When can the police legally arrest you?

Police powers of arrest

Police powers of arrest are set out in the Criminal Procedure Act (Act 51 of 1977). The Act deals with situations where police (and other ‘peace officers’) arrest a person with, and without, a warrant of arrest. Arrests may be carried out to prevent a crime or to secure a criminal suspect before a court of law. If police officers arrest a person without a legal basis, the arresting officer could face a sanction and a civil claim could succeed against the law-enforcement organisation employing the officer.

Arrest without a warrant by a police officer

The Criminal Procedure Act sets out numerous circumstances when a person may be arrested without a warrant, by police (or other ‘peace officers’). Amongst others, these include:

- If they commit or attempt to commit an offence in his or her presence;
- If the police ‘reasonably suspect’ the person of having committed a criminal offence named in Schedule 1. This includes all of the generally known criminal offences such as murder, assault, rape, theft or fraud.
- If they ‘wilfully obstruct’ a police member in executing his or her duties.

The police can also demand that a person provides his or her address. If police ‘reasonably suspect’ that the address is false, they may arrest the person for up to 12 hours to verify the address.

Arrest with a warrant

A warrant of arrest may be issued by a judge or magistrate on written application by a prosecutor or police officer of or above the rank of captain (‘a commissioned officer’). A warrant authorises the police (and other ‘peace officers’) to arrest the person named in the warrant in connection with a specific offence.

Arrest by a civilian

Civilians can also arrest a person if the person commits or attempts a Schedule 1 offence in their presence or if s/he ‘reasonably suspects’ them of committing a Schedule 1 offence (Section 42).

How an arrest is carried out

If a person does not submit to arrest, the police may use reasonable force to arrest them. At the time of the arrest, or immediately after, the police officer must inform the arrested person of the reason for arrest. If the arrest is under a warrant, the person must be given the warrant if it is asked for. The arresting officer must read out the rights of the arrestee at the time of the arrest.
## Rights of arrested and detained persons

In addition to being informed of the reason for the arrest or being provided with a copy of the warrant, the Constitution also provides that people who are arrested, and people who are detained, have specific rights. Some of these rights, provided for in Section 35 of the Constitution are:

1. The right to remain silent and to be informed promptly of this right
2. The right not to be compelled to make a confession or admission
3. The right to be brought before a court as soon as reasonably possible, but no more than 48 hours after the arrest
4. At the first court appearance after being arrested, the right to be charged or informed of the reason for the detention, or to be released
5. The right to be released from detention if the interests of justice permit, subject to reasonable conditions
6. The right to choose and consult with a legal practitioner
7. The right to be assigned a legal practitioner by the state at state expense, ‘if substantial injustice would otherwise result’
8. The right to communicate with, and be visited by, one’s spouse or partner, next of kin, religious counsellor and medical practitioner
9. The right to conditions of detention that are consistent with human dignity, including at least exercise and the provision of adequate accommodation, nutrition, reading material and medical treatment

In line with the right to be treated with dignity, police standing orders provide that physical searches of people who have been arrested may only be conducted by a person of the same gender.