

My
CHILD
IS IN
TROUBLE
WITH THE
LAW

**What can I
do to help?**



Your child really needs you now

Some parents think that since their child got into trouble on their own, it will be good for them to face the consequences on their own. They hope the experience will shock their child into better behaviour. There are many reasons why this is not a good idea.

If your child gets in trouble with the law, your support really matters. Your child should not go through the criminal justice system alone. Even adults find the experience scary and confusing. Your child needs your support, even if they say they don't.

Ways you can help

Going through the justice system can be a long and complicated process. Your child will have to make many decisions that will have serious and lasting consequences for them. Even if you don't have any experience with the justice system, you can help them get the information, advice, and resources they need.

Your presence in court can help your child. You can show the judge that your child has a caring and responsible parent to support and supervise them. This can help when the judge is deciding what should be

done with your child. For example, a judge may be less likely to make a young accused wait in custody until trial if an interested parent is present in court.

You can help your child understand what is happening to them. You can reduce the influence of negative peer contact. You can help them get a fair result and learn lessons from their experience that can help them stay out of trouble in the future.

Learning the wrong lessons can lead to more trouble

Some young people benefit from their experience in the youth justice system. Many, however, learn the wrong lessons.

They can learn the wrong lessons while waiting for their hearing

When young people go to court, they often have to wait many hours before their turn with the judge. If they are there alone, they have little to do but hang around and share stories with other youth in trouble with the law. If you are there with your child, you can reduce their exposure to the bad attitudes and misinformation often spread during these waits.

They can learn the wrong lessons in custody

If your child has to spend time in custody, they will probably be there with young people who have more criminal experience than they do. Your child can pick up opinions, misinformation, and instructions that are likely to lead them into more trouble with the law. You can help reduce the influence of these bad role models on your child.

They can learn the wrong lessons from the youth justice system itself

Going through the youth justice system without understanding it teaches some youth contempt for the law. They see what is done in the justice system, but don't understand why. Some youth end up disrespecting the law, which often leads to more criminal behaviour. You can help your child avoid this pattern by being there with them as they go through the system and making sure they get the information they need to understand what is happening.

A youth record is serious

A youth record can have a negative effect on a young person's life for a long time. Many people think it

doesn't matter if a young person gets a record. They think the record disappears when the young person turns 18. This often isn't true. The length of time a record lasts depends on:

- the kind of crime that was committed,
- the kind of sentence the young person receives, and
- whether the young person commits another crime while the record is still open.

The record for less serious offences usually lasts for 3 years after the whole sentence, including probation, is finished. It remains open during this time even if the young person turns 18 before the time is up. The record for more serious offences always lasts for at least 5 years after the sentence for the offence is finished. For some crimes it is not completely closed for 10 years, and for the most serious violent crimes it might never be completely closed.

If a young person commits a new offence before their record for a previous offence has been closed, both records remain open until it is time to close the record for the later offence. A violation of a probation order is a new offence and can keep the record for the original offence open.

If someone commits and is found guilty of another offence after turning 18, but while their youth record is still

open, their youth record will stay open indefinitely.

Having a youth record may make it difficult for your child to travel to other countries. Youth records are not supposed to be accessible to border officials of other countries, but there is always a chance that officials can get information on a youth record. Border officials are more likely to get access to an open youth record than one that is closed.

For example, when your child crosses the border to the United States, they can be asked if they have a youth record. It is an offence to lie. If your child's youth record is still open, they will have to answer yes to this question. If your child lies about having a youth record and the border official finds out about it, or if your child refuses to answer, your child can be refused entry into the United States. In addition, the border official may enter information about your child's record into their files. Once your child's record is entered into their files, it may remain there permanently.

Other countries do not have to obey Canada's law about closing youth records. This means that your child can be refused entry into the United States long after their record has been closed here in Canada.

When a young person's record is closed, they can honestly say that

they have no youth record or criminal record, and have never been convicted or found guilty of a criminal offence. For this reason, it is safest for someone who has committed an offence as a youth not to try to enter the United States until they have made certain their youth record is closed. When it is time for your child's youth record to be closed, the Royal Canadian Mounted Police (R.C.M.P.) should take your child's information off the system. Your child should contact them to make sure they have done this.

A youth record can also be a barrier to employment. Most employers do not have access to a young person's record even while the record is open. However, employers might ask job applicants themselves to have a police record check done to provide proof that they do not have a record. A young applicant who refuses will probably not be given the job.

A youth record does have practical consequences that can last for a long time. It is important that your child get expert advice before deciding what to do when they are charged.

It's a long process

Most people are shocked to learn how long things take in the justice system. A case isn't usually heard in court until at least several months

Your child needs a lawyer

after a young person is charged. The length of time varies from one court to another, but it is almost always longer than expected. The process can be a bit shorter if an accused youth pleads guilty, but even pleading guilty takes time.

