

# ARREST AND DETENTION

By and for sex workers  
Living and working in safety  
and dignity



This document should not be taken as legal advice. This is a tool offered to sex workers so that we may improve living and working conditions. This information is not intended to influence anyone to commit illegal acts.

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## THIS DOCUMENT PROVIDES INFORMATION:

- About your fundamental Rights and things to consider if you are detained or arrested by the police;
- To help you understand the process that can unfold if you are detained or arrested.

**The criminal law and your fundamental Rights are the same all across Canada. But:**

- Police guidelines and policies depend on municipal or regional authorities.
- Prosecutor's powers depend on provincial authorities.

**Police practices, enforcement, and court procedures, may be different in every province. They can even change from one city or region to another.**

**Note that this document was produced in Montreal.** It explains how court procedures such as "appearances" and "bail hearings" happen in Montreal. **These procedures might be very different in other areas of Canada.**

## SEX WORKERS & THE POLICE

Historically, sex workers and the police have had a hostile and antagonistic relationship. **This conflict persists because of criminalization and stigma: by treating sex workers as victims and criminals, and by treating sex work as a social problem.** Police harassment, profiling, and their arbitrary and questionable treatment of people who are marginalized, racialized and who hang out in public spaces, worsens this relationship.

**Sex workers often cannot access the same rights and freedoms that most other people enjoy.** Ex: other people can expect to work without fearing that their work place will be raided or that their clients and colleagues will be arrested. However, many sex workers work in a climate of fear, with a constant worry of being harassed, questioned, raided, detained or arrested.

**The criminal laws related to prostitution are the same all across Canada.** However, the prosecutor's powers depend on provincial authorities, while police guidelines and policies depend on municipal or regional authorities.  
**Enforcement of prostitution laws can vary from one city or region to another.**



## SPEAKING TO THE POLICE = MAKING A STATEMENT

If you are approached by the police:

**You can identify yourself, but anything else that you say will be considered a statement. Statements may be used to incriminate you, your colleagues and/or your clients.** They are used to help the police investigate further and obtain enough evidence to make an arrest.

**Once you make a statement to the police you become a witness and your statement becomes evidence.** Once you have made a statement you may be ordered to appear in court and testify against the people they arrest (e.g.: your colleagues or clients).

This is one of the reasons why some sex workers do not speak to police.

Some sex workers decide to speak with police to avoid arrest and detention. For example, if a sex worker is known to police and the police stop her for breach of conditions [Ex: non-respect of curfew or *quadrilatère* (redzone)], she might try to "talk her way out of it" and tell them that she'll go home, rather than "maintain her right to silence" and be arrested and detained.

## A GOLDEN RULE: YOUR RIGHT TO REMAIN SILENT

**The general rule is that you have no obligation to identify yourself to the police, or to answer any other questions. But there are exceptions.**

Some people panic and talk to police because they fear staying silent makes them look guilty. **Your silence cannot incriminate you, but your statement might.**

### Identifying yourself to the police

**The police can detain you, if you do not identify yourself (legal name, address, date of birth) in the following situations:**

- You are arrested for a crime [e.g.: Breach of a condition such as a *quadrilatère* (redzone)]
- You are stopped for breaking a municipal or metro by-law, or highway code (e.g.: Being in a park at night, jaywalking)
- You are driving a car (passengers are not obliged to identify themselves)
- The police suspect you are a minor and you are in a place that serves alcohol

**You are not obliged to answer any additional questions. Even if you are arrested, you have the fundamental Right to say nothing else until you speak with a lawyer.**

Sometimes you don't have a "legal obligation" to identify yourself, but if you don't the police may detain you. In some cases they may even charge you with an offence. For example:

- If the police have reason to believe that you have committed a crime, you may not have a duty to give your name, but if you don't they may arrest you for "obstructing police work".
- If you are intoxicated near a public place, the police may arrest you for "causing disturbance".

When there is no legal duty to identify yourself – it is your choice whether or not to do so. Many police officers will give you a hard time if you refuse to hand over your ID or tell them your name, but some may respect your legal right not to identify yourself.

Lying about your identity to a police officer is a criminal offence.

Municipal by-laws may also require that you identify yourself to the police if they enter your in-call location for 'inspection' (massage parlour, strip club, etc.).

## THE POLICE CAN TRY TO MAKE YOU TALK

Although you might have to identify yourself, you have the fundamental Right to say nothing else.

Once you ask to speak to a lawyer, the police must stop asking you questions. But once you have spoken to a lawyer (usually on the phone), the police:

- Have the right to question you - and can repeat the same questions over and over again.
- Are legally allowed to lie to you to get you to talk (make a statement).

