

The information in this pamphlet is general legal information only. You should get legal advice about your own situation.



Metropolitan Action Committee on Violence Against Women and Children

158 Spadina Road
Toronto, ON, M5R 2T8
Phone 416-392-3135
Fax 416-392-3136
www.metrac.org
info@metrac.org

Resource funded by



Produced December 2008

court records, police records, government records, and records kept by professionals or organizations while carrying out extrajudicial measures or sentences are also protected. Please note that there some exceptions.

First court appearance. If you do not have a lawyer, the judge should ask you if you want a lawyer. You can ask the court to help you find a lawyer because you have a right to a lawyer for the whole process. The judge will read the charge(s)

13

against you and your lawyer or the judge must make sure you understand them. If the charges are serious (e.g. murder), the judge must inform you that, if you are found guilty, you may face an adult sentence.

First or second court appearance. The judge will ask whether you plead “guilty” or “not guilty”. Pleading guilty means that you admit to committing the offence the judge read in court. Pleading not guilty means you or your lawyer will argue that you are not guilty of the offence.

14

At trial. The prosecutor (the lawyer against you) will introduce his or her evidence and call witnesses. If you disagree with anything that is said, make notes and tell your lawyer. Your lawyer will have the chance to ask the prosecutor’s witnesses questions. Once the prosecutor is done, your lawyer can call his or her own witnesses to tell the court your side and speak on your behalf. Whether or not you are called as a witness will depend on how you and your lawyer decide to handle the case.

15

Once the judge hears from both sides, s/he will decide if you are guilty or not guilty. The judge may make a decision immediately or take some time to decide. If the judge finds you not guilty, the case is over and you are free to go. If s/he finds you guilty, s/he will have to decide upon an appropriate sentence.

Sentence. The judge will ask for more information, which may include:

- a conference that may involve your workers, police officers, your

16

family, the victim, etc.

- a pre-sentence report, usually prepared by a probation officer. It provides background information about your life.
- other reports, like a medical or psychological report.

You and your lawyer will have a chance to review the pre-sentence report before sentencing, as well as have the opportunity to question the person who wrote it.

Depending on factors such

17

as the type of offence, the conference, and the pre-sentence report, the judge will pick one of many sentence options. It is important to talk with your lawyer about the various options and what they mean.

Aboriginal youth. The YCJA understands that Aboriginal youth are over-represented in the criminal system, and as a result, judges have to respect and address their needs. This means that when you are sentenced, they have to consider recommendations

18

from a “sentencing circle” or other “restorative justice” processes. Rather than focusing on punishing you, the goal is to heal the whole community, including you and the victim.

Appeal. If you and your lawyer disagree with either your guilty verdict or the sentence you got, you have the right to appeal the judge’s decisions. You will probably need a lawyer who specializes in appeal cases.

19

Resources

Justice for Children and Youth

415 Yonge Street, Suite 1203
Toronto, ON, M5B 2E7
416-920-1633
1-866-999-JFCY (5329)
(toll free)

Operation Springboard, Justice Services

(extrajudicial measures and sanctions)
2 Carlton Street, Suite 800
Toronto, ON, M5B 1J3
416-977-0089

Aboriginal Legal Services

803-415 Yonge Street
Toronto, ON, M5B 2E7
416-408-3967

20

Legal Aid Ontario

1-800-668-8258 (toll free)
www.legalaid.ca

Elizabeth Fry Society of Toronto

215 Wellesley Street East
Toronto, ON, M4X 1G1
416-924-3708

Elizabeth Fry Society of Ottawa

701-151 Slater
Street/211 Bronson Avenue
Ottawa, ON, K1P 5H3
613-237-7427

Ontario Women’s Justice Network

www.owjn.org

21

Notes

22



Youth Criminal Justice Act

Young women are much more at risk of being criminalized because of their age and unemployment or underemployment. These factors are viewed by authorities as signs of “anti-social behavior.” Young women who are Aboriginal, immigrant, LGBT, mothers and/or racialized are at higher risk of coming in contact with the law. Young women are more likely to be sent to prison for minor offences because of their economic vulnerability and inequality. Discrimination in sentencing is very

common for young women. As a result, they are often sentenced to custodial care.

Youth Criminal Justice Act (YCJA)

The YCJA applies to young people 12 to 17 years old. It only applies if you break federal laws (criminal and drug laws). It focuses on “rehabilitation” (making people better) and keeping young people out of jail as much as possible.

Can the police stop me for any reason?

Police officers cannot stop and question you unless

they think you:

- have broken or are going to break the law, or
- have information about an offence.

If police officers ask for your name, address, and age, you do not have to answer. You cannot be arrested for refusing to answer questions or provide identification. If you choose to answer, once you have given them the information, ask the police officers why they want to talk to you. However, if the police use force, it

is important not to resist arrest as this can result in a separate charge. If the police stop you while you are driving a car, you must show your driver’s license, car registration, and insurance.

When can the police search me?

They can search your “person” (body) when:

- you give them permission (being silent can be seen as permission);
- you have been arrested;
- they think you have illegal drugs or a weapon; or

• they believe you have liquor and are underage. The police can search your car or house when: you give them permission (being silent can be seen as permission);

- they have a search warrant; or
- they have a “reasonable belief” that an offence is being committed and it would be impractical for them to get a search warrant.

When can the police charge me?

When a police officer believes you have committed an offence, s/he can give you a caution or warning or you can be charged. If the police do charge you, they do not always take you into custody. You and your parents will receive notices explaining:

- the offence(s) you are charged with,
- the date and time of your court appearance,
- the court’s address, and

When can the police arrest me?

Only when:

- they have a warrant for your arrest,
- you have committed an offence,
- you are committing an offence, or you are about to commit an offence.

Please note that you are allowed to make as many phone calls as you need to get a lawyer.

Are there alternatives to being charged?

The police and prosecutor can use “extrajudicial measures” to hold you accountable without creating a criminal record. The measures can include a warning, a caution, or entry into a community program. The police and prosecutor can use “extrajudicial sanctions” which will make you attend a program as a form of punishment. The advantage of extrajudicial sanctions is that you do not have to go through the court system and once you have

What happens if I get arrested?

The police may take you to the police station or give you an “appearance notice.” Once you are arrested, you have the right to be informed of the reason for your arrest, not make any statements to the police, talk to and be represented by a lawyer without delay, and talk to your parents or another adult you trust

You do not have to make any statements to the police before speaking to a lawyer. You can wait to have your lawyer present before you give a statement. It is true that you can give up your right to talk to a lawyer or your parents before making a statement, but it is bad idea. You can tell the police you want to talk to a lawyer and you do not have to say anything else until your lawyer arrives.

Before the police let you go, you may be asked to sign a form promising that you will appear in court at

a particular date and time. If the police decide to keep you in custody, they are supposed to take you before the court within 24 hours or as soon as possible so the court can decide whether to release you or continue to keep you until trial. This is called a “bail hearing”.

What happens if I get detained?

If you are arrested and detained, you will be held until the court orders that you be released. You will be held in a place for young people or at least in an area separate from

adults. After your arrest, your parents or guardians will be informed of where you are being held.

What happens in court?

You will appear in Youth Justice Court – a special court for young people charged under the YCJA. It is important to appear for your court date. “Failing to appear” is a separate offence.

Is your identity protected?

Your name and other information that would identify you cannot be published. In addition, all records, including