



Type of law:
CRIMINAL LAW

A 2023 Alberta Guide to the Law

Police Interactions, Detentions, & Arrests



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GENERAL

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Stopped by Police?

- You have been "stopped" if the police stop you and ask you a question
- You have been "detained" if, after having stopped you, the police tell you (or imply by their behavior) that you aren't free to leave, and you'll face legal consequences if you leave
- You have been "arrested" if the police tell you that you are under arrest

YOU DO NOT HAVE TO TALK TO THE POLICE!

There are times where you have to provide your name, date of birth, and address. Lying about this can lead to a criminal charge. You can ask "am I free to go?" or "am I being detained?" The police can still ask you questions but if they tell you that you are free to go then you may leave. You do not have to give a statement to the police and it may not be in your best interests to do so. There are times when the police are allowed to search you, but you can tell them that you do not consent to a search when asked. You and your belongings can be searched without your consent once arrested.

When Can You Be Arrested

- You are found in the act of committing a criminal offence
- An officer has reasonable and probable grounds to believe that you have committed an offence, or are about to commit an offence
- An officer has a warrant

Arrest Warrants

A warrant is a document that is issued by the court when there are reasonable and probable grounds to believe that someone has committed an offence. If you have a warrant you can do nothing or appear at a police station. You may be taken into custody, or released with a new court date

Rights Upon Arrest

- To know the reason for your arrest
- To be informed of your right to talk to a lawyer for free and to contact one as soon as it is reasonable to do so
- To remain silent and not talk to the police
- To ask for the officer's name and badge number
- You do have to provide your name, address and date of birth



Table of Contents

What Does It Mean To Be "Stopped" vs "Detained" vs "Arrested"?	1
When Can the Police Stop Me?	1
What Are My Rights If The Police Stop Me?	1
What Are My Rights If The Police Detain Me?	2
When Could You Be Arrested?	2
Police Searches	3
Arrest with A Warrant	4
When Is an Arrest Warrant Issued?	5
What Can I Do If There Is A Warrant Out For My Arrest?	5
What Happens If The Police Stop Me And They Discover That I Have A Warrant?	6
Are Arrest Warrants Only Valid In The Province It Was Issued?	6
What If I Have A Warrant Elsewhere But I'm Arrested In Alberta For Something Else?	6
Can An Arrest Warrant Prevent Me From Traveling?	7

What Does It Mean To Be "Stopped" vs "Detained" vs "Arrested"?

- You have been "**stopped**" if the police stop you and ask you a question
- You have been "**detained**" if, after having stopped you, the police tell you (or imply by their behavior) that you aren't free to leave, and you'll face legal consequences if you leave
- You have been "**arrested**" if the police tell you that you are under arrest

When Can the Police Stop Me?

The police can generally stop you whenever they want. While you have the **right to remain silent**, you may need to provide some information such as your name, birthday, address, etc. For example, if, during the lawful execution of their duties, the police witness you committing a crime or have reasonable and probable grounds to believe that you have committed a crime, you are required to give them your identifying information. If the police do not have evidence of you committing an offence, you do not need to give them your identifying information. However, if you are stopped while driving, you must hand over your documents. This includes riding a bike or anything else that qualifies as a "conveyance" (or vehicle) under the Code.

In Alberta, the police are allowed to conduct "street checks" to speak with you. These interactions are typically voluntary and the police must tell you why they have stopped you and that the conversation is voluntary.

It is in your best interests to provide the correct legal name, and not to lie. Lying to an investigating police officer can lead to detainment and/or a charge for obstruction of justice, a serious criminal offence.

What Are My Rights If The Police Stop Me?

When you are stopped by the police, you have several rights that are protected under the *Canadian Charter of Rights and Freedoms*, including:

- The right to remain silent when you are not obligated to provide police any information;
 - Note: Police can still ask you questions even if you choose not to answer
- The right to be presumed innocent until tried and found guilty;

- The right against unreasonable search or seizure; and
- The right against arbitrary detention or imprisonment.

When Can Police Detain Me?

You have a *Charter* right against arbitrary detention (detention without reason). However, the police can detain you when they have a reasonable suspicion (beyond a mere hunch) that you are involved in a recent/ongoing criminal activity. For example, if you match a witness description, or you're in an area where a crime was committed, or your criminal record matches that of a crime that was committed. You can also be detained for being drunk/high in public. You have the right to ask if you are being detained.

