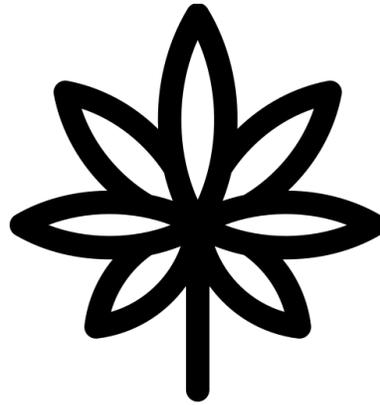


Type of law:
CRIMINAL LAW

Cannabis and Controlled Drugs & Substances



A 2022 Alberta Guide to the Law

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GENERAL

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Drug Possession

Possession means to knowingly have, keep, or store a controlled drug or substance with yourself, another person, or at any other place. While cannabis is now legal to possess in Canada you are limited to 30 grams. Other drugs like cocaine, heroin, and LSD are illegal to possess even in small amounts.



- You can possess up to 30 grams of dried cannabis, and are able to share with others over the age of 18.
- You can grow up to 4 plants per residence for personal use.
- Shatter and other concentrates are illegal to possess and produce
- You can smoke at home but there are limits on smoking in public places

When Can You Be Arrested

- You are found in the act of committing a criminal offence
- An officer has reasonable and probable grounds to believe that you have committed an offence, or are about to commit an offence
- An officer has a warrant

Trafficking

Trafficking is generally punished more severely than simple possession. The quantity of drugs found as well as presence of scales, plastic bags etc. can support a charge of possession for the purpose of trafficking.

Rights Upon Arrest

- To know the reason for your arrest
- To be informed of your right to talk to a lawyer for free
- To remain silent and not talk to the police
- To contact a lawyer as soon as it is reasonable to do so
- You do have to provide your name, address and date of birth



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“Possession” of a Controlled Drug or Substance

It is a criminal offence to be in possession of a drug or substance in either Schedule 1, 2, or 3 of the *Controlled Drugs and Substances Act (CDSA)*. **Possession means to knowingly have, keep, or store a controlled drug or substance with yourself, another person, or at any other place.**



You **DO NOT** need to be the owner of the controlled substance to be charged with possession of a controlled substance. Also, **more than one person can be in possession of a drug or controlled substance at the same time.** For example, if you are holding drugs that belong to someone else, you both can be charged with possession.

Trafficking: Unless you have the licensed authority to do so, giving, selling, administering, sending, transferring, transporting, or delivering any of the controlled substances listed in Schedules I through V of the *Controlled Drugs and Substances Act* is considered trafficking. This includes selling the authorization to obtain any such substances. Simply offering to do any of the above constitutes trafficking as well.

Possession for the purpose of trafficking: When found in possession of a controlled substance, the police may look for evidence of an intention to traffic. Evidence of an intention to traffic may include baggies or scales, or even text messages about selling drugs. This type of evidence may result in more serious criminal charges and harsher penalties.

The *Controlled Drugs and Substances Act (CDSA)*

The *CDSA* regulates drugs and substances in Canada. Under the *CDSA*, there are six different categories of drugs called “schedules”. Each schedule has different rules about obtaining and possessing those substances.

Schedule 1 (Opiates and other dangerous drugs)

Schedule 1 substances include: heroin, morphine, fentanyl, cocaine, codeine, amphetamines, methamphetamines, and date-rape drugs.

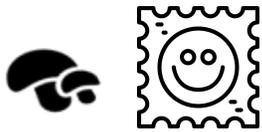
Some of the drugs in Schedule 1 are illegal to obtain and possess unless you have a valid doctor’s prescription (eg. morphine, codeine, oxycodone). Some of the other drugs in Schedule 1 are illegal to possess altogether (eg. heroin, crystal meth, cocaine, crack cocaine).

Schedule 2 (Synthetic cannabinoids)

Schedule 2 formally included cannabis, which is now regulated under the *Cannabis Act*. It still includes synthetic cannabinoids which are human-altered alternatives to cannabis. It is illegal to obtain and possess some of these substances unless you have a valid



doctor's prescription.



Schedule 3 (Amphetamines and hallucinogens)

Schedule 3 substances include: amphetamines and hallucinogens (eg. LSD, mushrooms). It is illegal to obtain and possess some of these substances unless you have a doctor's prescription. Some of the other drugs in Schedule 3 are illegal to possess altogether.

