

# *Youth Have Rights!*



Public Legal Education  
and Information Service  
of New Brunswick

Public Legal Education and Information Service of New Brunswick is a non-profit organization. We create materials about the laws and the justice system to help people find the information about laws in New Brunswick. We have a number of pamphlets, posters and videos about youth in the law.

Justice Canada has provided funding to help us create materials about youth and the law. If you have questions about youth justice or would like more information about the *Youth Criminal Justice Act* and the changes to the way we deal with youth crime in Canada you can contact PLEIS-NB to receive free copies of our other youth justice products or visit our website at [www.youthjustice.nb.ca](http://www.youthjustice.nb.ca)

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**PLEIS-NB publications for youth include:**

Youth Justice in New Brunswick Toolkit

Supporting Youth with Disabilities in the Justice System

Youth Justice – How Do You Fit In?

Youth Have Rights - Newsletter

Consequences of a Youth Record

Dating Violence

Sexual Harassment in Schools

Let's Stop Bullies Activity Book

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# Introduction

Rights are created by laws that permit, forbid or require certain actions. Rights give people freedoms and protections. Rights help to ensure that everyone is treated fairly. In Canada, the *Charter of Rights and Freedoms*, human rights legislation, and other laws set out our legal rights. There are some rights that are based on age, like the right to vote and the right to an education.

When a young person comes in conflict with the law, for example, when the police suspect, accuse or charge a youth with a crime, the **Youth Criminal Justice System** provides special rights to ensure the young person is treated fairly and has access to advice and guidance. Even when a court convicts youth of an offence, youth have rights that are specifically designed to protect them and get them back on track.

Do you know your rights? Even if you have never been involved in a crime or accused of a crime, it is important for you to know your rights. This booklet can help give you a general overview of the rights for 12-17 year olds under the *Youth Criminal Justice Act*.

If you have questions about a specific situation you should talk to a lawyer. You can find more information on hiring a lawyer in this booklet under, “Your Right to a Lawyer”.

## Your Rights and the Police

You may feel scared if the police stop you and ask you questions, but it can help to know your rights. It is important to be polite and respectful. However, do not be afraid to speak up if you are uncomfortable answering their questions. Here are some common questions about the police and youth rights.

### Can the police stop and ask me questions for no reason?

No. The police must suspect you have committed a crime or will commit a crime. If you are uncertain why the police have stopped you, ask politely. The police will tell you why they want to talk to you. You have the right to know why they are questioning you. They may want to know if you have information. If you do not want to answer the questions, simply say



so. The police will not arrest you just for refusing to answer. However, if they have reason to believe you are involved in a crime, they may place you under arrest.

### **Do I have to give the police my personal information if they ask me?**

It is a good idea to cooperate and answer general questions such as your name, age and address. If you are driving you must show your driver's license, registration and proof of insurance.

### **What if I am uncomfortable with the questions or want to call my parents?**

If you are feeling afraid or uncomfortable, tell the police that you would prefer to have your parents or another adult with you.

### **If the police think I have committed a crime will they arrest me?**

Not always. If you admit to committing a crime, or police have reason to believe that you were involved, you may or may not be arrested. The police may feel you can be held accountable without placing you under arrest and charging you with a crime.

Even if the police charge you with a crime, they may not arrest you. If the police tell you that you are free to go, they may provide you with documents advising you of when you must appear in court. It is important to keep these documents. They will contact you and your parents and guardians with information about the offence you have been charged with, the time and date you must appear in court, and your right to have a lawyer represent you.

### **Do police have the right to search me, my car or my house?**

The police are only allowed to search you if they have good reason to believe you have illegal drugs, weapons or alcohol in your possession, or if you give them permission. If the police arrest you, they will likely search you.

Generally, the police do not search your car or your house without a warrant or without your permission. There are some exceptions, for example, if a police officer has reason to believe that someone is in danger or that a crime is being committed and it would be unreasonable to wait for search warrant.



# Under Arrest

If the police place you under arrest they must tell you your rights. They must be sure that you understand these rights. If you do not understand, or if you have questions, don't be afraid to ask. The police will repeat these rights and explain them to you.

## When can police arrest someone?

The police can arrest someone if they have reason to believe that person has committed a crime, is in the process of committing a crime, or is about to commit a crime.