What Are My Rights If The Police Detain Me?

If you are detained, you have the right:

- To be informed of the reason for detention;
- To ask for the officer's name and badge number;
- To speak with a lawyer as soon as possible;
 - Importantly, there are some circumstances where this right is suspended. For example drivers who are detained on the roadside may not be immediately granted their opportunity to speak with a lawyer while the police conduct their investigation.
- To be informed of your legal rights;
- The right to have a justice determine if your detention is valid and appropriate, and if not, to be released;
 - This typically applies more to detention resulting from an arrest and being placed in the physical custody of the police.

Upon your initial **detention**, the law requires that your detention be reviewed at the soonest possible time within 24 hours, if a justice is available.

- If a justice is not available within 24 hours, then it will be reviewed at the next soonest available time.
- Within the first 24 hours, you could be released without appearing before a

justice.

- To talk to your parent, guardian, or a trusted adult if you are younger than 18 years of age

If you decline your right to speak to a lawyer, the police are allowed to ask you questions and what you say may be used against you in court. You do not have to answer these questions or give a statement. You still have the **right to remain silent.**

If you request to speak with a lawyer, make sure to make the best use of your call with them since the police are not obligated to provide you with a second opportunity to speak with a lawyer.

When Can the Police Arrest Me?

You could be arrested when:

- There is a warrant out for your arrest or if the police officer has reasonable and probable grounds to believe that there is one;
 - “Reasonable and probable grounds” means that the officer has reliable information that is more than just a suspicion
- An officer has reasonable and probable grounds to believe that you have committed a crime;
- An officer witnessed you committing a crime; or
- An officer has reasonable or probable grounds to suspect that you have committed or are about to commit a serious and indictable offence.
 - When a crime is classified as indictable, it means that the prosecutors will likely seek jail time if you are convicted.

An arrest occurs when the police intend to physically detain you, place you in their custody, and tell you that you are being arrested.

When you are being arrested, you have the right:

- To be informed of the reason for your arrest;
- To be informed of the officer's name and badge number;
- To retain and instruct counsel without delay;

- To be informed of your legal rights;
- To have a justice determine if your arrest is valid and appropriate, and if not, to be released.

The law requires that your **arrest is reviewed** at the soonest possible time, within 24 hours of being placed under arrest, if a justice is available.

- If a justice is not available within 24 hours, then the next soonest available time.
- Within the first 24 hours, you can also be released without appearing before a justice

If you have been arrested, you can call a lawyer. If you cannot afford a lawyer, you can call the **Legal Aid Society of Alberta** at 1-866-845-3425. **The Police have an obligation to provide you with information about a free lawyer and provide a way to contact these services.**

Police Searches

Generally, until you are lawfully arrested, you do not have to allow the police to search you or your possessions. However, an officer can search you prior to arrest if:



- You expressly **consent** to the search,
- The police have a **search warrant**,
- The police think you have a **weapon**,
 - The police may conduct a “protective pat down search” where they can only look for weapons or items that endanger public safety
- The police think you are about to **destroy evidence**, or
- The police have reasonable and probable grounds to believe that you are committing or have committed an offence and that evidence will be found at the place of the search.

Once you have been lawfully arrested, police officers have the right to search you, your belongings, and the area around you for evidence of the alleged criminal offence or for a weapon.

Note: If you are pulled over at a roadside check stop, the police officer can search the area that is in plain view. The officer may use a flashlight. This means that while they cannot look in the trunk or glovebox, police officers can look inside the car at what is on top of the seats, in cup holders, etc. If you are lawfully arrested, the police can **search your phone** if they have a valid law enforcement purpose such as protecting the police, the accused, or the public, or to preserve evidence.

However, if your phone is password protected, you are not required to reveal their phone password, and any details about the passcode must be obtained by the police voluntarily and consensually.

Arrest with A Warrant

A warrant is a document issued by the court when there are reasonable and probable grounds to believe that someone has committed an offence.

An arrest warrant gives the police the power to arrest the individual named in the warrant, so that they can be brought before the court.



