



If you have questions about anything you read in this booklet, call Community Legal Information Association (CLIA) at 902-892-0853 or 1-800-240-9798. You can also visit our website at www.cliapei.ca/youth or email us at clia@cliapei.ca.

If you need support or need to talk to someone, call the Kids Help Phone at 1-800-668-6868.

Youth Justice on PEI

The *Youth Criminal Justice Act (YCJA)* is the *Act* that deals with young people who are involved in the youth justice system. This booklet explains what happens when a young person becomes involved in the criminal justice system in PEI.

Police, courts, lawyers, judges, community youth workers, youth outreach workers, youth justice workers and youth custody centres (youth jails) make up what is called the youth justice system. This system deals with **young people aged 12 through 17** who are in trouble with the law. The court system is made up of courts and judges that hear cases, settle disputes and interpret laws.

In Canada, children under 12 years of age cannot be charged with a crime. If a child under 12 does something that would be a crime if he or she was older, it is understood that the child needs help. The child protection and mental health systems may become involved. They become involved to help support the child and his or her family so the behaviour can be changed.

The *YCJA* says that the youth justice system must be based on "... the principle of diminished moral blameworthiness or culpability of young persons". This means that the justice system understands that young people are not as mature as adults and may make poor decisions. They are not held to the same standards as adults.

A key goal of the *YCJA* is to protect the public by holding young persons accountable through proportionate measures, by promoting their rehabilitation and reintegration back into their communities, and by supporting the prevention of crime. The *Act* has a graduated, proportionate approach and encourages the repair of harm done by the crime. It says the youth justice system must be sensitive to gender, race, and cultural differences.

The *Act* says that special consideration must be given to young people of Aboriginal descent. Aboriginal young people can be referred to the Aboriginal Justice Program, which provides culturally sensitive services. It is important to let police know you are

Aboriginal so you can be referred to this program, as police cannot ask you if you are Aboriginal. If you would like support or information from the Aboriginal Justice Program, call 902-367-3681.

As a young person, you need to know your rights and obligations. You have the right to be treated fairly and have your privacy respected. You have the right to be heard in court and to participate in the process. You have the right to speak with a lawyer and to have a lawyer and your parent or a trusted adult with you when you go through the youth criminal justice system.

Getting Stopped by the Police

Police are responsible for investigating crimes, arresting people who may be involved in a crime, helping victims and teaching people about safety. You should call the police if you or someone else is hurt or in danger, or if you see a crime taking place. If you are in an emergency situation, call 911.

If you commit a crime or if you might have information about a crime, the police may contact you. They may want to question you about what you know, what you saw or what you did.

If the police stop you or pick you up, it is very important to co-operate with them and to be polite and respectful. Tell 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. A search warrant is a court order that gives police the right to enter and search where someone lives or works.

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 an adult and your lawyer with you when you make a statement. You are not required to make a statement. A statement is an account of what you know about a crime, usually collected as part of an investigation.

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 or form 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 important to use them.

If you think the police have violated your rights or if you have a complaint, you can contact the police department. 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.

Parents and Lawyers

When you become involved in the youth justice system, your parent must be told about it. Your parent is expected to participate in the process used to deal with your situation. The police must notify your parent. They may call or visit your parent.

When you are being questioned by police, you have a right to have your parent or a different trusted adult with you. The police must tell you about this right and allow you to call someone. You also have a right to call a lawyer and have a lawyer with you.

The *Act* states that you have the right to a lawyer (also called legal counsel) at any stage of the proceedings against you. If you cannot afford a private lawyer, Legal Aid will be available to you. They can be reached at: Charlottetown, 902-368-6043; Summerside, 902-888-8219.

For a one-time consultation with a lawyer at a low fee, you can call the Lawyer Referral Service: 902-892-0853 or 1-800-240-9798.

You have the right to a lawyer:

1. if you are being questioned;
2. if you have been arrested but not charged;
3. 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.

Your lawyer works for you, not for your parent. Even if your parent is paying for your lawyer, you are the client of your lawyer. Without your consent, your lawyer

cannot tell your parent any information about your case. Your lawyer's role is to advise you and take instructions from you, not from your parent.

