

In Trouble with the Law:
Youth Rights



Public Legal Education and Information Service of New Brunswick (PLEIS-NB) is a non-profit, charitable organization. We receive funding and in-kind support from Justice Canada, the New Brunswick Law Foundation and the Office of the Attorney General of New Brunswick. We create materials and resources to help people find information about laws and the justice system. We have a number of pamphlets, posters, games and videos about youth and the law. It is important to note that these publications do not contain a complete statement of the law on the topic of youth justice and the law changes from time to time. For specific advice on your situation, you must talk to a lawyer.

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Other PLEIS Publications for youth include:

Youth Have Rights: Youth Justice in New Brunswick Workbook

Consequences of a Youth Record

Youth Justice Lesson Plan

Chasing Away Rain Clouds Lesson Plan Guide

Understanding and Preventing Abuse: A Workbook for Aboriginal Youth

For more information on youth justice from the government of Canada, visit:
www.justice.gc.ca/youth

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Check out PLEIS-NB's website
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P.O. Box 6000
Fredericton, NB E3B 5H1
Telephone: (506) 453-5369
Fax: (506) 462-5193
Email: pleisnb@web.ca
Website: www.legal-info-legale.nb.ca

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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. The **Canadian 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.

Youth get into trouble with the law when the police suspect, accuse or charge them with a crime. The Youth Criminal Justice System gives youth special rights to ensure they are treated fairly and can access advice and guidance. Even when a court convicts youth of an offence, youth have rights that are 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 explain 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 be Represented by a Lawyer**”.

The booklet contains the following sections:

- **Your Rights and the Police**
- **Your Right to be Represented by a Lawyer**
- **Alternatives to Court**
- **Going to Court**
- **Entering a Plea**
- **Sentencing**
- **Youth Records**



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, if you are uncomfortable answering the questions police are asking you, tell them you do not want to answer them. Here are some common questions about the rights police must respect when they are questioning, detaining, or arresting youth.

• *Being Questioned*

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

No. The police need a good reason to suspect you have committed a crime or will commit a crime. If you are unsure why the police have stopped you, ask politely for a reason. 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. If the police have a good reason to believe you are involved in a crime, they may detain or arrest you.

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

It is a good idea to cooperate with police if they ask you to identify yourself. You may tell them 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 want to have your parents or another adult with you. Youth have the right to have a lawyer and a parent or other adult present when they are answering questions.

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, the police may or may not arrest you. They do

not have to arrest you and charge you with a crime. The police may decide to hold you accountable in other ways. For example, they may decide to give you a warning.

It is also possible that the police will charge you with a crime and not arrest you. If this happens, the police will tell you that you are free to go. They may give you documents telling you when you must appear in court. It is important to keep these documents. The police will give you and your parents 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.**

• ***Being Searched***

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 are carrying illegal drugs, weapons, or alcohol. They are also allowed to search you if you give them your permission. If the police arrest you, they will probably search you. This may include a search of your cell phone if the search is directly connected to your arrest.

Generally, the police do not search your car or your house without permission from you or from a judge (a warrant). There are some exceptions. For example, if the police believe a crime is occurring or a person is in danger, they will not wait for a search warrant.

The rules are different if the police arrest you while you are driving a car. Police can search your car if they think you might be carrying anything illegal, like weapons or drugs. They can search any part of the car that you had easy access to before they stopped you.

• ***Being Detained***

If the police suspect that you have committed a crime, they may detain you. They could hold you in a police car or take you to the police station to keep investigating. They could also detain you after arresting you for a crime. **The police must tell you about your right to speak to a lawyer and have your**

parents present.

What is detention?

When the police first question you, they may decide to detain you in their 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 making sure of your identity.

How long can the police detain me?

If the police detain you after your arrest, you have the right to appear before a judge as soon as possible. Usually, this means you will appear within 24 hours. This is called a first appearance. If the judge decides it is not in the interest of the public to release you right away, he or she will schedule a bail hearing.

