

The Arrest Handbook

A Guide to Your Rights



Important Notice and Qualification

This handbook has been prepared and published for information and educational purposes only. It is not legal advice, and it is not intended that this handbook should in any way replace legal advice from a qualified lawyer. Individuals with specific legal problems should seek legal advice from a qualified lawyer.

Contents may not be commercially reproduced, but any other reproduction is encouraged. Where these materials are reproduced and distributed for educational or other purposes, attribution should be given to the BC Civil Liberties Association.

Published simultaneously in Traditional and Simplified Chinese, French, Punjabi, and Spanish.

2023 edition.

© BC Civil Liberties Association

Acknowledgements

The BC Civil Liberties Association extends a special thanks to the Law Foundation of BC and The Canadian Bar Law for the Future Fund for providing financial support for this project. Thank you to the Canadian Race Relations Foundation for generously supporting the second printing of this Handbook.

The material in this book is the product of extensive consultation with many community groups and people with lived experience.

We'd like to express our appreciation for the efforts of subject matter experts including:

- André Capretti, Policy Analyst, HIV Legal Network
- Colton Fehr, Assistant Professor, Faculty of Law, Thompson Rivers University
- Irina Ceric, Assistant Professor, Faculty of Law, University of Windsor
- Iva Cheung, Policy and Legal Researcher, Health Justice
- Jennifer Nason, Lawyer, Mental Health Law Program, Community Legal Assistance Society
- Kendra Milne, Executive Director, Health Justice
- Laura Johnston, Legal Director, Health Justice
- Molly Shames, Lawyer, Stern Shapray Criminal Lawyers
- Nikos Harris, KC, Associate Professor of Teaching, Peter A. Allard School of Law, UBC
- Robert Diab, Professor, Faculty of Law, Thompson Rivers University

We would also like to thank the African Nova Scotia Justice Institute, BC Centre on Substance Use, Coalition of Peers Dismantling Drug War, Defund 604, Downtown Eastside Women's Centre, Karen Ward, SWAN Vancouver, Union of BC Indian Chiefs (UBCIC), Vancouver Area Network of Drug Users (VANDU), and Western Aboriginal Harm Reduction Society (WAHRS), for their valuable feedback.

Thanks to the Board of Directors of the BC Civil Liberties Association, and everyone who contributed to this guide.

-BCCLA Staff

Contents

Introduction	10
Interactions with Police	10
“Voluntary Conversations”	12
Interactions with Police on Reserve	13
Filming the Police	14
Police Photography and Video	14
Random Police Stops or “Street Checks”	15
The Right to Remain Silent	16
Identifying Yourself	17
Fake ID	17
Undercover Police Officers	18
Being Arrested	19
Reasons for Arrest	19
Arrest Warrants	21
Use of Force by the Police	22
Remaining Silent	22
Breach of the Peace	23
Public Intoxication	23
Sobering Centres	24
Being Detained	25
When can you be detained?	25
Your Rights When Being Detained	26
Being Detained	27
Being Detained While Driving	28
After Arrest	29
Police Questioning	29
Written Statements	31
Right to Speak to a Lawyer	32
Brydges Line	32
Duty Counsel	33
Diversion Programs	33
Legal Aid	34
Rowbotham Application	35
Legal Services for Indigenous People	35

Release or Detention	36
Detention and Personal Searches	36
Medical Needs While in Custody	37
Jailhouse Informants and Undercover Police as Prisoners	37
Trans and Gender-Diverse Rights	38
Identification Procedures	39
Bail	40
Conditions of Release	41
Detention Review	41
Visits from Friends or Family	42
Search & Seizure	43
Resisting a Search	44
Racial Profiling	44
Search of Your Body	46
Detention and the Right to Counsel	47
Trans and Gender-Diverse Rights	48
Body-Cavity Searches	49
DNA Samples and Bodily Samples	50
Sniffer Dogs	51
Search of Your Home	51
Tents and RVs	53
Search of Your Vehicle	53
Body Language and Communication	55
Search of Your Phones and Computers	55
Seizure of Personal Property	56
Other Law Enforcement Agencies	58
Private Security	58
Canada Border Services Agency (CBSA)	59
Transit Police	61
Train Police	61
Conservation Officers	61
Protest, Civil Disobedience and Indigenous Resistance	62
Protest & Civil Disobedience	62
Your Right to Protest	62

Civil Disobedience	62
Counter-Protest	63
Indigenous Resistance	63
Injunctions	65
Exclusion Zones	65
Planning	66
Police Presence and Interaction	68
Recording Information	70
Legal Consequences for Protestors and Land Defenders	71
After Arrest	73
Heavily Policed Communities	74
General Use of Streets and Public Spaces	74
People Experiencing Homelessness or In Unstable Housing	76
People Who Use Drugs	79
Sex Workers	82
People who are HIV+	85
Youth and the Law	88
Children Under 12	89
Special Rules for Youth	89
Searches in Schools	93
Personal Safety and Security	94
Mental Health Law and Involuntary Treatment	95
Mental Health & Initial Detention	95
Criminal Records Check	97
Involuntary Treatment and Continue Detention	98
Treatment and Discipline	99
Detention Review	101
Important Phone Numbers	104
Important Legal Words	105

The BC Civil Liberties Association is based on the traditional, unceded, and ancestral territories of the hə́nqəmíḥəm speaking x^wməθk^wəyəm (Musqueam) people and sə́lilwə́tə́ł (Tsleil-Waututh) Nation, and the Skw̓xwú7mesh sníchim speaking Skw̓xwú7mesh Úxwumixw (Squamish Nation). These lands and the languages derived from them were never freely given up for settler occupation. As a predominantly settler organization, we acknowledge our complicity in colonial violence through our continued occupation of these lands. Our work spans the traditional territories of hundreds of diverse Nations. We are grateful for their stewardship, including ongoing resistance to the destruction of these lands. We believe that the realization of human rights and civil liberties can never be achieved until the Indigenous Peoples of these lands can be fully self-determined. In this spirit, we pledge to use our resources to oppose violations of the rights and freedoms of Indigenous people now and in the future.

Introduction

The BCCLA was formed in 1962 in response to excessive use of RCMP power against the Doukhobour religious community. We are built on the belief that protecting and defending the rights of equity-denied groups leads to safer communities for everyone. We promote, defend, sustain, and extend civil liberties and human rights by challenging unfair laws, educating the public, advocating for law and policy reform, and holding state actors accountable. As a settler legal society, we have a particular responsibility to understand how colonial laws protect the unlawful occupation of these lands and disempower and control Indigenous Peoples. These are the laws that are addressed in this guide, though we recognize that various forms of Indigenous law pre-date this legal system and continue today. The purpose of this guide is to empower people by providing information about what their rights are in interactions with police and law enforcement.

Policing as an institution enforces colonial laws and occupation. This institution continues to forcibly remove Indigenous Peoples from their lands, to protect state and corporate interests, and systematically fails to protect Indigenous women, girls, and Two-Spirit people from alarming violence at all levels. The RCMP was instrumental in implementing and enforcing the residential school system, which we recognize as genocide. White supremacy and the historic enslavement and segregation of African people is a further lens through which discriminatory policing today must be understood. This guide would be incomplete without acknowledging ongoing colonial violence and the mass incarceration of Indigenous and Black people. Policing continues

to disproportionately target Indigenous, Black and other racialized people, people who are unhoused, people with mental health challenges, people who use drugs, people who are HIV+, and gender-diverse people. This guide is dedicated to you.

Disclaimer: This guide explains your rights when interacting with police or law enforcement. However, sometimes police enforcing the law do not follow or respect these rules. They may not even be aware of them. Knowing your rights helps you to advocate for yourself, but it is possible that your rights may be breached. If this happens, try to stay calm. Continue to state your rights in a calm, clear manner. Note the names, badge numbers, or other identifying information of any officers involved. Record the interaction if you feel able to. Give this information to a lawyer or someone you trust later.



Interacting with the Police

“Voluntary” Conversations

Police might use “friendly” or “voluntary” conversations to find reasons to detain you, or to get information about you and people you know. They could say they are investigating an incident they think you saw or know about, or they might think you’re about to commit a crime.

Even if it seems like you are having a casual conversation, nothing you write or say to the police is “off-the-record.” Everything you say to the police, even in a “friendly” conversation, can be used as evidence against you in court. There are many ways you can be held responsible for a crime, like if you help someone else commit a crime or even if you just try to commit a crime.

You can choose to speak with the police, like when you have witnessed information that may be important to solving a crime, but you can’t be forced to speak to the police.

If you don’t want to speak with a police officer, ask: “Am I free to go?” If the answer is yes, you can leave. If the answer is no, you are being detained. (See Chapter 3: Being Detained.)

If the police are trying to have a “voluntary” conversation with you, **you always have the right to remain silent**. Police often use tricks to get you to talk, both before and after you are arrested. They might say they really want to hear your side of the story, or that you’ll feel much better if you talk. You can repeat: “I want to remain silent.” If you’re not being detained or arrested, you can also walk away.

In BC, each police agency should have a policy online about voluntary police interactions. In 2020, BC set a standard *“to ensure that...the person knows they are free to go, and their refusal to stay or answer questions do not justify further law enforcement action.”* For example, police in Vancouver should tell you that you’re not required to provide any identifying information or answer any questions and are free to walk away at any time.

Interactions with Police on Reserve

Depending on the specific community, policing duties on-reserve may be carried out by the RCMP, provincial or municipal police forces, or by a police force operated by the community.

In addition to any specific community laws, the *Criminal Code* and many provincial laws apply on-reserve and can be enforced by the police. All your rights outlined in this handbook still apply.

Filming the Police

You have the right to film the police. The police can't tell you not to film them, but they can tell you to move if you're creating a safety issue or getting in the way of their duties. Follow directions the police give you on where to stand.

If the police try to take away your phone, you can tell them clearly: "I do not consent," but don't physically resist because this could be dangerous or lead to criminal charges. If you are filming the police while they arrest someone else, keep in mind that doing things like yelling or swearing at the police may have negative outcomes for the person being arrested.

Police Photography and Video

As more law enforcement agencies decide to use body worn cameras for their officers, police recordings of all interactions they have with the public have become common. If you think you have been recorded, the police may give you a copy of their recording if you ask in writing. If you're charged with an offence, you'll have the right to see any relevant video and photographs.

If the police don't let you see the recordings, you may be able to get them through a request under the *BC Freedom of Information and Protection of Privacy Act*. Visit <https://www.oipc.bc.ca/> or call 250-387-5629.

For RCMP recordings, you can make a request under the *Privacy Act*. Use the forms on www.priv.gc.ca/en or call the Privacy Commissioner's office at 1-800-282-1376.

Random Police Stops or “Street Checks”

It is illegal in BC and across most of Canada for police to randomly stop someone and ask them for information, except in an investigation or if the person is driving. Random police stops interfere with our fundamental liberties and freedoms. They can often happen through racial profiling and discrimination.

Random police stops are not legal, and yet they still happen. Nova Scotia is the only place in Canada that has a clear ban on street checks, although people with lived experience recount that they still happen even there.

Police stops can be intimidating and stressful. Even if you think the police aren't acting within the law, or if you feel unsafe, try to use your best judgement in how you choose to act. You always have the option of filing a complaint later. Remain as calm as possible and make notes of your interactions with the police as soon as you can.

The Right to Remain Silent

If you are being investigated for a crime, you have the right to remain silent. It is best not to say anything to the police until you have spoken to a lawyer. (See After Arrest: Chapter 3 for more information on contacting a lawyer.) The police may continue to ask you questions even if you tell them you want to remain silent, but you can keep saying: "I want to stay silent. I want to speak to a lawyer."

What to say to the police:

1. If the police say: "Do you want to leave?" You can ask: "Am I free to go?" If they say Yes, then you can go.
2. If you are not free to go, you can ask: "Am I under arrest?" If they say Yes, you can ask: "Why?"
3. If you are under arrest, you can say: "I want to remain silent. I want to speak to a lawyer." Give your name and address if the police ask. You can ask for the police officer's badge number.
4. If you are not under arrest, but are told you can't leave, you can ask: "Why?" and ask for the police officer's badge number.

