

CITY OF WILMINGTON,
BUREAU OF POLICE,
Wilmington, Del., November 1, 1961.

ROBERT V. MURRAY,
Chief of Police, Metropolitan Police Department,
Washington, D.C.

MY DEAR CHIEF MURRAY: In regard to your letter of October 24, 1961, relative to our uniform arrest law, I wish to advise you that this law has been one of our greatest tools to effective law enforcement in this city.

I am enclosing a copy of this law and, as you can see, we are not permitted to make any record of the persons detained unless an arrest is made.

It would be very difficult, indeed, to estimate the number of persons detained for questioning under this law, as it is used daily by our detective and uniform divisions.

I would like to point out that once a person is detained, the officer or officers should detain the suspect only as long as they are interrogating and once the interrogation is complete, the subject is to be released or arrested, i.e., if the officer or officers pick up a suspect and he is detained for interrogation as a burglary suspect and the officers complete their interrogation in 45 minutes, this subject would then be released or arrested. In any event, the questioning could not be more than 2 hours and the suspect would have to be released or arrested at that time.

The following is a quote handed down from our attorney general's office in regard to police having the right to detain persons under 11 Del. C. 1902 when appropriate questions are directed to the detained person.

"After the person is lawfully detained for questioning, he is not denied his constitutional guarantee of due process if he is refused the privilege of telephoning an attorney or family. In several cases directly on point in surrounding States, the court directed that such actions by police officers were not a denial of due process. *Commonwealth ex rel Lockoski v. Claudy, Warden, et al.* (94 A. 2d 203, 172 Pa. Super. 330); *Commonwealth v. Agoston* (72 A. 2d 575, Cert. Den. 71 S. Ct. 9, 340 U.S. 844, 95 L. Ed. —).

"The issue is different, however, after arrest. Pursuant to statute, the person arrested must be brought immediately to the nearest magistrate or to the municipal court. At this point, he should be permitted the privilege of telephoning an attorney or his family for, if the defendant is arraigned or given a preliminary hearing, the presence of counsel is usually deemed necessary concomitant and a denial to him of such counsel would probably be deemed a denial of due process."

I am also enclosing an opinion from the Supreme Court of the State of Delaware which may prove to be of value to you by answering some of the questions that may be directed to you.

If further information is desired, please do not hesitate to write.

Sincerely,

JOHN J. SMITH,
Chief of Police.

CHAPTER 19, TITLE 11, SECTION 1902, DELAWARE CODE OF 1953

SEC. 1902. Questioning and detaining suspects.

(a) A peace officer may stop any person abroad who he has reasonable ground to suspect of committing, has committed, or is about to commit a crime, and may demand of him his name, address, business abroad, and where he is going.

(b) Any person so questioned who fails to identify himself or explain his actions to the satisfaction of the officer may be detained and further questioned and investigated.

(c) The total period of detention provided for by this section shall not exceed 2 hours. The detention is not an arrest and shall not be recorded as an arrest in any official record. At the end of the detention the person so detained shall be released or be arrested and charged with a crime.