



Criminal charges mean that you are accused of doing something that is an offence in the [Criminal Code](#). If you are arrested, you have a right to be advised of why, and the right to talk to a lawyer. You have the right not to make a statement to the police.

What should I do when I am arrested or being investigated?

Remember that you **do not** have to talk to the police without talking to a lawyer first. There are some things you **do** have to tell the police if you are under arrest, like your name. You should remain respectful with the police.

You don’t have to talk to the police. You have the right to remain silent and this cannot be used against you. You may think that it might help your case if you give your story to the police. You should talk to a lawyer before you do this.

How do I get legal information or advice if I am arrested or charged?

If arrested, you will be asked by the police if you wish to talk to legal counsel. You will be given, or can ask for, the contact information for lawyers you know of, or **duty counsel**. **Duty counsel** is an on-call lawyer you can talk to for free.

Lawyers that represent people accused of a criminal offence are called **defence counsel**. The lawyer on the other side is called a **prosecutor or Crown Counsel (the “Crown”)**. You can get a lawyer in a few ways:

- You can apply for [Legal Aid](#) and a lawyer *may* be provided to you at no cost. However, not everyone qualifies for Legal Aid.
- If you have been denied representation through Legal Aid and cannot afford a lawyer, you may consider an application for court-ordered counsel (Rowbotham).
- Another way you can get a lawyer is by hiring one yourself. You usually have to pay a fee upfront (a **retainer**).

Contact information for all lawyers who can work in the Yukon is available from the [Law Society of Yukon](#).

You can get legal information from the [Law Line](#). This includes helping you find the offence in the *Criminal Code*, explaining what your rights are and what the next steps might be. The Law Line does not give legal advice and cannot represent you!

Remember that talking with a lawyer is always confidential. They cannot discuss your case without your permission.

STATEMENT FOR POLICE

“Officer, if I am under arrest or being detained, please tell me so. If I am free to go, please tell me so. If I am not free to go, please tell me why. I wish to exercise all my legal rights including my right to silence and my right to speak to a lawyer before I say anything to you. I do not consent to being searched. I wish to be released without delay. Please do not ask me questions because I will not willingly talk to you until I speak to a lawyer. Thank you for respecting my rights.”

Police Arrest

Each situation is different and you must use your common sense. Stay calm and remember everything that happens (take notes if possible). Remember your rights!

SILENCE

You can refuse to talk to police or answer their questions **unless** you are: in a bar or a cinema, driving a car, or they say you broke the law.

In those cases, **you must** give your name, birthdate, and address, or show your ID, but you do not have to say any more.

Credit: Pivot Legal Society (pivotlegal.org)

What happens if I am arrested?

If you are arrested, you will either be released on police documents, OR be held for court, which means staying in jail until a bail hearing.

Release by Police on Documents

If you are released on police documents, such as a **Promise to Appear** or a **Recognizance, Appearance Notice or Summons**, you may also have to sign an **Undertaking** with conditions. You will be given a date to appear in court and to go for fingerprinting and identification. An Undertaking may also require that you NOT do things, like contact someone or drink alcohol. If you do not understand something that is in the paperwork given to you by the police, you should ask them to explain. You could also have somebody else look at it to make sure you understand. If you do not follow the conditions in an Undertaking, such as fingerprinting or attending court, you could be charged with another criminal offence.

If you are released on a **recognizance**, you may have to promise that if you don't follow the conditions on the release documents, you will pay money. The amount can be for up to \$500.

If you are released on police documents but find that the conditions are impossible or very difficult to follow, you can ask the court to change those conditions at your first appearance in court, or later.

Bail Hearing

If the police do not release you, you will be kept in jail or police cells for up to 24 hours until a **bail** hearing which is held in Territorial Court. **Duty counsel** or your lawyer, if you have one, can help you at the bail hearing.

Generally, **the Crown** has to give a reason in court why you should stay in jail. Whether you are released or not is ultimately up to the court. If you are released on bail, you may be subject to:

- a **recognizance** - paying money or agreeing to pay money if you don't come to court or follow conditions that are imposed on you;
- an **undertaking** – conditions that you have to comply with; and
- a **surety** - someone depositing money, that they could lose if you breach conditions or don't appear in court. A surety is also often responsible for supervising you to make sure you comply with your conditions.

You are required to follow all the bail conditions placed you on. Failing to comply with bail conditions is a criminal charge.

Bail Review

If you have been denied bail, you can ask for a **Bail Review**. This happens in Supreme Court and you should get legal advice if you want to do this. You can also ask the Supreme Court to vary your bail conditions if you find them impossible or very difficult to follow and the Crown will not agree to change them.

You have a right to a bail review within three days of your bail hearing in Territorial Court, and, if the Supreme Court does not give you bail, you can re-apply for bail there after 30 days. You can apply for a bail review on the basis of a "material change of circumstances", for example if you have a different and better plan for where you will live and what you will do if you are released.

Written with assistance from B. Bruce Warnsby – Yukon Defence Counsel and Vincent Larochelle, Legal Aid