
A GUIDE TO THE LAW IN ALBERTA REGARDING

HOW TO DO YOUR OWN SPEAK TO SENTENCE

version: 2008

GENERAL

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INTRODUCTION

This pamphlet is written for the person who has to deliver their own speak to sentence.

After you enter a guilty plea or you are found guilty of an offence after a trial, the Judge needs to know something about you so that he or she can sentence you. The "Speak to Sentence" is your chance to tell the Judge about yourself. This is your opportunity to suggest to the Judge why you should be treated less harshly than somebody else.

GENERAL IMPRESSIONS

First, there are a few things that can be done to make a positive impression on the Judge:

1. Always be on time for Court.
2. Look respectable and dress neatly. A suit and a tie, or dress pants and a blouse or dress shirt is always better than a t-shirt and jeans. You should never wear a hat, shorts, or a tank-top in Court.
3. Speak clearly and always stand when speaking to a Judge. You should also stand when the Judge is speaking to you.
4. Always be respectful and courteous towards the Judge and everyone else in court. Do not interrupt anyone who is talking. Address both male and female Judges as "Your Honour"; or use "Sir" for a male judge and "Ma'am" for a female judge.
5. While waiting for your turn, try to be quiet while court is in session. If you need to have a conversation, quietly leave the courtroom and do so.
6. When entering and leaving the courtroom it is customary to bow to the Judge, even if he or she is not looking in your direction.

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Not all of these points will have an effect on every Judge, but each action taken may make a positive impression and help you in sentencing.

COURT PROCEDURE

1. Before Your Court Appearance

- a. If you are unsure of the courtroom, the date, or the time that you must appear you should phone the Provincial Court Criminal Clerk (the phone numbers are at the end of this pamphlet). Tell them your name, birth date and what you are charged with and they will be able to tell you the date, time and courtroom you are scheduled to appear in.
- b. Arrive at your courtroom *at least fifteen minutes* before your Court time.
- c. Check the docket list (the paper posted outside of the courtroom with names and charges) to make sure your name is there and that the charges are correct. (If your name is missing, go immediately to the Clerk's counter, Provincial Court Criminal Division, located on the main floor of the courthouse in Edmonton).
- d. If you are appearing in docket court (the courtroom in which you make your first appearance, reserve your plea, set a trial date, or enter a guilty plea) you should speak to Duty Counsel who are usually located just outside the courtroom. Duty Counsel is a lawyer who can help unrepresented people in docket court. Duty Counsel will help you:
 - i. "reserve" your plea so that you can seek further legal advice about your charge(s);
 - ii. enter a not guilty plea and set a trial date;
 - iii. speak to the Crown Prosecutor about your charge(s);
 - iv. enter a guilty plea; or
 - v. speak to sentence

It is important to remember that Duty Counsel does not run trials and if your charge is set for trial it is your obligation to find a lawyer (possibly through Legal Aid) or to talk to someone at Student Legal Services about opening a file.

- e. If you choose not to use the help of Duty Counsel or if you are going to court for a trial date rather than a docket appearance, you may want to speak to the Crown Prosecutor before court begins. The Crown Prosecutor usually arrives in the courtroom about fifteen minutes before Court begins and will sit at one of the desks at the front of the courtroom. Tell the Prosecutor who you are and what you are planning on doing (ie. plead guilty, not guilty, reserve your plea, or ask for an adjournment). You can try to negotiate with the Prosecutor at this point as well.

2. Negotiating With The Crown Prosecutor

- a. If you are planning to plead guilty and you are set to go to trial on your next court date, you should call the Prosecutor as soon as possible to let them know that you want to plead guilty. Telling the Prosecutor that you want to plead guilty before your court date gives the Prosecutor time to cancel witnesses and save everyone inconvenience. Also, if you call the Prosecutor ahead of time you may get a chance to discuss your case and try to make a deal with the Prosecutor. When you call the Prosecutor's office in Edmonton you should ask for the Public Assistance Unit and ask to make an appointment with a "Duty Crown", who can discuss your file with you. If you want to ask for an adjournment (postpone the trial), it is also a good idea to call the Prosecutor ahead of time and find out if the Prosecutor has any objections to postponing your trial. The Prosecutor's phone numbers are listed at the end of this pamphlet.

- b. It is sometimes possible to negotiate with the Prosecutor. If you are charged with more than one offence, you may be able to get the Prosecutor to drop one or more of the charges. This may be done by telling the Prosecutor that you are willing to plead guilty to some of the offences but not all of them. Also, if you are charged with a serious offence you can tell the Prosecutor that you are willing to plead guilty to a less serious offence, and the Prosecutor may agree to reduce your charge.

