



# After Arrest

Even after you have been arrested, you still have the right to remain silent. You also have the right to speak to a lawyer. This section tells you what happens after the police arrest you.

## Personal Search

After you are arrested, the police can search your clothing, bags or car for objects or weapons you could use to harm yourself or someone else, or aid in your escape. They can also look for anything illegal or evidence that you have broken any other laws.

Usually, if you have just been arrested, you will be taken to the police holding cells to wait to go to court. You may also be taken to the courthouse jail cells or in rare situations, the *remand centre*. Either before or just after you arrive at the holding cells, all of your property will be taken by the police. You will be asked to sign a list of everything the police have taken. Make sure the list is correct. If it isn't, don't sign it.

If you are kept in police holding cells, the police do not have the right to strip search you (this will often be the case for *public intoxication* or minor offences where you are held for fewer than 24 hours).

If you are taken to a remand centre, you may have to change into a prison uniform. Corrections officials may perform a strip search if you will be in contact with other prisoners. All strip searches must be done by a person who is the same sex as you. If you feel you are being searched inappropriately, tell the searching officer and any potential witnesses. Although police or corrections officials can do a strip search, they cannot do a body cavity search without *reasonable grounds*.

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See Canadian Charter of Rights and Freedoms

## Right to Speak to a Lawyer

You have the right to speak to a lawyer as soon as possible. The police will give you access to a phone. You have the right to use the phone as often as you need to actually speak to a lawyer. There are usually phone numbers posted near the phone for the lawyer referral service and *legal aid* (see page 39 for information about legal aid). A lawyer will help you ensure that your rights are respected and that you receive a fair hearing.

Remember when you are calling from jail that the police could be listening on the phone. Tell the lawyer what you have been charged with and where you are. Try to arrange to meet in person with your lawyer before any hearings. Anything you say to a lawyer in private is secret and can't be repeated by the lawyer in court without your permission. Prison phone lines are not private.



### Translators

If you do not speak English well and a translator could help you understand the police better, ask for a translator. You do not have the right to a translator for police questioning, but they may bring one to you anyway. Remember, you do have the right to remain silent and you also have the right to a lawyer. Any time you have to go to court, you have the right to have a translator. MOSAIC can provide you with a translator for a fee at any time (1-877-475-6777).

## Duty Counsel

If you have not had the chance to call a lawyer, or if you didn't know who to call, don't panic. When you appear in court there will be a lawyer there who can help you called *Duty Counsel*. Duty Counsel will be able to help you explain to the judge what you would like to do.

If you would like to get a lawyer or apply for *legal aid*, tell Duty Counsel and she will tell the Judge. She may be able to give you the address and phone numbers you need to find a lawyer or get legal aid.

Duty Counsel can help you:

- set a date for your trial (see page 42 for details);
- get the Judge to set *bail* or release conditions for you (see page 43 for details);
- 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 (see note below).

## Diversion Programs

*Diversion programs* ask people to take responsibility for breaking the law through community service or other activities. If you are a first-time offender and you are unlikely to break the law again, you may be a good candidate for diversion. If your case is diverted, the **Crown** will not charge you or if you have already been charged, they will not continue to prosecute the charge. A diversion program allows you to avoid a criminal charge, a conviction and the court process 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 get legal aid. If you get legal aid, the government pays for a lawyer for you. The rules for who receives legal aid are different in each province.

In B.C., to apply for legal aid, you need to call the Legal Services Society office in your area. If you are in jail, call the Legal Services Society office collect and choose the option given by the answering machine that is for people in jail. If you go to court before you can apply for legal aid, tell the Judge or Duty Counsel you would like to apply for legal aid.

Not everyone gets legal aid. In order for you 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 in B.C. include: criminal charges where there is a strong possibility you will go to jail, some serious family law problems (violence, child endangerment), deportation, and some other issues. The Legal Services Society will tell you if your problem is covered. If your income is above welfare rates, you may have to pay some money. If you apply for legal aid and you are told you don't qualify, you can appeal the decision. Ask for an appeal form from the Legal Services Society office.

### Legal Aid Phone Number

The Legal Services Society office number for Metro Vancouver is 604-408-2172; 1-866-577-2525 (toll free, outside of Metro Vancouver).



## Identification Procedures

If you have been charged with a *hybrid* or *indictable offence*, or convicted of an indictable offence, or you have been arrested under the Extradition Act or the Security of Information Act (formerly the Official Secrets Act), the police have the right to take your picture, measurements and fingerprints. In all other situations, they require your permission. You have the right to say no.

If you are fingerprinted or photographed but you are not convicted, you can request that the police destroy the copies of your fingerprints and photos they have on file. A recent Ontario Court of Appeal decision (*R. v. Dore*, 2002) suggests the police may have to destroy the fingerprints if you request, without charging you money for the service.

