

## **Chapter 7: Sentencing After Being Found Guilty**

### **1. What happens when I am found guilty?**

The judge may decide that there should be a conference\* held to consider what an appropriate punishment would be (see question #3 below). The judge will also consider anything that you and your lawyer, your parents / guardians, and the prosecutor\* tells the judge about you and you will all have a chance to make suggestions to the judge about the appropriate sentence for you. (See Youth Sentences for a list of the kinds of sentences you could get) s.41 and 42

### **2. May the Judge consider anything else in deciding the appropriate punishment?**

Yes. The judge may also consider a pre-sentence report\*. The judge could also ask for a medical or psychological report,\* and any other relevant information. s.40 (See questions #12-20 for more information about a medical or psychological report.)

## **Conferences**

### **3. What is a conference?**

A conference is a group of people who meet and then give advice to the judge about many different parts of the court process including sentencing. Many different people may sit on the conference. It may be the same as a youth justice committee\* if there are youth justice committees in your province or territory. It may have various people from the community involved, including 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. s.19

## **Pre-sentence Reports**

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

It is a report about your personal life, including your family life, or your school life, or employment, past and present. Someone will investigate and give a report to the judge (usually in writing) if the judge wants more information about you before deciding on a sentence. Often the reports are prepared by probation officers who may have an opinion about what sentence would be best for you. The judge may want a pre-sentence report no matter what sentence he or she is thinking about giving you, but the judge must get a pre-sentence report if he or she is thinking about giving you time in custody\*.

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

The person who writes the report will meet with you, and other people including your parents / guardians, other family, teachers, other adults who know you, the victim, and will include in the report any relevant information gathered in these meetings. s. 40(2) The report will also contain:

- the recommendations from a “conference”, if one was held,
- your age, maturity, character, behaviour, attitude, and willingness to make up for your offence,
- your plans for the future, especially for getting yourself together,
- your history of offences and sentences,
- any history of alternative measures, or extra-judicial measures programs,
- any services available in your community and your willingness to participate in those services,
- your relationship with your parents and / or other family members, and
- your school and employment record.

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

Usually a probation officer.

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

Yes. You and your lawyer, and the prosecutor\* will get a copy, and your parent(s) / guardian(s) may get a copy of the report. s.40(5)

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

You will have a chance, through your lawyer, to question, or “cross-examine” the person who wrote the report. 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 orders that a pre-sentence report be prepared, your case will be adjourned\* to give the person time to prepare the report. So, even though you have been found guilty you will still 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. Are there other kinds of reports that the judge may order to be prepared?**

Yes. The judge may want to have a medical or psychological report about you. s.34

**13. What are these reports?**

A medical or psychological report is prepared if you and the prosecutor\* agree, or if the judge thinks that you are suffering from a physical, mental, emotional or psychological problem, or a learning disability. It can also be prepared if you have a lengthy record of offences or have committed a serious violent offence. The report is written by a qualified expert, for example a doctor or a psychologist who will meet with you and examine you. s. 34(1)

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

It depends on your case. The judge will adjourn your case to give the expert time to write the report.

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

Yes. The judge can order you to be detained if necessary to get the assessment done. The detention\* cannot be longer than thirty (30) days. s.34(3)(4)

**16. Once the report is prepared, do I get a copy?**

Usually you will get a copy of the report. Your lawyer, the prosecutor,\* and sometimes your parent / guardian, and of course the judge will also get a copy of the report. s. 34(7)

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

No. If the judge believes that giving you (or your parents) the report or some parts of the report would seriously harm your treatment or recovery, or would likely endanger the life, safety, or cause emotional harm to another person, then the report or a part of the report can be kept from you. This should only happen for very special reasons because it is usually your right to see all reports about you. Your lawyer will always get a full copy of the report to make sure that your interests are protected. s. 34(9)

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

You – through your lawyer – will get a chance to question, or cross-examine the person who wrote the report. In this way you can show why you think that the judge should not pay attention to all or part of the report. s.34(8)

### **19. What if I do not co-operate in the preparation of the report?**

Although your consent is necessary in some situations, the judge can still order you to go for an examination and may put you in custody\* to make sure it happens. You could decide not to co-operate when you are being examined. This may not be a good idea because it may make the judge think that you are unreasonable or difficult, which could influence your sentence.

### **20. Are there any other reports that may be prepared?**

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

### **Sentencing possibilities**

There are many sentencing options under the Youth Criminal Justice Act, and they can be quite complicated. For detailed information about sentences see *Chapter 9 – Specific Youth Sentences*.

### **21. What kinds of youth justice court sentences can a judge give for an offence? S.42(2)**

- a.** The judge could give you a **reprimand**. Reprimand is not defined, but it probably means the judge will tell you why your behaviour was wrong and needs to change.
- b.** The judge could give you an absolute **discharge**\*. This means that except for having a Youth Justice Court record there will be no other punishment.

