

Getting Arrested – What to Do

An Educational Resource for People with
Cognitive or Learning Disabilities

Training Guide for Educators



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Introduction

Getting Arrested – What to Do; is an educational resource to be used when educating people with an intellectual disability or other cognitive disability on their rights and responsibilities when coming into contact with the police as a suspect or when under arrest.

As intellectual disability commonly affects a person's ability to understand, to communicate and to cope with new situations, coming into contact with the police is a particularly stressful experience.

The resource aims to educate people with an intellectual disability on

- their rights when arrested
- how to access suitable support
- and to understand and practice the skills needed to access these rights

This training guide has been designed to support educators using the resource.

Background

Historically people with an intellectual disability have been unable to access their full legal rights due to a number of issues:

- The system often fails to meet the communication needs of a person with an intellectual disability.
- Police and courts have little knowledge of intellectual disability.
- It is difficult for police to identify that a person has a disability and the person may not alert police to their disability.
- Police rely on verbal communication; which may severely disadvantage a person with an intellectual disability.
- A person with an intellectual disability may lack knowledge of their rights and how the system works.
- A person may have limited assertiveness skills when confronted by police.
- Fear of being in trouble or making the police upset or angry may cause the person to comply inappropriately.
- Often a support person is not called and therefore the person's rights not upheld.

It is hoped this resource and the training will assist by addressing some of these issues.

Before you Start – Important information for educators

It is assumed in the design of these sessions that educators using the package have experience working with people with intellectual disability and an understanding of the communication and learning needs of participants. These learning needs will determine how the information is utilised. The sessions may be delivered once, or repeated over a number of weeks. Repetition and feedback is important to ensure the information has been communicated and retained effectively.

Facilitators may find that they only work through a small portion of the information each session. It is more important to adapt to the needs of participants, and ensure they have sound knowledge of each component of the training, than it is to cover all the information in the sessions.

Always review the information from the previous session prior to commencing the new session. Present the information a number of ways to address the communication needs of all participants.

Ensure role-plays and exercises are thoroughly debriefed. Keep characters in the role-plays in the third person to enable participants to think through the issues in a non-threatening way.

The 'key points' may or may not be covered in a particular session. Educators can determine how much information is suitable to their participants. Before commencing a session decide which pieces of information you want your participants to take away from the session. Use these as the foundation of the session and gradually build on the information over time.

Be mindful that a person with an intellectual disability may have had limited contact with the police or have had previous disappointing contact with the police. Educators may find, if a participant has had prior contact with the police, that telling their story is important to them. This, however, can detract from the needs of the other participants and be inappropriate in this context. To avoid this occurring during training the following points may be useful:

- Acknowledge that if a person has had previous experience with the police, the training might bring up some of their anxiety and the need to talk more about it. Let participants know that you are available to talk after the group.
- Include in the group agreement rules, at the beginning of Session 1, that if participants have had previous contact with the police, they will discuss it with the educator privately before discussing it in the large group. By doing this, the focus of the discussion is distributed amongst participants, in a general context, and not focussed on only one individual's experience.
- Make time to talk privately with the participant and allow them the time and space to debrief their experience.

Following up the sessions with arranged visits to police stations and local courts can reinforce the information and can take some of the fear out of these environments.

Contents of package and how to use resources

DVD; Getting Arrested – What to do

The DVD follows Tim through the experience of being arrested; being in custody at the police station; taking up his rights to have a support person present, to get legal advice and his right to silence; being charged with a crime and given bail conditions. The DVD is sub-titled. Key messages are repeated and highlighted providing opportunities to pause for discussion and activities.

Explanatory notes for the DVD

The explanatory notes are for educators. They go through the content of the DVD and highlight questions and issues which arise. The notes suggest suitable points to pause and relevant activities and issues for discussion. The notes are to be used in conjunction with the session plans and are also designed to assist anyone to use the DVD with an individual.

