

Dealing with Clients in a Garda Station

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Reasons for being in a Garda Station

- Drugs Search
- Drink Driving
- Public Order
- Detention for Questioning
- Bench Warrant/Committal Warrant

The first questions!

- Why is the client detained?
- Are there any other bench warrants/committal warrants?
- If there are bench warrants, deal with the reason for the arrest, then deal with the warrant in Court

Drugs Search

- **Section 23 Misuse of Drugs Act, 1977**

A member of the Garda Síochána who with reasonable cause suspects that a person is in possession in contravention of this Act of a controlled drug, may without warrant search the person and, if he considers it necessary for that purpose, detain the person for such time as is reasonably necessary for making the search

- **Advise:**

- They are searching under a statutory power. Let them
- If Garda finds something:
 - Attack the stop and subsequent search procedure at trial
- If Garda finds nothing:
 - No Charge - Happy Days!
 - If client still unhappy, write for copy of custody record, and consider complaint to Ombudman.

Drink Driving

- Call from station
- Client will most likely be quite intoxicated
- People just over the limit tend to be scared and just follow instructions, and therefore don't call
- Can usually be dealt with over the phone

Drink Driving

If sample given, and client is over the limit, possibility of fix charge notice and short disqualification

3 months to 6 months

If sample given, and reading is high enough for Court prosecution, range of disqualifications is

6 months to 3 years

Failure/Refusal to give sample

4 year disqualification

Drink Driving

- “They want to take a sample”
 - Give the sample
 - If you fail in giving a breath sample, offer blood/urine
 - Mistakes can be made with blood/urine samples
 - People fill out forms incorrectly
 - Samples might not be sent on time
 - Section 4 (driving while intoxicated) or Section 5 (Drunk in charge) is easier to defend than Section 12 refusal
- “They had no reason to stop me/arrest me”
 - That is an issue for hearing. Give the sample.

Public Order Offences

- Power of Arrest – Section 24 Criminal Justice (Public Order) Act, 1994
- Covers most of the Public Order offences
 - Except:
 - Disorderly Conduct (Section 5)
 - Wilful Obstruction (Section 9)
- **Power (usually) only exists while offence is being committed**
 - If offence has ceased, can only ask the name and address of someone who a Garda suspects with reasonable cause has committed an offence
 - If that person refuses to give name & address, then power to arrest reignites
- Some of these offences are arrestable offences in their own right, and therefore can be arrested & detained for questioning/charge
 - E.g. Riot, violent disorder

Public Order Offences

- Usual Combination:
 - Section 4 (Intoxication to such an extent as to be a danger to oneself or another)
 - Section 6 (Threatening and abusive behaviour with the intent that it cause a breach of the peace or being reckless as to whether a breach of the peace will be occasioned)
 - Section 8 (Failure to Comply with direction of a member of an Garda Siochana)
 - Section 19(3) Resisting arrest

Client intoxicated

Public Order Offences

- Client intoxicated
- “Come down and get me out of here!”
- Advice:
 - The sooner you shut up and calm down, the sooner you get out of there
- Usually – Charged and released
- Until recently no power to detain for being drunk
- Gda would prepare charge which can “take a bit of time.”
- The more stropo the prisoner, the longer it would take to prepare a charge

Public Order Offences

- Section 4A Criminal Justice (Public Order) act 1994
 - Inserted by Criminal Justice Act 2017
- “[H]e or she may, if the member of the Garda Síochána for the time being in charge of the Garda Síochána station is of opinion that the person is intoxicated to such an extent as would give rise to a reasonable apprehension that the person might endanger himself or herself or other persons, be detained in custody for such period, not exceeding **6 hours** from the time of his or her arrest, as the member of the Garda Síochána so in charge remains of that opinion.”
- Effectively – Drunk Tank

Detention for Questioning

- Huge area - Needs its own full 2 day CPD
- Changes in recent years
 - Solicitor presence in interview

Detention for Questioning

- Section 4 Criminal Justice Act 1984
 - Arrestable Offences
- Section 42 Criminal Justice Act 1999
 - People removed from prisons for questioning
- Section 30 Offences Against the State Act 1939
- Section 2 Criminal Justice (Drug Trafficking) Act, 1996
- Section 50 Criminal Justice Act, 2007
 - Murder of Garda, Murder using Firearm, Murder while committing offence under Offences Against the State Act, False imprisonment
- Sections 16 & 17 Criminal Procedure Act 2010
 - Detention after and acquittal

Detention for Questioning

Allowable periods of detention

	Section 4	Section 42	Section 30	Section 2	Section 50
Initial period	6 hours	6 hours	24 hours	6 hours	6 hours
First extension authorised by Superintendent	6 hours	6 hours	24 hours (Note 1)	18 hours (Note 1)	18 hours
Second extension authorised by Chief Superintendent	12 hours	12 hours		24 hours	24 hours
First extension authorised by District or Circuit Court			24 hours (Note 2)	72 hours	72 hours
Second extension authorised by District or Circuit Court				48 hours	48 hours
Total	24 hours	24 hours	72 hours (3 days)	168 hours (7 days)	168 hours (7 days)

Note 1: First extension must be authorised by a Garda Chief Superintendent (or higher rank).

Note 2: The extension is authorised by the District Court following application by a Garda Superintendent.

Detention for Questioning

- Initial Phone Call
 - Find out name of prisoner
 - Find out name of arresting member
 - Find out what is the alleged offence (theft, assault)
 - Find out what provision they are detained under
 - Find out time of initial detention
 - Give estimated time of arrival
 - Go to station

Detention for Questioning

- On arrival at station
 - Note time you arrive at public office
 - Note time you are let in to the cell area
 - Speak to investigating member to ascertain:
 - Alleged facts
 - Witnesses
 - CCTV

Detention for Questioning

- Speak to client
 - Does he/she need a doctor?
 - Especially relevant for prisoner with addiction issues
 - Does he/she need to contact someone
 - Legal Advice
 - Alleged incident

Detention for Questioning

- Should I stay or should I go now?
- DPP v Gormley; DPP v White [2014] IESC 17
 - Recognised right existed in Europe
 - Only went as far as the right to have legal advice in a garda station
 - Did not say you were entitled to have a solicitor present
- DPP v Doyle [2017] IESC 1
 - Right to legal advice
 - No right to have solicitor present during questioning

Detention for Questioning

- This is not the movies – very little solicitor input
- Is the solicitor just correcting the garda questioning?
 - When I object to a certain question, garda will then put that same question to client correctly
- If I fail to stop my client answering, a certain question, is my presence there enough that at trial the question is not excluded?
- If the client says that he does not want me there, is the fact that I leave relevant? Will matters now be admissible because I could have stayed?
- Time constraints for practice – Usual interview will last about 2 hours. Usually 2 interviews.

Bench Warrants

- Can affect any of the above
- Will be brought to Court
- Before going to Court find out from the Garda
 - Objections to bail
 - Are gardai satisfied with the address?
 - Any conditions sought?
- Sort the address first. Speak to client. Get him to call other family member to confirm alternative address – This is the one that can take time.

Committal Warrants

- Straight to gaol
- Do not pass go
- Usually nothing you can do about this really
- Article 40?
 - You get the ball rolling while they are brought to prison