

Chapter 4: Detention

This chapter will focus on what happens if you're allowed to go home and when you are held by the police after you are arrested.

If you are arrested or held by the police, talk to a lawyer immediately. See *Chapter 3 – Getting a Lawyer*.

1. What happens if the police let me go home after being arrested?

If the police decide to let you go home after being arrested, they will give you some papers that tell you when you have to go to court. These papers are called a "Promise to Appear" and may include some rules and conditions you have to follow before your court date. If you are required to have photographs and fingerprints taken at the police station, this will also be on your papers. It is important that you show up for at the police station and at court on the correct date and time.

2. What is detention?

In certain circumstances, after you have been arrested, you can be held in custody until your trial. In those situations, you will not be allowed to go home. This is called detention. If the police do not release you after your arrest, they will take you to court within 24 hours or as soon as possible for a bail hearing (see below). A judge or justice at the court will decide if you should be detained until your trial.

3. When can I be detained?

You can only be detained if you are charged with a serious offence or if there is a pattern of other charges against you. s. 29(2)(a)

If you have been charged with a serious offence or if you have a pattern of other charges, the judge or justice **can** put you in detention for any of these reasons:

- To protect the public,
- To make sure you come to court in the future when you have to, or
- In rare and very serious cases, to help other people trust the courts.

s. 29(2)(b)

R. v. R.D. 2010 ONCA 899

Even if the judge or justice is concerned about any of these things, the judge or justice might still release you if he or she thinks that you will follow certain rules when you are released.

s. 29(2)(c)

A judge or justice **cannot** put you in detention for any of these reasons:

- Your own protection,
- You have a mental illness,
- You need a place to live, or
- You need social services.

s. 29(1)

4. If the judge thinks I should be detained, is there another option?

Instead of sending you to a detention facility the judge or justice can order a responsible adult to take care of you until your trial. The responsible adult will have to be able to provide a close level of supervision over you. The judge or justice is required to consider releasing you to this person as an option. Both you and the responsible adult must agree to the arrangement. If you agree then the judge may release you to the care of the responsible adult. You will both have to sign an agreement for the court. If no responsible adult can be found or if you do not want to go with that particular adult, then you will be held in detention.

s. 31

R. v. R.D., 2010 ONCA 899

5. Where can I be detained?

Usually you will be held in a place designated for young people. s.30(3).

You may be held in:

- A facility with doors that are locked all the time,
- A facility that has areas where you can be locked up,
- A facility where the doors are not locked, or
- The care of a responsible adult.

s.31

6. I am under 18. Can I ever be held in the same place as an adult?

If you are under 18, you will generally be held in a place separate from where adults are being held.

s.30 (3)

If separate buildings are not available, you may be held in the same building as adults but must be held in a separate area from the adults.

Also, a court can order you to be held in the same place as an adult if :

- It is not safe to keep you in a place for young people, or
- There is no place for young people available nearby.

s.30(3)

7. I am already 18 or 19 years old (or turning 18 soon) with youth charges. Will I be detained in an adult facility?

If you turn 18 before you are detained on youth charges or if you turn 18 while you are already detained on youth charges, the provincial director (the person responsible for place of custody and probation) can ask the judge to have you held in an adult facility instead of a youth facility. If that happens you have a right to tell the

judge where you prefer to be held and why. The judge will decide where you will be held. The judge will look at your behaviour while you have been detained. Bad behaviour that affects other young people might be a reason for the judge to send you to an adult facility.

s.30(4)

Ontario (Ministry of Children and Youth Services) v. K.K., 2011 ONCJ 592.

8. I am 20 years old or older with youth charges. Will I be detained in an adult facility?

If you turn 20 before you are first detained on youth charges, you will be held in an adult facility, and you will not have the right to tell the judge what you prefer.

s.30(5)

9. Will my parent(s) find out that I am being held in detention?

Yes. As soon as possible after you are arrested and detained, the police will contact your parent(s). They will tell your parent(s) where you are and why you are being detained.

s. 26(1)

10. If the police arrest me and don't let me go right away will I have to stay in detention until my trial?

Not necessarily. If the police do not let you go after your arrest, the police must take you to court within 24 hours or as soon as possible. The judge or justice at the court will decide whether to release you or to detain you until your trial. This is called a bail hearing.

s. 503 of the *Criminal Code of Canada*

11. What will happen at my bail hearing?

In most situations, the prosecutor will have to show the judge or justice why you should be detained.

s. 29(3)

In some situations (for example when you are charged with a serious offence or when you have been charged with another offence after you already had bail) your own lawyer will have to show the judge or justice why you should be released. During the bail hearing the prosecutor or your lawyer might ask people who know you or who know about the case to come to court. Those people might be asked questions by the lawyers to help the judge or justice decide what to do.

12. How does the judge or justice decide whether to detain me?

The judge or justice can detain you for any of these three reasons:

- To protect the public,
- To make sure you come to court in the future when you have to, or in rare and very serious cases to help other people trust the courts.

The judge or justice is more likely to detain you if you have made a statement to police admitting to the offence, if you have other charges and criminal convictions, if you have failed to attend court or escaped custody in the past, or if your charges are serious.

13. What happens if the prosecutor cannot convince the court that I should be kept in detention?

The judge must let you go after you have signed a form promising to come back to court on a certain date.

14. Will I have to promise to meet other conditions before I am released?

You might. These conditions could include:

- Reporting to a youth worker,
- Staying in town,
- Staying with your parent(s) or another specified person,
- Not having any contact with certain people,
- Attending school or going to work,
- Staying away from a certain place or area, like a shopping mall, or
- Agreeing that you or someone else will pay some money to the court if you do not show up at the next court hearing.

15. If I'm not released at the hearing, how long can I be kept in detention?

You may be kept in detention until your trial. If you feel your case is moving too slowly, ask your lawyer to try to speed things up.

16. What if I think I have been wrongfully detained or detained too long or I want the conditions of my bail changed?

You may ask a judge to look at your situation again. Contact your lawyer for advice on how to do this. You can also tell the worker in the detention facility or the superintendent that you want your situation "reviewed."

17. What if I am being treated badly or there are other problems where I am being detained?

You have rights in detention. You have the right to have your basic needs met, the right to recreation, the right not to be physically disciplined and rights relating to the use of segregation. You have other rights as well. If you have any concerns or questions you have the right to call a lawyer or a child and youth advocate.