Photo Book; Getting Arrested – What to do

The photo book covers the same information as the DVD using still photos and key messages. It can be used during training and is also useful for the participant to take away from the training as a reminder of what they have learnt. Families and other support people can also benefit from the booklet. One copy is provided with the package; it can be copied or downloaded from the Intellectual Disability Rights Service website www.idrs.org.au

DVD; Bail Conditions. Don't Break Them....It's Just Not Worth It

This animated DVD follows the experience of Tracey who has been charged with a crime and given bail conditions. It is a real struggle for Tracey to stick to her bail conditions and to face going to court. The DVD is designed to be used with individuals who have been given bail conditions. It will assist a person to understand what bail conditions are and the importance of not breaking them. It can provide a discussion starter about the person's own bail conditions. This DVD is also a resource for Session 4 of the training sessions. The script of the DVD is provided in at the end of the Explanatory Notes for getting Arrested DVD..

Additional Training Resources

The following resources are also in the kit. They can be copied as required or reordered from Intellectual Disability Rights Service

- Photos of police doing their different jobs
- Plain English version of the Caution and Part 9 of the Law Enforcement (Powers and Responsibilities Act) 2002
- Laminated Cards: (6) "Your Rights if the Police think you Broke the Law"
- Helping Hand: Outline of hand for support exercise
- Role Play Cards
- CJSN Wallet Cards

Session 1 Time: 1 - 2 hours

Objectives

1. Introduce participants to the topic.
2. Identify various roles of the police and set the context for what happens when a person is arrested
3. Demonstrate an understanding of what it means to break the law and our responsibility not to break the law

Methods

1. Introduction.

Icebreaker activity; invite participants to sit in a circle, ask participants to introduce themselves, saying their name and telling others one good thing that has happened to them today.

Alternative icebreaker; have a small basket of different objects eg shell, feather, ornament. Invite participants to choose an object they like and take it back to their seat. Ask each person to say their name and what they like about the object they chose.

2. Group agreement.

Explain to the participants that it is a good idea to have some rules for the group. These rules mean that we know what is expected of us while we are in the group. Ask participants if they can think of some things to put in the group agreement. Add to their list. Some of the things we might include in the rules are: one person talking at a time; treating each person with respect; not talking about the personal things that people say in the group.

3. Overview of sessions.

Talk about the content of the sessions. Explain to participants that this is information that everyone needs to know about. It doesn't mean it is going to happen to you. Probably you will never be arrested but you need to know what to do if it does happen.

Explain that in the sessions we are going to do different things, for example: discuss the jobs that the police do; watch a video and talk about the information in the video; practise doing some of the things we see in the video. Acknowledge that if some participants have been in trouble with the police, they might have some uncomfortable feelings during the discussions. If this happens tell them they can talk to you in private during a break or after the session. Make sure you follow up with this person throughout the training.

4. Discuss the role of the police

It is important to assist participants to understand what the police do and the different parts of their job.

Say: 'Lets talk about the police'. 'What do the police do?' Make a list and discuss. Add to the list if needed. Talk about the role of police in helping people when they need it eg, as a victim of crime; talk about other roles of the police eg, arresting a person when they believe they have done something wrong. Bring out the contrast between when the police are there to help us and the other roles of the police.

Have available photos of police working in different roles. Hand these around to participants. Ask them to hold up their photo one at a time and talk about what the police are doing in the photo.

Explain to participants that police are only doing their job when they arrest someone. They do and say the same things whenever they make an arrest.

5. Introduce discussion about the law

Ask participants: 'Do you know what the law means?'; 'Have you heard the word before?'

Explain that the law means rules that we have so that everyone knows what we can and can't do. Talk about what would happen if we all broke the rules. Discuss our responsibilities not to break the rules. Use the group agreement rules as an example of rules or laws that ensure that everyone understands what is expected of them.

