



Youth With FASD and the Legal System

Hamilton, Ontario Jurisdiction

By John Stevens

Hamilton FASD Parents & Caregivers Support Group

stevens-john@outlook.com



As A Youth
YOU must be responsible
and keep yourself out of the
Legal System!

As A Caregivers
WE need to keep your
Youth out of the
Legal System!



Myth

Youth believe the police can not prosecute or put them in jail.

WRONG



If you do the crime you do the time!



Secure Custody

- Hamilton, Niagara, Brantford youth go to Craigwood Youth Services in Alisa Craig, ON – 2hrs away
- All doors are locked
- Doors and walls are concrete 6” thick, bullet proof windows
- No shoe laces, belts, zippers, or strings in hoddies
- Must do own laundry
- Beds are made of concrete with a mattress
- Desk stools made of concrete in the floors
- Desk mounted to wall
- No bathrooms in room, have to ask
- Have to do chores and go to school in unit
- Parents are the only one who can visit
- Strip search after every visit, or appointments
- Outside food must be wrapped and consumed during visit
- You also lose your Child Tax Credit (Baby Bonus)



Make The Book

- Gather all your youths pertinent information
- Create an information sheet about the youth
- Create a contact list, doctors, lawyers etc.
- Education Psychological Report
- Other Psychological Reports
- Discharge Reports



Make the Book

- Adoption Profile
- Letters of Official Diagnosis
- IEP
- IPRC
- Section 34 Reports, Pre-Sentence Report, NCR
- Other Pertinent Information

**Make Copies and
Keep It Up To Date**

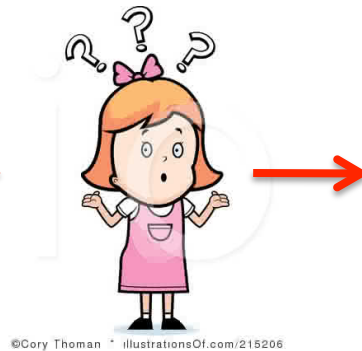
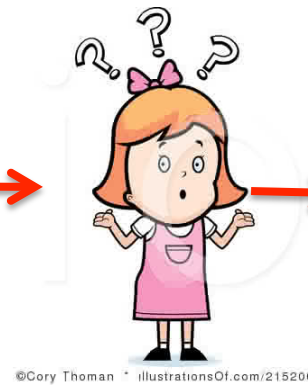


McMaster Children Hospital

- McMaster does not recognize or treat youth with FASD
- Take your youth when in crisis
- This gives your youth time to cool down
- Allows you to care for yourself
- Documents Frequency and Pattern
- Insist a report sent to youths Behavior Pediatrician or Doctor



Normal Brain vs FASD Brain

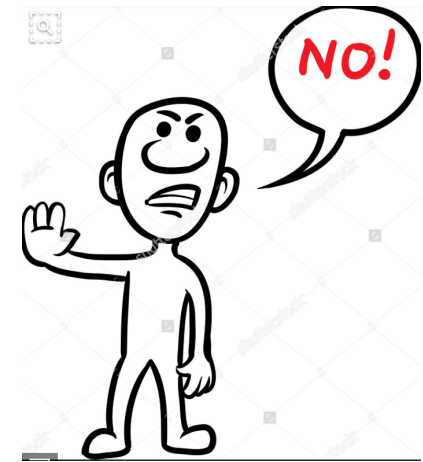


Police Involvement

- Depending on the event, the police will ask if you want to press charges?

Say NO

- Get the incident number
- Don't be afraid of calling the police. Start creating a pattern so they know your youth.



