

Police powers to arrest and detain

This information sheet deals with the general powers of police in Western Australia to arrest and detain you.

For information about police powers to question, search and obtain identifying information such as DNA, please refer to the heading 'Where can I get more information?'

If you need more information about police powers to arrest and detain, or want to know whether police have exercised their powers appropriately in a particular situation, you should get legal advice.

What are police powers?

Police have powers that enable them to keep the peace, prevent crime and protect property from criminal damage. These powers include the power to arrest and detain people, obtain information, carry out searches, seize things and obtain identifying information such as DNA. It is important to understand your legal rights and obligations in these circumstances.

When can police make an arrest?

An arrest may be made with or without a warrant.
Most arrests by police are made without a warrant.

Arrest without a warrant

Arrestable offence

Police have the same basic power of arrest as an ordinary citizen, in that they can arrest you without a warrant if they reasonably suspect that you **have committed or are committing an "arrestable offence"**. An arrestable offence is one that has a penalty that is or includes imprisonment.

Under these basic powers, they can also arrest you without a warrant to prevent violence, a breach of the peace or the commission of an offence, where

they reasonably suspect one of these things will happen.

Serious offence

In addition to these basic powers, police have powers of arrest that are not available to ordinary citizens. These powers mean that police can arrest you without a warrant if they reasonably suspect that you have committed, are committing or are just about to commit a "serious offence". A serious offence includes an offence:

- of breaching a Violence Restraining Order
- of failing to comply with an order in relation to an out of control gathering, or
- that has a penalty of 5 years imprisonment or more, or life imprisonment.

Alternatively, police may arrest you without a warrant **even if the offence is not a serious offence**, as long as they can show that if they don't arrest you, one of the following things will happen:

- they won't be able to find out who you are
- you will continue to commit the offence
- you will commit another offence
- you will be a danger to another person or their property

- you will interfere with witnesses or the course of justice
- you will conceal or disturb something related to the offence
- your safety will be endangered.

An arrest may be lawful even if it is later found that you did not commit an offence, as long as at the time, the officer who arrested you had a reasonable suspicion that you had committed, were committing, or were about to commit an offence.

Arrest with a warrant

An arrest warrant is a written authority from a justice of the peace, magistrate or judge for police to arrest a particular person. An arrest warrant can be issued against a person for a number of reasons including:

- for a criminal offence
- for failure to appear in court
- to ensure attendance in court as a witness.

An arrest warrant must specify the person to be arrested and cannot be used as authority to arrest any other person.

If police are executing an arrest warrant against you, you should check that it refers to you and that it is signed by the justice of the peace, magistrate or judge who authorised it.

What should the police do if they want to arrest me?

If the police have decided to arrest you, they should:

- tell you that you are under arrest, or
- place their hands on you and tell you that you are under arrest, or
- physically seize you.

Police should use only as much force as is reasonably necessary to arrest you. They should be as discrete as they can be in the circumstances and not humiliate you more than is necessary to carry out the arrest.

What should I do if I am being arrested?

If you are being arrested you should keep calm and be polite.

If you resist or struggle against police when they are arresting you, you can be charged with an offence of obstructing or resisting police.

What should I do if someone I know is being arrested?

If you are present when someone you know is being arrested, you should keep calm and be polite.

If you interfere with the arrest or try to stop the police from making the arrest, you could be charged with an offence of obstructing police.

What if police have used unreasonable force to arrest me?

A police officer can use **as much force as is reasonably necessary** to restrain you, arrest you or execute a warrant.

If you think that **unreasonable force** was used, or you have been **injured** by the police, as soon as possible you should:

- Write down as much as you can about how you were hurt and who hurt you, including their name, rank and the police station where they work.
- Report the matter to the officer in charge of the police station straight away. A written report that is dated and signed is best, but otherwise you should at least give a verbal report. Keep a copy of any written report and make a written record of anything you have said if it is a verbal report.
- Ask a doctor to examine and document your injuries as soon as possible. If possible have photographs taken of your injuries and record the date the photographs were taken.
- Write down the name of the last person to see you before you were hurt and the first person

to see you afterwards. Ask them to write notes of what they saw before and after.

- Write down the name of any person who witnessed the arrest and ask them to make notes about what they saw.
- Get legal advice about your situation as soon as possible.
- For more information see the Legal Aid WA information sheet **Complaints about the police**.