Schedule 4 (Pharmaceutical drugs)

Schedule 4 includes: barbiturates, steroids, rohypnol, etc. Simple possession of these substances is not illegal. However, it is illegal to seek or obtain these drugs unless a person has a valid doctor's prescription.



Schedules 5 and 6

Schedules 5 and 6 include substances like cold medications, etc. They are not illegal to possess, seek, or obtain. However, since some of these substances can be used to manufacture drugs, there are strict regulations for possession. It is illegal to import any of the substances in these schedules into Canada without proper authorization.

Getting Arrested

It is important to remain calm and respectful with police officers. Individuals who do not remain peaceful may be charged with resisting arrest, obstruction of justice, obstructing a peace officer, or assaulting a peace officer.

Police officers can make arrests either with a warrant, or without a warrant.



With a Warrant

A warrant is a court order allowing the police to arrest an individual based on information or evidence that you have possibly committed or are in the process of committing a crime. The officer must show you the arrest warrant.

Without a Warrant

An arrest can be made without a warrant if:

- You are found in the act of committing a criminal offence,
- An officer has reasonable and probable grounds to believe that you have committed an offence, or
- An officer has reasonable and probable grounds to believe that you are about to commit a criminal offence.

Note: Reasonable and probable grounds means that an officer must have some reason to believe that you committed or were about to commit an offence.

Rights Upon Arrest

Upon arrest, peace officers **MUST give reasons for your arrest** and **inform individuals of their right to contact a lawyer**. This includes informing you of all available options including free numbers for lawyers, duty counsel, and Legal Aid. Individuals have the right to contact a lawyer as soon as it is reasonable to do so.



Talking to the Police

You do not have to talk to the police. You have the **right to remain silent** and do not have to speak to the police. However, sometimes you do need to provide some information such as your name, birthday, address, etc. if you wish to secure your release from custody or in certain situations like when you are operating a motor vehicle.

If you do not provide your correct legal name, you may be detained and charged with obstruction.

If you decline your right to speak to a lawyer, the police are allowed to ask you questions and what you say may be used against you in court. You do not have to answer these questions or give a statement. You still have the **right to remain silent**.

Police Searches

Generally, until you are lawfully arrested, you do not have to allow the police to search you or your possessions. However, an officer can search you prior to arrest if:

- 1. Police asked & you consented**
- 2. You have been arrested; however, certain conditions must be met:**
 - The arrest is lawful
 - The search is related to a valid purpose such as officer safety, to discover evidence related to the arrest, or to preserve any evidence that may be destroyed
 - The search is conducted in a reasonable manner
- 3. Police have a search warrant**
- 4. Police find you in a vehicle where people are drinking**
- 5. Police have reasonable & probable grounds to think you:**



- Have a weapon that is illegal or was used to commit a crime
- Are going to destroy evidence of a crime
- Are an imminent threat to public safety and the search is reasonably necessary

6. You have been detained and police are ensuring police or public safety (“protective pat-down search”)

Note: If you are pulled over at a roadside check stop, the police officer can search the area that is in plain view. The officer may use a flashlight. This means that while they cannot look in the trunk or glovebox, police officers can look inside the car at what is on top of the seats, in cup holders, etc.



Appearance Notices

Once you have been arrested, the officer will decide whether to release you or take you to the police station. In most minor cases, you will be released with an appearance notice. This notice will usually order you to appear for two appearances:

1. At the police station for **fingerprints and photographs** (unless these were taken prior to release), and
2. At the courthouse to **enter a plea** of guilty or not guilty.

It is VERY IMPORTANT that you attend both appearances. If you do not attend court, you may be charged with another offence: failure to appear. A warrant for your arrest may be issued.

If you do not have a lawyer for your court date, you can request to speak with duty counsel (a free lawyer at the courthouse) who can speak to the judge on your behalf.

Pre-Trial Custody

The police may choose not to release you with an appearance notice and instead keep you in custody. This may be done if the police believe that it is needed:

- To properly identify you,
- To secure or preserve evidence,
- To prevent you from committing further offences,
- To protect the safety of public and any victims or witnesses,
- To ensure that you will attend your court dates.



