



YOUR RIGHTS IN CRIMINAL DEFENCE & BAIL

A practical Alberta guide for people who have been arrested, detained or charged

IF YOU ARE IN POLICE CUSTODY

Ask to speak with a lawyer immediately. You have a Charter right to retain and instruct counsel without delay.

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1. If You Are Arrested or Detained

Being arrested or detained can be stressful and confusing. The most important thing is to protect your legal rights from the beginning. Under the Canadian Charter of Rights and Freedoms, a person who is arrested or detained has the right to be told promptly why, to retain and instruct counsel without delay, and to be informed of that right.

- Stay calm and do not physically resist, even if you believe the arrest is unlawful.
- Ask clearly: “Am I under arrest or am I free to go?”
- Say that you want to speak with a lawyer and ask to do so without delay.
- Do not try to explain your way out of the allegation before obtaining legal advice.
- Do not consent to a search simply because you feel pressured. Police powers to search depend on the circumstances; tell your lawyer what occurred.
- Remember that what you say may become evidence. There are exceptions and context matters, so obtain legal advice before answering investigative questions.

2. Your Core Charter Rights

Depending on the circumstances, important Charter protections may include:

- Section 7 - life, liberty and security of the person, in accordance with the principles of fundamental justice.
- Section 8 - protection against unreasonable search or seizure.
- Section 9 - protection against arbitrary detention or imprisonment.
- Section 10(a) - the right to be informed promptly of the reasons for arrest or detention.
- Section 10(b) - the right to retain and instruct counsel without delay and to be informed of that right.
- Section 11 - protections for a person charged with an offence, including the presumption of innocence and the right not to be denied reasonable bail without just cause.

3. What Happens After Arrest?

Police may release an accused person on documents requiring a later court appearance, or may keep the person in custody for a judicial release hearing. If the person is not released, section 503 of the Criminal Code generally requires that the person be taken before a justice without unreasonable delay and, where a justice is available, within 24 hours of arrest; if a justice is not available within that period, the person must be taken before a justice as soon as possible.

4. What Is Bail?

“Bail” is commonly used to describe judicial interim release - whether an accused person will remain in the community while the criminal charge proceeds or will be detained in custody. A bail hearing is not a trial and does not determine guilt or innocence.

The Criminal Code contains a principle of restraint. In ordinary cases, release at the earliest reasonable opportunity and on the least onerous appropriate conditions is an important starting point. However, the law also identifies circumstances where detention is justified and circumstances where the accused bears the burden of showing why detention is not justified.

5. The Three Bail Grounds

Under section 515(10) of the Criminal Code, detention may be justified on one or more of three grounds:

- Primary ground - whether detention is necessary to ensure the accused attends court.
- Secondary ground - whether detention is necessary for the protection or safety of the public, including victims or witnesses, having regard to the circumstances and risks identified by law.
- Tertiary ground - whether detention is necessary to maintain confidence in the administration of justice, considering statutory factors such as the apparent strength of the prosecution case, gravity of the offence, circumstances of the alleged offence and potential punishment.

6. Who Has the Burden at a Bail Hearing?

In many cases, the prosecutor must show why detention or a more restrictive form of release is justified. In specified “reverse onus” situations under the Criminal Code, the accused must instead show why detention is not justified. Reverse-onus provisions are technical and have been amended over time, so the applicable provision should be assessed by defence counsel based on the actual charges, record and circumstances.

7. Building a Strong Release Plan

A practical release plan addresses the risks that the court must consider. The appropriate plan depends on the case, and unnecessary or unrealistic conditions can create new legal problems.

- A stable and verified residence.
- A realistic plan to attend every court date.
- Employment, education, treatment or other structured commitments, where relevant.
- A plan to comply with no-contact, geographic, weapons, abstinence or other proposed conditions, where legally appropriate.
- A suitable surety where one is legally required or genuinely necessary.
- Reliable contact information and practical transportation arrangements.
- Any documents that help verify the plan, where appropriate.

8. Bail Conditions Must Be Taken Seriously

If you are released, read every condition carefully before leaving custody or court. A release order is a court order. Breaching a condition can result in a new criminal charge, arrest, cancellation of release, or a more difficult future bail hearing.

- Keep a copy or photo of your release order.
- Do not contact a prohibited person indirectly through friends, family, social media or another account.
- If a condition becomes unworkable, speak to a lawyer about lawful ways to seek a variation. Do not simply ignore it.
- Attend every required court appearance and comply with reporting or other lawful conditions.

9. Your Criminal Defence Rights After Release

After release, the case is only beginning. Important defence steps may include:

- Obtaining and reviewing disclosure from the prosecution.
- Identifying Charter issues involving detention, search, right to counsel, statements, delay or other police conduct.
- Preserving texts, photographs, video, location data, receipts and other potentially relevant evidence.
- Identifying witnesses and obtaining their contact information without coaching or pressuring them.
- Assessing the elements of the offence, available defences and the reliability of the prosecution evidence.
- Considering resolution discussions, applications, trial strategy and sentencing consequences only after informed legal advice.

10. What Not to Do After You Are Charged

- Do not discuss the facts of your case on social media.
- Do not delete messages, photographs, videos or other potentially relevant evidence.
- Do not contact a complainant or witness if a condition prohibits contact.
- Do not miss court because you believe your lawyer or another person will automatically handle it.
- Do not plead guilty simply to “get it over with” before understanding the evidence, possible defences and consequences.

11. How ATEH LAW Can Help

ATEH LAW provides criminal defence representation focused on protecting your liberty, constitutional rights, reputation and future. Depending on the retainer and circumstances, assistance may include:

- Urgent legal advice following arrest or detention.
- Bail hearings and preparation of release plans.
- Review of disclosure and case strategy.
- Charter applications and evidentiary issues.
- Negotiations with the prosecution.
- Criminal trials, guilty pleas and sentencing advocacy.
- Advice about the collateral consequences of criminal charges and convictions.

CHARGED OR HELD FOR BAIL?

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Important Legal Information

This guide is general legal information for Alberta and is not legal advice. Criminal and bail law is fact-specific and can change. Reading or downloading this guide does not create a lawyer-client relationship with ATEH LAW. Do not rely on this guide as a substitute for advice from a lawyer about your own case. If you are in custody, ask police for access to counsel. If you cannot retain private counsel, ask about duty counsel and Legal Aid Alberta.

Sources & Further Reading

- **Canadian Charter of Rights and Freedoms, ss. 7-11**
<https://laws-lois.justice.gc.ca/eng/const/fulltext.html>
- **Criminal Code, s. 503 - taking an arrested person before a justice**
<https://laws-lois.justice.gc.ca/eng/acts/C-46/section-503.html>
- **Criminal Code, ss. 493.1 and 493.11 - restraint and release principles**
<https://laws-lois.justice.gc.ca/eng/acts/C-46/section-493.1.html>
- **Criminal Code, s. 515 - judicial interim release and detention grounds**
<https://laws-lois.justice.gc.ca/eng/acts/C-46/section-515.html>
- **Legal Aid Alberta - Justice of the Peace Bail**
<https://www.legalaid.ab.ca/services/justice-of-the-peace-bail/>
- **Legal Aid Alberta - Adult Criminal Law**
<https://www.legalaid.ab.ca/services/adult-criminal-law/>

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