

## 2 - My rights during the investigation of a crime

### What is the purpose of a criminal investigation?

The purpose of a criminal investigation is to respond to a complaint of a criminal act by a member of the public or where the Gardaí suspect there has been a breach of criminal law, and to detect the offender(s). It is usually the case that a member of the public will report an incident and the Gardaí will respond by launching an investigation as to whether there has in fact been a breach of criminal law and if so they will begin to investigate the matter further.

### Who carries out the investigation?

In almost all cases the right to investigate crime lies with the Irish Police known as [An Garda Síochána](#). The Gardaí may receive legal guidance as to how best to progress their investigation from the Chief Prosecution Solicitors Office (The Director of Public Prosecutions) who are the legal officers who conduct most prosecutions on behalf of the Irish state.

### What are the stages of a criminal investigation?

The first stage of a criminal investigation is the making of a complaint by a member of the public or the detection of a suspected crime by a Garda (member of the Irish police). The Gardaí will ascertain whether the incident as reported is a criminal offence and if it is they will begin to investigate the offence.

It is at this stage that the Gardaí will decide whether the suspected offence is deemed to be 'serious' or not. The term 'serious' means any offence that could in theory carry a term of imprisonment of at least five years. If the offence falls into this category it can be investigated by the Gardaí by using their power to arrest and detain you in a Garda station and during that detention to question you. The rights of arrest, detention and questioning will be discussed later in this factsheet.

If the offence is not one of a serious nature then the Gardaí will have greater restrictions of their powers. They will usually have the power to investigate the alleged crime but not the power to arrest and detain you for the purposes of questioning. They will only have a power to arrest you for the purpose of charging you with the suspected offence. If they do not arrest you for a non-serious offence then they will usually summon you to court to begin the trial process.

The third stage of an investigation will be the gathering of information that may become evidence in a later trial. This information gathering process may take many forms and the rights of the Gardaí to gather this information will be dependent upon the nature of the suspected crime. The right of the police to arrest and question you also gives them limited powers to gather forensic and other forms of potential evidence from you which will be discussed within this factsheet.

The Gardaí will make a decision either themselves or with the guidance of the [DPP](#) to charge you and what to charge you with. The decision to prosecute crimes of a serious and non-serious nature is often taken by the Gardaí. If the crime is of an unusual or obviously serious nature or one which will require the assistance of the DPP to prosecute then the Gardaí will normally seek the guidance of the DPP.

## My rights during the investigation

Click the links below for more information about your rights during the stages of the investigation.

- [My rights when arrested \(1\)](#)
- [Questioning and the police investigation \(2\)](#)
- [Searches \(3\)](#)
- [First court hearing \(4\)](#)
- [Preparation for trial or entering a plea of guilty pre-trial \(5\)](#)

### My rights when arrested (1)

If the offence is 'serious' then the Gardaí have the power to arrest and [detain you for questioning](#). This means you are taken into custody and that you are not entitled to leave for the remainder of your lawful custody (the maximum period of detention ranges from 24 hours to 7 [days depending on which section of the legislation](#) you are being detained under).

Do the Gardaí need a warrant to arrest me?

No. The Gardaí do not necessarily need a warrant to arrest you. [You may be arrested without a warrant](#) when a Garda has reasonable cause to suspect that you have committed an arrestable offence and that you are guilty of the offence.

Where can they arrest me?

The Gardaí can arrest you in your home or in a public place. Gardaí may enter and search any premises where they suspect you to be in order to carry out an arrest, if they have obtained a warrant. Gardaí may also enter and search any premises (other than a dwelling) when they have reasonable cause to suspect you to be, if it relates to an arrestable offence.

Must I be told the reason for my arrest?

Yes. A Garda must tell you that you are under arrest and the reason for arrest. You are also entitled to be told in a simple language that you are under arrest and the reason for your arrest.

Can the Gardaí use force when arresting me?

Yes. Gardaí can use reasonable force to arrest you. However, if excessive force or physicality is used, you can make a complaint to the Garda Ombudsman. You can also sue the arresting Garda/An Garda Síochána for assault where excessive force was used.

Once you are arrested

You will be brought to a Garda station for questioning or charge. Your rights when in the police station are protected by law and the Member in Charge of the Garda station will be responsible for your rights. The length of time that you can be kept in a Garda station depends upon the statutory power upon which the Gardaí detain you. Please refer to [The Irish Council for Civil Liberties \(ICCL\)](#) for further reading on your rights.