If you are kept in custody, you have the right to appear before a Justice of the Peace or a Judge within **24 hours** of your initial arrest for a bail hearing if one is available. Usually the burden is on the Crown prosecutor to show why you should be kept in custody, but in some cases, such as if you are already on release for other outstanding charges, or are charged with certain serious offences like drug trafficking, the burden is on you to give reasons why you should be released. After hearing

from both sides, the Judge or Justice of the Peace will decide whether or not to release you and if so, what conditions should apply (ie. attending court, curfew, no contact, etc).

Defenses



Individuals who have been charged with possession of a drug or substance should seek legal advice. A lawyer trained in criminal law can assist with preparing a defense.

Sentencing

Sentencing in Canada is an individualized process. However, for some drug-related offences there may be “guideline” jail sentences that can be a starting point for a judge’s analysis of what sentence is appropriate. Some serious drug-related offences also have mandatory minimum penalties.

If an individual is found guilty of drug possession, a judge will determine the appropriate sentence by considering a number of factors related to the circumstances of the offence, the circumstances of the offender, and the principles and objectives of sentencing.

Some examples of factors that might be considered in the sentencing process could include:

1. Circumstances of the Offence:

- The **type** (or schedule) of the drug/controlled substance,
- The **quantity** of the drug/controlled substance,
- If the offence included **trafficking** or the **intention to traffic**,
- Whether or not **minors** were involved,
- Whether the offence was an **indictable offence** (more serious) or **summary conviction** (less serious), and
- Whether a **weapon** or **threats** were used.

2. Circumstances of the Offender:

- Age
- Background and family circumstances,
- Education or employment history,
- Health (physical or mental),
- Any efforts the person has made to rehabilitate themselves,
- Whether the individual is Indigenous, and
- Criminal record (especially other previous drug-related offences).



This is by no means a complete list but just intended to give some examples of things that may influence a judge’s decision. The goals of sentencing include discouraging individuals from

committing future criminal offences, as well as providing for rehabilitation. Ultimately the final sentence must reflect the seriousness of the offence and the degree of responsibility of the offender.

Even if an individual is guilty, there are steps that can be taken to reduce punishment. This may include voluntarily seeking rehabilitation. If you have any questions, you can ask your lawyer about “mitigating factors”.

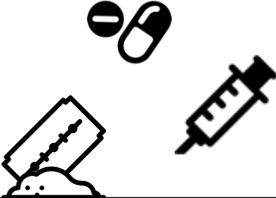
Alternative Measures Program (AMP)

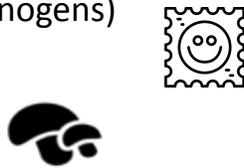
This program allows first- or second-time offenders charged with minor offences (like simple possession) to be diverted out of the court system. They are usually required to complete community service hours or drug treatment instead of receiving a formal criminal sentence. Individuals who successfully complete AMP will have the charges against them withdrawn and will not have a permanent criminal record. Individuals must apply for the program.

Drug Treatment Court Program

This program offers participants an opportunity to avoid prison by completing a drug treatment program. There are a limited number of spots and is only available for non-violent offences. The program aims to reduce crimes committed because of addiction and involves judicial supervision, drug abuse treatment, drug testing, sanctions, and social services support. Sentencing is postponed until completion of this program.

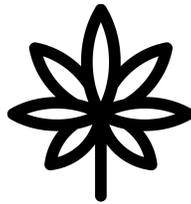
Maximum Penalties for Drug Possession

	Maximum Indictment Penalty	Maximum Summary Conviction Penalty
CDSA, Schedule 1 (Opiates and other dangerous drugs) 	7 years in prison	1 st Offence: \$1,000 fine and/or 6 months in prison Subsequent Offences: \$2,000 fine and/or 1 year in prison
CDSA, Schedule 2 (Synthetic cannabinoids) 	5 years less a day in prison	1 st Offence: \$1,000 fine and/or 6 months in prison Subsequent Offences: \$2,000 fine and/or 1 year in prison

CDSA, Schedule 3 (Amphetamines and hallucinogens) 	3 years in prison	1 st Offence: \$1,000 fine and/or 6 months in prison Subsequent Offences: \$2,000 fine and/or 1 year in prison
Cannabis Act, Schedule 3 (Over 30g of dried cannabis or an equivalent amount)	5 years less a day in prison	\$5000 fine and/or 6 months in prison

Cannabis

Cannabis is now legal in Canada for both medicinal and recreational use. However, there are still laws governing cannabis that may result in criminal charges, and serious penalties including fines and incarceration for offences such as providing or selling cannabis to people under the age of 18.



