

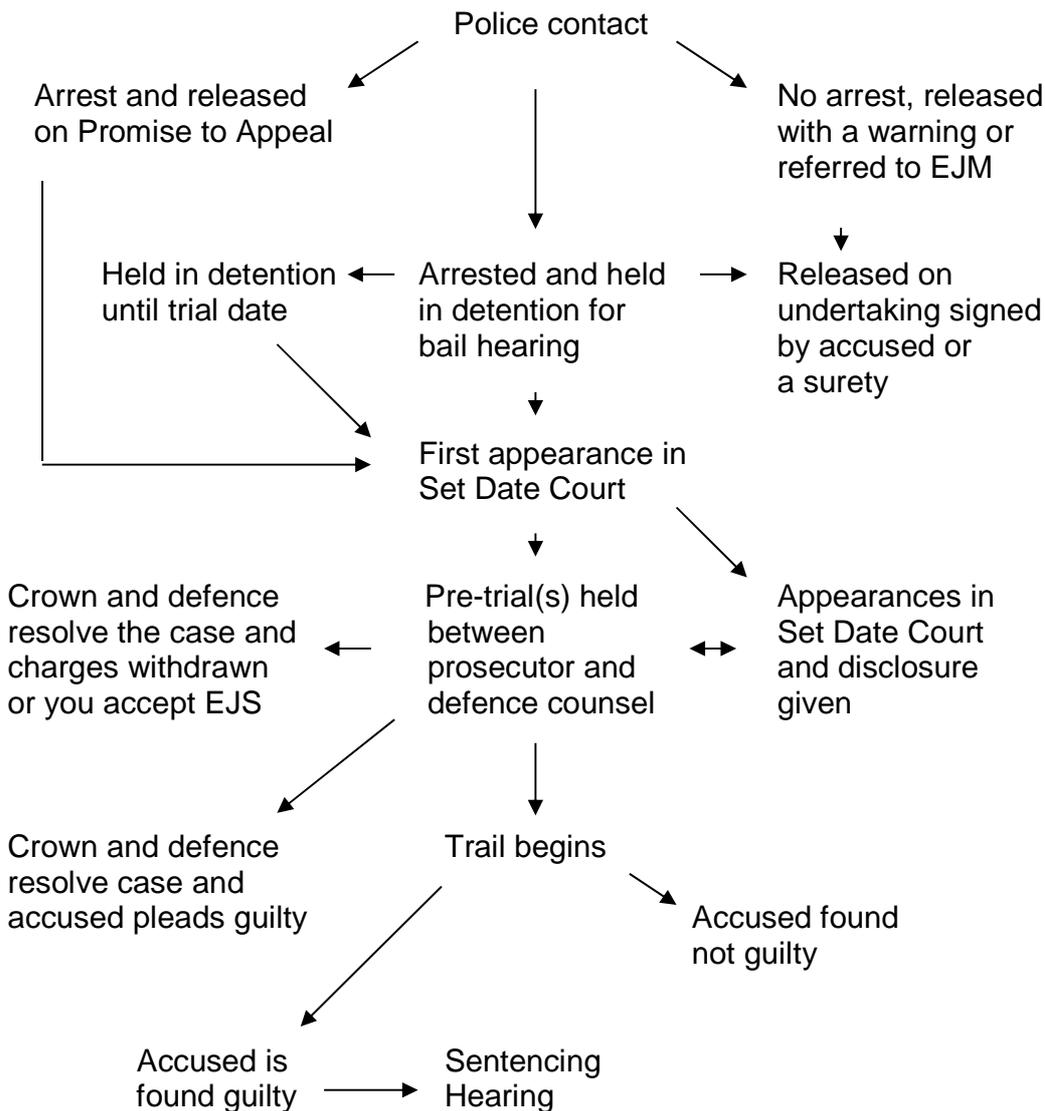
## Chapter 1: Introduction to the *Youth Criminal Justice Act (YCJA)*

This chapter provides:

- a flowchart of how a case moves through the Youth Justice system,
- the important principles of the YCJA, and
- information about who and the types of offences that the YCJA applies to

### 1. Flowchart

This is a general overview of the steps that may occur in a case:



## **2. What are the important principles of the YCJA?**

### ***General Principles about Young People***

- i. Everyone shares the responsibility for addressing the needs of young people by providing guidance and support.
- ii. Young people have special rights that need to be protected, including the rights contained in the United Nations *Convention on the Rights of the Child*.

### ***Principles about Consequences and Taking Responsibility***

- i. Young people are not as mature or developed as adults and are therefore held responsible for their actions in different ways than adults.
- ii. The consequences that a young person receives after committing a crime should be meaningful for that young person while reinforcing society's values.
- iii. Young people should be encouraged to repair the harm done to the victim.
- iv. The youth criminal justice system should try to figure out the real reasons that a young person did what they did and take into account the special circumstances of the young person, such as when the person identifies as aboriginal, has cultural differences, or has special needs.
- v. An important focus is for the young person to rejoin the community and be rehabilitated, not just punished.
- vi. Custody is to be used as a last resort and all options before custody or jail should be considered first.

### ***Principles about the Youth Criminal Justice System***

- i. The system is intended to protect the public.
- ii. Young people should be given extra protection and care because they are more vulnerable than adults.
- iii. Young people should be treated fairly, and their rights to privacy should be respected.
- iv. Young people experience time differently than adults so they should be dealt with quickly to strengthen the link between the behaviour and its consequences.
- v. Young people have rights and freedoms of their own, such as the right to be heard in court and to participate in the process.
- vi. Parents should be informed of measures or actions involving their children and encouraged to support them in addressing their child's behaviour.

## **3. Why should I know about these principles?**

The principles of the YCJA are important because they will affect how you are treated by people working in the youth criminal justice system. The police, the Youth Justice Court, and others involved in the youth criminal justice system are required to keep these principles in mind when dealing with you.

#### **4. To whom does the YCJA apply?**

The YCJA applies to all young persons who are 12 to 17 years old at the time they are said to have committed a crime, including a drug offence.

#### **5. What if I am under 12?**

Although the YCJA will not apply to you if you are under 12, there may be other consequences for illegal behaviour. For example, if you have stolen from a store you may not be allowed to go there in the future.

Also, while you can not be held criminally responsible, there are other laws that could have consequences for you. For example, treatment or removal from your home under the *Child and Family Services Act* or other child protection or mental health laws.

#### **6. What about other offences such as careless driving, drinking under age, or trespassing?**

The YCJA only applies to federal laws, not provincial laws. Careless driving, drinking under age, and trespassing are examples of offences covered by provincial laws so the YCJA does not apply. Each province has consequences for young people who commit these offences, but they will not be dealt with under the YCJA.

#### **7. What about truancy (skipping school)?**

The YCJA does not apply to truancy (absence from school without a good reason), unless by skipping school you break rules or conditions that says you must attend school imposed on you by a youth court order, like probation or bail.

#### **8. Does this mean that nothing will happen to me if I skip school?**

No. Most provinces will have some consequences for skipping school if you are under the legal age for leaving school. For example, you may have to see a counsellor and you might be taken to court under provincial law.

## Chapter 2: The Police

This chapter will focus on when you come in contact with the police. This chapter does not include situations where the police sometimes have additional powers, for example, when they enforce trespass laws on behalf of landlords.

### 1. Can the police talk to me whenever they want?

A police officer can try to talk to you whenever they want, just like any other stranger can try to talk to you. But you do not have to stay and listen to the police unless the police officer is arresting you, detaining you, or giving you a ticket.

You always have the right to ask the police why they want to talk to you and if you are free to go.

Here are some things that can help you figure out whether you have to stay:

- Ask: “Am I free to go?”
- Ask: “Why are you questioning me?”
- If the police officer is searching you and you don’t think it’s right, say, “I do not consent to the search.” But do NOT physically resist.
- Say: “I want to speak to a lawyer.” (You should ask to make a telephone call right then if you have a cell phone).

### 2. Do I have to give my name and address?

In most situations, you do not have to give your name or address to the police.

But there are some situations where you have to give the police your name and address. One example is if you are stopped by the police while you are driving a car or riding a bicycle.

If you are in a situation where you have to give your information to the police and you don’t do it, then the police can charge you with obstructing justice. The same is true if you lie to the police about your information.

It is generally a good idea to be polite, provide your name, and ask why the police officer is asking you questions. You do not have to answer any other questions and you can choose to remain silent. Be careful if you say anything because it can be used against you.

### 3. How do I know if I am being detained by the police?

You are detained when the police stop you from leaving, even if the police do not touch you and even if you are not handcuffed. Once the police act or speak in a way that makes you feel like you can’t leave, you are detained. For example, if they stand in your way or if they come very close to you, you might be detained.

*R. v. Grant, 2009 SCC 32*

If you are not sure whether you are being detained, you should ask the police officer, “Am I free to go?” If the officer tells you that you are free to go, then you can walk away if you want to.

#### **4. When are the police allowed to detain me?**

The police may only detain you if they think that you are connected to a recent or ongoing crime and that detaining you is necessary. The police should detain you for as little time as possible. If there is no clear connection between you and the crime, then the police officer may be breaking the law by detaining you. This is called an “arbitrary detention.”

#### **5. When are the police allowed to arrest me?**

The police may only arrest you if they think that you have committed a crime. If you are arrested, the police have to tell you why they are arresting you. They also have to tell you about some of your rights.

#### **6. What are my rights when I am detained or arrested?**

Any time you are detained or arrested, the police will:

- Tell you why they are arresting you.
- Tell you that you can speak to any lawyer you want.
- Ask if you want to speak to a lawyer. Always say “YES.”
- Give you a phone number for a free lawyer service called “Duty Counsel.”

You also have some extra rights that the police don’t have to tell you about. These include:

- You have the right to remain silence. You do not have to say anything to the police. It is usually best to stay quiet even if the police keep asking you questions.
- As soon as you ask to speak to a lawyer, the police are not allowed to ask you any more questions. If they don’t stop asking questions, tell them again that you want to speak to a lawyer.
- The police have to give you a chance to call a lawyer in private. Normally, they will let you do this in a private room at the police station. Sometimes you can do this with a cell phone before going to the police station.
- If you have a specific lawyer, the police have to give you a chance to speak to that specific lawyer.

