

## **When can the police arrest you?**

Police are responsible for making sure that people do not break the law and they have a duty to enforce the law. Usually their response will be to arrest the person who they believe is breaking the law. Most people who are arrested have trouble understanding that if they see someone breaking the law, the police can get into trouble if they do not respond.

This basic fact is important to keep in mind. It is frequently (very frequently (usually)) tough to convince people that the police are not out to persecute them personally for an arrest and charge(s) but the fact of the matter is that police are just like everyone else – they would rather get paid for not working just like you and I. The decision to arrest you is almost always based on the fact that they have very little choice in the matter.

Police also have a duty to stop a breach of the peace. A breach of the peace could be anything from a brawl in the middle of a hockey game (those kinds of parents should probably stay home) or a screaming match at the Northern (is their stuff worth screaming about?)

Police can arrest you if they have reasonable grounds to believe you have committed or are about to commit an offence or if they only have reasonable grounds to suspect that you have committed an offence but they need to hold on to you for a short time to investigate what happened.

Reasonable means just that; the information that the police rely on has to be what most people would agree makes sense. If police arrest solely on the basis of information from someone who so hammered he barely knows his own name, they are going to get into trouble if they arrest you.

The information that they have must also make it probable that an offence took place. If someone tells police that that heard from someone else that someone might have done something wrong last week sometime, there is nothing without confirmation that makes it probable that someone did anything wrong.

The police can also arrest you if there is a warrant for your arrest – we'll talk about warrants another day.

Arrest is a pretty simple idea – it comes from a French word - arrê - meaning to stop; an arrest is a stop by police. It is a special kind of stop however, in that once you are arrested, you must

accompany the police officer who has placed you under arrest or you can be charged.

If you are arrested, please be nice.

You can object to the police about the arrest but if you don't accompany the police officer or put up a struggle, you can be charged with obstructing or resisting arrest. If you fight with the police officer who is trying to arrest you, you can be charged with assault to resist arrest or assault peace officer.

The Court views these charges pretty seriously and very often send people to jail for these kinds of offences. Also don't forget, police are entitled to take reasonable steps to protect themselves during an arrest. So if you put up a struggle or resist arrest, in addition to handcuffs police can use a hobble, a baton, pepper spray or even a Tazer. (I don't need to say anything about the gun do I?)

When you get to the detachment, be nice there too. If you act crazy in the cells or threaten to kill yourself, the police will take away your clothing so that you can't hurt yourself.

Please for god's sake don't threaten to kill anyone. That will just result in still more charges.

The bottom line is this, when you get arrested, be nice; fighting with the police is going to get you more charges, maybe tied up and maybe hurt.

### **Should I just run away?**

In my first answers to FAQs I talked about a basic rule associated with arrest - be nice. Not surprisingly, there are other important arrest rules; one of them is - don't run away. (If the person making the arrest with does not appear to have been participating in track and field events lately, this might also be covered by the "be nice" rule.)

Running away means different charges for the runner depending on the situation.

An arrest is only legally effective if a peace officer tells you that you are under arrest and why and touches you in some fashion (grabbing your clothes counts). In addition to grabbing your clothes, a peace officer with proper grounds to arrest is legally entitled to use such force as is reasonably necessary to complete the arrest (and take you into custody).

If you run away before you are actually arrested you can be charged with resist or obstruct

peace officer under section 129 of the Criminal Code. Before you can be convicted of this offence by a Court, police need to have proper grounds to arrest you and, as a practical matter, must be able to identify you.

Unfortunately, most runners have a poor perspective on the identity issue. It is not uncommon to deal with accused who want to run a trial based on the “they didn’t actually know it was me” defence. Since the charge suggests that the police did know who it was, this defence poses some challenges.

A conviction for this offence can get you up to 2 years in jail although, in the normal course, the maximum sentence is likely to be 6 months.

Once you are legally arrested, the situation changes. Running away (or even crawling from the locked back of the police vehicle to the front seat and freedom, as sometimes happens) will get you charged with escape lawful custody under section 145(1)(a) of the Criminal Code. Provided that you are legally under arrest, a conviction carries a theoretical maximum sentence of 2 years in jail; most accused face a 6 month maximum sentence.

There are rules that direct police not to make an arrest in certain circumstances (more on that topic in due course) but the application of those rules is limited and it is relatively rare that a police duty not to arrest will afford a defence to either of these charges.

Arrests for the offence of mischief are very common. Mischief is an offence that can be committed in several different ways, but the most common are destroying or damaging or interfering with the use of property. Property means both things like cars and televisions and land and houses. Destruction of, or damage to, property requires no elaboration; if you wreck someone’s stuff, you can be charged for it. There is no law against wrecking your own stuff as long as you do not commit another offence in doing so.

A common Northern scenario for interference with the lawful use of property involves people in a shared dwelling with differing views about whether one of them meets an acceptable sobriety threshold. When these differing views mean that one party’s lawful use of the property, such as for sleeping, is interfered with, it constitutes mischief. In theory both party-person and sleepy-person have an equal right to the enjoyment of the property but given that the sleeper is unlikely to interfere with the partier, it is usually partier that is committing mischief. Police will frequently be forced to reconcile these differing opinions by removing one of them for the evening. An arrest in these circumstances rarely results in charges

(although you will likely overnight at the detachment).

If your polite, sober-sounding apology and an offer to go somewhere else for the evening does not resolve the matter, the arrest rules come into play.

A vigorous physical protest that you are not as drunk as everyone thinks you are violates the “be nice” rule and running away before or after you are arrested for mischief is an equally poor response to the interest the police have taken in you. Either way, you will convert a simple arrest into criminal charges and a day in court.