

Unfortunately, due to the continued criminalization of substance use, many people with a substance use disorder or addiction will find themselves involved with the criminal justice system.

If an individual suspected of an offense is older than 12 but younger than 18, they are considered a “young person” under Canadian law, and they will be investigated under the terms of the federal Youth Criminal Justice Act (“YCJA”).

The YCJA, which applies across Canada, makes allowances for an accused individual’s mental and emotional immaturity. For example, in most cases, police must consider whether “extrajudicial measures”—such as taking no action, warning or cautioning the young person, or referring the young person to a community program—would be sufficient prior to initiating a court proceeding.³

If a suspect is 18 or older they will be investigated as an adult, under the terms of the Criminal Code of Canada and related legislation.

In law, a “child” is an individual who is under the age of 12. In the below sections “young person” refers to individuals between 12 and 17, while adult refers to those 18 and older.

DIFFERENCES BETWEEN YOUTH CUSTODY AND ADULT CUSTODY

Youth Custody Services has a fundamentally different mandate from BC Corrections.

If a young person between 12 and 17 years old is incarcerated, they will be placed in a Youth Custody Center (YCC) managed by Youth Custody Services, a division of the Ministry of Children and Family Development, rather than an adult facility operated by either BC Corrections or the Correctional Service of Canada.

Young people detained in YCCs are not called “inmates” but “residents.” This term reflects the basic aim of youth custody—not simply for detainment but to provide stable and controlled circumstances in which the young person may develop in a healthy way (by continuing with school, for example).

³ In British Columbia, youth custody is further regulated under the Youth Justice Act and the Youth Custody Regulation.

The goals of youth custody are set out in the Youth Custody Services mission and vision statements.

Mission of Youth Custody Services

Youth Custody Services contributes to public safety by providing a safe, healthy and supportive environment with a range of integrated, evidence-based programs which address the individual risk and needs of residents, thereby promoting positive outcomes for youth, families and the community.

Vision of Youth Custody Services

To deliver high quality, youth-centred services that complement community based youth services, which engage, involve and share responsibilities with youth, families and communities.

The goals of adult facilities also leave room for rehabilitation and reintegration, but are decisively less supportive of those incarcerated. For example, the mission of Correctional Service Canada:

The Correctional Service of Canada, as part of the criminal justice system and respecting the rule of law, contributes to public safety by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control.⁴

There are currently 19 adult correctional facilities located throughout BC. What facility an individual ends up in depends on a number of factors, including the seriousness of their offence and the length of their sentence. There are currently only two Youth Custody Centers, located in Prince George and Burnaby.

HOW TO ACCESS YOUR CHILD OR LOVED ONE IN A YOUTH CUSTODY CENTRE

When young people come into custody, the parents or legal guardians will receive an information package from the centre explaining everything needed to visit and receive calls from their child or ward.

Youth Custody Centre rules restrict visitors. The young person must request permission to schedule a phone, video, or in-person visit and all visits to youth in custody must first be approved by their probation officer, in conjunction with centre staff.

If parents or other legal guardians wish to visit, they place their request with the facility. Young people are also asked which family members they would like to come and visit them, and may choose to not receive visits from certain people.

If you do not live near the institution where your child or loved one resides, the centre may help coordinate other options so that you can see your child or loved one through the Family Visitation Support Program. This program is available if your child or loved one is serving 30 days or more. The Case Management

⁴ <http://www.csc-ccc.gc.ca/about-us/index-eng.shtml>

team can assist families with funding support related to hotel accommodations, transportation, meals, and other miscellaneous travel costs. You may also “visit” by video, which is arranged through your local community youth probation office.

Families are seen as important to the rehabilitation process and so you can expect that centre staff will help you stay connected with your child or loved one, notify you of any serious injuries, and address your concerns in a timely manner.

HOW TO FIND OUT IF YOUR CHILD OR LOVED ONE IS IN YOUTH CUSTODY

Phone or visit the nearest facility to book a visit; if your child or loved one is not there, the booking clerk will say so. Usually, a young person in custody has a probation officer in the community assigned to their case.

A phone call to the probation officer is also very informative. If you are unsure who the assigned youth probation officer is, you can contact the youth probation office. You can find a list of youth probation offices in your community by utilizing the “search” function on www.bc211.ca.

