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# Community Legal Information Association of Prince Edward Island, Inc.

## The Youth Criminal Justice Act: A Legal Guide for Youth and Their Families

The Youth Criminal Justice Act (YCJA) is based on certain values and principles that are written into the Act itself. Some of these are:

- The youth justice system seeks to prevent youth crime, rehabilitate the young person, and help the young person reintegrate into the community after time spent in custody.
- Families and communities must work as partners to prevent youth crime, by providing guidance and support to young people and responding to the needs of young people.
- Young people should be given the opportunity to, and be encouraged to, repair the harm done to others because of their behavior.
- The youth justice system must address the needs of victims of youth crime and make sure offenders are held accountable for their actions.
- Non-violent offences should be dealt with outside the court process whenever possible, and serious consequences should be saved for the most serious offences.
- Sentences or other consequences must be in proportion to the seriousness of the offence and the part played by the youth.
- Gender, language, and ethnic background must be respected when deciding how to hold a young person accountable. The needs of Aboriginal youth and youth with special requirements must also be responded to.

### The Youth Justice System in Prince Edward Island

The *Youth Criminal Justice Act (YCJA)* replaced the *Young Offender's Act (YOA)* on April 1, 2003. This booklet explains what happens when someone becomes involved in the youth justice system in PEI under the *YCJA*.

Police, courts, lawyers, judges, youth workers, **probation** services and youth **custody** centers make up what is called the youth justice system. This system deals with young people from 12 to 17 years of age who are in trouble with the law.

Under the *Youth Criminal Justice Act*, families, communities, **victims**, and **support people** for both **victims** and **offenders** are much more involved in the youth justice system than in the past.

In this booklet we will take you through the youth justice system under the YCJA. We will walk you through the system, step-by-step, as though the police have picked you up for possibly committing an offence. We will answer frequently asked questions concerning this. If you have questions that we have not answered, call the inquiry line at Community Legal Information Association (892-0853 or 1-800-240-9798) for more information.

## **Frequently Asked Questions**

### **What are my rights and obligations if the police stop me or pick me up?**

It is a good idea to cooperate with the police by telling them your name, address and age. You do not have to say more than that. If you are driving a car, you must show the police your driver's license, registration and insurance papers.

If the police believe you have committed a crime, they can search you and possibly your car without a search warrant. They cannot search the place where you live without a search warrant.

The police must tell you why they stopped you or picked you up and if you are being arrested. You can be arrested and taken to the police station for questioning. If you are not arrested, you do not have to go to the police station. Being **arrested** does not mean you will be **charged** with an offence.

You have the right to remain silent and refuse to answer questions. You have the right to speak to a lawyer at any point, whether or not you can pay the legal fees. You have the right to speak with another adult, such as your parent or guardian or someone else you trust, before you make a statement, and to have them and your lawyer with you when you make a statement. You are not required to make a statement.

You can sign a form called a waiver that says you do not want an adult present when you make a statement. This will not keep your parents or guardians from finding out about the incident. The police must notify your parents or guardians if you become involved in the youth justice system. They will be expected to participate in whatever process you go through.

There is a separate waiver that you must sign if you decide to give up your right to a lawyer. It is not a good idea to give up this right before you have spoken to a lawyer and you should not sign anything until you speak with a lawyer or an adult you trust. These policies are in place as guarantees to protect your rights - it is a good idea to use them.

### **Do I need to contact a lawyer?**

The Act states that you have the right to a lawyer (also called legal counsel) at any stage of the proceedings against you. This is true even if you or your family can't pay for one. This means that you have the right to a lawyer

- if you are being questioned or interrogated
- if you have been arrested but not charged
- if your case might be dealt with outside the court system or

- if you have been formally charged with an offence.

In all of these situations, the police must provide you with a phone to contact a lawyer.

### **When should I contact a lawyer?**

Anytime you do not understand or agree with what is happening, you should immediately talk to a lawyer. It is your right to refuse to make a statement or answer any questions until after you have spoken to a lawyer.