6. Breaking the law.

Ask participants to think of some of the things that people might do to break the law. Create a list and add to the list if necessary.

Use photos, pictures or symbols of people breaking the law to reinforce the information. Examples of photos might be: someone breaking into a car; someone hitting or pushing another person; someone stealing from a shop. Ask participants to identify what the person in the picture is doing and how they are breaking the law.

Talk about what happens to a person if they break the law and the police find out. Explain what 'arrested' means. Explain to participants that sometimes the police think you broke the law but it's a mistake. Even if you didn't break the law you can still get arrested while the police try to find out what happened. Discuss the feelings a person might have if they are in trouble with the police. Discuss these feelings and how to manage them.

Key Points

- The job of the police is to make sure peoples' rights are protected.
- Important to preserve the idea that the police, in general, are helpers and we should get their help if we need it. However the police also have the job of arresting people and we need to be careful and know what to do if that happens to us.
- Police sometimes want to talk to people who they think may have done something wrong.
- What it means to be arrested; a brief introduction to the term and concept.

Resources

Whiteboard

Whiteboard pens

Icebreaker activity objects

Visual resource: photos of the police doing their different jobs

Visual resource: photos, pictures or symbols of people breaking the law

Session 2 Time: 1 - 2 hours

Objectives

1. Demonstrate the arrest process
2. Examine our rights if arrested
3. Learn about and practice how to get support and legal advice

Methods

1. Introduce the DVD; Getting Arrested – What to Do

Tell participants that we are now going to watch a DVD called 'Getting Arrested – What to Do'. This DVD is about a young man called Tim, who gets arrested by the police. They think he has done something wrong and broken the law.

Play the DVD in its entirety. Discuss what people thought about the DVD and how they felt.

Replay the DVD and use the Explanatory Notes whilst showing the DVD, stopping at certain points to discuss what is happening. This session will relate to the DVD till Tim is charged with a crime. This will help us to learn about what a person should do if they are arrested. This will help us to learn about our rights.

Explain the police caution 'I am going to ask you certain questions. You are not obliged to say anything unless you wish to do so, but whatever you say or do may be used in evidence. Do you understand that?'

2. Talk about Skills

Explain how it can be hard to stand up for our rights. It can be very frightening for people to stand up for their rights with the police. The police aren't always polite and don't always give us the support we need.

Ask participants to think of what would make it hard to stand up for your rights with the police. This can be very difficult for people to identify, so keep it in the third person and refer to the video. For example,: 'What does Tim have to do to stand up for his rights?' Some ideas to add to their list: support from someone; help to understand what the police are saying; knowing what to say.

3. Some exercises

Break participants into pairs. With the help of another educator, demonstrate to participants how to tell another person that you need some support. Give participants some ideas of how to do this, both in a way that leads to a getting the support you need, and a way that doesn't.

Now ask participants to practise in their pairs and move around the room checking that people have understood the instructions and are having a try. Ask participants: 'How did it feel to ask for help?' Discuss the responses. If participants are confident, have them demonstrate to the rest of the group how they would ask for support.

4. Support person

Ask each participant to think of people in their life who they think would make a good support person. It can be someone you know like a family member, a friend or someone who works with you like a case manager or care worker. It might need to be someone who can help you to stay calm, someone who you trust and feel comfortable with, someone who is strong enough to talk to the police.

Talk about how it can be hard to ask someone for help when you are at the police station because you might be worried that they will think you have done something wrong. Explain that having support is very important so you need to not be afraid to ask for help.

Distribute 'helping hand' handout. Assist participants to record the names of their support people on the fingers of the hand.

Discuss how participants can call Criminal Justice Support Network (CJSN) to get a support person. CJSN can send a person to the police station in some areas. If that's not possible in the particular area where you are, CJSN can help a person to work out whom they could get for a support person. It is a good idea for participants to include CJSN as part of their helping hand network. Add CJSN to the hand.

Distribute CJSN wallet cards.

