

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 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*.