### Questioning and the police investigation (2)

Will I be given a notice of my rights?

Yes. When you are detained under one of these statutory powers then you will be given a notice of your rights in custody. This notice will be in writing and must be translated into your language if you do not understand English.

Can I notify my embassy?

Yes. If you are not an Irish citizen then you have the right to contact your embassy or consulate about your arrest if that is your wish.

I am from another country. Do I have to be in Ireland during the investigation?

Not necessarily. If you are not charged after your detention ends then you are free to leave and to travel. If the Irish state wishes to charge you at a later date you can return voluntarily for that purpose or you can challenge your extradition in your home state. If you are charged after your detention ends then you must be brought before a competent court. A judge will then decide whether you should get bail.

Will I be allowed to speak to a solicitor?

Yes. You have the right to speak to a solicitor in private. You should contact your solicitor immediately. If you do not know a solicitor then the Member in Charge will help you to find one, from a list kept at the Garda Station. If you ask for a solicitor, you cannot be questioned until they arrive, except in exceptional circumstances.

When can I speak to a solicitor?

If you wish to speak to a solicitor you should not be questioned until your solicitor arrives and then you should be given immediate access to them.

Can I have my solicitor with me when I am questioned?

Yes. You do have the right to have your solicitor with you while you are being questioned. A solicitor will be admitted to the interview if that is your wish. A solicitor cannot answer questions on your behalf, but a solicitor is there to protect your legal rights.

What if I cannot afford a solicitor?

If you cannot afford a solicitor, then you may be entitled to have your solicitor's advice paid for under the Irish Free Legal Aid system (see [Factsheet 1](#)). However it is always advisable to seek legal advice and the issue of your financial means can be discussed with your solicitor at a later stage in the process.

How long can I be questioned for during my detention and how will I be questioned?

You can only be questioned for a maximum of four hours at a time. All interviews must be fair. Only two Gardaí may interview you at any time and there should be no more than four Gardaí in the room at any time. The interview should be recorded on video camera unless it is not practicable. You will only be entitled to a copy of the recording if you are prosecuted and the court makes an order releasing it to your legal adviser. The Gardaí will also record your interview in writing.

Do I have to answer questions?

No. [You can remain silent](#) throughout questioning but you should be aware that if you remain silent it may in certain circumstances be used as evidence against you in a later trial. If you refuse to answer certain questions then this refusal may be used with other evidence to support a finding of guilty against you. In certain specific circumstances, the Gardaí must tell you what could happen if you don't answer the questions.

If I am asked for information should I provide it?

You are obliged to give your personal details to allow the Gardaí to identify you. You should seek legal advice before deciding to provide any further information. If you are under arrest for the purpose of questioning then you are suspected of a serious criminal offence and any information you provide may become evidence against you in any future trial.

What happens if I say something which is bad for my case?

You have the right against self-incrimination. If your answers are bad for your case, then your legal advisers will advise you about the consequences, which will usually be that what you say becomes evidence against you.

Do I have to give my fingerprints and allow myself be photographed?

Yes. If you are detained in a Garda station, your fingerprints (and/or palm print) and your photograph can be taken without your consent. The Garda can also use reasonable force to take the fingerprints (and/or palm print) and

photograph with the authorisation of a Superintendent. It is a criminal offence to obstruct the taking of either fingerprints or photographs.

Can the Gardaí keep my fingerprints forever?

Yes. However you or your legal adviser can write to the Gardaí and ask that the materials taken be destroyed if there is to be no prosecution or if you have been acquitted at trial.

Do I have to give DNA or other more intimate bodily samples?

If you are detained under a statutory power then the Gardaí need authorisation from a senior officer to allow them to take intimate samples such as DNA, saliva, nail clippings, hair, a footprint, material found under a nail or swab from your mouth. They are not allowed to take a dental impression, blood, urine, pubic hair or a swab from your genital region or any other body opening (other than your mouth), without authorisation, unless you consent. If you obstruct the Gardaí in taking any of these samples, you may be guilty of an offence.

Can my home, business premises, car or other property be searched?

Yes. The Irish Constitution and European Convention of Human Rights require that your bodily integrity and privacy are respected, but these rights are limited. The Gardaí may search your home with your consent or without your consent if they have a search warrant or are going onto your property to find you to arrest you if they have reasonable cause. For more information about searches, see [Searches 3](#).

