



301 – 441 Main Street, Winnipeg, Manitoba R3B 1B4

Phone: (204) 943-2382 Fax: (204) 943-3600

E-mail: [info@communitylegal.mb.ca](mailto:info@communitylegal.mb.ca) Web: [www.communitylegal.mb.ca](http://www.communitylegal.mb.ca)

# BAIL

## GROUNDS FOR DETENTION

The Crown Attorney must give reasons, or “show cause”, as to why the young person must be kept in custody before trial.

A young person may be kept in custody before trial if:

- 1) a) the young person has been charged with a serious offence, **or**  
b) the young person has a history that indicates a pattern of outstanding charges or findings or guilt, **and**
- 2) one of the following exists:
  - a) there is a good chance that the young person will not appear in court
  - b) detention is needed to protect the public, **or**
  - c) in exceptional circumstances, to maintain confidence in the administration of justice when a young person has been charged with a serious offence considering:
    - the apparent strength of the Crown’s case,
    - the seriousness of the offence,
    - the circumstances under which the offence was committed, including whether a firearm was used, and
    - the fact that the young person, if found guilty, may be looking at a lengthy custodial sentence, **and**
- 3) release with conditions would not be enough to deal with the court’s concerns.

**Note:** A serious offence is one for which an adult could be sent to prison for five years or more.

The *Youth Criminal Justice Act* specifically says that pre-trial detention shall not be used instead of appropriate child protection, mental health, or other social measures.

## PRE-TRIAL DETENTION

Generally, a young person in custody must be held separately from adults. The only exceptions are if the young person’s safety or the safety of others would be at risk by holding the youth in a youth detention facility, or if there is no place of detention within a reasonable distance.

## **RESPONSIBLE PERSON ALTERNATIVE**

An alternative to pre-trial detention is to place the young person in the care of a responsible person. There are three requirements before this can happen:

- The young person would otherwise be kept in custody,
- The responsible person must be willing and able to assume care and control over the young person, and
- The young person must agree to the arrangement.

If a young person may be held in custody before trial, the youth justice court must ask whether there is an acceptable responsible person available.

The responsible person must:

- undertake in writing to take care of the young person,
- make sure the young person attends court, and
- comply with any conditions of the court.

The young person must also agree in writing to the arrangement.

## **RELIEF FROM OBLIGATIONS**

The young person, responsible person, or any other interested person, may apply to court for an order relieving the young person and the responsible person from their obligations.

When this order is granted, there will be a warrant for the arrest of the young person. The young person may then be placed in the care of another responsible person, if there is one. If there is not, the young person will be held in custody until trial.

## **CONDITIONS OF RELEASE**

If the young person is not detained in custody, the judge may order the young person to comply with certain conditions.

Examples of conditions:

- curfew,
- restrictions to a certain area,
- an order to report any change of address to the court,
- regular reporting to supervision at given times,
- abstaining from drugs or alcohol.

The young person or another designated individual may also be required to promise to pay the court if the young person does not abide by the conditions of the court.

---

*Community Legal Education Association gratefully acknowledges Youth Justice Policy, Department of Justice Canada, for funding this project.*

*Written by: Jennifer Dunik, Community Legal Education Association*

*Reviewed by: Tony Cellitti, Phillips Aiello*