Youth Arrested 1st Time

- Ask Police where are they taking your youth
- Tell them to take your youth to McMaster
- Remind your youth not to give a statement
- Refer to their Wallet Cards
- <https://www.fasdwaterlooregion.ca/strategies-tools/sub-page-test-2/justice-and-the-legal-system/identity-information-cards> [Sample](#)
- Go to police station with your **Book**
- Talk to the arresting officer & detective about your FASD youth and give statement
- It's up to the acting sergeant if charges will be laid



Youth Arrested 1st Time

- Your youth will spend time in a cell until the next day for a bail hearing
- If your youth has a lawyer – Call Them!
- You will be given a date and time for bail
 - You may not be called right away
- It is important to speak to Duty Counsel or Lawyer before court starts, about FASD



Youth Arrested 1st Time

- Your youth will be transferred from the police cell to a holding cell within the court
- When it's time, the police will bring your youth to the prisoners box
 - Be prepared, your youth will be in shackles and handcuffs and will look pretty rough
- Your Lawyer/Duty Counsel will set and agree on a bail amount, and conditions of release (if appropriate)



Youth Arrested 1st Time

- The crown will ask for a surety
 - This can be any amount, usually starting at \$500
 - You don't have to give money unless your youth does not obey the bail conditions
 - Lasts the entire order until sentencing
 - You must call police if the youth does not follow any of the conditions
- The judge will ask for a plea from your youth
- The Judge will agree or disagree with the crown and makes a bail order



Youth Arrested 1st Time

- If the youth does not obey the bail conditions, police must be called
- **You start all over again**, and another count is added to the original charge, with new conditions
- Depending on what was done the youth could end up in secure custody until sentencing



Youth Arrested 1st Time

- You will now meet with your appointed lawyer
- Take your **Book** and a copy, and discuss it
- Your Lawyer may consult a court mental health worker for advice
- Your Lawyer will consult with the Crown and come up with a plan



Youth Arrested 1st Time

On Sentencing Day

- In Hamilton, usually the 3rd floor
- Be ½ hour early with your youth
- Your case may not be called right away, but be in the body of the court
- Your youth will sit beside their lawyer
- If your youth was in secure custody, they will appear as described before



Youth Arrested 1st Time

On Sentencing Day

- The charges will be read, and any new charges
- The crown and Lawyer will make their case
- Because this is the first offence, chances are the youth will be out on **Divergence**
- Conditions will be set and your youth must comply to the conditions of Divergence
- Usually last 6 months, with meetings every 3 weeks or more.



Youth Arrested 1st Time

After Divergence

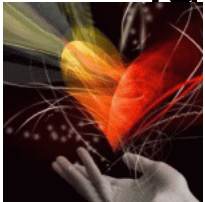
- Your court appointed mental health worker will send a letter to the crown and judge if you meet or failed Divergence.
- If all conditions are met, charges are dropped and there will be no criminal proceedings.
- The youth will still have a Divergence Complete charge on their record.

Your done



Youth Arrested 2nd Time For the SAME offence

- Ask Police where are they taking your youth
- Remind your youth not to give a statement
- Refer to their Wallet Cards
- <https://www.fasdwaterlooregion.ca/strategies-tools/sub-page-test-2/justice-and-the-legal-system/identity-information-cards> Sample
- Go to police station with your **Book**
- Talk to the arresting officer & detective about your FASD youth and give statement
- It's up to the acting sergeant if charges will be laid



Youth Arrested 2nd Time

For the SAME offence

- Your Youth will spend time in a cell until the next day for a bail hearing
- If your youth has a lawyer – Call Them!
- You will be given a date and time for bail
 - You may not be called right away
- It is important to speak to Duty Counsel or your lawyer before court starts, about FASD



Round Table Meeting

- This is a good time to get all the players that are involved with your youth at the same table.
- Police
- Teacher
- CCNP Worker
- Court Mental Health Worker (Banyan)
- Parole Officer
- Contact Hamilton
- Psychiatrist or Doctor
- Other Care Workers



Youth Arrested 2nd Time

For the SAME offence

- Your youth will be transferred from the police cell to a holding cell within the court
- When it's time, the police will bring your youth to the prisoners block
 - Be prepared, your youth will be in shackles and handcuffs and will look pretty rough
- Your Lawyer/Duty Counsel will set and agree on a bail amount, and conditions of release (if appropriate)



Youth Arrested 2nd Time

For the SAME offence

- The crown will ask for a surety
 - This can be any amount, usually starting at \$500
 - You don't have to give money unless your youth does not obey the bail conditions
 - Lasts the entire order until sentencing
 - You must call police if the youth does not follow any of the conditions
- The judge will ask for a plea from your youth
- The Judge will agree or disagree with the crown and makes a bail order



