

If you are suspected of a criminal offence



de Rechtspraak



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About this brochure

This brochure provides information about what to expect if you have been arrested for a criminal offence. It explains the role of the various people involved in the criminal justice system, how long you can be held in custody or on remand, and sets out your rights and responsibilities. It also tells you where you can obtain further information at each stage of the procedure. You can also contact your own lawyer or the local office of the *Juridisch Loket* (Legal Advice Centre). Details of other brochures and useful addresses are given at the rear of this brochure.

Arrest and questioning

You have been arrested on suspicion of having committed a criminal offence. The police may wish to question you further at the police station. If so, they are entitled to hold you for up to six 'working' hours. The hours between midnight and 9 am do not count towards this period. For example, if you are taken to the police station at 9 o' clock in the evening, the police can detain you for questioning until 12 noon the following day.

Police custody

Sometimes, six hours will not be enough time for the police to ascertain all the facts of the matter. An 'assistant prosecutor', usually a senior police officer, can authorize an extension of this period to allow further investigations. This decision is not taken lightly and he (or she) will interview you before signing the necessary order, or 'warrant'. If the extension is granted, you can be held without charge for a further 72 hours (including the nighttime hours). You will be given a copy of the warrant. Note that the 72-hour extension period applies *only* in the case of 'arrestable' criminal offences for which the law allows suspects to be held on remand prior to trial, such as theft and possession of drugs with intent to supply.

You can be held in police custody:

- if considered necessary in the interests of the police investigation
- if ordered by a duly authorized senior police officer or the assistant prosecutor
- if that officer has interviewed you in person
- if the alleged offence is 'arrestable', e.g. theft or possession of drugs with intent to supply.

Review by an examining judge

Within three days and fifteen hours of the time of your arrest, you must be brought before the *rechter-commissaris*, or 'examining judge'. He (or she) will determine whether your further detention is justified. In certain circumstances, he can order you to be placed on remand awaiting trial. You can also request him to order your immediate release. If he considers further detention to be unwarranted, he will do so.

Your lawyer

If you are detained in police custody, you will automatically be assigned a lawyer to provide legal assistance free of charge. This lawyer ('solicitor' or 'attorney') is entirely impartial and has no connection with either the police or the prosecutor's office: his name just happens to be on the duty roster at that time. Of course, you can also appoint your own lawyer who may also be able to provide his services free of charge depending on your personal financial circumstances. It is advisable to discuss the matter of fees during your first meeting. Your lawyer, whether court-appointed or selected by yourself, will provide advice and support throughout the legal proceedings.

Probation service

If you are detained in custody, the Probation Service will be informed accordingly. Probation officers deal with all those who come into contact with the criminal justice system. Their primary task is to prevent re-offending. A probation officer visits every suspect held in custody. You will be able to discuss any problems you have, and the probation officer will devise an 'action plan' to resolve those problems. The probation officer is able to report your personal circumstances to the prosecutor at an early stage of the proceedings. This information may be important when deciding whether or not you are to be placed on remand awaiting trial.

Further extension of police custody

In principle, you can be held in police custody for up to three days. During this period, the police will consult the public prosecutor, known as the 'Officer of Justice', to determine what is to happen next. There are three possibilities:

- The Officer of Justice decides that you must be detained even longer in the interests of the police investigation. He is able to order a further extension of police custody of up to 72 hours. You will be given a copy of the extension order.
- The Officer of Justice decides that further detention will serve no useful purpose and will order your release pending trial.
- The Officer of Justice is unable to reach a decision because insufficient progress has been made in the investigation thus far. He will then order you to appear before him for further questioning (see page 6).

Rights and restrictions

If necessary, the police can impose certain restrictions on you while you are in custody. You may, for example, be prohibited from making telephone calls or sending post. The police have the right to search you and can confiscate certain objects and items of clothing. They can also restrict or prohibit contact with certain individuals. You may be photographed and your fingerprints taken. The police are also entitled to seize objects and property that they consider important to their investigation. If do not wish to relinquish these items, you may lodge an objection with the court. Your lawyer can advise you further. (Note that this list of restrictions is not exhaustive.)

You also have certain rights while in custody. You are, for example, entitled to an outdoor exercise period at least twice a day (provided the police station at which you are being held has suitable facilities). You are also entitled to order food to be brought in from outside (at your own expense). Subject to certain restrictions, you and your lawyer are entitled to see all documents relating to the case. If you are a foreign national, you are entitled to have your embassy or consulate informed of your arrest. (Note that this does not happen automatically: you must expressly request the police to contact the embassy on your behalf). In most cases, you are entitled to a visit from a consular official if you wish.