Court dates are often set and then rescheduled. There are usually a number of delays you cannot control. However, some delays can be prevented if your child:

- hires a lawyer as soon as possible,
- tells their lawyer they want their case dealt with as soon as possible, and
- finds out what is needed for court and gets it ready.

Each time your child has to go to court they will probably have to wait for hours before their case is called. The appearance notice will usually tell them what time they have to be in court. They have to be there on time. But many cases are scheduled for the same time. People who are represented by lawyers will be called first. Your child cannot leave until the judge tells them they can. Since you should be with your child for the main court dates, be prepared to be there all day.

Your child has a right to a lawyer. The laws of Canada and the Charter of Rights and Freedoms give this right to any person who is arrested or held in custody.

Whether your child is innocent or guilty, it is important that they have a lawyer to represent them. There are serious decisions to make. These decisions should be made with the help of someone who knows the law, the process, and the possible consequences for your child's future.

A lawyer should be chosen who specializes in criminal law. If you have used a lawyer for other kinds of legal work, that lawyer may not be suitable to handle your child's criminal case. But they might be able to suggest someone.

A lawyer can be hired as soon as your child has been charged with an offence. It is best to contact a lawyer as soon as possible after the police have contacted you. Do not wait until your child has to appear in court.

A lawyer can help right away by getting information from the authorities and negotiating on your child's behalf. Getting help early in the process can make a difference to what happens in your child's case.

It can also save time. If your child does not have a lawyer when they appear before the judge, the judge will usually postpone the case to give time to hire one. Many delays are caused by the failure to get a lawyer before the court date.

If you can afford to pay for a lawyer, but do not know a suitable one, you can search the lawyers' listings in your local yellow pages. Many listings give the lawyers' specialty. Find out if any lawyers are experienced at representing young clients.

If you can't afford a lawyer

If you can't afford to pay for a lawyer, your child can apply for a legal aid certificate. You can usually find the Legal Aid Ontario office nearest you by looking under "Legal Aid" or "Lawyers" in your phone book. You can also contact Legal Aid Ontario by calling **1-800-668-8258** or **416-979-1446**, or you can visit their web site at www.legalaid.on.ca.

Legal aid is intended for people with low incomes. You will have to give Legal Aid Ontario information about your income and any property you own. Your child will have to do this too. If both of you qualify financially, and the charge against your child is a serious one, Legal Aid Ontario will give your child a certificate to pay for a lawyer.

Not all lawyers will work under a legal aid certificate. Ask Legal Aid Ontario for a list of local criminal lawyers who do legal aid work.

You and your child's lawyer

Your child's lawyer does not work for you. The lawyer works for your child, even if you are paying.

Your child's lawyer has a duty not to tell anyone what your child tells them in confidence. They are not even allowed to share this information with you, unless your child tells them they can.

Because your child is the client, you will not be able to tell the lawyer how to handle the case. You can offer your opinion, but decisions will be made by your child and the lawyer.

You can communicate with the lawyer but the lawyer cannot share confidential information with you. You can ask to be kept informed about how the case is progressing. You can also ask questions. The lawyer will tell you if you have asked a question that they aren't permitted to answer.

Duty counsel can help at the first court appearance

There will not be a trial the day of your child's first court appearance. The police and the other Crown witnesses will not be in court that day. Witnesses for your child don't have to come either.

If your child doesn't have a lawyer for their first court appearance, they should get help from duty counsel at the court house. Duty counsel are lawyers appointed by the court to give free legal help to people who are about to appear in court and don't have their own lawyer.

Duty counsel can help in a number of ways. They can:

- describe the court process,
- explain the charges against your child and the possible penalties,
- explain what is going to happen that day,
- help apply for alternative programs,
- ask for a postponement so that your child can get their own lawyer,
- tell the court how your child is going to plead, and
- explain how to apply for legal aid and find a lawyer.

Your child should get to court early so there is enough time to meet with duty counsel before they are scheduled to appear before the judge. Duty counsel can answer many of their questions. It is a good idea to have a list of questions prepared.

Duty counsel is not a substitute for your child having their own lawyer. Duty counsel can only give general information and basic advice. They can't take your child's case to trial.

Alternatives to court

Your child may not have to go to court at all, or may go to court and then get transferred to an out-of-court program. The new Youth Criminal Justice Act strongly encourages the use of out-of-court measures, called extrajudicial measures, for young people who commit an offence. These extrajudicial measures include:

- the police taking no further action,
- the police giving a warning,
- the police or Crown attorney giving a formal caution, and
- the police referring the young person to an agency that can help them make better choices.

If one of these extrajudicial measures is used, your child will not end up with a youth court record.

The most formal type of extrajudicial measures are called extrajudicial sanctions. They may be used if a warning, caution, or referral is not adequate because of the seriousness of the offence or because a young person has been in trouble with the law in the past.

