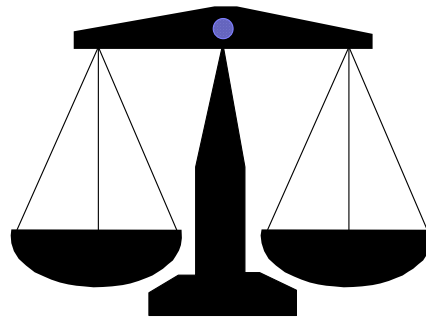


Youth Court

The John Howard Society of the Lower Mainland is committed to assisting and supporting young people and their families through the youth court process. The purpose of this booklet is to provide information about the court process to young people, their families and their support networks.



Questions or comments? Please call
The John Howard Society at:
(604) 660-7459 or (604) 872-5651

This booklet made possible by funding from the Legal Services Society

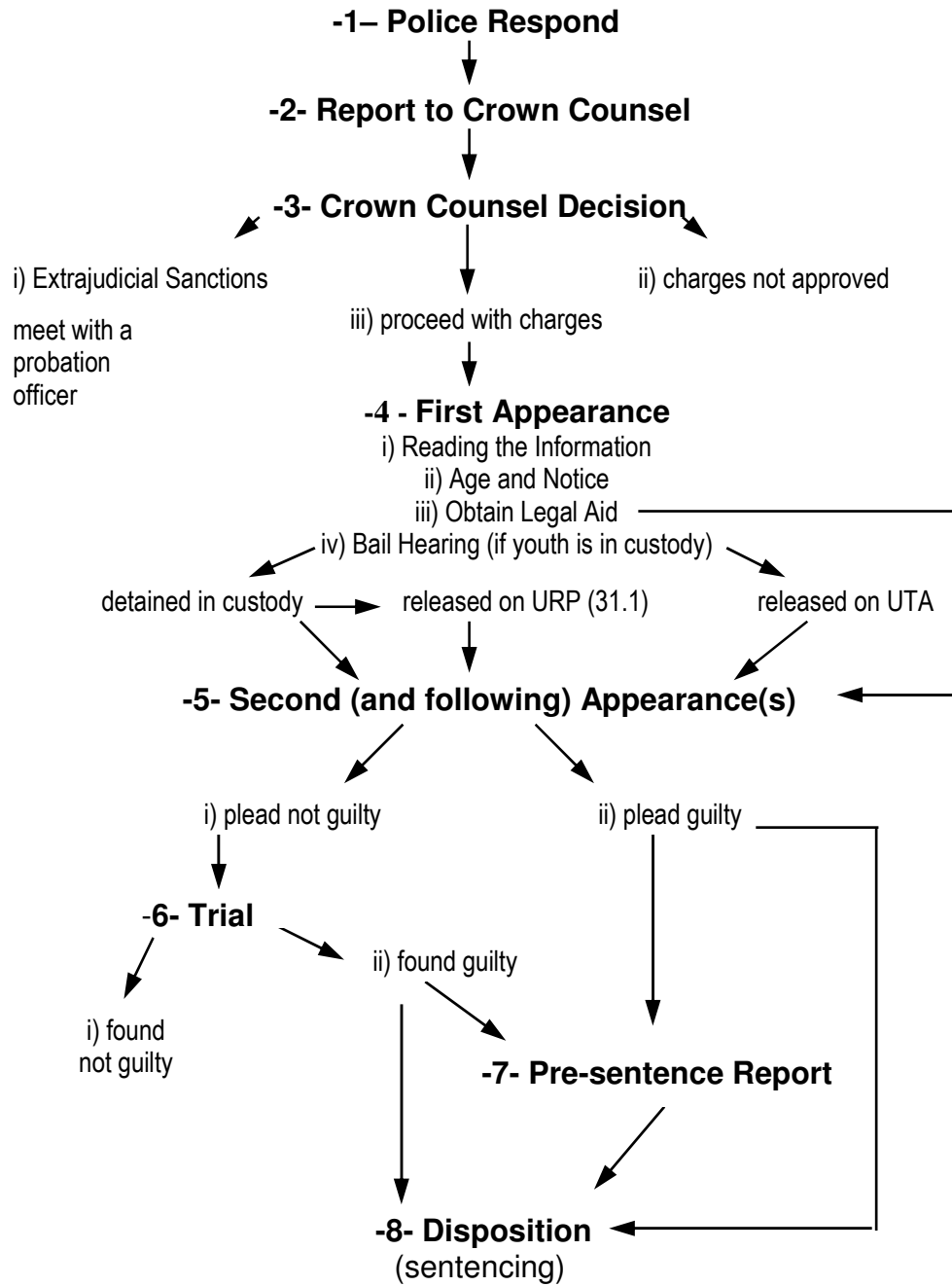
“Bridging the gaps between the correctional system and the community”



