



Handout: Rights to Counsel under the YCJA

The right to counsel is essential to a fair legal system. Accused young persons may have no idea of their rights. They may be frightened or intimidated by the police and others in authority, and may say things that they do not mean. A lawyer can explain the process to the young person, explain what the young person's rights are, and make sure that the authorities follow fair procedures.

Under the *Youth Criminal Justice Act*, an accused young person has the right to talk to a lawyer as well as the right to talk to a parent, guardian, or other suitable adult of their choice at the earliest opportunity. An arresting officer must advise the young person without delay of the right to have a lawyer and must provide the young person with an opportunity to exercise this right in private. This must be explained in words that they can understand.

The young person must be informed of this right when they are being held for questioning, when arrested, and before considering taking part in an extrajudicial sanction instead of a court proceeding. The right to counsel is the young person's right and is independent of their parents.

It is up to the young person to exercise this right or knowingly waive this right.

The accused person has the right to talk to a lawyer at any stage throughout the arrest and detention proceedings. As well, an accused young person is not limited to making one phone call.

If the matter goes to court, the young person has a guaranteed right to legal counsel. If the youth cannot afford a lawyer and is declined legal counsel through legal aid, the Court may appoint a lawyer for the young person. This is one way that the YCJA recognizes that youth, by virtue of their level of maturity and dependence, have special needs and may be incapable of representing themselves.

Discuss

1. Imagine that a police officer arrived at your school to confront you in the principal's office about a bag of marijuana that she says was found in your locker.
 - a. Would you want the opportunity to have a parent or other adult there with you? Why?
 - b. Would having an adult there make the process more or less fair? Explain.
2. What might happen if the police were allowed to hold a young person indefinitely without allowing them to contact a lawyer or family member? What is wrong with this?
3. Imagine that a 12-year-old is arrested and advised that she has a "right to obtain counsel" before making a statement. She waives this right because she doesn't understand what "counsel" means, nor does she know how to "obtain" counsel.
 - a. Should the police offer some assistance so that a young person can get a lawyer?
 - b. Imagine you are a Judge and this case comes before you in court. Because this youth does not understand the word "counsel" nor how to "obtain counsel," have the police properly informed her of her right to a lawyer?