



Factsheet - Arrest and Questioning

Get Legal Advice

Criminal charges even of a minor nature can have serious consequences for you. You should always get immediate legal advice about your situation.

If The Police Want To Talk To You

In the following circumstances it is an offence to fail or refuse to give your name, address and other requested details to police when asked:

- when a police officer has reasonable grounds to believe that you have committed a certain offence;
- when required by a police officer executing his or her duty under particular traffic laws;
- when you are on premises licensed to serve alcohol;
- when requested by a police officer, as the owner of a vehicle, to give the name and address of any person who was, on a specified occasion, the driver of the vehicle, or to give the police officer particulars which you know are likely to mislead the Police;
- when requested by a police officer to state your source of supply if you are found in possession of drugs.

Should You Go With The Police?

If you are arrested then you do have to go with the Police. Being arrested involves you being made aware by the Police why you are under arrest and, either through words or actions, that you must accompany them or that you are not free to leave. If you are not sure whether you are under arrest, you should ask "Am I under arrest?"

Police also have additional powers under particular laws to:

- require or direct you if you are driving a motor vehicle on a public street to undergo a breath test at or near the place where the requirement is made;
- take you into custody for a forensic procedure;
- take you into custody if the police officer believes on reasonable grounds that you are in a public place and intoxicated and behaving in a manner likely to cause injury or damage, or that you are incapable of protecting yourself from physical harm;
- take you into custody if a police officer reasonably believes that you have committed or are committing a particular firearm offence.

Again, if you are not sure whether you have a legal obligation to do as you are required or directed by Police, then you should ask.

Resisting Or Obstructing Police

You must not resist being arrested or taken into custody or wilfully interfere in the arrest or taking into custody of another person as you can be charged with resisting an arrest or wilfully obstructing a police officer in the execution of his or her duty. Resisting arrest can include pulling away from a police officer trying to handcuff you or struggling against the arrest even a little bit.

What Happens After Arrest

You will be taken to a police station, probably be interviewed and then you will be "processed". This involves you being charged and bailed by Police or detained for Court. It may also involve conducting a forensic procedure.

FREE TELEPHONE LEGAL ADVICE **1300 366 611** VISIT OUR WEB SITE: <http://www.legalaid.tas.gov.au>

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Under 18?

If you are under 18 you should read the Young People - Law for under 18's Factsheet.

Being Held In Custody

Unless earlier released or bailed by Police, you may be detained for a reasonable time for the purposes of questioning and investigation, and for as long as it takes to bring you before a Magistrate or Justice. A reasonable time will depend on the situation.

If you have been taken into custody because Police reasonably believed you were intoxicated then Police must make reasonable inquiries to find a place of safety or a responsible person willing to take care of you. If Police cannot find such a place or person then you can be held in custody for up to 8 hours unless the police officer believes that it is reasonable to release you at an earlier time. Whilst being held in custody for this reason you cannot be questioned by Police in relation to an offence, photographed or have your fingerprints taken.

Your Rights

Before questioning or investigation commences, you have the right to attempt to communicate with a friend or relative and a legal practitioner. If you are 18 or over the police officer conducting the investigation may deny you this right for up to 4 hours if he or she believes, on reasonable grounds, that the communication is likely to result in the escape of an accomplice, or the fabrication or destruction of evidence, or that the questioning or investigation is so urgent having regard to the safety of other people that it should not be delayed. Before the 4 hours is up Police may also make an application to a Magistrate to deny you communication for a further period of time.

These rights do not always apply when you have been taken into custody for a forensic procedure to be conducted.

Being Interviewed

While the Police will usually ask you to take part in a video recorded interview, there is no such thing as an "off the record" conversation with the Police. However anything you say to the Police while being interviewed which is either directly or indirectly against your interests may be able to be given as evidence against you in Court.

If you do not want to answer questions you should give the Police only your name, address and date of birth and answer any other questions by saying, "I do not wish to answer any questions". It is important to understand that any interview questions you answer may be used as evidence.

If you answer some questions, but not others, and the questions you do not answer appear to involve a crime or offence, an inference of guilt may be drawn by the Police.

RELEVANT LEGISLATION

Criminal Law (Detention and Interrogation) Act 1995

Family Violence Act 2004

Firearms Act 1996

Misuse of Drugs Act 2001

Poisons Act 1971

Police Offences Act 1935

Road Safety (Alcohol and Drugs) Act 1970

Traffic Act 1925

Traffic (Road Rules) Regulations 1999

CONTACTS

Legal Aid Commission of Tasmania Telephone Advice Service, Ph: **1300 366 611**

The information contained in this factsheet is not legal advice. If you have a legal problem you should talk to a lawyer before making a decision about what to do. The information in this factsheet is written for people resident in, or affected by, the laws of Tasmania, Australia only. All questions concerning this factsheet to info@legalaid.tas.gov.au.