy to read.

Non-Bermudians in custody

If you are not Bermudian, you have the right to speak with a consular representative from your home country. You may request a visit from a consular officer, and the police must allow you a private meeting. You may talk with the consular officer who may be able to arrange legal advice for you.

If you are an American citizen, the US Consulate will automatically be notified of your arrest without you needing to request consular assistance.

You must be informed of these rights as soon as practicable after your arrest.

If you cannot speak English, the police will usually provide an interpreter.

Se você não fala inglês, a polícia normalmente arranja um intérprete.

Si vous ne parlez pas Anglais, les Services de Police vous donneront accès à un interprète.

Si Usted no habla Inglés, la Policía le proporcionará un intérprete.

Kung hindi po kayo nakapagsasalita ng wikang Ingles, ang pulisya ay karaniwang maglalaan ng isang tagapagsalin.

Legal Advice at the police station

A legal aid attorney is on call at the police station 24 hours a day to give free legal advice whether you are brought in for questioning or detained.

You have the right to consult privately with your lawyer at any time while in detention. Once you have asked for legal advice, the police cannot question you until you have spoken with your lawyer.

Legal Aid

Legal aid can help you pay for legal advice if you cannot afford it.

The Legal Aid Committee and the Legal Aid Office are the government entities which administer the legal aid scheme in Bermuda. They seek to ensure that legal advice and representation is readily available to those who need it most and who because of limited financial means can least afford it.

Legal aid is not available for summary offences, however it may be available for criminal offences that are triable either in the Magistrates' Court or in the Supreme Court or indictable offences that are triable in the Supreme Court. Legal aid may also be provided in matters in the Court of Appeal and, where it is determined that a matter is of public interest, the Privy Council.

You can apply for legal aid by collecting an application form from the Legal Aid Office. You will then be required to provide details of your case and information relating to your household income level in order to determine if you are eligible for assistance, and if so, how much, if any, you will need to contribute to your legal costs.

Contact information:

Legal Aid Office

2nd Floor, Ingham Wilkinson Building

129 Front Street, Hamilton, HM 12

Tel: (441) 297-7617 | Fax: (441) 295-6670

Being charged with a crime

If you are charged with a crime, you will be given a charge sheet which gives the main details of the crime charged. You must then be cautioned by the police with words to the effect:

"You do not have to say anything unless you wish to do so, but anything you do say may be put in writing and given in evidence."

After you are charged, you will be required to attend Magistrates' Court (or the Family Court, if you are under 16) in order to plead to the offence – that you are guilty or not guilty of the charge(s). Until your appearance in court, the police will have to decide if you:

- can go home – but which may be subject to certain conditions, known as bail; or
- stay in custody.

Police bail

You can be released on bail from the police station whether or not you have been charged. This means you will be able to go home while the investigation continues or until your court hearing (section 51 of PACE and section 3 & schedule 1 of the Bail Act 2005).

If you are given bail, you might have to agree to conditions like:

- living at a particular address;
- not contacting certain people;
- giving your passport to the police so you cannot leave Bermuda; and/or
- reporting to a police station at agreed times, e.g. once a week.

If you don't stick to these conditions, or if you don't attend the police station or court as required, you can be arrested again and be taken into custody while the investigation continues.

Reasons you may not be given bail

You are unlikely to be given bail if:

- you are charged with a serious offence, e.g. armed robbery;
- you have been convicted of a serious crime in the past;
- you have been given bail in the past and did not stick to the terms;
- the police think you may not turn up for your hearing;
- the police think you might commit a crime while you are on bail; or
- the police think you might interfere with the investigation.

Going to Magistrates' Court

After you have been charged, the next step is to appear before a magistrate. You can plead guilty or not guilty in the Magistrates' Court depending on the type of offence you are charged with.

If you have not had an opportunity to hire a lawyer before your appearance, you can get free legal assistance from the duty counsel – a lawyer assigned to handle cases at the Magistrates' Court for those without their own lawyers.

The three main types of offences are as follows:

Summary offences – These are more minor offences and generally receive lesser sentences than indictable-only offences. These offences are dealt with in the Magistrates' Court. Most offences in Bermuda are dealt with summarily. There is no right to trial by jury in summary-only offences.

Indictable-only offences – These are more serious offences. While a defendant will initially appear in the Magistrates' Court for preliminary proceedings, they always move to the Supreme Court where the defendant is arraigned on an indictment and tried in front of a jury.

Either-way offences – Also known as 'hybrid offences', these are offences which may be dealt with either summarily or on indictment, depending on the seriousness of the particular conduct alleged.

When charged with an either-way offence, the defendant always has the right to elect trial by jury in the Supreme Court. If he or she elects for the trial to be dealt with summarily, the magistrate must agree and consider that the matter is not serious enough to be dealt with in the Supreme Court. Otherwise, the defendant will be committed for trial.

Guilty plea

You should only plead guilty if you actually are guilty of an offence. It is strongly urged that you receive legal advice before you are required to make your plea.

If you plead guilty, the Magistrate may sentence you right away or may adjourn sentencing to another date. During this time, he or she may ask for a social inquiry report, which is prepared by Court Services, and which may assist the Court in determining a sentence for you. However, any recommendation in the report is not binding on the Court.

If you plead guilty to a serious either-way offence and the Magistrate does not think he or she has enough power to punish you properly, you will be sent to the Supreme Court to be sentenced by a judge.

Not guilty plea

If you plead not guilty, the matter is set down for a trial either in Magistrates' Court or sent up to the Supreme Court to be dealt with there.

You will never be required to plead to an indictable-only offence in the Magistrates' Court.

Bail at Magistrates' Court

When your hearing in front of the Magistrate is concluded, you may be required to appear again. You may be granted bail (i.e. free to go subject to certain conditions) or remanded in custody.

Generally, the law says everyone charged with a criminal offence has a right to bail. However, there are certain circumstances where the court can refuse you this right (section 6 of the Bail Act 2005).

As with police bail, you may be required to adhere to certain conditions, and you are unlikely to be released from the Court if:

- you are charged with a serious offence, e.g. armed robbery;
- you have been convicted of a serious crime in the past;
- you have been given bail in the past and did not stick to the terms;
- the Magistrate thinks you may not turn up for your hearing;
- the Magistrate thinks you might commit a crime while you are on bail; or
- the Magistrate thinks you might interfere with the investigation.

(See section 3 and schedule 1 of the Bail Act 2005.)

If you plead guilty or are convicted, the Court may grant you bail if you are not immediately sentenced to imprisonment.

Complaining about your treatment by the police

If you have any complaints about your treatment by the police, you may make a complaint to the independent Police Complaints Authority. Complaints are governed by the Police Complaints Authority Act 1998.

Complaints may be made orally or in writing. Complaint forms are available at every police station. If made orally, the complaint should be put into writing as soon as possible. The complaint should be made to an officer of the rank of inspector or higher (or to a sergeant in the absence of an inspector), which is then forwarded to the Authority.

The Authority may direct and supervise a police investigation of a complaint, it may conduct its own investigation, or it may request that the Commissioner seek an informal resolution of the complaint.

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We have endeavoured to state the law accurately in this publication as at 7 May 2013.



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If you wish to contact Centre for Justice for any reason, including to provide any feedback on this leaflet, please do not hesitate to do so at any time.

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