## Do the police have to contact my parents?

Yes. If the police place you under arrest, they must contact your parents or guardians. Being arrested is very serious and your parents have the right to know where the police have detained you and why.

## If the police arrest me, do I have to answer their questions?

The police cannot force you to answer their questions when they arrest you. Youth have the same rights as an adult when it comes to answering police questions. Police must tell you about your right to remain silent. You also have the right to speak to a lawyer, your parents, or both before you give any information. Youth also have the right to have a lawyer and a parent or other adult present when they are answering questions.

## I have the right to remain silent – should I?

If you choose to say anything to the police, it could be used against you. If you say something before the police told you about your right to remain silent, it can only be used in court if a judge decides to allow it.



## Making a Statement

Answering questions or making a statement is a good way to let the police hear your side of the story. You should consider speaking to a lawyer or your parents before you begin explaining your role in the incident.

### Can the police take my picture or my fingerprints when I am arrested?

The police can take your picture and/or fingerprints if they have charged you with a serious crime. Generally, they will give you a time and place where you must go to have this done. It is an offence to miss this appointment. The police can charge you for not showing up.

## Right to a lawyer

Like adults, youth are guaranteed the right to consult with a lawyer if they are under arrest, detained, asked to make a statement, or required to appear in court.

### How do I get legal advice?

When the police arrest you, they must let you call a lawyer who can give you legal advice. Your parents or guardian might want to use their lawyer if they have one. Police must give you a reasonable amount of time to find a lawyer. They must let you make the phone calls in private. If you do not know a lawyer, or you can't find a lawyer, the police can help you contact a Legal Aid lawyer. This lawyer is called "duty counsel". He or she can talk to you on the phone free of charge and give you some advice and information about your situation. The duty counsel lawyer you speak to will not be the person who represents you if you have to go to court.



### How do I choose a lawyer to represent me?

If you have to go to court, you should choose a lawyer who practices criminal law. You or your parents will have to pay the lawyer's fees. You



can meet with your lawyer by yourself or with your parents. What you say to your lawyer is private; the lawyer cannot discuss your conversation with anyone without your permission. Your lawyer will want to hear your side of the story. Be sure to tell the lawyer everything and be truthful.

### **What if my parents or guardians can't or won't pay for a lawyer?**

If your parents refuse to pay for a lawyer, or if they cannot afford one, you can make an application to Legal Aid. Legal Aid is a free service that is offered in every province or territory. You must prove that you do not have the money to pay for a lawyer in order to qualify for Legal Aid. If you have a job, Legal Aid may expect you to make a contribution to the cost. If you do not qualify, and you show up in court without a lawyer, the judge may appoint a lawyer to represent you. You will have to convince the judge that you tried to find a lawyer and were not able to get one.

## **Detention**

The police may detain a youth they suspect has committed a crime. They may also detain a youth after arresting him or her for a crime. When a youth commits a serious crime, the court may order that the youth stay in detention until the court case is heard.

### **What is detention?**

When the police first question you, they may decide to detain you in their police car or at the police station. That means that you are not free to go. If they detain you – even in their car - they must notify your parents and tell you about your rights to remain silent and to call a lawyer. Even after your arrest, the police may continue to detain you if they are still collecting evidence or verifying your identity.

### **Will I have to stay in detention until my trial?**

If the police detain you after your arrest, you have the right to appear before a judge as soon as possible, usually within 24 hours. This is called a bail hearing. The judge will decide whether to release you or continue to detain you until trial.