Obtaining a warrant requires an officer to follow certain rules:

- Information alleging the offence must be sworn and brought before a justice of the peace or judge who will hear and consider the information.
 - “Sworn” or “swearing in” information or testimony means that you promise under oath that you are telling the truth or that information is true.
- The justice or judge may issue an appearance notice or an arrest warrant.
- A warrant must contain the name or description of the accused, a brief description of the offence alleged, and an order that the accused be arrested. The warrant remains in force until the accused is arrested. The warrant is outstanding until that time.



When executing an arrest warrant, the police officer must have the arrest warrant with them when possible, and they should be able to produce it when asked. However, the Courts also recognize that, in certain situations, it is not feasible for the police officer to have the warrant with them at the time of the arrest.

The police officer also has a duty to give notice to the person they are arresting of the:

- Warrant under which they make the arrest; or
- The reason for the arrest

If you feel that the police did not follow these rules and you would like to make a complaint, consider taking a look at our pamphlet on *“How to Initiate a Public Complaint Against the Edmonton Police Service.”*

When Is an Arrest Warrant Issued?

It is most common for police officers to seek a warrant when an accused has avoided the police or the court, and a warrant is the only way to get the accused to court. Warrants are also issued when an accused:

- Fails to appear in court when required to do so, such as on a summons, appearance notice, promise to appear, recognizance, undertaking, or release order;
- Avoids service of a court document; or
- Ignores a subpoena or avoids being served with a subpoena.

If you miss a court date and have not sent someone to appear on your behalf, the court can issue a warrant for your arrest. This can happen even if you accidentally miss your court date or were unable to appear for a specific reason. It is very important that you make every effort to attend your court date, or at the very least that you send someone on your behalf. Note that there are circumstances where you must attend court in person and cannot send someone to appear on your behalf. However, there are circumstances where you must attend court in person and cannot send someone to appear on your behalf, such as if the alleged crime is serious and indictable.

What Can I Do If There Is A Warrant Out For My Arrest?

If there is a warrant out for your arrest you can do nothing, or you can report to the nearest police station to try and deal with it. If you report to a police station, the police may issue a "appearance notice" and release you with a new court date. Often the police are able to provide you with an appearance notice without requiring that you appear before a justice. It is best to talk to a lawyer before reporting to a police station to get advice regarding your case. Your lawyer can also help you come up with a release plan that you will be able to present to the police.



However, sometimes depending on the circumstances and the seriousness of the offence, the police may arrest and detain you until your next court appearance. These types of detentions usually take place if the police believe that your detention is in the public's best interest or if they believe that you will not attend your court date.

If you are taken into custody, then you will be brought before a justice or a judge within 24 hours to determine if staying in custody is justified. If it is not, the justice can order that you be released but on the stipulation that you will appear before the court to deal with your charges at a specified date. They can also add other conditions or even deny your release if (1) they believe that more is needed to ensure that you show up to court, (2) if they believe you are a

threat to public safety, or (3) if the judge decides that your release would undermine the public confidence in the administration of justice. Each of these factors are considered equally in determining whether someone ought to be detained or released.

You could be released on **bail**. The word “bail” is usually used to describe the time between when a person was arrested till the court finalizes the charges (for example, guilty, not guilty, etc.). If the individual is allowed to be out of custody during that time, they are out on *release* or bail. Police or the courts will decide whether or not an individual will be granted bail.

Sometimes, you are required to pay "**bail**" to be released. Courts can decide whether or not a person must pay to be released on bail. The court can also release someone with a "**promise to pay.**" This means that the individual charged will promise to pay a certain amount if they do not follow a bail condition or miss their court date. Courts can also decide to have no monetary incentive, but it can still be a criminal offence to miss your court date or break a condition.

You will **get your bail back if you comply with any conditions** that you've been given upon release. Other times, you will be released if you promise to pay a certain amount of money if you fail to comply with your conditions.

You may also be released on an "**appearance notice,**" which does not necessarily require any agreement that you will pay a certain amount if you breach your conditions. Often, the police are able to provide you with an appearance notice without requiring that you appear before a justice.

If you do not report to the police, then the warrant will remain outstanding until you are arrested.

NOTE: In December 2019 “recognizance” was changed to “release order” and “promise to appear” was change to “appearance notice.”

What Happens If The Police Stop Me And They Discover That I Have A Warrant?

