



THE LAW, THE POLICE AND **YOU**

Your Rights When
Questioned, Detained
or Arrested



Public Legal Education
and Information Service
of New Brunswick

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Purpose of the Booklet

The purpose of this booklet is to provide a general outline of your rights and responsibilities when you come into contact with the police in public. What should you do or say - and, **not** do or say - when you are questioned or detained by the police? What are your rights if the police arrest you? Many people are convicted of criminal offences by statements they give voluntarily.

The information in this booklet is a general overview of your rights when dealing with the police. Information on the rights of youth who come into contact with the police can be found in other PLEIS-NB publications on the *Youth Criminal Justice Act*.

You should note that this booklet does not contain a complete statement of the law in the area and the law may change from time to time. Anyone needing specific advice on his or her legal position should consult a lawyer.



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Being Questioned by the Police

Can the police stop me and ask questions?

Yes. A police officer is allowed to walk up to you and engage you in conversation. There is no limit whatever on a police officer's right to ask you questions. There are a number of common reasons for police to stop and question people in public places - investigating drugs, weapons, liquor and motor vehicle offences are a few examples. They may be looking for help in finding suspects.

If an officer stops you for no clear reason and begins to ask questions, generally, you do not have to answer. The law does not require you to identify yourself or supply any information, unless the officer gives you a legal reason for making such a request.

These general rules apply.

- If the police stop you in a public place you are not required to answer questions. If you are not under arrest, you are entitled to go on your way.
- If the police stop you while you are driving a motor vehicle, you are not required to answer questions except about your driver's licence, insurance and motor vehicle registration. If you refuse to show them these documents, the police can arrest you. Others in the vehicle are not required to answer questions.
- If the police stop you for any offence, you must give them your name and address. If you refuse, the police can arrest you.
- The police have no right generally to search you. However, depending on the situation they may have the right to conduct a safety search if they detain you.

What if the police suspect I have committed a crime?

Any individual that a police officer believes has carried out a criminal or quasi-criminal offence (e.g.: highway traffic violation) is a **suspect**. If you are a suspect, the police may or may not place you under arrest. You may want to tell the police your name and address to show that you are cooperative. If you are not the person the police are looking for, you might avoid being arrested. If the police think you might have committed an offence and you don't tell them who you are, they could detain you while they check your identity. Here are some guidelines to consider if you are a suspect.

- **The Right to Remain Silent**

The first rule is to remain silent. You are not required to answer questions asked by police. Police are required to tell a suspect of the right to remain silent and to warn you that any statement you make may be used as evidence against you if there's a trial later.

- **The Right To A Lawyer**

If police are investigating a crime, for example, vandalism at a sporting event, and start to question you, ask them to tell you the purpose of their questions. Tell them that you wish to consult a lawyer before answering any questions, and say no more. It is always wise to discuss your situation with a lawyer **before** granting interviews to the police. Many people are convicted of criminal offences by statements they give voluntarily (incriminating statements).

Do not make false statements to the police. You are not doing yourself any favour by lying.

Do I have to go with the police to the police station?

If the police want to investigate further, they may ask you to go to the police station. If you are not under arrest or being detained, and you do not wish to answer any questions, you are entitled to go on your way. You can, however, agree to go. It is up to you.

When may the police detain me?

A police officer may stop a person and ask questions in the course of an investigation. When that person is not free to leave, for example, if the police officer tells him or her to come to the station and take a breathalyzer test, that person is considered to be a **detainee**.

If I am detained, what are my rights?

If you ask the police officer if you are free to go and the police officer says no, you have the right to know why you are being detained.

You have *the right to have a lawyer* (retain and instruct counsel) and to be informed of that right. Police must tell a detained person about the right to have a lawyer **without delay** and about any legal aid that may be available such as *duty counsel*. Duty counsel is a lawyer who can talk to you without any charge. The New Brunswick Legal Aid Services Commission has arranged to have duty counsel available by telephone in either official language on short notice. The right of a person in police custody to telephone a lawyer in complete privacy is part of the right to counsel. An exception to these rights might be a roadside screening demand for suspected impaired drivers. For more information on your right to a lawyer, see the information on the next page.

Being Arrested

When and how can the police make an arrest?

The police officer's powers of arrest differ depending on whether the offence is a summary or indictable offence.