The fact that you exercised your right to silence can never be used against you to prove a crime.

Identifying Yourself

Most of the time, according to the law, you do not have to give the police any information.

Sometimes you do have to give your name and address to the police, like when:

1. You're under arrest.
2. You're driving a car. Passengers in the car do not have to give the police their names or addresses.
3. A police officer is giving you a ticket (for breaking a city bylaw or any other law) or serving you an *appearance notice*, *undertaking to appear*, or *summons*.

If you are unhoused, you can say that to the police, or tell them that you have "no fixed address."

Fake ID

Don't ever give the police a wrong name and address, or fake ID. You could face serious charges.

Undercover Police Officers

Undercover police officers don't wear uniforms and pretend not to be police. If they're undercover in jail, they may pretend that they're also being held in custody. In other situations, they may dress like an unhoused person, a businessperson, or the head of a criminal organization. You should not talk about your case or charges to anyone other than a defence lawyer when you are in custody. Anyone else could be an undercover police officer. Even if they aren't the police, anything you say to anyone other than your lawyer can be used against you in court.

Police working undercover are allowed to encourage you to commit a crime if they suspect that you're already doing a similar crime, or you're in an area where that crime happens a lot. For example, if they think you're selling drugs, or you're in an area where drugs are usually sold, they can ask you to sell them drugs. But they can't randomly ask you to commit crimes, and they can't offer rewards or trick you into committing a crime.

Police in undercover investigations are allowed to:

- Lie about being a police officer, no matter how many times you ask them directly: "Are you a police officer?"
- Lie about anything else – including their name, background, and personal information.
- Break the law (in some situations).



Being Arrested

The police have to tell you if you're under arrest and the reason for your arrest, unless it is obvious. Remember the reason they give for arresting you so that you can tell your lawyer later. If you are under arrest, and the police ask, you must tell them your name and address.

Reasons for Arrest

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

1. They see you committing a *summary offence*.
2. They have reasonable grounds to believe you have committed or are about to commit an indictable (serious) or *hybrid offence*.
3. They have reasonable grounds to believe you have breached or are about to breach any state-ordered conditions of a summons, appearance notice, undertaking to appear or release order.
4. There is a *warrant* for your arrest. (See Chapter 3: Being Detained for information on arrest warrants.)
5. They have reasonable grounds to think that they need to arrest you to stop a terrorist act.
6. You have broken any law, including provincial laws and city bylaws, and you won't tell police who you are and where you live
7. They see you "breach the peace" or have reasonable grounds to believe you are about to "breach the peace" (See Chapter 3: Being Detained for information on breaching the peace.)
8. There is a specific law that lets the police arrest you for

something you have done. For example, if you are drunk or high in public. (See Chapter 3: Being Detained for information on public intoxication.)

For *hybrid* and *summary offences*, you can't be arrested unless the police: (a) can't identify you; (b) need to preserve the evidence of your crime; (c) need to stop you from committing the crime or repeating it; or (d) believe you won't come to court.

If none of these apply, the police will probably release you with an appearance notice, asking you to show up for court at a certain time and possibly to go to a police station to be fingerprinted. They can also keep you in custody to protect the safety of a victim or a witness. (See Chapter 4: After Arrest.)

Arrest Warrants

A *warrant* is a piece of paper that a Judge gives to the police to allow them to do something. *Arrest warrants* order the police to arrest a specific person.

If the police say they have a *warrant* for your arrest, you have the right to see it. You can ask: "Can I see the warrant?" If the police have it with them and the situation is under control, they have to show it to you. However, the police usually don't have the physical *warrant* with them. They usually have been told there is an outstanding *warrant* by their computer system. If it's not possible at the time of your arrest, the police have to show you the warrant as soon as possible after you are arrested.

When you read the *warrant*, make sure the *warrant* is actually for you. The *warrant* **must** include:

- Your name or a description of what you look like.
- The reason why you are being arrested.
- The order that you should be arrested.
- A signature of a Judge or *Justice of the Peace*.

If you're arrested with or without a warrant, you have all of the same rights and responsibilities. You have the right to remain silent and the right to speak to a lawyer. You must give your name and address. (See Chapter 4: After Arrest.)

Use of Force by the Police

The police are only allowed to use as much force as is necessary to arrest you or ensure a situation is safe. Any additional force is considered “excessive” force. If you feel that the police used more force than needed, tell your lawyer. You can make a complaint or file a lawsuit. If you have cuts, marks, bruises, or other physical evidence, go to a doctor and take photographs of your injuries. The doctor’s notes and the photographs can be used as evidence in a trial or to support a complaint.

The police can do a full search of you and your personal property if you are arrested. (See Chapter 5: Search and Seizure.)

If you’re under arrest, don’t physically resist the police. Kicking, punching, pulling, running, or resisting physically in other ways could be dangerous and result in more charges against you. Going limp does not count as resistance, but the police may react negatively to this as well.

Remaining Silent

You can tell the police: “I want to remain silent. I want to speak to a *lawyer*.” They may keep asking questions, but you don’t have to answer them. (See Chapter 1: Interacting with Police.) Talk to a *lawyer* before you speak to the police after you have been arrested. Anything you write or say to the police or other people may be used against you. **There is no such thing as an “off-the-record” discussion with police.**

Breach of the Peace

The police can arrest you for *breach of the peace*. *Breach of the peace* means you are acting in a way that is violent or could harm other people or property. Being annoying or disruptive is not enough to be arrested, but the police might arrest you if they think you're about to breach the peace.

Breach of the peace is not a specific crime. This means the police must release you unless they charge you for breaking another law. They might keep you in a cell or otherwise detain you before releasing you. You should be released as soon as the risk of committing a breach has passed, and in all cases within 24 hours. Arrests for breach of the peace do not result in a criminal record, but they may show up in police record checks.

Public Intoxication

Public areas are spaces where anyone can go, like parks, restaurants, malls, the beach, and the street. They may be owned by the government or privately. Your own home, a hotel room, or the house of a friend is not a public area.

Even though *Public Intoxication* isn't a criminal offence, if you're in a public area and you're intoxicated, the police can arrest you. To be "intoxicated" is to be so drunk or high that you're a danger to yourself or others, or you're causing a disturbance. If you're arrested, the police must release you when you are sober. They must also release you if an adult who is sober and responsible asks the police to release you into their care.

Sobering Centres

If you're arrested for public intoxication, police may hold you in a jail cell or bring you to a hospital emergency unit. In some areas of BC, they can also take you to a sobering centre. This is a facility with beds and supports where intoxicated people may be held for a short-term, usually up to 24 hours.

Your Rights

Remember! Whether you are intoxicated in public, or you are in breach of the peace, you still have all of your rights, including the right to talk to a lawyer and the right to remain silent.



Being Detained

The police detain you when they limit your freedom to move around. This could be by physically restricting you, or by making you believe you aren't free to go.

If you're in a heavily policed community, you may be more likely to feel like you're being detained when you interact with the police. If you're not sure whether you are being detained, you can ask the police: "Am I free to go?" If the answer is yes, you can leave. If the answer is no, you are being detained.

When can you be detained?

The police can detain you when they're investigating a crime. You can only be detained for an investigation if police have *reasonable grounds* to suspect that you're connected to a crime. For example, if you match the description of the suspect, and your detention is necessary and reasonable in the circumstances.

There are other specific situations when you can be legally detained. The police can also detain you to carry out their legal duties. For example, to enforce a by-law or give you a ticket for a non-criminal offence.

The police can only detain you for a reasonable amount of time – this is usually a short period.

Your Rights When Being Detained

You have the right to be told why you're being detained, unless the answer is obvious, for example, if you've tested over the legal limit on a roadside breathalyzer. Remember the reason the police officer gives you. Get the badge number or name of the police officer in case you want to make a complaint later.

If you don't want to talk, you can say: "I want to remain silent." In general, you don't have to say anything to the police. In some cases, like if you are being arrested or being given a ticket for breaking a law, you do have to give your name and address. You also have to give information when there is a specific law that requires it. For example, if the police stop you while driving. (See "Being detained while driving" Page 26.)

Sometimes, even if you say you want to remain silent, the officer will continue to ask you questions and try to get you to talk. You can continue to say: "I want to remain silent." (See Chapter 1: Interacting with Police for more information on police questioning and investigations.)

In general, you also have the right to speak to a lawyer before you say or write anything to the police. You can say: "I want to speak to a lawyer." If you ask this, the police have to give you access to a phone to call a lawyer that you choose. (See Chapter 2: After Arrest for more information on finding and contacting a lawyer.) There are specific times when you do not have the right to speak to a lawyer first. For example, when you are driving.

When you're detained, the police might conduct a *pat-down search* for weapons, and they might look at the contents of your bags. They can only do these searches if they have a reasonable suspicion that there is a safety risk. But if it turns out that the police didn't have the right to detain you, then they also wouldn't have the right to search you. Remember the details so you can tell a lawyer or make a complaint. (See Chapter 5: Search and Seizure for more information about searches.)

Being Detained

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

- You can ask why you are being held.
- You can get the badge number or name of the police officer.
- You generally have the right to stay silent. You can tell the police you are staying silent if you feel safe to say this.
- You have the right to speak to a lawyer. You can tell the police: "I want to speak to a lawyer."
- In some cases, you do have to give some personal information, like when you are driving and being ticketed for a by-law infraction, or if you are crossing the border.

(See Chapter 1: Interacting with Police for more information about talking to the police.)

Being Detained while Driving

The police can randomly stop you while you're driving to check your license, inspect your vehicle, and generally maintain safety on the road. If the police stop you, you have to give them your license, vehicle registration and proof of insurance if they ask. You also have to give the police your name and address, and the name of the owner of the vehicle.

If the police believe your car, or a car you are driving, was involved in an accident, or in breaking a law, you have to tell the police who was driving the car at the time. If the police suspect you are drinking and driving, they can do an investigation at the roadside before you speak to a lawyer. This includes asking you if you've been drinking, performing sobriety tests, and using a roadside breathalyzer. Other than these requirements, you have the right to remain silent and to speak with a lawyer before saying anything else to the police.



After Arrest

After being arrested, you **still** have the **right to remain silent** and **speak to a lawyer**.

Police Questioning

Police may continue to ask you questions even after you've asked to speak to a lawyer. You can repeat: "I want to remain silent. I want to speak to a lawyer." You may have to exercise your right to remain silent repeatedly. Anything you write or say to the police or other people can be used against you. Nothing you say to the police is "off-the-record."

The police may try different ways to get information from you:

- **Lying – Police officers are allowed to lie when asking you questions.** They may say: "Your friends have already told us everything," "We have evidence," or "We already know what really happened," even if none of this is true.
- **Threats – Police are not allowed to threaten you in any way.** They're **not** allowed to tell you that you will face more charges or more serious charges if you do not cooperate. If you have a lawyer, tell them if you have been threatened or made to feel unsafe.

- **Promises – The police are not allowed to promise you anything to get you to make a confession.** Only the Crown prosecutor can make agreements. Don't make any agreements or "deals" with the police without speaking to a lawyer first.
- **Lie Detector Tests – You must give permission before police can do a lie detector test.** If you've already spoken to a lawyer, and the police ask you to do a lie detector test, you have the right to speak to a lawyer again. The police will never release you just because you pass a lie detector test. Anything you say during a lie detector test can be used as evidence in court, but the test results cannot as they are considered unreliable.

Written Statements

Remember: Anything you write or say to the police or other people can be used against you. You have the right to refuse to make a written statement. If you decide to write a statement before speaking to a lawyer, tell the police you want to write it yourself or carefully read any document before signing it. If you see anything that is not correct, don't sign it and ask for it to be changed. If you don't understand something in the document, don't sign it.

Interpreters

Ask for an interpreter if speaking in another language would help you understand what the police are saying. You don't have the right to an interpreter for police questioning, but they may bring one if you ask.