Extrajudicial sanctions can only be used if the young person agrees to participate. As well, they are only for young people who are willing to accept responsibility for the offence they are charged with. Usually, the young person must agree to perform specific tasks to make up for the harm caused by the offence. Some of the things that your child could be asked to do are:

- return or pay for property they stole,
- repair or pay for property they damaged,
- do volunteer work in the community,
- write an essay on a subject related to their offence,
- do a research project related to their offence, or
- participate in a program related to the offence, such as an anti-shoplifting or anger management course.

It is very important that your child do what they promise in an extrajudicial sanctions program. You can help them understand that this is their chance to make up for the mistake they made without messing up their future. You can go over the assignment with them to make sure they understand what they have to do. You can help them set a schedule for completing it so they don't put it off until it is too late to get it done. Most importantly, you can help your child by showing an interest and encouraging their progress.

If your child changes their mind or does not complete the program, they may be sent back to court. If that happens, the fact that your child has previously accepted responsibility for the offence cannot be used in court.

If your child participates in an extrajudicial sanctions program, they will have a record that shows they participated. The record will last for 2 years after they agree to participate. Because there will be a record, your child should talk to a lawyer before they agree to participate in an extrajudicial sanctions program.

Conferences

Whether or not your child is going to court, the Youth Criminal Justice Act allows for the use of conferences to help people in the justice system make decisions about your child's case. Conferences can be called by judges, police officers, justices of the peace, Crown attorneys, youth workers, and other decision-makers. Usually, conferences bring together people who know the young person and who can advise the decision-maker on things like what kind of extrajudicial measure to use, what the conditions for bail should be, what kind of sentence would be best, or what kind of rehabilitation plan to set up.

If you are asked to participate in a conference, you should go. This is a good opportunity for you to be heard.

Conditions of release while waiting for trial

Most young people accused of committing crimes are released until their hearing date. Often the police release them right away and later notify their parents in writing. The only condition may be that they have to appear in court at the scheduled time.

In other circumstances an accused young person might be released on

the promise that they will obey certain conditions, such as:

- keeping a curfew,
- attending school regularly,
- staying away from certain people, such as co-accused, witnesses, or victims,
- not drinking alcohol or using drugs,
- not driving, or
- reporting to the police at regular intervals.

Sometimes they are released only if a parent or other responsible adult promises the court to take responsibility for them. The responsible person must then carry out what they agreed to do or they can be charged with a criminal offence.

If you find out that your child is not keeping the promise they made to the court, you have a legal duty to tell the police. Make sure your child knows this right from the start.

It is important your child understands that they have to keep their promise to obey the conditions. A condition is an order of the court. Even if your child thinks a condition is stupid, they have to obey it. Otherwise they could end up in custody. This could happen even if their original offence was a minor one. They could also face a new criminal charge for disobeying the court.

Go over the conditions with your child. Make sure they understand what they are supposed to do and what will happen if they don't.

The pre-sentence report

A pre-sentence (or pre-disposition) report must be prepared for the judge whenever there is a chance that a young person who has been found guilty might be sentenced to custody. In other situations, a defence lawyer or Crown attorney can ask for one.

The report tells the judge about the young person, their life, and their circumstances. Knowing as much as possible about the young person helps the judge decide what kind of sentence would be most suitable.

The report is prepared by a probation officer or youth worker after talking to you and your child, the victim, your child's teachers, employers, and any other professionals who have worked with your child.

What you say about your child in your interview can have a lot of influence over what kind of sentence they receive. It is a good idea to cooperate with the worker and to think carefully about what you will say to them. Be honest about any real problems your child might be having, but don't exaggerate those problems or use the interview to express resentment you might be

feeling toward your child. Remember that the pre-sentence report is not another trial of the same issues. A court has already found your child guilty of an offence.

The court will give your child, their lawyer, and the Crown attorney a copy of the finished report. If you have been in court with your child, you will be given a copy too. You can also get a copy if you have not been able to go to court, but have shown an active interest in your child's case. If your child is sentenced to custody, the facility operator will also receive a copy. The probation office already has a copy because a probation officer wrote it.

There will be an opportunity in court to correct any errors or to challenge the accuracy of the report. Your child's lawyer can cross-examine the person who prepared the report.

Being a parent of a young person who has been charged with a crime can be a stressful, confusing experience. It will be stressful and confusing for your child too. You can help your child by learning about the court process, and what it will mean for them if they are found guilty. Most importantly, make sure your child gets legal advice. And give your child support. They will need it.

This publication contains general information only. Each situation is unique. As well, policies and practices can change or vary. If you have a legal problem, contact a lawyer.

This pamphlet is part of a series produced by Community Legal Education Ontario (CLEO). CLEO has publications on other areas of law as well. Most are free. For an order form call **416-408-4420, extension 33** or visit our web site at **<www.cleo.on.ca>**.

CLEO gratefully acknowledges the Department of Justice Canada for funding this project.



February 2005