Anytime you do not understand or agree with what is happening, you should speak with a lawyer.

Your lawyer may come to the police 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 later.

First Steps

The YCJA says that extrajudicial measures - consequences that take place outside of court - should be used as long as they are adequate to hold you accountable for what you've done. These are sometimes called out-of-court procedures. These measures can be used more than once.

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 will 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 by police will be whether to use extrajudicial measures.

Some possible extrajudicial measures are:

- Taking no further action;
- Warnings – the police may give you a verbal or written warning; this can 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;
- Referrals – the police refer you to community programs or agencies, like an outreach worker, a recreation program or counselling, to help you stay out of trouble. Outreach workers may talk to you about a restorative justice process and encourage you to participate. For more information about Restorative Justice, read the extrajudicial sanctions section below;
- Extrajudicial sanctions (see next page).

Records of extrajudicial measures are kept by the police. If you have a history of several previous extrajudicial measures, the police may decide to use a more serious consequence next time.

Extrajudicial Sanctions

If the above measures are not enough to hold you accountable, the police may decide to make a recommendation to the Crown Attorney to use an extrajudicial sanction. This does not require going to court.

Extrajudicial sanctions are the most formal type of extrajudicial measure. In order to participate in an extrajudicial sanction program, you must accept responsibility for the offence and agree to take part in the process. If you later end up in court for the offence, your statement or admission of responsibility cannot be used as evidence against you.

An agreement will be made about what you will do to repair the harm done by your actions. The agreement is monitored or checked regularly to see if it has been fulfilled. Charges may be laid or other further action taken if conditions of the agreement are not met.

The most common extrajudicial sanction used on PEI is Alternative Measures. The Alternative Measures Program (AMP) for young people is the authorized program for Extrajudicial Sanctions under the *Youth Criminal Justice Act* in PEI. The program can be used before or after charges are laid and it is used to divert young people from the court system. The goal of the program is to reduce the harm done by crime and reduce involvement in the criminal justice system by the young person.

The Alternative Measures Program provides several ways to hold young people accountable for their actions. Some examples are:

- An agreement will be developed with a Youth Justice worker that the young person has to fulfill. This could include requirements such as attending school, writing a letter of apology to the victim, not using drugs and alcohol, or staying away from certain locations. Victims are often consulted. Parents will be present when developing the agreement and will have an opportunity for input.
- A Restorative Justice process may be used, such as Victim-Offender mediation or a Community Justice Forum. The Aboriginal Justice Program also uses Restorative Justice processes.

Restorative Justice (RJ) is a way of viewing justice that emphasizes repairing the harm done and healing the trust broken in relationships by the young person's actions. Restorative Justice encourages participation of all those affected by a crime, including victims, families and community. An RJ process takes place in a circle facilitated by someone trained in the process. It may involve victim, offender, support people for each and others affected by the crime. Everyone will have an opportunity to speak about how it has affected him or her. In this way, the young person learns how others feel and victims have an opportunity to have their questions answered.

It is important that parents of the young person know about this option because they can request it. It is an excellent way to make the young person aware of the effects of his or her behaviour on others. An RJ process can be used in addition to other alternative

measures or court. Outreach workers also often use RJ processes as an early intervention tool.

Court

If you are going to be charged with an offence, a decision will be made about whether you can be released from custody until your court date. Being kept in custody before your trial is called “pre-trial detention” or “remand”. If the police or Crown Attorney believe you will be a danger if released or may not show up for court, there will be a “show cause” hearing at which reasons will be stated for keeping you in custody. Your lawyer (if you have one) can argue against this.

The judge looks at several factors when making this decision, such as:

- the seriousness of the offence;
- whether you have a history of outstanding charges or findings of guilt;
- whether there is a substantial likelihood that you will not appear in court or will commit a serious offence if released;
- whether detention is necessary to protect the public or maintain confidence in the justice system.

If you have been charged with a crime and are not going through the Alternative Measures Program, you will go to youth court. This court is separate from adult court and there is extra protection for your rights. The young person and his or her parent will be issued an appearance notice by police with the date for your court appearance.