What must the police do once they have arrested me?

As soon as possible after you are arrested, the officer in charge of the investigation must tell you what your rights are. Your rights are different depending on whether you have been arrested as a suspect or not.

In **every case** when you are arrested by police you have the right to:

- any necessary medical treatment
- a reasonable amount of privacy from the mass media
- a reasonable chance to communicate with or try to communicate with a relative or friend to tell them where you are, and
- assistance from an interpreter or other qualified person if you are unable to understand or communicate well enough in spoken English.

If you are **arrested as a suspect**, you have the right to:

- be told what offence you have been arrested for and any other offences police suspect you have committed
- be given a reasonable chance to communicate with or try to communicate with a lawyer
- if an interpreter is needed, wait for the interpreter to be available before police interview you, and
- be cautioned before you are interviewed as a suspect.

If you are arrested as a suspect, the police can refuse to let you contact a person if they reasonably

suspect the contact will mean an accomplice will get away from police, evidence will be destroyed or hidden, or someone will be put in danger.

In addition, it is police policy that your safety and welfare should be checked regularly once you have been arrested and that you should be treated in a dignified and humane way.

What if police do not do these things?

If police do not tell you what offence you have been arrested for, or do not give you medical treatment, or do not allow any of the things that are listed as requirements above, you can request that they do give you the information or allow the thing to happen.

If they refuse, you should ask to speak to the officer in charge of the investigation or the officer in charge at the police station where you are being held and make the request again.

If police continue to refuse, you should ask that a note of the refusal be made in your custody record and you should ask for a copy of this note. You should also make your own note of the refusal as soon as possible. Later, you will have the option of making a complaint in relation to the conduct of the police. For more information see the Legal Aid WA information sheet **Complaints about the police**.

What are the reasons police can keep me in custody after arresting me?

Police can keep you in custody after arresting you in order to:

- search you, your property and your premises
- investigate any offence they suspect you have committed
- interview you, or
- decide whether or not to charge you.

If possible, you should be kept in custody in the company of a police officer, rather than in a police cell.

How long can police keep me in custody before charging me?

If you are in custody because police suspect you have committed an offence, police may keep you in custody for a **reasonable time** to investigate the offence, question you about it, carry out searches and decide whether to charge you. In deciding what a “reasonable time” is, a number of things may be considered, including things such as:

- the time required to transport you to a place where you can be interviewed properly;
- the need for you to receive medical treatment;
- the need to let you recover from the effects of alcohol or drugs;
- the number of offences and how complicated they are;
- the need for police with special knowledge to travel to attend the investigation; and
- the need to interview witnesses or other suspects.

Apart from this reasonable time limit, police must also ensure that they do not keep you in custody for more than six hours, unless they get the approval of a senior officer. If they get approval, they are then allowed to keep you in custody for no more than another six hours, making a total of twelve hours. After twelve hours, police may only continue to keep you in custody if they get approval from a magistrate.

Commonwealth offences

Police in WA also have the power to arrest and detain you in relation to Commonwealth offences, such as offences under the Commonwealth *Customs Act 1901* or Commonwealth *Criminal Code Act 1995*. The powers that police have in relation to Commonwealth offences are very similar to State offences, but there are a few differences in relation to how long you can be kept in custody.

For Commonwealth offences, police can only keep you in custody for a “reasonable time” but this is otherwise limited to:

- two hours if you are under 18 years old or you are an Aboriginal or Torres Strait Islander, or
- four hours otherwise.

Police may apply to a magistrate or justice of the peace to extend this to a maximum period of eight hours and they can only apply for an extension once.

When must police release me from custody?

Police must immediately release you if they decide not to charge you or if they have not received approval to keep you in custody for more than the time allowed.

If you are charged with an offence, you may or may not be released, depending on the seriousness of the offence and whether police consider bail is appropriate.

What if I am kept in custody when I should not be?

If you are kept in custody without a proper reason or for longer than is allowed, you should ask to be released. If police do not release you when they should, you may have a civil action against them for false imprisonment. If you think you have been taken into or kept in custody when you should not have been, you should seek legal advice.

What if I am charged but not released?

If you are charged but not released on bail to attend court, you will be taken to court in police custody. You will then have a chance to apply for bail in court.

If you do not have a lawyer and you want legal assistance to make a bail application, you may tell the custody staff at court that you wish to see a duty lawyer. The duty lawyer will visit you in custody to advise you and can then represent you in court. If there is no duty lawyer at the court on that day you can ask the court to put your bail application off to another day when a lawyer is available.

