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2 - My rights during the investigation of a crime and before the case goes to court

What are the stages of a criminal investigation?

Criminal matters are investigated by the police. The police will typically investigate a case because they have been notified that a person has been a victim of violence or theft, or because the police, or possibly a citizen, have apprehended a person in the act of committing a crime.

Preliminary charge

At first, the police will seek to establish whether a criminal offence has been committed, and whether there are one or more identifiable suspects who may be charged with the crime. In that connection, the police will typically want to question the suspect.

Arrest

The police may detain a suspect.

Preliminary statutory hearing and pre-trial detention (including European arrest warrant)

If the police wish to detain a suspect in order not to jeopardise the police investigations or for some other reason, the suspect must be brought before a court within 24 hours of his or her arrest so that the matter can be submitted to a judge.

Intrusive measures

In addition to questioning the suspect and potential witnesses, the police may obtain information during the investigation by means of intrusive measures such as searches, surveillance of telecommunications, telephone tapping, etc. Most intrusive measures must be approved by a court before they are used.

Decision as to whether or not to file charges against a suspect

The purpose of the police investigation is to provide information that makes it possible for the prosecutor to decide whether or not to file charges against a suspect. If there is insufficient evidence to prove that a suspect has committed a criminal offence, the prosecution will drop the case.

At the local level, the police and the prosecution service are under the same management, so the prosecution service will often be involved at an early stage of the case, including the planning of the investigation.

Preparing for trial by the defence

For more information about the right to be informed about the investigation and to influence it, see [here](#).

My rights during the investigation

Click on one of the following links for further information about your rights at each stage of the case.

- [Preliminary charge, including questioning \(1\)](#)
- [Arrest \(2\)](#)
- [Preliminary court hearing and pre-trial detention \(including European arrest warrant\) \(3\)](#)

- [Intrusive measures, including searches \(4\)](#)
- [Decision whether or not to bring charges against a suspect \(5\)](#)
- [Preparation of the case by the defence \(6\)](#)

Preliminary charge, including questioning (1)

Why am I being charged?

You are charged because the police strongly suspect that you have committed a crime and that the police investigation will from now on focus on you and not some other person.

What does it mean that I am charged?

It means that you will be told what kind of crime the police believe you have committed. The police must tell you which provision of law they believe you have violated. You have the right to follow the investigation of your case through a lawyer, and in case of serious criminal offences you have the right to a court-appointed lawyer.

Why do the police want to question me?

The police want to question you to find out whether their suspicion that you have committed a criminal offence is correct or not. The police will use your statement in their further investigations. Later, the prosecutor will use your statement to decide whether the case should be tried as a guilty plea case.

Where and when may the police question me?

There are no special rules as to where and when the police may question you. The questioning must be conducted so that your rights are not unduly violated. The police are generally not allowed to contact you at your place of work. The police will typically start asking you questions at the crime scene. In many cases, the police will ask you to go to the police station for a more detailed interview.

What if I don't speak the language?

If you don't speak the local language, you have the right to an interpreter who can interpret to and from your own language. The police will provide the interpreter, and you do not have to say anything until the interpreter arrives.

Do I have to make a statement to the police?

You must state your name, address and date of birth to the police. You do not have to say anything else. You do not have to tell the truth. The police must inform you of these rights before the interview. It depends on your case and the gravity of the charges whether it would be favourable to your case that you make a statement to the police. If you don't know whether you should answer questions, you should ask your lawyer.

Will I be able to speak to a lawyer?

You have the right to speak to a lawyer of your own choice before you decide whether you will agree to a police interview. If you don't know a lawyer, the police will find one for you.

Your lawyer has the right to be present during the interview but may not advise you on how to answer specific questions.

Can I check that the police have understood my statement correctly?

The police must write down your statement. You may read the report or have it read to you and then comment on it. It is up to you to decide whether or not you want to sign the report. Many lawyers will advise you not to do so if you do not understand the language.

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

If you have said anything that may harm your case, the police may use the information in their investigations. As a general rule, a police report is not evidence and cannot be used against you at trial on its own. The prosecutor may

ask questions about details of the report. Changing your statement may harm your credibility.

Arrest (2)

Why am I being arrested?