Legal Uses of Cannabis

Recreational cannabis in Alberta is legal in Alberta for individuals 18 and older who purchase from a licensed store or www.albertacannabis.org. **You can only possess up to 30 grams of dried cannabis, or equivalent amounts in public.** You are also permitted to share up to 30 grams of legal cannabis with other adults. One (1) gram of dried cannabis is equal to:

- 5 grams of fresh cannabis,
- 15 grams of edible product,
- 70 grams of liquid product,
- 0.25 grams of concentrates (solid or liquid), and
- 1 cannabis plant seed.

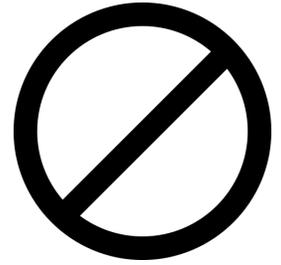
Those who are 18 years or older can also grow up to 4 cannabis plants per residence for personal use and make cannabis products (such as food and drinks) at home as long as organic solvents are not being used to concentrate products.

Where is Cannabis use Permitted

You can use cannabis in your own home and yard. However, property owners, landlords, condo boards and rental companies can further restrict the smoking and growing of cannabis on their

properties and common areas. In Edmonton you cannot consume cannabis within 10 metres of a bus stop, door or window, or patio. Nor can you consume cannabis inside buildings, on school or hospital property, or in any park with a playground or sports field. You are not permitted to use cannabis in a vehicle, and if being transported, it must be in closed packaging and out of reach of any of the vehicle's occupants.

The complete list of prohibited places is available at https://www.edmonton.ca/city_government/edmonton-s-cannabis-rules.aspx.



Organic Solvents and “Shatter”

Organic solvents include butane or other explosive/combustible chemicals. They are prohibited for the purpose of production of cannabis concentrates such as “shatter”.



You can face up to 14 years in prison for producing concentrates with organic solvents.

Cannabis for Medical Purposes

The current regime for medical cannabis will continue to allow access to cannabis for individuals who have authorization from their healthcare provider.

Frequently Asked Questions

What if I Didn't Know that the Drug or Substance was Illegal?

Not knowing the law is NOT a valid defense. Possession is about whether you had an illegal drug or substance in your control. It is not about whether you knew it is illegal or not. If you are in possession of a controlled substance, it is your responsibility to make sure it is legal to do so. This means having a valid prescription for drugs (eg. Adderall), or knowing the amount of a certain drug you are legally allowed to possess (eg. 30 grams of cannabis).

When it comes to possession of a drug or controlled substance, if you knew you had it and the substance is controlled, you may be charged.



When Does Possession of a Drug Become Drug Trafficking?

There is no specific amount of a drug or controlled substance that will automatically result in a trafficking charge instead of a simple possession charge. A trafficking charge or a charge for possession for the purpose of trafficking may be laid if there is evidence of trafficking such as scales or plastic bags, text messages about buying and selling drugs, or if the quantity is too large to be considered personal use. It is important to note that trafficking does not require the exchange of money to make out the offence. For example, sharing a drug with a friend (or possessing a drug for

the purpose of sharing) may still result in a conviction for drug trafficking or possession for the purposes of trafficking, even if you were not paid for the drugs.

WHO CAN I CALL FOR MORE HELP OR INFORMATION?

Legal Resources

Student Legal Services – Criminal Project #100, 9924 106 Street (Anderson Dawson Building) Edmonton, AB T5K 1C4	Ph: 780-425-3356 Admin: 780-492-2226 www.slsedmonton.com
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The Criminal Law Project looks to assist adults who have been charged with certain offences but are unable to afford a lawyer or qualify for Legal Aid Alberta. A law student will volunteer their time to provide free legal assistance where they can act as an agent for you while acting under the supervision of advising lawyers.

Legal Aid Alberta #600, 10320 102 Ave (Revillon Building) Edmonton, AB T5J 4A1	Ph: 1-866-845-3425 www.legalaid.ab.ca
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The Legal Aid Society of Alberta functions to assist low-income Albertans with certain types of legal matters. Assistance is provided through information, referrals, advice, and/or representation, depending on what your matter is and which eligibility guidelines you meet.