Youth Arrested 2nd Time For the SAME offence

- If the youth does not obey the bail conditions, police must be called
- **You start all over again**, and another count is added to the original charge, with new conditions
- Depending on what was done the youth could end up in secure custody until sentencing



Youth Arrested 2nd Time For the SAME offence

- You will now meet with your appointed lawyer
- Take your **Book** and a copy, and discuss it
- Your Lawyer may consult a court mental health worker for advice
- Your Lawyer will consult with the Crown and come up with a plan



Youth Arrested 2nd Time

Sentencing Day

- The charges will be read, and any new charges
- The Crown and Lawyer will make their case
- Because of FASD and the mental problems that come with it, they could initiate Section 16 of the Criminal code



Section 16, Criminal Law

- **16 (1)** No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.

-

Presumption

(2) Every person is presumed not to suffer from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection (1), until the contrary is proved on the balance of probabilities.

-

Burden of proof

(3) The burden of proof that an accused was suffering from a mental disorder so as to be exempt from criminal responsibility is on the party that raises the issue.



Youth Arrested 2nd Time

Sentencing Day

- Under Section 16 they must prove a mental disorder
- Pre-sentencing Report
- Section 34 – Psychological Assessment Report
- Ask your lawyer to recommend that these are done concurrently
- Each one is about 8 hours, bring copies of your **Book** and discuss



Pre-Sentence Report

- **What is a Pre-Sentence Report (PSR)?**
- A Pre-Sentence Report (PSR) is a report prepared by a probation officer [jump to probation] to help the judge decide what sentence to give. It is used to find out about an offender's background.
- If a judge orders a PSR, a probation officer will interview the offender [1], the offenders family, friends, and employer (if they are working). A case is usually adjourned to allow a probation officer time to prepare the PSR. It usually takes between two and six weeks to prepare.



Section 34 - YCJA

- The Youth Court has the authority to order a medical, psychological or psychiatric assessment at any stage of the court proceedings involving a youth. The assessment is used to identify both the historical and current mental health issues of the young person and to make recommendations to the court for medical/psychological/psychiatric treatment plans.
- The assessment serves to provide the court with guidance of mental health professionals on the status of a young person and to guide professionals in developing a plan to address the youth's needs within the community.
- Referrals are made through the Youth Court at any stage of the proceedings.



<http://www.dfcc.org/clinical-assessments.php>

WARNING

- In the Section 34 report you do **NOT** want any reference to “Criminally Not Responsible”



Not Criminal Responsible (NCR)

- What does NCR mean
- NCR stands for “Not Criminally Responsible.” It is defined in section 16 of the Criminal Code, Section 16 of the Criminal Code states that a person is not, criminally responsible for something that he or she did (or didn’t do, if they were legally required to do something) if they were suffering from a mental disorder at the time and:
 - the mental disorder made it impossible for him/her to understand the nature and quality of what they did; OR
 - the mental disorder made it impossible for them to understand that what they did was morally wrong (not just legally wrong).



NCR

- Must see Forensic Psychiatrist within 30 days (672.14.1)
- May ask for 1 extension of 30 days (672.15.2)
- Takes about 60 days for the report to be written
- Youth does not have to stay in custody for this report (672.16.1)
- If your youth can not obey bail conditions, custody may be the better way



NCR vs Criminally Responsible

- You **DO** want your youth found Criminally Responsible.
- They will have a record
- They will have to do time, possible 90 – 120 days
- They can come home
- Why would you want this?



NCR vs Criminally Responsible

- If they are found “Not Criminally Responsible”
- The Ontario Review Board takes control of your youth the rest of their lives
- Secure Treatment review for 45 Days
- As parents you lose total control of your youth
- Conditions are always in effect
- Can end up in treatment the remainder of their life (basically a life sentence)



Contacts

- Lawyers

- * **Beth Bromberg, Criminal Law**

- Also will take Legal Aid

- 20 Hughson St. S. #303

- Hamilton ON L8N 2A1

- 905-523-7770

- 905-522-4264 after hours

- **Jeffrey Manishen, Criminal Law - with Ross & McBride**

- 1 King Street West

- 905-572-5813

- 905.637.9026 after hours

- 905.630.5813 after hours



Contacts

- Judges
 - **Honorable Madam Marjoh Agro**
 - Youth – Ontario Court of Justice
- John Sopinka Court House**
45 Main Street East
Hamilton, ON L8N 2B7