Bail hearings are also known as a “show cause hearings”: they give the Crown prosecutor a chance to “show cause” for keeping you in custody. Usually, the bail hearing will be scheduled within a few days of the first appearance. At the bail hearing, the judge will decide whether to release you or continue to detain you until trial. Generally, unless a youth is charged with a very serious offence, the judge will release them from custody while they wait for trial.

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, agreeing to stay away from certain people or places, attending school or work regularly, and reporting to a youth worker.

• **Being Arrested**

If the police arrest you 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 good reason to believe that person has committed, is committing, or is about to commit a crime.

Do the police have to contact my parents?

Yes. If the police arrest you, 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 cannot reach your parents, you have the right to ask that an adult relative or another adult be notified to help you.

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 remaining silent.

Police must tell you about your right to remain silent. They must also tell you that you have the right to speak to a lawyer, your parents, or both before you give any information.

As well, police must tell you about any legal aid that may be available such as duty counsel. Duty counsel is a lawyer who can talk to you without any charge. The **New Brunswick Legal Aid Services Commission** has arranged to have duty counsel available at the police station by telephone in either official language 24 hours a day. The right of a person in police custody to telephone a lawyer in complete privacy is part of the "right to counsel".

• ***Making a Statement***

Answering questions or making a statement to the police lets the police hear your side of the story. However, you should consider speaking to a lawyer or your parents before you begin explaining your role in the incident. See the section **Your Right to be Represented by a Lawyer** for more information.

Do not make false statements to the police. Lying to the police can get you into more trouble.

I have the right to remain silent – should I?

You may choose to talk to the police if you wish. However, the police are required to tell you of your right to remain silent. They must also warn you that any statement you make may be used as evidence against you if there's a trial later. Many people are convicted of criminal offences because of statements they gave to the police voluntarily. If you say something before the police tell you about your right to remain silent, your statement can only be used in court if a judge decides to allow it.

• ***Being Fingerprinted***

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.

• ***Being Kept in Custody until a Trial (Remand)***

When a youth commits a serious crime, the court may order that the youth stay in detention until the court case is heard.

How does the judge decide whether to keep me in detention?

The judge has to consider a number of factors in deciding whether or not you will be released. The judge might choose not to release you if:

- you have been charged with a serious offence;
- you have a history of charges;
- you have been found guilty of previous offences;
- you are likely not show up to court when you are told to;
- you are a threat to the public and releasing you is contrary to the public interest and the administration of justice; or
- it is best for the safety of the community that you be detained so you don't commit another serious offence.

The judge might also decide to keep you in custody if there are circumstances that make him or her think that it is important you remain in detention.

The judge will look at the seriousness of your crime and the circumstances surrounding it (for example, if a gun was used). The judge will also consider if the offence you are charged with carries the possibility of serious jail time.

The judge can only decide to keep you in detention until your trial if he or she believes it is necessary. Being kept in remand until your trial is a last resort. You will be remanded in custody if a judge decides that you are likely to miss your court appearance otherwise. The judge could also keep you in remand if you pose a risk to the public. Finally, a judge could decide not to release you if doing so might damage the public's confidence in the justice system.

Where will I be sent if I am remanded until my trial?

You will probably be sent to a youth facility, unless the judge decides that it is better for your safety and the safety of others for you to be in an adult facility. You may also be kept in adult



facility if there is no youth facility within a reasonable distance. The facility where you are detained may be one where you are locked up, or it could be one that provides some freedom.

Note: If you plead guilty or a judge convicts you and sentences you to custody, you will serve your time in a youth facility.

What if I am treated poorly while I am detained?

