

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)