Contacts

- **Dr. Khrista Boylan, MD, FRCPC, PhD**
 - Psychiatrist
 - p. 905-521-2100 x 77250
- **Dr. Sandra A. Seigel , M.D., FRCPC**
 - Behavioural Paediatrician
 - p. 905-628-0054
- **Dr. Janelle Hawes & Jeffrey Wong**
 - Forensic Psychologist for Section 34 Report
 - 416-666-5654
- **Dr. Ajay Prakash**
 - Forensic Psychologist for Not Criminal Responsible Report (NCR)
 - 519-631-8510 x 49781

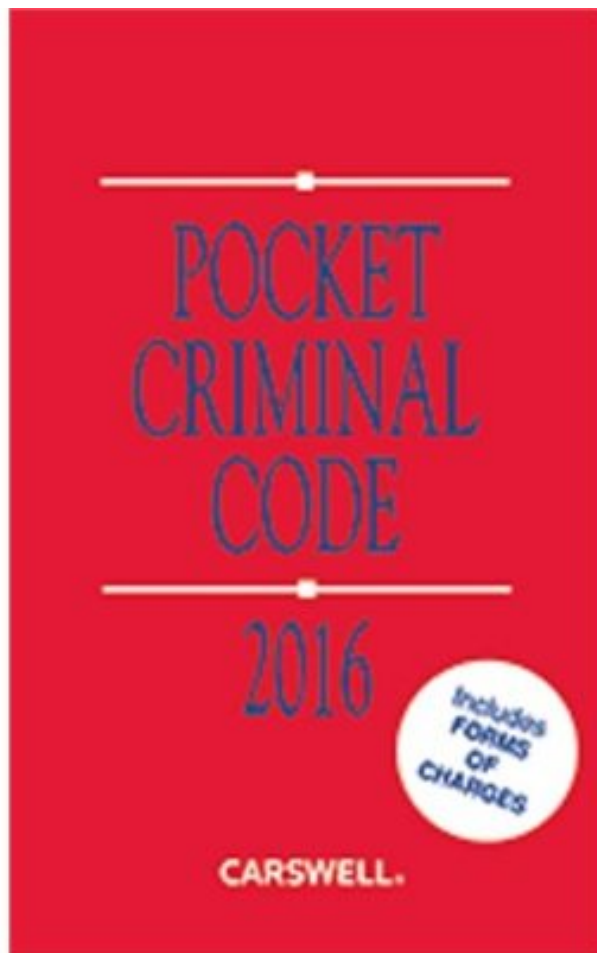


Contacts

- Iwona Hukiewicz
 - Probation Officer & Pre-Sentence Report
 - 905-521-7762
- P.C. Sarah Collins-Ricker Badge #1133
 - Hamilton Youth Officer
 - 905-546-4836
- Provincial Advocate Office for Children and Youth
 - <https://provincialadvocate.on.ca>



Pocket Criminal Code



Hamilton Public Library

345.71002632

ISBN: 978-0-7798-6556-7

Criminal Code of Canada References (YCJA)

- Section 16 – Criminally Responsible
- Section 40 YCJA – Pre-Sentence Report
- Section 34 YCJA– Psychological Assessment Report
- Section 672 YCJA - Assessments
- Section 430 – Mischief
- Section 145 – Failure To Comply



POLICE INFORMATION CARD

I have a Fetal Alcohol Spectrum Disorder (FASD), a brain-based invisible physical disability.

Because of this disability, I may have difficulty understanding abstract concepts, such as legal rights. I could be persuaded to admit to acts that I did not actually commit. I am unable to knowingly waive any of my rights.

I do not wish to talk with police officers until I have talked with a lawyer. Please contact the person listed on the back of this card if you need assistance or my cooperation.

My name is: _____
and I have FASD. For information or assistance
regarding me, please contact:

Name: _____

Phone: _____

Name: _____

Phone: _____

(Please read the other side of this card.)



**Presentation
Finished.**

Any questions?