
17 Procedure: Making an arrest

Arrest is the act of depriving a person of their freedom. There is no way to predict the reaction of an individual faced with arrest. For further information on planning a safe arrest, see the *Investigator's Guide*, chapters I and III.

In cases where a warrant has been issued, section 29 of the *Criminal Code* obligates the arresting officer to have a copy of the warrant with them and show a copy of the warrant if a request is made to see it. A police officer or peace officer has the authority to execute an immigration warrant under A142 through the direction of an officer.

Prior to the actual arrest, officers should contact the IWRC to:

- verify the validity of the warrant;
- obtain a copy of the warrant;
- any other available information such as fingerprints and photographs.

This should assist officers to verify the identity of the person subject to the warrant.

The mere words, "you are under arrest", are sufficient to constitute an arrest in law, if the person acquiesces. In the absence of the person's acquiescence or understanding, an officer must actually touch the person. Officers when making an arrest should use the following wording:

"I am arresting you because (briefly describe the reason for the arrest). It is my duty to inform you that you have the right to retain and instruct counsel without delay. If you cannot afford counsel, legal counsel access to free legal aid may be available to you. Do you understand?"

An officer must clearly document on the file the reasons for arrest, because they may be called upon at any time to justify the grounds on which the decision to arrest was based.

In order to effect a valid arrest under the Act, the arresting officer must take these steps:

- identify oneself as an immigration officer;
- display the officer's badge and identity card to the person being arrested;
- tell the person that they are under arrest, the reasons for the arrest and their rights to counsel;
- in the absence of acquiescence or where the person does not understand, the officer must actually touch the person. In the case of a language barrier, the person should be taken to the nearest CIC office and an interpreter located;
- inform the person of their right to contact their embassy or a representative in their country's consulate in accordance with their rights under the Vienna Convention, see Section 17.3 , IMM 0689B; and
- search the person, see Section 20.1.

17.1 Entering a notice of arrest in FOSS

The IMM 1285B, Notice of Arrest (NOA), is a document which formally records the arrest and the reasons for the arrest of a person under the *Immigration and Refugee Protection Act*. After any any arrest has been made under A55(1) or A55(2), an NOA must be entered immediately into the FOSS/ NCMS database. The purpose of the NOA is to maintain accurate details and of arrests made under

IPRA such as the arrest time, date, place, reasons, grounds and arresting officer. The NOA can be entered into FOSS in two ways:

- where the NOA, IMM 1285B was manually completed, the information must be entered in the status entry field referring to the protected document number in the upper right-hand corner of the document; or
- if a manual NOA IMM 1285B was not issued, an officer can initiate the printing of a Notice of Arrest using the Full Document Entry (FDE) screen under the NA option (notice of arrest).

In both cases, it is imperative that officers indicate in the warrant field whether or not the person was arrested with or without a warrant. Remarks should also be entered into the "Remarks" screen to record the grounds and reasons for why the person is a danger to the public or is unlikely to appear for an examination, admissibility hearing, removal, a proceeding that may lead to the making of a removal order under A44(2) or for identity.

In the event that the person cannot be dealt with by the intended process, the officer should clearly mark the documents and file that corresponds to the purpose of the arrest (i.e. examination, admissibility hearing, removal, or a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2). Depending on the processes following an arrest and where a manual IMM 1285B was not completed, officers may want to place a FOSS printout of the Notice of Arrest on the file to physically record the details of the arrest.

A report under A44 may be required following a Notice of Arrest if inadmissibility grounds exist.

