



State Comptroller and Ombudsman  
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Criminal Detentions in Israel

# **Detention Proceedings - Israel's Police and Courts**

Abstract





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## Abstract

### Background

The right to freedom is a fundamental right in Israel by virtue of the Basic Law: Human Dignity and Freedom. A person's arrest infringes upon the person's personal liberty. The Detention Act empowers law enforcement agencies to limit a person's freedom by way of detention or holding. Many elements are involved in criminal detention proceedings: The police decide on the detention according to the powers granted to them in or by the power of the Detention Act to take measures for the prevention and detection of offenses, catching criminals and the maintenance of public order and security of life and property. Arrest procedures are conducted in courts and the Courts Administration assists the judiciary.

### Key figures

About **174,000**

arrests were made in the years 2016-2018 according to Israeli police data

**16%**

Proportion of all the detainees in 2016-2018 who were released before being brought before a judge

**35%**

The proportion of 2018 arrests in which there was a petition for detention of the suspect until the end of legal proceedings

**21**

Number of detainees per day brought on average before a judge in each of the district courts in 2018

**156** million NIS

Were deposited in police and courts as bail and not returned as of August 2019. Most of it held by the court administration

**7** days

Median detention duration from the earliest detention date to the date of the end of detention

**66%**

of (examined) requests for appointment of defense counsel were forwarded to the Public Defender's Office only after the detainee had already been questioned

**5** years

The number of years police have not collected data on the use of a commissioned officer's authority to grant conditional release at the police station, so there is no clear picture regarding the situation in this matter

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## Audit Actions






From March to June 2019, the State Comptroller's Office examined the systemic treatment of various law enforcement agencies. This chapter deals with the conduct of the Police and the courts system. The audit actions included analyzing police databases for 2016-2018 and visits to police districts, police stations<sup>1</sup> and courts<sup>2</sup>.

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## The Situation Reflected in the Audit Findings







-  **Detention records and their presentation to the public** - Israeli police data on the number of criminal arrests, published in the Statistical Journal, present only a partial picture of the extent of the detention authority's use. In the years 2016 to 2018, the data did not include about 123,000 arrests. In hundreds of cases, a double record of the arrest was found. In many cases, the detention reports only partially documented the actions taken during the detention: In 24% of the detention reports, the police officer did not specify the cause of detention; Only 57% of the detention reports stated the date the detainee was brought to the police station. It was also found that there was an inconsistency between the trend seen in the use of the holding authority (an increase of about 5% compared to 2017) and the trend in regard to the use of detention authority and the overall scope of cases investigated during the same period (a decrease of 11% and 2.5%, respectively).
-  **Exercise of the right to consultation with an attorney** - The police do not record in a regular and comprehensive manner all the actions it must take to ensure that the detainee exercises his right to consult with an attorney, including data on the time of filing an application for the appointment of a defense attorney. In 23% of the arrests examined, the application form was prepared and sent only after the detainee was interrogated, despite the overseeing officer's decision to send it before the interrogation. Therefore, there is concern that the right to consultation has been violated in these cases.
-  **Conditional release of detainees** - For a decade now, the court administration and public defender's office have argued that the police do not make sufficient use of its powers to decide upon conditional release of detainees at the police station, but rather bring them to court unnecessarily. On the other hand, the police say that this is because the powers of the officer in charge are limited, and they argue that his powers should be expanded. However, the police did not collect data on the matter. In approximately 52% of the approximately 30,000 arrests examined by the State Comptroller's Office, the court's ultimate decision for release had been within the authority of the officer in charge.

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1 In the Capital Center Station (Jerusalem), the City Quarters Station (Tel Aviv), Ramle, Haifa and Be'er Sheva

2 The magistrates' courts in Jerusalem, Tel Aviv and Beer Sheva.








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**Deposit guarantee and restitution** - Over the years, the court system has accumulated large sums of money deposited as bail and which were not yet been reimbursed to the eligible persons. In August 2019, NIS 148 million were deposited in 42,855 arrests cases - about 47% of all deposits. All courses of action put forward by the courts to address the problem of reimbursement of the deposited funds, including the eligibility issue, have not been promoted or completed. Police have accumulated approximately NIS 8 million in deposited moneys which have yet to be reimbursed to the eligible persons.
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**Availability of Courts** - Courts limit the time for filing detention applications in the magistrate's courts in the early morning hours only. Also, the detention practices in districts across the country are not uniform.
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**Controls regarding detention** - The objectives set by the Commissioner of Police called for a reduction in use of goals involving indices of the number of detentions or indictments filed. However, in three districts, annual detention goals have been set in the area of arrests that are inconsistent with the Police Commissioner objectives. As a result, there is growing concern that district work is being shifted toward over-policing or under-policing, and that assimilation of conceptions of values within Police Commissioner indices will be harmed.
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**Video Conferences** - The issue of video conferences in connection with detention hearings has not been promoted for years, and since 2013, disputes between the parties involved have not been decided and no legislation has been furthered in the matter.



Lodging detainees at the stations - Since the previous audit, the number of detainees boarded at police stations nationwide has decreased - from 23,000 detainees in 2015 to 3,694 detainees in 2017.

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## Main Audit Recommendations

-  The police is required to document data in regard to arrests in an orderly manner in the computerized systems. This documentation will enable it to conduct a comprehensive examination of the use of powers of detention and to make the complete data available to the public. It must ensure that the reports are prepared using the computerized systems and online.
-  The police must ensure that investigators and officers in charge document all precedent steps for the implementation of the right to consultation, to enable national-level supervision and control, and the examination of claims in a specific case file. This is also the case when the detainee was interrogated by an investigator prior to being brought before an officer in charge.
-  The police must collect data regarding the use of detention alternatives, from the decision of the officer in charge through the filing of a request in the secretariat of the court, and up to the conditions laid down in the court.
-  It is proposed that the Police Commissioner ensure that the number of controls is increased, and that the police station's incentive to comply with its obligations under law will increase. To this end, it is proposed that the control and audit activities conducted in the Investigations and Intelligence Division, in the districts, in the different areas, and in the stations, be brought before the senior command of the police in order to assess its nature and frequency.
-  The court administration must consider the allegations raised in connection with the filing of requests in the court secretariats and their effect, in practice, on the actions of all law enforcement agencies involved.
-  As for the return of deposit money – the courts administration is advised to consider further steps to assist in promoting a solution to the problem including, inter alia: launching the service on a website and publicizing it; launching an online form for contact and payment details; receiving the funds through the Post Bank in cash and not only by bank transfer; examining possible assistance in finding updated contact information from other parties.
-  The Ministry of Justice should consider advancing the regulation of video conferences within a proper legislative framework, and discuss and resolve disputes that have been raised over the years.

## Summary

The management of detention requires a balance between the needs of criminal investigation and the right to personal liberty of the detainee and the presumption of innocence. There were flaws in the Israeli police activity in the area of arrests - lack of observance of detainees' rights, such as the exercise of the right to consult a lawyer, lack of documentation of its activities, and inadequate use of professional supervision and control in the area of arrests. It has also been found that the court administration limits its accessibility to the police, and that it has not yet found a solution for reimbursement of deposit money (bail) to eligible persons. Despite the fact that the police play an important role in this area - from the detention phase to the release decision - it does not have complete data on the actions it carries out and regarding the protection of the rights of detainees.

### The changes in the scope of criminal arrests in the last three decades, by type of detention