**The two most important things to remember is that:**

- **You don’t have to tell the police anything other than your name, and**
- **You should always ask to speak to a lawyer.**

#### **7. When can I be searched by the police?**

The police may only search you in four situations:

- a. If the police have a search warrant.
- b. If you are being detained (safety search only).
- c. If you are being arrested.
- d. If you give the police permission to search you.

If the police search you outside of these four situations and they find illegal things, a judge might decide that the illegal things cannot be used as evidence.

a. Search warrants

A search warrant usually allows the police to search a place (for example, an apartment or a storage locker), but the police can also get a warrant for DNA (blood, hair or saliva). If the police come to your place with a search warrant, you should ask to see the warrant and check that:

- the address on the warrant is your address,
- the police are at your house at a time the warrant says they can be there,
- the warrant is signed by a judge or a justice of the peace, and
- the police only look in places where the item(s) they are allowed to look for could actually be (e.g.: they cannot search for a stolen piano in a cookie jar).

b. Search on detention

If the police are detaining you and they have a reasonable suspicion that their safety or the safety of others is at risk, then they may do a pat-down search. Sometimes they are also allowed to go through your bag if they think that there might be something dangerous in the bag. The police cannot search your pockets unless they feel something in there that they think is dangerous.

*R. v. Mann, 2004 SCC 52*

c. Search on arrest

If you are being arrested, the police may search you and your property for safety reasons and also to find evidence.

*R. v. Stillman, [1997] 1 SCR 607*

d. Search with your permission

If you are not detained or arrested and you give the police permission to search you, then you can be charged for any illegal items they find on you. If you act in a way that suggests that you are giving permission for the police to search you, then they may be allowed to search you even if you don't say "no" out loud. For example, if the police ask you what is in your bag and you open the bag up without saying anything, the police may think you have given permission for them to look inside the bag.

According to the law, your permission only counts if you understand the reason the police are searching you and you agree to the search for that reason.

*R. v. Borden, [1994] 3 SCR 145*

## **8. When can cell phones be searched?**

In most situations, the police are not allowed to search your cell phone without a warrant, even if you are arrested. In urgent cases, the police can search your cell phone without a warrant. For example, if the police urgently need the information in your phone to keep someone safe or if the police investigation would be seriously hurt if they have to wait for a warrant. If the police search your phone without a

warrant, they are only allowed to search the recent items related to the urgent situation.

*R. v. Fearon, 2014 SCC 77*

### **9. Do not physically resist being searched**

If the police start searching you without your permission, you can say, “I don’t want you to search me,” or, “I do not consent to the search.” If the police continue searching you, you should not resist. If you physically resist, you may be charged with resisting arrest or assaulting a police officer. Later, you will get a chance to tell a lawyer that the police searched you without your permission. Your lawyer will tell the judge and the judge may decide that the things the police found cannot not be used as evidence.

### **10. Statements to the police**

**The most important piece of advice that a lawyer will give you is to remain silent and do not make any statements to the police.** A statement is anything you say, even if you don’t think the police are listening to you and even if the police are not writing anything down. Just stay quiet and don’t say anything.

The police can record anything you say. Many police officers have audio or video recorders that will record what you say and do. The police are also allowed to use tricks and sometimes lie to you in order to make you think it is a good idea to tell them something. It can be stressful and intimidating when the police are trying to get you to say something. The times when you are stressed can be the worst times to say anything to the police.

#### What if I want to give a statement?

Before you give a statement, the police must tell you that you have the right to have a lawyer and your parent(s) or an adult with you. Those people can be there before and during a statement. If you decide you want to make a statement, you should wait until a lawyer is there and you have talked to the lawyer in private.

s.146(2)(b)

If you “blurt out” a statement before the police have had a chance to tell you about your rights, the police may still be able to use your statement against you. Even if the police forget to tell you about your rights, a judge might still let the police use the statement against you.

s.146(3); 146(6)

#### The police are telling me that I can make a statement without talking to a lawyer first. Is this right?

It is legally correct. You can “waive” or give up your right to talk to a lawyer and/or your parent(s) before making a statement, but it is not a good idea to do this. Normally, the police officer has to either videotape you or get you to sign something saying that you agree to “waive” your rights.

s.146(4)

If I do make a statement to a police officer, how will it be used?

Anything you say can be used against you in court. Even if you refuse to sign a written statement the police can still use the statement against you in court. If you want to make a statement, you should wait until after you have talked to a lawyer in private and the lawyer is with you.

Any statement you make to the police can only be used if it is voluntary. If you have made a statement without talking to a lawyer first, check with your lawyer after the statement to see if it was made voluntarily.

s.146(2)(a)

**11. What about statements I make to get Extrajudicial Measures?**

If you make a statement in order to be eligible for extrajudicial measures (EJM), your statement cannot be used against you in court. See also Chapter 5 – Extrajudicial Measures and Extrajudicial Sanctions.

s.10(4)

**12. What if the police violated my rights?**

If you believe that the police have violated your rights or acted improperly, you should collect as much information about the incident as possible. There are different ways for you to officially complain about the way you were treated by the police depending on where you live. You should speak to a lawyer in your province or territory for advice.

## Chapter 3: Getting a Lawyer

This chapter will focus on your right to a lawyer, the different ways to get a lawyer, and what you should expect from your lawyer.

It is always best to get a lawyer. Other adults may want to help, but they may not understand what legal options you have or how certain choices may affect your case or your future.

### Part 1: The right to a lawyer

#### 1. When do I need a lawyer?

You should talk to a lawyer if you:

- are charged with breaking the law,
- are arrested or detained by the police,
- have to appear in court, or
- have questions about your rights.

#### 2. Why do I need a lawyer?

You need a lawyer to speak for you and to make sure that your rights are protected. Your lawyer can give you advice and help you to understand your options. Your parents and others who give you advice may not know how certain choices may affect your case or your future.

#### 3. What does it mean to have the right to a lawyer?

If you are arrested for a criminal offence, you have the right to speak to and get advice from a lawyer. You also have the right to speak to a lawyer if you are offered an extrajudicial sanction.

See *Chapter 5*  
ss.25(1), 10(d)

#### 4. Will someone tell me about my right to a lawyer?

Yes. When you are arrested the police must tell you that you have a right to a lawyer and must give you a chance to contact one. s. 25(2)

The first time you go to court, if you do not yet have a lawyer the judge must tell you that you have a right to a lawyer. s. 32(1)(b)

#### 5. How can I find a lawyer?

It is **not true** that you only get one phone call when you are arrested. You can make multiple phone calls to try to find a lawyer. Here are some places to check:

- If your region has Legal Aid, call your local Legal Aid office and ask for a list of lawyers who work with young people and criminal law.
- Look in the yellow pages of the phone book under “Lawyers”.

- Call your local legal clinic (look in the phone book under "Legal Aid").
- Call your provincial or territorial law society to see whether they can help you find a lawyer.

## **6. How do I pay for a lawyer?**

- If you have a job, you may be able to afford one yourself.
- Your parent(s) may pay one for you.
- If you cannot afford a lawyer and your parent(s) cannot afford a lawyer, or if your parent(s) refuse to pay for a lawyer, or there is another reason you don't want your parent(s) to be involved in hiring your lawyer, you can apply to Legal Aid. Legal Aid may be able to get you a free lawyer depending on your situation.
- If Legal Aid will not pay for a lawyer for you, you should tell the judge and ask the judge to make sure that a lawyer is appointed for you. (See section below on Court Appointed Lawyers) s. 25(4)-(5).
- In some courts there are free emergency lawyers called Duty Counsel who can give you limited help, but they will not represent you in trial and they will not be your permanent lawyer.

## **Part 2: Ways of getting a lawyer**

### **A. LEGAL AID**

Each province and territory's legal aid system is different. All provinces and territories have some form of legal aid available for Youth Criminal Justice matters. For more information on how legal aid works in your region call your nearest office (look in the phone book under "Legal Aid").

### **B. COURT ORDERED LAWYERS**

If you applied for Legal Aid and Legal Aid decided that they will not pay for a lawyer for you, you should ask the judge to make sure that a lawyer is appointed for you. If it is not yet time for your trial or if there is no chance of you going to jail yet, then the judge might not appoint a lawyer for you yet (*R. v. L.S.*, 215 CCC (3d) 246). But if you are already at trial or if there is a chance of you being in jail, then once you ask the judge for a lawyer, the judge must appoint a free lawyer for you. s. 25(3)(4).

One exception is if you are 20 or older at the time you go for your first appearance\* for a Youth Justice Court charge. In that situation you do not have the right to a free lawyer. s. 25(11)

**Note:** the province or territory can try to get back the money that is spent for your court-ordered lawyer from you or your parent(s). This does not mean that they will do this, only that they can. s.25(10)

If you have a particular lawyer you want, that lawyer can ask the judge to make sure that his or her fees are paid. If you do not have a particular lawyer that you want, someone who works for the province or territory will find a lawyer for you. s. 25

### **C. COMMUNITY LEGAL CLINICS/SPECIAL PROGRAMS**

Some provinces and territories have other legal services available for people with low incomes. Often, universities with law schools have programs that provide legal services for free or for a small fee. Here are some examples:

**Ontario** has a large number of community legal clinics that provide legal services to people with low incomes. Justice for Children and Youth (416) 920-1633 or toll-free: 1-866-999-5329) helps young people under the age of 18 with various legal matters, including charges under the *Youth Criminal Justice Act*.

In **Manitoba**, law students at the University Law Centre (University of Manitoba) will represent\* people with minor criminal charges.

In **Alberta**, a program is offered on the Siksika Reserve which provides criminal legal services..

### **D. DUTY COUNSEL**

Some provinces and territories have duty counsel. Duty Counsel are Legal Aid lawyers who are in the courthouse building for the day to help you. If you do not have your own lawyer, duty counsel can give you some limited advice and speak for you in court. They usually will not represent you at a trial and they will not be your permanent lawyer.