You can be arrested when the police have reason to suspect that you have committed a criminal offence, if arrest is necessary to prevent you from committing other criminal offences, to ensure your presence or to ensure that you do not speak to others. You may also be arrested on the basis of a [European Arrest Warrant](#) issued by another EU Member State.

Can the police arrest me in all types of cases?

You will not be arrested if arrest would be disproportionate to the gravity of the offence with which you are charged. For example, it is highly unlikely that you will be arrested if you are suspected of having committed an offence for which the maximum penalty is a minor fine.

Where will the arrest be made?

The arrest will usually be made at the local police station. You will normally be held in a waiting cell until the police can question you (see [Preliminary charge, including questioning \(1\)](#)).

Can I see a doctor if I need one?

If you are ill, injured or under severe influence of alcohol or drugs, you have the right to see a doctor. You should tell the police that you need to see a doctor, also if you need special medication.

Can I contact a lawyer?

If you have been arrested, you have the right to contact a lawyer of your own choice before you decide whether you want to agree to a police interview. In certain cases, the police may refuse to let you have a specific lawyer. You may complain about this to the court.

Both the police and your lawyer must explain to you that you can have a court-appointed lawyer and who will have to pay for him or her.

Can I contact my embassy if I am from another country?

If you are a foreign national, you have the right to contact your country's embassy. The police can help you contact the embassy.

Can I contact my family?

You have the right to let your family or employer know that you have been arrested. The police may refuse to comply with your request to contact them if they believe that such contact could interfere with the case. The police may choose to inform your family on your behalf.

For how long can I be held under arrest?

You must be released as soon as the grounds for your arrest no longer apply. If you have not been released within 24 hours, you must be brought before a court (preliminary statutory hearing) so that a judge can decide whether you should be released, whether your arrest should be extended (which is possible for up to 3 x 24 hours), or whether you should be held in custody ([Preliminary statutory hearing and custody \(3\)](#)).

When may an arrest be extended beyond 24 hours?

If the judge who hears the case at the preliminary statutory hearing finds that the evidence produced is inadequate for deciding whether you should be held in custody, your arrest may be extended for 3 x 24 hours from the time when the first hearing ended.

Preliminary statutory hearing and custody (3)

Why am I being held in custody?

You are held in custody because the police believe that it is necessary to detain you for a while or as long as the investigation is ongoing. You may also be held in custody to ensure that you will be available for extradition to another Member State under a [European Arrest Warrant](#).

Who decides whether I must be remanded in custody?

A judge decides whether the conditions for holding you in custody are met. Before the judge decides whether you should be held in custody as requested by the police, a hearing is held (preliminary statutory hearing). During that hearing, the prosecutor will present the police's understanding of the case, and you will also have an opportunity to present your point of view. The judge will decide whether to remand you in custody, but not whether you are guilty as charged.

Can I be remanded in custody in all types of cases?

You may be remanded in custody on the following conditions:

- The police must be able to explain why they suspect that you have committed an offence for which you may be sentenced to imprisonment for 18 months or more.
- The potential sentence must be more than 30 days of imprisonment.
- The police must be able to satisfy the judge that it is important that you are not released as long as the police investigation is ongoing, for one of the following reasons:
 - The police believe you will evade punishment.
 - There is reason to believe that you will continue to commit the same type of crime.
 - There is reason to believe that you will impede the investigation if released.
 - The crime is so serious that it would be offensive to others if you were allowed to go free while awaiting trial.

In rare cases you may avoid custody even though the conditions for holding you in custody are met, that is if imprisonment would be extremely burdensome for your personal circumstances. It is important that you inform your lawyer of such circumstances.

Where will the preliminary statutory hearing be held?

The preliminary statutory hearing will be held at the local court. You will normally be held in a waiting cell until you enter the courtroom.

Must I testify during the preliminary statutory hearing?

You do not have to make a statement or tell the truth. It depends on the nature of your case and the gravity of the charges whether it would be favourable for you to make a statement before the court. You should consult your lawyer to determine whether it would be best for you to testify or not.

Will I be able to speak to a lawyer?

[Factsheet 1](#)

You have the right to discuss the case with your lawyer before the hearing. If you and the lawyer do not speak the same language, you are entitled to the help of an interpreter. Your lawyer will protect your interests during the hearing and may also ask you questions.