Appearance before the Officer of Justice

Following the permitted period of police custody, you will be required to appear before the Officer of Justice. He will have received the dossier on your case from the police, and therefore knows the details of the alleged offence and what you have said during questioning. He will also have any witness statements and details of any (forensic) evidence which exists. If the Probation Service has produced a report, the Officer will have this at his disposal. He will also know about any previous arrests and/or convictions you may have. During this appearance, the Officer of Justice will question you further about the exact circumstances of the alleged offence.

What happens next?

Following this appearance, there are two possibilities:

- The Officer of Justice considers it unnecessary for you to be detained any longer and you will be released. However, this is not necessarily the end of the matter: you may still face prosecution. If the Officer of Justice decides to take the matter to court, you will receive a summons, either before you leave the office or later by post. (See: 'Prosecution', page 10.)
- The Officer of Justice considers it appropriate for you to be held 'in detention'. He will then request the examining judge to issue the necessary order. Before doing so, the examining judge will wish to interview you (in the presence of your lawyer if you wish). You then have the opportunity to state your side of the story.

Detention

If the examining judge grants the Officer of Justice's request, you will be placed 'in detention'. In most cases, you will be taken to a detention centre (*huis van bewaring*: literally, the 'house of keeping') although it is also possible that you will be returned to the police cells. The maximum detention period is fourteen days. It cannot be extended.

Remand

After fourteen days, the period of detention expires. If the Officer of Justice considers it necessary for you to remain in custody, he will request the court to issue a *remand order*. Once again, you will be given the opportunity to state your case before the decision is taken. A remand order is for a maximum of ninety days. Where the order is issued for a period of less than ninety days, it can be extended to a period of up to ninety days by the court at the request of the Officer of Justice.

Pre-trial arrest: schedule

Detained for questioning	By:	the police
	Period:	6 hours (excluding the hours between midnight and 9 am.)
	Location:	police station
Possible extension*:	By:	the police
	Period:	6 hours (excluding the hours between midnight and 9 am.)
	Location:	police station
Custody order:	By:	(Assistant) Officer of Justice
	Period:	no more than six days (2 x 3 days)
	Location:	police station
Detention	By:	examining judge
	Period:	no more than fourteen days
	Location:	detention centre or police station
Remand	By:	the court
	Period:	no more than 90 days
	Location:	detention centre or prison (following arraignment)

* Where the nature of the alleged offence does not permit detention in custody, the interview is solely for the purpose of confirming the suspect's identity.

The total time spent in custody and on remand prior to conviction is also known as 'pre-trial arrest'. If sentenced to a period of imprisonment, the time spent in custody prior to sentencing will usually be counted towards the period you actually serve.

Release from custody

Pre-trial arrest can be cancelled at any time, whereupon you will be released immediately. It can also be 'suspended', whereupon you will be released subject to certain conditions. This is similar to the 'bail' arrangements in other

countries. If you breach the stated conditions, you can be returned to custody. You can apply for cancellation or suspension of the pre-trial arrest. Your lawyer can advise you about the necessary procedure. The decision is made by the court.

Appeal

You can appeal against a remand order (or an extension to a remand order) to the *gerechtshof* or Court of Appeal. You can also appeal against a lower court's decision to refuse termination or suspension of pre-trial arrest, in which case you must lodge your appeal within three days of the court's decision. Note that only one appeal is allowed: if you appeal unsuccessfully against the first remand order, you cannot appeal against a subsequent extension. Similarly, if you appeal unsuccessfully against the first extension, you cannot appeal against the second extension. Your lawyer will be able to tell you more about the relevant procedures.

Preliminary hearing

Sometimes, the Officer of Justice will ask for a preliminary hearing (the 'committal' hearing) to be held before he requests a remand order to be issued. He can also do so at the same time as requesting the remand order. The investigation is then to be continued under the supervision and authority of the examining judge. During the preliminary hearing, the examining judge can hear witness testimony. He may decide to give the Officer of Justice or the police additional powers in the interests of the investigation, such as authorizing them to open post, intercept telephone calls or search private premises. The examining judge is entitled to delve deeper into your personal circumstances than the police. He can, for example, ask the Probation Service to produce a report about you. He can also ask for a psychiatric report, in which case you can be admitted to a psychiatric unit for tests and observation. You can request the examining judge to hear witnesses who are able to confirm your side of the story. Even if the prosecution does not request a preliminary hearing, your lawyer can do so in the interests of your defence. Once the examining judge considers his investigation to be complete, he forwards all relevant documents to the Officer of Justice who must now decide whether to proceed to a full prosecution and trial.

