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## **U.S. CITIZENS ARRESTED IN THE DUTCH CARIBBEAN**

### **PURPOSE OF THIS INFORMATION SHEET**

The U.S. Consulate has prepared this information sheet to help you understand the judicial systems of the Dutch Caribbean, and to explain what the Consulate can and cannot do on your behalf if you are arrested. Its purpose is to provide you with general background information; it should **NOT** be used as a basis for making legal decisions. You are strongly advised to retain a local lawyer if you feel you need legal assistance.

### **SOME BASIC FACTS ABOUT BEING ARRESTED IN THE DUTCH CARIBBEAN**

1. U.S. laws do not apply in the Dutch Caribbean, nor do you have any U.S. Constitutional rights.
2. There is no bond or bail system, you can be kept in jail until the investigation is completed.
3. Detainees can expect to receive a "Cautie" form which is a one page form stating the person's rights under the law. Detainees may sign the form, but are not required to do so. The form is provided in most major languages including English, Spanish, German, and Dutch, among others.
4. A detainee has the right to have access to a lawyer. However, this does not entail that the suspect has the right to have a personal meeting with a lawyer prior to the first interrogation or to have a lawyer physically present at the interrogation. The access to a lawyer prior to the first interrogation generally means the right to a telephone conversation but access depends on the investigation. A detainee is interviewed by the local police with or without a lawyer. He or she will be provided with an interpreter.
5. Pre-trial detention, the period you are in jail prior to sentencing, can last from a few days to several weeks, depending on the scope of the investigation. Usually after 7-10 days you are transferred to the prison but this depends on the availability of space.
6. In the Dutch Caribbean a detainee may request, on a need basis, a public defender at any time after his/her detention. However, if an attorney is not available, the trial may go forward without any legal representation for the detainee.
7. A call is allowed to a lawyer who subsequently may contact the detainee's family if desired. Detainees may or may not be permitted to call family or friends depending on the investigation.
8. There is no trial by jury. A judge will hear your case.
9. Trials frequently involve lengthy delays or postponements, and are conducted in Dutch.
10. There is no active death penalty in the Dutch Caribbean.
11. If you have been arrested on a drug related charge the investigating officer might call in a U.S. Drug Enforcement Administration Agent for assistance. If you are approached, the Agent must inform you that he is with DEA and provide you with DEA identification. The decision to speak to the Agent is yours to make.

### **WHAT AN AMERICAN CONSULAR OFFICER CAN DO FOR YOU**

1. Ensure so far as possible that your rights **under local law** are fully observed and that humane treatment is accorded to you under internationally accepted standards: that you are treated no worse than any other prisoner.
2. Telephone you as soon as possible after being notified of your arrest. If you are detained for a long period of time, visit you every few months to ensure your well being.
3. Provide you with a list of local attorneys from which to select counsel.
4. Contact family and/or friends to inform them of your situation and to request financial or medical aid, if you so desire.

### **WHAT AN AMERICAN CONSULAR OFFICER CANNOT DO FOR YOU**

1. Demand your release, or get you out of jail or out of the country.
2. Provide you legal advice, represent you at trial, pay legal fees or other related expenses with U.S. government funds.
3. Intervene in the Dutch Caribbean court systems or judicial processes to obtain special treatment for you.

## **SELECTING A LAWYER**

The Consulate has available a list of attorneys in the Dutch Caribbean. A Consular Officer cannot choose a lawyer for you or vouch for an attorney's professional ability. The list is composed of lawyers contacted by the Consulate who agreed to represent U.S. citizens and meet the basic requirements to practice law in that location.

## **INITIAL ARREST AND PRE-TRIAL DETENTION**

The police may detain a person suspected of violating the laws of the Dutch Caribbean for up to six hours without making a formal arrest. If you are suspected of committing a minor offense, you may be released on your own recognizance. If, however, the alleged crime is of a serious nature, such as assault, fraud, destruction of property, possession of drugs, etc., you will be formally arrested and may be detained in jail.

You will appear before a public prosecutor within two days who will determine if a trial is warranted. In the Dutch Caribbean, if the Public Prosecutor feels that the information about your case is incomplete, he/she can order you to be held in jail for intervals of 10 days, 8 days, 8 weeks and another 8 weeks while the investigation continues. A Public Prosecutor can request detention for longer periods by combining the intervals. A trial is usually scheduled by a Judge by the end of the second eight week period.

During the first 26 days of pre-trial detention your contact with anyone other than your lawyer and the Consular Officer will be strictly limited. Visits or phone calls from your immediate family are rarely allowed and only with prior permission from the Public Prosecutor or Prison Director. You can send and receive letters, but these will be censored by the authorities.

## **TRIAL**

Your trial will normally take place on the island on which you were arrested. There are no jury trials in the Dutch Caribbean. When you appear in court, which is known as Court of First Instance, there will be a Judge, the Public Prosecutor, a registrar, you, and your attorney, if you have retained one. The Court's verdict and sentence are normally pronounced within two to three weeks after the trial. If you are found guilty, you will be fined and/or sentenced to prison. If you are unable to pay the fine, an additional prison sentence will be added.

## **APPEAL**

Once the verdict is given, both you and the prosecutor have two weeks in which to file an appeal. An appeal is heard by the Court of Appeal as soon as your case can be placed on its calendar. The court of appeal may increase as well as decrease a sentence. You should consult your attorney and consider carefully before filing an appeal.

## **IMPRISONMENT**

If you are tried in Curacao, Aruba or St. Maarten, you will serve your sentence where you were tried. If you are tried in St. Eustatius, Saba or Bonaire, you will serve your sentence in Bonaire. Pre-trial detention time spent in jail is usually deducted from the sentence. If you are sentenced to more than 12 months, you may be eligible for release after serving two-thirds of your sentence. Good behavior is the primary condition for early release.

You may apply for "gratie" (grace) at any time. Gratie is a reduction or cancellation of the remainder of a prison sentence and is granted by the Governor. In order to apply for it you must write a letter to the Governor explaining the special circumstances involved in your case that call for a reduction in sentence. The Attorney General, Public Prosecutor and Prison Director are usually asked to give their opinions. Gratie cannot normally be expected, but may be granted under very special and unusual circumstances.

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