Can I check that the court has understood my testimony correctly?

The judge will enter the essential elements of your testimony in the court records. Your statement will be read out loud to ensure that it has been understood correctly.

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

Your testimony in court may be used as evidence in the case.

For how long can I be remanded in custody?

The judge will decide during the hearing whether you should be released or remanded in custody. In some cases, the judge will rule that your period of detention must be extended by 3 x 24 hours (see [Arrest \(2\)](#)).

If you are imprisoned, the judge will fix a maximum time limit of four weeks. This means that you must either be released before the expiry of that period, or your case must be brought before a judge again to ensure that the conditions for continued imprisonment are met. There is no maximum limit for the time you may be kept in custody. This will depend on the nature of the case.

You must be released as soon as the reason for your arrest no longer applies.

What is solitary confinement?

Sometimes the police will request that you be kept in solitary confinement so that you have no contact with other prisoners. You may only write to or telephone others under police supervision. It is the judge who decides whether you should be kept in solitary confinement.

Can I appeal against the ruling on custody and solitary confinement?

You can appeal against a ruling on custody or solitary confinement to the high court. The usual way to do this is to say that you want to appeal at the hearing where your case is heard.

Can I avoid custody if I surrender my passport or post bail?

The criminal code makes it possible for you to avoid being detained if you surrender your passport or post bail. However, this rarely happens in practice.

Intrusive measures (4)

During their investigation, the police may obtain information by using various intrusive measures, some of which are described below.

Are the police allowed to take my fingerprints and a photo of me?

The police may take your fingerprints and a photo of you on the following conditions:

- You are suspected of having committed an offence and the measure is necessary for the police investigation.
- The police have good reason to suspect that you have committed an offence for which you may be sentenced to imprisonment for 18 months or more.

Are the police allowed to take DNA or blood samples from me?

The police may take a DNA sample or blood sample from you on the following conditions:

- There are reasonable grounds to suspect that you have committed an offence for which you may be sentenced to imprisonment for 18 months or more, and the measure is considered to be very important to the investigation.
- A blood sample may be taken if alcohol or drug intake is an element of the crime of which you are suspected.

Are the police allowed to search me and my clothes?

The police may search your outer clothing on the same conditions as those applying to the taking of photographs.

Are the police allowed to check my mobile phone and search my car?

The police may check your mobile phone to find your telephone number and the IMEI number of your telephone

and may also search your car on the following conditions:

- The police have good reason to suspect that you have committed a prosecutable offence.
- The search is assumed to be very important to the investigation.

Are the police allowed to search my home?

The police may search your home on the following conditions:

- The police have good reason to suspect that you have committed an offence that can be prosecuted.
- The search is considered to be very important to the investigation.
- The offence may lead to imprisonment.
- The police can substantiate that they are likely to find evidence relating to the crime or objects that the police should seize for other reasons.

Who decides that an intrusive measure is to be used?

The court decides whether your home may be searched. If there is reason to fear that evidence may disappear if the search is not conducted immediately, the police may conduct the search without having obtained a search warrant. The search must be brought before the court within 24 hours after it has been conducted. If you give your written consent to a search of your home, the police can make the decision to search your home.

The police decide whether to take your fingerprints, DNA and blood samples and a photo of you. The police also have the right to check your mobile phone, search your car, etc.

Can I complain?

If you want to complain about the investigation carried out by the police you can file such a complaint with the court.

Court decisions concerning searches and the planning of the investigation may be appealed against to the high court within two weeks of the court's decision.

Can I demand that the police destroy the fingerprints, photographs, DNA traces and blood sample results?

If the prosecution drops the case, or if you are acquitted, the police must destroy their photo of you. The police may keep your fingerprints and DNA samples but must destroy them after a certain period of time.

Can I claim compensation?

If you have been detained, imprisoned or exposed to an intrusive measure, and it subsequently turns out that the detention, imprisonment or intrusive measure was unjustified, you will generally be entitled to compensation. The Director of Public Prosecutions issues an annual notice about the rates to be used when determining the amount of such compensation.

Decision on whether or not to bring charges against you (5)

Once the police have concluded their investigation, your case will be sent to the prosecution service, who will decide how to proceed.