YOUR ACCESS TO AN ADULT CHILD OR LOVED ONE IN CUSTODY

How to find out if your adult child or loved one is in a pre-trial centre

If your adult child or loved one has been arrested, BC’s privacy laws prevent the police from notifying you, and your adult child or loved one may choose not to call you. However, you may place a request for a visit by calling the Corrections Branch via the BC Government Inquiries line. Identify your adult child or loved one by name and birthdate. This step will be necessary even if your adult child or loved one has been arrested before; a detainee’s visitors list does not remain on record. Upon locating your adult child or loved one, the facility’s staff will encourage them to call you. You can also search by name on the Court Services Online website (<https://justice.gov.bc.ca/cso/esearch/criminal/partySearch.do>), which provides access to the public court record. You can search by name to see if charges have been laid against your child or loved one as well as if they are currently in custody and any upcoming court dates.

For a full list of correction facilities that may be used for pre-trial detention, check the website www.pssq.gov.bc.ca/corrections.

PLANNING A VISIT TO ADULT CUSTODY

To arrange a visit, check with the appropriate facility, as visiting hours and booking procedures may vary. Your child or loved one must give the name of potential visitors to corrections staff prior to you booking a visit. Visits are permitted to last 1 hour or less and your child or loved one is entitled to a minimum of two hours of visits per week. You must be 19 years of age or older to book a visit, and must first register to clear a background check. Call 24 hours in advance to book a visit.

Children are permitted only if they are accompanied by a birth parent or legal guardian and if the inmate has obtained approval for the visit.

You will need to bring:

- Two pieces of ID—one piece must be picture ID.
- A quarter for locking jackets, wallets, keys, etc. in a pay-per-use locker, as you are not permitted to take anything into the visiting area.

You will be scanned with a metal detector before entering the visiting area. An ion test for drugs may be requested.

You will be assigned a cubicle, and communication with your child or loved one will be via hand phone or speaker unit. Conversations and actions will be monitored.

Money

Your adult child or loved one will have an account in which money can be deposited for services such as phone calls, haircuts, or canteen items (snacks, toiletries, writing materials, etc.). If money is sent through the mail, it must be in the form of a money order in your child or loved one's name. Cheques are not accepted. Cash will only be accepted for a direct deposit at the facility.

Phone calls

Your adult child or loved one will not be permitted to receive telephone calls. They can call you collect or you can deposit money into their account so they can have money added to their ID card for phone calls.

If they call you collect, the charge is \$1.75 per call. A non-collect call costs your adult child or loved one \$0.90. When your adult child or loved one calls you from custody, you will hear the following message when you pick up the phone: "This is a call from a BC Correctional Facility. This call is from [person's name]. You will/not be charged for this call. If you do not wish to receive this call, press 5; otherwise, press 0."

Do not press 5, as calls to you from all correctional facilities will be blocked. Then, to reopen access, you will have to write a letter that gives the caller permission to try reaching you again.

Mail

Mail can be sent via the regular postal service and is subject to drug scanning on arrival at the facility.

Refrain from using stickers or metallic or sparkly pens when addressing an envelope; these letters will be returned to the sender.

If you are dropping off mail during a visit, the letter must be properly addressed (including return address) and must not be sealed.

Emergencies

In an emergency, you can call the main line at the detention centre. If that does not work, you can also call the probation officer, lawyer, or you can try contacting the facility's chaplain; the chaplain might be able to get a message to your adult child or loved one.

Addictions counselling

If treatment or a conditional sentence for your child or loved one is an option, an appointment with the addictions counsellor should be requested as soon as your child or loved one has entered a corrections facility. The counsellor will be able to help your daughter or son complete applications to community-based public agencies and services. Parents may need to contact rehabilitation centres on behalf of the inmate, as some centres and recovery houses will not accept calls from a correctional facility.

ATTENDING COURT WITH A YOUNG PERSON OR ADULT CHILD

Clothing for court appearances

If your child or loved one is in pre-trial detention, they will be given clothing by the centre (sweat pants and sweat shirt). This clothing will be worn for court appearances as well.