- **Summary offences** are usually minor types of charges. They include, for example, causing a disturbance, and unlawful assembly. Breaking provincial laws, such as motor vehicle offences and liquor charges, are also examples of summary offences. A police officer can arrest you for a summary offence if you are found committing it, or if a warrant has been issued for your arrest. To make a lawful arrest, the police officer should identify himself/herself, and state that you are under arrest. The police must tell you the reason for the arrest.
- **Indictable offences** are more serious than a summary offence and carry heavier penalties. Indictable offences include such charges as theft (over \$5,000), forgery, breaking and entering, breaking out of jail, perjury, robbery and murder. For an indictable offence, the police have wider powers of arrest. If a police officer finds you committing an indictable offence, he/she can arrest you. Also, if an officer believes "on reasonable and probable grounds", that you have committed, or are about to commit an indictable offence, the officer can arrest you.

What happens once I've been arrested?

The police have the power to search you then and there. Next, they may take you to the police station and give you the opportunity to contact a lawyer if you have not already done so. You may be booked and your personal belongings will be taken from you.

If you are placed under arrest the police will ask you for details, such as your name, address and date of birth. You must tell them your name and address. If you lie about your name or address, you can be charged with obstructing justice or obstructing the police. You will likely be searched again, especially if the police decide to hold you until Court.

What are my rights at the time of arrest?

Police are required to tell you of the right to remain silent and to warn you that any statement you make may be used as evidence against you. You also have the right to contact a lawyer **without delay**. The police must tell you of your right to speak to a lawyer and about free duty counsel who is a lawyer with the legal aid program. The right to counsel also includes the right to speak with your lawyer on the telephone **in private**. This means police officers should not be present or in a position to overhear the conversation.

Can I call my own lawyer?

Yes, if you wish, you may call your own lawyer. If you do not have a lawyer, you can look in the telephone book at the yellow pages and choose and call a lawyer at random. The police may permit you to contact a relative or friend to find a lawyer. They are not, however, required to do so. If you cannot find a private lawyer, you should contact duty counsel.

How many phone calls am I allowed to find a lawyer?

The law does not say how many phone calls you are allowed to make. However, the number must be reasonable and involve a genuine attempt on your part to contact only your lawyer or a legal aid duty counsel.

Do I have the right to remain silent after my arrest?

Yes. The right to remain silent continues throughout every stage of the criminal justice process. You do not have to answer police questions. It is wise to refuse to answer any questions until after you have had a chance to consult a lawyer. You may tell the officer in charge that you have nothing to say until you speak with your lawyer.

Will I be fingerprinted and photographed?

Police have a right to fingerprint and photograph you if they charge you with an offence that can be an indictable offence.

If the police charge you with a summary offence, they have no right to take your fingerprints and photograph.

Will I know why I've been arrested?

The law requires a police officer who arrests you to give you a reason for the arrest and to do so **promptly**. The word "promptly" means immediately or as soon as possible.

Police are not expected to give details. They will give you a general statement of the charge against you.

What if I'm charged but not arrested?

Under certain circumstances a police officer may charge you with an offence without making an arrest. However, the officer will give you an **appearance notice** stating when and where you must go to court. If the offence is or may be indictable, the notice may say that you must go at a certain time and place for fingerprinting and photographing.

When will I know the details of the offence for which I was arrested?

Once the police charge you with an offence, you have the right to be informed of the specific charge, without unreasonable delay. You have the right to see the Crown prosecutor's file after the charge is laid, but it may take some time for the police to get the file to the Crown. However, you are under no obligation to enter a plea when you go to court until you have had a chance to review it.

A person in police custody must go before a judge **within 24 hours** and be charged with the specific offence in a document known as an **information**.

Will I be released from jail?

That depends on your situation. Even after an arrest, the police can release you in all but the most serious of cases.

If you are arrested, the police officer can refuse to release you if he or she believes there is a danger that you may continue to break the law or that you won't go to court when required. If the police can't confirm your identity they may continue to hold you. **It is a good idea to carry valid identification at all times.**

If the police do not set you free, you have the right to appear as soon as possible, before a provincial court judge who may release you with conditions or set a date for a bail hearing.

A person charged with an offence has the right not to be denied bail without just cause.

What is bail?

The word **bail** or **judicial interim release** is used when a person is released from custody by the court while waiting for a court hearing. A cash deposit or special conditions for release may sometimes be imposed.

When do I get to see a judge?

If the police arrest and charge you with a criminal offence and hold you in jail, you must be brought before a judge within 24 hours of the time of arrest or as soon as possible. If it is on a weekend, you may have a hearing with a judge by conference call.

