

# Arrest/Interview Rights\*

## Fingerprints

- > If you are **over 15 years old AND the offence is serious, you must** give fingerprints. A lawyer can tell you which offences are serious.
- > Police **can use “reasonable” force to get fingerprints**. This must be taped, at least with sound (but probably not with video).
- > Your fingerprints are **destroyed if no charges are laid within 6 months** of the fingerprints being taken, or if a court finds you not guilty.
- > **Forensic samples are kept for 12 months** (swabs, hair, saliva etc) unless you are awaiting trial, or if a court finds you guilty.

## Photos / ID parades

- > You have the **right to say no to police taking your photo**, unless a court orders it. Police may want your photograph to show which cell you are in or for when you sign the bail book, if you get bail.
- > You have a **right to say no to police taking a photo of tattoos, piercings, birthmarks or other body parts**.
- > You have the **right to say no to an ID parade (line up)**. Police cannot ask a court to order you to do it.

## Arrest Rights

### When can police arrest me?

- > Police can arrest you if they form a **“reasonable” belief** that you are **breaking the law**.
- > This includes if police see you **in a car with a mug**.
- > Just **one police officer can** arrest you. Two police officers are not needed to arrest you.

### Phone calls

- > You have a right to **call a lawyer and a support person**, in private. Police cannot say no if you ask to call a lawyer.
- > Police can say no if you ask to call a friend or family member if police think it will place someone in danger, lead to evidence being lost or that it will help another offender get away.

### Your things

- > If you are held in a cell, the **police will take your personal things**. You will not get them back if they are evidence or proceeds of a crime (such as cash from selling drugs).
- > If you do not get your personal things back, you can **apply to a court to ask for them back**. You have 28 days to apply from the time the charge is withdrawn, or when you are found guilty or not guilty.

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## Interview Rights

### What are my interview rights?

- > You have the right to be told your rights before an interview (**the “caution”**).
- > You have the right to **make a “no comment”** interview and not have this held against you.
- > You can always tell your side after you **speak to a lawyer**.
- > You have the right to a **copy of the interview** on DVD but it will be sound only, and will not show a video of your interview.
- > If you are **under 18, you have a right to have a parent or an independent person** at the interview (police can arrange this).

### Your health

- > You have a **right to see a doctor** if you need to and you can **receive prescribed medicine**, including methadone and bupe. It is important to ask for this before an interview.
- > If you have a mental illness, you have a right to have an independent third person with you during an interview (police can arrange this). This person can be from an independent organisation or it can be a friend. It is best not to choose someone who is involved in the incident.

# Sexual Assault\*

## What is a general assault?

- > When you are deliberately **struck or hit, touched inappropriately** or without asking (someone grabs your boobs or crotch), or they hold you down **against your will**.
- > It is also an assault if you are threatened or made to feel fear. You do not need to be hit for it to be an assault. Being spat at or threatened verbally can be an assault.

## What is a sexual assault?

- > Any **sexual behaviour that makes you feel uncomfortable, frightened or threatened** can be a sexual assault.
- > If someone uses emotional or physical violence to **force you into a sexual act**, it is sexual assault.
- > Anyone can be sexually assaulted, whatever their gender.

## Reporting a sexual assault

### 1. Getting help

The **Centre Against Sexual Assault (CASA)** has a 24 hour crisis care line. They can give information about accessing medical care and legal processes. Call **1800 806 292**

If you see a doctor or go to hospital after a sexual assault, it's a good idea to **ask for photos of injuries**. Photos & doctor's notes are evidence, if you choose to make a statement to police.



### 2. Making a statement to police

If a doctor hasn't photographed your injuries, you could ask the police to take photos when you make a statement.

Some police stations have a Sexual Offences and Child Abuse Investigation Team (SOCIT). SOCIT police are trained to investigate sexual assaults and focus on your welfare.

..... or .....

If you can't get to a SOCIT, you can make a statement at any police station. Police must offer, within 2 hours, to take you to a Centre Against Sexual Assault (CASA) or hospital crisis care.



### 3. Legal process

If police decide not to proceed, you have a right to be told.

If police do proceed, they will put together a **'brief'** of findings and **charge** the offender.

A **committal hearing**, with a magistrate, decides if there is enough evidence for trial.

At **trial**, a defendant pleads guilty or not guilty.

If the defendant pleads not guilty, you will be cross-examined.

### ...or complaint goes no further

After you've made a statement to police, if you don't want to continue, police may request a **'No further complaint'** statement.

