

This pamphlet sets out what you should know when you, or one of your friends or relatives, is arrested and detained.

Do the Police need a warrant to make an arrest?

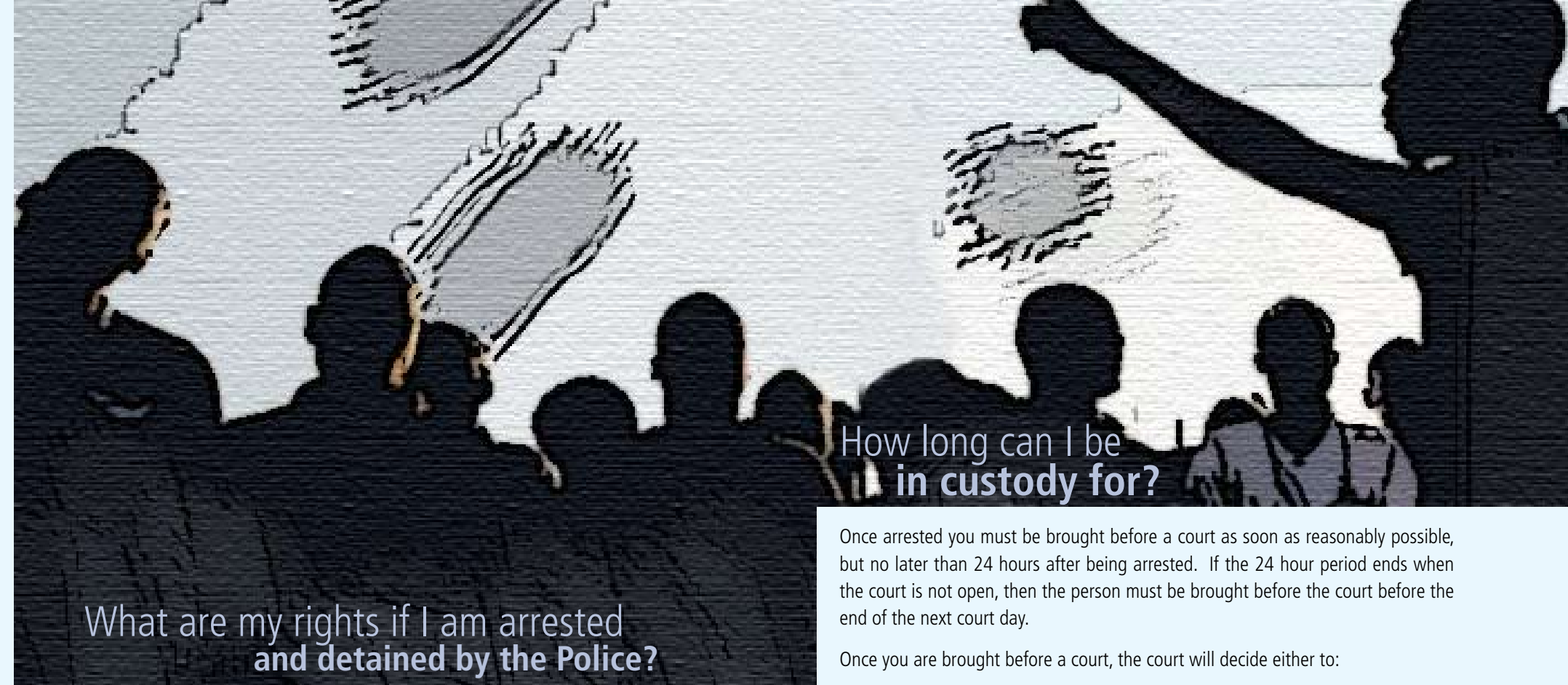
Normally, yes. However, the police do not need a warrant in the following situations:

- The police reasonably suspect the person has committed a cognizable (serious) offence
- The police reasonably suspect the person of committing an aggravated assault
- The person obstructs the police from doing their work
- The person has escaped police custody or is trying to escape
- The person has 'breached the peace' in the presence of the police officer
- The person has property that the police reasonably believe is stolen or part of a crime
- The person is a deserter from the armed forces
- The police officer reasonably suspects the person has committed, or is about to commit, a felony
- The police officer reasonably believes there is a warrant out for this person

Can the police use force to arrest me?

