

DEALING WITH THE POLICE

THIS FACTSHEET IS DESIGNED TO SERVE AS A GUIDE, AND SHOULD NOT SUBSTITUTE FOR SEEKING LEGAL ADVICE.

It is important to note that there are many differences between the laws of each State and Territory. This is a national guide, designed to serve as a starting point for anyone concerned about dealing with the police.

To contact Legal Aid (or equivalent) see contact numbers below. For more information on your jurisdiction and contact details of other legal services you can check out AIVL's Handy Hints booklet. You can pick one up at your local drug user organisation (see the 'Member Organisations' link for contact details) where you can also ask the staff for guidance with these issues. For multiple copies of any of AIVL's resources, you need to order through AIVL directly. Simply contact the office for an order form, see the 'Contacting AIVL' link.

LEGAL ADVICE CONTACT NUMBERS:

QLD: Legal Aid: 1300 651 188 (Local call cost)

NSW: Legal Aid: 1300 888 529 (Local call cost)

ACT: Legal Aid: 1300 654 314 (Local call cost)

VIC: Legal Aid: 1800 677 402 (Free call)

SA: Legal Services Commission: 1300 366 424 (Local call cost)

WA: Legal Aid: 1300 650 579 (Local call cost)

NT: Legal Aid: 1800 019 343 (Free call)

TAS: Legal Aid: 1300 366 611 (Local call cost)

IF YOU ARE STOPPED BY THE POLICE:

- stay calm, be polite;
- give the police your correct name and address and do not resist arrest;
- ask the police why they want to talk to you;
- you are entitled to ask the police officer for his or her name, rank and the name of the station where they are based.

If the police have enough evidence to charge you, they can do two things: charge you by summons, or arrest you and charge you. In the event that you are arrested or charged, the police may require you to go to the police station. If you are arrested, you have the right to speak to a lawyer before you say anything (apart from giving your name and address).

If you have been arrested after hours, and cannot afford a lawyer to come after hours, the police must allow you to talk to a lawyer during business hours, before you answer any questions. They can charge you (if they have enough evidence) before you talk to a lawyer.

IF YOU ARE QUESTIONED:

It is quite common for people to be convicted by their own admissions, in relation to offences involving illicit drugs. This is particularly the case with charges such as self-administration and possession. So, regardless of what you have or haven't done, it is recommended you think carefully before answering any questions asked by the police, before seeking legal advice.

If you are charged with a serious offence, it is recommended that you have your lawyer present during questioning or when making a statement. If you choose to remain silent after giving your name and address, stay calm and simply say 'no comment' to any questions. You can always make a statement or answer a question later, after speaking to a lawyer.

If you are under the age of 18, in most states the police cannot question you without a parent, guardian or suitable adult present.

IF YOU ARE SEARCHED:

The police can search you, your house or your car without a warrant and without your consent if they have reasonable suspicion that you have illicit drugs in your possession. They can also search your house without a search warrant if they believe they will find someone who has committed a serious offence or who has escaped from custody. Don't obstruct them. This may escalate the situation, and cause a conflict for which you could then be arrested. Stay calm, and ask the police why they want to search you, your car or your house. Make a note of what is said for future reference.

IF YOU ARE ARRESTED:

You can be arrested if the police find you committing a crime and consider that arresting you will ensure you appear in court, if the public's safety is in danger, to stop you committing another crime, or if they suspect you of committing a crime and they want to question you. You should not try to resist arrest. It is an offence to resist arrest.

Once you have been arrested and charged you can then apply for bail. If you don't turn up in court to answer the charges against you the police can take out a warrant and arrest you at any time.

Points to consider if you are arrested:

- It is in your interest to cooperate with the police by providing your name and address.

- In many cases it is difficult for police to get enough evidence for a charge if the person being questioned makes no admissions. Think carefully about making any admissions before speaking to a lawyer.
- You have the right to remain silent, except where you are questioned by a customs officer in relation to the import or export of prohibited drugs or by a police officer in relation to a motor traffic offence;
- It is usual practice for the police to allow people under the age of 18 a telephone call. Adults do not have a legally enforceable right to make a phone call.
- You may find free 24-hour legal advice is not available in your area. If you have a solicitor, it's probably best to contact them. Otherwise you can call your local legal aid office; the police usually have information and contacts for the duty solicitor.
- If you believe you have been badly treated by police you can make a formal complaint. Take note of which police are involved, exactly what occurred, and anything said or done that you might want to complain about later.
- There are limits to the length of time you may be held under arrest before being formally charged or brought before a magistrate. In certain circumstances this time can be extended by a magistrate. The length of time you can be held varies between states and territories and is also influenced by the nature of the charges. As a general rule you will be brought before a magistrate as soon as is practicable, and generally within 48 hours of your arrest.

SEEKING BAIL

If you have been charged and are being held in custody, you have the right to seek bail in front of a magistrate or bail justice. Your application for bail should be heard as soon as possible.

At the bail hearing there should be a duty solicitor to help you with your bail application. The hearing determines whether or not you should be released to answer the charges at a later date. This is your opportunity to explain to the court any reasons why you should be released, including refuting the police's reason for holding you.

If you are granted bail, you must follow any conditions it imposes until the time of the next court hearing. If you don't show up for any court hearing, the court will issue a warrant for your arrest and you will then be charged with failing to appear.

This '*Dealing with the Police*' fact sheet has been developed and produced by the Australian Injecting and Illicit Drug Users League (AIVL) on behalf of its members. This project has been funded by the Australian Government Department of Health and Ageing.