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

Police may ask you to appear in a police lineup for identification. You have the right to have your lawyer present when this happens. You have the right to refuse to participate in a lineup. The police may sometimes arrange for witnesses to look at you without your consent or knowledge to identify you.



## Visits from Friends or Relatives

It is unlikely visits from friends or relatives will be permitted until after your *show-cause hearing* (see page 42). 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.

Be careful what you say during this call and during any visits with family and friends. The police may be listening. Information you tell your family and friends is not secret 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. Your lawyer should be able to tell you how to arrange for visits.

## Release by Police

The police may release you at any time after they arrest you. They might release you without charges. Even if you are released without being charged, the police may still send you a summons later or re-arrest you for the same offence later if they find more evidence. A summons is a piece of paper that orders you to go to court on a certain day for a hearing.

The police may give you an appearance notice or undertaking to appear. An appearance notice is a piece of paper that tells you to show up for court at a certain time. It may also tell you when to go to the police station to be fingerprinted. Read it carefully and show up on the date(s) and times listed.

If you don't show up for fingerprinting or your trial, you could be arrested and held in jail until your trial date. It could also be counted as another charge against you. Often, people who would have won their trials because of an illegal search or other police

### Contacting Family and Friends

Do not sign a statement for the police so that you can see family or friends. You can send messages to them through your lawyer. Whatever you say in your statement will be used against you in court.



misconduct still get a criminal record because they are charged for not going to their trial (called “failing to appear”). If you don’t show up, you also can’t take advantage of *diversion programs* (see page 38).

If the police release you, they can make rules for your release that you must follow. If you think the police conditions are too restrictive, you can wait until your court appearance for the Judge to set conditions for your release. If you are from outside of B.C., the police may ask you to pay a deposit similar to *bail* to make sure you come to your trial.

## Show-Cause Hearing

If you are not released within 24 hours, the police must bring you to court for a *show-cause hearing* to explain why they did not release you and to set a date for your trial. If you don’t have a lawyer, Duty Counsel should be in the courtroom area to help you.

If you have not been able to contact a lawyer up to this point, explain why you have not contacted a lawyer to the Judge. The Judge may give you time to find a lawyer. Duty Counsel should be able to help you talk to the Judge. She can also help you find a lawyer or apply for legal aid.

During the show-cause hearing, the judge will consider whether to release a person from jail or not. The Judge may release you if you promise to appear in court for your trial. He may give you rules to follow after you are released. These rules can include not talking to some people, curfews, not drinking, not going to certain places, or whatever other rules the Judge feels will help you not break the law before your trial. Your lawyer will try to talk the Judge into reducing the number of rules for your release. Tell your lawyer if the rules will interfere with your job or where

you live. The Judge may also require bail be posted before you are released (see below).

In most situations, *Crown Counsel* will have to convince the judge that you should be held in jail or that rules should be included if you are released. Crown can apply to the judge to delay the show-cause hearing for up to three days to obtain further information.

## Bail

*Bail* is an amount of money the Judge says the court needs to make sure you show up for your trial. The money can come from you, your friends, or your family. When you show up for your trial, the person who paid the bail is entitled to get the bail money back.

If the Judge is convinced during your show-cause hearing that bail is needed to make sure you come to your trial, or if Crown Counsel asks for bail, the completion of a show-cause hearing can be delayed for up to three days. You will wait in jail until your hearing to consider whether bail is needed or not.

Your lawyer can help you during your bail hearing to reduce the amount of money the court asks for in bail. Whether or not you will be allowed to leave on bail depends on your criminal record, the strength of the Crown's case, the charges against you, and other information the Judge knows about you.

If you are allowed bail by the Judge and somebody pays it for you, you will be released. If you do not appear for your trial after being released, the bail money will belong to the court. The person who gave the money to the court will not get it back, and you will be arrested.

## Sureties

You may be released without bail if you have a *surety*. A surety is a person who lives in the province who, generally, has a job and a place to live. They may promise, on your behalf, that you will appear in court. If you don't appear in court, your surety may face charges.

You may need to provide both a surety and bail before you are released. If the court refuses to release you on bail, or releases you with conditions you think are too serious for the crimes you are charged with, you can appeal the decision. You will likely need a lawyer for that appeal.

## Review of Detention Hearing

If you are not allowed bail and are kept in jail until your trial, you will be brought before a Judge to review why you are being kept in jail after a certain period of time. If your trial has not started within 30 days for *summary offences*, you will have a hearing. If your trial has not started within 90 days for *indictable offences*, you will have a hearing.

If you are facing a very serious charge (treason, murder, and others) you may not be allowed these hearings.

### Jailhouse Informants and Undercover Police as Prisoners

Police may put a police officer in street clothes or in a prison uniform in a cell with you to get information. They may also force your cellmate or another prisoner to testify at a trial. Do not talk with people in jail about what you are charged with and whether you are guilty or innocent.