When you arrive at court

You may be screened as you enter the courthouse, so bring as little with you as possible. There will be a master list of court appearances posted somewhere near the entrance of the courthouse; this will specify in which courtroom and at what estimated time your child or loved one's case will be heard. There may be last-minute changes to the assigned courtrooms—be sure to check with the sheriff on duty. Court appearances seldom run on time, so you may have to be at the courthouse for almost a full day of waiting. Keep this in mind if you are booking time off work to attend.

Parental support counts

Your presence in the courtroom reflects well on your child or loved one. In some cases, in the youth system, you may be granted permission to speak about your child or loved one. Talk to their lawyer about this. Alternatively, your child or loved one's social worker may address the court after being introduced to the court by their lawyer, or if the judge asks them directly. This usually occurs at a bail hearing or sentencing.

For adult children or loved ones, you may be able to submit a letter of support for a bail hearing or sentencing hearing. In this case, talk to either duty counsel or their lawyer about this option.

Legal proceedings can be very daunting, particularly if you do not understand the vocabulary commonly used. Below are some of the terms that you may encounter.

INSTITUTIONS

Youth Court: The court that hears the majority of criminal cases involving accused youth aged 12 to 17. In particularly serious cases, Crown counsel may seek an adult sentence, but the trial will still occur in youth court.

Provincial Court of British Columbia: The court in which the vast majority of adult criminal cases are tried. This is the court for “summary conviction” offences such as mischief or theft under \$5,000. An accused may elect to be tried in provincial court for certain “indictable offences” such as robbery or breaking and entering.

Supreme Court of British Columbia: The trial court for the most serious criminal charges. For certain “indictable offences” such as robbery or breaking and entering, an accused may elect to be tried in Supreme Court. If the trial is set for Supreme Court, the accused may have the choice of trial by judge alone or by a judge and jury (which mode of trial to elect is an important decision for which the accused will generally require the advice of experienced counsel.) The BC Supreme Court also hears some appeals from Provincial Court.

Drug Court: A specialized court in which certain adult persons accused of drug- or drug-related charges to support their addiction are allowed to opt for a court-supervised course of treatment and rehabilitation as an alternative to a jail sentence. The usual candidates for drug court are persons who have engaged in trafficking to support their own addictions.

First Nations Court: Different from other provincial courts, First Nations court focuses on healing and community, making sure that everyone who is involved in a case has a chance to be heard. The goal of sentencing is to strengthen both the person convicted of a crime and their community.

British Columbia Court of Appeal: The highest court in the province. It hears appeals from the Supreme Court, and from the Provincial Court on some criminal matters.

Supreme Court of Canada: The highest court of Canada, the final court of appeals in the Canadian justice system.

WHO’S WHO

Accused (sometimes referred to as the “Defendant” or the “Prisoner”): The person charged with having committed a criminal offence. If the person is convicted, he or she is referred to as the “Offender.”

Court Clerk (sometimes referred to as “Madame Registrar” or “Mr. Registrar”): The official responsible for managing the court files and keeping a record of the proceedings.

Crown Counsel (sometimes referred to as the “Prosecutor”): The lawyer who conducts prosecutions of criminal cases on behalf of the state, symbolized by the Crown. Crown counsel’s role is to represent the interests of society rather than to act for any individual victim. This may be important for a parent or other loved one to remember when that person also happens to be the victim.

Defence Counsel: The lawyer who advises and acts for the accused in court. Communications between defence counsel and the accused are strictly confidential, unless the accused chooses to waive that privilege to share information with their parents or others. Parents should remember that defence counsel must take instructions from the accused—even if the parents are paying the legal bills. “Legal Aid” (publicly funded legal representation) is generally available to a young person facing criminal charges and may be available to an adult accused who lacks the financial means to hire a lawyer. Further information can be found at the Legal Services Society: www.lss.bc.ca.

Duty Counsel: The defence counsel who is on call at the courthouse to provide free legal assistance to an unrepresented accused. Generally, duty counsel is the first lawyer seen by an accused who has been arrested and is awaiting a bail hearing. Duty counsel can provide legal advice about charges, court procedures, and legal rights, and can represent someone at a bail hearing, but cannot take on a whole case or represent someone at trial.