### **How does the judge decide whether to release me?**

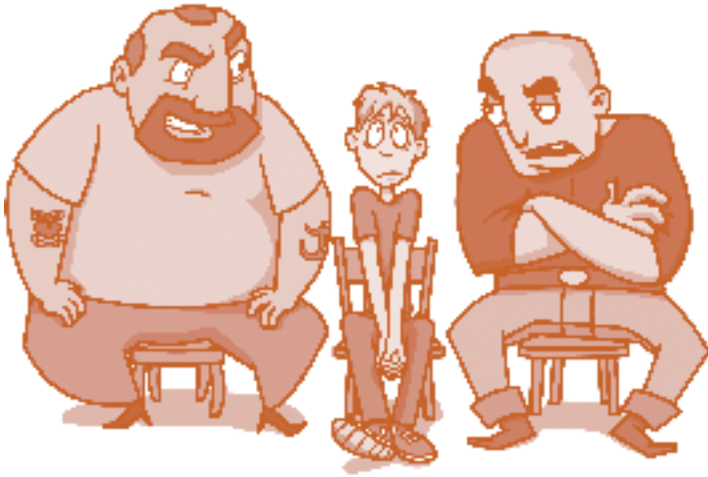
If your offence is not serious enough for a court to sentence you to “custody” if you were found guilty, then the judge should let you out of



detention. The judge must be satisfied that you are not a risk to public safety and that you will show up at your court hearing. If the judge has concerns, he or she needs to find out if there is a responsible adult who can take care of you and help you get to court. If there is no one, or you don't want to go with this person, the judge may decide to keep you in detention until your trial. If you are convicted, a judge may keep you in detention until he or she makes a decision about your sentence.

### **Where will I be detained?**

You will be detained in a youth facility. It could be a youth facility where you are locked up, or a one that provides some freedom.



### **What if I am treated poorly while I am detained?**

If you are treated poorly tell your lawyer or make a complaint to the appropriate authorities. When you are detained by the police or sent to a youth facility you have rights, including the right to physical safety and the right to have your basic needs met (food, water, hygiene).

### **What happens if I am released from detention?**

You will have to sign a form promising to show up in court on a certain date. You may also have to agree to certain conditions. These conditions may include paying money to the court (bail), agreeing to stay away from certain people or places, attending school or work regularly, and reporting to a youth worker.



## Alternatives to court

### If I am accused of a crime will I have to go to court?

Not all youth accused of a crime will end up in court. Police and crown prosecutors may recommend that the youth be held accountable outside the courtroom. These alternatives to court are referred to as extrajudicial measures or sanctions. There are several factors that are considered when deciding to hold a youth accountable in the community; these include your age and past behaviour, the nature of the crime and whether you accept responsibility for your actions. A record of your participation may be kept but only for a limited time and limited purposes, this is not the same as having a youth court record.

### What are some of the alternatives to court?

Police have discretion to deal with youth in the community. They must consider each specific situation and determine the best way to hold the young person accountable. There is a wide range of options from giving a verbal or written warning to referring the person to an appropriate community program. If they do not feel that these options are enough to hold the young person accountable, the file will go to the crown prosecutor.

Even after the crown prosecutor has laid a charge, the young person may be given the opportunity to take part in a program such as Alternative Measures. If the person completes the tasks or programs required by the Alternative Measures program the charges could be dropped and the youth will not have to go to court.

### Can I be forced to take part in an alternative program?

It is your decision. You can not be forced to do something or take part in any program as an alternative to court. You have the right to have your case heard by a judge. If you choose to go to court the judge will consider all of the factors and determine what the consequences will be.



## Going to Court

It is very important to go to court when you are supposed to. If you do not, you may be charged with failing to appear. You will then be in more trouble.



### Is there a special court for youth?

Yes, all youth ages 12-17 years old accused of committing a crime appear in Youth Court. Youth who have turned 18 by the time the case goes to court will still be tried in Youth Court. The *Youth Criminal Justice Act* gives all youth the protections and benefits of the youth justice system unless they are found guilty and receive an adult sentence.

### Will everyone know I am going to court?

Although the court is open to the public, the *Youth Criminal Justice*

*Act* does not allow newspapers, television or other media to reveal any information about a young person. This right helps protect youth from being labeled as a criminal in the community and makes it easier for them to change their behaviour.

### What will happen the first time I go to court?

If you do not have a lawyer, you should arrive early and speak to the lawyer on duty. Duty counsel can help you by explaining the process and speaking for you in court. It is best to have your own lawyer who can prepare for court ahead of time and represent you throughout your case. If you do not have a lawyer at your first appearance, the judge will make sure that you understand your right to a lawyer and may appoint one to represent you. At your first appearance the judge will read the charges against you. If you do not understand the charge, ask the judge or your lawyer to explain what it means right away. It is important that you understand what crime you are accused of committing.



