

Under 18's - Rights in Custody

Arrest

If the Police reasonably suspect that you have been involved in a crime they may arrest you. You are under arrest if you are not free to leave. Police will often tell you “you are under arrest” and should tell you what you are under arrest for. It is important to stay calm. If you swear, resist, fight the Police or try and escape you may be charged with more offences.

Once arrested, Police should “caution” you – i.e. inform you that you have the right to silence and anything you say may be used against you in court.

They also have the power to search you (whether at the Police station or elsewhere) and may seize anything found as a result of that search. Police will often search you before placing you in a Police vehicle.

They should transport you as soon as possible to a Police station.

At the Police station – Custody Manager

Sometimes, if the Police phone you and inform you that you are a suspect for a crime, they may make an appointment for you to attend at the Police station. You don't have to go to the Police station but if you do not attend they may try to arrest you at home, school, or on the street. If you attend the Police station, the Police may formally arrest you at the station and place you in custody.

Anyone under arrest at the Police station will be introduced to the Custody Manager. The Custody Manager is a senior Police officer who is independent from the investigation and is responsible for people in custody. It is their job to make sure you are safe and treated fairly.

If you have any requests, questions or complaints you can raise them with the Custody Manager. The Custody Manager will record your details and will read to you from a sheet that explains your rights in custody. If you have understood your rights, the Custody Manager will get you to sign this sheet of paper. They will give you a copy.

Interpreters and foreign nationals

If you need an interpreter, the Custody Manager should arrange an interpreter for you. If you are not an Australian citizen or permanent resident, the Police should ask an official from your Embassy, ask an official to attend the Police station and allow the official to talk with you privately.

Right to be looked after in custody

When being held in custody, you have a right to medical attention if you need it, something to eat and drink and access to a toilet.

Identification

The Police can ask you for your identification details – e.g. your name and address. It is important to provide Police with your correct identification.

If you do not give your identity or if you provide false details you may be:

- Committing a crime of “failure to disclose identity” or “providing false/misleading identification”
- Providing an alias that the Police will enter on their computer system. This can show up in court or any future dealings with the Police and make you look untrustworthy
- Delaying the Police from being able to deal with you properly and therefore keep you locked up in Police custody for longer
- Giving up your rights to be dealt with as a child (if you provide the incorrect date of birth).

If you are 14 or older, Police may take your fingerprints and photograph to identify you. They need a court order to do this if you are under 14 years old. These fingerprints and photographs will be destroyed if a court eventually finds you not guilty.

Right to silence

You have a right to silence. You do not have to talk to the Police or provide a written statement about any offence they suspect you’ve committed.

The Police can’t say that you must be guilty because you won’t do an interview. The Police need to prove that you have committed a crime. You do not need to prove that you are innocent. If you are under arrest, you should always seek legal advice before speaking with the Police.

As part of your right to silence, you can say no to being part of a line-up. A line-up is where witnesses are asked to choose who they think did a crime out of a set of photos or a line-up of people.

See Fact Sheet – ‘*Right to Silence*’.

Legal advice

You have the right to a lawyer. The Police have a responsibility to help you contact a lawyer. There is no rule that says you are limited to one phone call. The Police should offer you the chance to contact the Legal Aid Youth Hotline and/or the Aboriginal Legal Services Hotline and help you to contact these services.

The Legal Aid Youth Hotline (1800 10 18 10) operates between 9am-midnight on Monday-Friday and 24 hours over the weekend (midnight on Friday to midnight on Sunday). A lawyer is available to give free advice over the telephone.

The Police should let you to speak to a lawyer (either on the Hotline or a lawyer who attends at the Police station) in private. Any conversation you have with the lawyer is confidential and cannot be used against you in court.

See Fact Sheet – ‘Getting Legal Advice’.

Support person

If you are under 18, the Police need to provide you with a support person. A support person is an independent adult whose role is to make sure you understand things, that you are treated fairly by the Police and that your rights are respected.

If you are under 14 years old a support person has to be a lawyer, a parent / guardian or an adult who your parent or guardian agrees to. If you are 14 or older you can choose who you want the support person to be. Police should allow you to talk to your support person in private.

Even though you are under 18 years old, you make the decisions about what you want to do – not your support person or your lawyer. They are there to help you understand and give advice so you can make a good decision.

How long can they keep me locked up?

The Custody Manager will record the time of your arrest and the time that you arrived at the Police station. They can keep you locked up for up to 4 hours of investigation time. After this they need to charge you, release you or apply for an extension of time.

However, the 4 hours does not include what are called “time outs”. Time outs can include the time that it takes for your support person to arrive at the Police station and the time that you speak with your support person/lawyer.

If the Police have decided to “charge” you they need to complete some paperwork and make a decision about bail. This charge process and bail determination is not part of the 4-hour investigation time.

Interview

The Police may want to do an interview with you – i.e. ask you questions and record your answers. An interview can take many forms. Two common forms include:

- a notebook interview - where the Police write down everything that is said in their notebook and get you and your support person to sign it.
- Electronically Recorded Interview of Suspected Person (ERISP) – held in an interview room where the whole procedure is recorded on tape/CD (both audio and visual).

You have a choice about whether you do an interview. The Police cannot force you to do an interview. It is **not** always in your best interest to do an interview. You should seek legal advice about whether to do an interview.

You do not have to sign any notebook statement, make a written statement or say anything on tape in the interview room.

If you do an interview, anything that you say in an interview can be used against you to prove your charge(s) in court. It can also be used against other people. For example, if you name others who were involved in a crime, the Police could make you give evidence against them in court.

Generally, anything you say to the Police without a support person being present cannot be used against you in court. However, anything that you say when your support person is present can be used against you even if it wasn't in a recorded interview.

See Fact Sheet – 'Police Interviews'.

Young Offenders Act or Court Attendance Notice

The Police may deal with you under the *Young Offenders Act* (provided you meet all the criteria) or they may send your case to court. If they send you to court they can do that by either charging you or giving you a Future Court Attendance Notice (CAN).

A Future CAN is a notice telling you to go to court on a future date.

A charge is where the Police give you a notice to go to court and also make a decision about whether to give you bail.

Charge and Bail

If the Police charge you they will give you some paperwork that will include:

- a copy of the charges
- the Police Fact Sheet – a summary of the Police's version of events
- the bail determination

The Police may release you on bail with a court date in a few weeks time. Bail is a promise you sign to say you will show up at court and keep certain conditions until your court date. These conditions could include living at a certain address, a curfew, reporting to the Police station, not hanging out with certain people or at certain places.

If you do not keep your bail conditions you could get arrested and locked up.

If the Police do not give you bail, they need to take you before a court as soon as possible for the court to decide whether to give you bail. If the courts are closed for the day, then you may be transported to a detention centre for the night and go to court the following morning.

This Fact Sheet is designed to give you a very basic understanding of how the law works. If you have a legal problem, or want to know how these laws apply to a specific situation, you should speak to a lawyer. If you are under 18, you can call the Legal Aid Youth Hotline 1800 10 18 10.