Can I appeal against a breach of my rights?

You should tell your legal advisers about any breaches of your rights and they will advise you as to how and when to challenge such breaches.

Who is the Member in Charge?

The Member in Charge is a member of the Gardaí who is responsible for your welfare and the protection of your rights. Every Garda station must have one present. If you have any problems during your time in custody you should ask to speak to the Member in Charge.

Can I speak to my family?

Yes. You can have a member of your family (or another person of your choice) told that you are being detained, and in which Garda station. This does not necessarily mean you have a right to talk the person. However, this person can also visit you, but only if the member in charge is satisfied that the visit can be supervised and it will not delay the investigation of the crime.

What if I feel unwell and what about my right to rest and refreshments?

You have the right to medical attention, and should ask as soon as you need it. You have the right to proper periods of rest and to refreshments during your detention. You should get at least two light meals and one main meal in any 24-hour period. You are also entitled to a reasonable time for rest, however this may extend your period of detention in certain circumstances.

Will there be a record kept of my time in custody?

A record will be kept of your time in Garda custody and of other relevant details. You or your legal adviser will be entitled to a copy.

What if I do not speak or understand English?

You have the right to have an interpreter to translate on your behalf. You or your legal adviser should insist that the interpreter who interprets any private consultation between you and your solicitor is not the same interpreter who interprets your question and answer session with the Gardaí. An interpreter should be available at all times where either a solicitor or Gardaí wish to communicate with you.

How long can I be detained for?

The maximum period of detention ranges from 24 hours to 7 days [depending on which section of the legislation](#) you are being detained under.

## Searches (3)

Do I have to be told why my property is being searched?

You can ask and should be told why the search is being carried out and under what power. If your property is searched you will be entitled to a copy of any search warrant at a later stage.

How can the Gardaí carry out the search?

Gardaí must carry out the search in a fair and respectful way. You also have the right not to be treated in a degrading way during the search.

Can the Gardaí take away anything with them?

Yes. They can seize any items that they reasonably believe they can use as evidence. They can also take away items which may not have been specified on any warrant but which may be evidence of a different criminal offence.

Can I remain in my property when the Gardaí are carrying out a search?

Yes. You can observe the way in which a search is carried out, however, you are not allowed to do anything which may obstruct a lawful search. You could commit a criminal offence if you obstruct a search.

Can I personally be searched?

Yes. If a Garda has a reasonable suspicion that you have committed a criminal offence then they have powers to search you without your consent.

Do they have to arrest me first?

No. You can be searched prior to arrest.

Do I have to be told the reason for the search?

Yes. The Garda should tell you the reason for the search and the power they are relying upon to search you.

Can I be strip searched?

Yes. You should only be strip searched if it is necessary. A strip search should take place in a private area of a Garda station and not in a manner that causes harassment to you. If possible a doctor should carry out the search.

Will I be searched by someone of the same sex?

You should be searched by someone of the same sex if the search is more than a 'pat down search' (search of clothing).

## The first court hearing (4)

Can I be held in custody or released?

You can be held in custody if you are brought from a Garda detention to court and refused bail by the court.

Can I make an application for bail?

In most cases you can [apply for bail](#) during your first appearance in the [District Court](#) (lower court). In limited circumstances (for example the charge of murder) you must apply to the High Court and will therefore have to spend some time in custody before that application.

You are entitled to legal representation and depending upon your income this representation will be paid for under the free legal aid scheme.

Can I be told why bail is being opposed by the Gardaí?

Yes. You must be told in advance about the reasons why the Gardaí object to the granting of your bail. You have a right to bail but it is not absolute. [Bail can be refused](#) when a judge is of the opinion that if granted bail, you will either not turn up for your trial, interfere with witnesses or commit further serious offences whilst on bail, or other relevant reasons.

Can I be given conditional bail?

Yes. You may be granted bail with conditions such as the surrendering of your passport, residency within the Irish state while awaiting trial and reporting regularly to a Garda station to ensure your compliance with these conditions.

## Preparation for the trial or entering a plea of guilty pre-trial (5)

Can I plead guilty to all or some of the charges before the trial?

Yes. You can plead guilty to the offence at any stage in the criminal proceedings against you in court. You will only be given a trial if you enter a plea of not guilty. If you enter a plea of guilty then you will not be given a trial but rather you will be given a sentence hearing.