Police officers conducting an arrest can use force – but only the amount of force that is necessary in order to make the arrest. If you don't resist arrest, the police cannot use force.

They also cannot use force when they are questioning you – this is a crime. They are not allowed to beat you, hit you or kick you.



What are my rights if I am arrested and detained by the Police?

At the time of arrest, the police must tell you, in a language that you understand:

1. The reason for the arrest
2. That the person has the right to remain silent
3. What the consequences of not remaining silent are

You also have the following rights:

- To Remain silent.
- To talk to a lawyer, or other people that can provide assistance. You can access legal aid, or choose your own lawyer.
- To be released on bail or bond pending a charge or trial unless there are compelling reasons not to release you
- You cannot be forced to make a confession or statement that could be used against you.
- To be held separately to people convicted of a crime by the court.
- To communicate and receive visits from family subject to reasonable conditions.
- To tell your family of your arrest and where you are being held.
- To access medical assistance.
- To lodge complaints about the way the police are treating you. These complaints will be investigated by the Independent Policing Oversight Authority (IPOA) or the Internal Affairs Unit of the police.
- To speak to the IPOA in private if they visit where you are being held. The IPOA can visit at any time, unannounced, and the Police must cooperate with them.
- To all the rights and freedoms in the Bill of Rights (Constitution), except where it is clearly incompatible.

How long can I be in custody for?

Once arrested you must be brought before a court as soon as reasonably possible, but no later than 24 hours after being arrested. If the 24 hour period ends when the court is not open, then the person must be brought before the court before the end of the next court day.

Once you are brought before a court, the court will decide either to:

1. Release you completely.
2. Release you on bond or bail until a charge is laid or - if you have been charged with an offence – until the Court trial is held.
3. Keep you in custody for a longer period. The Court can only order this if there are compelling reasons.

You cannot be held in custody if you have been arrested for an offence which is only punishable with a fine or a jail sentence of less than 6 months.

What happens if I am not brought before a court within 24 hours?

You can petition for an order of habeas corpus – this means you can ask to be brought before a court. You can ask your lawyer to help you do this. Also, if a police officer does not bring you before a court within a reasonable time, and at least within 24 hours, they may be held liable for an offence.

Will I be held in a separate cell to a man? I am scared!

Yes you will be. Women and men must be held separately. Also children must be held separately to adults.



What will the lock-up facility be like?

You can only be held in an official lock-up facility that has been officially declared. You cannot be kept in a secret place that other people do not know about. The lock-up facility must have:

1. Hygienic conditions
2. Adequate light, toilet facilities, washing facilities and an outdoor area.

How will anyone know when I was arrested and locked up?

The police officer in charge of a police station must keep a register of all people arrested and detained, including the following details:

- Name of person arrested and detained and reason why person detained
- Date and time of the arrest and detention
- Date and time that the person was brought before a court
- Name of the police officer who arrested the person
- Date and time of any questioning and interrogation – and the name of the police who conducted the interrogation
- Details of any transfer to another place of detention

What happens if a person dies in custody?

The officer in charge must notify the Independent Police Oversight Authority. If this is not done, the IPOA will start an investigation into this failure and the police officer may be guilty of a criminal and disciplinary offence.

Torture and Degrading Treatment

The Constitution says that you cannot be tortured or treated in a cruel, degrading or inhumane way. There are absolutely no circumstances when the police can do this. This is very clear in the Constitution.

If the police do torture you, they can be sent to prison for up to 25 years. If the police treat you in a cruel, degrading or inhumane way, they can be sent to prison for up to 15 years.

What can I do if the Police violate my rights?

You should make a complaint if you or someone you know has been tortured or treated very badly in police custody. You can make a complaint to the:

- The police themselves – to a different station or officer
- Independent Policing Oversight Authority
- National Police Service Commission
- Kenya National Commission on Human Rights or other relevant Commission
- To the High Court: the High Court can hear any matter relating to a violation of a person's rights under the Constitution.

Policing in Kenya Know Your Rights



Arrest and Detention

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