January 2002

MOVING THROUGH THE YOUTH COURT PROCESS

Please see the following pages for an explanation



MOVING THROUGH THE YOUTH COURT PROCESS

The Youth Criminal Justice Act (YCJA) is the federal legislation that governs how young persons (age over 12 to under 18) are dealt with by the criminal justice system. Among other things, the YCJA ensures that when a young person is arrested there is no improper questioning by the police or persons in authority. It is important that the young person is aware that:

- s/he has the right to remain silent
- making a statement to the police is voluntary
- any statement made by the young person can be used against him/her in court
- before a statement is made the young person has the right to talk to a lawyer and a parent, or other Adult.

-1- Police Respond: Upon arrest, police may hold a young person suspected of committing a criminal offence in custody, or the young person can be released with an “Intent to Summons.” The summons is sent to the young person’s home and indicates when and where s/he must appear before a Judge or Justice of the Peace. Alternatively, the police may issue an “Appearance Notice” which also indicates when and where the young person must appear in court.

-2- Report to Crown Counsel: The police will provide a report to Crown Counsel regarding the offence.

-3- Crown Counsel Decision: It is the Crown Counsel’s decision whether or not charges will be laid. The Crown has three options when dealing with a young person accused of a criminal offence:

i) The Crown Counsel can divert the young person from the court process by referring the young person to **Extrajudicial Sanctions (EJS)**. EJS is supervised by Youth Probation Officers (Youth Workers). In order to be diverted, the young person must accept responsibility for the offence and agree to complete an alternative measures plan. Community service work, letters of apology, or participation in a Victim Offender Mediation Program are some of the terms that may be included in an EJS plan.

ii) The Crown Counsel may decide not to charge the young person due to insufficient evidence.

iii) When there is a reasonable likelihood of conviction, the Crown Counsel may **proceed with the charges** in court.

-4- First Appearance: Upon arrest, the young person must appear in front of a Judge or Justice of the Peace within 24 hours. If the young person was released by the police then s/he will be required to attend court as indicated on an Appearance Notice or a Summons. Crown Counsel may request that a Justice of the Peace issue a summons or a warrant for the accused after the charges have been laid.

i) At a First Appearance, the young person will be **read the "Information"** (the charge) by the Judge or Court Clerk. This is to ensure that the young person understands the charge s/he is facing. At this point the young person does not have to decide whether to plead guilty or not guilty.

ii) When a parent/guardian attends court, **age and notice** can be completed. This is done by asking the parent/guardian to tell the court the young person's date of birth and confirm that s/he is aware of the charges that the young person is facing. If a parent/guardian is unable to come to court in person, the young person's lawyer can speak to that adult prior to court. The lawyer can then inform the court of the young person's date of birth and that the parent/guardian is aware of the charges the young person is facing. Age and notice must be completed for each new charge. As age and notice must be done before a trial or disposition (sentencing) hearing, it needs to take place before the young person pleads guilty or not guilty.

iii) All young people are entitled to **free legal services** (a lawyer) to help them through the court process. In order to get a lawyer, young people must fill out a legal aid application. It is the young person's responsibility to go to a legal aid office to complete the application or, if the young person is in custody, to contact legal aid by phone. It is also the responsibility of the young person to find out which lawyer has been assigned to his/her case, and to contact that lawyer. (If the young person is in the permanent care of the Ministry of Children and Family Development or in temporary care as a result of a court order, then s/he will be assigned a specific lawyer and does not have to fill out legal aid).