3. Your Court Appearance

- a. When the Judge is in the courtroom you should be sitting in the gallery of the courtroom waiting for the Court Clerk or the Prosecutor to call your name. When your name is called, walk up to the front of the courtroom and state your name to the Judge.
- b. If this is your first court appearance the clerk may read the charge(s) and ask how you want to plead. If you entered a plea of not guilty at your first appearance and you want to change your plea to guilty at the trial date you must tell the Judge that you want to change your plea to guilty.
- c. Once the guilty plea is entered, the Judge may ask you a few questions in order to "canvas section 606 of the Criminal Code". The judge simply wants to know if you are pleading guilty **voluntarily** and that you understand that you are **giving up the right to have a trial**. Next, the Crown Prosecutor will read the particulars (ie. the facts) of the offence. Listen carefully to the facts as read by the Crown and be sure they are correct. The Judge will then ask you if you acknowledge the facts as read. If there is a point that is incorrect tell the Judge your view of the incident. However, if you are entering a guilty plea you must acknowledge the substance of the offence (meaning, that you admit that you committed the offence) so if you disagree with a lot of the facts you may need to plead not guilty and go to trial.

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- d. The Crown Prosecutor will also show the Judge a copy of your criminal record if you have one. The Prosecutor should show you a copy first so that you can make sure that it is your record and that there aren't any mistakes on it. If there are any mistakes on the record, tell the Judge immediately.
- e. If there is no dispute over the facts or your criminal record the Judge will ask if you have anything you wish to say on your behalf. This is where you begin your speak to sentence.

SPEAK TO SENTENCE

There are two objectives when Speaking to Sentence. First, you want to describe what type of person you are. The Judge wants to know about your character. Second, you want to describe the circumstances surrounding the offence. The Judge wants to know if there are mitigating factors or, in other words, special circumstances which led to you committing an offence (ie. severe illness, necessity, personal difficulties, etc.).

Below is a list of things a Judge may want to know. Remember to paint the best picture of yourself. It is usually best not to talk about your past criminal record. **But always be absolutely honest with the Judge.** As a general rule, never remind the Judge of the negative and always emphasize the positive, however, if you have spent time in remand for this particular offense, you should let the judge know this straightaway. You should tell the judge these things in a short speech that you prepared ahead of time. After the Judge has heard you speak to sentence, the Judge will pass sentence taking into account all that the Crown Prosecutor and you have said.

1. Character of the Offender

- a. Age and background:
 - i. your birth date

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- ii. where you were born
- iii. whether you are married, single, divorced, widowed or separated
- iv. how many children you have, how old they are, and whether they live with you. If they don't live with you, you should explain any financial support you give them and what type of relationship you have with them. You can also mention anyone else who depends on you for financial support (like an elderly parent or a disabled family member)
- v. any disabilities that you have
- vi. if you are Aboriginal, or a member of another minority group
- b. Family circumstances:
 - i. where your family lives
 - ii. whether you live with them
 - iii. if you have a good relationship with your family you can tell the Judge
 - iv. your spouse's occupation, or your parent's occupation if you are a young adult
- c. Education:
 - i. how far you went in school (high school, college education, etc.)
 - ii. special skills or trade training you have (ie. welding, business administration, etc.)
 - iii. where you were educated
 - iv. any school awards or scholarships you have received.
- d. Employment:
 - i. where you are employed, whether your work is full-time or part-time, and how long you have been working there
 - ii. if you are unemployed, how long you have been out of work and what you have done to look for work
 - iii. if you have a medical problem that affects your ability to work, you can give the Judge documentation to prove it (ie. doctor's letter, etc.)

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- iv. your monthly income (if you are on social assistance you may want to tell the Judge because he or she may take it into account when sentencing you)
- e. Previous Criminal Record
You don't need to volunteer any information about your criminal record but you may want to tell the judge anything that will make your record look less damaging. For example, you can explain if the offences were committed during a rough time in your life, if there were special circumstances surrounding the offence (like shoplifting a \$2.00 item), or if you had a problem with drugs or alcohol in the past that contributed to your record.
- f. Other
 - i. This includes any other personal circumstances that you feel may be relevant or that may make an impression on the Judge, or that may provide some explanation of your actions.
 - ii. You may want to mention your involvement in volunteer or community groups.
 - iii. If you are sorry for the offence, you should tell this to the Judge, and include why you are sorry.
 - iv. The fact that you have suffered embarrassment, financial loss, or had family problems as a direct result of having been charged with the offence may also assist the Judge in determining to what extent you should be further punished.
 - v. If a criminal record will have a negative effect upon your life (ie. it will mean that you will get fired or will not be able to obtain a job), this should be brought to the Judge's attention.