### **E. USE OF A RESPONSIBLE ADULT (FOR EXAMPLE, A PARENT, GUARDIAN, OR FRIEND)**

You are allowed to use a responsible adult to speak for you in court but it is not a good idea. s. 25(7)

It is a bad idea to use an adult who is not a lawyer because while this adult is concerned about you, he or she may not be familiar with the criminal law (especially the Youth Criminal Justice Act), the rules of the court or the consequences of not providing the appropriate information to the court. An adult who is not a lawyer may not understand what options you have or how certain choices may affect your case or your future.

## **Part 3: You and your lawyer**

### **1. How do I decide whether to hire a particular lawyer?**

Ask the lawyer lots of questions, including:

- Are you familiar with the Youth Criminal Justice Act, criminal and drug laws, and young people's rights?
- Are you familiar with the services and programs in the community available to young people?
- Will you listen to what I want and follow my instructions rather than those of my parent(s), social worker, or youth worker?
- Will you explain to me why you may give recommendations about what I should do?
- Will you do what I want rather than what you think is best for me even if we do not agree about how to handle my case?
- Will you keep everything I tell you private unless you check with me first? This includes talking to my parent(s).
- If I do not have any money, will you help me get Legal Aid?
- What services will you provide? Getting bail? Helping me find a place in a program?
- Will you show up for my court date?

If the lawyer answers "yes" to most of these questions, then he or she will probably be a good lawyer for you.

### **2. How should my lawyer treat me?**

Your lawyer should listen to your problem and understand what you want. He or she should give you advice and then do what you want (within certain limits) rather than what other people think might be best for you. The information you give your lawyer is private. Your lawyer cannot tell anyone, including your parents or guardian, social worker, or the police, what you say unless you give your lawyer permission to do so. However, if you tell your lawyer that you are going to harm someone, they may have to report this to the police.

It is important to answer your lawyer's questions honestly and to give your lawyer all relevant information. If you do not understand something, ask questions. If you disagree with your lawyer's advice, make sure you speak up.

If you feel that your lawyer is not doing a good job representing you, you can ask that another lawyer take your case. If your lawyer is paid by Legal Aid, you should ask Legal Aid if they will still pay for your new lawyer if you change lawyers.

### **3. What should the lawyer I hired do for me?**

Your lawyer should:

- Explain what your charges and options are, and give you advice on how to proceed with your case.
- Tell you how likely it is that you'll be found guilty and what your sentence might be,
- Make sure that the rules of the court are followed so that you get a fair trial,
- Make sure that your version of what happened is presented in court
- If you are found guilty, recommend to the judge a plan that meets your needs (if you agree). It is even better if you ask your lawyer to get you involved in a program that meets your needs,
- Be with you every time you go to court (if your lawyer cannot go to court on a particular day, he or she should send someone else to be there in his or her place, or your lawyer should speak to duty counsel for you in advance, or your lawyer should give you a letter to take to court), and
- Present your defence to the court.

### **4. Why do I need a lawyer to present my story?**

The police will have a lawyer to help tell the story of what happened to the judge. That lawyer will know the rules of the court and will know how to argue the case. Because of this, you also need a lawyer who can tell your side of the story to the court in a logical way and knows the rules of the court. Your lawyer will also know how to carefully question the police and police witnesses.

### **5. What can I do if my lawyer has done damage to me or my case by not acting properly?**

Ask your provincial or territorial law society about what can be done. You may want to appeal your case.

*See Chapter 11 - Appeals.*

**Remember that your appearance in court may have serious short and long term consequences for you. You need a trained lawyer to advise you and to present your case in court.**

## Chapter 4: Detention

This chapter will focus on what happens if you're allowed to go home and when you are held by the police after you are arrested.

**If you are arrested or held by the police, talk to a lawyer immediately.** See *Chapter 3 – Getting a Lawyer*.

### 1. What happens if the police let me go home after being arrested?

If the police decide to let you go home after being arrested, they will give you some papers that tell you when you have to go to court. These papers are called a "Promise to Appear" and may include some rules and conditions you have to follow before your court date. If you are required to have photographs and fingerprints taken at the police station, this will also be on your papers. It is important that you show up for at the police station and at court on the correct date and time.

### 2. What is detention?

In certain circumstances, after you have been arrested, you can be held in custody until your trial. In those situations, you will not be allowed to go home. This is called detention. If the police do not release you after your arrest, they will take you to court within 24 hours or as soon as possible for a bail hearing (see below). A judge or justice at the court will decide if you should be detained until your trial.

### 3. When can I be detained?

You can only be detained if you are charged with a serious offence or if there is a pattern of other charges against you. s. 29(2)(a)

If you have been charged with a serious offence or if you have a pattern of other charges, the judge or justice **can** put you in detention for any of these reasons:

- To protect the public,
- To make sure you come to court in the future when you have to, or
- In rare and very serious cases, to help other people trust the courts.

s. 29(2)(b)

*R. v. R.D.* 2010 ONCA 899

Even if the judge or justice is concerned about any of these things, the judge or justice might still release you if he or she thinks that you will follow certain rules when you are released.

s. 29(2)(c)

A judge or justice **cannot** put you in detention for any of these reasons:

- Your own protection,
- You have a mental illness,
- You need a place to live, or
- You need social services.

s. 29(1)

#### **4. If the judge thinks I should be detained, is there another option?**

Instead of sending you to a detention facility the judge or justice can order a responsible adult to take care of you until your trial. The responsible adult will have to be able to provide a close level of supervision over you. The judge or justice is required to consider releasing you to this person as an option. Both you and the responsible adult must agree to the arrangement. If you agree then the judge may release you to the care of the responsible adult. You will both have to sign an agreement for the court. If no responsible adult can be found or if you do not want to go with that particular adult, then you will be held in detention.

s. 31

*R. v. R.D.*, 2010 ONCA 899

#### **5. Where can I be detained?**

Usually you will be held in a place designated for young people. s.30(3).

You may be held in:

- A facility with doors that are locked all the time,
- A facility that has areas where you can be locked up,
- A facility where the doors are not locked, or
- The care of a responsible adult.

s.31

#### **6. I am under 18. Can I ever be held in the same place as an adult?**

If you are under 18, you will generally be held in a place separate from where adults are being held.

s.30 (3)

If separate buildings are not available, you may be held in the same building as adults but must be held in a separate area from the adults.

Also, a court can order you to be held in the same place as an adult if :

- It is not safe to keep you in a place for young people, or
- There is no place for young people available nearby.

s.30(3)

#### **7. I am already 18 or 19 years old (or turning 18 soon) with youth charges. Will I be detained in an adult facility?**

If you turn 18 before you are detained on youth charges or if you turn 18 while you are already detained on youth charges, the provincial director (the person responsible for place of custody and probation) can ask the judge to have you held in an adult facility instead of a youth facility. If that happens you have a right to tell the judge where you prefer to be held and why. The judge will decide where you will be held. The judge will look at your behaviour while you have been detained. Bad behaviour that affects other young people might be a reason for the judge to send you to an adult facility.

s.30(4)

*Ontario (Ministry of Children and Youth Services) v. K.K.*, 2011 ONCJ 592.

**8. I am 20 years old or older with youth charges. Will I be detained in an adult facility?**

If you turn 20 before you are first detained on youth charges, you will be held in an adult facility, and you will not have the right to tell the judge what you prefer.

s.30(5)

**9. Will my parent(s) find out that I am being held in detention?**

Yes. As soon as possible after you are arrested and detained, the police will contact your parent(s). They will tell your parent(s) where you are and why you are being detained.

s. 26(1)

**10. If the police arrest me and don't let me go right away will I have to stay in detention until my trial?**

Not necessarily. If the police do not let you go after your arrest, the police must take you to court within 24 hours or as soon as possible. The judge or justice at the court will decide whether to release you or to detain you until your trial. This is called a bail hearing.

s. 503 of the *Criminal Code of Canada*

**11. What will happen at my bail hearing?**

In most situations, the prosecutor will have to show the judge or justice why you should be detained.

s. 29(3)

In some situations (for example when you are charged with a serious offence or when you have been charged with another offence after you already had bail) your own lawyer will have to show the judge or justice why you should be released. During the bail hearing the prosecutor or your lawyer might ask people who know you or who know about the case to come to court. Those people might be asked questions by the lawyers to help the judge or justice decide what to do.

**12. How does the judge or justice decide whether to detain me?**

The judge or justice can detain you for any of these three reasons:

- To protect the public,
- To make sure you come to court in the future when you have to, or in rare and very serious cases to help other people trust the courts.

s. 29(2)(b)

*R. v. R.D.* 2010 ONCA 899

The judge or justice is more likely to detain you if you have made a statement to police admitting to the offence, if you have other charges and criminal convictions, if

you have failed to attend court or escaped custody in the past, or if your charges are serious.

**13. What happens if the prosecutor cannot convince the court that I should be kept in detention?**

The judge must let you go after you have signed a form promising to come back to court on a certain date.

**14. Will I have to promise to meet other conditions before I am released?**

You might. These conditions could include:

- Reporting to a youth worker,
- Staying in town,
- Staying with your parent(s) or another specified person,
- Not having any contact with certain people,
- Attending school or going to work,
- Staying away from a certain place or area, like a shopping mall, or
- Agreeing that you or someone else will pay some money to the court if you do not show up at the next court hearing.

**15. If I'm not released at the hearing, how long can I be kept in detention?**

You may be kept in detention until your trial. If you feel your case is moving too slowly, ask your lawyer to try to speed things up.

**16. What if I think I have been wrongfully detained or detained too long or I want the conditions of my bail changed?**

You may ask a judge to look at your situation again. Contact your lawyer for advice on how to do this. You can also tell the worker in the detention facility or the superintendent that you want your situation "reviewed."

**17. What if I am being treated badly or there are other problems where I am being detained?**

You have rights in detention. You have the right to have your basic needs met, the right to recreation, the right not to be physically disciplined and rights relating to the use of segregation. You have other rights as well. If you have any concerns or questions you have the right to call a lawyer or a child and youth advocate.