If the police discover that there is a warrant out for your arrest, then you could potentially be arrested and held in custody. If you are arrested and held in custody, you will then be brought before a justice or a judge, typically within 24 hours to determine whether you should be released.

Are Arrest Warrants Only Valid In The Province It Was Issued?

Typically, an arrest warrant signed by a justice or judge is only valid in the province where the justice or judge has jurisdiction. This means that an arrest warrant signed in Edmonton is usually valid anywhere in Alberta but it would not be valid in another province.

However, this does not mean that the police cannot arrest you outside of Alberta. If a police officer in another province believes a certain arrest warrant is serious enough to arrest and detain you, then they can arrest you and then contact the police in the province where the warrant was issued. Once contacted, the police from the issuing province will then contact the Crown to decide how they wish to continue. Depending on the circumstances, they may decide that you can be released, or they can have you transported back to the province where the warrant was issued.

Note that an out-of-province arrest warrant can also be pursued when it has been endorsed by a judge or justice in another province. For example, if a police officer in Vancouver arrests an individual who is wanted on an arrest warrant signed by a justice or judge in Alberta, then the arrest warrant must be signed by a justice or judge who has jurisdiction in British Columbia in order for it to be valid.

What If I Have A Warrant Elsewhere But I'm Arrested In Alberta For Something Else?

The main concern of the police who arrest you in Alberta is the offence that you have committed in Alberta. However, the police in Alberta can call the police in the province where the warrant was issued in order to inform them that you have been arrested. If the warrant is out because you avoided police custody on a fairly serious offence, then you may be sent back to face those charges after you have dealt with the charges in Alberta.

Can An Arrest Warrant Prevent Me From Traveling?

An arrest warrant will probably not prevent you from traveling within Canada, unless the police stop you and determine that the criminal offence underlying the warrant is serious enough for you to be prevented from continuing your travels within Canada.

If you are planning to travel outside of the country, there is a chance that you will be detained at the border. The border guards and customs officers can choose to run your identification and often do random checks to prevent people from slipping across the border when they are the subject of an arrest warrant. If they run your identification and discover that there is a

warrant out for your arrest, then you will be detained at the border until the police can come and pick you up.

Who Can I Call For More Help Or Information?

Student Legal Services – Criminal Law Project #100, 9924 106 Street NW Edmonton, AB T5K 1C7	Ph: 780-425-3356 Admin: 780-492-2226 Fax: 780-420-0065
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The Criminal Law Project looks to assist adults who meet our income guidelines, have been charged with certain offences, and cannot afford a lawyer or qualify for Legal Aid Alberta. A law student will volunteer their time to provide free legal assistance where they can act as an agent for you while acting under the supervision of advising lawyers.

Provincial Court Clerks – Criminal	Edmonton: 780-427-7868
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The Provincial Court Criminal Clerks are able to assist in providing information for Provincial Court Criminal matters regarding judicial procedures, court appearances, trial dates, adjournments, outstanding warrants, summonses, subpoenas, witness fees, and payment of fines. It is not their role to provide you with legal advice. *The criminal division does not handle traffic matters.*

Provincial Court Clerks – Traffic	Edmonton: 780-427-5913
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The Provincial Court Traffic Clerks are able to assist in providing information for Provincial Court Traffic matters regarding judicial procedures, court appearances, trial dates, adjournments, outstanding warrants, summonses, subpoenas, witness fees, and payment of fines. It is not their role to provide you with legal advice.

Lawyer Referral Service	Toll Free Ph: 1-800-661-1095
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The Lawyer Referral Service can provide contact information for practicing lawyers who may be appropriate for your matter. When you call, you will speak to an operator and you will describe the nature of your problem to them. The operator will then provide you with the contact information for up to three lawyers who may be able to help. When contacting these lawyers, let them know that the Lawyer Referral Service gave you their contact information. The first half hour of your conversation with a lawyer will be free and you can discuss your options. This does not mean the lawyer will give free work.

Legal Aid Society of Alberta Revillon Building Suite 600 – 10320 102 Avenue Edmonton, AB T5J 4A1	Toll Free Ph: 1-866-845-3425 Ph: 780-427-7575
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The Legal Aid Society of Alberta functions to assist low-income Albertans with certain types of legal matters. Assistance is provided through information, referrals, advice, and/or representation, depending on what your matter is and which eligibility guidelines you meet.

NOTES:
