
A GUIDE TO THE LAW IN ALBERTA REGARDING

POSSESSION OF CONTROLLED DRUGS AND SUBSTANCES

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GENERAL

All information is provided for general knowledge purposes only and is not meant as a replacement for professional legal advice. If you have a personal legal question that requires legal advice, please consult a lawyer.

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INTRODUCTION

The purpose of this pamphlet is to provide a basic guide to the law surrounding possession of controlled drugs and substances. It should not be used as a substitute for obtaining legal advice if you are charged with an offence. It is particularly important if you are charged with offences such as trafficking, possession for the purpose of trafficking, cultivating (or “producing”) or double doctoring, that you consult legal counsel. Possession of controlled drugs and substances is less serious. However, it is still a criminal offence and has significant consequences. One of the most serious consequences in addition to penalties that a court can impose is prohibiting your entry into the United States; the American Government is quite strict in their general policy not to admit "excludable aliens", which includes persons with drug offences, into the country.

CONTROLLED DRUGS AND SUBSTANCES ACT

There are five basic categories of drugs that are controlled by the Controlled Drugs and Substances Act. These categories are all listed in schedules attached to the Act. Drugs listed in schedules 4 and 5, which include substances such as steroids and barbituates, can be possessed but must be obtained with a prescription, and are illegal to import, export or traffic, or to possess for the purpose of trafficking.

Schedules 1, 2, and 3 contain drugs which are illegal to possess. There are literally hundreds of drugs in these schedules.

The first schedule includes drugs such as heroin, morphine, cocaine, codeine and many other similar substances.

The second schedule contains cannabis (marijuana) products.

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The third schedule contains drugs like amphetamines, LSD, psilocybin and methamphetamines.

POSSESSION

It is an offence to be in possession of any controlled substance listed in schedules 1, 2, or 3. If in doubt about whether or not a particular substance is controlled and legal or illegal one should get legal advice or look specifically at the schedules in the Controlled Drugs and Substances Act. This Act should be available at any library, online, or from any criminal lawyer.

Generally speaking, if the substance appears to be a drug which has not been specifically prescribed to the person who has it in their possession or which is not sold over the counter, chances are it is controlled and therefore illegal to possess.

"Possession" has a particular meaning in law. It does not mean to "own". It is also not limited to one person. That is, more than one person can be in possession of the same substance. Generally speaking, to be in possession means to have something under one's control, to have knowledge of it and to consent to being in control of the substance. Simply not knowing that the substance is illegal, is not a defence. This is based on the principle that ignorance of the law is no excuse.

GETTING ARRESTED

A person can be arrested in two circumstances: with a warrant or without a warrant.

1. With a Warrant

A warrant is a court order to arrest a person based on information the police have that he or she has committed, or is in the process of committing, a crime. The officer must show the person being arrested the warrant either at the time of the arrest or within a reasonable time after the arrest.

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2. Without a Warrant

An arrest can be made without a warrant if:

- a. a person is found in the act of committing a criminal offence;
- b. the officer has reasonable and probable grounds to believe that they have committed an indictable offence; or
- c. the officer has reasonable and probable grounds to believe that they are about to commit an indictable offence.

The law under which the person is charged will state whether the offence is indictable or a summary conviction offence. The main difference between the two is that indictable offences carry more serious penalties than do summary conviction offences.

Until a person has been arrested (generally), they are not under any obligation to cooperate with the police. Once arrested the accused must submit peacefully (even if the accused knows or believes they are innocent). If they do not submit peacefully, additional charges of resisting arrest, obstruction of justice, obstructing a peace officer, or assaulting a peace officer may be laid.

When a person has been arrested the officer **MUST** give the reasons for the arrest and immediately inform the accused of their right to contact legal counsel (a lawyer) without delay. The officer **MUST** also inform them of all available options: including 1-800 numbers for Lawyer Referral Service and the Legal Aid Society if they are available in the jurisdiction (the area) of the arrest. The officer must also give the person an opportunity to exercise their right to contact a lawyer as soon as it is reasonable to do so.

A person may remain silent when stopped and questioned by the police, but generally has a legal obligation to provide the officer with their correct legal name. It is in a person's best interests to provide the correct legal name, otherwise they may be detained. Once a person has been lawfully arrested the officer has a right to

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search him or her, their belongings, and the area around them, for evidence of the alleged offence or a weapon. If a person has not been arrested, for example if pulled over by the police at a roadside check stop, the officer can only search the area that is in his plain view. The officer cannot enter a vehicle to search it, but may use a flashlight to look into the vehicle under these circumstances. Also, a police officer can search a person, even before he is arrested if the individual gives express consent for them to do so, provided the consent is informed. This means that they must be aware of their right to refuse the search. A person cannot be forced or pressured into consenting to be searched. However, a person should not physically resist a search.

Once you have been arrested the officer will make a decision about whether to release you on an APPEARANCE NOTICE or take you to the police station. In most minor cases you will be released on an appearance notice. The notice will state that you are suspected of committing the offence listed and it will order you to appear on at least two separate occasions. The first of these appearances will probably be at a local police station to have your finger prints and photograph taken. The second date is likely to order you to make an appearance at the local courthouse to enter a plea of either guilty or not guilty to the charge(s) against you.

It is VERY IMPORTANT that you attend both of these places at the dates and times listed. If you don't you will be charged with another offence for FAILING TO APPEAR and a WARRANT FOR YOUR ARREST will also be issued.

The police also have the option of taking you to the police station where you may be kept in jail. This may be done if they believe it is necessary to preserve evidence of the offence or properly identify you, or that detaining you is necessary to protect the public (that is to prevent the commission of further offences), or if they believe it is necessary to ensure you will attend your court dates. You will have the right to appear before a Justice of the

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Peace or a Judge within 24 hours of your initial arrest. This appearance is called a BAIL HEARING (or an INTERIM RELEASE or SHOW CAUSE HEARING). This is where the Prosecutor may attempt to convince the Judge or Justice that you should not be released prior to your trial. IF you are already out on outstanding charges the onus is on you to give reasons for why you should be released. You also need to give reasons for your release for some drug offences like trafficking. After the Justice or Judge has heard from both sides they will decide whether or not to release you, and if so, what conditions should apply.

ARE THERE DEFENCES AVAILABLE?

If you are charged with possession of a controlled substance, you should get legal advice. A person trained in criminal law can advise you whether or not there is a defence, whether proper procedures were followed by the police and what effect improper procedures might have on the charge. If the search was illegal, this could result in the evidence being excluded. The Crown must also prove that the substance was in fact the controlled substance they are alleging. Often times, this is done by a certificate of analysis for the controlled substance which must be served upon you before trial.

WHAT SENTENCE CAN I GET FOR POSSESSION?

The potential or the probable sentence for possession depends upon several things:

- a. The type (or schedule) of the controlled substance;
- b. The quantity;
- c. Whether the Crown proceeds by way of summary conviction or by indictment.

In addition, the general circumstances surrounding the offence and the personal circumstances of the person being sentenced

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are considered by a sentencing judge. If a person has a prior criminal record, especially a drug record, the sentence will probably be more harsh than if the person has no previous involvement with the law. The maximum sentences which can be imposed for possession are as follows:

- a. Marijuana (schedule 2) - up to \$1,000.00 and six months in jail if the amount is less than 30 grams (or one (1) gram of hash);
- b. If the amount of marijuana is more than 30 grams (or more than one (1) gram of hash) the maximum penalty is five (5) years less a day in prison, if the Crown proceeds by indictment. Maximums are less if the Crown proceeds by summary conviction.
- c. In the case of schedule one (1) drugs (such as heroin, cocaine or morphine) - the maximum penalty if the Crown proceeds by indictment is seven (7) years in jail. If the Crown proceeds by summary conviction, the maximum penalty is less.
- d. For schedule three (3) drugs - the maximum penalty by indictment is three (3) years and less for summary conviction.

Generally speaking possession of marijuana in small amounts will result in a fine. If there are prior related convictions, jail is a possibility. If the quantity is substantial, the chances of jail increase.

For other types of drugs or controlled substances, especially those in schedule (1), a small amount may be dealt with by a substantial fine. However, there is a risk of jail for even a small amount of cocaine or heroin. Again the chances of jail increase and the amount of any fine increases if there are prior related convictions.

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REFERRAL NUMBERS

Lawyer Referral Services/Dial-A-Law 1-800-661-1095
*Lawyer Referral will provide you with the names of three lawyers who practice in the area of law which you need help in. Once you select a lawyer a half hour interview with that lawyer is free.
Dial-A-Law provides free pre-recorded information which may be of assistance to you without going any further.*

Legal Aid Society of Alberta 780-427-7575
www.legalaid.ab.ca

Student Legal Services of Edmonton 780-492-2226
www.slsedmonton.com
Corona Criminal Law Project 780-425-3356
If you cannot afford a lawyer, and Legal Aid will not accept you and the Crown has proceeded in your case by summary conviction then you may apply to Student Legal Services for assistance. Student Legal Services represents the lower income earners of Edmonton and the surrounding areas and will act as your legal agent in all matters relevant to your case which take place in the Provincial Court of Alberta - Criminal Division.

Native Counselling Services 780-423-2141
Native Counselling provides court services and legal information for both Aboriginal and non-Aboriginal persons.

AADAC - Recovery Centre 780-427-4291
www.aadac.com

AADAC -Day Counselling and Treatment 780-427-2736

George Spady Centre 780-424-8335

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The George Spady Centre provides overnight accommodation for the public inebriate and offers a 3 day detox program for abusers of alcohol and drugs.

Narcotics Anonymous 780-421-4429
www.eana.ca

Elizabeth Fry Society 780-421-1175
Court worker Office 780-421-4775