If your parent does not attend court, the judge may delay court and order your parent to be present at the next court date. Your parent will be given a chance to speak in court.

At your first appearance in court, you will have to enter a plea. You can plead either:

- **Not guilty** – you are saying you did not commit the crime the judge has read to you, or
- **Guilty** – you are saying you did commit the crime the judge has read to you.

If you plead not guilty, a trial will be held. The Crown Attorney has to prove to the judge, “beyond a reasonable doubt”, that you committed the crime and are guilty. “Beyond a reasonable doubt” is the standard used by a jury or judge when deciding if someone is guilty or not guilty of an offence.

The Crown Attorney presents the case against you and may call witnesses. Witnesses are people who testify (or tell their knowledge) in court about an offence or an accused person.

After the Crown has finished questioning each witness, your lawyer can question the same witness. This is called cross-examination and its purpose is to show weaknesses in their story. 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.

The Victim

If you go to court and are found guilty, the victim may read a victim impact statement in court. This is a document a victim has written about how the crime has affected him or her. The victim has the right to read this in court or can have someone else read it.

If you participate in a restorative justice process, you may have to hear the victim tell you how he or she was affected by your actions and the victim may ask you questions about what you did and why you did it.

Victims have rights under the *YCJA* to information about the process used to deal with the offence and also have the right to participate and be heard if they wish.

Sentencing

If you plead guilty or are found guilty, the judge will sentence you. 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 you.

The judge may order a conference to get advice on sentencing. The *YCJA* encourages the use of conferences to help make decisions. A conference is a group of people involved in the young person's life brought together to give advice about things like appropriate sentences, plans for reintegrating (or bringing you back) into your community, or plans to help you deal with problems in your life. Participation and attendance is voluntary (you do not have to take part) but normally the young person and his or her parents or guardians are expected to take part. The victim may or may not be there.

The judge may ask for a pre-sentence report. This is a report about your situation prepared by a Youth Justice worker. If a pre-sentence report or a conference is ordered, you will have to come back to court at a later date to be sentenced. You will probably be released or let go until you are sentenced. If you were in remand before court, you may have to return to custody 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 provide 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.

A judge has several choices when it comes to sentencing, and is guided by specific principles set out in the YCJA. The judge must give you the least restrictive (least limiting to your freedom) sentence that will hold you accountable for the offence and still protect society. A history of criminal involvement can be a factor when deciding on your sentence.

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. You may be able to work off your fine at the minimum wage rate through the Fine Option Program. The **Fine Option Program** is an option for a young person when they receive a fine of any sort, from littering, to possession of alcohol, to a speeding ticket. Through this program, the young person works off a fine at the minimum wage rate doing community service work. A youth who is not formally involved with the Justice system may be supervised by a Youth Justice Worker as part of their participation in the fine option program. The youth must apply prior to the fine being due for payment and a Victim Fine Surcharge cannot be worked off.
- Restitution – 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.
- 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 Youth Justice worker under specific conditions named by the judge, for up to 2 years.
- 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.

Parents: If your child is sentenced to custody, he or she may be taken to the PEI Youth Centre directly from the courtroom and you may not have a chance to speak to your child at that time.

If you do not fulfill the conditions of your sentence, there will be legal consequences.

Custody

Custody refers to spending time in a youth correctional facility. In PEI, this is the PEI Youth Centre located in Summerside.

You can be sentenced to custody if:

- you have committed a violent offence that could have, or did, cause bodily harm or endanger the life or safety of another person or created a substantial likelihood of causing bodily harm;
- you have failed to comply with previous non-custodial sentences;
- you have committed an offence for which an adult could be sent to jail for a term of more than two years and you have a history of extrajudicial sanctions, or findings of guilt, or both;
- the circumstances related to the offence are so exceptional that the purposes of sentencing could not be achieved without a sentence in custody.

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:

1. hold you accountable or responsible for the offence and be proportionate to the seriousness of the offence and your role in the offence;
2. promote rehabilitation and reintegration, and
3. promote a sense of responsibility and an acknowledgement of harm done.

