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