The young person has the right to request a specific lawyer, and has the right to change counsel. It is important that the young person remains in contact with his/her lawyer throughout the court process. If a young person has not yet found a lawyer, Duty Counsel can provide legal advice and represent the young person in court.

iv) If the young person is in custody then a ***bail hearing*** (show cause hearing) may take place to determine if the young person should be released and, if so, under what conditions. If Crown Counsel does not want the young person released, then it is the Crown's responsibility to convince the Judge that the young person should be ***detained in custody***. The Crown will argue that detention is necessary for one or more of the following three reasons:

- to ensure the young person attends court;
- to protect society;
- due to the seriousness of the crime for which the young person is charged.

If the Judge decides that the young person should be detained in custody, s/he may then consider releasing the young person on an ***Undertaking by Responsible Person*** (URP), under Section 31 of the Youth Criminal Justice Act. Under Section 31, the responsible adult (often a parent) agrees to ensure that the young person obeys the conditions and returns to court when required to do so. The adult who signs the sec. 31 must revoke the order if the young person is not abiding by the required conditions, or face being charged with an offence themselves. The adult may revoke the sec. 31 at any time. As the young person would be in custody without the sec.31, revoking the order will result in a "524 Warrant" being issued, and the young person being arrested. If the young person fails to appear in court, a "Bench Warrant" may be issued for the young person's arrest.

If custody is not considered necessary, the Judge can release the young person on an ***Undertaking To Appear*** (UTA). The young person will sign the order stating that s/he will attend court as directed. The UTA may include conditions such as reporting to a Probation Officer (Youth Worker) and obeying a curfew. If the young person fails to comply with any condition of his/her release, then a "524 Warrant" may be issued and the young person will be arrested. If the young person fails to come to court, a "Bench Warrant" may be issued for the young person's arrest.

-5- Second (and Subsequent) Appearance(s): Anything not completed at a first appearance can occur at a second appearance, including “age and notice” or applying for legal aid.

i) If the young person has a lawyer and has decided to **plead not guilty**, an Arraignment Hearing will take place. At this time a Trial Date may be scheduled. Often, a Trial Confirmation Hearing is also set to take place a few weeks before the trial. The purpose of the Trial Confirmation Hearing is to make sure that the trial will go ahead as planned. Both the youth and their lawyer must come to court for the confirmation hearing.

ii) If the young person has a lawyer and has decided to **plead guilty**, the court *may* immediately proceed with sentencing (disposition) or the court may adjourn the sentencing hearing to a later date. The court may also order a **Pre-Sentence Report** (PSR) (see –7– for an explanation). The young person may participate in the John Howard Society’s Victim Offender Mediation Program prior to a sentencing hearing. More information about this program is provided towards the end of this booklet.

-6– Trial: (plead not guilty) During a trial, it is the responsibility of the Crown Counsel to prove its case by calling witnesses to present evidence. Each witness can be questioned by the young person’s lawyer (the Defense Counsel). The young person has the right to testify, as well as to call other witnesses. The Crown Counsel may question these witnesses.

i) The young person is **found not guilty** when, after hearing the witnesses, as well as the arguments presented by Defense and Crown, the Judge believes that there is a reasonable doubt that the young person committed the offence. The charge is then dismissed and the young person is free to go.

ii) The young person is **found guilty** when, after hearing the witnesses, as well as the arguments presented by Defense and Crown, the Judge is satisfied, beyond a reasonable doubt, that the young person is guilty. A finding of guilt will lead to a disposition (sentencing) hearing. A sentencing hearing may take place immediately following a trial or a Pre-Sentence Report may be ordered, and a later disposition date scheduled.

-7- Pre-Sentence Report (PSR): The purpose of a PSR is to assist the Judge with deciding an appropriate disposition (sentence). PSRs are prepared by Probation Officers (Youth Workers). The PSR includes the young person's family history; educational and employment background; drug and alcohol history; and any past findings of guilt for criminal activity. The report also includes the Probation Officer's recommendation for sentencing.

Section 13 of the Young Offender's Act allows for medical and psychiatric reports to be prepared where the court has reasonable grounds to believe that the young person may be suffering from a physical, mental or psychological disorder. Both the PSR and *Section 13* reports are confidential. These reports are only given to the young person, their lawyer, the Crown Counsel and the Judge. It is important that the young person go over the reports closely with their lawyer prior to sentencing to ensure that they are accurate.