Justice of the Peace: These are judicial officers who preside over some preliminary court matters, including bail hearings and early court appearances. Justices of the Peace are called “Your Worship” in court, though this tradition is shifting to “Your Honour”.

Provincial Court Judge: The judge who presides over hearings and trials in provincial court. This judge is addressed in court as “Your Honour.” Trials in provincial court are tried by a judge without a jury.

Supreme Court Justice: The judge who presides over hearings and trials in Supreme Court. This judge is addressed in court as “My Lord” or “My Lady.” Trials in Supreme Court may be tried by a judge alone or by a judge and jury.

Sheriff: The uniformed officer who is responsible for maintaining security in court and for movement of prisoners to and from court.

PRE-TRIAL PROCEDURE

Bail: The pre-trial release from custody which may be granted by a judge. The simplest form of bail is a release on an “undertaking” by the accused to appear in court when required. More onerous forms of bail may carry various conditions and may be secured by a cash deposit or by the promise of a “surety” to pay a specified amount if the accused fails to abide by the terms of the bail. In some cases, a parent may act as a surety to secure the release of the accused. However, anyone who acts as a surety should be aware that they are assuming a heavy responsibility and may be taking a financial risk. In some cases, a young person may be placed “in the care of a responsible person” if the youth justice court or a justice is satisfied that certain conditions have been met.

Bench Warrant: A court order authorizing the arrest of a person. Judges will generally issue a bench warrant if an accused fails to appear in court when required.

TRIAL

Arraignment: The court procedure in which the accused's name is called, the charge is read, and the accused pleads guilty or not guilty. Be aware that a plea of "not guilty" is not a claim of innocence but rather the exercise of the accused person's right to a trial and to the presumption of innocence until proven guilty. That being said, whether or not a person pleads guilty, and at what stage in the proceedings, can impact the sentence they receive.

Examination: The formal interrogation of a witness by a lawyer. During "examination in chief" a lawyer uses open-ended questions to obtain evidence from a witness who supports their client's version of events. During "cross-examination," the lawyer for the opposing party tries to undermine the evidence of that same witness.

Preliminary Inquiry: A pre-trial hearing conducted in provincial court to determine whether there is sufficient evidence to proceed to trial. These hearings are only available for certain, more serious offences, where the trial is to be in Supreme Court. Crown counsel calls and examines key witnesses who, in turn, are cross-examined by defence counsel. The provincial court judge who presides over the preliminary inquiry does not make findings of fact or decide questions of guilt or innocence.

Trial: The court hearing for the determination of whether the accused is guilty or not of the offences charged. The Crown bears the onus of proving the guilt of the accused "beyond a reasonable doubt." The Crown calls witnesses first and then, after the Crown's case is closed, the accused has the right to choose whether or not to testify and/or call other witnesses. The accused is under no obligation to prove his or her innocence.

Sentencing Hearing: The hearing for the determination of the court-ordered consequences of a conviction, after the accused has either entered a plea of guilty or has been found guilty at the conclusion of a trial. The judge must consider a range of factors and principles before deciding what sentence is "fit" for the individual offender in the particular circumstances of the case. The judge's discretion over sentencing may be limited by a mandatory minimum jail sentence required by law for certain serious offences.

The judge hears submissions from both counsel and also reviews other relevant materials that may be filed at the hearing, such as a criminal record, a statement by the victim about the impact of the crime, reference letters about the character of the offender, and a plan for treatment and rehabilitation if the offender does not have to go to jail. In some cases, counsel may request and the judge may order a pre-sentence report by a probation officer outlining background information about the offender, often including some family history.

If the offender is Indigenous, the court must take into account the adverse background cultural factors facing Indigenous peoples. A sentencing judge is required to take into account all reasonable alternatives to incarceration for Indigenous offenders.

Family members may attend court to support the accused, and the judge may give parents an opportunity to speak if they wish to be heard. The accused has the right to the last word before sentence is pronounced. Some have nothing to add to what has been said on their behalf; some choose to express remorse and a determination to turn their lives around.

SENTENCING OPTIONS

Youth Sentencing

Reprimand: A reprimand is essentially a stern lecture or warning from the judge in minor cases in which the experience of being apprehended, taken through the court process, and reprimanded appears to be sufficient to hold the young person accountable for the offence.