When you are detained by the police or sent to a youth facility you have the right to physical safety. You also have a right to have your basic needs met (for food, water, and hygiene). If you are treated poorly, tell your lawyer or make a complaint to someone whose job it is to protect you. In New Brunswick, the **Child and Youth Advocate** is the agency that protects the rights and interests of all children and youth. If you have concerns about any of your legal rights, you can contact their office by telephone at 1-888-465-1100, by email at

advocate-defenseur@gnb.ca or

online at www.gnb.ca/cyanb

- ***Being Put into the Care of a Responsible Adult***

Sometimes, instead of keeping you in detention, the judge may decide to place you in the care of a responsible adult who can take care of you and help you to get to court. You have to agree in order to stay with this adult. If you don't agree, or if the court cannot find a person like this, you may be kept in detention until your trial.



Your Right to be Represented by a Lawyer

Youth have the same guaranteed right as an adult to “legal counsel”. As mentioned in the previous section, that means the police must tell you that you have the right to speak to a lawyer if they place you under arrest, detain you, or ask you to make a statement. You also have the right to legal representation when you appear in court.

How will I get a lawyer to represent me if I have to go to court?

If you have to go to court, you should be represented by a lawyer who practices criminal law and who can represent you throughout your case. Here are a few options for legal representation.

- **Duty Counsel at the courthouse:** If you do not have a lawyer for your first appearance, you should talk to Duty Counsel. This is a lawyer that you can talk to free about your case. The duty counsel lawyer can explain the court process and give you informal advice about making a plea. He or she may appear with you to enter a plea but will not represent you or appear at trial.
- **Hire a criminal law lawyer:** Your parents can hire a criminal law lawyer to represent you.
- **Apply to the New Brunswick Legal Aid Services Commission (NBLASC) for legal aid:** NBLASC provides free legal representation in court for youth charged with a criminal offence. Although adults applying for criminal legal aid must undergo a financial screening process to qualify, youth are automatically eligible. Representation may not be available for first offenders charged with less serious offences that are typically diverted out of court.
- **A judge may appoint a lawyer to represent you:** 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.

Why should I have a lawyer?

Your lawyer, whether a private lawyer or lawyer appointed by legal aid, is an expert in criminal law and court procedure and can give you good advice on your options. For example, your lawyer would review any documents about the case against you that are disclosed by the police and explain what would likely happen if you plead guilty or not guilty. 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.



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. Before this can happen you have to admit that you did what the Crown prosecutor said you did. If you did not do anything wrong, you should not agree to alternative measures just to avoid going to court.

There are several factors that they consider when deciding to hold a youth accountable in the community. These include: your age, past behaviour, and the nature of your crime.

A record of your participation in such out of court measures will be kept by police, and it may also form part of a youth court record. Learn more about youth court records in the section called **'Youth Records.'**



What are some of the alternatives to court?

Police can choose 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 taking no further action, 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 (a kind of extrajudicial measure). 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 cannot be forced to do something or take part in any program as an alternative to court. You have the right to have a judge hear your case. 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.

What will happen the first time I go to court?

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. As mentioned in other sections, it is a good idea to have lawyer to represent you. If you do not have a lawyer, you should arrive early and speak to the duty counsel lawyer. Duty counsel can help you by explaining the process and speaking for you in court.

Will everyone know I am going to court?

Although the court is open to the public, the **Youth Criminal Justice Act** generally does not allow newspapers, television or other media to reveal any information that would identify a young person. This right helps protect youth from being labelled as a criminal in the community and makes it easier for youth to change their behaviour. However, if the youth is found guilty, and receives an adult sentence, or if they received a youth sentence for a violent offence, the judge may allow the youth's identity to be released to the media. The name of a youth could also be released to the media if the youth is at large in the community, and a court determines that he or she is dangerous and that publication is necessary to apprehend the youth.

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 for you 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. During this time, you and your lawyer will be able to prepare for the trial.

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 kept in custody while I am waiting for the sentence?

Not necessarily. That depends on what the judge decides. If the Crown agrees to your release until sentencing you probably will be released. However, the judge might even release you if you have been found guilty and the Crown objects to your release. Your lawyer should ask to have you released.