You can choose to make the application for bail yourself, without advice or representation from a

lawyer, but you should be aware that if bail is refused, you may not be given another chance to apply for bail. For this reason it is best to get legal advice before you apply for bail.

For more information about appearing in court see the Legal Aid WA information sheet **Appearing in court on a criminal charge**.

Fingerprints and photographs

If you are under arrest for an offence, police have the power to take your fingerprints and photo. For more information see the Legal Aid WA information sheet **DNA testing by police** or the WA Police webpage [Identifying people](https://www.police.wa.gov.au/Crime/Identifying-people) (link address: <https://www.police.wa.gov.au/Crime/Identifying-people>).

Powers in road traffic matters

Police have special powers under the *Road Traffic Act 1974* (WA). Some of these powers are outlined here.

Providing a preliminary breath test

If police reasonably suspect that you are the driver of a vehicle, they can require you to stop your vehicle and provide a sample of your breath to see if you have been drink driving. To enable this to happen, they can ask you to wait and if necessary, to get out of your vehicle.

If you refuse to, or cannot, provide a sample of your breath, you can be required to accompany police to a police station or other suitable place to provide a sample for analysis.

Accompanying police for a breath or blood test

If your preliminary breath test shows a reading above the limit allowed for you, or you cannot or will not provide a preliminary sample of breath, police can require you to accompany them to a police station or other suitable place to obtain a sample of your breath or blood for analysis. During this time, you are in the custody of police and you are not free to leave until the procedure is completed and you are released from custody.

It is an offence to refuse to provide a sample for analysis.

Dealing with intoxicated people

In addition to the power to arrest, police and appointed community officers have the power under the *Protective Custody Act 2000* (WA) to stop and detain you if you are in a public place or trespassing on private property and you:

- are intoxicated (affected by alcohol, drugs or another intoxicant, to the extent that your judgement is significantly impaired), **and**
- need to be apprehended to keep you or any other person safe, or to prevent you from causing serious damage to property.

A railway security officer may exercise these same powers, but only on railway property, not elsewhere.

While being detained under the *Protective Custody Act 2000* (WA), police **cannot question you** about any offence you are suspected of committing, they **cannot do any forensic procedure** on you, such as taking a photo, fingerprints or DNA sample and they **cannot charge you** with an offence. Any information they obtain from you while you are being detained cannot be used against you. If police wish to get information from you or charge you, they must do it at another time, after you have been released.

Move on orders

In addition to the power to arrest, police also have the power to order you to leave a particular public place or public transport for up to 24 hours. This is called a “move on order”. A police officer may issue a move on order if they reasonably suspect that you:

- are doing, or are about to do, something violent
- are committing a breach of the peace
- are preventing or hindering a lawful activity by another person, or
- have committed, are committing or will commit an offence.

When issuing a move on order, police must consider the impact of the order on you, including whether it affects your ability to get to the place where you live, work or shop, or your ability to access transport, health, education or other essential services. A move on order must be in writing.

It is an **offence** to fail to comply with a move on order, unless you have a reasonable excuse for not complying. The maximum penalty is a fine of \$12,000 and imprisonment for 12 months.

If you are charged with this offence you should seek legal advice. You can obtain advice from a duty lawyer at court. For further information about the Legal Aid WA Duty Lawyer Service, see under the heading **Where can I get more information?**

Accompanying police when not under arrest

Police may request that you accompany them to assist in the investigation of an offence. In this situation they must inform you that you are not under arrest, that you do not have to accompany them and that if you do accompany them, you are free to leave at any time.

Can I complain about the conduct of police?

Yes, if you feel that the police have not behaved properly towards you or have abused their powers, you can make a complaint about them.

If you have been charged with an offence and you are facing court, you should get legal advice before making a complaint.

For more information on how to make a complaint, see the Legal Aid WA information sheet **Complaints about the police**.

Where can I get more information?

There are webpages and information sheets on the **Legal Aid WA website** www.legalaid.wa.gov.au under Find legal answers covering the following topics:

- **Answering questions from the police**
- **Police powers to search**
- **DNA samples and identifying information**
- **Complaints about the police**

The **Legal Aid WA Infoline 1300 650 579** is available for information and referral.

LEGAL AID WA OFFICES



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