Encourage participants to keep the handout for future reference if needed.

If participants have appropriate reading skills, hand out 'Your rights if the police think you broke the law' for their information.

Key Points

- It can be difficult for people to assert their rights due to:
 - Fear
 - Lack of knowledge
 - Limited skills
 - Inexperience
 - No support
 - Low confidence
 - Communication difficulty/breakdown
- The police are not always polite and it can be very scary to stand up for your rights when at the police station. It is easy to be intimidated when being questioned by the police, particularly if you are alone at the police station.
- Making sure the police know if you have a disability means you can get the help and support you need.
- Sometimes a person with an intellectual disability will misunderstand the questions and give inaccurate answers.
- It is a good idea to have another person there who can give support and try to make sure the person's interests are protected.
- A support person should
 - be chosen by the person her/him self where possible,
 - can be a family member, a friend or someone who works with the person like a case manager or care worker, although someone they know is not always appropriate.
 - needs the ability to stay calm, be someone the person trusts and feels comfortable with and be someone strong enough to talk to the police.
 - plays an active role in ensuring the person's rights are upheld.
 - can identify any communication problems with the person being interviewed.
 - can advise the police if the person wants legal advice and ask if the interview can be at a later time to enable the person to get that advice.
- The most important role of the support person is to make sure that the person understands they do not have to answer the questions put by the police.
- Your responsibilities if arrested:
 - Must go with the police
 - Do not fight or argue with the police
 - Don't run away
- Criminal Justice Support Network; when and how to use this service.

- Your rights if arrested:

- Right to let a friend or relative know where you are
- Right to not answer questions
- Right to legal advice
- Right to support person
- Right to information in a way you can understand

- Important points to remember from the video if you are arrested:

1. stay calm
2. do not get angry
3. tell the police your name and address
4. tell the police you have a disability
5. ask for a support person
6. ask for legal advice
7. do not answer any questions till you talk to a lawyer
8. ring the Criminal Justice Support Network (CJSN) 1300 665 908
9. do not say anything in an interview till you have talked to a lawyer

Resources

Whiteboard

Whiteboard pens

DVD Player

DVD 'Getting Arrested – What to Do'

Explanatory notes for the video

Handout 'Your rights if the police think you broke the law'

'Helping Hand' handouts

CJSN Wallet cards

Session 3 Time: 1 - 2 hours

Objectives

1. Revise information on what to do if you are arrested and the importance of support people.
2. Practice skills using role – plays.
3. Identify the implications of receiving bail conditions and court attendance notices

Methods

1. Revise information

Ask participants to brainstorm the answers to the following questions to review and revise the content of the DVD:

- Why was Tim taken to the police station?
- What did the police officer want Tim to do when he got to the police station?
- What happened to Tim's stuff?
- Who came to the police station to help Tim?
- Who did Tim talk to on the phone?
- What did the lawyer tell Tim?
- What did Tim say to the police when they interviewed him?

2. Role plays

Now set up a role – play of a person being interviewed by the police. Refer to Role – play cards. Select people to play the roles. The educator may need to play the police officer and to demonstrate with a co-facilitator if possible. Wearing a police hat can be useful to remind participants which person is playing the police role.

Debrief role-play, using questions on role – play cards.

3. Watch DVD

After revising the information, watch the DVD from when Tim is charged using the explanatory notes regarding what happens when you are charged. Reiterate importance of doing what the bail conditions say you must do. Talk about our responsibilities to do what we agree to do in this, and any other situation.

Follow the explanatory notes and discuss bail conditions and going to court.

Note: Another useful resource kit called 'So You Have to Go to Court!' is available from Diversity Services at the NSW Attorney General's Department (02) 9228 8460 or diversity_services@agd.nsw.gov.au and is suitable for people who have to attend court.