If you have been picked up for an offence, it is possible that you will be dealt with outside the court system, particularly if the offence is less serious. If this happens, it is still be a good idea to talk to a lawyer because a record may be kept and this may have consequences for you later. This is especially important if you are being dealt with by extrajudicial sanctions, which are explained later in this pamphlet. If you are charged with an offence, you should talk to a lawyer as soon as possible.

### **What if I can't afford a lawyer?**

You have the right to a lawyer even if you, or your parents or guardians, can't pay for it. If you cannot afford a private lawyer, Legal aid services will be available to you. It is important to remember that your lawyer works for you, not your parents or guardians, even if they are paying for it. The lawyer's role is to advise you and take instructions from you, not your parents or guardians.

### **Will a lawyer come to the police station?**

Your lawyer may come to the station or may give you advice by phone. If it is after-hours and you have called the lawyer at home, he or she may give you advice over the phone and arrange to complete the process the next day.

### **What do I do if I think the police have violated my rights or if I have a complaint about them?**

You can make a complaint to the police department if you feel your rights were not respected - for example, if you were not given an opportunity to speak with your parents or guardians. In your complaint, you should include information about when and where you were stopped or arrested, if there were any witnesses, and the name or a description of the police officer. Talk with your parents or guardians or your lawyer about what happened.

### **Will my parents or guardians be told about what has happened?**

The law says your parents or guardians must be notified if you are involved in the youth justice system. They will be sent a notice and they may be called or visited. They are expected to participate in whatever process is used to deal with the incident. If they do not attend court, the judge may postpone proceedings and order them to be present at the next court date. They will be given an opportunity to speak in court.

### **What is a conference?**

The YCJA encourages the use of conferences to help make decisions. A conference is a group of people brought together to give advice to police, judges, Crown attorneys, youth workers, or the provincial director of youth corrections. Any of these people can request a conference to advise them on decisions. The advice can be about things like appropriate extrajudicial measures, appropriate sentences, plans for reintegrating you into your

community, or plans to help you deal with problems in your life. A conference could include your parents or guardians, community people who know you, other professionals who may be involved with you or your family, or victims of your offence.

### **Will I have to go to court if I am caught doing something illegal?**

The new law says that out-of-court procedures (called extrajudicial measures) should be used in all cases where they are adequate to hold you accountable for the offence. It is presumed that extrajudicial measures will be used for first-time, non-violent offences. These measures can be used more than once and are explained in this booklet.

### **What will happen to me if I don't have to go to court?**

The YCJA uses a proportionate approach to consequences - this means that the consequences used will depend on both the seriousness of the offence and your role in the offence. If you continue to re-offend and the offences become more serious, the consequences can also become more severe.

The police have several choices of what to do after you are picked up. What is done depends on the offence and the circumstances under which the offence was committed. The first thing considered will be out-of-court procedures, called extrajudicial measures.

### **Extrajudicial measures**

Extrajudicial measures is the name given to the out-of-court procedures that are used when dealing with youth crime. These measures are to be used in all cases where they will hold you accountable, or responsible, for your behavior.

Some possible choices are:

- Taking no further action
- Warnings – the police may call your parents or guardians in and give you a verbal or written warning with them present; this can also be done without your parents or guardians present
- Police caution – a more formal warning by police that will likely include a letter to you and your parents and possibly a meeting at the police station
- Crown caution – Crown attorneys give a caution after the case has been referred to them by the police...it may be similar to a police caution
- Referrals – the police refer you to community programs or agencies, like a recreation program or counseling, to help you stay out of trouble
- Extrajudicial sanctions (see below)

Extrajudicial sanctions are the most formal of the extrajudicial measures. In order to participate in an extrajudicial sanction program, you must accept responsibility for the offence and agree to take part in the process.