Absolute Discharge: A finding of guilt but not a criminal conviction. This is a confusing distinction, but in short, a person who is given an absolute discharge can honestly say they have never been convicted of a criminal offence (e.g., on a job application). An absolute discharge is entered on an offender's criminal record, but is cleared a year later as long as there have been no further criminal incidents. Conditional Discharge: Described under "Adult Sentencing" below.

Fine: An order to pay a fine up to \$1,000. The amount, time of payment, and terms of payment are determined by the court.

Restitution/Compensation: An order to make restitution of any property gained through commission of a crime or to pay money to compensate for loss of property or damage to property, loss of income, or special damages for personal injury arising from the crime.

Restitution to Purchaser: An order that the young person must compensate the person who unknowingly bought property obtained through crime where an order has been made that the property must be returned to its owner.

Personal Service Order: An order that the young person compensate a person in kind or by way of personal services at the time and on the terms that the court may fix for any loss, damage, or injury suffered by that person.

Community Service: An order that the young person must perform a community service at the time and on the terms that the court may fix.

Prohibition Order: The court may make any order of prohibition, seizure, or forfeiture which is permitted under the Criminal Code of Canada.

Probation: A probation order is a court order to "be of good behaviour" for a set period of time, up to a maximum of two years for a young person. A probation order generally includes various conditions such as that the offender report to a probation officer, obey a curfew, avoid certain areas known for drug use, and take part in a program of treatment. A probation order may be added to a jail sentence or may be imposed in the form of a "conditional discharge" or a "suspended sentence." Probation cannot be imposed if the global sentence of imprisonment is greater than 2 years.

Intensive support and supervision order: This sentencing option provides closer monitoring and more support than a probation order to assist the young person in changing their behaviour.

Non-residential order: This order requires the young person to attend a program at specified times and on conditions set by the judge. It can be crafted to address the particular circumstances of the young person; for example, the order might target specific times and days when a young person is unsupervised and tends to violate the law.

Deferred custody and supervision order: This sentencing option allows a young person who would otherwise be sentenced to custody to serve the sentence in the community under conditions. If the conditions are violated, the young person can be sent to custody. This order is not available to the court for offences in which a young person caused or attempted to cause serious bodily harm.

Custody and Supervision Order: An order that the young person serve a period of time in custody.

Intensive rehabilitative custody and supervision order: This order is a special sentence for serious violent offenders. The court can make this order if:

1. The young person has been found guilty of a serious violent offence (murder, attempted murder, manslaughter, or aggravated sexual assault) or an offence in which the young person caused or attempted to cause serious bodily harm and for which an adult could be imprisoned for more than two years and the young person had previously been found guilty at least twice of such an offence;
2. The young person is suffering from a mental or psychological disorder or an emotional disturbance;
3. An individualized treatment plan has been developed for the young person; and
4. An appropriate program is available and the young person is suitable for admission.

Adult Sentencing

Fine: An order to pay an amount of money at the court registry within a time period fixed by the judge. A fine goes into the public purse; it is not to be confused with restitution or a compensation order, which goes to a victim. However, judges seldom impose fines or compensation orders on persons suffering from an addiction, for the practical reason that such persons usually lack the means to pay (and have difficulty holding onto money).

Restitution/Compensation Order: Money the court orders an offender to pay a victim as compensation for losses to the victim as a result of the crime. This might cover, for example, lost wages or damaged property.

Probation: A probation order is a court order to “be of good behaviour” for a set period of time, up to a maximum of three years. A probation order generally includes various conditions such as that the offender report to a probation officer, obey a curfew, avoid certain areas known for drug use, and take part in a program of treatment. A probation order may be added to a jail sentence or may be imposed in the form of a “conditional discharge” or a “suspended sentence.” Probation cannot be imposed if the global sentence of imprisonment is greater than 2 years.

Absolute Discharge: A finding of guilt but not a criminal conviction. This is a confusing distinction, but in short, a person who is given an absolute discharge can honestly say they have never been convicted of a criminal offence (e.g., on a job application). An absolute discharge is entered on an offender's criminal record, but is cleared a year later as long as there have been no further criminal incidents. If an individual receives an absolute discharge as an adult, it can still show up on a vulnerable sector check or in future sentencing proceedings.