What happens?

If you do not seek a trial then you are accepting one or a number of the offences with which you are charged. You cannot use plea bargaining to reduce the severity of your sentence or conviction as it has no statutory basis in the Irish law. However in practice, the DPP may accept a plea to some charges and agree to withdraw others. If you enter a plea of guilty then you will be sentenced at a later date and may or may not be placed in custody before the sentence hearing.

What happens at my sentence hearing?

Unless there is a mandatory sentence, such as life in the case of murder, you have the right to a sentencing hearing and to have your legal advisor address the court in relation to your role in the crime and your personal circumstances.

If you are charged and plead guilty to a summary offence, The District Court Judge will issue your sentence after listening to your legal representative and the prosecution. If you are charged and plead guilty to an indictable offence, you will be required to sign a plea of guilty. Before you sign a plea of guilty, the District Judge will first make sure that you are aware of the facts alleged against you and that you understand the nature of the offence. You will then be sent to the Circuit or Criminal Court for sentencing.

Can the charges be changed before the trial?

Yes. The DPP can add additional charges up to and during the trial date. They can also withdraw charges up to the trial date. The DPP have the right to serve additional evidence up to and during the trial. The DPP must act in accordance with fair procedures and cannot withhold evidence or disclose materials in their possession which are relevant to you and your legal advisers.

Can I be charged with an offence which I have already been charged with in another Member State?

If you have been charged and tried for an offence in one Member State then you cannot be charged with the same offence in another Member State. However if you have been charged in one Member State but the charges have been withdrawn then you may be charged with that offence in Ireland.

Will I get information about the evidence against me?

Yes. You must be given documents (commonly known as a 'book of evidence') which comprise of the evidence

against you. In a case of trial on indictment, the prosecution is obliged to give you statements of the evidence against you when you ask for it. You must also be given disclosure of the materials which are produced as a result of the investigation into your alleged crime but which the prosecution do not intend to rely upon.

In summary trials, there is no general duty for the prosecution to provide you in advance with the evidence. You or your solicitor should provide reasons to the court regarding why you need advance disclosure of the evidence.

Will I get information about the witnesses against me?

Yes. You can get some limited information about the witnesses against you. You are entitled to know if they have a criminal record. You are entitled to seek information from them during the trial by way of cross examination by your lawyer or by way of private investigation by your legal advisors.

You are not entitled to an exhaustive list of personal details about the witness. You are not entitled to interfere with a witness in a manner that may be seen as an attempt to intimidate them or pervert the course of justice and such an action may result in your bail being revoked or you facing additional and subsequent separate charges.

In a summary prosecution there is no general duty for the prosecution to provide you in advance with the statements of witnesses, whether or not you request them. You can apply to the court to be provided with the statements, however, it is up to the court to decide whether you can be provided with them.

When will my 'book of evidence' be given to me?

If you are to be tried on indictment for a serious crime then you should be given these documents within 42 days from the date of charge. The court has discretion to extend the time period within which the State has to give these documents to you.

What will be given to me?

The prosecution is obliged to disclose to the defence all relevant evidence which it has before the trial starts. This includes evidence which the prosecution intends to use at your trial, as well as the evidence which it has but does not intend to use.

How do I get my 'book of evidence'?

You will be given your 'book of evidence' by it being handed to you in court by a member of the Gardaí. Additional evidence will usually be served upon your legal advisor at their office or in court.

Will information be requested about my criminal record?

Yes. The Gardaí are entitled to seek information about your previous character for the purpose of their investigation and for the purpose of making a decision about your suitability for bail if charged. They are also allowed to refer to your criminal record if you are convicted to allow the Judge(s) determine an appropriate sentence. A record of foreign convictions can be admitted.

Are there any limitations on when they can refer to my previous character?

Yes. They cannot refer to your previous character during your trial unless your legal advisers introduce your character in their cross examination or submissions to the court.

## Related links

[More detail on the powers of search, detention and charge](#)

[More detail on the role of the Gardai](#)

[Chief State Solicitors Office and the Office of the Director of Public Prosecutions](#)

[More details on legislation](#)

[The Criminal Justice Act 1984 \(Treatment of Persons in Custody in Garda Stations\) Regulations 1987](#)

■ Last update: 08/08/2025

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