An agreement may be made about what you will do to repair the harm done by your actions. The agreement is monitored to see if it has been fulfilled. Charges may be laid or other further action taken if conditions of the agreement are not met. Community justice forums, explained below, are one common way of developing these kinds of agreements in PEI.

An extrajudicial sanction creates a record that remains open for two years from the date the contract is signed between you and the program.

### **Community Justice Forums**

In a community justice forum, you (the offender), the victim, families and support people of each, and others involved with the case all meet together with a trained facilitator to work through a structured process. Municipal police, RCMP, and schools have all used community justice forums as one way of dealing with incidents.

In a forum, everyone has a chance to talk about how the incident has affected him or her and what would repair the harm that has been done. Everyone present reaches an agreement about:

- what is to be done
- by whom and when, and
- who will monitor the agreement after the forum is over.

The agreement must be appropriate for the offence and your role in the offence. When all conditions of the agreement have been completed, the case is closed.

Forums give everyone affected the opportunity to be heard. You listen to what has happened to others as a result of your actions. Forums are designed to be a safe place to express thoughts and feelings. Facilitators work to make the process a constructive one. A forum can be a difficult experience, but most participants express a lot of satisfaction after the forum.

Forums begin the healing process and make it easier for all involved to live together more comfortably in their school, workplace, or community. Forums are very powerful tools in helping young people learn from their mistakes.

### **What happens if I go to court?**

At your first appearance in court, you will have to enter a plea of either “not guilty” or “guilty”.

If you plead not guilty, a trial will be held. The Crown Attorney has to prove to the judge that you committed the crime and are guilty beyond a reasonable doubt. The Crown Attorney presents the case against you and may call witnesses.

After the Crown has finished questioning each witness, your lawyer can question the same witness. This is called cross-examination. Your lawyer then calls witnesses to support your case, and after questioning each of them, the Crown can cross-examine them.

You and your lawyer will decide if you will go on the witness stand.

If you plead guilty or are found guilty, the judge usually asks if you or your parents have anything to say before sentencing. Your parents or guardians should be prepared for this and know what they want to say. They should talk about anything that may help the judge decide what sentence to give.

The judge may order a pre-sentence report. This is a report about your situation prepared by a probation officer. The judge may ask that a conference of people who are involved with you or your case be called to make suggestions about what sentence to give you. If a pre-sentence report or a conference is ordered, you will have to come back to court later to be sentenced. You will probably be released until you are sentenced.

The Crown Attorney will also have a chance to make recommendations about your sentence. You or your lawyer will have a chance to speak after the Crown speaks. You can bring witnesses to give evidence about your character. It is important to talk about your background, prior youth record if you have one, and the circumstances of the offence.

### **What sentence might I get if I am found guilty in court or if I plead guilty?**

A judge has several choices when it comes to sentencing. A pre-sentence report may be ordered to help the judge make a decision or the judge can ask for a conference, or meeting, of those involved in your case in order to receive recommendations about your sentence. The judge is required by the new law to give you the least restrictive sentence that will hold you accountable for the offence and still protect society. The judge can sentence you to one or more of the following choices:

- Reprimand – the judge gives you a stern warning or lecture in the courtroom
- Discharge – the judge orders you to be discharged with no conditions or with conditions and requirements
- Fine not exceeding \$1000 – the judge can fine you and name the time and the terms for it to be paid
- Compensation – the judge orders you to pay or provide personal services to the victim to compensate, or make up, for loss or damage to property, for loss of income or support, or for personal injury
- Restitution – the judge orders you to return property to the victim
- Community Service – the judge orders you to perform tasks that benefit the community and to report to a person named by the judge
- Prohibition, seizure or forfeiture – the judge makes an order preventing you from possessing any weapons or other prohibited devices, or requiring you to give up anything of this nature in your possession
- Probation – the judge orders you to report to and be supervised by a probation officer under specific conditions named by the judge, for up to 2 years
- Intensive support and supervision order – the judge makes an order similar to probation but with closer monitoring, and more support for you
- Attendance order – the judge orders you to attend a program, with conditions and times tailored to meet your needs
- Deferred custody and supervision order – the judge orders that you can serve the custody portion of your sentence in the community, under conditions ordered by the judge.
- Custody and supervision order – the judge orders you to serve time in a custody facility followed by a period of supervision in the community

### **Will I go to jail if I plead guilty or am found guilty?**

Custody is to be used mainly for violent offenders and serious repeat offenders. You cannot be sentenced to custody unless:

- you have committed a violent offence, or
- you have failed to complete non-custodial sentences, or
- you have committed a serious offence and you have a history that shows a pattern of offences, or
- you have committed a serious offence and the circumstances are so exceptional that the purposes of sentencing could not be achieved without a sentence in custody. A judge must give reasons for this decision.

Before sentencing you to custody (jail), the judge must have looked at all other choices and must be convinced that none of them will hold you accountable for the offence. You are to be given the least restrictive sentence that will:

- hold you accountable for the offence
- provide meaningful consequences for the offence, and
- provide you with what you need to become a law-abiding citizen.

### **Will I be transferred to adult court if I do something really serious?**

In the YCJA, there is no transfer to adult court – instead, a youth court judge can, in certain circumstances, give you an adult sentence after it has been determined that you are guilty of the offence. An adult sentence can only be given if there is no youth sentence long enough to hold you accountable for your actions.

Presumptive offences may result in adult sentences. The presumptive offences are murder, attempted murder, manslaughter, aggravated sexual assault, or a pattern of repeated serious violent offences. You can be given an adult sentence for other offences but there is no presumption of an adult sentence except for these offences.

In PEI, you can receive an adult sentence only if you were the minimum age of 14 years when the offence was committed.

### **What happens if I get an adult sentence? Where do I serve my sentence?**

Adult sentences may be served in a youth custody facility or an adult facility, depending upon your age and the circumstances.

If you are under 18, you may go to a youth facility.

If you are 18 or older when sentenced, and are sentenced to less than 2 years, you may go to the provincial jail.

If you are 18 or older when sentenced, and are sentenced to more than 2 years, you may go to a federal penitentiary.

If you turn 20 while you are serving your sentence in a youth facility, you may be transferred to an adult facility.

You, your parents or guardians, your lawyer, correctional officials, or the Attorney General can appeal the decision about where you will serve your sentence.

### **Do I have to speak to the victim(s) of my crime?**

If you agree to participate in a community process such as a community justice forum, you will listen to and speak with the victim(s) and others who have been affected by your actions. This will likely include your family or people close to you.

If you go to court and are found guilty, you may have to listen to a victim impact statement but you may not have to face your victim directly or speak to your victim.

### **Will I have a criminal record?**

Records can be kept about any case under the YCJA by the police, the court (if it goes to court), and the government. If your offence is dealt with by out-of-court measures, a record may be kept by the police and others involved. This may be considered if you get in trouble with the law again. If your case goes to court and you are found guilty, you will have a youth court record.

### **How long will my record last?**

The rules around youth records are complicated. The records created from out-of-court measures will be closed after two years if you don't commit another offence during that period. However, if you do commit another offence within those two years, the record may stay open.

Many people think that your record is closed once you turn 18, but this is not true. Turning 18 has nothing to do with closing your record. The time period before a youth court record is closed ranges from three to five years after you complete your sentence and any probation period. The more serious your crime, the longer your record stays open. If you commit a second offence before the three to five years is up, your record may be kept open beyond that three to five year period. If you are over 18 and you commit an offence while your youth record is open, your youth record becomes part of your adult record. If you are given an adult sentence for a very serious crime, your record is treated like an adult record. Adult records remain open for life, unless you get a pardon.

Once your record is closed, it is either destroyed or sent to the National Archives of Canada or the Provincial Archives to be stored. Records that are stored can be used for certain purposes like research and statistics, but information that may identify you cannot be disclosed.

### **Who can see my record?**

Most people are not allowed to see youth records. However, the YCJA does allow certain people to see your record for specific purposes. Fewer people have access to the information in your record if you are dealt with by extrajudicial measures. People who could have access to your record include:

- you, if it is your record
- your parents or guardians
- your lawyer, your lawyer's representative, or another adult helping you in court
- any victim of the offence
- the Attorney General of the province
- any peace officer dealing with the case (usually a police officer)
- a judge, court, or review board if they are dealing with your case
- the director of a correctional facility, if you are in custody
- someone who is participating in extrajudicial measures concerning your case, such as a community justice forum facilitator
- someone doing an official criminal records check

- someone collecting information for Statistics Canada
- other officials investigating an offence, working on your behalf, or somehow dealing with your case

**Will anyone else know I have gotten in trouble with the law?**

As a youth, your name cannot be published unless you are given an adult sentence for a very serious crime. However, youth court is open to the public, so anyone is allowed to attend.

**What are the consequences of having a record?**

Having a record may affect your sentence if you go to court again for another offence. It is one of the factors considered by a judge when sentencing you.

If you have a youth or adult record:

- You may be denied entry into the United States and other countries.
- You may have trouble passing a security check or criminal records check that is required for some jobs and some volunteer organizations.
- Some government jobs are not open to anyone with a record.
- Some professions may be closed to you if you have a record because you are required to be “of good moral character” to be licensed.
- Private businesses may require “bonding” or security clearance and a record could prevent you from being bondable or getting the clearance.

**What happens to children under 12 years old who get in trouble?**

The YCJA deals with crimes committed by young people from age 12 up to the 18th birthday. Once you turn 18, you are dealt with by the adult system. If you are under 12, you are dealt with by systems other than the criminal justice system.

Children under 12 years are not considered mature enough to be held criminally responsible for their behavior. If a child under 12 does something that would be a crime if he or she were older, it is recognized that help is needed. The child welfare system will look at the situation and the mental health system may also become involved. The purpose is to provide help and support to the child and his or her family so the behavior can be changed.

## **Glossary**

The words in this glossary are defined as they are used in this pamphlet.

Admit responsibility – you agree with the facts that the police hold against you

Adult facility - a jail, prison, halfway house, or penitentiary for adults

Aggravated sexual assault – forcing sexual contact or intercourse,  
-with the use of a weapon, or  
-with the intent to commit another crime, or -with the intent to cause serious bodily harm

Arrested – taken into custody by police

Attempted murder – trying to kill another person but not succeeding

Attorney General – the provincial government official responsible for The youth justice system and other judicial matters

Beyond a reasonable doubt – the standard used by a jury or judge when deciding if someone is guilty or not guilty of the offence; a “reasonable doubt” is the doubt that prevents people from being firmly convinced of a person’s guilt

Charged – formally accused of a crime

Community programs – programs taking place in the community that could be recreational or educational, used as therapy or used for supervision

Conference – a group brought together to give advice on decisions to be made under this Act - for example, advice about sentencing, conditions of release, or appropriate extrajudicial measures

Consequence – something that happens as a result of something else that happened earlier

Constructive – helpful

Correctional officials – people working for the government departments responsible for the imprisonment, parole and probation of convicted adults

Court system – the network of courts and judges that hears cases, settles disputes, and interprets our laws

Criminal records check – a search to discover if a particular person has a criminal record – this is required for some jobs and volunteer activities - his does not bring up records from extrajudicial measures or extrajudicial sanctions.

