



Your rights when police come to your home

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An unexpected visit from the police, asking questions or saying they have a search warrant to go through your house, is a very confronting event. If you find yourself in this position, it is important you are aware of the extent of police powers, and your rights in responding to them.

This article aims to provide a brief overview of your rights and the best way to handle a situation when police come knocking.

What should I do when police come to my house?

Where police are investigating a crime, they may attend at your home seeking to question you, or to execute a search warrant, and maybe even to arrest you.

First and foremost, in such a situation, it is vital that you contact an experienced criminal lawyer to seek legal advice. A lawyer can assist you in dealing with the police to ensure that your rights are protected and that the police investigations are carried out in a fair and lawful manner.

[Get advice from a criminal lawyer: 07 3361 0222 \(available 24/7\)](tel:0733610222)

It is possible, of course, that the police may just want to speak to you as a witness, i.e. that they don't suspect you of any offence. If that is the case, they should say so clearly. Nonetheless, it always pays to be cautious, and legal advice can help you understand when it is advisable to speak to police and when it is advisable not to.

It is important to understand that you have the general right to remain silent when the police seek to question you. There are times however, under some laws, when you are required to provide the police with certain information, such as your full and correct name, your date of birth and residential address. They can also insist on you providing information in respect of some (but not all) [traffic investigations](#).

Police must tell you if you are legally required to answer questions. Otherwise, you are not required to make any comment or statement to police about anything, and the best advice is that you should not do so without first obtaining advice from a lawyer.

Be aware that any conversation between you and the police (whether in person or by telephone) may be being recorded. You do not have to be told that this is happening for it to be done lawfully. There is no such thing as an “off the record” conversation with a police officer or any other person.

It is also important to keep in mind, if you are calling your lawyer in the presence of the police, that police could be listening and/or recording, so it is vital to be aware of your surroundings and refrain from discussing anything confidential that could be overheard.

Do I have to go with police?

During an investigation, police may advise you that you “*have to attend the police station*” with them to discuss the matter further. However, you are not required to go with them unless you are formally arrested or legally detained (discussed below). If need be, ask for this to be clarified – “*Am I under arrest?*”.

What should I do if I am arrested?

If you are under arrest, you can be forcibly taken to a police station. You can be arrested for various reasons, including to prevent you from committing a further criminal offence, establish your identity, or to question you in relation to a criminal offence. It does not always mean you will be charged with an offence.

Generally speaking, the police must tell you that you are under arrest and the reason for the arrest. You have the right to know these things at the time of being arrested.

If you are arrested, it is important that you don't fight with the police or resist their arrest. It is an offence to assault or obstruct police officers when they are carrying out their duties, and the courts take this offending seriously.

If you are arrested, you should seek the advice and assistance of an experienced criminal lawyer.

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Should I go through with an interview with police?

The decision to participate in a record of interview with police should not be taken lightly and shouldn't be done without obtaining legal advice first.

Importantly, your right to silence still applies even if you are arrested or detained by the police. The police will ask you if you wish to participate in an interview or a ‘record of interview.’ You do not have to participate in an interview and can decline to do so. Any comment made by you to the police can be used against you, and therefore our advice is typically against participating in a police interview.

Although you might think that you are helping your position by providing the police with your version of events, or an explanation of your conduct, you can inadvertently do the opposite and make your situation worse.

Your version of events is usually unlikely to influence the police not to charge you. Often a police officer's decision to charge is made even prior to the offer of a record of interview, and then any interview is simply used as a means of seeking further information to help their case.

Further information in relation to the risks of participating in a police interview can be found in our article, [‘Your rights during a police interview in Queensland’](#).

What happens if I am charged with a criminal offence?

Just because you are arrested or detained by the police doesn't mean you are charged with an offence – they are two different things. However, if you are subsequently charged with an offence by the police, there are a few different ways it can occur.

If you are arrested and taken to the police station, the police can charge you and release you on bail there and then. In serious cases, the police can object to your bail and require you to remain in custody until you can be taken to court and apply for bail. This will occur if the police are of the view that there is an unacceptable risk of you committing further offences if granted bail and/or you are at risk of failing to appear at court when required.

Alternatively, the police may release you with a 'Notice to Appear', which is a document stating the charge against you and provides the details of your first court appearance. That means that you will have to attend court at that first court mention and be granted bail by the Presiding Magistrate on the day.

More information in relation to bail can be found in our article, [‘Bail in Queensland – applications, granting and refusals’](#).

What happens if police execute a search warrant?

A search warrant is an official document giving the police the power to search you, your vehicle, your home and/or your place of work.

The police can execute a search warrant in circumstances where they have reasonable grounds to suspect that they will locate evidence of a criminal offence. If this occurs, it is important to:

- ask for a copy of the warrant to be provided to you;
- ensure that the warrant contains the correct details, i.e. your name and/or place of residence/workplace;
- do not assist the police with their execution of the search warrant;
- do not hinder or obstruct the police in their execution of the search warrant; and
- get legal advice.

Further information regarding search warrants can be found within our article, ['Dealing with police search warrants - the do's and don'ts'](#).

Getting help from a criminal lawyer

Gilshenan &Luton are highly experienced criminal lawyers who deal with police officers daily. We have a wide range of experience assisting individuals through the stages of a police investigation, interview and criminal charges.

If you have been contacted by police, you should contact Gilshenan &Luton for legal advice and assistance. We are available 24/7.

Contacting Gilshenan &Luton Criminal Defence Lawyers

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.