Key Points

- Many people with an intellectual disability get into further trouble with the law by failing to comply with their bail conditions or failing to attend court.
- This failure may be due to their inability to understand the information and the consequences of their actions.
- Practical support to explain the implications of these orders is vitally important for a successful outcome for the person charged with a crime.
- The kit is called 'So You Have to Go to Court!' and is available from Diversity Services at the NSW Attorney General's Department (02) 9228 8460 or diversity_services@agd.nsw.gov.au

Resources

Whiteboard

Whiteboard pens

DVD Player

DVD 'Getting Arrested – What to Do'

Explanatory notes for the DVD

Roleplay cards

Police hat and other props for role-plays

Session 4 Time: 1 – 2 hours

Objectives

1. Identify and review bail conditions
2. Examine resources
3. Evaluate informally

Methods

1. Revise information

Ask the question: 'What happened at the beginning of the video?' Invite participants to use their own words and gradually build the story of Tim's experience.

This exercise will enable you to elicit how much information participants have retained and identify gaps in their knowledge. Use open-ended questions if necessary to assist participants to remember the story.

May be useful to use the questions from the beginning of Session 3 to again revise the information. The questions may be phrased in a different way so participants can generalise the information.

2. Watch DVD

Have the video ready to play (*tape count 10.17 onwards*) where bail conditions are raised. Explain bail conditions for participants and invite them to tell you about bail conditions in their own words. Give some examples from the video and others from the explanatory notes.

3. Play the CJSN Bail DVD (see Key points)

If the information in this DVD is appropriate to your participants (see Key points) play it at this stage in the training.

This DVD tells the story of a person called Tracey who was in trouble with the police. By taking us through Tracey's experience, it provides an understanding of bail conditions and some information about court.

The DVD highlights the importance of keeping bail conditions and the implications of failing to comply with them. It reinforces the bail information on the video.

Ask participants to tell you in their own words what happened to Tracey. This will help you to ascertain how much information has been retained and with how much accuracy.

4. Examine resources

Distribute a copy of the booklet 'Getting Arrested – What to Do' to each participant. Work through the booklet, assisting participants who have difficulty reading the words to examine the photographs to access the information. Ask participants to tell you what is happening in the booklet one page at a time and revise the information.

5. Conclusion

Invite participants to tell you, in their own words, what they remember about Tim's experience with the police. Use open-ended questions to prompt responses if they have trouble with recall.

Ask participants to think of 3 things they remember about what they should do if arrested by the police. Give each person an opportunity to respond. Draw up a list adding each point and add to it if necessary.

Review the 'helping hand' diagram and have the participants recall the name of their chosen support people.

Ensure everyone has a CJSN wallet card and remembers how to use it.

Thank participants for their contributions and attention to the sessions and invite them back for a follow up session in four weeks time. A follow-up session creates an opportunity to evaluate their retention of the information and fill in any gaps in knowledge and understanding.

Key Points

- Bail is being allowed out of police custody after promising to attend court. If the police refuse to give bail the person must be taken to court as soon as possible.
- Often a person with intellectual disability will get into more trouble because they fail to do what is required of them by the police. They cannot understand the bail conditions or the court attendance notice.
- Emphasising the importance of bail conditions supports a person to understand the implications of their failure to comply.
- Having a support person to help interpret the bail conditions, and to support a person going to court, can overcome this communication issue.
- The CJSN Bail DVD is designed primarily for participants who are in contact with the criminal justice system. It may be appropriate to use only with these groups.
- The booklet 'Getting Arrested – What to Do' reinforces the information presented in the sessions and a copy is available to each participant attending the sessions.
- Important to go through the information in the booklet, as participants may have literacy difficulties.
- Informal evaluation is the appropriate means of evaluating these sessions. Methods for evaluating informally: discussion, role play, recall, open-ended questions, experiential exercises.
- In order to not overload participants with information, a comprehensive understanding of court procedure would be more appropriately presented within a different program.
- The NSW Attorney General's Department have a Resource Kit for people with disabilities or learning difficulties who have to go to court.

