

## **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 the 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.