If you go to custody, you will be in a centre for young people only. After the period of custody ordered by the judge, you will be supervised in the community with conditions imposed on you. This is called a community supervision order. If you do not follow these conditions, you may be returned to custody. Custody sentences are usually ordered as 2/3 of the sentence in custody followed by 1/3 in the community. Youth Justice workers can add conditions to your community supervision order. A probation order may follow or may already be in place.

Adult Sentences

Young persons who are found guilty of the most serious crimes can, in some cases, be given an adult sentence.

The Crown Attorney must consider an adult sentence if a young person aged 14 or older commits a serious violent offence. The serious violent offences are murder, attempted

murder, manslaughter, aggravated sexual assault, or a pattern of repeated violent offences. The Crown Attorney may also apply to the court for an adult sentence in relation to any offence for which an adult could be sent to jail for a term of more than two years.

An adult sentence can be given only if there is no youth sentence long enough to hold the young person accountable.

It is up to the Crown Attorney to ask for an adult sentence and to prove you should be given an adult sentence.

No person under the age of 18 will serve any part of a youth or adult sentence in an adult facility. If you are given a sentence involving custody, you will go to a youth facility, even if you are given an adult sentence. If you turn age 18 while in custody, you may be transferred to an adult facility. When you turn 20, you will be transferred to an adult facility.

Records

Records must 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 extrajudicial measures, a record will be kept by the police. Records of extrajudicial sanctions will be kept open for 2 years and can be considered if you have to go to court within that 2 years. If your case goes to court and you are found guilty, you will have a youth court record.

Many people think that your youth court record is closed once you turn 18, but 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 year waiting period is up, your record for the original offence may be kept open beyond that three to five year period. If you commit an offence after turning 18 and are convicted of that offence while your youth record is open, your youth record becomes part of your adult record. If you are given an adult sentence in youth court for a very serious crime, your record is treated like an adult record. Adult records remain open for life, unless you get a pardon. A pardon officially seals an adult criminal record.

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.

Most people are not allowed to see youth records. However, the *YCJA* does allow certain people to see your record for specific purposes. 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.

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.

Fewer people have access to the information in your record if you are dealt with by extrajudicial measures.

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.

Publication Bans

Your name would not usually be published unless you are given an adult sentence for a very serious crime. However, if you are given a youth sentence for a violent offence, the court may allow your name to be published if you pose a significant risk of committing another violent offence and the public needs to be warned about this risk.

Youth court is open to the public, so anyone is allowed to attend.

Some Important Contacts

For legal information or legal help, please contact us at clia@cliapei.ca or 902-892-0853 or 1-800-240-9798. You may also want to check out our website and social media: www.cliapei.ca/youth; www.facebook.com/CLIAPEI; and www.twitter.com/CLIAPEI

If you need a lawyer and cannot afford one, Legal Aid provides representation to low income Islanders who qualify: Charlottetown, 902-368-6043; Summerside, 902-888-8219. For a one-time consultation with a lawyer at a low fee, you can call the Lawyer Referral Service: 902-892-0853 or 1-800-240-9798.

If you are a victim of a crime, even if that crime never results in a criminal charge, you can get support at Victim Services. This agency provides victims with information about the criminal justice system, short term counselling and emotional support, court preparation, help in preparing a victim impact statement, referrals to other services, and assistance under the *Victims of Family Violence Act*. Charlottetown: 902-368-4582 or Summerside 902-888-8218.

If you need someone to talk to about difficulties you're experiencing, contact Kids Help Phone at www.kidshelpphone.ca or 1-800-668-6868.

If you are being abused, neglected, or it is not safe in your home, you can call Child Protection. Number to call on week days: 902-368-6657 or 1-877-341-3101. Number to call evenings, weekends and holidays: 902-368-6868 or 1-800-341-6868.

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.

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For more information, you can telephone CLIA at 902-892-0853 or 1-800-240-9798, visit our website at www.cliapei.ca or email us at clia@cliapei.ca. You can also find us at: www.facebook.com/CLIAPEI, www.twitter.com/CLIAPEI and www.youtube.com/CLIAPEI.

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