



ARREST

(ALSWA website version)

Aboriginal Legal Service of Western Australia (Inc)

Striving for justice for Aboriginal and Torres Strait Islander peoples for over thirty years

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When can you be arrested?

The police may arrest you with or without a warrant. Most arrests are made without a warrant.

The police can arrest you with a warrant if they have a reasonable suspicion that you have broken the law or are about to break the law.

The police can arrest you if you are drunk in a public place, but it is not a crime to be drunk so you will not have to go to court. Instead the police will take you to a sobering-up centre, take you home, or keep you in custody until you are sober.

What happens if you are arrested

The police must make it clear to you that you are under arrest.

They can tell you that you are under arrest. Or they can touch you or hold you and ask you to go with them or tell you to stay where you are. If they are in plain clothes, they will tell you they are police officers and show you identification such as a police badge.

The police should also tell you why you are being arrested, unless the reason is obvious. If they do not tell you why, you should ask.

How much force can the police use?

The police are allowed to use reasonable force if necessary to make an arrest.

If you think they have used too much force, or if you have been injured by them, you should immediately:

- Report the matter to the officer in charge of the police station
- See a doctor and get any injuries photographed
- Get legal advice.

Can the police search you?

Police can search you at any time if they think you have broken the law or are about to break the law, for example if they believe you are carrying a weapon.
The police can search you after you have been arrested.

The police can search your house or car if they have a reasonable suspicion you have broken the law or are about to break the law or if they have a search warrant.

Legal rights if you are arrested

DO

DO—Give your name and address

WHY: It is an offence to refuse to give your name and address to a police officer or to give a false name or address.

DO—Give your motor driver's licence

WHY: It is an offence to fail to give your driver's licence to a police officer when asked, unless you produce it within a reasonable time to the officer in charge of any police station.

DO—Ask if you are being arrested and what the charge is

WHY: Police often invite people to help them with their inquiries. They may invite you to come with them to the station and answer a few questions. If you are not under arrest, you can refuse to go to the station and you can refuse to answer any questions apart from:

- Giving your correct name and address
- If you were stopped by police while driving, you must also give details of the owner of the car, show your driver's licence and do a breath test if instructed
- You must report details of any car accident if someone is hurt or the damage is more than \$1,000
- If you are in a nightclub or hotel the police or staff can ask you for proof of identity.

If you are under arrest, you must go to the station (it is an offence to resist arrest or to escape once you have been arrested), but you can still refuse to answer any questions apart from giving your name and address and giving the other information listed above. Police can only charge you for an arrestable offence.

DO—Ask for bail if you are arrested

WHY: As soon as they reasonably can, the police have to make arrangements for it to be decided whether or not you can have bail. If you are arrested you will be kept in custody until your charge is dealt with by the court unless you get bail. If you get bail you will be released and can go home, on condition that you go to court on a set date. There might be other bail conditions as well. For example another person might have to agree to act as surety and agree to pay the court a certain amount of money if you do not go to court on that date, or you might have to stay at a particular address, or regularly report to a police station, or obey a curfew, or not contact certain people.

NOTE:

If you are under 18, you may have to have a responsible adult available to enter into the bail undertaking with you. If you do not have a responsible adult available, the

supervised bail program might help either in arranging for your family to sign bail, or for you to stay in a hostel under the program instead of having to stay in custody.

DO—Ask the police for a telephone to contact your lawyer

WHY: In Western Australia, a telephone call to a lawyer is not a right, but you can ask. If the police refuse, tell your lawyer when you do see him or her.

Most lawyers do not work at night, but the Aboriginal Legal Service provides legal advice for criminal law matters 24 hours a day, 7 days per week. **In Perth, the after hours number to call is 9265 6644.**

Your lawyer can give you legal advice about what is likely to happen and what your options are, and can represent you in court in relation to bail and in relation to how the court deals with your charge.