Will I always get a youth sentence?

Generally, youth convicted of a crime will get a youth sentence. However, if a youth is found guilty of an offence for which an adult would get more than 2 years, the Crown prosecutor may ask the court to impose an adult sentence if the youth was at least 14 years old at the time of the offence and a youth sentence would not be sufficient to hold the youth accountable. The Crown is not obligated to request an adult sentence nor is the judge required to impose one.



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,
- the harm done to victims,
- any ways you have already paid back the victims or the community,
- your age and level of maturity, and
- your past criminal history.

The judge may ask to meet with the prosecutor, your defence lawyer, your 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:

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 a fine. The maximum fine amount is \$1000. The court also could order you to pay money to the victim of the crime or replace something that was lost or broken.

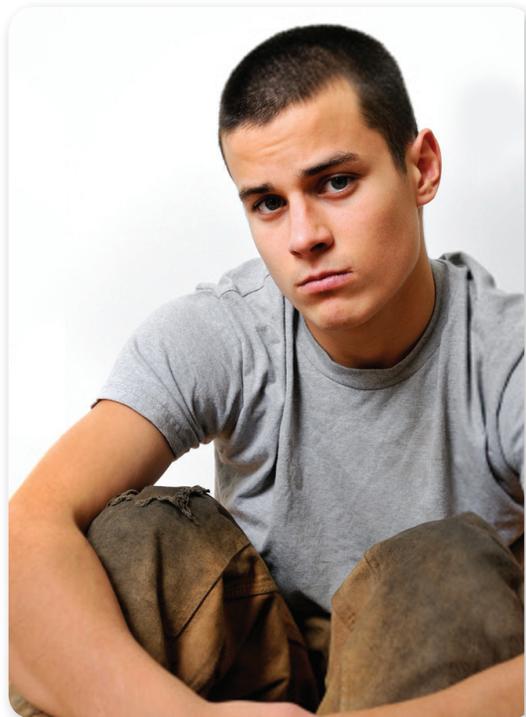
Community service / Personal service – the judge may order that you perform some task for the victim, or spend a specific number of unpaid hours working for an approved social or community agency.

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 that while you are in custody, you 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. The judge could make this order if a youth has been found guilty of a serious violent offence and is suffering from a mental, psychological, or emotional disorder. In these cases, an individualized plan of treatment and intensive supervision is developed for the young person.

The judge must always explain why he or she gave a certain sentence.



Youth Records

If you are convicted of an offence, you will have a record that may result in serious consequences. For example, it may prevent you from being hired for particular jobs or travelling out of the country. There are three kinds of records; police records, youth court records, and government records. 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 extrajudicial measures, as well as photographs and fingerprints.

Are police records destroyed if I do not go to court?

Even if you do not go to court the police must keep information about the incident, including a record of any extrajudicial measures that were used to deal with the incident.

What is in my Youth Court Record?

This record includes any report prepared for the court, the charges laid, previous convictions and any sentences (including consequences lighter than jail time) that have been imposed by the court.

Who can see my Youth 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?

The length of time a record stays open depends on what happened in the court case and even after the case has been completed. How long a record stays open has nothing to do with your age. Typically, if a youth is found guilty of an offence, the youth record stays open for 3-5 years **after** the sentence is completed. 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. These rules do not apply to records of judicial sanctions, acquittals, charges stayed or withdrawn, reprimands, or absolute or conditional discharges.

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 may stay open for 3-5 years or more 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 may become part of your permanent adult record. These rules do not apply to records of judicial sanctions, acquittals, charges stayed or withdrawn, reprimands, or absolute or conditional discharges.

How do I close my youth record after the access period ends?

The police are responsible for destroying your records. You may wish to contact your local RCMP or police to be sure they have destroyed these files once your youth record has closed.

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 or contact PLEIS-NB for a free copy.

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