Prosecution

If the Officer of Justice decides to proceed, your case will be brought to trial before a judge. You will receive a summons ordering you to appear in court at the stated time.

Dismissal

The Officer of Justice can also decide to 'dismiss' the case, which means that prosecution is waived on this occasion and you will not stand trial. However, the police and the Officer will retain all details of the case on file, and this information can be called upon if you are arrested for any subsequent offence.

In court

If you have been released from custody but your case is indeed to go to trial, you will be sent a 'summons' at your home address. A summons is basically a letter which states the charges against you and instructs you to appear before the judge at a certain time. If you are in detention or on remand awaiting trial, you will be served with the summons in person at the detention centre. If the court has already granted two extensions of the remand period and you have still not received a formal summons at the end of the total permitted period, you must be released immediately.

The total period of pre-trial arrest cannot exceed 110 days: six days in police custody, fourteen days in detention and ninety days on remand. Court proceedings must begin within this period. If you are in custody while the trial is ongoing, the period of pre-trial arrest continues until the judge returns his verdict. Further information about court procedures can be found in the brochure, 'On trial'.

Once the judge has returned his verdict, if you have been found guilty and sentenced to a term of imprisonment, you will be transferred from the detention centre to a prison.

If you disagree with the judge's verdict or consider the sentence to be inappropriate, you have fourteen days in which to lodge an appeal. You must produce a written statement setting out why you believe your case should be re-examined. Not all cases will be heard by the Court of Appeal. In many instances, particularly those involving relatively straightforward cases, the

president of the court (senior judge) first examines the file to determine whether another hearing is warranted. If the president decides not to hear the appeal, the verdict of the original court is confirmed. You are not able to appeal against this decision. However, if the president decides that an appeal is appropriate, the Court of Appeal will hear your case and pass an independent verdict and sentence. In principle, you are able to take the case one stage further to the *Hoge Raad*, or Supreme Court. As the name suggests, this is the highest court in the land. The Supreme Court will re-examine the case, but will rule only on procedure and points of law: was the trial conducted properly and did the other judges apply the law correctly? The Supreme Court does not rule on matters of sentencing.

Compensation

If you have spent time on remand and are eventually acquitted, or if the case is 'discharged', you may be entitled to compensation. Your lawyer will be able to advise you further.

Assistance

If you have any questions about your case or your detention, the first person to ask is your lawyer. However, you can also approach the people within the judicial system who are directly responsible for your case. It is advisable to do so in writing, although in urgent cases you are able to request a personal interview. The people to contact are:

During police custody:	Officer of Justice and examining judge
During detention:	Officer of Justice, examining judge and the court (judge's chambers)
During remand:	The court (judge's chambers)
During the preliminary hearing:	Officer of Justice and examining judge
If there is no preliminary hearing, or if the preliminary hearing has been completed:	Officer of Justice and examining judge
During the period between summons and verdict (i.e. during the trial)	Officer of Justice and judge (president of the court)
After the verdict:	Officer of Justice
During an appeal:	
Prior to summons being issued:	Advocate General
During the period between summons and verdict:	Advocate General and President of the Court of Appeal
Thereafter:	Advocate General

NB The 'Advocate General' is the representative of the Public Prosecution Department in the higher courts. His role is therefore similar to that of the Officer of Justice in the lower courts.

Other brochures

Several other brochures dealing with Dutch law and jurisprudence are available and can be downloaded or ordered from www.postbus51.nl, or by calling 0800 8051 (free).

Brochures which may be relevant to your situation include:

- On trial
- Problems, conflicts, legal questions: what to do and where to go
- How to apply for legal aid or subsidized mediation

Further information

Detailed information about the Dutch judicial system can be found at www.rechtspraak.nl

This site includes the addresses of all courts in the Netherlands, together with information about court procedures.

Further information about the Ministry of Justice can be found at www.justitie.nl. The Public Prosecution Service also has its own website at www.om.nl.

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