

British Columbia
Civil Liberties Association

The Arrest Pocketbook

A Guide to Your
Rights

by David Eby



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www.lawfoundationbc.org

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Important Notice and Qualification

This pocketbook has been prepared and published for information and educational purposes only. It is not legal advice and it is not intended that this pocketbook should in any way replace legal advice from a qualified lawyer. Individuals with specific legal problems should seek legal advice from a qualified lawyer. See the list of contact numbers at the back of this pocketbook to locate a lawyer near you.

Introduction

The B.C. Civil Liberties Association (BCCLA) is the oldest and most active civil liberties group in Canada. With the support of the Law Foundation of B.C., we have published this pocketbook to help you understand your rights and responsibilities when you are dealing with the police.

The police are responsible for enforcing the law. While they are deserving of respect and assistance, they must also respect your legal rights. This pocketbook has important information about how you can expect the police to act, and how you can respond if you feel the police do not act properly.

If you need specific legal advice, talk to a lawyer. This book is a pocket-sized, shorter version of the full-length BCCLA Arrest Handbook.

The Police and Arrest

There are three reasons why a police officer would stop someone walking down the street. You have different rights in each situation.

Reason #1 – The Police are Just Making Conversation

Police officers can use polite conversation to find a reason to hold you or arrest you. They could be investigating an incident you saw or know about. They might also simply be friendly. If you don't like the questions the police are asking, ask: "Am I free to go?" If the answer is yes, you can leave. If the answer is no, you are being detained (see Reason #2).



Reason #2 – The Police are Investigating You (Detention)

If you ask if you are free to go and the police officer says no, you have the right to be told why you are being detained. Remember the reason the police officer gives you, if he gives you one. Get the badge number or name of the police officer so that you will have it if you want to make a complaint.

If you are being detained but you are not under arrest, you aren't driving, and you haven't broken any laws, you don't even have to give the police officer your name. If you don't want to talk, say: "I want to remain silent." You may want to tell the police your name and address to show you are cooperative.



Being Detained

If you have not been arrested, but you are being held against your will, remember to:

- Ask why you are being held.
- Get the badge number or name of the police officer.
- Stay silent and tell the police you are staying silent (if you feel safe doing so). You may, if you have not committed any crime, wish to explain what you were doing that made the police suspicious. Sometimes an explanation can end a police interaction more quickly.
- Tell the police if you have needles with you before they search you. They'll probably find the needles anyway, and you don't want to accidentally hurt a police officer.

Reason #3 – The Police are Arresting You

You will know if you are under arrest because a police officer has said you are under arrest, or somehow indicated you are not free to go by physically holding you. If you are under arrest, and the police ask, you must tell them your name and address. The police must tell you why you are being arrested unless the reason is obvious – remember what they say so you can tell your lawyer.

The arresting officer may release you right away with an “appearance notice” (a sheet of paper that tells you where and when to show up for court) if she believes that you will show up for court, not break any more laws, and she is sure she knows who you are.

When You are Arrested

- The police can do a full search of you and your personal property.
- You may be kept in jail for up to 24 hours before appearing before a judge or justice of the peace.
- Any pulling, kicking, punching, running or physical action to avoid arrest could result in more charges. Going limp does not count as resistance.
- The police are allowed to use only as much force as is necessary to arrest you or ensure that the situation is safe. Any additional force is considered “excessive” force.
- The police may keep asking questions, but you don’t have to answer them. Tell the police you want to remain silent and you want to speak to a lawyer.
- Giving a fake name or address could result in more charges.

Reasons for Arrest

The law says the police must have a reason for arresting you. You can only be arrested by the police if:

- A police officer sees you committing a criminal offence.
- A police officer has reasonable grounds to believe you have committed or are about to commit an indictable or hybrid offence (p. 11).
- You have broken any law (including provincial laws or city bylaws) and you won't tell police who you are and where you live.
- There is a warrant for your arrest (p. 12).
- A police officer has a reason to think you have a mental disorder and are dangerous (p. 10).
- You have breached the peace or are about to breach the peace (p. 13).
- You are drunk or high in public (p. 13).
- A police officer has a reason to think you are a terrorist about to commit a terrorist act.

Types of Offences

There are three types of offences:

- Summary Offences = The least serious offences. They generally have lower penalties.
- Hybrid Offences = Where the Crown counsel can choose whether the offence is a summary or indictable offence depending on the situation.
- Indictable Offences = The most serious offences. They have much higher penalties.



For hybrid and summary offences, a police officer must release you immediately after arrest with an appearance notice (see page 6) unless she: (a) can't identify you; (b) needs to preserve the evidence of your crime; (c) needs to stop you from committing the crime or repeating it; or (d) has reasonable grounds to believe you won't come to court.

Arrest Warrants

A warrant is a piece of paper that a judge uses to allow the police to do something. Arrest warrants order the police to arrest a specific person. If the police have a warrant for your arrest, ask to see it. You have the right to see the warrant as soon as possible. When you read the warrant, make sure the warrant is actually for you.

The Mental Health Act

Under the *Mental Health Act*, police officers can use force to take you to a hospital for an exam by a doctor if they think that you are acting in a way that is dangerous to yourself or other people, and you seem to have a mental disorder that needs treatment. You can request a review of your detention. Ask staff members at the hospital for the review panel request form. You can also contact the Mental Health Law Program for legal information and advice.

Breach of the Peace

The police can arrest you for breaching the peace. Breaching the peace means you are causing a disturbance that involves some potential for violence. There is no specific offence of breaching the peace. This means that police must release you after they arrest you unless they are going to charge you for breaking another law.

Public Intoxication

Public areas are areas where anyone can go. They include parks, beaches and streets, as well as private places where the public are welcome, such as bars, restaurants and malls. If you are in a public area and you are intoxicated, the police can arrest you. Intoxicated means that you are so drunk or high that you are unable to care for yourself, a danger to yourself or others, or you are causing a disturbance. You must be released when you are sober.

Identifying Yourself to Police

You only have to give police your name and address if:

- You are under arrest.
- You are driving a car. Passengers in the car do not have to give the police their names or addresses.
- You have allegedly broken a law (including a criminal law, a provincial law or a city bylaw).

What to say to police

- Do you want to leave? Ask: "Am I free to go?" If yes, then go.
- If you are not free to go, ask: "Am I under arrest?" If yes, ask why.
- If you are under arrest, say: "I want to remain silent. I want to speak to a lawyer." Give your name and address if the police ask. Get the police officer's badge number.
- If you are not under arrest, but you can't leave, ask why. Get the police officer's badge number.

Personal Searches

Most searches happen because people tell the police it is okay to search them. You have the right to say no and the police can't legally threaten you or force you. If you don't give permission, the only times the police can search you or your things are when:

- The police have a reasonable belief (a good reason to believe) that you are carrying drugs, a weapon or open alcohol.
- The police have detained you (see page 6) to ask you questions. If you are detained, they may only do a frisk or pat-down search for weapons you could use to hurt them or yourself. They may also look in your bags. They cannot search for needle marks or drugs.
- The police have arrested you. If you are arrested, the police can do a full search of your body (not a strip search – unless they have a good reason) and personal possessions.



Vehicle Searches

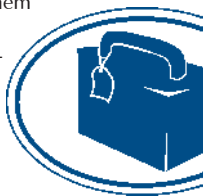
You have different rights when you are driving than when you are walking. When you are driving, police can stop you for many reasons, including to check whether you are impaired. When you are walking, they need a reason they can explain and justify before they can stop you. Just because the police stop your car does not mean they can search you or the car. The police can only search your car if:

1. You give them permission. You do not have to give police permission.
2. You have committed a criminal offence, like drunk or dangerous driving.
3. You are arrested.
4. They see something sitting in your car in plain view or smell something that raises suspicion and gives them reasonable grounds for the search.

Seizing Property

If the police “seize” your property, it means they have taken your property. The police can only take your property if it is somehow connected to a crime.

If you have paid for your property with money you got from crime, or you have used it when you were committing a crime, or owning the property itself is a crime, the police can take it. They can also take property that might give them evidence. Police can seize alcohol from you if you are drinking in public, and you are not in a licensed bar or restaurant. Police may also seize unopened alcohol if it is going to be used for an unlawful purpose.



The court should order your lawfully owned property returned once it is no longer valuable as evidence. Your illegally owned property may be destroyed, and will not be returned to you, even if charges are not pursued.

The general public can make arrests in some situations. They don't have the same arrest powers as police.

The police don't have to see you break the law to arrest you. Members of the general public can only arrest you if they actually **see** you commit an *indictable* or *hybrid* offence or if they see you running away from the police. People who own property can arrest you if they see you doing something wrong related to their property. They can't arrest you for being intoxicated in a public place, or for breach of the peace.

Although they may look like police, security guards only have the same rights as regular people, listed above. They can remove you from property they are protecting, just like the person who owns the property can remove you. They can only search you if you give permission.

Citizens and security guards must hand you over to the police as soon as possible after they have arrested you. You are under no obligation to talk to these people.

Police Accountability

The police must obey the law. If they act improperly, you can sue them in a civil lawsuit, and you can file a complaint that may result in criminal charges against the police officer. Civil lawsuits are expensive, and you will probably need a lawyer. Filing complaints is free.

For more information on how to file a police complaint, contact the BCCLA at (604) 687-2919 and ask for a police complaint brochure. There may be time limits to making a police complaint. Contact the BCCLA or the agencies below for more information about the complaint process.

The Commission for Public
Complaints Against the RCMP
#102-7337 137th St., Surrey, BC, V3W 1A4
tel 604.501.4080 or 1.800.665.6878

The Office of the Police Complaint
Commissioner (City Police)
#200 – 1111 Melville St., Vancouver, BC, V6E 3V6
tel 604.660.2385 or 1.800.663.7867

Important Phone Numbers

B.C. Civil Liberties Association.....	(604) 687-2919
Immigration/Refugee Law Clinic.....	(604) 601-6390
Law Line (Legal Services Society)	(604) 601-6100
Lawyer Referral Line.....	1-800-663-1919
Legal Aid in Vancouver	(604) 601-6300
Mental Health Law Program.....	(604) 525-2615
Office of the Police Complaints Commissioner...	1-800-663-7867
Ombudsman (B.C. Provincial)	1-800-567-3247
Prisoner Legal Services	(604) 853-8712
Privacy Commissioner of BC	(250) 387-5629
Privacy Commissioner of Canada	1-800-282-1376
RCMP Police Complaints	1-800-665-6878
Refugee Assistance.....	1-888-622-6337
Salvation Army Pro Bono Lawyer Program	(604) 299-3908
UBC Law Student Legal Advice Program	(604) 822-5791
Vancouver Area Network of Drug Users	(604) 683-8595
Society to Access Justice (<i>Pro Bono</i> Lawyers)	(604) 482-3195