- c. You may be given a **conditional discharge**, which means that you will have to fulfil certain conditions that the judge orders, and you may have to be supervised for a period of time.
- d. You may be ordered to pay a **fine** of not more than \$1000. Sometimes you can work your fine off.
- e. You may be ordered to pay money to another person for any loss or damage that they suffered because of your actions, this is called **compensation**.
- f. You may be ordered to return or replace any property that you took or damaged, this is called **restitution**.
- g. 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. You may be ordered to do **personal services** to compensate for loss or damage that you caused.
- i. You may be ordered to perform **community services** that will be supervised.
- j. The judge may order forbidding you from having something, or that you give the thing over to the police – this is called a **prohibition order**, and is most often about weapons. There are some situations where the judge is required to give you a prohibition order.
- k. The judge may put you on **probation\*** for up to two years.
- l. The judge could order that you be put into an **intensive support and supervision program** if a program like that exists where you live. See Chapter 8, part 5
- m. You may be ordered to go to a **non-residential program** for up to 240 hours over no more than 6 months, if such a program exists where you live. Examples are a drug or alcohol treatment program or a literacy program.
- n. The judge may make a **custody\* and supervision order\***. For the first part of the sentence you will be in jail at a youth custody facility, and the second part, which is half as long as the first, you will be under supervision in the community. The judge sets these portions. The whole period of time cannot be more than two years in most cases. So the maximum would be 16 months in jail and 8 months under supervision in the community. If you commit an offence where an adult could get life your sentence could be for a total of three years, or 2 years in jail and one year under supervision. Before the end of the custody part of your sentence, the prosecutor\* can ask the judge to order that you spend the rest of

your sentence in custody even though you were originally ordered to have the second part under supervision in the community. s.98

If the period of custody that the judge orders is not more than 90 days, the judge can also order that you serve the sentence **intermittently**. This can only be ordered if there is a youth custody facility that could handle this. It means that you only go to jail on weekends, or on week days in order for you to be able to do something else that is important like go to school or work. s.47

**o.** If you are found guilty of attempted murder, manslaughter, or aggravated sexual assault, you would be subject to the 3 year maximum sentence described above, but before the end of the custodial part of your sentence the prosecutor could ask the judge to order that you spend the rest of your sentence in custody even though you were originally ordered to have the second part under supervision in the community. So you could spend all three years in jail.

**p.** If your offence does not involve serious violence, the judge may order that you receive a **deferred custody and supervision order**. This means that you will be subject to conditions and supervision in the community. The maximum period of time under this type of sentence is 6 months. If you do not comply with conditions of your order, the conditions may be changed and you may be ordered to serve the remaining time as a custody\* and supervision order\* (described above in Section n). s.42(5)

**q.** If you are found guilty of first degree murder you can be sentenced to 10 years, with a maximum of 6 years in jail and 4 years under supervision in the community. But before the custody\* part is finished the **prosecutor\*** could ask a judge to order that you continue to be held in custody for the rest of your sentence. If you are found guilty of second degree murder you can be sentenced to 7 years, with a maximum of 4 years in custody and 3 years under supervision in the community. Again, before the custody part of your sentence is finished the prosecutor could ask the judge to order that you continue to be held in custody for the rest of your sentence.

**r.** If you are found guilty of first or second degree murder, attempted murder, manslaughter, aggravated sexual assault, or if you have at least 2 other serious violent offences on your record, in some special circumstances the judge could order you into an **intensive rehabilitative custody and supervision program** if you have a mental health problem.

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

You may receive a separate sentence for each offence. This means, for example, that for 2 offences you could have 2 fines to pay. Where you have committed more than one offence the combined time of the sentence imposed for

these offences cannot be more than 3 years, except for first or second degree murder.

If you commit a new offence before the sentence for your old offence is finished, the judge can give the maximum sentence for the new offence. So, the combined total for the old and the new offence could be more than 3 years

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

In addition to the pre-sentence report\*, other reports, and any recommendations made by a conference\*, the judge will also consider things such as:

- your role in the offence - whether you were the leader, or how much you participated,
- the seriousness of the offence - how much harm was done, and whether the harm was intentional, or you should have known that harm would be done,
- whether the offence involved serious violence,
- any reparation that you have made to the victim or the community,
- the time spent in detention\* before being found guilty,
- your record - Youth Justice Court record, or record of participation in alternative measures or extrajudicial measures\*, and
- whether reasonable alternatives to custody\* have been considered.

The court is not supposed to order custody just because there isn't another place to take care of you. s.38(3)

### **24. Can the judge give any punishment that he or she thinks is right for the offence?**

Yes, but the sentences must be within certain limits, and in line with certain principles that the judge must consider. You should talk to your lawyer about what the likely sentence is for the offence with which you are charged. In addition to the limits outlined in question #21 above, here are some other important limits and principles. s.38(2):

**a.** You cannot get a more serious sentence than the maximum sentence that an adult could get for the same offence.

**b.** The sentence you get must be similar to sentences that other young people would get for an offence in a similar situation.

**c.** The seriousness of the sentence must be linked to the seriousness of the offence and the extent that the young person should be held responsible.

**d.** The sentence should be the least restrictive option that is still a meaningful response to the offence, and promotes the young person's healthy participation in the community.

**e.** The sentence should be the one that is most likely to rehabilitate the young person, promote a sense of responsibility, and acknowledge the harm done to the victim(s) and to the community.

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

Not necessarily. As mentioned before, the judge considers more than just the crime. For instance, 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 showed up and participated at the last minute, then you might get a more serious punishment.

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

Yes. The judge must give his or her reasons for giving the sentence, and you have a right to have a copy of the reasons if you ask for one. s. 39(9), s. 48

**27. 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 12 – Appeals*.