



Ministry of Justice

Balancing Rights and Responsibilities

KNOW YOUR RIGHTS #3

One People • One Spirit • One Justice



PROTECTION AGAINST ARBITRARY ARREST

Last week we looked at your right to life and the circumstances in which you may lose your life which would not be in breach of your right. For example, you would not be considered to be intentionally deprived of your life if you have been sentenced to be “put to death in a manner prescribed by law”.

This week, we look at how the law protects you against arbitrary arrest with the Head of Legal Aid Council Mr. Hugh Faulkner:

Question: Mr. Faulkner, what is considered to be arbitrary arrest?

Answer: *an arrest for which there is no lawful basis or which is founded on malice may be considered arbitrary. An arrest ought to be based on reasonable suspicion that a person has committed or is in the process committing a crime.*

Question: If this happens to anyone what would you advise the person to do?

Answer: *Request of the police that Duty Counsel or your own personally retained lawyer be contacted. Your lawyer may take instruction from you with a view of bringing the matter before a Court of law through a writ of Habeas Corpus. Where you are able to establish the arbitrariness of the arrest the stated may be sued for compensation.*

Question: When someone is arrested, take us through the dos and don'ts

Answer: *You are not obliged to answer any question until your attorney visits and advises you. The arresting officer should also caution you that you are not obliged to say anything.*

Question: At what point should the person ask for a lawyer?

Answer: *The police having expressed a desire to conduct a Question and Answer session, Identification Parade or had you locked up without charge, request an attorney.*

Question: What are the person's rights if his lawyer is not present, for example, does he have to give a statement to the police?

Answer: *Every citizen have a right to legal representation where he or she wishes to give a Cautioned Statement. Likewise to the law provides legal representation for Question and Answer, Station Bail Application, filing of a writ of Habeas Corpus Court Bail Application and Identification Parade.*

Question: What are some of the common mistakes that people make when they are arrested?

Answer: *seek to argue their own cases themselves. Failure to request and be guided by trained legal advice. Make self-incriminating remarks without understanding the full context of the case against them.*

Question: Finally, how can the Legal Aid Office assist persons who have been arrested but cannot afford legal representation?

Answer: *The Legal Aid Council provides case presentation for all citizens who are taken into custody and cannot afford to privately retain a lawyer.*

The service is available for all persons arrested at all police lock ups islandwide. Duty Counsel programme is free and requires no application form. For trial in Court an application form is completed at the Court, Legal Aid Council or Legal Aid Clinics.

You Can Get Help

You can get help from several entities in the Government sector.

Legal Aid Council

Have you or your relative been arrested but cannot afford legal representation?

Call or visit the Legal Aid Council at:

Air Jamaica Building

Ground Floor,

72-76 Harbour Street, Kingston.

Telephone: (876)948-6999

Email: aid.legal@moj.gov.jm

INDECOM

If you or anyone you know have had your rights breached by members of the security forces or the correctional services contact the Independent Commission of Investigations at:

1 Dumfries Road, Kingston 10,

Toll free 1-888-935-5550 (Digicel)

1-888-991-5555 (LIME)

Email: info@indec.com.gov.jm

The Office of the Public Defender

Have you suffered an injustice by a public sector entity? Contact the Office of the Public Defender at:

22-24 Duke Street, Kingston

**Telephone: 922-7089-90, 922-7109,
922-8256**

Email: enquiries@opd.gov.jm

Ministry of Justice
61 Constant Spring Road
Kingston 10
Telephone: (876) 908-5561
www.moj.gov.jm



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KNOW YOUR RIGHTS #4

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FREEDOM OF MOVEMENT

So far we have been examining the fundamental rights afforded to all Jamaicans as provided for by law. This article will focus on the Protection of Freedom of Movement. The Jamaican Constitution guarantees your freedom of movement, unless restrictions are imposed in keeping with the law. You should never be unlawfully restrained or confined.

What constitutes a breach of your right to freedom of movement?

- Kidnapping
- Being held hostage
- Human Trafficking
- Not being allowed to enter certain areas because individuals are securing or protecting their turf.

Legally, to restrain or confine someone without having the authority or jurisdiction to do so is called **false imprisonment**. This could also amount to a criminal offence.



The state can also be guilty of false imprisonment if proper procedure of arrest and detention is not observed or followed. It must be emphasized that, although the police has powers of arrest, they should not arbitrarily restrain or restrict your movement.

In exceptional cases, your freedom of movement may be limited or restricted by the state. It is therefore not considered a breach of your right to freedom of movement if:

- There is a state of emergency
- A curfew has been imposed by the state in order to maintain law and order
- It is in the interest of public health and safety
- You have been detained and/or charged with committing an offence
- You have been incarcerated
- You do not have the necessary permit and travel documents to cross international borders
- You have been refused entry into a foreign country owing to violation of immigration laws and/or policies

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