Remember: You have the right to remain silent and the right to speak to a lawyer. Exercise these rights if the police do not provide an interpreter.

If you go to court, you have the right to have an interpreter. In the lower mainland, MOSAIC can provide you with an interpreter for a fee: 604-254-8022 or 1-877-475-6777.

Right to Speak to a Lawyer

Lawyers can help you as you go through the legal system and help make sure your rights are respected. You have the right to speak to a lawyer as soon as possible after you're arrested. You have the right to use a phone as many times as you need to get through to a lawyer.

Anything you say to your lawyer in private is secret and can't be repeated by the lawyer in court without your permission. However, if you say something to a friend, family member, counsellor, religious leader, cellmate, police officer, or anyone other than a lawyer, that information can be used against you.

Anything you say over a jail phone line or through the mail you send or receive from jail may not be private. When you are calling from jail, the police could be listening. This can happen when you're speaking to your lawyer, even though those calls should be private.

Brydges Line

All provinces and territories have a phone line for people who are arrested, detained, or in custody for an active police investigation, called the Brydges Line. In BC, the Brydges Line is run by Legal Aid BC and is available 24/7: 1-866-458-5500.

Duty Counsel

If you have to go to court before you have the chance to call a lawyer, you can get help from Duty Counsel. Duty Counsel is a lawyer who works at the courthouse to help people who don't have their own lawyer. Duty Counsel can give you information about the charges against you, court procedures, and your legal rights. They can also help explain to the judge what you would like to do.

Duty Counsel can help you:

- Find the address and number you need to find a lawyer or legal aid;
- Set a date for your trial;
- Get the judge to set bail or release conditions for you;
- Make a guilty plea and tell the judge why you deserve a less severe sentence; and
- Find out if you qualify for a diversion program.

Diversion Programs

Diversion programs, or alternative measures, ask people to take responsibility for breaking the law through community service or other activities. You may be a good candidate for a diversion program if you have a minimal offence history and are unlikely to break the law again. If your case is diverted, the Crown will not charge you. If you have already been charged, they will not continue to prosecute the charge. A diversion program allows you to avoid a criminal charge and conviction if you complete it successfully. Ask your lawyer or Duty Counsel for details.

Legal Aid

If you can't afford a lawyer, you may be able to receive legal aid. If you receive legal aid, the government fully or partially covers the cost of a lawyer for you. The rules for who qualifies for legal aid are different in each province and territory.

In BC, to apply for legal aid, you need to call the Legal Aid BC office in your area. If you're in jail, call the Legal Aid BC office and choose the option on the phone recording for people in jail. If you go to court before applying, tell Duty Counsel or judge that you would like to apply for legal aid.

Not everyone gets legal aid. To qualify, you must have:

1. A problem that is covered by legal aid;
2. A very low income; and
3. No other way to get help.

Problems covered by Legal Aid BC include: some criminal charges where there is a strong possibility you'll go to jail, mental health and prison issues, some serious family law problems, deportation, and some other issues. Legal Aid BC can tell you if your problem is covered. If you apply for legal aid and you're told you don't qualify, you may be able to appeal the decision. Ask for an appeal form from the Legal Aid BC office.

Legal Aid BC

The Legal Aid BC phone number is 604-408-2172 (Greater Vancouver) or 1-866-577-2525 (elsewhere in BC). Visit legalaid.bc.ca for more information.

Rowbotham Application

If you can't get legal aid, you may be able to convince the judge to assign you one if you show that you can't afford a lawyer and can't get a fair trial without one. The judge will think about how difficult your case is and whether you would likely go to jail if guilty. For more information, see: <https://legalaid.bc.ca/publications/pub/if-you-cant-get-legal-aid-your-criminal-trial>.

Legal Services for Indigenous People

In most provinces, there are services to help Indigenous people move through the colonial legal system. You can ask the legal aid provider in your province for referrals or more information.

There are also First Nations and Indigenous Court services in BC, which can handle bail and sentencing for Indigenous people. You can talk to Duty Counsel or your lawyer about whether your case may be referred into one of these courts.

Release or Detention

After you've been arrested, the police will decide to release you or keep you in jail. The police can usually hold you for 24 hours before they bring you before a judge for a bail hearing, except in rare circumstances.

Release by Police

The police may release you at any time after you're arrested. The police might release you without charges. But if they find more evidence later, the police may re-arrest you or send you a *summons* ordering you to go to court on a certain day for a hearing.

The police may give you an *appearance notice*, asking you to show up for court at a certain time and possibly to go to a police station to be fingerprinted.

An *undertaking to appear* is similar but may include additional rules you have to follow until your court date. If you think the rules are too restrictive, speak to your lawyer or Duty Counsel when you attend court. They can help you ask the judge for reasonable conditions for your release.

Read your *summons*, *appearance notice*, or *undertaking to appear* and show up on the date(s) and times listed. If you don't show up for your court date or fingerprinting, you could be arrested and held in jail until your trial. It could also be counted as another charge against you.

Detention and Personal Searches

You may be held in custody in police holding cells, courthouse jail cells, or at a remand centre (long-term prison while waiting for trial).

Before the police or correctional officers put you in a cell, they'll take all of your things. You'll be asked to sign a list of everything they've

taken. Make sure the list is correct. If it isn't, don't sign it. If you wear or carry spiritual, religious, or cultural clothing or items, tell the police or correctional officer who is taking them. You can explain how they should be handled and stored while you are in custody.

If you're kept in police holding cells, the police can only strip search you if they have a specific reason. If you're taken to a remand centre, you will likely be strip searched when you arrive. You may also be put through an X-Ray body scanner. To learn more about the rules for searches, including your protections. (See Chapter 5: Search and Seizure.)

Medical Needs While in Custody

If you have any urgent medical issues while in custody, tell the police. The police should provide you with access to medical care. For example, if you need medication that you didn't have with you when you were arrested, the police should help you get that medication. If they refuse, you may want to make a police complaint.

If your medical needs are related to an illness, disability, your gender identity, or any other prohibited ground of discrimination, you may want to make a human rights complaint.

Jailhouse Informants and Undercover Police as Prisoners

Police may pretend to be a person in custody with you to get information. They may also force your cellmate or another prisoner to testify at a trial. Don't talk to people in jail about your charges or if you're guilty or innocent.

Trans Rights and Gender-Diverse Rights

Police holding cells, courthouse jail cells, and remand centres are segregated by gender. As a trans, two-spirit, non-binary, or otherwise gender-diverse person, you have the right to self-identify your gender to police or correctional staff.

Police or correctional staff have to place you either according to your gender or where you've said you prefer to be held, unless there are health or safety concerns that cannot be resolved. If you are held according to your birth-assigned sex, the facility has to put you in a private cell.

You also have specific protections in pat-down, strip, or body cavity searches. (See Chapter 5: Search and Seizure for more information.)

For more information, visit the Trans Rights BC website: www.transrightsbc.ca/know-your-rights/police-prison-system.

Identification Procedures

If you've been charged with a *hybrid* or *indictable offence*, or convicted of an indictable offence, the police can take your picture, measurements, and fingerprints. For a select few less serious offences, they require your permission, and you have the right to say no.

If you're fingerprinted or photographed but later the charges are dropped, or you're found not guilty, you can ask the police to destroy copies of your fingerprints and photos.

If you're released from jail, your *appearance notice* or *summons* may have information about when you'll be fingerprinted. Even if you feel the police do not have the right to take your fingerprints, don't miss this appointment. If you do, an arrest warrant can be issued, and you may face more charges. Talk to a lawyer instead.

Police may ask you to be in a lineup for identification. If you've already spoken to a lawyer, and then the police ask you to be in a lineup, you have the right to speak to a lawyer again. You have the right to refuse to participate in a lineup. The police may ask witnesses to look at you without your consent or knowledge.

Bail

If you are not released within 24 hours, the police must bring you to court for a bail hearing or a “show cause hearing.” If you don’t have a lawyer, Duty Counsel should be there to help you.

During the hearing, the judge will decide whether to release you from jail. You cannot be held in jail unless it is reasonably necessary. If you’re released, the terms of your release must be reasonable. In most situations, Crown Counsel will have to convince the judge that you should be held in jail or that certain rules or conditions should be put in place if you are released. The starting point for your release is that you promise to show up for trial without any additional rules.

The judge can add rules, including not talking to certain people, curfews, not drinking, or not going to certain places. You may have to promise to pay money if you don’t follow these rules. You may also have to pay a cash deposit, or have a person called a *surety*. A *surety* is a responsible person who promises to make sure you follow your conditions.

If the court refuses to release you or releases you with conditions you think are too restrictive, you can apply to have the decision reviewed.

Delay of Bail Hearings

Crown Counsel can apply to delay the bail hearing for up to 3 days to get more information. Your lawyer or Duty Counsel can also ask to delay the bail hearing. While this happens, you will remain in jail.

Conditions of Release

It's very important that you follow all the rules of your release. If you don't follow them, it can lead to additional charges. If any of the rules prevent you from accessing important services, like a doctor, shelter or clinic, interfere with your job, or if you think you won't be able to follow the rules, you should let your lawyer or Duty Counsel know. If you do not have a lawyer, you should tell the judge this directly.

Detention Review

If you are kept in jail until your trial and your trial has not started within 90 days, you have the right to have a hearing before a judge scheduled as soon as possible. The purpose of this hearing is to review why you are being kept in jail. If you are facing a very serious charge, like murder, this process does not apply.

Visits from Friends or Family

In most cases, visits from friends or family won't be allowed until after your bail hearing. Although you don't have the right to call family or friends, the police may let you call them to explain where you are and what help you need.

Do not sign a statement for the police in exchange for being allowed to see family or friends. Whatever you say in your statement will be used against you in court. Ask your lawyer for help with contacting them and arranging for visits.

Remember: Be careful what you say on the phone and during visits with family and friends. The police may be listening. Information you tell your family and friends is not private and can be used in court against you.

If you are not released and are held before your trial date at a remand centre, you will be able to have visitors by appointment.



Search and Seizure

When can the police search you or your things?

Police can only search you or your things in specific circumstances. Your rights in a search are protected by Section 8 of the *Charter*. How much the police are able to search depends on the type of search and what is being searched.

You can be searched if:

- You tell the police it is okay to search you or your things, or if you allow them when asked. The police still need to prove that you were able to consent and that your consent was voluntary. Voluntary means that you were free to say no, and were told you are free to say no.
- The police have a *warrant*, or if they have authority under laws like the *Criminal Code*.
- You have been arrested lawfully. The search is limited to yourself, your things, and the area nearby.

Resisting a Search

Never physically resist a search, even if you think the search is illegal. You could be charged with assaulting a police officer or obstruction. It could also be dangerous if the officer uses force against you.

You can say: "I do not consent to this search." If you say no to a search and the officer continues to search you, make a note of their name, badge number, license plate, or appearance, if you can. You can speak to a lawyer or make a complaint later when you're safe.

Some searches require that police have reasonable suspicion or a reasonable belief that an offence has occurred (or is about to) and evidence is to be found in the place to be searched. The police need to be able to explain the reasons that led them to believe you have committed a crime or are about to commit one. When a search requires *reasonable grounds* to believe, it means the police need a lot more evidence to search you, but also that they can also search a lot more. When the police have *reasonable grounds* to suspect, which is a lower standard, they need less evidence to search you, but they also can't search as much. You also have stronger protections against searches if you have a strong reasonable expectation of privacy.

Racial Profiling

Police can't search you at random or on a "hunch." They're also not allowed to discriminate against people based on race to justify their searches. Despite this, we know that people are racially profiled by the police. Police are allowed to target their searches based on the description of a suspect, including the suspect's race.

What is considered private during a search?

You have a high reasonable expectation of privacy in the following, which means police must have *reasonable grounds* to believe and follow special rules to search:

- **Your body**, including your DNA and other bodily samples.
- **Your home**, including a house, an apartment, or the living space of a trailer.
- **Your phone or personal computer**.

You have a lower expectation of privacy in the following, which means the police only need *reasonable grounds* to suspect to search:

- **Your car**, while you're driving on a road or highway.
- **Your luggage**, while you're travelling in an airport or bus terminal.
- If you're a student, **your locker or personal things** while at school.