## Chapter 5: Extrajudicial Measures and Sanctions

This chapter will focus on different ways that your situation might be dealt with instead of going through the formal court system.

### 1. If I break the law will I always be charged by the police and go to court?

No. There are a number of other things that the police or prosecutor can do to hold you responsible for your actions. These are called Extrajudicial Measures.

### 2. What are Extrajudicial Measures (EJM)?

They are methods to hold you responsible for having done something wrong without creating a youth “criminal” record and without making you go through the formal court system. There are different kinds of Extrajudicial Measures as described below. The police are required to keep a record if they give you an Extrajudicial Measure, but it is not a criminal record.

s. 115(1.1)

### 3. What are the different kinds of Extrajudicial Measures?

Instead of charging you, a police officer can do any of these things:

- The police can give you a warning,
- In some places the police can give you a formal or written caution, or
- The police can send you to a community program that will help you to stop committing offences. The police can only use this option if you agree to go to the program.

s. 6

Another possibility is that if you have already been charged, and in some places even before you are charged, the police or prosecutor\* can give you an Extrajudicial Sanction, which is the most serious kind of Extrajudicial Measure.

See questions 7- 14 below for more information.

### 4. When is a warning, caution or community program appropriate?

Warnings, cautions, and programs are only used for offences where no one was physically hurt

*R. v. C.D.*, [2005] SCJ No 79

The police officer might use a warning, caution, or program if he or she thinks that:

- It would be a good way of holding you responsible for what you have done wrong;
- The long court process would not be as effective at changing your behaviour;
- You are able to fix the wrong thing you’ve done without the court having to force you to fix it; or
- It allows your family, the community and the victim to be involved in dealing with your behaviour.

s. 5

**5. Is it only the police who can caution someone?**

No. The crown attorney or prosecutor can also give you a caution instead of having you charged. Even if you have already been charged, the prosecutor can withdraw the charge and give you a caution instead.

s.8

**6. If a warning, caution, or community program is not appropriate, are there other options?**

Yes. If the offence is too serious, or if you have a record of too many other serious offences, then the police can give you an Extrajudicial Sanction. This is the most serious kind of Extrajudicial Measure.

s. 10

**7. What are Extrajudicial Sanctions (EJS)?**

A sanction is a consequence or a punishment. An Extrajudicial Sanction means that you will get some punishment for your actions. An Extrajudicial Sanction is more serious than other Extrajudicial Measures but you will still not go through the formal court system and you will not be punished by a judge. An Extrajudicial Sanction is part of a special program that you agree to participate in. If you have already been charged by the police you may have to appear in court before the program starts. The program will be much quicker than going through the regular court process.

s.10

**8. When can I get an Extrajudicial Sanction (EJS)?**

You can get an Extrajudicial Sanction only if:

- there is an Extrajudicial Sanction program where you live;
- the police or the prosecutor thinks that the program is the right thing for you and for the community; and
- you are willing to accept responsibility for what the police say you have done wrong.

s. 10(2)

**9. What rights do I have before accepting an Extrajudicial Sanction (EJS)?**

Before accepting an Extrajudicial Sanction:

- You must be told all about the program and then you must freely agree to participate; you cannot be forced to accept the Extrajudicial Sanction,
- You must be given a chance to talk to a lawyer about the Extrajudicial Sanction program, and
- The prosecutor must believe that he or she has enough evidence against you to continue with the charge; if not the prosecutor must withdraw the charge.

s. 10 (2)

### **10. When can I NOT get an Extrajudicial Sanction (EJS)?**

An extrajudicial sanction **cannot** be used if:

- you deny being involved in the offence;
  - you want to have a trial in court; or
  - you are not accepted into the program
- s. 10(3)

In these situations, your case will stay in the youth court system.

### **11. If I agree to participate in an Extrajudicial Sanctions (EJS) program, what will I have to do?**

Different places have different types of Extrajudicial Sanction programs. You may be asked to do some kind of community service, participate in a conference\*, write an essay or letter of apology, go to workshops, do a mediation, or perhaps do something else that would be relevant to you or the offence.

### **12. What happens if I complete all the conditions of the program?**

Then any charge that has been laid against you will be dismissed, stayed or withdrawn, and you will not have to go back to court for this matter.

s. 10(5)(a)

### **13. What happens if I only complete some of the conditions of the program?**

The prosecutor could bring the matter back to the court, and the judge may or may not dismiss the charges against you depending on the circumstances. The closer you have come to completing the program the more likely the charges will be dismissed. If it is your own fault that you did not complete the program, the judge is less likely to dismiss the charges.

s. 10(5)(b)

### **14. If I successfully complete the program, will I have a “Youth Court Record”?**

No. This is one of the advantages of extrajudicial sanctions. However, even though there is no criminal record, a separate record will be kept for 2 years about your participation in the program.

s. 119(2)(a)

See Chapter 10 - Records, Fingerprints, Photos, DNA

### **15. Will anyone know that I have done an Extrajudicial Sanction program?**

Yes. If you participate in an extrajudicial sanction program your parent(s) will be informed. Also, if the victim wants to know your identity and to hear about your program, the victim will be given that information.

ss. 11-12

## Chapter 6: In Court

This chapter will focus on the formal court process and some of the rules of the court, including some information about guilty pleas and trials.

### Part 1: General Information About Court

#### 1. What court will I go to?

You will appear in Youth Justice Court. This is a special court to deal with young people charged under the *Youth Criminal Justice Act*. Sometimes the Youth Justice Court is in the same building as other adult courts.

s. 13

#### 2. Is the Youth Justice Court always open to the public?

Yes. Generally all courts are open to the public, except if the judge feels that certain information should not be heard by the public. If you do not want others to be in the court, you (or your lawyer) may ask the judge to keep the public out of the courtroom.

s. 132

#### 3. What if I forget to go to court?

Missing a court appearance is a criminal offence. You can be charged with “failing to appear”. This is a separate offence and may stop you from getting bail. If you forget to go to court, you should call your lawyer right away. If you do not have a lawyer yet, you can call the courthouse to ask when your next court date is because sometimes the judge or justice will schedule a new date for you if you do not show up in court.

#### 4. Can my name be published in a newspaper or magazine?

The default rule is that no one is allowed to publish your name or any information that could be used to identify you. However, the media is allowed to publish general information about what is happening in court and facts about the case once that information would not identify you.

s. 110

*R. v. D.B.*, 2008 SCC 25

One exception to this rule is that if the police believe that you are dangerous and that publishing your name would help them arrest you, a police officer can ask the court for permission to publish your name.

s. 110(4)

Another exception to this rule is if you are given an adult sentence (see Chapter 9 – Sentences), or if you are given a youth sentence for a violent offence and the judge thinks you will commit another violent offence.

s.110(2); s. 75(2)

## **5. What will happen the first time I go to court?**

It is very important that you have a lawyer when you go to court. There are ways for you to get a free lawyer if you don't already have a lawyer. See Chapter 3 - Getting a Lawyer.

If the police kept you at the police station after arresting you and then took you straight to court without letting you go home, then the first time you go to court will be for your bail hearing. See Chapter 4 - Detention.

If you have already received bail, or if the police let you go home after they arrested you, then the first time you go to court (called a "first appearance") the judge will read the charge(s) to you. If you do not have a lawyer, the judge must be sure that you understand the charge(s).

The judge might ask if you want to plead guilty or not guilty, but this doesn't always happen on a first appearance. You should have discussed this with your lawyer before going to court. Your lawyer can advise you on whether you should plead guilty or not guilty. If you are going to plead not guilty, you will have to come back to court on another day. The judge or justice will tell you what date to come back. This will give you, your lawyer, and the prosecutor time to prepare for the case.

Sometimes the prosecutor may give you or your lawyer a disc or some documents called "disclosure". If you do not have a lawyer yet, it is important that you keep the disclosure in a safe place until you can give it to a lawyer.

## **Part 2: Understanding Not Guilty and Guilty Pleas**

### **6. What is a "guilty plea"?**

Always talk to a lawyer before pleading guilty or not guilty. A guilty plea means that you admit that you committed the offence that the judge has explained to you.

### **7. What is a "not guilty plea"?**

Always talk to a lawyer before pleading guilty or not guilty. You can plead not guilty if you or your lawyer will argue that you are not guilty according to the law. Even if you think you are guilty, a lawyer can advise you whether you might be not guilty according to the law. For example, you might not be guilty if the law you broke does not follow the constitution, and you might not be guilty if the police did not follow the rules that apply to them. In those situations you could legally and honestly plead "not guilty". If you plead not guilty it will be the prosecutor's responsibility to prove that you are guilty, and sometimes the prosecutor does not have enough evidence, which will mean that you are not guilty.

### **8. What are the steps to pleading guilty?**

- i. The clerk of the court or the judge will tell you what the charges are. The judge will explain the charges to you and ask you if you want to plead guilty or not guilty.

- ii. The judge will listen to your answer. If the judge does not think that you understand the charges, the judge will not let you plead guilty. If the judge thinks that you do understand the charges then the judge will the prosecutor to tell the story of what you did wrong. s.32(4)
- iii. When the prosecutor is finished telling the story, the judge will ask you if you agree with the story the prosecutor told.
- iv. If you agree with the prosecutor’s story, then the judge will officially say that you are guilty.

s. 36

**9. What if I disagree with the prosecutor’s version of the story?**

When the judge asks you if you agree with the story that the prosecutor told and you think that all or some of the story is wrong, you or your lawyer can tell the judge your version of the story. Sometimes the judge will want more evidence to decide which version of the story is true.

**10. What will happen once the judge decides which version of the story is true?**

If you plead guilty and you agree with the version of the story that the judge thinks is true then the judge will officially say that you are guilty. In rare cases, even if you plead guilty, the judge might say that the prosecutor’s story is not enough to show that you committed a crime and the judge will say that you are not guilty.

s.36

**11. Should I plead “guilty” to get out of court quickly?**

No. If you feel you are not guilty, then plead not guilty. A finding of guilt may have serious effects on your future: you will receive a sentence from the judge, you will have a youth criminal record that may last for over five years after you finish your sentence, and in some cases your youth criminal record can last forever which makes it difficult to get a job, to travel, and do many other things.