## Entering a Plea

The judge will ask if you admit to the crime or wish to plead ‘not guilty’. Sometimes this will happen the first time you appear in court. You should discuss your options with your lawyer. If you have not had the chance to do this, the judge may set another date to return to court and enter your plea.

### What happens if I plead guilty?

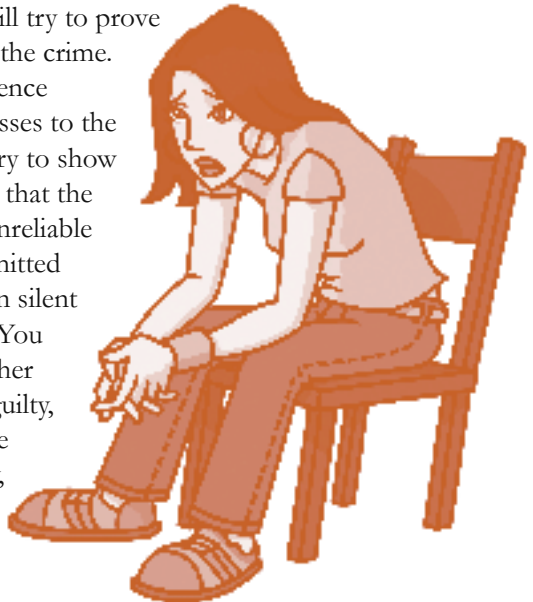
If you enter a plea of “guilty” you are admitting to the charges that the judge has read to you. The judge will either sentence you right away or set a later date to decide on your sentence.

### What happens if I plead not guilty?

If you enter a plea of ‘not guilty’ the case will go to trial. The trial will be scheduled for a later date, usually several months down the road. The judge will decide whether to allow you to return home while you wait. During this time, you will be given the opportunity to work with your lawyer to prepare for the trial. In New Brunswick, more than 80% of youth who appear in court are found guilty.

### What happens at the trial?

At trial, the Crown prosecutor will try to prove to the court that you committed the crime. The prosecutor will present evidence gathered by police and call witnesses to the alleged crime. Your lawyer will try to show that the prosecutor is wrong and that the evidence against you is untrue, unreliable or does not prove that you committed the offence. Your right to remain silent continues throughout your trial. You and your lawyer can decide whether you should testify. To be found guilty, the prosecutor must convince the judge, and in some cases the jury, without any reasonable doubt, that you are the person who committed the crime.



## Sentencing

Once a youth pleads guilty to a crime or is found guilty, the judge will decide on an appropriate sentence.

### **Will I be sentenced right away?**

Sometimes the judge hands out a sentence right away. Usually, the judge will want more information about the young person. You will probably have to wait awhile to find out what your sentence will be.

### **Will I be detained while I am waiting for the sentence?**

Not necessarily. That depends on whether the crown prosecutor shows that you should be kept in detention.

### **Will I always get a youth sentence?**

Generally, youth convicted of a crime will get a youth sentence. However, after a conviction, the crown prosecutor may ask the judge for an adult sentence under certain circumstances. For example, the crown prosecutor can ask for an adult sentence for a youth charged with murder, attempted murder or aggravated assault, or if the youth has three convictions for serious violent offences. In New Brunswick you can receive an adult sentence at 16 years of age.

### **What does the judge consider before giving a youth sentence?**

The judge must consider a number of factors before deciding on a fair sentence. These factors include the type of crime you have committed, your age, level of maturity and past history. The judge may ask to meet with the prosecutor, your defence lawyer and parents, and others who know about your situation to get suggestions about an appropriate sentence. This is called a “conference”. The judge may also ask a probation officer to gather information about your home and school life, your employment, and so on. This is called a “pre-sentence report”. The judge may consider all of this information before deciding on the sentence.

### **What types of sentences could a youth get?**

The types of sentences that a judge may give a youth convicted of a crime include:



A **reprimand** – a stern warning from the judge.

**Absolute discharge** – the judge finds you guilty and you will have a youth record, but there is no additional punishment. You are “discharged” from any obligation to the court. Your record will stay open with the RCMP for one year.

**Conditional discharge** – the judge finds you guilty but sets out certain conditions for you to follow, for example, taking part in a drug and alcohol treatment program. The record of a conditional discharge will last for three years.