Conditional Discharge: Similar to an absolute discharge, except that the offender is sentenced to a period of probation (up to three years), and the conditional discharge is removed from their criminal record as long as the probation is successfully completed.

Suspended Sentence: A sentence of a period of probation which results in a criminal record and which remains "suspended" in the sense that an offender who breaches probation can be brought back to court to be re-sentenced. (Usually, in lieu of re-sentencing, the Crown lays a new, separate charge of breach of probation.)

Conditional Sentence (not to be confused with a conditional discharge or a suspended sentence): A sentence "served in the community" which resembles a probation order but is regarded as a more serious entry on a criminal record than a suspended sentence, and often carries more stringent terms amounting to those of house arrest. Also, an offender who breaches a term of a conditional sentence risks having to serve the remainder of the sentence in jail. A conditional sentence may be used to compel an offender to reside in a residential treatment centre or in a recovery house.

CUSTODIAL INSTITUTIONS

Youth Custody Centre: *Jail for persons under the age of 18. Youth Custody Centres* are run by the provincial government through Youth Custody Services, a division of the Ministry of Children and Family Development (MCFD).

Pre-trial Centre: The lock-up facility for accused persons who are detained in custody to await their court appearance. Young persons are held at the Youth Custody Centres for pre-trial detention if they have not received bail.

Provincial Correction Facility: Jail for adults sentenced to a period of incarceration of less than two years. Provincial facilities are managed by the provincial government through BC Corrections.

Federal Penitentiary: Prison for adults sentenced to a period of incarceration of two years or more. Federal penitentiaries are run by the federal government through Correctional Services Canada.

INFORMATION RESOURCES

- Justice Education Society: Youth and Crime resources
 - Young Offenders: <https://www.justiceeducation.ca/legal-help/crime/youth-and-crime/young-offenders>
 - Youth Charged with a Crime: <https://www.justiceeducation.ca/legal-help/crime/youth-and-crime/youth-charged-crime>
 - Young People and Criminal Law: <https://www.justiceeducation.ca/legal-help/crime/youth-and-crime/young-people-and-criminal-law>
 - Youth Court: <https://www.justiceeducation.ca/legal-help/crime/youth-and-crime/youth-court>
- Legal Rights for Youth: Crime
<http://www.legalrightsforyouth.ca/crime>
- Clicklaw: Young People and the Law:
http://wiki.clicklaw.bc.ca/index.php?title=Young_People_and_the_Law#Young_people_and_criminal_law
- People's Law School: Consequences of a Youth Record
<https://www.peopleslawschool.ca/publications/consequences-youth-record>
- Law Students' Legal Advice Program Manual: Chapter 2 – Youth Justice
<http://www.lslap.bc.ca/manual.html>
- Department of Justice: The Youth Criminal Justice Act Summary and Background
<http://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/back-hist.html>
- Aboriginal Legal Aid:
<http://aboriginal.legalaid.bc.ca/>
- Gov.bc.ca: Youth Justice
<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/understanding-criminal-justice/youth-justice>
- Gov.bc.ca: Youth Services
<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/services-and-resources/youth-services>
- The Canadian Bar Association: Young People and Criminal Law
<https://www.cbabc.org/For-the-Public/Dial-A-Law/Scripts/Youth-and-the-Law/225>
- The Canadian Bar Association: Youth Justice Court Trials
<https://www.cbabc.org/For-the-Public/Dial-A-Law/Scripts/Youth-and-the-Law/226>
- Gov.bc.ca: Glossary of Criminal Justice Terms
<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/justice-terms>

- Irwin Law's Canadian Online Legal Dictionary
<https://www.irwinlaw.com/cold>

LEGAL RESOURCES

- Legal Services Society of BC
www.lss.bc.ca
- Access Pro Bono
www.accessjustice.ca
- UBC Law Students Legal Advice Program
www.lslap.bc.ca
- Native Courtworker and Counselling Association of British Columbia
<http://nccabc.ca/>
- Ombudsperson: An official appointed by the government to investigate complaints against public authorities. To contact an ombudsman, your son/daughter in custody will find a toll free number is posted on all units.
www.ombudsman.bc.ca