**12. What happens if I want to plead “not guilty”?**

If you want to plead not guilty, nothing much will happen in court on your first appearance. Usually the judge or justice will give you an adjournment (to return to court for a second, third, etc appearance) to get a lawyer if you do not already have one. The judge or justice will tell you what date to come back to court. If you already have a lawyer, the court and your lawyer will decide together on the next court date. This allows time for your lawyer to get information from the prosecutor about the evidence they have against you. Your lawyer and the prosecutor will also have time to meet and discuss your options. Your lawyer will then be able to tell you about those options and give you advice on how to pick the best one.

**Part 3: Understanding Trials**

### **13. How many times will I come to Court before trial?**

Sometimes it takes a while for the police to get all the witness statements together and for your lawyer to meet the prosecutor and to agree on a trial date. While this is happening, you may have to go to court several times before the trial.

### **14. Will there be a jury?**

There is no jury in most youth trials. Usually there is only a judge. However, if the prosecutor wants to give you an adult sentence (see Chapter 10 - Sentences) or if you are charged with murder, you can choose to have a jury. In these situations, you also have the right to a “preliminary hearing” which happens before the trial. At the preliminary hearing, the prosecutor will have to prove to the judge that there is enough evidence against you to start a trial.

s. 67

### **15. What will happen on the trial date?**

You will come back to the Youth Justice Court on the date of the trial. The judge will ask you to plead guilty or not guilty. If you plead not guilty, the prosecutor will call witnesses who tell their version of what happened. Witnesses will only be allowed to tell their version of the story after they have promised to tell the truth. After the prosecutor is finished with all of his or her witnesses, you and your lawyer will get a chance to call your own witnesses. After all the witnesses from both sides are finished, the lawyers will summarize everything and the judge will make a decision about whether you are guilty or not guilty. Sometimes the judge needs more time to make a decision and will tell you to come back on another day to get the decision.

### **16. What if I disagree with what the witnesses say?**

Your lawyer will have a chance to ask each witness questions, including the witnesses that the prosecutor called. This is often called “cross-examination.” Your lawyer can ask the witness questions about things you disagree with.

### **17. Can I call my own witnesses?**

Yes. After the prosecutor has called all of his or her witnesses, your lawyer can call witnesses to help tell your side of the story. Sometimes your lawyer might tell you that you don't need your own witnesses, especially if the prosecutor does not have enough evidence against you.

### **18. Will I have to tell the court my version of the story?**

Not always. This will depend on how your lawyer decides to handle the case. Tell your lawyer if you want to tell the court what happened (this is called “testifying”).

### **19. What will I be asked if I testify?**

After you have promised to tell the truth, you will be asked to tell your version of what happened. The types of questions you will be asked will depend on the type of case. If you do not understand a question that you are asked, you shouldn't try to guess what the question means. Say out loud that you don't understand the question. If you don't know the answer, it is ok to say that you don't know.

**20. Who will ask me questions?**

Your lawyer will question you first, then the prosecutor will get a chance to ask you questions. Remember, if you give different answers or if your answers keep changing then the judge may not think you are telling the truth. That is why it is really important to make sure you understand the questions and to answer truthfully.

**21. How will the trial end?**

After the judge has listened to all the witnesses from both sides, the lawyers will get to summarize the case. Then the judge will decide whether you are guilty or not guilty.

**22. Does the judge make a decision right away?**

Sometimes the judge will make a decision right away. Sometimes the judge needs more time to make a decision and will tell you to come back on another day to hear the decision.

**23. What if I am found “not guilty”?**

If you are found not guilty, then the case ends. You will receive no sentence or punishment.

**24. What if I am found “guilty”?**

If you are found guilty, then the judge must decide on a suitable sentence.

See Chapter 7 – Sentencing Process and Chapter 9 – Types of Sentences

## Chapter 7: The Sentencing Process

This chapter focuses on what happens after you are found guilty and before you receive your sentence, and what information the judge can use to decide what sentence to give you. See Chapter 9 for information on Types of Sentences.

### PART 1: STARTING THE SENTENCING PROCESS

#### 1. What happens after I am found guilty?

After you are found guilty, the judge must decide what sentence or punishment to give you. The judge will usually want to get information from different people to decide what sentence is fair. The judge may ask that a conference held to consider what a fair sentence would be for you (see question #3 below). The judge will also consider anything that you, your lawyer, your parents / guardians, or the prosecutor tells the judge about you and they think is the appropriate sentence for you.

s. 42

#### 2. What other information can the judge ask for?

The judge may ask for certain reports about you such as a pre-sentence report, a medical report or a psychological report. Sometimes the judge may ask for other specific information.

See questions 4 - 11 below on pre-sentence reports.

See questions 12 - 20 below on medical or psychological reports.

### PART 2: SOURCES OF INFORMATION

#### Conferences

#### 3. What is a conference?

A conference is a group of people who meet, discuss your case, and then give advice to the judge about many different parts of the court process, including sentencing. Many different people may be in the conference. Some examples of the people who might be in a conference include police officers, teachers, youth workers, the victim, support people for the victim, you, your family, support people for you, elders in your community, or anyone else who would have something to add to the conference. Some jurisdictions may use a “youth justice committee” that is made up of various people from the community for the purpose of holding a conference.

s.19

#### Pre-sentence reports

#### 4. What is a pre-sentence report?

If the judge wants more information about you before deciding on a sentence, the judge can ask someone to investigate and give a report about you (usually in writing). The report will include information about your personal life, including your family and school life, and your employment history. Often the reports are prepared by probation officers who may have an opinion about what sentence would be best for you. The

judge can ask for a pre-sentence report in any case. In cases where the judge is thinking about giving you time in custody, the judge must ask for a pre-sentence report.

s. 39(6)

#### **5. What kind of information will a pre-sentence report contain?**

The person who writes the report will meet with you and other people who know you. Those people may include your parents / guardians, other family members, teachers, other adults who know you, and the victim. The report will include the information given by all of those people.

s. 40(2)

The pre-sentence report will also contain:

- the recommendations from a conference, if one was held (s. 40(2)(c)),
- your age, maturity, character, behaviour, attitude, and willingness to make up for the harm you caused,
- your plans for changing your behaviour,
- your plans for the future, including your education, training, or other activities that might be good for you,
- your history of offences and sentences,
- any history of extra-judicial measures and extra-judicial sanctions,
- any services or programs available in your community and your willingness to participate in them,
- your relationship with your parents and / or other family members, and
- your school and employment record.

s. 40(2)(d)

#### **6. Who will prepare this report?**

Usually a probation officer.

#### **7. May I see a copy of the report?**

Yes. You, your lawyer, and the prosecutor will each get a copy. If your parent(s) / guardian(s) attend court with you or if they are interested in the case then they may also get a copy of the report.

s.40(5)

#### **8. What if I disagree with the report?**

You or your lawyer can tell the judge that you want the person who made the report to come to court, and then you or your lawyer will be allowed to ask the person questions in front of the judge.

s.40(6)

#### **9. When will this report be prepared?**

After you are found guilty but before you are sentenced.

**10. Does this mean I will not be sentenced right away?**

Yes. If the judge wants a pre-sentence report, you will come back to court on after the person has enough time to prepare the report. You will have to wait a little while to find out what your sentence will be.

**11. Can I go home while we wait for the report?**

That will depend on whether or not the prosecutor can show that you should be kept in detention. See *Chapter 4 – Detention*.

**Medical or psychological reports**

**12. What is a medical or psychological report?**

These are reports prepared by experts, usually doctors. The expert will meet with you and examine you before writing their report on you.

s.34

**13. When might a judge order a medical or psychological report?**

A medical or psychological report is done if:

- you and the prosecutor both want a report,
- the judge thinks that you are suffering from a physical, mental, emotional or psychological problem, or a learning disability,
- you have a lengthy record of offences, or
- you have committed a violent offence.

s. 34(1)

**14. How long does it take to have a medical or psychological report done?**

It depends on your case. The judge will give the expert enough time to write the report before you are sentenced. It can often take several weeks or longer.

**15. Can I be detained while the report is being written?**

Yes. The judge can order you to be detained if the judge thinks it is necessary in order for the experts to examine you. A detention for this purpose cannot be longer than thirty (30) days.

s. 34(3)-(4)

**16. Once the report is finished, who gets a copy?**

Usually you, your lawyer, the prosecutor and the judge will each get a copy. If your parent(s) / guardian(s) attend court with you or if they are interested in the case then they may also get a copy of the report.

s. 34(7)

**17. Do I always get a copy of the report?**

No. The judge can decide not to give you or your parent(s) / guardian(s) a copy of the report if:

- reading the report or some parts of the report would seriously harm your treatment or recovery, or

- something in the report would likely endanger the life, safety, or cause emotional harm to another person.  
s. 34(10)

The report is only kept from you in special cases. It is usually your right to see all reports about you. Even if you or your parents do not personally get a copy of the report, your lawyer will always get a full copy of the report to make sure that your interests are protected.

s.34 (7)

### **18. What if I disagree with the report?**

If you disagree with something in the report, tell your lawyer. Your lawyer will be allowed to ask the expert questions about what the expert wrote in the report. Then your lawyer can ask the judge to not pay attention to all or part of the report.

s.34(8)

### **19. What if I do not co-operate with the expert writing the report?**

If you do not co-operate, the judge could force you to be detained in a place where an expert can examine you. If you still don't co-operate with the expert, the judge may think that you are an unreasonable or difficult person, which could affect your sentence.

s. 34(4)

### **20. Can I get my own expert to write a report?**

If you or your lawyer do not agree with the results of the first report, your lawyer might be able to get a different report written by another expert. You and your lawyer should discuss whether this is possible, and whether it would be a good idea.