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

If you have admitted during the police investigation that you are guilty of the most serious charges against you, the prosecution will usually try to have the case treated as a guilty plea.

What is an indictment?

The indictment forms the basis of the hearing of the case in court. The indictment must specify the statutory provisions that you are accused of having violated and must contain a description of how you have committed the offence(s). The description must be so precise that you can to prepare your defence on the basis of it.

Can I be charged with offences other than those the police have charged me with?

The prosecution service prepares the indictment. If the prosecution service has a view on the case that differs from that of the police, the indictment may contain new or different counts.

Can new counts be added to the indictment?

The prosecution must try to collect all pending charges against you so that a collective verdict can be delivered. The indictment may therefore contain new counts if you have been charged with an offence on several occasions.

Special rules apply if you have been extradited to Denmark under a [European Arrest Warrant](#) or under an extradition agreement. If you are indicted on new counts, you should consult your lawyer about them.

Can the indictment be changed?

An indictment can be changed or extended if a new indictment is prepared and served, which can be done until the date on which the court proceedings begin.

If the prosecutor in the case believes that the sentence for a count should be stricter than stated in the indictment, such a change is only possible if the Public Prosecution Service agrees to change the indictment. If it is changed, you must be notified within two months.

Once the court proceedings have started, only very limited changes may be made to the indictment. The court decides whether a change will be allowed.

Can I be charged with an offence that I have already been charged within another Member State?

It cannot be ruled out that you may be charged with an offence which you have already been charged with in another country. However, you cannot be found guilty of a charge if you have already been sentenced for or acquitted of it in another country.

Will I receive information about the witnesses against me?

The prosecutor must file the indictment with the court together with a list of evidence stating the names of witnesses. Your lawyer will receive a copy of this list. You usually have a right to know the identity of the witnesses.

Preparation of defence (6)

On what basis can my lawyer and I prepare my defence?

Your lawyer will normally receive copies of all reports prepared by the police during their investigation. You have a general right to see the material. Your lawyer may only give you a copy of the material if permitted to do so by the police.

Am I entitled to see all the material produced by the police?

The police can order your lawyer not to give you certain information about the case material if this is deemed necessary to protect the interests of foreign powers or to provide evidence. Such an order may only be issued in serious cases, and only until you have testified in court.

Who decides whether I can see all the material?

The police will submit the material and decide whether a prohibitory injunction should be issued for part of or all of the case. The police's decision can be appealed against to the court, which will then decide the matter.

Can I participate in all hearings of the case?

Generally, you have the right to be present at all court hearings where the court decides whether you should be remanded in custody, or at which accomplices or witnesses will be examined before the trial.

If requested to do so by the police, the court can decide not to allow you to be present at the hearings. In that case, you have the right to be told what happened at the hearing. The court may rule that you are not to receive such information. You have a right to be told what happened at a hearing you could not attend. At the latest, you must be told when you have testified before the court.

Can my lawyer participate in all hearings of the case?

Your lawyer is entitled to participate in all hearings of the case. This also applies to hearings where the court is to decide whether to allow bugging or telephone tapping, searches or other intrusive measures that require prior court approval.

Can my lawyer participate in the police investigation?

Your lawyer must be informed of the investigation and is entitled to participate in that part of the investigation that may serve as evidence in the case against you. Examples are identification parades, reconstructions, etc.

Can my lawyer conduct his/her own investigation?

Your lawyer will normally ask the police to make further investigations if you believe they have failed to obtain information that could help your case. If the police refuse to make such further investigations, the matter may be brought before the court, which may order the police to conduct the relevant investigations.

Your lawyer may also choose to make his/her own investigation. However, that rarely happens in practice. If your lawyer conducts his/her own investigation of the case, he or she may not obstruct the police investigation, and your lawyer's own investigation must comply with the codes of ethical conduct that apply to lawyers.

Can my lawyer summon witnesses to testify in court?

Your lawyer can ask for certain witnesses to be summoned to testify in court. If the prosecution objects to those witnesses being heard, the court will decide whether the hearing of the witnesses in question is relevant.

Related links

[Danish Administration of Justice Act](#)

[Danish Act on the establishment of a central DNA register](#)

[Director of Public Prosecutions](#)

[Danish Extradition Act](#)

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