



Handout: Rights on Arrest

When a person is placed under arrest it is important that certain procedures are adhered to and that certain rights are preserved. Our legal system has developed a number of rights for young persons accused of crimes in order to make sure that they are treated fairly. These rights include:

- *The right to be informed promptly of the reason for arrest*

The police cannot arrest a person without a good reason. Police officers must be able to state clearly the reasons for their action. This allows the person arrested to know what charge they face and eliminates the possible unfairness of general or vague accusations.

- *The right to remain silent*

A person does not have to give a statement to the police or answer questions that the police ask. Exercising this right to remain silent will not be used against the person. If an accused person voluntarily says anything, it can be used against them.

The police cannot threaten the accused or promise a favour in order to obtain a statement. If the accused person makes a statement under these circumstances, it is not admissible in court (this means it cannot be used as evidence against the accused).

It is important to remember that the right to remain silent does not include the right to lie to the police. This could result in a separate criminal charge being laid.

- *Justification for detention*

A young person can only be held in custody before sentencing if they:

- have been charged with a serious offence*, or
- have a history that shows a pattern of either outstanding charges or findings of guilt

Additionally there must be a likelihood that:

- they will not go to court as required
- their detention is necessary for the protection or safety of the public, or
- in the case of a youth charged with a serious offence, there are exceptional circumstances that warrant detention and are necessary to maintain confidence in the administration of justice, and
- there are no conditions or combination of conditions that would adequately address any of these concerns

*A “serious offence” means an offence for which an adult would be liable to imprisonment of five years or more, such as impaired driving causing bodily harm, aggravated assault, and theft over \$5000.

- *The right to talk to a lawyer and parent or other suitable adult of the young person’s choice*

Upon arrest, the young person must be advised without delay about their right to a lawyer. The police must also provide the young person with an opportunity to obtain a lawyer.

If an accused young person cannot talk to a lawyer, they may have no idea what other rights they have. They may be frightened of the police or others in authority, and do or say things without understanding the consequences. A lawyer can help by explaining the law and outlining the rights of the accused. The lawyer can also advise the young person about what to do and what not to do. Finally, the lawyer can explain what steps may be taken against the young person and ensure that the authorities treat the young person fairly.

Young persons also have the right to talk to their parents or guardian and to have them present when the police are questioning them. The young person doesn't have to choose between calling a lawyer or their parents – they can do both and have both present during questioning.

In addition to the above stipulations, the *Youth Criminal Justice Act* requires that police notify a parent that a young person has been arrested and detained as soon as possible. In some cases, the police have the right to take fingerprints and photographs after they have charged a young person.

It is important to remember that a young person does not have to be arrested to be charged with a criminal offence. Sometimes charges are laid without arresting the suspect. If this is the case, the police will give them an appearance notice or a promise to appear at court. These are legal forms that indicate where and when the young person must appear in court, and if and when the young person must go to the police station to be photographed and fingerprinted.