Police might still decide to proceed.

## Who can I report a sexual assault to?

- > You can **'Report an Ugly Mug'** to RhED, the Salvation Army Crisis Centre Health Information Exchange (HIE) or to St Kilda Gatehouse. **RhED can support you** to make a report to police.
- > 'Ugly Mugs' alerts are about **any type of assault, violence, robbery, intimidation or harassment**.

## SEXUAL ASSAULT IS NOT A 'PART OF THE JOB'.

## Why report a sexual assault?

- > Sexual assault is **not a 'part of the job'**.
- > You might **stop the ugly mug from hurting other people**.
- > It is easier to get **Victims of Crime help** with a police report.

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**CASA crisis care line:** ☎ 1800 806 292

**SOCIT Moorabbin:** ☎ (03) 9556 6128



## MAKE A 'NO COMMENT' INTERVIEW UNTIL YOU SEE A LAWYER.

### If someone overdoses will police be called if I call an ambulance?

- > Only if someone dies or you become aggressive with paramedics (even if they don't feel threatened).

### Can police check my body for needle marks?

- > It is **not an offence to have marks** on your arms.
- > You **can say no to rolling up your sleeve** but it may be easier to do it and make a complaint later. **Talk to RhEd or St Kilda Legal Service for help with making a complaint.**

### Can I be arrested for having syringes?

- > You can carry syringes, but **used syringes, foil or drug backs can be used as evidence.** Dispose of used syringes and packages safely as soon as you can.
- > **Never admit to using**, even in the past. Police can charge you.
- > **If you don't safely dispose of syringes**, it is littering and a public health risk. You can be fined.
- > **Police will test used syringes for traces of drugs.** More than 1 syringe can mean more than one possession charge.

# Drugs & The Law\*

## Charges & Penalties

	Charge	Max. Penalties**
Use	<ul style="list-style-type: none"><li>&gt; Smoking, inhaling fumes, injecting or swallowing a drug.</li><li>&gt; It is a crime to inject someone else. If that person dies, it is more serious.</li></ul>	<ul style="list-style-type: none"><li>&gt; Cannabis fines: 5 units (about \$700).</li><li>&gt; Other drugs: 30 units (about \$4225) and/or 1 year jail.</li><li>&gt; Some magistrates will show sympathy for addiction but will want to see you trying to beat the addiction.</li></ul>
Possession	<ul style="list-style-type: none"><li>&gt; Includes having a drug on you, where you live, or in a car you're using.</li><li>&gt; If you didn't know the drug was there, <u>you</u> have to prove that.</li></ul>	<ul style="list-style-type: none"><li>&gt; If you have less than 50 grams of cannabis: 5 units (about \$700).</li><li>&gt; For other drugs: 400 units (about \$56,300) or 5 years.</li><li>&gt; Possession of instructions for manufacture: 10 years.</li></ul>
Trafficking	<ul style="list-style-type: none"><li>&gt; Selling or just agreeing to sell, making, mixing, packing, exchanging or offering drugs.</li><li>&gt; Selling drugs to a friend or buying them with money a friend gives you.</li><li>&gt; Having drugs you plan to sell (but haven't sold yet) can still be trafficking if it is a traffickable quantity.</li></ul>	<ul style="list-style-type: none"><li>&gt; Traffickable quantities (mixed amounts): 3 grams for speed, cocaine, heroin, ecstasy, meth (ice) and 250 grams/10 plants for cannabis.</li><li>&gt; Much higher amounts than these are needed to be considered "commercial quantities" under the law.</li><li>&gt; Depending on the amount trafficked and circumstances, fines go as high as 5000 units (over \$700,000) or life in jail.</li><li>&gt; Trafficking a commercial quantity usually means jail time.</li><li>&gt; Traffick to a child: 2400 units (over \$330,000) and/or 20 years.</li></ul>

\*\*1 penalty unit = \$140.84 (at March 2013). All depend on the circumstances.

### Can I drink alcohol in public?

- > You can be given an **on-the-spot fine** for drinking in public.
- > The police can take your alcohol as evidence.

### First offence

- > First-time cannabis users are **usually cautioned.**
- > Other drug users may be cautioned the first time and **referred to a drug treatment centre.** Not going means you may be charged.
- > First-time possession charges might mean you're **offered a bond.**

### Trafficking & DNA testing

- > The **prosecution must apply for a DNA test** for any type of trafficking charge. Your lawyer can oppose it but if you have a history of drug charges, the court will likely grant the application.

