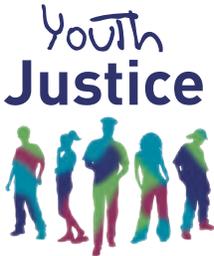




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PRE-TRIAL DETENTION



The *Youth Criminal Justice Act* (YCJA) recognizes the fundamental principle of criminal law that a person accused of a crime is presumed innocent until he or she is found guilty. However, in some cases the YCJA permits the court to keep a young person accused of a crime in custody prior to his or her trial. This is known as pre-trial detention.

This fact sheet contains general information regarding pre-trial detention under the YCJA. This information is of a general nature and is not intended as a substitute for professional legal advice. For more information, see the *Youth Criminal Justice Act: Summary and Background* or the full text of the YCJA.

Most youth who come into conflict with the law are not held in pre-trial detention. Cases can be dealt with outside of the formal court process through extrajudicial measures, such as police warnings or referrals to community programs, or youth may be released by police back into the community while waiting for the case to be dealt with in court. If a bail hearing is held, a court will decide whether to release the young person into the community, often under strict conditions that must be obeyed, or to keep the young person in custody awaiting trial.

Certain conditions must be met before a court can order that a youth be kept in custody awaiting trial.

Grounds for Pre-Trial Detention

Under the YCJA, a youth may be detained prior to trial only if the following criteria are met:

1. If the youth has been charged with a “serious offence” (i.e., an offence for which an adult could be imprisoned for five years or more if convicted)

or has a history of outstanding criminal charges or findings of guilt under the YCJA;

AND

2. If the court is satisfied that detention is necessary to ensure the young person’s attendance in court, to protect the public, or in exceptional circumstances, to maintain public confidence in the justice system;

AND

3. If releasing the youth into the community with conditions would not be sufficient to address the court’s concerns.

- The YCJA specifically states that pre-trial detention cannot be used as a substitute for child protection, mental health or other social measures. This means, for example, that a homeless youth cannot be kept in custody simply because he or she has no place to live.