You have no expectation of privacy in the following, meaning the police can always search:

- **Everything in your garbage**, even if it is still on your property waiting to be picked up.
- DNA samples, strands of hair, clothing, or other **things left at the scene of a crime** or anywhere the police are investigating.
- **Someone else's things**, if they give permission for the police to search.

Youth and the Law

See Chapter 8: For information on the special rules for searches for young people under 18.

Search of Your Body

The police should never search your body on a “hunch” or at random, based on prejudice, or because they feel like it. There are three types of body searches, each with special rules: *pat-down searches*, strip searches, and body cavity searches.

Pat-Down Searches

A pat-down search is when an officer touches the outside of your clothes to check for weapons or evidence of a crime.

When you are detained, police can only do a pat-down search for the officer's safety, not to look for evidence. The police can't check your pockets unless the pat-down search gives police grounds to suspect that you're carrying something potentially dangerous.

If you are arrested, police can do a pat-down search as part of a search incident to arrest. This type of search is to make sure that you're not carrying weapons or hiding evidence. Police can also search your bags, your car, your phone, your camera, and other things nearby.

Strip Searches

A strip search is when police ask you to move or remove some or all of your clothes, so that your private areas are visible. Police in Canada should **not** be regularly strip-searching people; strip searches **can only be used in very limited circumstances** and police must follow strict rules.

The search should be:

- **Done at a police station** unless the police have *reasonable grounds* to believe that it's necessary to search right away for items that could hurt someone.
- **Done in a way that protects the health and safety of everyone involved.**
- **Authorized by a supervising police officer**, if possible.

- **Done by an officer with the same gender as you**, unless the situation is urgent, and an officer of that gender is unavailable.
- **Completed by the fewest number of officers** necessary.
- **Done using minimum force.** It should not be a violent incident where you get hurt.
- **Carried out in a private area**, so that no one else can watch.
- **Done as quickly as possible**
- **Done** in a way that makes sure you're not completely naked.
- **Done only by looking** at, and never touching, breasts, buttocks, genital and anal areas.
- **Documented** by the police, with reasons for the search and a description of the way it was done.

Detention and the Right to Counsel

Always remember, if the police are asking questions or want to search your things, you can ask: "Am I free to go?" In most cases, if the answer is yes, you can leave without giving any information or letting the police search anything. If the answer is no, the police have detained you, and you have the right to stay silent and the right to talk to a lawyer.

There are a few specific situations where people do not have a right to counsel while detained:

- While under examination by a CBSA officer enforcing the *Customs Act*,
- If stopped for a driving offence, or
- When required to provide identifying information (See Chapter 1: Interactions with Police.)

Trans and Gender-Diverse Rights

If you're two-spirit, trans, non-binary, or otherwise gender-diverse, you have the right to self-identify your gender to police and choose if the search is done by a male or female officer, or both. If you choose both, you can choose who searches which part of your body. Your choices should be respected unless the situation is urgent, and an officer of the requested gender is unavailable.

Gender-affirming clothing should also be treated respectfully and returned to you. You can explain to officers that these items are part of your expression of gender identity.

Body Cavity Searches

A body cavity search is only conducted if a strip search shows there is a weapon or evidence in a body cavity. Police should not proceed to do body cavity searches without first giving you a choice between removing the object yourself or having it removed by a trained medical professional, in a safe way. A body cavity search must also follow the same rules for strip searches, listed above.

Strip searches and body cavity searches are humiliating. They should **not** be done as part of normal police practice or as a threat by police officers. The police must have reasonable and probable grounds to believe you are hiding something under your clothes or in a body cavity that is dangerous or evidence of a crime.

Warning for Body Searches

Although these are the rules for what **should** happen during body searches, not all police are appropriately trained, or they may not follow these standards.

Be aware of your safety in these situations. If you feel you were searched inappropriately, try to make notes about what happened, the officers' names, and any other identifying information to tell your lawyer.

DNA Samples and Bodily Substances

When the police collect DNA or samples from your body like blood, saliva, teeth impressions, or hair, officers usually need to have a warrant.

The police don't need a warrant if they have *reasonable grounds* to believe that you have been driving a car, motorboat, or other vehicle while impaired by alcohol or drugs. The police can take samples of your breath or bodily fluids (like blood or urine) to check if you are above a legal limit, or make you do a physical coordination test. If you refuse to provide a sample or to do a test, you can be charged with a separate offence.

If you test at or over 0.08 (80mg of alcohol in 100mL) within 2 hours of driving, you can be charged with driving under the influence. If you consumed more alcohol after driving in those 2 hours, you would have to prove that your blood level at the time of driving was less than 0.08 and that you had no reason to expect to be asked to provide a blood sample, for example, because there was no accident.

The police do not need a warrant for any DNA samples that you have thrown away or left behind (like hair, bloodstains, or used tissue). Also, the police may not need a warrant if they believe that you have someone else's DNA on your skin or clothes.

Sniffer Dogs

To use sniffer dogs on you or your things, the police must *reasonably suspect* that you have committed a crime or are about to. They can't just use a sniffer dog on every person within an area, pick people at random, or act on a "hunch."

Search of Your Home

Police can only search your home in three situations: (1) with a warrant, (2) with your permission, or (3) in an emergency.

In general, police need to have a *warrant* to search your home. This is a written document signed by a judge or Justice of Peace, after police have provided *reasonable grounds* to believe an offence has been committed and evidence will be found in the place to be searched.

Police have to show you the warrant if you ask to see it. The police may not be able to provide a copy at the time of the search, for example if they're responding to an emergency.

Police are also allowed to enter your home without a warrant if you consent. If you are in someone else's home, that person can give their permission for police to enter, unless you have a right to privacy over some part of it. For example if you're living in a room in your parents' house, police would need your consent (or a warrant or other authority) to enter.

What Should a Warrant Look Like?

The *warrant* does not need the correct name of the homeowner, but it should include:

- The correct address of the house or property.
- Date and time for when the officers can use the warrant. If the warrant is out of date, it has expired.
- Specific areas that officers are allowed to search, like garages, yards, or sheds.
- The judge or Justice of Peace's signature.

If the warrant does not have this information or has expired, you can tell the police that they can't search your home. However, police might still come in anyway or force entry. You can say that you do not consent to the search and speak to a lawyer later to challenge it in court.

Finally, police can enter your home without a warrant in some emergency situations. For example:

- A reasonable suspicion that someone inside your house is hurt and needs help right away, like when responding to a 911 call.
- *Reasonable grounds* to believe that they need to enter to stop the immediate loss or destruction of evidence for a serious or indictable offence, like murder or weapons trafficking.
- The police are chasing someone who runs into your house.
- When you or someone in the house gets arrested, the police can do a search limited to the area nearby, connected to the arrest charges. If they see any evidence of a crime in plain view, they can take it.

Police should not unnecessarily tear apart your belongings, take or seize things that have nothing to do with the investigation, or act aggressively toward people in your home.

Search of Your Vehicle

Police can stop you when you are driving a car or other vehicle for many different reasons. This could be to check if you are drinking and driving, enforce a traffic law, or investigate a crime.

If you're pulled over by the police, they can ask for your license and vehicle registration, and they can look quickly around the inside of your vehicle.

Tents and RVs

Tents and temporary shelter on public property and recreational vehicles (RVs) are not protected by the same rules as houses, even if it's the only home someone has. Police don't need a warrant and can search these types of homes if you're arrested in or near them.

The police can search your car if:

- You give them permission. Informed and voluntary consent means that you understand the possible consequences of the search, police told you the reasons for the search, and you understand that you were free to refuse the search. For example, if a police officer just says, “Can you show me what’s inside that bag?”, and you just went along with it because you thought you had to, this is not real consent. You can say “No” to questions like this. Do not physically try to stop them if they continue the search. You can enforce your rights later.
- You’re arrested while driving or in your car.
- They have *reasonable grounds* to believe that you have committed a criminal offence, like dangerous driving.
- You’re stopped for a traffic offence **and** then an officer sees something to give them *reasonable grounds* to suspect that you have committed a crime, or are about to. For example, if an officer pulls you over for speeding, and then sees an empty alcohol bottle on the passenger seat or notices a strong smell of marijuana, they could have *reasonable grounds* to suspect that you were driving while impaired.

If the police look inside your car and can’t find any evidence of a crime, they can’t search your trunk. For example, if it turns out that an empty bottle held orange juice and not alcohol, they no longer have a reason for a search. You can say: “No” if the police ask you to open your trunk in this situation.

Body Language and Communication

Police officers should not jump to conclusions, or act in a rash or violent manner, or assume that you are a threat. However, we know that police have used deadly force against people in these situations.

Keep your hands on the steering wheel so the police can see them. If you need to pull something out of a pocket or the glove compartment, say: "I am going to get my license out of the glove compartment." It is very understandable to be angry or upset in this situation, but try to speak calmly, and to move in a calm and slow manner.

Search of Your Phones and Computers

Personal electronic devices, like cell phones and laptops, have special protections because they can show your location, conversations, medical records, and banking information. The police generally need a warrant to search them.

If you're arrested, the police can only search your phone if:

- The arrest is lawful,
- Police have one of three specific law enforcement reasons to search: to protect the police or public, to preserve evidence, or find evidence;
- The nature and extent of the search matches one of those reasons, and
- The police take detailed notes about what they searched and why.

Police should only be looking at recent emails, texts, and photos, not looking through messages you sent weeks ago or checking your Netflix account.

Seizures of Personal Property

Police carry out a seizure when they take something from you for safety, to collect evidence, or to present it in court. In general, the same rules apply for seizures as they do for searches. To take something, the police need:

1. **Your permission.** If the police ask to take something and you agree to give it to them.
2. **A warrant.** It should say the things or types of things being taken.
3. **Legal authority** that specifically allows the police to take the item(s) according to a particular test. For example, the Criminal Code allows an officer to seize anything without a warrant if they have reasonable grounds to believe that it was obtained by, used in or provides evidence of a crime.

Police are not allowed to seize or take random things that have nothing to do with a crime.

Property Connected to Crime

Police can take anything you paid for with money that came from criminal activity, even if you didn't know it. They can also take any property involved in a terrorist activity. This is called forfeiture of property.

Police can also take property that you may have used to commit a crime, or property that is a crime to own, like an illegal handgun.

Some provinces, including BC, have civil forfeiture laws. Your money, your valuables, your house, or car, can all be taken by the province under these laws, if they are the proceeds of crime, or have been used for a crime, even if no one has been charged or convicted of an offence.

You can argue for the return of your things in some situations. Speak to a lawyer about how to get your things back.

Bystander Evidence

As a bystander, or someone who has witnessed a crime, you might have evidence regarding the crime. You could be subpoenaed to bring it to court or police can obtain a warrant to seize it. If you didn't get your things illegally, and it's not illegal for you to own them, you should be able to get them back at the end of the court process.



Other Law Enforcement Agencies

Private Security

People who are not police can make arrests in certain circumstances, but they don't have the same powers as police. They can only arrest you if they actually see you in the act of committing an *indictable* (serious) or *hybrid offence*, or if they see you running away from the police.

The rules are different if the crime is related to property, and the person arresting you is the property owner or a security guard protecting that property and not a police officer. Property owners, or security guards protecting property, can arrest you if they see you committing a crime related to their property **or** shortly after that crime is committed if they believe on reasonable grounds that it's not realistic for a police officer to make that arrest.

Whether or not the arrest is for a crime related to property, property owners and security guards have to call the police and give you over to the police as soon as possible after they've arrested you.

Canada Border Services Agency (CBSA)

The Customs Act gives the Canadian Border Services Agency (CBSA) a lot of power to search people coming into Canada, including the things they bring with them. Unlike police, CBSA can search your car, bags, pockets, and electronic devices or do a pat-down search on a “hunch” without *reasonable grounds*. This includes your digital files, photos, and videos.

