**SOC 3395: Criminal Justice & Corrections**

 **Overheads Class 11: Pretrial Criminal Procedures**

\* Pre-trial criminal procedures generally occur between arrest & trial:

\* Most cases don’t go to trial, so these affect most cases

\* Example: search & seizure:

- police have been subject to court challenges (e.g. Feeney case:

 illegal search & seizure when officer entered trailer on “hunch”

 without a warrant or “reasonable grounds”)

 - competing court decisions reflect justice model vs. crime control

 philosophies

 - parliament has stepped in by passing law enabling officer to enter

 dwelling to prevent loss of evidence, personal harm or if there is

 urgent call for help

 - evidence collected will not necessarily be excluded (e.g. Godoy,

 Caslake cases)

 **Investigative Detention:**

\* Even before arrest, police may detain, interrogate & search a person

\* Investigative detention = reactive power dependent upon a reasonable belief that the detainee is implicated in a prior criminal act.

\* Runs up against s.9 of Charter: no arbitrary detention or imprisonment

\* Bilodeau case: investigative detention allowed when there are clear safety concerns (e.g. weapons). If evidence found, arrest OK & evidence admissible. Questions usually surrounds whether safety concerns reasonable, & intrusiveness of search

\* Investigative detention is an invaluable tool for police (stopping, confronting, questioning, & possibly detaining suspects)

\* Yet, if enough evidence found to arrest detainee(s), must read them their rights under Charter

  **Arrest:**

\* Arrest=power of police to restrain an individual:

 -suspect must be verbally informed

 -acknowledge acquiescence (or be forced)

 -police must inform suspect of reasons for arrest

 -police must read suspect his/her rights (e.g. to counsel, to silence)

  **Arrest Without a Warrant**:

\* s.495(1) of the Criminal Code authorizes arrest without a warrant when:

 - a person is found committing a criminal offence

 - is about to commit an indictable offence on the basis of

 reasonable & probable grounds

 - if the officer, on reasonable & probable grounds, believes there is

 an outstanding warrant for the suspect; or

 - the suspect is someone the officer knows has committed an

 indictable offence

\* s. 495(2) also authorizes arrest without a warrant of:

 - anyone found committing a criminal offence

 - anyone who has committed an indictable offence

 - anyone police believe, on reasonable grounds, has committed or

 is about to commit an indictable offence, and

 - anyone they believe has an outstanding arrest warrant in force in

 that jurisdiction

\* S. 495(2) no warrantless arrest can be made if

 - no reasonable grounds to believe suspect will not show in court

 - suspect’s identity is clear

 - evidence is secured

 - continuation/commission of another offence is prevented

\* In effect, this restricts warrantless searches in summary conviction, provincial statute & hybrid offences (where other methods, like appearance notices, will apply)

  **Arrest with a Warrant**:

\* In this case, police must suspect:

 - on the basis of reasonable grounds

 - that suspect committed a crime &

 - his/her appearance cannot be compelled by summons

\* Police must go before a JP & “lay an information” that an offence has been committed. Arrest/search warrant may then be issued

 **Custodial Interrogation:**

\* When taken into custody, Charter requires suspect be informed of right to counsel & right to remain silent before questioning begins

\* Before Charter, the major issue was voluntariness of statements

\* Now, s.7 imposes broader limits on police questioning (statements only admissible if police respect “principles of fundamental justice”)

\* Police use various psychological strategies to break down suspects:

 - the “conditioning strategy”: act like their best buddy

 - the “de-emphasizing strategy” : minimize focus on rights in favor

 of what victim went through

 - the “persuasion strategy”: tell your side or only the victim will

 have input

\* Some experts thus argue that it is a myth that videotaped confessions put the truth before the court

\* Many of these approaches are at least potentially problematic, but suspects often don’t appreciate their rights & statements slip by

 **Jailhouse Interrogations:**

\* Jailhouse informants have long been used to provide evidence against an accused.

\* Questions have been raised about their credibility and motivations

\* SCC in *Vetrovex* urged trial judges to give “clear a sharp warning” about such evidence

\* Morin and Sophanow inquiries criticized their use as leading to wrongful convictions

\* Some provinces have introduced reforms

 **Right to Counsel:**

\* s.10 of Charter: right to be informed promptly of reason for detention

 right to retain & instruct counsel without delay

 right to be informed of rights

 right to have validity of detention determined

\* Generally, suspect must be given reasonable opportunity to consult lawyer & confer privately:

 - accused can’t drag things out

 - burden on suspect to show impossible to contact lawyer

 - right doesn’t apply when accused agrees to accompany police

 without being formally detained

\* Police can’t question suspect about case until s/he speaks to counsel (otherwise evidence excluded)

\* Waiver of rights possible, but suspect must appreciate consequences

\* Length of time given to call depends on seriousness of charge

 **Compelling Appearance, Interim Release, & Pretrial Detention:**

\* This depends on the charge:

 - summary conviction offences: offender usually released on

 “promise to appear”

 - hybrid or indictable offences: police must have reasonable &

 probable grounds to swear “information” before JP (who has

 decision re: summons or warrant)

 - indictable offences: if police believe suspect won’t show in court,

 may detain & await bail hearing (a.k.a. “show cause hearing”)

 - if charged with s.469 offence (e.g. murder), reverse onus applies

 - in most other cases, accused released, with or without conditions

\* Continued detention of accused must be justified. Generally, this only happens if:

 - necessary to ensure attendance in court

 - necessary for protection & safety of the public

 - there is substantial probability accused will commit offence/

 interfere with administration of justice

 - detention necessary to maintain confidence in administration of

 justice

 **Bail Reform:**

\* Bail Reform Act (1972) created above system due to fear traditional bail practices discriminated against poor (despite studies showing better attendance rates at trial for those released on own recognizance)

\* Several levels of screening included to prevent unnecessary/unjustified detentions (e.g. senior officers, JP’s).

\* Also, several graded options institute degrees of control over suspects (e.g. appearance notices, recognizances, unsecured bail, fully secured bail)

\* This “ladder effect” is said to be fairer to poor/ helps them better prepare legal defense

\* Still, criticisms persist that, despite above reforms, system is still in effect racist