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TALK TO RHED OR  
ST KILDA LEGAL SERVICE.  
THEY CAN HELP.

## Can police search my property without a warrant?

### Search CAR without warrant

- > Police think you have weapons, drugs, explosives, or if you are on public transport and they think you have graffiti gear.
- > Police can search anyone for weapons in a "designated area" that police set up at a rail station or along a street (usually for 12 hours).

### Search HOME without warrant

- > Police suspect you or someone in your house has committed a serious offence or escaped from custody.
- > Police need to stop a fight.
- > An intervention order is breached.
- > Police think drugs are in the house.

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# Property Searches\*

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RhED (Resourcing health & education in the sex industry) with  
St Kilda Legal Service, 2013 - **Shining light on street workers rights**

# Loitering\*

## What is loitering?

Standing in one place or walking back and forth, **with the intention to commit a crime.**

- > You can be charged with loitering if you are just sitting in a car.
- > Never admit to loitering or soliciting.

## What isn't loitering?

**Hanging around to catch a taxi**, even if on your way to a mug.

- > Your intention is the most important part of a loitering charge - why you were hanging around.
- > If police charge you with loitering when you are not working, or committing a crime, you can contest it.

## Court

- > If you get charged, **talk to RhED or St Kilda Legal Service.** They will **help you find case workers and lawyers** who can help.
- > Melbourne workers have offences heard at the Loiter Court, in the Melbourne Magistrates Court building.
- > The Loiter Court is **less formal than other courts.**
- > At the Loiter Court, the magistrate will have sentencing options that likely won't involve a fine. These can include drug treatment programs or referral to the care of a RhED case worker.
- > Regional workers may not be able to appear in the Melbourne Loiter Court but ask a lawyer if it can be arranged.

## Maximum penalties:

- > 1 penalty unit = \$140.84 (at March 2013).
- > Maximum penalties for workers are for information only. They are NOT the usual for workers who appear in the Loiter Court. The maximum penalties are:
  - 1st offence**  
5 penalty units or 1 month jail.
  - 2nd offence**  
15 penalty units or 3 months jail.
  - More offences**  
25 penalty units or 6 months jail.
- > The **fine is at least double** (but jail is the same) **if loitering near a church, hospital or place where children normally go** (school, beach, playground).

*\*This legal information is of a general nature, you should seek advice from a lawyer.*



# Body Searches/Samples\*



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## What should I do if I'm searched?

- > You have a **right to be told why** you are being searched.
- > Get a **receipt for anything police take** from you.
- > Cooperate if police are allowed to search you, or they might charge you with hindering police.

## Can I say no to a body sample such as saliva, hair or genital swab?

- > Yes, but police can seek a court order if you say no to an intimate search or swab.
- > A senior police officer does not need a court order to get non intimate body samples, such as hair, fingernails or saliva.

	Pat down search	Strip search	Internal search
<b>Where</b>	Anywhere.	In private. Can be in a police car for a weapons search.	In private.
<b>What</b>	Empty your pockets, take off your jacket, shoes, socks and hat.  Can involve looking in your bag.	Removal and search of your clothes. Police must consider your dignity, privacy and modesty.  Keep jewellery on, unless police think it is stolen.	Searching inside your body. This can include ultrasound, MRI or x-ray.
<b>How</b>	Police use their hands to feel over your clothes.  Police can search for weapons with a metal detector.	Police should not touch you.	Doctors should behave professionally.
<b>Who</b>	Should be done by an officer who is the same sex as you.  Transgender persons have the right to an officer of the sex they identify with.	Must be done by an officer who is the same sex as you.  Transgender persons have the right to an officer of the sex they identify with for a strip search.	Must be done by a doctor who is the same sex as you.  Transgender persons have the right to a doctor of the sex they identify with for an internal search.
<b>Support</b>		If you're under 18 you can have a parent or independent person attend a strip search.  If you have a mental illness you can usually have an independent third person (ITP) there.	If you're under 18 you can have a parent or independent person attend an internal search.  If you have a mental illness you can usually have an independent third person (ITP) there.
<b>Do you have to?</b>	If police think you are carrying drugs, weapons or explosives.  If you are on public transport and police think you are carrying graffiti gear.	Police don't need a warrant to strip search for weapons. They probably don't need one for other serious evidence but speak to a lawyer if you don't want to cooperate.	Police can ask for one, but if you say no they need a warrant.