

THE POLICE AND YOU



This information is general and is not a substitute for legal advice. The Legal Service Commission provides free advice for most legal problems. Contact the Legal Helpline on 1300 366 424 www.lsc.sa.gov.au www.lawhandbook.sa.gov.au

THE POLICE AND YOU

Police in South Australia have wide powers and responsibilities. If you have contact with the police, it is important that you are clear about your legal rights. It is sensible to be helpful and courteous to police. However, you should not let the police abuse their powers or treat you in an improper way

WHEN QUESTIONED BY POLICE

- Be polite and stay calm;
- Tell the police your name and address if asked (it is an offence to give an incorrect name and address or to give false information to the police);
- You have the right to remain silent, but anything you say may be recorded and used as evidence;
- The driver of a motor vehicle must tell the police her or his name and address and the name and address of whoever owns the vehicle;
- A driver must show their licence either by producing it on the spot or at a police station within 48 hours (if you are hold a provisional, probationary, interstate or international licence or a learners permit, you must carry your licence with you at all times when driving); and
- Anyone must answer any question that would help to identify the driver or owner of a motor vehicle.

POLICE POWERS TO SEARCH

Even before an arrest has been made, the police may, without a warrant, search a person or a car if they have reason to suspect the person holds, or the car contains evidence of a crime, for example, illegal drugs.

Police holding a search warrant have wider powers to search and enter premises and vehicles. To obtain evidence of an offence, police can, in some cases, break into a house or a car.

ARREST

The police may arrest anyone suspected of committing an offence. The police do not need a warrant to arrest you. The police must make it clear to you by words or by actions that you are under arrest. If you are under arrest you are not free to go. If you are unsure, ask the police if you are under arrest or you have to go with them. Police may use as much force as is reasonably necessary to arrest a person including using handcuffs or restraints.

RESISTING ARREST

It is an offence to resist a lawful arrest.

HOW MUCH PHYSICAL FORCE?

A police officer is not allowed to use violence or threaten to use violence on you; however police are entitled to use whatever force is reasonably necessary if you try to struggle when under arrest, or if you are violent or refuse to be examined.

POLICE CUSTODY

Being arrested means being taken into custody. Being charged is having a legal complaint made against you that must be answered in court. The police may, after arrest, detain anyone for up to 4 hours on suspicion of having committed a serious offence or for the purpose of completing an investigation before charging them. During that time the police may take you to places connected with the offence. A magistrate can grant police the power to detain someone for up to 8 hours before a charge is laid. It can sometimes happen that the police arrest you but later release you without laying charges. You may also be guilty of a criminal offence.

WHAT ARE MY RIGHTS AFTER ARREST?

You have the right to remain silent, to make one telephone call (the police can stop you making a call to a particular person), to have a lawyer, friend or relative present during questioning (the police can refuse permission for a particular person to be present), and to have an

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interpreter present during questioning, if required.

The police will probably ask you a lot of questions, but you do not have to answer them. If you do not wish to give information apart from personal details like your name, address and date of birth, just politely say so after each question.

Remember - anything you say may be brought up later in evidence. There is no such thing as an 'off the record' conversation with a police officer.

UNDER 18 YEARS OLD?

If you are under 18 years old you should not be interviewed without a parent or an adult friend, a lawyer, or somebody from the Families SA. However, this is not essential if you are 16 or 17 and the offence is a minor matter, however the police must try to contact your parents. You still have the right to remain silent.

DO I HAVE TO SIGN A STATEMENT?

You do not have to make or sign a statement. You do not have to respond to someone else's statement if it is shown to you. It is usually best not to sign anything until you have seen a lawyer

CAN THE POLICE EXAMINE ME?

If you have been arrested, the police may search you and seize anything they find. If the police wish to have you searched by a doctor, you have the right to have a doctor of your own choice present if it is practicable.

After you have been charged, you can be photographed, fingerprinted, asked to supply a sample of your handwriting or have your voice recorded. The police may also wish to take a sample of your blood, hair, fingernails, saliva, etc, or have you examined by a doctor or dentist. If you do not consent, tell the police and ask to speak to a lawyer, but do not resist.

If the police suspect you have committed a serious offence, they can take a DNA sample by mouth swab even if you have not been arrested or charged.

You may also be asked to participate in an identification line up. You do not have to consent, but you should seek legal advice.

HOW DO I GET OUT OF POLICE CUSTODY?

Any person who has been charged with any offence can apply for bail. Bail means that you may be released from police or court custody on the condition that you promise to appear in court on certain days and at certain times. In some cases you may need another person to be a guarantor for you. A guarantor is a person who promises to pay an amount of money (called a 'guarantee' or 'surety'), if you do not appear in court the next time you have to.

WHEN CAN I APPLY FOR BAIL?

It is up to the police whether you are given bail immediately. If you are not given bail immediately, the police must take you to court as soon as possible. If it is evening you will go to court in the morning when you can ask for bail.

COMPLAINTS ABOUT POLICE BEHAVIOUR

If you think the police have acted wrongly, you may tell them so, but don't put up a struggle or argue the point. You can make a complaint to any police officer (apart from the police officer you are complaining about) and they are required to receive your complaint and pass it on to the appropriate person. If you don't feel comfortable speaking to the police, you can make a complaint to the Police Ombudsman or talk to your lawyer.

If you are injured, arrange a medical examination and have some photographs taken as soon as possible. As well, contact witnesses who can attest to your condition before your arrest. Write down what happened, who did it, (such as the police officer's I.D. number or nickname) and when and where it all happened, while it is still fresh in your mind.

POLICE OMBUDSMAN

Telephone: 8226 8677

Email: policeombudsman@agd.sa.gov.au

Web: www.policeombudsman.sa.gov.au

LEGAL HELP

There is often a lawyer on call at the Magistrates Court called a Duty Solicitor. If you appear in court without a lawyer, ask to see the Duty Solicitor. If you cannot afford a lawyer ask the Legal Services Commission about legal aid.