## **PART 3: BEING SENTENCED**

### **21. What factors will the judge consider in deciding my sentence?**

The judge may consider a pre-sentence report, a medical or psychological report, and any recommendations made by a conference. The judge will also consider things such as:

- your role in the offence – whether you were a leader, or how much you participated;
- the seriousness of the offence – how much harm was done, whether you meant to cause harm, or whether you were reckless;
- whether the offence involved violence;
- whether you have tried to repay the victim or repair the problem afterwards;
- the time you spent in detention before being found guilty;
- your record, including prior findings of guilt and your participation in extrajudicial sanctions.

s.38(3)

The court will not sentence you to custody unless the judge thinks that is the only option that will work in your case.

s.39

## **22. Can the judge give any sentence he or she wants?**

The judge must follow certain rules when giving you your sentence. You should talk to your lawyer about what the likely sentence is for your charges you have. These are some of the rules the judge must follow:

- a. Sentences for young people must be lower than sentences for adults who committed the same type of offence.
- b. Sentences for young people must be similar to sentences that other young people get for similar offences.
- c. The seriousness of the sentence must be linked to the seriousness of the offence. The seriousness of the sentence must also be linked to how much the young person is responsible for the offence.
- d. A sentence that includes custody is the last option. The judge first has to think of other options that might work in your case. The judge should pick a sentence that does not affect your freedom more than necessary.
- e. The sentence should make you feel responsible for your actions while also helping you to become a positive member of society.
- f. The sentence can encourage you not to do the same thing in the future.

s.38(2)

## **23. What if I have committed more than one offence?**

You may receive a separate sentence for each offence. For example, you might have to pay two different fines; one for each offence. If you receive a sentence for more than one offence at the same time, the total length of the sentences imposed for these offences cannot be more than 3 years, unless one of the offences is murder.

s.42(15)

If you receive a sentence for one offence and then later commit a new offence before the first sentence is finished, the judge can give the maximum sentence for the new offence. In that situation, the total for the old and the new offence could be more than 3 years.

s.42(16)

## **24. If my friend and I are both found guilty of the same offence, will we get the same punishment?**

Not necessarily. The judge considers more than just the offence itself. For example, if your friend has a record and you don't, then your friend might get a more serious sentence. Or if you planned the whole thing and your friend just helped you a little bit, then you might get a more serious sentence.

**25. Will I be able to find out why I received the sentence I did?**

Yes. The judge must give his or her reasons for choosing your sentence, and you have a right to have a written copy of the judge's reasons.

s. 48

**26. What if I disagree with the sentence the judge gives?**

In some situations you may have the right to appeal your sentence – which is different than appealing the finding of guilt. You can also sometimes appeal certain parts of your sentence. There are many important details about appeals that you should discuss with a lawyer. See *Chapter 10 – Appeals*.

## Chapter 8: Aboriginal Youth

This chapter is about some of the special parts of the criminal system that apply to young people who are aboriginal.

### 1. Who is an aboriginal youth under the YCJA?

Youth who are Inuit, First Nations, Indian or Metis are all considered aboriginal youth, whether they are living on or off reserves. There is no official process that is required to be identified as aboriginal.

### 2. Are aboriginal youth given special rights?

Yes, the particular needs of aboriginal youth must be taken into account. This is because in the past young aboriginal people were not treated fairly by the criminal justice system. In addition many aboriginal youth may not have some of the same advantages as other youth. Therefore, at each stage of the criminal justice process, everyone must respect and respond to the particular needs of aboriginal youth.

s. 3(c)(iv)

### 3. Do aboriginal youth use the same courts?

In some places there are special courtrooms designed for aboriginal youth. These courts use a different format than other courts and they try to use approaches that are inspired by practices from different aboriginal communities. You can ask your lawyer or a court worker if your courthouse has a courtroom for aboriginal youth.

### 4. Do aboriginal youth get different sentences?

The circumstances of aboriginal youth must be taken into account when they are sentenced. In the past, too many aboriginal youth ended up in custody. This means that the judge must consider any factors that help to explain why the young person committed the offence. These factors might include low income, poor housing, lack of education, loneliness and other stresses in the community.

If there is a pre-sentence report (see *Chapter 7 – The Sentencing Process*), the report must include information about your experience as an aboriginal person. This is sometimes called a “*Gladue Report*” or it might just be a *Gladue* portion of the pre-sentence report.

s. 38(2)

*R. v. J.L.M.*, [2005] SJ No 362

### 5. What sentencing options are available to aboriginal youth?

Judges and prosecutors should be aware of alternative forms of sentencing for aboriginal youth, especially those which are connected to the aboriginal community. This may include such things as sentencing circles and other forms of restorative justice. These alternatives are meant to heal the entire community, including the offender and the victim, instead of only focusing on punishing the offender.

*See also Chapter 9 – Types of Sentences.*

## Chapter 9: Types of Sentences

This chapter explains all of the types of sentences that a young person can get. There are five parts:

- Part 1 explains all of the sentences that don't include custody.
- Part 2 has important information about sentences that do include custody.
- Part 3 explains all of the sentences that include custody.
- Part 4 is about different situations that might come up while in custody.
- Part 5 is about adult sentences.

### **PART 1: SENTENCES THAT DON'T INCLUDE CUSTODY**

#### ***A. REPRIMAND***

A reprimand is a stern lecture or warning from the judge.

#### ***B. ABSOLUTE DISCHARGE***

An Absolute Discharge means that the judge will find you guilty and you will have a youth justice court record, but you will not have a youth criminal record. There will be no additional punishment and you will be free to go without any other conditions.

#### ***C. CONDITIONAL DISCHARGE***

A Conditional Discharge is similar to an Absolute Discharge except that you will have to follow certain rules or conditions for a period of time. Usually someone connected to the court will supervise you while you are required to follow the rules or conditions. If you do not follow the rules or conditions, the judge may choose to: discharge you, order that you complete your conditions, attach new conditions, or give you a completely different sentence.

#### ***D. FINES***

The judge can order you to pay a fine of up to \$1000. Sometimes you can work to pay off your fine. If you can't afford to pay the fine right away you can ask the judge for extra time to pay the fine. You might be allowed to pay off the fine by earning credits while working in a special program (if such a program exists where you live).

#### ***E. COMPENSATION***

Compensation is when you are ordered to pay someone money. This might happen if you caused any damage to property, caused the person to lose a chance to earn money, or caused a person physical injuries.

#### ***F. RESTITUTION***

Restitution is when you are ordered to return or replace any property that you damaged or took wrongfully.

#### ***G. BUY IT BACK***

If you sold stolen property to someone who did not know it was stolen, you may be ordered to buy it back so that you can return it to the rightful owner.

### **H. PERSONAL SERVICE**

The judge can order you to spend up to 240 hours doing work for the victim. The hours can be spread out over one year. The kind of work you do will depend on what the victim needs. For example, you might be ordered to paint a wall if you put graffiti on the wall. The judge must think that you are the right kind of person for this sentence and the work cannot interfere with your school or employment. The judge cannot make this part of your sentence unless the victim agrees to it.

### **I. COMMUNITY SERVICE**

The judge can order you to do up to 240 hours of work for a community organization such as a place of worship (like a church or a temple), hospital, nursing home, or a city or town department. The hours can be spread out over one year and you will be supervised and required to report to someone. You can make suggestions about what you would like to do. Speak to your lawyer so they can help you present your ideas to the judge. The work cannot interfere with your school or employment, and the judge must approve the organization that you work for.

### **J. PROHIBITION ORDER**

This is when the judge says that you are not allowed to have something in your possession or that you give the item(s) to the police. These orders are usually about weapons. If you are ordered not to use a weapon, you cannot use the weapon for any reason, even hunting. In some situations the judge is required to give you a prohibition order, such as when your offence involved violence or a weapon or for certain drug offences. The prohibition order will last for at least two years. If you are put in custody, the order will last for two years after you leave custody.

### **K. PROBATION**

Probation is when you are allowed to go home but you are required to follow certain rules or conditions for a period of time. You will usually have to report to a probation officer and the probation officer will stay in touch with you to make sure you are not having problems. Probation can last for up to two years for a single offence or up to three years for multiple offences. Once probation is finished, your case will be over and you will not have to go back to court for that offence.

The rules and conditions that you will always have to follow are that you must:

- “keep the peace and be of good behaviour” – meaning that you will not break any laws or cause trouble; and
- appear in court if you are told by the court to do so.  
s.55(1)

The rules and conditions that **might** also be required are that you:

- report to and be supervised by a probation officer;
- tell the court if you move or change schools or change jobs;
- don’t leave town, the province, territory or country;
- try to get and keep a job;
- go to school, training, or recreation program

- live with a parent or a responsible adult who will take care of you;
  - live at a place chosen by the provincial director;
  - don't have any weapon, ammunition, device or explosive; or
  - other conditions such as a curfew, or that you obey the rules of the house wherever you live.
- s.55(2)

You will have to sign the probation order. If there is anything that you do not understand you should ask the judge about it. You should not sign a probation order if there is something that you do not understand.

If there is a rule or condition you cannot follow, tell the judge before the order is made. If something in your life changes, the judge can change a rule or condition for you. Ask your lawyer to help if you need a rule or condition changed.

If you break a rule or condition, your probation officer or someone else can tell the police. The police can charge you with a new offence: "failure to comply with probation". The judge will take this charge seriously because it means you disobeyed the judge. You could get sentenced to custody and the new offence will be added to your youth justice court record. Call your lawyer right away if you are charged with failure to comply.

#### ***L. INTENSIVE SUPPORT AND SUPERVISION PROGRAM***

You will be closely monitored and supervised in this type of program which is designed to help you to change your behaviour. The judge may use this sentence instead of a custody sentence if the judge thinks you are suitable for the program. This is only available in some places.

#### ***M. NON-RESIDENTIAL PROGRAM***

Sometimes this is referred to as an attendance program and is designed to help you to change your behaviour. For example, a judge could order you to go to a drug or alcohol treatment program or a literacy program. You will not be monitored or supervised as closely as in the intensive support and supervision program (see

above). This program can last up to 240 hours spread out over six months and is only available in some places.