Criminally responsible – accountable for an act that would be an offence if it was done by someone 12 years of age or older

Cross-examination – to question a witness for the opposing side in court in order to show any weakness in their testimony

Crown attorneys – lawyers who work on behalf of the state – usually prosecutors in a criminal trial

Custody - held in a facility with restrictions on freedom

Discharged – released or dismissed

Extrajudicial measures – processes other than court proceedings used to deal with a young person who has broken the law (for example, police warnings, referrals to community programs)

Extrajudicial sanctions – a more formal type of extrajudicial measure used to deal with a young person who has broken the law – the young person must admit responsibility for the act (for example, a community justice forum)

Facilitators – people trained to guide a group process like a community justice forum

Federal penitentiary – a prison for adults who are sentenced to two years or more

Healing process – the way that hurt or damaged relationships or feelings are repaired and conflicts are addressed

Hold you accountable – you make amends for the offence and the consequences are appropriate to the offence and the circumstances

Law-abiding – obeying the law

Least restrictive – with the least limits to a person’s freedom

Legal aid – free legal services provided to those charged with a criminal offence who can’t afford to pay

Manslaughter – killing another person without the intent to kill or the intent to cause severe bodily harm

Meaningful consequences – consequences that help the young person understand and appreciate how others have been affected by their actions and that help repair the harm done to others

Monitored – observed and checked to see if agreements and conditions are being met

Municipal police – police for a town or city, such as Summerside City Police

Murder – the intentional killing of another person

Offence – an act or behaviour that breaks the law

Offender – someone who breaks the law

Out-of-court procedures – ways of dealing with someone who has broken the law that does not include going to court

Pardon – officially sealing a criminal record – this applies to the adult system only - youth records are automatically sealed after you are crime-free for a certain period of time

Pre-sentence report – a report to the court on the personal and family history and environment of someone who is to be sentenced

Presumptive offences – murder, attempted murder, manslaughter, aggravated sexual assault, and a pattern of serious violent offences – it is presumed that an adult sentence will be given for these offences

Probation – a way to deal with offenders that allows them to be in the community under certain conditions while being supervised by a probation officer

Proportionate approach – consequences that reflect the seriousness of the offence and your role in the offence

Provincial jail – where adults are held when sentenced to less than two years

Record – anything containing information that is created or kept for the purposes of the YCJA or for the investigation of an offence under the YCJA

Rehabilitate – to become someone who no longer breaks the law

Reintegrate – to successfully bring someone back into the community, school, or work after time in custody

Released – freed from custody

Review board – a group that reconsiders certain decisions made under the YCJA

Search warrant – a court order giving police the right to enter and search where someone lives or works

Sentencing – a judge deciding on the appropriate consequence for someone guilty of an offence

Serious violent offence – an offence during which a young person causes or tries to cause serious bodily harm to someone else

Statement – an account of someone's knowledge of a crime, taken by police as part of an investigation

Support people – those who are there to help a victim or offender

Transfer – move to another place

Victim - a person who suffers or loses something as the result of a crime

Victim impact statement – a statement read in court during sentencing to inform the judge or jury of the effect of the offence on the victim and the victim's family

Waiver – a form you can sign in which you give up a legal right

Witnesses – people who testify in court for the prosecution or the defence about what they know about the offence or the accused

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This pamphlet is an attempt to give you a picture of what might happen if you become involved with the youth justice system on PEI. If you want to learn more about the YCJA, the Department of Justice Canada has a website (<http://canada.justice.gc.ca/youth>) where you can get a summary and background to the new Act and a complete copy of the Youth Criminal Justice Act.

This pamphlet contains general information about the law. It is not a complete statement of the law in this area and is not a substitute for legal advice. To receive legal advice, you need to speak to a lawyer.

Community Legal Information Association of PEI Inc. (CLIA) is a charitable organization that receives funding from the Department of Justice Canada, the Prince Edward Island Office of the Attorney General, the Law Foundation of PEI and other sources. CLIA provides Islanders with understandable and useful information about the law and the justice system in Prince Edward Island.

Call CLIA (892-0853 or 1-800-240-9798) if you wish more information or if you have questions that have not been answered.

Charitable Registration Number: 118870757RR0001

ISBN: 978-1-894267-54-0