



GETTING CHARGED AND ATTENDING COURT

Being charged criminally means that you are accused of an offence in the *Criminal Code*.

Everyone has the right to be presumed innocent until proven guilty.

What should I do if I am arrested or being investigated for an offence?

Don't say anything to the police without talking to a lawyer first. You should never say anything to the police when you have been arrested. A lawyer can give you clear advice if making a statement may be to your advantage.

Even if you are charged with an **offense**, the police may decide not to arrest you. If you are unsure of whether you have been arrested or not, ask the police.

Instead of arresting you, the police can issue an **Appearance Notice**. The Appearance Notice gives you a date to appear in court and can also have a date to go to the police station for finger printing and identification. **It is important that you attend at all required dates in the notice.** You can be charged with a separate offence if you fail to attend a required date.

The first thing to be dealt with when you are charged with an offense is your release. You can be released on police documents or you can be held for court.

Release Documents

There are two kinds of release: **Promise to Appear** or **Undertaking to an Officer in Charge**.

Promise to Appear - If the officer determines that your arrest is required, you can be released on a Promise to Appear. Similar to an Appearance, a Promise to Appear will give you a date to attend court and may give you date to attend for finger printing and identification. The police may require you to enter into a **recognizance** of up to \$500. You may not have to give the amount in cash, but if you breach the conditions, the **Crown** can take steps to make you pay. If you are not a resident of the Yukon, or live a long way from the place you were arrested, you may be required to deposit cash.

Undertaking to an Officer in Charge - similar to Promise to appear, but allows for release on more serious charges without the need for a bail hearing.

Being Held for Court – Bail Hearing

If the police are not in a position to release you, you will be held in court for a bail hearing within 24 hours. At a bail hearing you will be assisted by **Duty Counsel**. It is important that you listen to Duty Counsel's advice as you only have one chance at bail. However, remember that you have a **right** to a bail hearing. It is your right and you decide whether you wish to exercise it and when. Generally, the Crown has to give a reason why you should not be released. The judge will decide whether to release you or not. If the Crown does not agree to your release, you may wish to seek a Bail Assessment Report. If you request a Bail Assessment Report you will have to consent to be in jail for 3 working days. Regardless of if Crown agrees to your release, you may be released on a recognizance (with or without deposit) or an undertaking. You will be required to follow all the conditions that the **Justice of the Peace** places you on. One or more **sureties** may also be required to sign for your release.

Bail: release from custody while awaiting trial on conditions that may but need not include payment
Criminal Code of Canada: <http://laws-lois.justice.gc.ca/eng/acts/C-46/>
Crown: the lawyer representing the government; prosecutor
Duty Counsel: lawyers who can give immediate, legal assistance Crown
Offence: a violation of the law that has a punishment
Recognizance, undertaking: a promise to the court
Waiver: voluntarily giving up a right

Amending Bail Conditions

If your **Bail Conditions** are difficult, or impossible, for you to follow, you can apply to have them changed. How this is done depends on the type of bail you have. First, check to see if the conditions allow for permission from a bail supervisor to change. Regardless of the type of bail you have, it is a good idea to contact the Crown. If you can explain why your bail should be changed, often the Crown will agree. If the Crown doesn't agree, you can contact the **Court Registry** to have you the matter brought forward to the correct court for a hearing.

Changing the Terms of a Promise to Appear or an Undertaking to an Office in Charge

You can apply to the Territorial Court to change your terms, even if the Crown does not agree. You may wish to talk to a lawyer before trying to change your bail. If the Crown does not agree to the change, it is a good idea to be able to explain why the condition is not needed or is not reasonable. For example: if you are charged with assault and there is no evidence that you were drunk, a condition not to consume alcohol does not make sense. When making an application, it is important that you consider all the changes you want, or need, to make. Your bail will be converted into an **Undertaking to the Court**, which can only be amended with Crown's agreement or by a **Bail Review** in Supreme Court.

Bail Review

A Judicial Interim Release can be made by the court to change your terms. These terms can only be changed in Territorial Court with the agreement of the Crown. If the Crown does not agree, you have to make application for a **Bail Review** in Supreme Court. If you are applying for a Bail Review you need to give the Crown two days' notice, along with the required paper work and affidavit(s). At a Bail Review the Crown may wish to **cross-examine** you or your supports on the affidavits.

Courtroom Do's and Don'ts!

DO: dress in a clean and respectful manner, but **DON'T** wear a hat!

DO: wait for your matter to be called inside the courtroom

DO: address the decision maker and others respectfully

First Appearance

If you are released, you will be given a date for your first appearance, usually a few weeks later. At your **First Appearance**, the court will normally read out the charges to you to make sure you understand them and ask you if you wish to proceed in English or French. Try to speak to Duty Counsel if you do not have a lawyer assisting you. Duty Counsel can assist you by speaking to the court on your behalf and explaining the charges to you. Generally, an **adjournment** for two weeks to give you a chance to retain counsel will be advised. After speaking to Duty Counsel, go in the Court Room and wait for your matter to be called. When your matter is called, go and sit by your lawyer or Duty Counsel, who can **waive** reading of the charges and tell the court if you are going forward in English or French. If you can't speak with Duty Counsel, you can request an adjournment of two weeks or more to find counsel. If you understand your charges, you can also ask to waive reading of the charges yourself.

Disclosure

Disclosure is all the evidence the Crown will be using to try to prove the charges against you. You have the right to have all the disclosure that Crown has respecting your charges. At your First Appearance, the Crown may have this package of documents ready. The Crown will only provide one copy of disclosure, so if you intend to hire a lawyer or apply for legal aid it may be best to let the Crown to hold on to it until you get a lawyer. Some disclosure such as video and picture may not be given to a self-represented person.

What if I don't live in the Yukon? Waiving Charges... If you live in another province or territory, you can ask the Crown about a **waiver**. You should talk to a lawyer for legal advice if you are seeking to waive charges. A waiver is an agreement that your charges will be sent to your home city to be dealt with **by way of a guilty plea**. If you wish to plead not guilty and go to trial, it will have to take place in the Yukon.

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