If you're not a Canadian citizen, including an asylum seeker, your luggage and electronic devices might be searched under the *Immigration and Refugee Protection Act*.

To do this search, the CBSA must have:

- *Reasonable grounds* to believe that you have not been honest about your identity or have hidden documents about whether or not you can enter Canada, or
- *Reasonable grounds* to believe that you're involved with people smuggling, human trafficking, or document fraud.

Device searches can only be done to identify you, find documents showing if you're allowed to enter Canada or not, or find evidence of the crimes above.

Being questioned or searched by the CBSA is not “detention,” but if you're taken aside, searched more and can't leave, you've been detained. This means you have a right to stay silent and ask for a lawyer.

Strip searches can only be done where the Customs officer has *reasonable grounds* to believe you are hiding something under your clothes or in a body cavity. If you're detained to be searched, you can ask to speak to the senior officer on duty to confirm whether there are reasonable grounds for the search.

You have the right to self-identify your gender and choose whether a male or female officer, or both do the search. You can choose who searches which part of your body if you choose both.

If you're not honest with the CBSA about what you're bringing into Canada, they may take your things. You may lose these things permanently or pay a fine. If they take something from you, they should give you a receipt with information on how to get your things back.

Passwords and the CBSA

CBSA officers may ask for your password or fingerprint to access your electronic device. They can't arrest you for not providing your password, but they might take your device if you don't.

Transit Police

BC has a police unit specifically for public transit in the lower mainland. They are police under the *Police Act* and have full police powers in the province, meaning they can do the same things any other police officer can do. Transit police operate on the SkyTrain, West Coast Express, Coast Mountain Bus and the SeaBus, but their power is not limited to transit property or transit-related incidents. Transit police work with municipal forces and the RCMP.

Train Police

The Canadian National Railway (CN) and the Canadian Pacific (CP) Railway have their own police forces. Their job is to protect railway property and personnel, and increase border security. Railway police work under the federal *Railway Safety Act* and have the same powers of arrest as other police in Canada. VIA Rail also has its own police service.

Most people in Canada may not interact with train police, but protestors and Indigenous land defenders could interact with them if their activities occur on or near railway lines.

Conservation Officers

The Conservation Officer Service (COS) focuses on environmental law enforcement. Conservation Officers (“COs”) have legal powers to search, seize, and arrest, just like regular police. They have Special Provincial Constable Status under the *Police Act*, carry guns, and are authorized to use force.

COs have the same rules to search you as regular police. (See Chapter 5: Search and Seizure to learn more.)



Protest, Civil Disobedience & Indigenous Resistance

Protest & Civil Disobedience

Your Right to Protest

If you're in Canada, you have the right to protest and are protected by the *Charter of Rights and Freedoms*.

The *Charter* guarantees your freedom of expression and peaceful assembly, whether you're a First Nations, Métis or Inuit person, a citizen, or a non-citizen. You have the right to participate in peaceful demonstrations, protests, parades, meetings, picketing and other assemblies, and the right to protest in public space, including the streets. However, the right to protest can be limited under certain circumstances.

Civil Disobedience

Civil disobedience is a type of protest that involves breaking the law to show how serious an issue is and/or to make the government or a third party do or stop doing something.

Blockading or occupying bridges, roadways, rail lines, ports, and legislatures can be illegal under provincial or federal laws. The police may not immediately enforce these laws because they are supposed to think about your *Charter* rights, which are protected by the Constitution of Canada and come first before other laws.

Throughout history, civil disobedience has been a powerful tool for positive social change and law reform. People participating in civil disobedience usually understand and accept the consequences of breaking the law to highlight an issue or unjust law.

Counter-Protest

A counter-protest is a protest that opposes another protest. It usually happens at the same time and place. The police may become involved if there is conflict between protestors.

Indigenous Resistance

Unlike protest and civil disobedience, the Indigenous resistance movement in Canada is grounded in Indigenous self-determination and freedom from settler-colonial domination and exploitation.

Canada's economic and legal foundations rely on the dispossession of Indigenous lands and ways of being. As a result, Indigenous peoples often experience human rights violations with little to no protection from the Canadian state.

All levels of government and the courts routinely disregard Indigenous rights and impose culturally and politically destructive laws, policies, and practices resulting in environmental degradation, enforced poverty and poor health. However, Indigenous peoples continue to resist and persevere through critical expressions of self-determination.

Indigenous land and water protectors are not protestors.

The Canadian state's capitalistic-driven economy has led to more demand for land and natural resources. Indigenous Nations' lands and waters have been targeted as a result. **When Indigenous peoples stand in the way to try to protect the lands they have belonged to since time immemorial, they are doing so as an act of self-determination, not protest.**

Indigenous peoples are guided by their obligations to the lands, waters, and all living beings of creation. Their responsibilities or rights – to live as they were meant to – don't come from Canada's laws; they are inherent and cannot be taken away. Indigenous peoples carry their responsibilities wherever they go, so it's common for Indigenous peoples from different nations to come together at different sites of settler-colonial resistance.

In recognition of Indigenous peoples' rights, The United Nations Declaration of the Rights of Indigenous Peoples

was adopted into law by the province of BC and the federal government and says that:

Article 26: Indigenous peoples have the right to the lands, territories and resources, which they have traditionally owned, occupied or have otherwise used or acquired; and

Article 29: Indigenous peoples have the right to conservation and protection of the environment and the productive capacity of their lands or territories and resources.

Injunctions

An injunction is a court order that prevents one party from interfering with the legal rights and interests of another.

Development and resource extraction projects are often approved by government regulators without the free, prior, and informed consent of impacted Indigenous Nation(s). Injunctions or other legal challenges against such projects sought by Indigenous groups are often denied while injunctions aimed at halting blockades, occupations, or other opposition by Indigenous peoples and allies are routinely granted to settler governments and corporations.

The enforcement of these injunctions allows police to remove, arrest, and criminalize Indigenous land and water defenders and other activists. Police cannot rely on a short prepared script and must make sure that all the terms of the injunction are clearly explained before arresting people. If you are arrested for allegedly violating the terms of an injunction, you will usually be charged with contempt of court.

Exclusion Zones

An injunction order doesn't usually say how the police can or should enforce it. The police may claim they need exclusion or "buffer zones" to enforce the injunction. Sometimes they'll set up check points that look like roadblocks to stop members of the public and the media from entering.

However, the police generally don't have the legal authority to set up broad exclusion zones.

Planning

Before organizing or joining a protest, or standing in solidarity with Indigenous land defenders, we recommend that you learn about your rights, create a safety plan, prepare for police interaction, and be aware of potential state violence and the consequences of breaking the law.

General tips:

- Wear comfortable shoes and clothing.
- Bring snacks, water and a few days' worth of essential medication. Don't bring unnecessary personal information, illegal drugs, or weapons.
- If you have a disability, special medical needs, or limited English or French, wear a bracelet or carry a card that explains this and consider bringing your prescription or a doctor's letter.
- Go with a group of people (an affinity group) who agree to stay together during the protest. You can help keep each other safe and watch (or witness) what happens.
- Leave your smartphone at home, or if that's not possible, use a passcode instead of fingerprint or face ID on your phone to help protect against police searches. (See Chapter 5: Searches and Seizure.)
- Write the phone numbers of a contact person and a lawyer on your arm in permanent marker in case you're arrested or detained and the police take your things.
- Make sure someone knows you're going to the protest in case they need to arrange urgent child, elder, or pet care for you.

For people who want to support an Indigenous-led action:

- Find out the protocols for getting consent to be a guest on the traditional territories of the Indigenous peoples who belong to those lands.
- Be there to support the cause, not your ego.
- Bring needed items and your unique gifts, skills, and abilities to the cause in a good way.
- Be present with open ears, and an open mind and heart.

Police Presence and Interaction

You may or may not want to contact the police before a protest. For example, it may be helpful to let them know if you're going to march down a specific street or block traffic. However, if you do, there may be more police at your protest, and they may try to put conditions in place, like making you change your route or location. You do not need a permit or license to protest.

Talking with police before a protest also means you might be identified as an 'organizer' and it gives them an easy way to get your or other organizers' details. The police will likely share information with other law enforcement or spy agencies, so it's important to decide what, if any, to give them. The police may also try to contact people they think are organizers. If this happens, you can say "no comment" to all questions.

Municipal and provincial governments, the police, RCMP, transit or train police all have a duty to facilitate peaceful protest. However, there have been many times where police haven't done this and have violated protest rights.

If you choose not to tell the police about the protest and they become involved, you may want to follow their directions about public safety. For example, not blocking hospital entrances or creating space for an emergency vehicle to pass. However, it's acceptable to question police decisions or tactics, like an exclusion zone. The police may still lie, ignore you, or react negatively.

The police may ask you questions during a protest, but you don't have to answer. You can ask: "Am I free to go?" If they say yes, you can leave. If they say no, you are being detained. (See Chapter 3: Being Detained.) Unless you're being arrested, driving a car or being ticketed for a bylaw infraction or provincial offence you generally don't have to give the police any information about yourself. Don't give the police a wrong name and address, or fake

ID. You could face serious charges. (See Chapter 1: Interacting with Police.)

If you're planning to protest, especially against development or resource extraction, think about the potential for police violence including tear gas, pepper spray, rubber bullets, and other lethal or non-lethal methods of force.

If the police decide to search, detain, or arrest you, don't physically resist, even if their actions are unjust. It could be dangerous, or you may be charged with assault. If you use "passive resistance" or go limp, be aware that the police are trained to use pain compliance techniques.

Charges could be dropped, or might result in a discharge, but you should also be prepared for the consequences of a criminal record. For example, finding or keeping a job.

We understand that exercising your protest rights can come with significant risks to your physical, mental, emotional, and spiritual safety, especially for Indigenous people, racialized people, non-citizens, visibly queer people, people with mental health issues, people with disabilities, and youth under 18.

Police may intimidate or threaten protestors who try to assert their rights. Or they may seem friendly to get information or get you to waive your rights. When dealing with police or asserting your rights, it is important to try and stay calm. We encourage you to trust your instincts and use your best judgment about what you need to do in order stay safe.

Recording Information

It's legal for people to take videos or photographs in public spaces. It can be helpful to have a video record of police and protestor interactions. You have a right to film the police, as long as you don't stop them from doing their duties. Use caution: recordings by members of the public may be taken by police if they think they provide evidence of a crime.

Record badge numbers or names of any police who you think weren't following the law. Police should identify themselves if you ask for this information. If they don't, note the date, time, location and, if possible, a description of the officer(s). This information will help you if you file a police complaint.

Police Photography and Video

Police often record videos at protests. If you ask in writing, the police may give you a copy of their recording. If you're charged with an offence, you'll have the right to see any relevant video and/or photographs. (See Chapter 1: Interacting with Police for more information about accessing Police Photography and Video.)

Legal Consequences for Protestors and Land Defenders

Knowing the most common charges and lawsuits can help you prepare for and understand the consequences of how you choose to participate in protest. (See Chapter 4: After Arrest.)

Breach of the Peace: This is not a charge but does allow the police to detain people who they believe may be physically violent against people or property. The police commonly use this tactic to round people up, put them in police vehicles, drive them far from their original location, and release them.

Causing a Disturbance: When you are doing the following in public places: fighting, screaming, shouting, swearing, singing using insulting language; impeding or molesting other persons; or loitering in a public place in a way that affects other people.

Unlawful Assembly or Riot: When three or more people do something in a way where people nearby fear that you will “disturb the peace tumultuously,” or violently, or encourage others to. A riot is an unlawful assembly that has already begun to “disturb the peace tumultuously.” It’s also an offence to hide your identity during an unlawful assembly or riot by wearing a mask or other disguise.*

Contempt of Court: When you’re considered disrespectful or disobedient of the court, for example, swearing at a judge or disobeying an injunction or other court order. There are two kinds of contempt – civil and criminal. Contempt convictions don’t necessarily result in a criminal record, but they can go into other police databases.

Intimidation by Blocking a Road: Blocking or obstructing a highway to prevent people from doing something they legally have a right to do, unless you have lawful authority.

Resisting or Obstructing a Peace Officer: Stopping a public officer or peace officer from doing their duty. Going floppy or limp while being arrested is not resisting arrest.

Assaulting a Peace Officer: Assaulting police officer carrying out their legal duties, including resisting or preventing the lawful arrest or detention of you or another person.

Mischief: Destroying or damaging property; making property dangerous or useless; or preventing the property from being used. This includes spray-painting, chaining doors shut, or blockading entrances.

Alberta's Critical Infrastructure Defence Act (CIDA): A law enacted to protect infrastructure, including pipelines, highways, railways, and mines, from damage that has public safety, social, economic, and environmental consequences caused by blockades, protests or similar activities. The penalties for these offences include high fines and/or up to 6 months in jail.

Restitution Orders: An order from a judge to pay for damage, often given to activists who have damaged property during a protest.

SLAPP suits: *Strategic Lawsuits Against Public Participation* used by settler governments, corporations, and individuals to intimidate and silence critics by making people pay for legal costs until they give up.

SLAPPs are a harmful problem affecting freedom of expression and public participation. To help protect people, Quebec, Ontario and BC enacted anti-SLAPP legislation that allows you to ask for the SLAPP to be dismissed as early as possible.

After Arrest

When many people have been arrested, protestors may choose “jail solidarity.” Jail solidarity includes various tactics to put pressure on authorities after protestors are arrested. It can involve collective demands for better treatment. For example, access to lawyers or phone calls, water, medication, food, or the release of arrestees.

Jail solidarity is often used to support more vulnerable arrestees, especially: Indigenous people, racialized people, visibly queer or trans/intersex people, people with disabilities or immediate medical needs, youth under 18, non-citizens and anyone who might be targeted or harassed by guards or police.

(See Chapter 2: Being Arrested and Chapter 4: After Arrest for more information.)

If You Believe Your Rights Have Been Violated

For legal support, see Important Phone Numbers on Page 102 of this guide.

Indigenous land defenders or groups also have the option of going to the United Nations (UN). The UN Committee on the Elimination of Racial Discrimination (CERD) is binding on Canada, and it accepts complaints regarding the treatment of First Nations people in opposing resource extraction projects on their lands through an Early Warning and Urgent Action Procedure (EWUAP). Indigenous groups can also send representatives to a CERD meeting in Geneva or invite a member of CERD to visit their territories.

For more information on CERD see The United Nations Committee on the Elimination of Racial Discrimination (CERD): A User Guide for Land Defenders.



Heavily Policed Communities

People experiencing homelessness, people who use drugs, sex workers, and those who are HIV+ are often heavily policed and criminalized.

General Use of Streets and Public Spaces

Panhandling

Asking for money (panhandling) is legal in Canada. For many people, asking for change is the only way that they can meet their basic needs.

However, provinces, territories, cities, and municipalities may make laws or bylaws banning panhandling in specific places and ways. It's important to know the panhandling laws and bylaws in your area — they might be more restrictive or have higher penalties. You can ask about the panhandling restrictions in your community by calling 311.

In British Columbia, “aggressive panhandling” is against the law. This means you're not allowed to ask for change repeatedly or ask for change while:

- Blocking someone or following someone,
- Using abusive language, or
- Approaching someone while you're in a group of two or more people.

It's also illegal to ask for money from someone:

- At an ATM, public washroom, or pay phone,
- At a bus stop, or
- Getting in or out of a vehicle, or from the inside of a vehicle. This includes vehicles on streets, in parking lots, and at intersections. It also includes things like offering to clean vehicle windows.
- In Vancouver, at the entrance to a bank or credit union, or in a way that blocks the street.

The police can arrest anyone for aggressive panhandling. While there are no provincial fines, many municipalities have bylaws with fines. For example, in Vancouver this fine can be between \$250 to \$2,000.

Loitering

Loitering is when you are hanging out in a public place, like parks, benches, or streets, without a specific reason for being there. Loitering is often a bylaw offence. While all citizens have the same right to be in public spaces, certain communities are targeted more by police when they enforce bylaws against loitering.

If you're asked by police to "move along," you can ask why. Use your best judgement in asserting your rights, and think about your risk of being fined, arrested, or endangered by police.

Vending without a permit

Vending (selling things) without a permit on city streets is against the bylaws in many municipalities. People who can't afford to get a permit, or don't know how to get one, are most impacted. For example, in Vancouver, people can be fined \$250 or more and the items being sold may also be taken by police.

People Experiencing Homelessness or in Unstable Housing

When you don't have a stable home, it can be hard to know where you can find shelter and what your rights are.

Can you sleep or shelter in public spaces?

You do have rights...

Under Section 7 of the *Charter*, it's unconstitutional for the government to unreasonably interfere with someone's life, liberty or security. So far, in BC and Ontario, courts have recognized that this *Charter* right means you should be able to set up a temporary structure or tent to shelter outside and the government doesn't have the right to make your leave, if there's not enough accessible, indoor shelter or housing. For many cities there isn't enough housing available for the number of unhoused people.

Governments tend to not respect these rights...

Unfortunately, cities often use the following bylaws to evict people who are sleeping or sheltering outside, even when there are no housing or shelter options available.

- **Street and park bylaws against obstructions or constructions.** For example, in Vancouver, it is a bylaw offence to put any structure or object, including tents and tarps, on a City street or sidewalk without a permit. This is similar for parks.
- **Loitering bylaws**
- **Panhandling and vending without a permit bylaws**

Even though the use of most of these bylaws are often being challenged in court, cities and police continue to enforce them, and unhoused people could end up facing criminal charges if they don't comply with the eviction.

What if you have been offered a shelter bed?

Shelter beds should be accessible or "suitable" for people living outside. Unhoused people often can't access shelter beds when they're empty as they can be unsafe, inaccessible for people with physical disabilities, or don't meet their needs. If you reject a shelter bed because it does not meet your needs, you should still legally be able to shelter outside.

What can the city and police do if you decide not to leave?

Police can fine you under the bylaws or arrest you for "trespassing". You can become a "trespasser" if you are violating a City bylaw and don't leave the area after you are told to do so. City staff can't arrest you or remove you, but they can give you a ticket. Police can also arrest you for other criminal offences like "uttering threats," "causing a disturbance," "obstructing police," or criminal "nuisance."

Can the City take away my belongings?

Many cities can take away your things if they're on the street or in a park, including tents, if they say you are breaching a bylaw.

There is no specific way to get your stuff back. Normally, the City claims to create a process that you can get your things back, sometimes by paying a fee. If you don't arrange to get your things back in time, they could be thrown away.

If the City has taken away your belongings, make a list of what was taken. In some areas, there are local organizations and lawyers who can support.

Can you sleep or shelter on private property?

Some spaces, like parking lots, can be privately owned, so sleeping there will likely be considered "trespassing". Private security guards may use "reasonable force" to remove people from private property but can't do this on public property, like in front of a store or in an alley way. (See Chapter 6: Other Law Enforcement Agencies.)

Can you sleep in a vehicle or RV?

In some municipalities, you can't sleep overnight in a vehicle or using a vehicle as "living accommodation" while parked on the street. Other municipalities restrict when you can park and where which can make it hard to find overnight parking in a permitted area.

People Who Use Drugs

Under the *Controlled Drugs and Substances Act*, you can be charged for possession of certain drugs, seeking or buying drugs, or trafficking. You can be charged even if you are only providing a safe supply to people you care about.

Exemptions exist for supervised overdose prevention sites across Canada. If you use substances at these sites, you will have access to harm reduction supplies and services, and you can't be charged. However, the exemption ends as soon as you leave the site.

Consumption of substances is not a crime, but sometimes it may go against municipal bylaws.

If you have done drugs and are then arrested:

You have a right to medical care while in custody.

However, between the time you are arrested and your bail hearing, you're normally held in police "holding."

As we understand, people are frequently denied their medications while in holding, so your use of methadone or other harm reduction medications may be interrupted.

(See Chapter 4: After Arrest for legal options.)

While the possession of many drugs is a crime, it's not criminal to do them. In many cities, however, there are bylaws to stop people from taking drugs, drinking, or even smoking in public areas. For example, there may be a bylaw that you can't smoke within 6 metres of a building's doors, windows, or air vents. For alcohol, municipalities often have a bylaw against drinking in public spaces, and police can take or pour out your drink.

BC Partial Exemption Pilot Project

BC started a pilot project beginning January 31, 2023, that offers a small and specific decriminalization of personal possession.

The exemption applies only if you:

- Are over 18;
- Are in BC, and not crossing a domestic or international border;
and
- Possess **less than 2.5 grams total of any of these four drugs: opioids, cocaine, meth, or MDMA (ecstasy).**

This means that the police should not take your drugs and you won't be criminally charged. This law is in effect until at least January 31, 2026.

Police can give you an information card with service and referral information for addictions support. They can't force you to access those services. They can only assist you if you ask. This exemption doesn't apply to you if you are:

- Engaged in another criminal activity including possession of drugs for the purposes of trafficking, trafficking, and exportation.
- Sharing, or transporting drugs to another person.
- At a school (Kindergarten to Grade 12), licensed childcare facility, or airport.
- In a car or watercraft operated by someone under 18.
- In a car, watercraft, or on public transit where your drugs can be accessed by the operator.

Good Samaritan Act protections and overdose response

If you are witnessing an overdose, you can call 911 and ask for an ambulance to try to save a life. The federal *Good Samaritan Drug Overdose Act* ("GSDOA") gives some legal protections to people who need help during an overdose.

The GSDOA can protect you from criminal charges for simple possession of drugs. If you're out on bail, out on probation, serving a conditional sentence, or on parole, and doing drugs, the GSDOA can protect you from getting criminally charged with breaching your conditions for possession.

The GSDOA protects the person looking for help, whether they stay or leave from the overdose scene before help arrives. It also protects anyone else who is at the scene when help arrives.

The GSDOA **does not provide legal protection against more serious offences**, such as:

- Outstanding warrants
- Production and trafficking of controlled substances offences
- All other crimes
- All other breaches of conditions where the underlying offence is not simple possession.

The police may respond to overdose calls, but this depends on your local police department. In Vancouver, the police will not normally attend overdose calls, except when asked by Emergency Health Services - usually if someone has died or if there is a threat to public safety.

Sex Workers

What is legal and illegal for non-migrant sex workers?

It's legal to sell your own sexual services and you can't be arrested for being a sex worker. However, in Canada's current approach to sex work, purchasing "sexual services" is illegal. This can make it harder to do sex work safely.

This is because the following are all criminal offences:

- Buying sexual services, anywhere, anytime.
- Communicating as a client in any place with the aim of buying sex, or, communicating as either a client or a sex worker, in a "public place" or a "place open to public view" that is "next to" a school, playground, daycare, or religious place. This includes within a car.
- Advertising sexual services as a collective. You can advertise services you personally provide, however many advertisers may not let sex workers advertise, as knowingly allowing ads for sexual services is also an offence.
- Stopping or impeding traffic in a public place to offer, provide or obtain sexual services, including pedestrians.
- Procuring, which means encouraging or enabling to offer sexual services.
- Receiving money or a "material benefit" from sex work as a third party. If you're a sex worker, this law targets anyone who accepts money from you when they know you made the money doing sex work. As long as you are not being abused, exploited, or pressured into doing sex work, or it was not part of a private business, then people can accept money you make from sex work if they are:
 - Partners, children, and roommates who are in living situations with you.
 - Family who are dependent on you.
 - Receiving gifts from you.
 - Receiving payment for public goods or services, like your accountant, landlord, or security system.
 - Your own private drivers, managers, and bodyguards.

Police practices and procedures for enforcing these laws are different depending on what region you are in. If you work in certain types of sex work, such as erotic massage, you may be required to register with the municipality. Check with a local sex work support organization to find out if this applies to you and the best advice on keeping safe in your region.

Migrant sex workers

Migrant and racialized sex workers can be especially targeted by police. Police also frequently collaborate with the Canada Border Services Agency (CBSA).

Temporary residents

If you're on a temporary resident visa, or waiting for a sponsorship or refugee claim to be accepted, then you're not legally allowed to do sex work. You're also not allowed to work with an employer who offers strip tease, erotic dance, escort services or erotic massages.

If the police find that you have not followed these rules, you could face arrest, detention, and deportation.

Permanent residents

If you are a permanent resident, the same laws that apply to Canadian citizens also apply to you. That means you can legally sell your own sexual services, as long as you don't commit any of the offences listed above.

Until you become a Canadian citizen, however, if you're criminally convicted for any offences then your permanent residency will be taken away and you will be deported from Canada.

Trafficking

Police could come to your home or workplace to search for evidence of trafficking. If this happens:

- Try to stay calm and do not obstruct police from searching.

- Ask for the police to show their warrant. (See Chapter 5: Search & Seizure.)
- Show them your ID, if asked.
- If you're a temporary resident, the police will frequently call the CBSA and you may face immediate detention.
- Remember: You have the right to a lawyer and the right to not speak. (See Chapter 2: Being Arrested.)

People who are HIV+

Generally, telling other people (or “disclosing”) that you have HIV is a personal decision. You may choose not to tell people because of stigma, discrimination, or fear of violence, as well as homophobia, biphobia, transphobia, or racism.

In Canada, the **criminalization of HIV non-disclosure** means that people living with HIV can be criminally charged if they don't tell their sexual partner(s) about their HIV status before having sex.

If there is a “realistic possibility” that you will pass on HIV to a partner during sex, you have a legal duty to tell your sex partner that you have HIV before sex. This is called the **duty to disclose**. What the law says is a “realistic possibility” of transmission is not always in line with the current scientific or medical knowledge about risk of transmission.

In Canada, the law in this area has evolved differently over the past few years, and some provincial prosecutors have different guidelines in dealing with these kinds of cases. **To understand the legal obligations applicable to your situation, please consult up to date resources from an HIV+ support organization in your province or territory.**

The following general guidelines apply for your legal **duty to disclose**:

- **If you don't have a low or undetectable viral load**, then you need to disclose your HIV status before vaginal or anal sex, even if you use a condom.
- **If you have a viral load that is low** (under 1500 copies/mL), you'll likely either need to use a condom for vaginal or anal sex **or** you need to disclose your HIV positive status prior to having sex.

- **If you have a suppressed or undetectable viral load (under around 200 copies/mL) for a certain amount of months (around four to six months) before having sex**, in some provinces and territories, you shouldn't be charged for not disclosing your status before any kind of sex, even if a condom was not used. It's important to check the law where you live if you want to not use a condom **and** not disclose.
- Oral sex is an unclear area and the legal situation differs across the country. Unless your viral load is undetectable, if you don't disclose your HIV status, you might want to use a condom for oral sex to reduce the chance of being charged. Be aware of things that could increase the possibility of transmission. For example, sores on the mouth or genitals, bleeding gums, oral contact with menstrual blood, and other sexually transmitted infections.
- There is no risk and therefore no duty to disclose with activities like kissing, biting, spitting, or mutual masturbation.
- If you don't have a test saying you are HIV positive, but you think you might be HIV positive and you choose not to get tested, then you should share this possibility with your partner before having sex.

These obligations apply no matter how you know the other person: even if it was casual sex with a stranger or as a part of sex work. They apply even if the other person doesn't ask, even if you didn't actually transmit HIV to the other person, and even if you didn't know about the duty to disclose.

All these same duties also apply to HIV positive youth.

If you don't tell someone or you lie when you had a duty to disclose, you could be charged with sexual assault or aggravated sexual assault, as well as manslaughter, if someone dies after contracting HIV from a sexual interaction with you. You could also be charged with other crimes, such as assault or criminal negligence if there is a realistic possibility you transmitted HIV to someone else, for example by giving blood donations without disclosure. Also, if you are convicted of serious offences, you could face other consequences such as being designated as a sex offender, being barred from some jobs, or facing immigration impacts like deportation.

HIV Disclosure on Arrest

You don't have to tell the police that you're HIV+. You also have a right against discrimination. For example, if police separate you from other people or put you in solitary confinement just because you are HIV+, that is discrimination.

You have a right to access medical treatment while in custody. However, people frequently face delays in processing before they can access medical care or their medications. (See Chapter 4: After Arrest.)



Youth and the Law

Young people under 18 have different rights and protections under the law than adults. The police have **special obligations** to explain your rights if you're under 18, using simple language that you can understand.

Just like an adult, you have the right to remain silent and the right to speak to a lawyer as soon as you are arrested or detained. You also have the right to know why you are being questioned, arrested, or detained.

1. Ask questions if you don't understand what's going on. If the police are questioning you, ask: "Am I free to go?" if the answer is no, you have the right to speak to a lawyer before answering.
2. Tell the police or judge: "I want to speak to a lawyer."
3. You may feel pressured to tell the police your side of the story, but you should wait to speak to your lawyer first. Continue to say: "I want to remain silent". Nothing you write or say to the police is "off the record."

Children Under 12

Children under 12 cannot be charged with a crime under the *Criminal Code*, but can face other legal consequences. This might include being taken away from their family, civil lawsuits, forced treatment for their mental health, or criminal consequences for their parent or guardian. (See Chapter 10: Mental Health and Involuntary Treatment.)

Special Rules for Youth

Young people under 18 have special protections under the *Youth Criminal Justice Act*:

- The police must contact your parent or guardian as soon as possible after arresting or detaining you. If your parent or guardian is not around, you can give the police the name of a close relative or trusted adult friend instead.
- You're also allowed to have your lawyer **and** a parent, guardian, or trusted adult present with you when you are questioned by the police. The police may ask you to waive (give up) this right, but you don't have to do this.
- In BC, lawyers are free for people under 18, no matter how much money you or your parents may have, or how serious a crime you're being accused of.
- Outside of BC, you can get a lawyer by applying for legal aid, which provides a lawyer for free. If *legal aid* does not accept your application, you can request a lawyer through the judge, and one will be provided to you, but this may cost you or your parents money (See Chapter 4: After Arrest for more information on Legal Aid.)

- You have the right to ask your lawyer to act in the way that **you** prefer, even if your parent or guardian disagrees with your choice, and even if your parent or guardian paid for the lawyer's fees or helped hire them for you. This includes having your lawyer keep information you share with them private between the two of you if you do not want your lawyer to tell your parent or guardian everything.
- Generally, as a young person facing charges, your identity must be kept private, and you can only be identified by initials in public documents.
- Generally, youth are held in separate jails from adults.

Extrajudicial Measures and Sanctions

Before charging you, police must think about whether it would be better to take no action, give you a warning or caution, or refer you to a community program as an extrajudicial (outside of court) measure.

Even if police do decide to refer you to the court system for charges, you could still be offered an extrajudicial sanction instead of a criminal charge. This is a specific process for young people. It doesn't involve going through the regular criminal legal process of a guilty plea or trial and sentencing. It asks you to take responsibility for the action you were accused of and may include a mediation process or community service program. If you follow all the rules of the sanction, the court will dismiss your charge(s). Your parent or guardian has to be told about any extrajudicial sanctions placed on you.

No one can force you to accept an extrajudicial sanction. Remember, you have a right to a fair trial, and you are innocent until proven guilty. It's very important to speak to a lawyer about the benefits and risks of an extrajudicial sanction before deciding if this is the best option for you.

Statements to Persons in Authority

A 'person in authority' is a police officer or anyone else that you reasonably believe has some control over your prosecution. Depending on the situation, a person in authority may include foster home administrators, school principals, and social workers. There are special protections for anything you say to a person in authority. A parent is not considered a person in authority.

Anything you say or write to a person in authority can't be used as evidence against you, unless the following is true:

- Your statement is voluntary. A statement is not voluntary if you were threatened, bribed, tricked, or put through harsh situations like starvation or sleep deprivation.

- Before you make the statement, someone has explained clearly, in language you can understand, that:
 - You're not required to **speak**;
 - Any statement can be used as evidence against you in an arrest or at **court**;
 - You have the right to **consult** a lawyer and a parent, guardian, or other trusted adult before speaking; and
 - You have the right to have a lawyer and a parent, guardian, or trusted adult with you **while you make the statement**, unless you prefer otherwise

Before you make the statement, you must be given a reasonable opportunity to:

- Talk to a lawyer and a parent, guardian, or other trusted adult, and
- Have your parent, guardian, or trusted adult present when you make your statement (unless you prefer for them not be).

Keep in mind there are some exceptions to these rules. For example, if you say something without thinking to a police officer before they have a chance to tell you your rights.

If the police want to use a warrant to take a bodily sample for DNA analysis, you have the right to first speak with a lawyer and your parent or guardian or another trusted adult. You also have the right to have your lawyer and parent or guardian or another trusted adult in the same room when the police collect the sample from you. (See Chapter 5: Search & Seizure.)

Searches in Schools

While at school, people under 18 don't have as many privacy protections over their personal things. School officials (like teachers, vice-principals, or principals) can do things like search your phone, locker, or backpack in circumstances when a police officer wouldn't be allowed to.

The police can't use searches by school officials to avoid getting a warrant or having *reasonable grounds* for a search. However, if the school official is planning to search you whether or not the police are involved, the school official can give any evidence they find to the police without the police needing to get a warrant. The police can then use this evidence to investigate or arrest you.

There are four rules that school officials have to follow:

1. They need authority from the school's Code of Conduct and the province or territory's laws (like *The School Act* in BC and *The Education Act* in Ontario).
2. They should try to avoid harming your rights as much as possible, and they should be sensitive about things like your privacy and your gender. For example, if the school official searches your backpack and clothing for drugs, they should not do so in front of everyone.

Mental Health & Youth

Youth may find themselves in involuntary treatment or a medical facility. (See Chapter 10: Mental Health and Involuntary Treatment to learn more about these rights.)

3. The items searched and the amount of detail in searching should match the seriousness of the rule-breaking or danger. For example, if the school is worried that you brought a weapon to school, they may search more of your belongings and search more thoroughly than if they are worried that you cheated on a test.
4. The search has to be based on the school official having *reasonable grounds* to suspect there is a possible school rule violation. You can't be searched randomly or based on a hunch.

Because of these rules, you may want to leave some of your things at home if you want to make sure that they're kept private.

Personal Safety and Security

You may feel intimidated or pressured to speak when you are confronted by the police. If you're racialized, 2SLGBTQI+, or are experiencing mental health challenges, you may feel even more intimidated or unsafe when in contact with the police or other authorities.

Think about your own safety, try to stay calm, and don't use physical force. Remember that you do have legal rights. You can continue to state your rights in a calm, clear manner. Try to make a note of the names, badge numbers, or other identifying information. Give this to a lawyer or someone you trust later.



Mental Health Law and Involuntary Treatment

Mental Health Act and Initial Detention

Under the *Mental Health Act* in BC, the police are allowed to detain and take you to a medical professional if they see or are told that you may be a “person with a mental disorder” **and** that your behaviour is likely to put your own safety or the safety of others at risk. They will usually bring you to the nearest hospital.

You do not have to be violent or have committed a crime to be detained by police under the *Mental Health Act*. The police also have the power to enter your home in response to a wellness check if you or someone you know calls 911 for help during a mental health crisis.

All provinces and territories have some form of mental health law. This is usually called the *Mental Health Act*. The rules and processes might be different depending on where you are.

What is a “mental disorder”?

According to the *Mental Health Act*, a mental disorder is a disorder of the mind that requires psychiatric treatment **and** seriously affects your ability to react appropriately to what's going on around you or how you interact with others.

Police are not trained to diagnose mental disorders. They do not need a specific diagnosis to detain and take you to a medical professional.

After the police detain you, you may be admitted to a mental health facility – like a hospital, psychiatric unit, or observation unit. You can be kept there for up to 48 hours **without your consent** if the doctor or nurse practitioner who examines you thinks that:

1. You are a person with a mental disorder;
2. You need psychiatric treatment in or through a mental health facility or hospital;
3. You need care, supervision, and control in a mental health facility or hospital to stop your mental or physical state from getting substantially worse, or for your own protection or the protection of others; and
4. You cannot be admitted voluntarily.

The medical professional's assessment is set out in a medical certificate. After receiving the certificate, the director of the mental health facility or hospital will decide whether to admit you. The certificate is valid for 14 days from the date you were examined by the medical professional.

The *Mental Health Act* also authorizes police to detain you and take you to a hospital in other situations. For example, it's possible for anyone - including family and friends - to ask a court to order it. If you leave a hospital where you are detained without permission, the police can be asked to find you and bring you back. If you are experiencing involuntary treatment in the community, or "extended leave," your treatment team can require you come back to the hospital and ask the police to bring you.

Criminal Records Check

If you are detained under the *Mental Health Act*, police will record that information and can access it as they wish. However, in most situations, it will not be included in an employment or volunteer criminal records check.

For more information, see the BC Guideline for Police Information Checks: https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/police-information-checks/police_infochecks_guidelines_dec16.pdf

Involuntary Treatment and Continued Detention

BC is one of the only provinces that does not currently have a service that provides advice about your rights when you are admitted for involuntary treatment.

A law was passed in June 2022 to create a new service for people detained and experiencing involuntary treatment so they can access information about their rights. **This new service is expected to be available in all facilities in 2024.**

You have the right to know the reasons for your detention and to call a lawyer immediately. You must be told your rights when you are taken to the mental health facility or hospital and admitted as an involuntary patient. A staff member should go through your rights, using a form called Form 13.

The director of the mental health facility or hospital is required to tell a “near relative” that you are being detained, where you are, and what your rights are. A “near relative” can include a blood relative or a friend, caregiver, or companion. You can choose whoever you want.

Treatment and Discipline

Once you are admitted, you may be examined and treated immediately **without your consent**. During detention staff are able to make all decisions about your psychiatric treatment, including discipline, which can include being restrained mechanically, given psychoactive medication, given electroconvulsive therapy (ECT), or put in solitary confinement.

Staff can choose when to use these methods. The *Mental Health Act* does not say when, why, or how these methods are used. You are considered to have given consent to any psychiatric treatment provided while you are held as an involuntary patient. You, or someone you choose, can ask for a second opinion from a doctor about your treatment using a Form 11, but this can only be done once within a one-month, three-month, or six-month detention period. Even if you get a second opinion, it may not change the treatment decisions of the staff team.

To be detained beyond 48 hours, you must be examined again by a physician and they must complete another medical certificate.

If a nurse practitioner examined you the first time, the second examination must be completed by a doctor. If a doctor examined you the first time, the second examination must be completed by a different doctor. If the second doctor agrees with the first assessment, you can be held against your will for up to one month at the mental health facility or hospital.

You can be detained for longer than one month if the director of the mental health facility or hospital, or an authorized doctor, decides that you still meet the original reasons for why you were detained. The director must also look at your history of mental disorder, including past hospitalizations and whether you have followed past treatment plans. They will think about whether you will be able to follow your treatment plan if they discharge you. They must give their decision in writing.

After one month, the term can be renewed for another month, then another three months, and then another six months, and then continually on a six-month basis. **The *Mental Health Act* does not put a time limit on detention.**

Detention Review

You have the right to challenge why you are being held. To do this, you can ask a nurse at the facility: “Can you give me a Form 7 to complete so I can have a review panel hearing?”. They should also help you complete the form. You can request a hearing as soon as a second medical certificate is completed. Another person, like a friend or family member, can also request a review for you. After you fill out the form and hand it in, the review panel hearing must be held within 14 to 28 days, depending on the length of your current detention term, as described on Page 98.

The Mental Health Review Board hears these cases and they are usually done online. At a review panel hearing, you can argue that you should not continue to be held because the reasons for your detention no longer apply. If the panel agrees with you, they can order your release and you can leave the facility or possibly choose to stay there as a voluntary patient.

Involuntary-Voluntary Admissions and Treatment: Youth under 16 and the *Mental Health Act*

If you are a young person under the age of 16, you may be admitted for treatment if a parent or guardian asks for it and a physician or nurse practitioner decides that you have a mental disorder. Even if you do not consent, this is considered a “voluntary” admission under the *Mental Health Act*. However, if you are admitted in this way, decisions about your psychiatric treatment are more complicated.

Your age shouldn’t dictate who makes your health care decisions. Children and young people who are capable of making decisions about their health regardless of their age are called mature minors in the law. The mature minor principle makes sure that young people don’t automatically lose their right to make decisions about their own medical treatment.

However, there is no law requiring a doctor to assess if you're a mature minor. When you are admitted under the *Mental Health Act* at the request of a parent or guardian, that means treatment decisions may often be made by your parent or guardian.

Even though these admissions are considered "voluntary," the law recognizes you may disagree with what is happening. It requires you to have access to some of the same protections that involuntary patients must have access to. You must be told why you're being admitted and told you have a right to a lawyer. You must also be told that you have the right to challenge your detention through a review hearing before the Mental Health Review Board or by making an application in court.

Unlike involuntary patients, voluntary patients of any age can't request a second medical opinion. You must also be examined by a doctor regularly, like involuntary patients: once a month during the first two months of admission, another one three months after the second examination, and then once during every six-month period after that. However, the doctor must confirm you have a mental disorder to continue your admission. If at any point the doctor decides you don't have a mental disorder, or your parent or guardian asks, you must be discharged.

Who to call during a crisis?

In BC, police are still the primary mental health crisis responders. If you call 911, it is likely that police will respond to your call. We know that despite available de-escalation training, police being present during mental health crisis can have fatal results.

In other mental health crisis response models, like Car 87 in Vancouver and Car 67 in Surrey, police officers respond with registered psychiatric nurses.

Peer Assisted Care Teams (PACTs) respond to calls with a mental health professional and peer support worker and will involve the police if they decide it is necessary. There are PACTs in New Westminster, Victoria, and on the North Shore.

See Page 102 for a list of resources, including Crisis Response Phone Numbers in BC. We cannot guarantee that these services will not involve police in an emergency.

Important Phone Numbers

Access Pro Bono Mental Health Program	604-482-3195 ext. 1500 / 1-877-762-6664
Access Pro Bono Summary Advice Program	1-877-762-6664
Atira Women's Resource Society	604 331 1407 ext. 114
Bella Coola Legal Advocacy Program	250-982-2110
Brydges Line BC.....	1-866-458-5500
Community Legal Assistance Society.....	604-685-3425 or 1-888-685-6222
Dial-A-Law	604-687-4680 or 1-800-565-5297
Disability Law Clinic.....	236-427-1108 / 1-800-663-1278
Indigenous Community Legal Clinic.....	604-822-5421
The Law Centre	250-385-1221
Legal Aid BC	604-408-2172 or 1-866-577-2525
Migrant Workers Centre	(604) 669-4482
MOSAIC.....	(604) 254-9626
Native Courtworker and Counseling Association of BC	604-985-5355
Society for Children and Youth	(778) 657-5544
South Asian Legal Clinic of BC	604-878-7400 or 1-877-762-6664
UBC Law Students' Legal Advice Program	(604) 822-5791
Vancouver Aboriginal Transformative Justice Services Society.....	604-251-7200

Crisis Response Phone Numbers

Services that can respond in-person:

PACT North Shore (Thurs. – Sun., 6:00 pm – Midnight).....	1-888-261-7228
PACT New West (7 days/week, Noon – 8:00 pm).....	1-778-727-3903

Services providing emotional support, information, and resources:

Mental Health Support Line.....	310-6789 (no area code)
Suicide Support Line	1-800-784-2433
Alcohol and Drug Information and Referral Service	1-800-663-1441
Northern BC Crisis Line.....	1-888-562-1214
Youth Northern Crisis Line	1-888-564-8336
Seniors Distress Line	1-604-872-1234
Vancouver Island Crisis Line.....	1-888-494-3888
Interior Crisis Line.....	1-888-353-2273
Fraser Health Crisis Line	1-877-820-7444
Vancouver Coastal Health Crisis Line	1-866-661-3311

Important Legal Words

Appearance Notice – A sheet of paper given to you by the police or the court that requires you to show up for court on a certain day. Not showing up to court will result in further charges, and you won't be able to participate in *diversion programs*.

Arrest Warrant– A piece of paper issued by the court ordering police to arrest a specific person.

Bail – Money placed by you or your family or friends with the court to support your promise that you will show up for your trial.

Bail Hearing – If you are not released by police, the hearing during which the police explain why you were not let go and during which the date for your trial is set. Usually the Judge places conditions (*bail*, no drinking, etc.) on your release.

Breach of the Peace – The arrestable action of causing a disturbance. Usually involves some threat of violence. Because there is no charge for Breach of the Peace, the police must release the arrestee shortly after arrest or charge the arrestee with another offence.

Car 60/67/87 – A program specific to a city or region in BC where a regular police car, staffed with a police officer and a mental health professional, usually a nurse, responds to suspected mental health emergencies.

Critical Infrastructure Defence Act - A law that applies in Alberta to protect infrastructure (including pipelines, highways, railways and mines) from damage and interference caused by blockades, protests or similar activities. The penalties for these offences include variable fines and/or up to 6 months in jail.

Crown Counsel (Crown) – The *lawyer* who is speaking on behalf of the government against the accused in a criminal trial.

Diversion Programs – Programs, generally for first-time offenders, that may allow them to avoid jail and criminal records in return for community service work, apologies and meeting certain conditions.

Duty Counsel – The lawyer present at the courtroom who can help people set court dates, plead guilty and sometimes help you apply for legal aid or find a lawyer.

Hybrid Offence – An offence *Crown Counsel* can choose to proceed with as either a *summary* or *indictable offence*.

Indictable Offence – The most serious kind of criminal offence. Maximum penalties vary and include life in prison. Some have minimum penalties.

Justice of the Peace – A part-time Judge, often a local lawyer, who can take the place of a Judge for many different legal hearings, including trials for *summary offences*.

Lawyer – An expert in the legal system, a professional certified by the provincial law society. Also called Counsel.

Legal Aid – Money from the government that pays for a *lawyer* for you.

Pat-Down Search – A search performed by pressing hands along a person's body on the outside of their clothing. Also called "frisking." Usually used to check for hidden weapons.

Public Intoxication – The arrestable offence of being so drunk or high you are a danger to yourself or others, or you are causing a disturbance. Must occur in a place accessible to the public.

Reasonable Grounds – A good reason to believe or suspect something. Usually used to say that police need some evidence beyond just a “hunch” before they arrest, detain, or search you. Reasonable grounds to believe requires more evidence than reasonable grounds to suspect.

Remand Centre – Where you are held until your trial date if the Judge decides not to release you at your *show-cause hearing* or you can't provide the necessary bail money.

Show-Cause Hearing – See *Bail Hearing*.

Summary Offence – The least serious kind of offence. Carries a maximum penalty of 6 months in jail and/or a \$5000 fine.

Summons - A document issued by a justice or judge requiring an individual to appear in court to answer to a criminal charge.

Undertaking to Appear – A piece of paper that an accused signs instead of being held for a bail hearing. It will usually contain conditions that an accused agrees to comply with as part of their release from custody.

Warrant – A piece of paper issued by the court ordering police to do something. Warrants can, among other things, order the search of a residence (search warrant) or require the arrest of a person (arrest warrant).

The Arrest Handbook was created to empower people living in heavily policed communities by providing information about what their rights are in police interactions. Arrest, searches and seizures, and detention, are all covered in easy-to-understand language. Special sections included in this updated guide include mental health and involuntary treatment, youth and the law, civil disobedience, protest, and Indigenous resistance.

Policing continues to disproportionately target Indigenous, Black, and other racialized people, people who are unhoused, people with mental health challenges, people who use drugs, people who are HIV+, and gender-diverse people. This guide was made for you.

Funding provided by the Law Foundation of BC and the Canadian Bar Law for the Future Fund. Funding for the second printing provided by The Canadian Race Relations Foundation with funding provided by the Government of Canada.



Published by **the BC Civil Liberties Association**



bccla.org