

HANDOUT 1: What You Should Know About the Youth Criminal Justice Act

What are the main points of the Youth Criminal Justice Act?

The act is for young people between the ages of 12 and 17 who are in conflict with the law. The main points are:

- Youth are responsible for their actions
- Youth will be held accountable for crimes in a fair manner

Young people are not sentenced in the same way as adults, except in some cases where the crime is very serious (for example, if s/he kills someone). It is important to try to help youth who commit crimes to improve their behaviour, and to avoid any further crimes.



If a young person breaks the law, what rights does he or she have?

Young people have the right to:

- Know the reason for being arrested (The police must tell youth this)
- Remain silent
- Speak with a lawyer, a parent or other responsible adult. (The police must give youth the opportunity to telephone any of these people)
- Not to be kept in a custody centre (jail) while waiting for trial, unless safety is a concern or authorities believe the young offender might not show up for his or her trial
- Be considered innocent until proven guilty and to have a fair trial
- Be dealt with in a timely manner



What will Crown counsel decide to do with a young offender?

The Crown counsel is the lawyer for the government who decides if there is enough evidence to proceed with a criminal charge.

For minor or first offences (for example, shoplifting), Crown counsel might:

- Write a letter to the parents or guardians of the young person so that the family can deal with the problem.
- Refer the young person to a community program or agency for an extrajudicial sanction rather than go to court. (This may include community service, service or repayment to the victim of the offence, courses, counselling, job-finding programs or recreation programs. This is to hold the young person accountable for a wrong doing in a way that is meaningful and promotes rehabilitation and reintegration.

For serious or repeat offences (for example, aggravated assault or armed robbery or for those who have been charged before with minor offences), the Crown counsel will charge the youth and conduct a trial in youth court. A possible consequence for the youth might be custody.

For repeat offenders, 14 years of age or older or charged with serious offences, the Crown counsel might apply to the judge to have the offender sentenced as an adult. If this happens, the young person would be sentenced the same way as an adult and might have his or her name published in the newspaper or other media.



Serious Offences

The most serious crimes are murder, attempted murder, manslaughter, aggravated sexual assault and repeat violent offences. If a youth is 14 (or 15, or 16, depending on the province or territory) and commits one of the most serious crimes, the justice system presumes the youth will get an adult sentence. The burden is on the youth to show why a youth sentence is appropriate to hold him or her accountable.

Victims

In all cases that go to court, victim impact statements can be introduced. These are statements by victims about how the crime has affected them and their families. The rights of the victim are considered under an important part of the process when dealing with youth crime.

HANDOUT 2: Legal Rights for Youth

Stopped on the Street

You do not have to give the police officer your name and address if you are just walking (it is different if you are driving). However, it is a good idea to be courteous and give your name and address.

You do not have to give the police officer your age, but it is a good idea to do so as it lets the officer know that you are a youth. After you have been courteous and given your name, address, and age, you do not have to give any other information to police. You can tell the police officer, "I want to remain silent."



You can be detained (held by police) for a short period of time if a police officer or other person believes you may be involved in a crime. If you are "detained" you are not free to go until the police say so.

If you ask, "Am I free to go?" and the police officer says no, you are being detained. You have the right to be told why you are being detained. Remember the reason the police officer gives you, if he or she gives you one. Get the badge number or name of the police officer so that you will have it if you want to make a complaint.

Arrest and /or Detention

You will know if you are under arrest because a police officer has said, "you are under arrest", or has somehow indicated you are not free to go by physically holding you.

If you are under arrest, and the police ask, you must tell them your name and address. You do not have to give the police officer your age, but it is a good idea to do so.

The police must tell you why you are being arrested unless the reason is obvious – remember what they say so you can tell your lawyer. Do not answer any further questions. You can say: "I want to remain silent."

If you are arrested you have rights that the police should tell you about: You have the right to talk to a lawyer before you say anything to police (other than giving your name, address, and age). The right to talk to a lawyer is called the "right to retain and instruct counsel."

You have the right to talk to your parents or guardian before you say anything to police. You have the right to have a lawyer and your parent(s) or another adult with you if the police question you.

Your Rights in a Car

If you are the driver, you must give the police officer your name and address. Also, you must show the police officer your driver's licence, car registration, and insurance.

A passenger in a car does not need to give their name and address if the car is stopped for a driving matter, unless the passenger is involved in a seatbelt violation.

If drugs are involved or there is evidence any other crime has been committed, a passenger in a car must give their name and address as he/she may be a witness to, or suspect in a crime.

When You are taken into Custody

At the police station you have the right:

- Speak to a lawyer and a parent or other adult in private before you say anything
- Have a lawyer and your parents (or other adult) with you when you make a statement to police

What you need to know

If you say anything about the events the police are looking into, you are "making a statement" – saying something police can use in court.

