



Expat Counsel

By James Finch and Nilobon Tangprasit

Last week we began discussing your rights and what to do if you are arrested for drugs. We mentioned that an arrest can be with or without a warrant and discussed what to do in the case of an arrest pursuant to a warrant.

Several readers have asked about arrests without a warrant. Section 14 of the Narcotics Control Act provides that the Thai authorities can only take action without a warrant if the time taken to get a warrant would allow for the evidence to be removed, hidden or destroyed. It might be a police officer that initially makes the decision to proceed without a warrant.

But if the officer is wrong, and it wasn't reasonable to think that the evidence might be removed, hidden or destroyed, a judge may later refuse to allow the evidence to be used against the defendant at trial.

But let's go back to the arrest. As with the situation above, if you're arrested for drugs and the officials arresting you don't follow the guidelines mentioned below, it may not be possible to prosecute you and they may be subject to penalties themselves.

Please remember, too, that it isn't just the police who can arrest you for illegal drug offences. Military officials, customs officers and Narcotics Control Board (NCB) officers may also be empowered by the Secretary General of the NCB to do so. All these arresting officers must comply with the procedures below.

At the arrest, the officer has to identify himself or herself, using reasonable means, such as showing a badge. This is true even for plain-clothes officers. You should take down any such information and give it to companions at the scene who are not under arrest. Excessive force can't be used against you and you can't be restrained in a way that is excessive or intended only to humiliate you.

At the scene of the arrest, if the circumstances allow, the arresting officer also has to tell you that:

You may call a relative, friend or other party. The officer has a duty to let you use a telephone to do so.

You can make a statement, but that the statement can in the future be used in evidence at a trial.

You have to right to call and have a lawyer present.

The arresting officer must take you to a government facility used for processing arrests, such as a police station, immediately. The officer must help you with any medical emergencies you may have before taking you to the government facility. You cannot be left as a prisoner in an intermediate facility, such as a private home or car, for more than a few minutes pending your delivery to the government facility.

Once you have been delivered to the government facility all of the above rights must be explained to you, even if the arresting officer has already done so. If you aren't a native Thai-speaker, the state must let you a translator. You have a right to call a lawyer or any other person at state expense. You must be told that you have a right to a lawyer.

CRIMINAL LAW IN THAILAND

Part LXXVIII:

Drugs — more about arrests



If you give a confession before the above rights have been explained to you, it will probably not be admissible against you in later proceedings. This issue is, however, beyond the scope of our discussion here, and if you have confessed you should talk to an expert criminal lawyer about it.

In general, at the time of arrest you cannot be kept more than a certain period designated under Thai law. Under the Narcotics Control Act, you can be held up to three days. In addition to this, if the arresting officers consider it necessary, they can turn you over to other officials for further questioning in accordance with the provisions of the Thai Criminal Procedure Code. There

are other internal limits on how long you may be held. For example, if you are to be held for more than 24 hours, the commander of the arresting officer must approve.

How can you get released if the authorities refuse to release you before charging you? You can, using a lawyer, file a petition with a judge. The judge can order you released if the detention is improper.

You may have the right to sue if the arresting officer did not comply with any of the above rules. Likewise, if the arresting officer has violated the rules mentioned above, you can submit a complaint to the arresting officer's commanding officer who is required to submit this to the secretary-

general of the NCB. You can also submit such a complaint directly to the secretary general. Officers violating the rules of arrest are subject to sanctions, including loss of status as a narcotics control officials. ■

James Finch of Chavalit Finch & Partners
finch@chavalitfinchlaw.co
and Nilobon Tangprasit of Siam City
Law Offices Limited
nilobon@siamcitylaw.co

Researchers: Sutatip Raktiprakorn and
Sitra Horsincharoen

For more information:
www.chavalitfinchlaw.co
Questions? Contact us at the
email addresses above