-8– Sentencing (Disposition): A Judge may order one or more of the following dispositions (sentences).

i) Absolute Discharge: The young person is found guilty but is "discharged" (released) with no youth record or punishment. Court records will indicate that the young person has received an absolute discharge. The Judge may grant an absolute discharge if satisfied that it would be in the best interests of the accused and not contrary to the public interest.

ii) Conditional Discharge: The young person is "discharged" (released) but must abide by a number of conditions for a specific period of time. If the young person obeys all of the conditions, court records will indicate that the young person has received a conditional discharge.

iii) Fine: A young person can be fined up to \$1000.00.

iv) Restitution Order: A young person is required to provide some form of compensation to the victim. The order may include paying for damages.

v) Community Service: The young person can be required to complete up to 240 hours of community service. Specific types of community service are usually arranged by a Probation Officer (Youth Worker).

vi) Probation: A young person can be given up to two years probation, during which time s/he must abide by the conditions set out by the court. The conditions vary depending on the circumstances of each case. A breach (violation) of the conditions of a probation order may result in a new charge.

vii) An Order of Prohibition: At the time of sentencing, the Judge may make an order prohibiting the young person from such activities as driving, possessing weapons or drinking.

viii) Secure (Closed) or Open Custody: The Judge may also decide to send a young person to custody. Secure custody centres are characterised by high levels of security and control, such as secure perimeters. Open custody centres are generally located in camp like settings in remote locations.

Some information provided in this pamphlet came from: Bala, Nicholas. "Essentials of Canadian Law: Young Offenders Law". Irwin Law, 1997. Thank-you to the many criminal justice professionals who also assisted by providing information for this pamphlet>

BURNABY YOUTH SECURE CUSTODY CENTRE INMATE VISITATION INFORMATION

BYSCC allows visits **by appointment only**. Visits are pre-booked through the Visit Line. The line can be reached Monday through Thursday at (604) 419-1612. A message must be left stating:

- Your name
- The resident you wish to visit
- The date and time of proposed visit
- Who will be attending with you
- Your phone number so your visit can be confirmed

Each visit must be pre-approved by the resident's Probation Officer before the visit will be booked. Additional rules must be followed while visiting BYSCC. Ask BYSCC for more details.

YOUTH DETENTION CENTRE

Upon request, the John Howard Society can visit Burnaby Youth Detention Center to provide support, advocacy, information, and referrals to incarcerated youth. Phone and ask for youth services at (604) 660-7459 or (604) 872-5651.

YOUTH COURT RECORDS

A Criminal Record is a file containing information about the offence and the young person. It also contains fingerprints and a photograph.

NOTE: A young person's criminal record is NOT automatically erased when s/he turns 18!

Depending on the offence, and the young person's sentence, his/her record is kept for a certain period of time (see the chart below). The criminal record is kept until the time period is finished even after the young person turns 18. (For example, the youth court record for a youth who receives a conditional discharge at age 17 will still be kept for three years even though the young person will turn 18 before the three years is up). When the time has expired, the youth record is sealed and is not released to anyone except the courts. The young person's youth record can be used during sentencing if the young person commits an offence as an adult before the record is sealed. When applying for a job, a person does not have to tell an employer that s/he has/had a youth record, and a youth court record should not appear on a criminal record check.

Please ask the a lawyer, a probation officer or the John Howard Society if you have questions about a youth record.

TYPE OF OFFENCE OR DISPOSITION	WHEN RECORD WILL BE SEALED
Diversion/Extrajudicial Sanctions	2 years from the date the alternative measures agreement is signed
Absolute Discharge	1 year from when the young person is found, or pleads, guilty
Conditional Discharge	3 years from when the young person is found, or pleads, guilty
Summary Offence (less serious offence)	3 years from the end of the sentence (during this time the youth court record can be used at a sentencing hearing if the young person commits another offence)
Indictable Offence (more serious offence)	5 years from the end of the sentence (during this time the youth court record can be used at a sentencing hearing if the young person commits another offence)

VICTIM OFFENDER MEDIATION PROGRAM

The John Howard Society offers a restorative justice program for victims and young offenders. The focus of this program is to create peace in communities by reconciling the parties and repairing the injuries caused by the crime, thus creating obligations to make things right. The active, voluntary participation of the victim, the offender, and the community will bring about resolutions that promote repair, reconciliation and reassurance.