## **PART 2: IMPORTANT INFORMATION ABOUT SENTENCES THAT INCLUDE CUSTODY**

### **1. What kinds of custody are there?**

There are two main levels of custody facilities for young people: open and closed custody. Open custody facilities are places where young people are required to live under strict rules but they are not usually locked in. Closed custody facilities are places where you are locked in and cannot leave, sometimes called jails.

## **2. Will I be in custody with adults?**

If you are under 18, you will be held in a place separate from where adults are being held. If separate buildings are not available, you may be held in the same building as adults but will be held in a separate area from the adults. If you are still in custody when you are 18, you can be transferred to an adult facility if the judge thinks it is appropriate.

s.30 (3); 30(4)

## **3. What is included in a custody sentence?**

Each custody sentence has two parts. In the first part of your sentence you will be in a custody facility. In the second part of the sentence you will be back in your own community under supervision. The supervision part will be half the length of the custody part. For example, if you spend 10 months in custody, there will be 5 months of supervision when you go home.

In certain cases, the prosecutor can ask the judge to order that you spend the entire time in a custody facility even though you were originally supposed to spend the second part under supervision in your own community. This will only happen if the judge thinks that you are likely to commit a serious violent offence before the end of your sentence, or that the conditions of the supervision part of your sentence would not stop you from committing another offence.

s.98

## **4. What does the supervision part of the sentence include?**

The judge will make an order about what conditions will apply to your supervision. They must include the following:

- keep the peace and be of good behaviour; this means that you must stay out of legal trouble;
- report to the provincial director or anyone the provincial director tells you to report to;
- if you are arrested or questioned by the police, inform the provincial director;
- tell the provincial director where you are living,
- tell the provincial director if there is a change in your address, your school, your work, your family situation, or your financial situation;
- tell the provincial director if there is any change that might make it harder for you to obey the rules and conditions; and
- do not own or have any weapon, ammunition, or explosive unless the provincial director gives you permission in writing.

s.97(1)

There can also be other rules added to the ones mentioned above. If there is any rule or condition that you do not understand, you should ask for an explanation. Keep asking until you understand.

s. 97(3)

## **5. What is an “intermittent custody” sentence?**

If the custody plus supervision parts of your sentence total less than 90 days, the judge can order that you serve the sentence “intermittently” which usually means that you only go into custody on weekends. During the week you do something else that is important like go to school or work. This is sometimes called “weekend jail” and is only available in some places.

s.47

#### **6. Who decides what level of custody I would go to?**

A person called the “provincial director” makes this decision. The provincial director is a government official who works for the province or territory. This person is involved in making sure that the all youth custody facilities work properly.

s. 85(3)

#### **7. How does the provincial director decide which level of custody I will get?**

You will get the level of custody that will limit your freedom as little as necessary. The provincial director will consider:

- the seriousness and circumstances of the offence;
- your needs, including how close you would be to family, school, employment and support services;
- the safety of other young people in custody;
- the interests of society;
- where the best programs are available for you available; and
- whether you are likely to try to escape.

s.85(5)

#### **8. What if I think I should be in different level of custody?**

You have the right to ask a “review board” to look at your situation to see if a lower level of custody is appropriate.

s.87

### **PART 3: SPECIFIC SENTENCES THAT INCLUDE CUSTODY**

#### ***N. GENERAL CUSTODY AND SUPERVISION***

The maximum amount of custody time plus supervision time is usually 2 years. However, if an adult could have been sentenced to life in jail for the same offence that you committed, then the maximum amount of custody time plus supervision time is 3 years.

#### ***O. CUSTODY AND SUPERVISION FOR SERIOUS OFFENCES***

If you are found guilty of attempted murder, manslaughter, or aggravated sexual assault, the maximum amount of custody time plus supervision time is 3 years.

#### ***P. DEFERRED CUSTODY AND SUPERVISION***

Deferred custody means that the judge will order you to start the supervision part of your custody first. The custody part of your sentence will not happen as long as you follow the rules and conditions given to you by the judge. The rules you will have to follow are intended to keep you out of trouble and to encourage you to change your

behaviour. If you break the rules the judge can order you to go to a custody facility just like a regular custody and supervision order (described in *Section N.* above). The judge will only think about this “deferred” option if you did not seriously hurt anyone during the offence. The maximum amount of time under this type of sentence is 6 months.

s.42(5)

#### ***Q. CUSTODY AND SUPERVISION ORDER FOR MURDER***

For first degree murder, the maximum custody time plus supervision time is 10 years. There is a maximum of 6 years in custody plus 4 years under supervision.

For second degree murder, the maximum custody time plus supervision time is 7 years. There is a maximum of 4 years in custody plus 3 years under supervision in your community.

#### ***R. INTENSIVE REHABILITATIVE CUSTODY AND SUPERVISION PROGRAM***

This type of sentence can only be used if you have committed a serious violent offence or if you have a history of trying to seriously hurt other people. The judge will only use this type of sentence if the judge thinks that you have a psychological or emotional disorder that someone can help you with and there is a treatment plan developed for you. Both the custody part and supervision part of your sentence will be part of the treatment plan. The maximum amount of time under this type of sentence is the same as described above in *Sections N. to Q.*

## **PART 4: SITUATIONS WHILE I’M IN CUSTODY**

### **1. Am I ever allowed to leave custody?**

There are two reasons that you can be given permission to leave custody. You may be given permission to leave custody to go to school or work on specific days or to participate in a particular program, or you may be given permission to leave custody on a “reintegration leave” (see below). Both of these options can be taken away if things do not go well while you are out of custody.

s.91

### **2. What is “reintegration leave”?**

The provincial director can give you permission to leave custody for up to 30 days under specific rules and conditions. This can be for specific days and times of the day. It can be for different reasons, such as:

- something important happening with you such as school, training or work,
- helping out your family at home,
- it would be helpful as part of your treatment, or
- it would be helpful to you in settling back into your community.

s.91

### **3. I am turning 18 soon. Will I be moved to an adult facility?**

If you turn 18 while you are already in custody, the provincial director can ask the judge to have you moved to an adult facility. If that happens you have a right to tell the judge where you prefer to be and the judge will decide where you should be. The judge will only move you to an adult facility if it is in your interest or in the public's interest, and if you have more than two years left on your sentence.

s.92(1), 92(2)

### **4. I am turning 20 soon. Will I be moved to an adult facility?**

If you turn 20 while you are in a youth custody facility, you will be moved to an adult facility unless the provincial director decides that you can stay in the youth custody facility.

s.93

### **5. Can I see my friends and family while I am in custody?**

Yes, your friends and family are usually allowed to visit you during specific hours and under certain rules and conditions while you are at the youth custody facility.

### **6. What if I am having problems or if I am being harassed by people or staff in custody?**

These are the people you can tell about the situation:

- The staff or supervisor of the custody facility.
- A youth worker or community agency staff member.
- Your lawyer.

You can contact the provincial Child and Youth Advocate if you are in Alberta, British Columbia, Manitoba, Newfoundland, Ontario Quebec, or Saskatchewan. It is their job to ensure that all young people in custody are being treated properly.

You can contact the provincial Ombudsman if you are in British Columbia, Manitoba, Newfoundland, Ontario, Quebec, or Saskatchewan, or the Yukon. It is their job to investigate complaints against government services and agencies, including custody facilities.

### **7. What if I run away from my place of custody?**

This is a serious matter. It is a criminal offence to "escape lawful custody" and you will likely be charged. If you are found guilty you will probably get a longer time in custody, and it will add to your Youth Justice Court record.

## **PART 5: ADULT SENTENCES**

### **1. When can I be given an “adult sentence”?**

By default, all young people who are found guilty will get a youth sentence. You will not have to go to an Adult Court, you will always appear in Youth Justice Court before a Youth Justice judge.

You can only be given an adult sentence if you are over 14 years of age and the prosecutor convinces the judge that you should get an adult sentence.

The prosecutor will figure out what kind of punishment an adult could have been given for doing the same thing that you did. If an adult could have been given more than two years in jail, then the prosecutor can ask the judge to give you an adult sentence. If an adult could not have been given more than two years in jail, the prosecutor cannot ask the judge to give you an adult sentence.

s. 64

### **2. What information will the judge use to decide whether to give me an adult sentence?**

If the prosecutor asks the judge to give you an adult sentence, you and your lawyer will get a chance to give your opinion to the judge. The judge will listen to everyone’s opinion, including your opinion, your lawyer’s opinion, your parents’ opinion and the prosecutor’s opinion. The judge will also look at the pre-sentence report (see Chapter 7 – Sentencing Process). s. 71, s. 72(3)

### **3. What will the judge consider in deciding whether to give me an adult sentence?**

The judge will only give you an adult sentence if they think there are no youth sentences that are long enough to hold you accountable for your behaviour. Also the judge will only give you an adult sentence if he or she thinks that you think and act more like an adult than a young person. s.72(1)

### **4. What difference does it make if I get an adult sentence?**

These are some of the differences:

- Your record will become an adult criminal record. This is a permanent criminal record that can make it difficult for you to get a job or travel in the future. s. 117
- The media and other people can publish your identity. s.110(2)(a)
- You will have to follow the laws regarding adult parole. s. 77
- If you are 18 or older at the time of your sentence, you could be sent to an adult facility or a federal penitentiary. s. 76

### **5. What if I think the judge was wrong in giving me an adult sentence?**

You have the right to appeal the decision to give you an adult sentence. Talk to your lawyer about an appeal. See *Chapter 12 – Appeals*

s. 72(5)

## Chapter 10: Records, Fingerprints, Photos, DNA

This chapter will cover records and why they are important.

Part 1: Types of records: Police, Youth Court, Government and DNA.

Part 2: Who can see your records.

Part 3: How records can affect your future, including employment and travel.

### Part 1: Understanding Records

#### 1. What is a record?

A record is any document or file that contains information about you. These records can be in paper form, electronic form, or a combination of the two. There are many types of records that are kept for different reasons. However, there is no such thing as a “Criminal Record” for a young person in Canada and only adults are given “Criminal Records. Youth have “Youth Court Records” – more information on this below.