You are even making a statement if you say you don't know anything about what happened, or say you weren't there or you didn't do it.

What you need to do

If you are arrested, phone a lawyer. If you don't have a number for a lawyer, ask the police for a "duty counsel" number. Duty counsel is a lawyer who will give you free legal advice.

- Do not talk to the police before you get advice from a lawyer
- Do not talk to the police without a lawyer present

Extrajudicial measures

An extrajudicial measure is a way of dealing with a youth who has broken the law, instead of going to court. (Extra = outside of; judicial = court). For non-violent offences, police and Crown counsel have the authority to recommend extrajudicial measures if you accept responsibility for the wrongdoing.

Extrajudicial measures mean you get some punishment for your actions but you will not go through the court system. You have to freely agree to participate in an extrajudicial measures program. You have the right to see a lawyer before making that decision.

You might have to:

- Help clean up the damage you caused
- Write a letter of apology to the person who was affected
- See a counsellor to get some help with your behaviour
- Do some hours of community service

If you complete the program you will not get a youth justice court record.

Searches at School

School officials can search you without your consent. This is because while you are in school they are responsible for your safety and well-being (the law says that they "stand in the place of the parent."). School officials can also search lockers. They must have good reason to do so. Police can search only if they are arresting you, or they have a search warrant, or with your consent. The bottom line is, when you are at school, you and your locker can be searched.

Special Considerations in Sentencing Youth

Aboriginal youth includes Inuit, First Nations, and Métis youth, either on or off reserve. The justice system recognizes that in the past young Aboriginal people have not been treated fairly by the justice system.

The circumstances of Aboriginal youth must be taken into account when they are sentenced. Where it is appropriate, the judge may give youth a sentence that involves support and supervision in the community. The sentence is meant to help the youth grow up and be a responsible member of the community.

At the Border

The time your youth record lasts has nothing to do with turning 18. How old you are when your record is closed depends on how old you were when you were sentenced, and how long the sentence lasted. There are time periods that apply. At the end of these time periods youth records are closed ("sealed") and cannot be disclosed to anyone. Youth are no longer regarded as having committed any offence.

This is different from adult records that are permanent. If you have an open or closed youth record, speak to a lawyer who has experience in youth criminal law before you go to the United States or other countries. You cannot assume that the United States will not know about your record. It is only in Canada that the law says that a youth record has to be closed after a certain period of time.

Other countries follow their own laws, not those of Canada. If another country knows about your youth record, they could keep it in their computer forever.

HANDOUT 3: Overview of the Youth Criminal Justice Act (YCJA)

Introduction

The *Youth Criminal Justice Act (YCJA)* applies to young people who are 12-17 years old. The law says a person is an adult at age 18. At age 18, the YCJA does not apply. Offenders are referred to as "young persons". The overall purpose of the YCJA is to make the public feel safe. Young people must be accountable for their actions which means that they must face the consequences for their wrong-doings. The consequence for the crime must be proportionate to the seriousness of the crime. That means that more serious crimes should have more serious consequences.

Why Do we Have the YCJA?

The YCJA treats youth differently from adults because of their level of dependency, maturity and development.

Principles of the YCJA

- Prevent crime by addressing the circumstances underlying a young person's behaviour
- Rehabilitate and reintegrate young people who commit offences into society
- Ensure that a young person is subject to meaningful consequences for his or her offence

These principles promote the long term protection of the public.

What Does the YCJA Do?

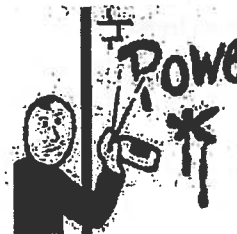
It establishes a fair and effective youth justice system. Serious and repeat offenders will be dealt with more severely. There are many choices or options in sentencing. Victims, parents and the community are encouraged to become involved in the process whether it is in court or not.

What are "Meaningful Consequences?"

Meaningful consequences are things done to help youth understand the implications of their actions and to fix the harm done to others.

Measures to deal with youth crime should:

- Address the crime
- Mean something to the offender
- Reinforce respect for Canadian values
- Help fix the harm done to victims and the community



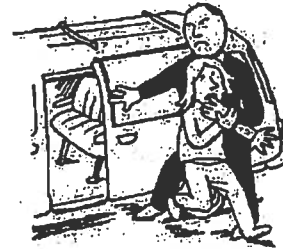
- Respect gender, ethnic, cultural; and language differences
- Involve the family, the community, and other groups
- Respond to the needs and lives of Aboriginal youth and youth with special requirements

Non - Violent Crime and First Time Offenders

Most youth who commit crimes are either non-violent or first time offenders. Non-violent and first time offenders will have a range of options other than going to court such as police warnings or police or Crown diversion programs. Extrajudicial Measures and Extrajudicial Sanctions may place young people who offend into programs that will help address their problems and they may also provide an opportunity for restitution to the community. If they go to court sentences could include doing something for the victim to make up for the crime or doing some form of community service.