2. Circumstances Surrounding the Offence

As a general rule, you should say nothing about the offence unless there are mitigating circumstances that should be brought to the attention of the Judge. Basically, you are dealing with the question: "Why did you commit the offence?" If you had a really

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good reason to commit the offence (i.e. shoplifting to feed your hungry children) or if it was completely out of character for you to commit such an offence, this should be explained to the Judge. If there is no acceptable reason for why you acted as you did, you are better off saying nothing. There is no point in reminding the Judge about the negative points of your case.

3. Concluding the Court Appearance

The Judge will impose a sentence after both you and the Prosecutor have concluded your submissions. You should stand when being sentenced.

TYPES OF SENTENCES

The types of sentences you can get after pleading guilty or being convicted are different for each offence, and depend a lot on your own particular circumstances. It is difficult to know what sentence you will get before you go to court because it is the Judge who makes this ultimate decision. Some of the different sentences you may receive are: (please note that a Judge may order more than one type of sentence for a single offence):

1. Fine

A Judge can order that you pay a fine of any amount of money that the judge sees fit. If you are sentenced to pay a fine you need to know about Time to Pay and Fine Options.

a. Time to Pay

If the Judge sentences you to pay a fine, you will be told that if you don't pay the fine you will have to spend some time in jail instead. The Judge will ask you whether you need time to pay the fine; if the Judge doesn't ask, you should mention it yourself. The Judge will want to know how much time you need to pay the fine. You generally need to have a good reason if you want more than three months to pay. If you are granted time to pay you need to pick up your Time to Pay slip

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from the Provincial Court Criminal Division Clerk's counter (on the main floor of the courthouse in Edmonton).

An application can be made for an extension of time to pay if it is impossible for you to pay the fine by the due date. To obtain an extension you must apply at the Provincial Court Clerk's Office in the city where you were sentenced **before** the expiry date. If you have made reasonable efforts to pay the fine, or have paid off some of the fine, you are more likely to get an extension than if you have made no efforts. The Clerk will then check with the Judge who sentenced you and you may be given more time to pay. *Do not* wait until the day your fine is due to request an extension because it takes time for an application to be approved, if your application is refused, you need time to get money together to pay the fine.

If your fine has not been paid by the expiry date, a warrant will be issued for your arrest.

b. Fine Options

If you are unemployed or working part-time, you should consider the Fine Options Program. The program allows you to work off your fine. As long as you are enrolled in the Fine Options Program within the time given by the Judge to pay off your fine, you probably will not be facing arrest for failure to pay your fine within the time prescribed so long as you are making progress towards paying your fine. The address and phone number to the Fine Option Program will be on your Time to Pay slip.

2. Jail Time

A sentence may include an order to serve jail time. If you think that it is possible that you will be sent to jail you should make any necessary arrangements before you go to court; for example, you might need to find proper care for your children, pay your rent, or leave your personal belongings in a safe place. If the Judge does order jail time it may be possible to serve your time intermittently

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(on weekends for example). You cannot serve a sentence intermittently if you are serving jail time because you didn't pay a fine or if you are sentenced to serve more than 90 days. If you want to serve your sentence intermittently you need to explain to the Judge why it would be best for you (ex. so that you don't lose your job or to allow you to continue school, etc.). You should bring documentation as proof to show the Judge.

3. Probation Orders

Sometimes a Judge will give a sentence that includes a probation order. A probation order requires that for a specific period of time (often six months or a year) you must meet certain conditions intended to keep you from re-offending. The conditions might include such things as counselling and drug treatment for substance abuse, community service hours and a requirement that you check in with a probation officer periodically. If you do not meet the conditions of the probation order you will be charged with another offence called Breach of Probation and you will have to go back to court again.

If you receive a period of probation you should go to the Clerk's counter and tell them who you are and that you received a period of probation. Wait there to receive a copy of the probation order and then take it to the Adult Probation Office or to wherever the Clerk directs you. If you don't report to the probation officer right away a warrant may be put out for your arrest.

4. Discharges

Sometimes a Judge will decide that someone deserves a second chance and will sentence the person to a discharge. If you receive an Absolute Discharge it means that you will not get punished and it will not appear on your permanent criminal record. A Conditional Discharge is like a probation order. The discharge is based on certain conditions which **must be met**. If you meet these conditions for the time period set by the Judge, your discharge will become absolute. If you do not meet the

conditions, you will have to go back to court and the Judge will sentence you again.