DO—If you are under 18, ask the police to arrange for a responsible adult you trust to be notified and to be with you

WHY: Apart from asking your name and address, the police are not allowed to question you unless a responsible adult has been notified and given an opportunity to be with you. Also, a responsible adult normally is needed to enter into a bail undertaking for you (see “DO—Ask for bail if you are arrested” above).

DO—Stay calm and be polite

WHY: It is an offence to be disorderly in a street, public place, passenger vehicle, police station or lockup.

DO NOT

DO NOT—Answer any questions except to give your name, address and/or driver’s licence until you speak with a lawyer or court officer, whether or not you have been arrested

WHY: First, you do not have to.

Secondly, you might say something that makes it harder for you to get bail, or easier for the prosecution to get you convicted by the court.

Or you might leave something out that would help you . By speaking to a lawyer or court officer first you can find out what options you have and what is likely to happen in your case. You can then decide whether or not you want to answer questions.

NOTE: If you are under 18, in addition to the above, the police are not allowed to question you unless a responsible adult has been informed, so the adult can be with you when you answer any questions.

DO NOT—Make any written or spoken statement until you speak with a lawyer or court officer

WHY: For the same reasons as above.

First, you do not have to.

Secondly, you might say something that makes it harder for you to get bail, or easier for the prosecution to get you convicted by the court. Or you might leave out something that would help. By speaking to a lawyer or court officer first you can find out what options

you have and what is likely to happen in your case. You can then decide whether or not you want to make a written or spoken statement.

DO NOT—Do an interview or a video interview until you speak to a lawyer or court officer

WHY: For the same reasons as above.

First, you do not have to.

Secondly, you might say something that makes it harder for you to get bail, or easier for the prosecution to get you convicted by the court. Or you might leave out something that would help. By speaking to a lawyer or court officer first you can find out what options you have and what is likely to happen in your case. You can then decide whether or not you want to do an interview or video interview.

NOTE: If you are under 18, in addition to all the above, the police are not allowed to question you unless a responsible adult has been informed, so the adult can be with you when you answer any questions.

DO NOT—Sign anything unless it is for bail until you speak to a lawyer or court officer

WHY: For the same reasons as above.

First, you do not have to.

Secondly, you might be signing something that makes it harder for you to get bail, or easier for the prosecution to get you convicted by the court.

Or the document you sign might leave out something. By speaking to a lawyer or court officer first you can find out what options you have and what is likely to happen in your case. You can then decide whether or not you want to sign the document that has been given to you. If you do sign a document, ask for a copy of it for you to keep.

NOTE: If you are under 18, you may need a responsible adult to enter into the bail undertaking with you (see "DO—Ask for bail if you are arrested" above).

DO NOT—Plead guilty to anything until you speak to a lawyer or court officer

WHY: When you plead guilty you are admitting that you committed an offence AND that you do not have a defence. You might not have committed an actual offence, or the details of the offence that the police have might be wrong, or you might have a defence available to you.

Once you have pleaded guilty it is hard to change your plea. By speaking to a lawyer or court officer first you can find out what options you have and what is likely to happen in your case. You can then decide whether to plead guilty or not guilty.

DO NOT—Resist arrest

WHY: It is an offence to resist arrest, or to escape once you have been arrested.

DO NOT—Be abusive or disorderly

WHY: It is an offence to be abusive or disorderly.

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The information contained in the website version of this ALSWA pamphlet is correct as at May 2008,
HOWEVER the law may change at any time.*

*Material in this publication does not constitute legal advice, but is intended for information only.
For legal advice please contact your nearest office of the Aboriginal Legal Service of Western Australia (Inc).
ALSWA'S Head Office is at 7 Aberdeen Street, Perth and other ALSWA offices are located at Albany,
Broome, Bunbury, Carnarvon, Derby, Fitzroy Crossing, Geraldton, Halls Creek, Kalgoorlie, Kununurra,
Laverton, Meekatharra, Newman, Northam, Roebourne, South Hedland and Warburton.*



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