

SOME NOTES ON YOUNGER ACTIVISTS AND THE LAW
N17 Legal Support Collective, October 2001

Generally

In Canada, the *Young Offenders Act* sets out how the criminal law applies to people between 12 and 17. The YOA applies to all federal offences – the *Criminal Code*, drug laws and offences under immigration law. Young people are charged with the same offences as adults, but the procedures and consequences are different. The YOA does not apply to provincial laws, like by-laws or traffic offences.

To be considered a young person under the YOA, you must be under 18 on the day of the alleged offence. If you turned 18 that day, you are not covered by the YOA. However, if you turn 18 after you are charged but before trial, you remain in youth court. People under the age of 12 cannot be charged with criminal offences at all.

One of the main goals of the YOA is to keep young people separate from adults in the courts and jails. That means:

- Young people are supposed to be held separately from adults in detention centers and jails.
- Young people normally go to a youth court, right from the bail hearing to trial. People between the ages of 14 and 17 can be transferred to adult court if they are charged with serious indictable offences. 16 and 17 years olds charged with *extremely* serious offences will transferred automatically.

In arrest situations

Under the YOA, police are supposed to treat young people somewhat differently than adults in arrest or detention situations. If you are a young person, the police are supposed to tell you:

- that you do not have to answer questions or give a statement
- that any statements may be used against you in court
- that you have the right to contact and get advice from a lawyer *and* a parent or other adult relative, and that you have the right to have one or both present if you do decide to answer questions

If you choose to give up these rights, you must do so in writing.

When a young person is charged with an offence or taken into custody, the parents *will* be notified in writing by the police. If the parents cannot be located, another adult relative will be contacted. The notice will include the charge and the court date. Although parents do not ordinarily have to come to court, the court can order them to do so if it is in the young person's 'best interest.'

The laws on bail which apply to adults also apply to young people, although the bail hearing will most likely take place in a youth court. Again, parents do not necessarily have to come to court. However, if a young person would not be released under the ordinary *Criminal Code* provisions (meaning that they have been denied bail after a hearing), the court can order that they be released into the care of an adult or other responsible adult, if the young person agrees.

The YOA states that every young person has a right to a lawyer and allows the court to order one to be appointed if the young person cannot get one on their own. The lawyer is supposed to be independent of your parents.

Youth court records

Contrary to popular belief, a youth court record is not automatically destroyed at the age of 18. Your record will be destroyed after a specific amount of time, depending on the type of offence and what the outcome of the charges was:

- a. For less serious offences, where the disposition was other than a discharge, your record will remain for 3 years from the end of the disposition.
- b. For more serious offences, your record will be kept for 5 years from the end of your disposition.
- c. After the period of time specified, the record will be destroyed unless you commit another offence during that period. Then the time will start running again based on the new offence.

For more on youth and the law in Canada see www.jfcy.org.