

Getting out of Jail – part 1

Be nice and don't run away seem obvious enough, but there is another arrest rule - don't spit. Your mom probably covered this rule already so I will only add that it usually ends up as an assault police charge and usually guarantees you a jail term.

Obviously, at some point the RCMP will decide that they do not want to keep you in cells after you have been arrested – what happens next?

Once the police arrest you they have to decide what to do with you. Generally dinner and a movie is not an option although if you are in cells long enough, you may get fed a Hungry Man dinner (don't count on candles).

Everyone who is arrested has certain legal rights that must be respected by the police. Failing to respect those rights may be a breach of the Charter of Rights and Freedoms, it may violate the provisions of the Criminal Code that require that the police release you as soon as possible, it may be grounds for a complaint against the police. Generally from what I have seen in the time that I have worked in the North, the RCMP are pretty good about releasing offenders. I have noticed that they seem to hold people longer in the NWT than they do in Nunavut but that may be because it is easier to find guards.

What they do will depend on the seriousness of the reason for which they arrested you. The more serious the crime, the more complicated the procedure.

First, if the police arrested you only because you were drunk and creating problems, but nothing got broken and no one got hurt, you will be probably be released when you are sober without charges being laid. However, please note - there is nothing you can do to get out earlier. You don't have a right to be given a "Breathalyzer". You don't have a right to an immediate bail hearing. You don't even have a right to a smoke, although usually the guard will get you a coffee (and, of course, you might get that Hungry Man unless your condition is such that it looks like you might give it back).

It is true that you must be taken before a justice of the peace within 24 hours, but usually most people are pretty sober before that point and they get released before the 24 hours is up. Basically, once the police have decided to arrest you for drunkenness, the only thing

you can do to get out of cells is to sober up.

Second, if the police decide to charge you with a criminal or drug offence, you may simply be released with a piece of paper called a promise to appear. The promise to appear is promise to show up for court on a specified date

It is likely that you will also be asked to sign an undertaking to an officer. This is a legally binding promise; failing to comply with the terms of your undertaking will lead to more charges and potentially a show cause or bail hearing at which you will have to prove to a court that it is safe to release you.

Even if you are just released on a promise to appear, don't assume because there are no conditions that you can go out and offend again without additional consequences. If you get charged with another criminal offence before the first one is finalized in court, it will be harder for you to get released the next time. In addition, if you fail to show up for court as you promised, you can be charged for failing to appear in court and the court will issue a warrant for your arrest.

I will talk more about changing conditions in columns to come, but with a promise to appear you have a right to request that your conditions be amended at your first court appearance. If you fail to make that request, it will be more difficult to change your conditions later.

More on getting out of jail

Be nice, don't run away, don't spit and proofread your work – above I referred to a request to change conditions in a promise to appear and I should have referred to an undertaking. A promise to appear is just that, a promise to show up for court and (usually) for fingerprints at some point in the future. If you promised to follow certain release conditions, they will be contained in an “undertaking” that you gave to the police officer who released you. If you need to change those conditions, you can do so at your first appearance in Court.

Police officer undertakings typically contain conditions like stay away from particular persons, stay sober or stay away from certain places. It is a criminal offence to fail to observe any of your conditions; compliance is not optional.

Unfortunately, most people are so anxious to get out of the RCMP detachment that they will agree to any conditions that will secure that objective.

If you are going to have a problem with the conditions discuss the issue with the police and you may be able to work something out OR ask the officer to put you in front of a Justice of the Peace who will listen to you and listen to the police officer and decide what conditions should be imposed. Although I have clients who feel differently about it, my experience is that the Justices of the Peace will listen to your concerns and not just do what the police want. If you are released by a Justice of the Peace, the document is called an undertaking to a Justice.

Whatever you do, do not make the mistake of a) hoping you will be able to follow the conditions if you can't or b) hoping you won't get caught. The North is full of small communities policed by RCMP officers who will have some idea who is on what conditions. The Courts (and jails) in NWT are full of people who thought they weren't going to get caught.

No contact / no-go and no intoxicants are the most frequently breached conditions. No-contact and no-go clauses, as they are called by people who like legal slang, are frequently used to keep an accused away from people with whom or places where the accused might get into further difficulties. For obvious reasons, it is generally thought that accused persons should not be hanging around with people alleged to be their victims. Domestic violence charges, for example, usually result in a release with conditions that the accused cannot return to the matrimonial home or contact her/his partner pending resolution of the case.

There are people, I call them "breachers", who seem to believe that a condition to stay away from a partner is something that can be ignored if the partner says "it's ok to come home." Not so! You will get charged if you do anything that is contrary to the promise you made to the police. More about this down the road.

No intoxicants conditions are frequently imposed because it usually appears that the offence in question was in some way a product of alcohol. To a huge (and I mean HUGE) extent alcohol is responsible for what shows up in Court and it is frequently, even usually, the case that people who don't drink don't offend. Conditions prohibiting the

consumption of intoxicants are intended to keep people out of trouble.

Do not make the mistake of thinking one drink won't hurt – it will. “C'mon, just a shot.” is such a good source of legal work, that I am thing of getting it printed on my business card.

If the police think that the charge is too serious to release you on an undertaking to a peace officer, they may put you in front of a Justice of the Peace to be released on an undertaking because a) a Justice of the Peace can impose broader release terms than a police officer and b) it is thought that breaching a release condition in an undertaking to a Justice of the Peace is more serious than breaching an undertaking to a Peace officer.

In reality, your criminal record won't know the difference so you need to comply with release conditions no matter how they end up in place.

Although you might get a second chance if you breach a police officer undertaking, normally, if you break your promise to a Justice of the Peace, you will be held for a show cause hearing, also known as a bail hearing, which is a judicial hearing at which a Justice of the Peace is required to decide if it is safe to release you. I am sure you are wondering why a “bail hearing” is called a “show cause hearing” but for the answer to that question and other mysteries of life, you will have to buy check out the next FAQ.