Discharges do not appear on your permanent criminal record. If you get an absolute discharge and you commit another offence within one year of when you were sentenced, the discharge will appear on your record when you are sentenced for the more recent offence; if you get a conditional discharge it will stay on your record for three years in case you are sentenced for a new offence. Discharges do stay on the record that is available to police and customs officers forever, but after a few years a discharge on your record is not likely to cause you any problems.

5. Restitution

If you plead guilty or are convicted of an offence involving theft or property damage, a judge may order restitution be paid to the victim. Restitution involves paying back the victim of the offence for either the items stolen or the damage done. The Judge will tell you how much time you have to pay back the victim. If restitution is made a condition of a probation order, or a conditional discharge, or a conditional sentence order, then failure to make restitution by the date in the order will result in a breach of the order, which then has criminal consequences. Whereas, if restitution is made as a stand-alone compensation order, then it is filed in the Court of Queen's Bench as a civil judgment, just as though you were successfully sued for the money. The complainant then can make good on the claim against you by seizing your property, assets, wages, etc. after proceeding through proper legal channels, such as giving proper notice to you.

6. Community Service

Community service hours are often given as part of a probation order or a conditional discharge. If you are ordered to do community service the Judge will decide how many hours you have to complete and how many months you will have to

complete the hours. Your probation officer will help you find a place for you to perform your hours which will usually be volunteering somewhere in your community.

7. Conditional Sentences

If you are given a jail sentence of less than two years, you can ask the court if you can serve a conditional sentence instead of going to jail. A conditional sentence allows you to remain living in your own community under the supervision of a probation officer and with certain conditions which will almost always include a curfew, and are often referred to as 'house arrest'. If you think that you are likely to be sent to jail you can ask the Prosecutor if he or she would consider a conditional sentence instead.

If you are later found guilty of breaking a Conditional Sentence order you may be ordered to serve the rest of your sentence in jail.

8. Alternative Measures

Alternative measures is a way for people to deal with criminal charges. You may be able to convince a Prosecutor that you be allowed to do alternative measures in exchange for the charges being dropped against you. The Prosecutor can decide on what type of alternative measures are appropriate, but often they will choose things like counseling, apologizing to the victim or community service work. You have to accept responsibility for your actions in order to be considered for alternative measures. Alternative measures will only be used if the Prosecutor thinks you are not going to commit another offence and deserve a second chance. If the Prosecutor decides to use alternative measures, you will have to go to court to have your court date moved to a new, later date and when you go back to court the Prosecutor will withdraw the charges if you have completed the alternatives measures specified. If you think that the Prosecutor will allow you to try alternative measures you should phone the Prosecutor ahead of time to discuss your case; phone numbers for the

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Prosecutors' offices are listed at the end of this pamphlet. Only minor types of offences are considered by the prosecution.

9. Victim Offender Mediation

You may also be able to get charges against you dropped by asking to participate in Victim Offender Mediation (called VOM). VOM allows you to work out a solution with the victim of your offence to avoid having to deal with it in criminal court. If you think that the victim in your case would be willing to try to work things out with you, you should ask the Prosecutor to check into VOM for you; the Prosecutors' phone numbers are listed at the end of this pamphlet.

FINAL NOTE

This pamphlet only gives you very general information about speaking to sentence. Each Judge and each city may have their own way of conducting court. Don't be alarmed if you are confused by the procedure in court, the Judge will guide you through. If you have any questions or concerns about your speak to sentence you should speak to Duty Counsel at the courthouse, or contact a lawyer or Student Legal Services for information before you go to Court. You can also call a lawyer or Student Legal Services after you have been to court if you have any questions about what happened when you were in court or about the sentence you were given.

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REFERRAL NUMBERS

	Crown Prosecutor	Provincial Court Clerk
Edmonton	422-1111	427-7863
Leduc	361-1206	986-6911
Morinville	939-6804	458-7300
St. Albert	458-7309	458-7300
Sherwood Park	449-1300	464-0114
Stony Plain	963-5009	963-6205
Wetaskiwin	361-1206	361-1204

[All the above numbers are in the 780 area code]

- Lawyer Referral Service 1-800-661-1095 (toll free)
- Student Legal Services [780] 492-2226
Corona Criminal Office (Downtown) [780] 425-3356
www.slsedmonton.com
- Fine Option Program [780] 422-0359
- Elizabeth Fry Society [780] 422-4775
. [780] 422-1175