After the young person has accepted responsibility for the criminal offence, if both parties are willing, a meeting can take place between the victim and offender with the help of a neutral mediator. The aim is to try to resolve the incident for both parties. Referrals are accepted from offenders, victims, lawyers, victim services, probation officers and judges.

By participating in mediation, the victim has an opportunity to actively participate in resolving the incident. S/he has an opportunity to express their feelings about the incident and be informed about the crime, the offender, and the criminal justice process. The victim may experience a sense of positive closure by participating in mediation.

By participating in mediation, the offender also has the opportunity to actively participate in resolving the incident. S/he has an opportunity to understand and take responsibility for their actions in an active, positive way. Through this program, the young person has an opportunity to attempt to repair the harm done to the victim, the community and themselves.

Mediation can take place at any of the following stages of the court process:

- Before a young person is charged
- When a young person is diverted from the court process (alternative measures)
- After a young person is charged but before s/he is sentenced
- After a young person has been sentenced

If you have questions or would like to refer a case for mediation, please contact the Coordinator of Youth Services at the John Howard Society at (604) 872-5651.

GLOSSARY

AGE AND NOTICE: Parent/guardian tells the court that s/he is aware of the charges the young person is facing. The adult also confirms the young person's date of birth to the court to ensure the young person is between the ages of 12 and 17.

BAIL HEARING: After arrest, a bail hearing is held to decide if the young person should be released, or kept in custody until found not guilty or sentenced.

CROWN COUNSEL: The prosecuting lawyer representing the government.

DEFENSE COUNSEL: (The young person's lawyer) The defense counsel works for the youth. The defense counsel should clearly explain the young person's options to them as well as consequences that may result from their choices. The young person has the right to change counsel at any time. To do so s/he must contact Legal Services.

DISPOSITION: The sentence given to the young person by the Judge after being found guilty or pleading guilty.

DUTY COUNSEL (DC): A lawyer who is available at court to provide assistance to someone who has not yet obtained a lawyer or who's lawyer is unavailable. The DC can provide legal advice and represent the young person in court.

LEGAL AID (also called Legal Services): All young people charged with a criminal act have the right to legal assistance. If the young person cannot afford a lawyer one can be obtained through legal aid. The young person must go to a legal services office in person to fill out legal aid. Contact the Legal Services Intake Clinic in Vancouver at (604) 601-6300 or look up Legal Aid in the phone book for an office in your area.

PRE-DISPOSITION REPORT (PDR): Written by the youth probation officer, a pre-disposition report is used to help the Judge decide an appropriate sentence. It includes many different aspects of the young person's life.

SHOW CAUSE HEARING: see bail hearing

MISSION STATEMENT

The John Howard Society of the Lower Mainland:

works for effective and humane criminal justice through reform, advocacy, direct service and public education in order to promote a safe and peaceful community.

Our Core Values are:

- People have the right to live in a safe and peaceful society as well as the responsibility to accept humane consequences when this right is infringed.
- Every person has intrinsic worth and must be treated with dignity, equity, fairness and compassion before the law.
- All people have the potential to become responsible citizens.
- Every person has the right and responsibility to be informed about, and involved in, the criminal justice process.
- Justice is best served through measures that resolve conflicts, repair harm, and restore peaceful relations in society.
- Independent, non-profit, non-government organizations have a vital role in the criminal justice process.

The John Howard Society, through its wide range of community based programs, offers consistent services through all levels of the criminal justice process. As an active information and referral service, we welcome all criminal justice related questions. Simply write, call or drop in at:

John Howard Society of the Lower Mainland of BC
#300 – 96 East Broadway Vancouver, B.C. V5T 4N9
Phone: (604) 872-5651
Fax: (604) 872-4165
website: <http://www.johnhoward.bc.ca/>
email: jhsyouth@adsl.intergate.ca

As a registered Charity (#0832444-59), donations to the John Howard Society are tax deductible.

PLEASE LET US KNOW WHAT YOU THOUGHT OF THIS BOOKLET. Was it useful and accurate? Is there other information you would like to see included? Contact the Coordinator of Youth Services at (604) 872-5651 or the above email address to provide your feedback.