The police are trained to provoke you and to make you talk - they will try to convince you that it's in your best interest to do so. **If you decide not to make a statement do not react to anything the police do or say - stay calm, avoid confrontation and remain silent.**

Some people panic and talk because they fear staying silent makes them look guilty. **Your silence cannot incriminate you, but your statement might.**

## If police question you or tell you to go with them: ASK THE OFFICER IF YOU ARE UNDER ARREST or BEING DETAINED

If they do NOT tell you that you are under arrest or being detained:

- Stay calm, explain that you understand you are not under arrest or being detained, and tell them you want to leave. You can walk away.

If they tell you that you ARE under arrest or being detained:

- The officer is obliged to tell you what you are being arrested for, or why you are being detained. They can't arrest you without formally accusing you of a crime.
- Being a sex worker, or a perceived sex worker, is not a criminal offence and is not a valid reason for arrest.
- "Helping you" or "Making sure you're alright" is never a valid reason to detain you.
- Remember, the police can arrest you for simply "causing disturbance" (e.g. screaming or being drunk in, or near, a public place).
- All police officers are required to wear a badge with their name and badge number and they are obliged to identify themselves if you ask them to.

## When the police can frisk, pat down, or search you:

The fundamental rule is the police cannot search you without a warrant. BUT:

After you have been arrested, the police have the right to frisk you and search your pockets and belongings, ONLY:

- If they have a reason to believe that **you have a weapon and you pose a serious and immediate threat** to the safety of the police officer or the public, or
- To **preserve or discover evidence** related to the crime you are arrested for.

If you are being detained, the police have the right to frisk you or pat you down ONLY if they have reason to believe that:

- **You have a weapon and you pose a serious and immediate threat to the safety of the police officer or the public.** This is often misused as an excuse to illegally search or frisk people. It is in your best interest to try to stay as calm as possible, so that they can't use anything you do or say as an excuse to "fear that you are armed and dangerous".

## The police can detain you - with or without a warrant - if:

- **You are committing a criminal offence** [e.g.: Breach of a condition such as a *quadrilatère* (redzone)]
- The police have reason to believe that **you have committed a crime**
- The police have reason to believe that **you are involved in a crime**
- **This includes being a "victim" or "witness" related to the crime.** For example, if the police arrest your client, you could be detained for a short period of time, as you are "involved" as a "victim" of a crime (purchasing sexual services).
- There is a **warrant issued for your arrest anywhere in Canada**

**The police are not supposed to detain you for a "summary offence"** (e.g.: communicating for the purpose of prostitution near a school), **UNLESS:**

- **They cannot identify you** (e.g.: You refuse to give your identity)
- They have reason to **believe that you won't show up for court** (e.g.: You can't provide a fixed address)
- They **can't prevent you from repeating the offence** (e.g.: you continue to approach cars after receiving a warning)
- They are **preserving evidence** (e.g.: They believe you have evidence of a crime on you or in your possession)

## If you are arrested for a criminal charge, the police may, with or without a warrant:

- **Take your name, address and date of birth and LET YOU GO:**

• With an "appearance notice" that outlines the charge and your next court date; or

• With an "appearance notice" that outlines the charge and your next court date and the **conditions** that you have to obey until your next court date; or

• You will receive a "summons" in the mail that outlines your next court date.

- **Take your name, address and date of birth and DETAIN YOU:**

• This means that you will spend the night in detention. The next day you will appear before a judge. But if it's the weekend, you wait in detention until Monday.

Whether or not you are detained, you will have a court date. **If you miss your next court date, the judge can issue a warrant for your arrest.**

Note: If you receive conditions and are later found in breach of your conditions, this leads to new accusations for breach. **If you are arrested for breach of conditions, chances are strong that you'll be detained.**

## Pour plus d'information ou de soutien, n'hésite pas à nous contacter

2065, rue Parthenais  
(coin Ontario)  
Bureau 404 - Code 65  
Montréal (QC) H2K 3T1  
Métro Frontenac  
Tél. : (514) 285 8889

*Stella*

Nous acceptons les appels à frais virés des personnes incarcérées.

### OTHER CARDS AVAILABLE IN THIS SERIES

I. ADVERTISING AND THE LAW  
II. THIRD PARTIES AND THE LAW  
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## APPEARING BEFORE A JUDGE

(These procedures might be different across Canada)

If you are arrested and detained you will appear before a judge the next day, unless it's the weekend. This is when you enter a plea of "not guilty" or "guilty".

