

China Country Summary Card

RIGHT TO COUNSEL	
Right to Counsel	<ul style="list-style-type: none"> A crime suspect has the right after the initial interrogation or from the day on which compulsory measures are adopted against him, to hire a lawyer to offer him legal consultancy or to act on his behalf in making appeal or accusation (art.96 CPL 1996) Also art. 11, 32, 34, 36 CPL
INTERROGATION AND INVESTIGATION	
Right of indigent to have attorney	<ul style="list-style-type: none"> A person who needs assistance of lawyers in a number of matters including criminal procedure but cannot afford lawyers fees, may obtain legal aid in accordance with State regulations (art.41, ch.VI Lawyers Law 2001) The People’s Court may designate a lawyer obligated to provide legal aid and serve as a defense lawyer for the accused, if he has not appointed one due to financial difficulties (art. 34 CPL)
Right to investigation	<ul style="list-style-type: none"> The public security organ shall conduct investigation into a criminal case already put on file, gather and acquire evidence and materials proving the crime suspect to be guilty or innocent. (art. 89 CPL)
Search and Seizure	<ul style="list-style-type: none"> The client has the right to reject an unlawful search. If he is not shown a search warrant from before, the search is unlawful. A search may be conducted without a search warrant if an emergency occurs at the time of arrest or detention. Any articles and documents discovered during an inquest or search that may be used to prove a criminal suspect’s guilt or innocence may be seized, but articles and documents that are irrelevant to the case may not be seized. All seized articles and documents shall be carefully checked by the investigators jointly with the eyewitnesses and the holder of the articles; a detailed list shall be made and duplicated on the spot and shall be signed or sealed by the investigators, the eyewitnesses and the holder. One copy of the list shall be given to the holder, and the other copy shall be kept on file for reference. (art. 111-115 CPL)
Search of person	<ul style="list-style-type: none"> For the purposes of collecting criminal evidence and tracking down a criminal offender, the investigating personnel may search the person...(art. 109 CPL)
Search of home	<ul style="list-style-type: none"> For the purposes of collecting criminal evidence and tracking down a criminal offender, the investigating personnel may search the residence of the crime suspects and persons who might hide the criminal offender or criminal evidence (art. 109 CPL)
ARREST AND DETENTION	
Arrest	<ul style="list-style-type: none"> An arrest of a crime suspect or a defendant must be approved by a people's procuratorate or decided by a people's court, and shall be executed by a public security organ. (art. 59 CPL) No citizens may be arrested except with the approval or by decision of a people's procurator or by decision of a people's court, and arrests must be made by a public security organ (art.37 Constitution)
Detention	<ul style="list-style-type: none"> Within 24 hours after a person has been detained, his family or work unit must be notified of the reasons

	<p>for his detention and the location of custody, unless such notification would hinder the investigation or there is no way of notifying them. (art. 64, 71 CPL)</p> <ul style="list-style-type: none"> • A public security organ shall interrogate the detainee within 24 hours after detention. If it is found he should not have been detained, he must be immediately released and issued a release certificate (art. 65 CPL) • Unlawful detention, ie by means other than after the approval or decision of a people’s procurator or after a decision of a court, is prohibited (art.37 Constitution)
Right to bail	<ul style="list-style-type: none"> • Crime suspects and defendants already taken into custody, their legal representatives and near relatives shall have the right to apply for their release upon bail pending trial. (art. 52 CPL) • The defendant may be granted bail under any of the following circumstances: - Possible sentence of public surveillance, criminal detention or supplementary punishments (art.51 (1) CPL); - Possible sentence of fixed-term imprisonment at least, and on condition that the public would not be endangered if the defendant is granted bail pending trial or is placed under residential surveillance (art. 51(2) CPL); when a suspect suffers from a serious illness or is pregnant or breast-feeding her baby (art. 60); If a case involving a suspect or defendant in custody cannot be closed within the time limit stipulated by law for keeping him under custody for the purposes of investigation, conducting examination before prosecution, or for the procedure of first or second instance (art. 74); When a suspect who is not eligible for arrest holds a valid passport or exit document and there is concern that the suspect will leave China to evade investigation, the Procuratorate can place the person on bail pending trial (Art 37, para 7 Rules of Criminal Proceedings of the People’s Procuratorates); When the Procuratorate does not approve the request for arrest or decides not to prosecute, requiring the case to be reviewed once more, public security organs can place the suspect on bail pending (art. 63, para 5 and 7 Rules on the Procedures for Public Security Organs in Handling Criminal Cases).
Conditions of Detention	<ul style="list-style-type: none"> • It is strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means. (art. 43 CPL)
TRIAL	
Presumption of Innocence	<ul style="list-style-type: none"> • The client is presumed innocent until judged guilty by a People’s Court according to law (art 12 CPL)
Admissibility of Confessions	<ul style="list-style-type: none"> • It is strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means. (art. 43 CPL)
Cross-Examination	<ul style="list-style-type: none"> • The defense lawyer has the right to cross-examine the prosecution’s witnesses (art. 47, 156 CPL)
Age Culpability	<ul style="list-style-type: none"> • A person who has reached the age of 14 but not yet 18 who commits a serious crime shall be given a lighter or mitigated punishment. A person who has reached the age of eighteen and commits a crime shall bear criminal responsibility. (art.17 Criminal Law)