**Fines, compensation or restitution** – the judge may order that you pay money to the court or to the victim of the crime or replace something that was lost or broken. The maximum fine is \$1000.

**Community service / Personal service** – the judge may order that you perform some task for the victim, or spend a specific number of unpaid hours working for an approved social or community agency.

**Prohibition order** – the judge may make an order that forbids you to have something or that you turn something over to the police, most often firearms and weapons.

**Probation** – the judge may order that you be closely supervised, but you will not go to jail. Youth who are given probation must stay on good behaviour and obey the conditions set by the judge. Some youth are ordered to take part in an intensive support and supervision program to ensure they obey the court.

**Non-residential program** – the judge may order that you take a program in the community such as anger management or literacy training, if it is available, rather than in a youth facility.

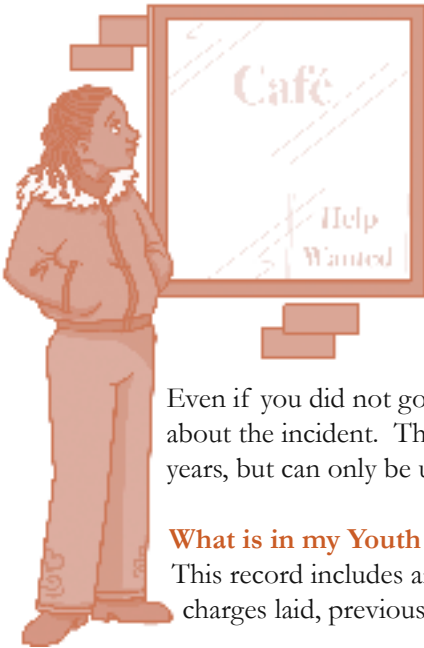
**Custody and supervision order** – the judge may order you into custody which means you will have to spend time in a youth facility. There are different levels of custody and some youth will have to go to a group home, while others will go to secure custody (jail). A custody order may be deferred or suspended if the youth obeys certain conditions.



**Intensive rehabilitation custody and supervision program** – the judge may order, for very serious offences, that you are to be closely monitored and that you must take part in support services and treatment to address the problems that lead to the criminal behaviour. After the treatment, you will be closely supervised in the community.

## Youth Records

If you are convicted of an offence, you will have a record that may result in serious consequences, for example, when you apply for a job or travel out of the country. There are two kinds of records, the police record and your Youth Justice Court record. A youth record does not end when you turn 18.



### What kind of information is kept in police records?

A police record includes any information that police gathered in their investigation, convictions, witness reports, participation in out of court measures, as well as photographs and fingerprints.

### Are police records destroyed if I did not go to court?

Even if you did not go to court the police can keep information about the incident. This information is generally kept for 2 years, but can only be used for limited purposes.

### What is in my Youth Justice Court Record?

This record includes any report prepared for the court, the charges laid, previous convictions and sentences.

### Who can see my Youth Justice Court record?

A youth record is not open to the public; very few people will be able to see your record. Some of the people who can see your record are: you, your parents or guardians, the police, the victims, and in some cases your teachers or principal.



### **When is a youth record closed?**

Youth records stay open for a specific period of time after you have completed your sentence depending on the seriousness of the crime. How long a record stays open has nothing to do with your age. Typically, youth records are open for 3-5 years after you complete your sentence or court-ordered conditions. During this time, you must stay on good behaviour and not commit any crimes for your record to be closed. Most youth records will eventually be closed. For very serious crimes and for court purposes your record may never close.

### **What if I commit another crime while my youth record is open?**

If you are under 18 years old and you commit another crime while your record is open, it will stay open for 3-5 years from the time you complete all conditions of your second sentence. If you are over 18 years when you commit another crime, and your youth record is still open, your record becomes part of your adult record and it will never close.

### **How do I close my youth record after I have been on good behaviour for 3-5 years?**

The police will automatically destroy your records. It is a good idea to contact your local RCMP or police to be sure they have destroyed these files.

For more detailed information about youth records, please see our publication “Consequences of a Youth Record”. You can view this and other youth justice publications online at [www.youthjusticenb.ca](http://www.youthjusticenb.ca) or contact PLEIS-NB for a free copy.