#### 2. What is a “Police Record”?

A police record contains all the information kept by the police and the police can check these at any time. A police record may include information about:

- arrests,
- investigations,
- suspected criminal activity,
- extrajudicial measures,
- extrajudicial sanctions,
- findings of guilt (for youth),
- convictions (for adults),
- fingerprints,
- photographs,
- 911 calls,
- interviews, and
- witness and victim reports.

s.115

#### 3. What is a “Youth Court Record”?

A youth court record contains all the information the court keeps about young people who go to court. The youth court record includes information about:

- your charges,
- the outcomes of your cases,
- findings of guilt,
- sentences, and
- reports that were given to the judge (for example, a pre-sentence report).

s.114

#### **4. What is a “Government Record”?**

A government record contains all the information kept by a government agency or government department. Some government agencies and departments work in connection with youth courts, for example, by running youth programs or helping with investigations. Those government agencies may keep the same kinds of records as the youth court record, and may also keep other information about you.

s.116

#### **5. What are “DNA Records”?**

If you found guilty of certain offences, you will be required to give a DNA sample. For other offences, the prosecutor can ask the judge to order you to give a DNA sample. If your case will or might require you to give a DNA sample, you should talk to a lawyer about it.

Usually, the person taking the DNA sample will get your DNA by taking some of your saliva, a strand of your hair, or pricking your skin to collect some blood. If you provide a DNA sample, someone working for the government will use the sample to create a report which will be kept in your “DNA Record.”

R. v. K.M., 2011 ONCA 252

s. 487.05 and s. 487.051 of the *Criminal Code of Canada*

### **Part 2: Accessing the Records**

#### **6. Can I get copies of my records?**

Yes. You have a right to get copies of all of your records at any time before or after your case is finished.

s.119(1)(a); s.124

#### **7. Who else can see my records?**

Only the people listed in the *Youth Criminal Justice Act* are allowed to see your records. The list of people includes the following:

- your lawyer,
- your parents,
- the victim(s),
- an adult who is assisting you,
- the police,
- judges,
- people helping the court (for example, in a conference), and
- people dealing with your sentence if you are found guilty.

s.119(1)

In some situations, the people in this list are allowed to tell others about parts of your Youth Court Record. For example, the police can tell people in charge of supervising you and for safety purposes which can include telling your school about the rules you are supposed to follow if it is necessary to keep other people safe or if the school is required to help you obey the rules. s.125

In very special cases, a judge can give other people permission to see the records. However, the judge will have to take your right to privacy very seriously and cannot give anyone permission to see the records without a good reason.

s. 119(1)(s)

*Toronto Star Newspaper Ltd. v. Ontario*, 2012 ONCJ 27

### **8. Who can see records of my participation in Extrajudicial Measures or Extrajudicial Sanctions (EJM or EJS)?**

The people listed in Question 2 may be allowed to see what extrajudicial sanctions you were given. For other kinds of extrajudicial measures (not extrajudicial sanctions), only the police or people involved in a conference can see records of your extrajudicial measures. See *Chapter 5 – Extrajudicial Measures and Extrajudicial Sanctions*.

## **Part 3: How Records Can Affect Your Future**

### **9. Is my Youth Court Record destroyed when I turn 18?**

No. Your records are not automatically destroyed at the age of 18.

### **10. How long will my Youth Court Record last?**

The length of time your Youth Court Record will last depends on the nature of the offence and the outcome of your case. This period of time is called the “access period.” Here are some of the access periods for Youth Court Records:

- a) If you are given an extrajudicial sanction (EJS), your record is kept for 2 years after you agree to the sanction.
- b) If you are found “not guilty” your record is kept for 2 months after the deadline for an appeal. If there is an appeal you have to wait longer.
- c) If the charges are dismissed or withdrawn or the judge gives you a reprimand, your record is kept for 2 months.
- d) If the charges are stayed, the record is kept for 1 year.
- e) If the judge gives you an absolute discharge, your record is kept for 1 year from the day you were found guilty.
- f) If the judge gives you a conditional discharge, your record is kept for 3 years from the day you were found guilty.
- g) If you are found guilty of a less serious offence (summary offences), your record is kept for 3 years from the end of the sentence.
- h) If you are found guilty of a more serious offence (indictable offences), your record is kept for 5 years from the end of your sentence.

- i) If you are found guilty of another offence before the time has expired on your first record, then the time will start running again. The new time will be either 3 years or 5 years, depending on if it is a serious offence or less serious offence.

### **11. What happens if I get convicted of a crime after I turn 18?**

After you turn 18, you are considered an Adult and if you are found guilty, you will be “convicted” of an offence. If this happens before the access period on your Youth Court Record has passed, your Youth Court Record is added to your Adult Criminal Record and will last forever.

s. 119(9)

### **12. What happens at the end of the access periods?**

At the end of the relevant access period, your records can not be given to anyone else. Anyone who knows about your records is not even allowed to tell anyone else about it. Police records have to be physically destroyed. Other records can either be destroyed or permanently sealed so that no one else can see them. s. 128(1)-(7) In special cases, a person can ask a judge to let him or her see the record after the access period. The judge will decide whether to let the person see the record, but the record can not be used against you. s. 123

### **13. How long will the police keep my fingerprints, photographs and DNA samples?**

Your fingerprints and photographs are kept by the local police and by the RCMP. DNA records are kept in the National DNA Databank.

As noted in Question 12, local police records should be destroyed at the end of the access period. RCMP records are automatically destroyed at the end of the access period. The bodily samples for your DNA record and the DNA record in the databank are also destroyed at the end of the access period.

If you were charged with a serious “indictable” offence, then the RCMP can keep your fingerprints and photographs for an extra 5 years beyond the access period. This is not true for DNA records, which must be destroyed at the end of the access period even for indictable offences. s. 120(3)

If you were charged with a serious violent offence and the prosecutor is asking the judge for an adult sentence, then the RCMP can keep your fingerprints and photographs forever. s.120(3)

*\*\*\*The law about fingerprints, photographs, and DNA samples is complicated. If you have any questions you should ask a lawyer.*

### **14. What happens at the end of the access periods?**

At the end of the relevant access period, your records can not be given to anyone else. Anyone who knows about your records is not even allowed to tell anyone else

about it. Police records have to be physically destroyed. Other records can either be destroyed or permanently sealed so that no one else can see them.

s. 128(1)-(7)

In special cases, a person can ask a judge to let him or her see the record after the access period. The judge will decide whether to let the person see the record, but the record can not be used against you.

s. 123

### **15. What if people who have my records use them after the access periods?**

It is against the law to use records after the access period and they may be charged and found guilty of an offence. If you think your record has not been sealed or destroyed at the end of the access period, you should check to make sure this has been done with the RCMP and local police. You can ask a lawyer for help with this.

### **16. On a job application, how can I answer the question, “Do you have a Criminal Record?” or “Have you ever been convicted of a criminal offence?”**

You can honestly answer “no” to these questions. You may have a Youth Justice Court record (Youth Record) but you do not have a “Criminal Record” unless you are charged and found guilty (“convicted”) for an offence you committed after you turn 18.

### **17. What if a potential employer asks for a “Police Record Check”?**

Employers may ask for your consent to do a background check during your application process. The depth of the record check will depend upon the type of job that you are applying for, and each police service has a different procedure for disclosing records they have. Although it is illegal for an employer to ask about your youth record, the police may disclose information to you with your consent. It is then up to you whether you want to give it to a potential employer. Unfortunately, the decision you make may affect your chances of getting the job.

JFCY believes that this disclosure is contrary to the rules in the *Youth Criminal Justice Act*. People might assume that you are voluntarily giving consent to access and subsequently disclose your record, when in fact, to be considered for gainful employment, you do not have a choice but to consent.

If the access period for your record has expired and a police record check shows a record of that incident, you should contact the police and ask them to give you with a clean record as required by the *YCJA*. A lawyer can also help you do this.

## Chapter 11: Appeals

### 1. What if I think the judge was wrong to find me guilty?

If the judge finds you guilty and you disagree with the judge, you may appeal to a higher level court. This means you are asking the judge(s) of the higher level court to figure out if the first judge was right or wrong. If the judge(s) of the higher level court thinks the first judge was wrong, then you can get a new trial with a new judge. If the higher level court thinks the first judge was right, then the first judge's decision will be approved. s. 37(1), s. 37(5). The prosecutor can also appeal if the prosecutor thinks the judge did not follow the law correctly.

### 2. What if I only disagree with the sentence?

If you think the judge was right to find you guilty but that the sentence was wrong, you can appeal just the sentence. If the appeal judge thinks that your sentence is unreasonable, the appeal judge can give you a different sentence. The prosecutor can also do the same thing.

### 3. Can I get my sentence changed without an appeal?

Yes, after some time has passed, you can ask a judge to look at your situation again to see if the sentence can be changed. This is called a "sentence review". The amount of time you will have to wait before you can ask the judge for a sentence review will depend on your situation. The judge may ask for a progress report from the people who have been supervising you. s. 59, s. 94

If you are sentenced to custody for more than 1 year, there will be an automatic sentence review of your youth sentence every year. s. 94

### 4. What other things can I appeal?

These are some of the other things you can appeal:

- the decision to give you an adult sentence, s.72
- the decision to allow your identity to be published, s. 75(2)

If you want to appeal either of these things, you have to also appeal your sentence at the same time. s. 37(4)

You can also appeal the decision to keep you in custody instead of serving part of your sentence under supervision in your community. s. 101(1)

### 5. Will I have to stay in custody during an appeal?

Under certain circumstances, even if you got custody as your sentence, the higher level court can let you out of custody while the appeal is going on. If you are in custody, you are allowed to go to court on the day of the appeal if you want. s. 37; s. 679 and s. 688 of the *Criminal Code of Canada*

### 6. How do I know whether to appeal?

You should get advice from a lawyer to see if you have a legal reason to appeal.