

STREET LAW SMARTS #22

APPEARING IN CRIMINAL COURT

After being charged by a police officer and being taken to the police station or jail, there are a number of ways that you may be released from jail. Before releasing you, the main issues that a police officer, Justice of the Peace, or Judge must decide are:

- If you will come to court for the required appearances, and
- If you pose a safety risk to the community or a risk of committing a criminal offence.

Getting released from the police station

If the police think that you will come to court and don't pose a risk to the community or risk of committing an offence, then you may be released directly from police custody and ordered to come to court by way of a "Promise to Appear", "Criminal Summons", "Recognizance", or "Undertaking". If released by an Undertaking, you may have agreed to abide by conditions such as a curfew or to not go to a certain location in the city.

The police officers will provide you, the 'Accused', with a date to appear at the police station for fingerprints and photographs, usually about one month after release. They will also give you a date to appear in court, usually about six weeks after release. Failure to appear at these dates can result in new criminal charges.

You will be directed to attend the courthouse located closest to where the incident took place. If at anytime you forget what courthouse you need to attend or what date you should attend, you should contact a courthouse and ask the clerk's desk when and where your next appearance is.

Getting released from court – bail hearings

If the police officers do not think that you will come to court, or think that you may pose a safety risk, then you will be held overnight to appear in court for a bail hearing. You have the right to appear before a Justice of the Peace within 24 hours of arrest (this includes weekends and statutory holidays).

Usually, it is up to the Crown Prosecutor to prove to the Judge or Justice of the Peace why you should be kept in jail awaiting trial. This is called the Crown Prosecutor 'showing cause' for your further detention. Bail hearings are also called 'show cause' hearings.

Sometimes, you must 'show cause' for why you should be released. Examples of when you must prove why you should be released are: if you are charged with certain drug or weapons offences or if you are charged while already out on bail conditions.

The Crown Prosecutor may consent to your release upon certain conditions. If you have other outstanding charges, the Prosecutor may request that you stay in custody for up to three further days so all of the charges can be before the court at the hearing.

It is highly recommended that you do not rush into having your hearing and that you take the time to get the help of a lawyer before agreeing to hold your bail hearing.

The Duty Counsel lawyer is able to assist you in the bail courtroom at any time. Whether with the help of duty counsel or another lawyer, it is important that you create a reasonable release plan. Your lawyer can tell the Justice of the Peace or the Judge how you will be properly supervised to make sure that you come to court and that the public is protected from any criminal activity.

Sureties

People taking on a legal obligation to supervise you are called sureties. In addition to agreeing to supervise you, sureties will be asked to pledge an amount of money that they can lose if you breach any of the conditions.

Even if you can't get someone to act as your surety, you should seek out any help from supportive or stable people in your life.

Letters of support or personal appearances at court from community support workers, mental health professionals, employment counsellors, housing workers, religious leaders, social workers, or guidance teachers are extremely helpful to show the court the network of support that you have. If you are a staff attending court to assist a youth, please be sure to introduce yourself to the Duty Counsel lawyer.

If the Justice of the Peace or Judge feels that you are suitable for release then they will determine appropriate conditions and the amount of money the sureties will need to pledge. If detained, you have a right to review of the decision.

Bail Program

The Bail Program at Toronto courthouses is also helpful when you are charged with a non-violent offence and you cannot get a surety. Instead, a regular reporting requirement is put in place for bail to be granted.

First appearances

The first court appearance is usually six weeks after you are charged. At this time, you may get your disclosure package from the Crown Prosecutor.

The disclosure includes the information against you that the Crown will use against you to prove that you are guilty. Generally, a charge screening form will be attached to the disclosure. This form shows what sentence the Crown is suggesting if you decide to plead guilty.

The charge screening form will also tell you if the Crown is offering you a diversion program or peace bond in exchange for the charges to be “stayed” or “withdrawn”. A lawyer may be able to help give reasons why the Crown should change their mind if they have not yet offered diversion or a peace bond.

Diversion

Diversion is a program where, if you complete certain requirements (community service, counselling, or donating to a charity), the Crown will “withdraw” or “stay” a charge. Operation Springboard runs the diversion program at many of the Toronto courthouses.

The main things that may lead to acceptance to a diversion program are:

- a non-violent offence
- no record or an old criminal record
- no outstanding charges
- that you feel bad, and
- that you would suffer harmful consequences of a record.

To enter the program, you agree that you are taking responsibility for your actions leading to the charge. You do not plead guilty when entering into a diversion program. If you fail to complete the program requirements, you can still set a date for trial on the charge.

If suffering from a mental illness, you may also be diverted through the mental health diversion court program.

For more information, see: **Street Law Smarts #10: Mental Health**.

Peace bonds

A peace bond is when you enter into a recognizance, or a promise to the court, to keep the peace and be of good behaviour.

If the court decides, you may have other conditions to abide by such as not to communicate directly or indirectly with the complainant. A peace bond is usually for 12 months. Peace bonds carry no criminal record and are not a finding of guilt, but there could be employment and travel consequences. For more information, see:

Street Law Smarts #24: Youth Records

Street Law Smarts #25: Adult Police Records

Getting a lawyer

If there is no resolution to your charges after a few court appearances, the Justice of the Peace or the Judge will urge you to hire a lawyer or apply for legal aid. Once you chose a lawyer, the lawyer can help make sure that disclosure is complete, have pre-trial meetings with the Crown, and set dates for a trial or guilty plea.

Legal Aid Ontario Client Services Centre: 1 (800) 668-8258

If you do not get a lawyer, the Justice of the Peace or the Judge will allow Duty Counsel to continue to help you and may permit you to carry on without a lawyer.

It is highly recommended that you get a lawyer to represent you on criminal charges. If denied legal aid because the charges are not serious enough and you live in Toronto, contact the Street Youth Legal Services lawyer at JFCY, the Community Legal Assistance Program (CLASP), or Downtown Legal Services (DLS) for assistance.

If you are denied legal aid for financial ineligibility, you may appeal the decision. Consult with the Lawyer Referral System, CLASP program, DLS program, or the Street Youth Legal Services lawyer at JFCY.

JFCY, Street Youth Legal Services lawyer: 416.920.1633

Community Legal Assistance Program (CLASP): (416) 736-5030, press '4'

Downtown Legal Services (DLS): (416) 736-5029

Lawyer Referral Service: (416) 947-3330 or 1 (800) 268-8326