• If you plead "not guilty" the prosecutor will decide whether:

- You are released until your next court date; or
- You are detained until your bail hearing the next day, and you will spend another night in detention.

• If you plead "guilty", your lawyer may:

- Try to negotiate a plea with the prosecutor; or
- Postpone your sentence.

Discuss the possible conditions (of release or probation) with your lawyer before they are decided by a judge. Tell your lawyer which conditions are problematic and what areas of town you need to access for treatment, medical appointments, community support groups, etc. Try to avoid a quadrilatère (redzone). If this is not possible, try to limit the restricted region so that you can access the services you need. Some sex workers try to negotiate a curfew (e.g.: 8pm to 8am) instead of a quadrilatère (redzone).

Discuss your immigration status with your lawyer. If you are applying for permanent residency or plan to do so in the future, try to avoid a criminal record of any kind.

## REMEMBER

You give your lawyer the mandate to represent you. You are the client. You decide what is in your best interest. Obviously your lawyer can't work miracles but it is their job to fight for your interests and take your instruction.

## TICKETS

Municipal by-laws and highway codes are used to control sex work, particularly on the street. Breaking these laws is not a criminal offence but you will get a ticket.

If you have received a ticket for being in, or working in, a public space or in the Metro (e.g.: approaching a vehicle, jaywalking, walking on the plants in a park, sleeping in a Metro), you can:

- Contest the ticket within 30 days or before the court date
- Contact the *Clinique Droits Devant* (514 603-0265)
- Contact the collection agent to establish a payment plan or work compensation program (303 Notre Dame Street East)
- Pay the ticket
- Do nothing. You will not be informed of your court date and you will be found guilty by default.

If you don't pay your tickets, this eventually leads to a "warrant for your committal". This means that a police officer who stops you can bring you directly to jail. BUT you can't go to jail for tickets received in Montreal. You can for tickets received in all other municipalities.

For more information on how to fix a debt from tickets related to occupying public space, speak to your Outreach Worker or contact:

*Clinique Droits Devant* at 514.603.0265 or [cliniquedroitsdevant@yahoo.fr](mailto:cliniquedroitsdevant@yahoo.fr).

## THE BAIL HEARING

(These procedures might be different across Canada)

If you are detained and the prosecutor does not release you at your court appearance, you will have a bail hearing. You have the right to a bail hearing within a delay of three days. Only with your consent can the bail hearing be held later than 3 days after your appearance.

The prosecutor may argue that you should not be released, because:

- You will likely not come back to court for your next court date; or
- You pose a risk to the safety of the general public or to a specific victim or witness; or
- You risk committing another crime; or
- The public will lose faith in the criminal justice system because the offence you are charged with, and the context in which it was committed, is considered very serious.

If the prosecutor convinces the judge not to release you, you will be detained until your trial date. You have the right to a trial as soon as possible, but the date depends on the court's availabilities. The trial date could be in weeks or months.

Your lawyer will argue that you should be released because:

- You can provide a fixed address where you will stay. If you don't have a room of your own, you can stay with a friend, family, etc. It is possible to provide an address for a shelter.
- You do not pose a risk to anyone's safety
- You will not commit a crime
- You will respect your conditions

Other things that can help convince the judge that you should be released:

- **Demonstrate that your situation is stable.** Explain that you have routines (Ex: job, school, medical follow-up, other activities)
- **Someone can testify to your stability and reliability.** Ask someone – if possible, someone who does not have a criminal record – (e.g. an Outreach worker, family member, colleague) to come to court and testify that they will ensure you respect your conditions and come back for your next court date.
- **Someone can provide bail.** Ask someone with "legit" and stable finances – if possible, someone who does not have a criminal record – to bring money to your bail hearing as a guarantee that you will respect your conditions if you are released. If they can't come up with the money, ask them to bring proof that they can come up with it if they need to.

If the judge decides to release you, you will be released with conditions until your next court date.

## QUESTIONS TO ASK YOURSELF

to reduce the risks related to criminalization:

- In what areas, or which streets, do I prefer to work?
- Do I know the area? Am I near a school ground, playground or day care?
- Am I known by police in the area?
- Am I in breach of any of my conditions (related to a pending case or probation)?
- What will I do if my client is arrested? Do I have a strategy?
- What will I do if the police stop me and question or harass me on the street? Do I know my Rights? Do I have a strategy?
- What will I do if my Rights are not respected? Do I have a strategy?
- What will I do if I'm detained? Is there anyone I can call if I have a bail hearing? Do I know their phone number by heart? (You won't have your cell phone in detention)
- Is there an address that I can give to the court?