17.2 Obligations under the *Canadian Charter of Rights and Freedoms* toward persons being arrested

The *Canadian Charter of Rights and Freedoms* applies to persons arrested or detained under the Act. The obligations of officers informing the person being arrested of their *Charter* rights apply equally to arrests with and without a warrant. Section 10 of the *Charter* imposes the following duties on officers effecting arrests and ordering the detention of permanent residents and foreign nationals pursuant to the *Immigration and Refugee Protection Act*:

- the officer must promptly inform the arrested or detained person of the reasons for the arrest or detention. If language is a barrier, an interpreter must be used. A relative, or acquaintance of the person, who is able to translate for them, can act as an interpreter in this situation;
- if the arrest and detention are pursuant to a warrant issued under A55(1), a copy of the warrant may be provided to the arrested person in fulfilment of the obligation to inform the person of the reasons for the arrest. If a copy of the warrant is provided to a person who is unable to read it, the officers must either read it to them or, if language is a barrier, have the warrant translated to the person;
- after an arrest or detention, an officer must not question the arrested person or otherwise attempt to elicit evidence from the person until they have been informed of their right to counsel and given a reasonable opportunity to retain and instruct counsel. This does not preclude questioning the person prior to arrest in order to obtain sufficient information to decide whether or not an arrest is warranted (for example, to confirm the person's identity and status in Canada, etc.);
- the officer must inform the person of the right to retain and instruct counsel without delay and provide the person with specific information about any legal advice services on immigration matters available to the person at no cost and about how to access such services. The nature of the information provided depends on the actual services available at the time of the arrest in a jurisdiction. If applicable, the officer must inform the person of the fact that legal aid and/or the

ENF 7 Investigations and arrests

services of duty counsel are currently available, and provide information as to how the person can access these services;

If such services are not available in the jurisdiction, the person is to be provided with the telephone book listing of lawyers and/or a 1-800 telephone number for regular legal aid services. Legal advice can only be provided by a member in good standing of a provincial law society (e.g., a lawyer) or a law student under the direction of a lawyer (e.g., student legal aid clinics). The number of telephone calls to lawyers that the person may make is left to the good judgment of the officer involved;

- where the person chooses to exercise the right to counsel, the officer must provide the arrested person with a reasonable opportunity to exercise the right, taking into account any physical constraints. This includes the duty to offer the arrested or detained person the use of a telephone, in an effort to seek legal counsel. If counsel is present, the officer must allow counsel to provide advice to their client in private; and
- the department is not responsible for the expenses and payments of counsel.

17.3 Notice of rights conferred by the *Vienna Convention*

Under the notice of rights conferred by the *Vienna Convention*, persons arrested or detained under the *Immigration and Refugee Protection Act* have the right to have the nearest representative of the government of his or her country of nationality informed of the arrest and detention.

Form IMM 0689B serves to advise and record the notice of rights under the *Vienna Convention*, as well as the exercise of those rights.

If the arrested or detained person cannot read the form or refuses to sign the form, the arresting officer must verbally inform the person that they have the right to contact a representative of the embassy or consulate of their country of nationality, in accordance with the rights of arrested person under the notice of rights conferred by the *Vienna Convention*. The officer is to record the fact that the person was verbally advised of their notice of rights conferred by the *Vienna Convention* rights on the face of the IMM 0689B.

It is important that an officer take the time to explain what is happening to the person in a manner that they fully understand. The officer must use terms that the person understands to explain the violations under the Act. If language is a barrier, an officer must take the person to the nearest CIC office and find an interpreter if one is not immediately available.

If the arrested or detained person wishes to have their government informed of their arrest and detention, the IMM 0689B should reflect this decision. The officer must inform their government representative, unless the person indicates a desire to contact their representative on their own initiative or informs the officer that their government representative need not be advised.

The officer is to record on the IMM 0689B, the date, time, and name of the government representative so informed. Any unsuccessful attempts to contact a government representative pursuant to the notice of rights conferred by the *Vienna Convention* should also be recorded on the person's file. An officer should complete this form and give it to the person concerned at the time of detention, or as soon as practicable.

17.4 Detention after the arrest

At the conclusion of an arrest, whether it is with or without a warrant, an officer must decide whether to detain the person. For procedures to follow when a person is detained, refer to ENF 20, Section 8.