Lawyer Referral Service	Ph: 1-800-661-1095
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The Lawyer Referral Services can connect you with lawyers who can help with your issue. When you call, you will speak to an operator and you will describe the nature of your problem to them. The operator will then provide you with the contact information for up to three lawyers who may be able to assist you. When contacting these referred lawyers, make sure to let them know that you were given their information by the Lawyer Referral Service. The first half hour of your conversation with a referred lawyer will be a free consultation and brief advice session. **Note:** It is not intended for the lawyer to provide free work.

Elizabeth Fry Society of Edmonton #900, 10242 105 Street Edmonton, AB T5J 3L5	Ph: 1-866-421-1175
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The Elizabeth Fry Society of Edmonton is aimed at providing at-risk women and girls with various programs and services. Programs include the Aboriginal Women's Program, Criminal Court Program, Employment Services Program, Financial Literacy Program, Legal Clinics, Imprisonment Programs, and youth programming. Services include smudging, laundry facilities, and drop-in workshops.

Red Road Healing Society 332 Orange Hub 10045 156 Street Edmonton, AB T5P 2P7	Ph: 780-471-3220 theredroadhealingsociety@redroadjourney.ca
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Red Road Healing Society offers a variety of programs and services throughout the year, including: addiction services, child and family services, educational services, housing services, legal services, cultural programs, counselling and healing circles.

Community Resources

Adeara Centre Box 68169 162 Bonnie Doon Centre Edmonton, AB T6C 4N6	Ph: 780-423-5516
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The Adeara Centre provides long-term residential addictions recovery and support to women. The program is unique in that women are supported in having their children reside with them during treatment.

Native Counselling Services of Alberta (NCSA) 14904 121A Ave NW Edmonton, AB T5V 1A3	Ph: 780-451-4002
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NCSA provides numerous programs working to support and strengthen Aboriginal individuals and families. These programs include court support for certain types of matters, assistance with Child and Family Services matters, housing and support for at-risk youth, and Aboriginal healing lodges for offenders. They do not provide therapy or counselling.

Salvation Army – Addictions and Residential Centre (ARC) 9611 102 Avenue NW Edmonton, AB T5H 0E6	Ph: 780-429-4274
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The Salvation Army ARC provides transitional housing programs for men and women with the aim of support them to maintain long-term recovery from addictions. The ARC can also provide meals

Addiction Support

Alberta Health Services – Addiction Services	Ph: 780-427-2736
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10010 102A Avenue NW
Edmonton, AB T5J 0G5

Toll-Free: 1-866-332-2322

Provides personalized walk-in intake and assessment, treatment, and referral services and a wide range of individual, group, and family counselling. Group sessions related to addiction recovery run in the morning, afternoon, and evenings. Referrals, support, and various programs also offered.

Cocaine Anonymous (of Northern Alberta)	24 Hour Help Line: 780-425-2715
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Various Locations

Cocaine Anonymous is a support network made up of individuals who have a multitude of experiences but share an addiction to cocaine and a desire to stop using cocaine and other mind-altering substances.

Narcotic Anonymous, Edmonton	24 Hour Help Line: 1-855-421-4429
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Various Locations

Edmonton Area Narcotics Anonymous is a support network made up of individuals who have a multitude of experiences but share an addiction to drugs and a desire to stop using.

Our House Addiction Recovery Centre	Ph: 780-474-8945
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2210 Stony Plain Road NW
Edmonton, AB T5S 2C3

Email: house@ourhouseedmonton.com

Our House Addiction Recovery Centre provides programs for addictions recovery to both men and women, as well as residential treatment options for men dealing with addictions. It also provides anger management courses.

Jellinek Society	Ph: 780-488-1160
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11229 100 Ave NW
Edmonton, AB T5K 0J1

Email: info@jellinek.ca

Jellinek Society provides a residential treatment program for men, ranging from 3 months to up to a year, that looks to address day-to-day issues beyond just the addictions as addiction is never a stand-alone issue.

George Spady Society	Ph: 587-524-1530
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10015 105A Avenue NW
Edmonton, AB T5H 0M5

The George Spady Centre Society focuses on serving individuals who have substance-related disorders and dual diagnoses by providing detox, shelters, housing, and other supports.