Violent and Repeat Offenders:

Serious violent crimes occur when someone gets hurt as a result of a crime or if there is a serious risk of someone being hurt. For example, a robbery in which no one was injured could be considered "violent" if a gun, or even a replica of a gun, was used as a threat. A youth is a "repeat offender" if s/he has committed a crime before.



An adult sentence can be given to a youth 14–17 years old if that person has been convicted of one of four serious violent offences or if the youth has a pattern of convictions for violent offences; or if the offence is one for which an adult could receive more than two years in jail. This means that when a youth (14, 15, 16 or older) commits attempted murder, murder, manslaughter, aggravated sexual assault or a third serious violent offence an adult sentence shall be imposed if the youth is found guilty.

The trial is always held in youth court. A province may fix an age greater than 14 years but not more than 16 years for the purpose of the application of the provisions relating to these presumptive offences. The YCJA can provide for a sentence that includes special supervision if the youth has committed one of the more serious crimes. This special supervision is called "intensive rehabilitative custody." The maximum youth sentence is ten years for first-degree murder, six years served in custody and four years under supervision.

The YCJA states that the media may publish the name of a youth who has been convicted of a serious violent crime and has received an adult sentence. If the youth does get an adult sentence for a serious violent crime then the records are treated in the same way as if the youth were an adult.

Custody as a Consequence

Keeping people in custody has been shown not to be the best approach for rehabilitation. When people are released they might commit further crimes because they have not broken their old habits or they have learned bad habits from other offenders. Therefore, alternatives to custody should be considered for youth.



Alternatives to the Formal Court Process

Extrajudicial Measures and Extrajudicial Sanctions are designed to solve problems and to keep young people out of the court system by having them take responsibility for their actions and, where appropriate, take other action such as to apologize, to attend counselling, to make restitution, among others. These extra-judicial measures and sanctions are often more meaningful and can help the youth focus on repairing the harm done to the victim and to the community.

Restorative Justice

Restorative justice means that those who are involved in a crime - victims, victims' families, youth who offend and the community - are encouraged to reconcile, restore and repair relationships and situations.

Rehabilitation

Rehabilitation means that young offenders must take steps to address some of his/her problems. Young people must be held accountable for their crimes. However, because of their age, young people are less set in their ways and they are more likely to respond to treatment programs and to be successfully rehabilitated and become law-abiding citizens. The YCJA underscores the importance of rehabilitation programs such as drug and alcohol counselling, anger management programs and job training.

Reintegration

Reintegration means that the youth must learn to fit back into his/her community. The YCJA makes this a priority. All custodial sentences will include a period of supervision in the community following the period of custody. Reintegration planning will be required for all youth in custody. There may be some rules that the youth must follow. The youth may have to attend school, obey a curfew, not associate with certain people, not use drugs or alcohol and attend anger management or drug and alcohol counselling. If these conditions are followed while the youth is being closely supervised and supported then the youth has a better chance of not committing a crime again during this critical period.

Consequences of Having a Criminal Record

The convicted youth would have a criminal record for up to five years after s/he has completed his/her sentence or ten years if a violent offence. If s/he commits another offence within that time period then, the previous offence could be addressed in court.

especially in sentencing. Even a "closed" youth record can be reopened by the court at a later time if more offences are committed. A convicted youth may not be able to travel to another country or secure certain types of employment if they have a record. What youth need to realize is that their young offender criminal record will not automatically disappear after they reach the age of 18. These are serious consequences for youth.



Do youth Have Legal Rights?

Yes. Youth have "due process" rights which include the right to be heard and take part in processes that affect them and special guarantees of rights and freedoms under the *Canadian Charter of Rights and Freedoms*.

Parents and guardians are told if their child commits a crime. They are asked to come to court to prove the age of their child.

Summary

- Youth aged 12-17 who commit offences are treated differently than adults
- The objectives of the youth justice system are crime prevention, rehabilitation and reintegration, and meaningful consequences. These objectives taken together will promote the long-term protection of the public
- Measures to deal with youth crime should be meaningful to the youth, encourage the repair of the harm done to victims and the community and should be responsive to the needs and circumstances of Aboriginal youth and youth with special requirements
- Measures must be fair and in proportion to the seriousness of the offence
- Youth have due process rights, which include the right to be heard and participate in the decisions that affect them
- The youth, his or her parents, the victim and the community all play an important role when addressing the youth's criminal behaviour
- The YCJA gives rehabilitation and reintegration special emphasis and recognizes the importance of timely intervention



