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LAW IN PRACTICE

Guidelines for drug users and drug workers

DETENTION and QUESTIONING

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THE MOST IMPORTANT law on detention and questioning is the Police and Criminal Evidence Act (1984) – PACE. This sets out police powers to stop, search, arrest and detain and governs almost every aspect of detention procedure.

Arrest

Many people held in police stations are said to be ‘helping police with their enquiries’ but may be arrested if they want to leave. Arrest means forcible detention. Most of the important rules governing detention apply only if the person is under arrest – so if a detainee feels forced to stay it is generally an advantage to have been arrested.

During arrest police investigate offences and gain evidence on which to base a prosecution. How long people can be held depends on the offence police suspect they have committed. Under PACE, offences are divided into:

- arrestable offences, eg, shoplifting, possessing class A or B drugs;
- serious arrestable offences, eg, drug trafficking (import, export, intent to supply, supply, etc), robbery, rape, murder.

This distinction is not clear cut. For instance, an arrestable offence can be considered ‘serious’ if it has or might result in serious injury, substantial financial loss or gain, death, etc. So in practice police have wide powers of discretion over whether to treat a suspected offence as serious or not, with implications for the rules governing the suspect’s detention (see below).

Detention

At the police station a custody officer independent of the investigation is responsible for the welfare of prisoners and for completing forms which check procedure. Anyone booked into a police station should

ensure their arrival time is correctly logged and that they don’t sign for property which doesn’t belong to them. Detainees with a medical problem needing attention should tell the custody officer immediately. If unsure whether they’re under arrest, detainees should check with the custody officer. If prevented from leaving, they should insist that they are arrested and booked in by the custody officer, who should give arrested suspects written information on their rights and how to get legal help.

Arrestable offences. People suspected of ‘arrestable offences’ are entitled to:

- have a friend or relative informed;
- consult a solicitor;
- consult police codes of practice.

Many detained people sign to say they do not want to see a solicitor because they’re told this will prolong their detention. Despite this it is imperative to have good legal advice while in custody. After 24 hours people suspected of minor offences must either be charged or released.

Serious arrestable offences. In certain defined circumstances people suspected of serious arrestable offences may be:

- held for up to 36 hours without having anyone informed (on the authority of an inspector or above);
- held for up to 36 hours without access to legal advice (on the authority of a superintendent or above).

After 36 hours, access to a solicitor is guaranteed. Continued detention can be authorised by a magistrate in stages up to 96 hours (4 days). After that suspects must either be charged or released (except under the Prevention of Terrorism Act). Foreign

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nationals have the right to contact their embassy or consulate in the UK.

How to help the suspect. Contact a solicitor immediately – Release is in touch with a panel of solicitors nationwide. You should not normally be asked to pay the solicitor's fees as most help is covered by legal aid. Don't be tempted to go down to the police station – you won't be able to help much and are very unlikely to get access. After someone has been charged (and sometimes before) it is possible to send them cigarettes, food and clothing.

Questioning

The best strategy while in custody is always likely to be silence. Interviews at the police station should be taped but detainees should remember that any verbal exchange may be noted and given in evidence. If the detainee is innocent they should say so, and if there is a simple explanation likely to satisfy the police, give it. Beyond this it should be remembered that it's easier to say nothing from the start rather than to stop answering questions when they get difficult. Answers that seem innocuous can be twisted in court.

Many people get convicted through signing confessions in the absence of a solicitor. Often no other evidence is needed. What is said during questioning will be critical during the trial, even if there has been no formal caution. Police are trained in interrogation and know that people in custody are disorientated. Many people are prepared to do almost anything to get out – even to sign false confessions.

If questioned detainees should insist a solicitor is called. If police persist the best response is 'I'd like to help, but I won't say anything until I have seen a solicitor'. Silence will probably prolong detention, but there are strict time limits; eventually the suspect will either have to be released or charged.

People under 17 should not be questioned without an appropriate 'responsible adult' being present – parent, social worker or some other responsible person over 18 not working with the police. Without this the interviews are never admissible in court. Responsible adults should realise that police are usually very anxious for them to be present so they can record interviews. Young people should understand that they too have the right to remain silent.

Juveniles should, like other detainees, also exercise their legal right to advice from a solicitor. For this reason it's best for 'responsible adults' to go to the police station with a solicitor; otherwise they may be brought in to witness an interview when the young person could instead have had the benefit of legal advice. Release can advise parents and 'responsible adults' on how to help.

Getting a lawyer

Once allowed access to a solicitor, suspects can call their own, phone Release for advice and a solicitor, or rely on the duty solicitor scheme. The duty solicitor scheme is merely a panel of solicitors independent of the police and working locally dealing with criminal cases. Some are good, some are not so good.

Detainees seeing solicitors should insist on being fully advised on their rights, not be afraid to ask questions, and ask to talk in private. During interviews with the police the solicitor can comment and make notes but won't be able to answer questions on the suspect's behalf.

Legal aid is available to cover solicitors attending police stations and advising before court appearances. Lawyers can arrange sureties, negotiate bail, and contact relatives and friends on the suspect's behalf. Solicitors are often reluctant to deal with trivial offences and prepared only to give telephone advice. Even in relatively significant cases the duty solicitor scheme can break down leaving detainees without

access to legal advice, especially overnight and at weekends. In these cases it is even more important that detainees understand their rights, including the right to silence.

Obtaining evidence

Police are entitled to take *fingerprints*, if necessary by force, if a superintendent has reasonable grounds to believe this would prove or disprove involvement in a criminal offence. Fingerprints can also be taken if a suspect is charged or convicted.

Photographs can't be taken without consent unless needed to record the circumstances of an arrest, or if a suspect has been charged or convicted of a criminal offence. Force should not be used. Samples of saliva and urine can be taken without consent, but other *intimate body samples* – blood, semen and tissue and swabs from body orifices – should only be taken with consent, by a doctor, and with written authorisation from a police superintendent or above.

Non-intimate samples such as fingernail scrapings, hair and footprints can be taken without consent when a superintendent has reasonable grounds to suspect involvement in a serious arrestable offence.

Intimate searches of body orifices can be authorised by a police superintendent or above who believes the suspect is concealing a class A drug (eg, heroin, cocaine) intended for supply or export/import, or some object that could cause injury. The search must be conducted by a doctor or nurse

in a hospital or clinic unless this is not practicable and, in the opinion of a superintendent, the item could cause injury to the detainee or to others. Doctors and other medical personnel are not authorised to use force to conduct an intimate search for drugs. ■

Key points

- Suspects should identify and contact a good solicitor at the earliest opportunity
- Detainees have the right to remain silent
- If prevented from leaving detainees should ensure they are formally arrested
- Once under arrest there are strict limits to the length of detention

CAUTION

■ This is a complex area on which we can only provide general guidelines. Anyone involved with the law should get legal advice at the earliest opportunity by contacting their solicitor or Release – Release's 24-hour emergency number is 071-603 8654; during office hours phone 071-729 5255.