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# **A GUIDE TO THE LAW IN ALBERTA REGARDING**

## **PROSTITUTION**

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**INTRODUCTION**

Prostitution, engaging in sex for money, is not a crime. When someone has a date or “turns a trick” they are not breaking the law. However, under section 213 of the Criminal Code of Canada, any person who stops or attempts to stop a motor vehicle, impedes the flow of traffic (which includes pedestrians or vehicles), or communicates for the purposes of prostitution or to obtain the sexual services of a prostitute in a public place is guilty of a summary conviction offence.

**COMMUNICATION FOR THE PURPOSES OF  
PROSTITUTION**

Communication for the purpose of prostitution is any attempt to get a person to pay money for sex or to provide sexual services in return for money. There are two main forms of communication:

**1. Verbal Communication**

- Verbal communication is using words to say something, either by talking or writing. A person is breaking the law if they discuss the price of sex acts or the services to be performed. A person can still be charged even if:
- a. The price is not fixed
  - b. The acts to be performed were not fixed
  - c. The communication does not end in sex (or a “date”)
  - d. The communication takes place in a car, moving or not.

**2. Non-Verbal Communication**

Non-verbal communication includes gestures, body language, hand signals or other ways of communicating without words. This can be anything from a wink to waiving arms or interrupting the movement of pedestrian or vehicular traffic. Police must prove that the person used the action to stop another person for the purposes of prostitution. For proof, the

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police look at such facts as the time, place, past actions of the person stopping the car and other things going on in the area.

A person can be found guilty of communicating for the purposes of prostitution even where there has been no physical contact. An offer of the body for the purpose of sexual acts in exchange for payment is enough.

### **UNDERCOVER POLICE OFFICERS**

A police officer does not have to identify himself or herself if asked, "Are you a cop?" or "Are you undercover?" The police only have to identify themselves once they start an arrest. Also, a police officer IS allowed to sexually touch a prostitute if it is in fulfilment of the officer's duty. So, if a prostitute asks a potential John to touch her sexually and he does, that does not guarantee that he is not a police officer.

### **PHOTOGRAPHS**

A police officer cannot take a photograph of someone who is charged with communicating for the purposes of prostitution unless permission is given. Communicating is a summary conviction offence, which means it is considered to be less serious than offences labelled as indictable. If someone is charged with other offences, which are indictable or hybrid offences, they may be required to give fingerprints or be photographed.

### **PROCURING**

Procuring means counselling or persuading someone one to do something. Under s. 212 of the Criminal Code of Canada it is an indictable offence to procure a person to have sex with another person, and punishable by a maximum term of imprisonment of

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10 years. Procuring can take many forms, including but not limited to: concealing someone in a bawdy house (or brothel), persuading someone to become a prostitute, giving someone drugs or alcohol for the purpose of enabling them to have sex, or living off the profits of the prostitution of another person.

### **LIVING OFF THE AVAILS OF PROSTITUTION**

Under s. 212 of the Criminal Code of Canada, it is an offence to live wholly or in part off the avails, or profits, of prostitution. This law is meant to target pimps whose main source of income is prostitution. This offence is not applied to prostitutes as the main offender but to those who make money off of the prostitution of others.

This offence is not meant to penalize a relationship that represents a legitimate living arrangement; the mere sharing of expenses between two people, one of whom is a prostitute, is not enough to satisfy this offence. There must be a direct benefit to one person because of the prostitution of the other.

This offence carries with it a reverse onus provision. That means, once the Crown proves that a person is living with or habitually in the company of a known prostitute, it can be presumed that the person is living off the avails of prostitution unless the accused provides evidence to the contrary. This means the accused must raise a reasonable doubt that although they are living with a prostitute, they are not receiving a direct benefit from it. This may involve showing that they have another source of income.

Living off the avails of prostitution is an indictable offence and punishable by a term of imprisonment of not more than 10 years. If the prostitute is under the age of 18, the potential maximum sentence is 14 years. If violence is used or threatened there is a minimum 5 year sentence.

## GETTING ARRESTED FOR PROSTITUTION CHARGES

### 1. A Person's Rights when Under Arrest

When someone is arrested, the police must:

- a. Inform them of the reason for the arrest
- b. Inform them of their right to call a lawyer
- c. Inform them that they can get free legal advice (any time, day or night)
- d. Give them the phone number for free legal advice
- e. Give them reasonable privacy and access to a phone to call a lawyer
- f. Give them a reasonable amount of time to contact and talk to a lawyer
- g. Inform them that they can get duty counsel any time (duty counsel is a lawyer who will talk on their behalf in court)

The police must not force someone to answer questions before they talk to a lawyer if they have asked to speak to one. If they waive their right to counsel they still have the right to be silent when asked questions.

## COARSE

The Prostitution Awareness and Action Foundation of Edmonton (PAAFE) offers a diversion program called COARSE ("Creating Options Aimed at Reducing Sexual Exploitation"). If an adult is charged with summary conviction offences, such as soliciting, minor theft, or breach of probation, that relate to their being a prostitute, they can apply to do a COARSE diversion plan. If they are successful, their charges will be withdrawn. COARSE is designed to help people involved in prostitution deal with the causes of their involvement such as addictions, homelessness, and mental health issues. Applicants must be serious about trying to end their involvement with prostitution.

## THE PROTECTION OF CHILDREN INVOLVED IN PROSTITUTION ACT (PCHIP)

The Protection of Children Involved in Prostitution Act (PChIP) is based on the idea that children (under 18 years old) involved in prostitution are victims of sexual abuse who need help and protection. This law allows police to apprehend children involved in prostitution with or without a court order and put in a "safe house" for up to five days. At the safe house the child is assessed for protection needs, medical concerns, drug and alcohol use, and other risks. If the child needs further protection, the PChIP director can apply to the Family Court for an additional 21 days of confinement and will be offered treatment. People who are involved with children as Johns or pimps can be charged with child sexual abuse and fined up to \$25,000 and/or jailed for up to two years.

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**REFERRAL NUMBERS**

**Student Legal Services:**

Criminal Law. . . . . 425-3356  
Family/Civil Law. . . . . 492-8244  
Legal Education & Reform. . . . . 492-2227

Lawyer Referral Service. . . . . 1-800-661-1095  
Legal Aid.. . . . 427-7575

COARSE Diversion Program. . . . . 471-6137  
Crossroads. . . . . 474-7421

Children's Services. . . . . 780-422-4682  
Child Abuse Hotline.. . . . 1-800-387-5437