Resources

DVD Player

DVD 'Getting Arrested – What to Do'

Booklet 'Getting Arrested – What to Do'

CJSN Bail DVD

CJSN Wallet cards

Legal Information for Educators Excerpts from 'A Question of Rights'

The criminal justice system is the system for investigating crimes and prosecuting and punishing offenders. It includes the police, criminal courts and corrective services. People with an intellectual disability are especially vulnerable in the criminal justice system. Reports show that they suffer a high rate of imprisonment and are at a particular disadvantage once in the system.

The system does provide some mechanisms to protect people with an intellectual disability. All too often these mechanisms are not used because those who need help don't know about them.

How does a person know they are being arrested?

If the police wish to arrest someone, the person must be told this or have the fact communicated in some way- for example, by telling the person that they may not leave. The police should also give the reason for the arrest. Until an arrest is made there is no requirement to go anywhere with the police. However, refusing to go with the police when asked to do so may prompt them to make an arrest.

Is there a right to silence?

Whether they have been arrested or not, a person does not have to say anything to the police. In fact, it is usually a good idea not to speak to them, at least until after you have received some legal advice. The only exceptions are traffic offences, where it is compulsory for a person to give their name, address and the details of the car being driven. Certain drug offences also carry this requirement.

Whatever the offence it is usually best to give the police a name and address, but to refuse to answer any further questions. Legal advice should be sought as soon as possible.

Is there a right to legal advice?

An act called the *Crimes Amendment (Detention after Arrest) Act* says the police must advise a person of their right to communicate and consult with a lawyer, and to have legal representation during any police investigation.

What should a worker or family member do if the police want to question a person with an intellectual disability?

A suspect does not have to speak to the police, and it is best not to unless there is a simple, innocent explanation which will immediately clear up the problem. Otherwise the person should be advised in the strongest possible terms to say nothing to the police. If the person has something to say it should be said to their lawyer in private. If it seems that the person is determined to speak to the police despite warnings not to, a third person (support person) can still help.

Under section 356N of the Crimes Amendment Act police must

- Advise a person with an intellectual disability of their right to communicate and consult with a friend, relative, guardian or independent person;
- Advise a person with an intellectual disability of their right to communicate and consult with a lawyer and to have legal representation during the police investigation;
- Defer any investigation for up to 2 hours to allow the detained person to communicate with family, friend, relative, guardian or independent person, and a lawyer

If police do not comply with this law, failure to do so may later be relevant in court proceedings. The time, date and other circumstances should be noted down and signed by the third party.

Should someone else be present if the police are questioning a person with an intellectual disability?

It is easy for a person to be intimidated when being questioned by the police, particularly if the person is alone at the police station. Sometimes a person with an intellectual disability will misunderstand the questions and give inaccurate answers. So it is a good idea to have another person present who can give support and try to make sure the person's interests are protected.

What role should a third person play during police questioning?

- The most important role is to make sure the suspect knows they do not have to answer the questions put to them by the police.
- A support person should tell the police if the suspect does not understand a question.
- It is also useful to note other details of police questioning.

Do the police have to charge a person who has committed an offence?

No. They may decide not to charge the person if the offence is minor or if they believe it would not be possible to obtain a conviction. Sometimes police will give a warning instead.

Is there a right to bail?

Bail is being allowed out of police custody after promising to attend court. Once a person is arrested, the police can give bail. If the police refuse to give the person bail the person must be taken to court as soon as possible. This may not be until the next morning. Bail may be granted by the court. Because it is a very serious thing to keep someone in prison when they have not been convicted, the court grants bail in most cases. If the police believe an accused person should remain in gaol instead of going free until the trial, it is up to the police to convince the court that this should happen. If they do not succeed, bail is granted, with or without conditions.

Examples of conditions which can be imposed by the court include depositing money with the court or agreeing to stay away from any witnesses.