

The Criminal Legal System for Teenagers

Student
Guide

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IMPORTANT NOTICE

This document has legal information up to date as of June 2017. None of the information in this guide should be taken as legal advice.

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1. Overview of the Court System

LOWER COURTS

MAIN LOWER COURTS

Court of Quebec

The Court of Quebec is made up of several divisions. Each division is responsible for specific types of cases.

One of these divisions is called the **Youth Division**, also known as the “Youth Justice Court.” It hears criminal and penal law cases when the person accused of breaking the law is a minor (i.e., a person under the age of 18). Penal law involves cases of violations of the law that are not criminal.

Judges of the Youth Division are very familiar with teenagers and the types of problems that affect them. They are therefore equipped to make the decisions about teens while making sure society is protected.

Superior Court

The Superior Court hears all cases not specifically assigned to other courts. For example, it is responsible for divorce and spousal and child support cases, murder cases, other serious crimes, and cases in which the amount claimed is \$85,000 or more.

OTHER LOWER COURTS

There are other lower courts as well, including **municipal courts**, which hear cases involving people who break city bylaws (for example, loitering in a park late at night) or people who want to challenge traffic violations (for example, a ticket for running a red light).

Several other courts handle cases dealing with very specific topics:

- **Tribunal administratif du Québec** (Quebec administrative tribunal) - hears cases about health care services, environmental protection, commercial matters, etc.
- **Human Rights Tribunal** - deals with human rights issues, such as discrimination and harassment
- **Canadian Tax Court** - hears cases about employment insurance, taxes, etc.

Another important court is the **Federal Court**, which rules on issues falling under the responsibility of the federal government, such as these issues:

- immigration
- intellectual property
- water transportation
- interprovincial disputes

APPEAL COURTS

Appeal courts decide whether the interpretation of the law by lower court judges was correct. So, a person involved in a case who believes the lower court decision was wrong can sometimes ask a court of appeal to review the decision. The main appeal court in Quebec is called the **Court of Appeal of Quebec**.

Appeal court judges do not usually hear witnesses or consider new evidence. Rather, they decide whether the first decision was correct based on the evidence presented in the lower court and based on the applicable law.

SUPREME COURT OF CANADA

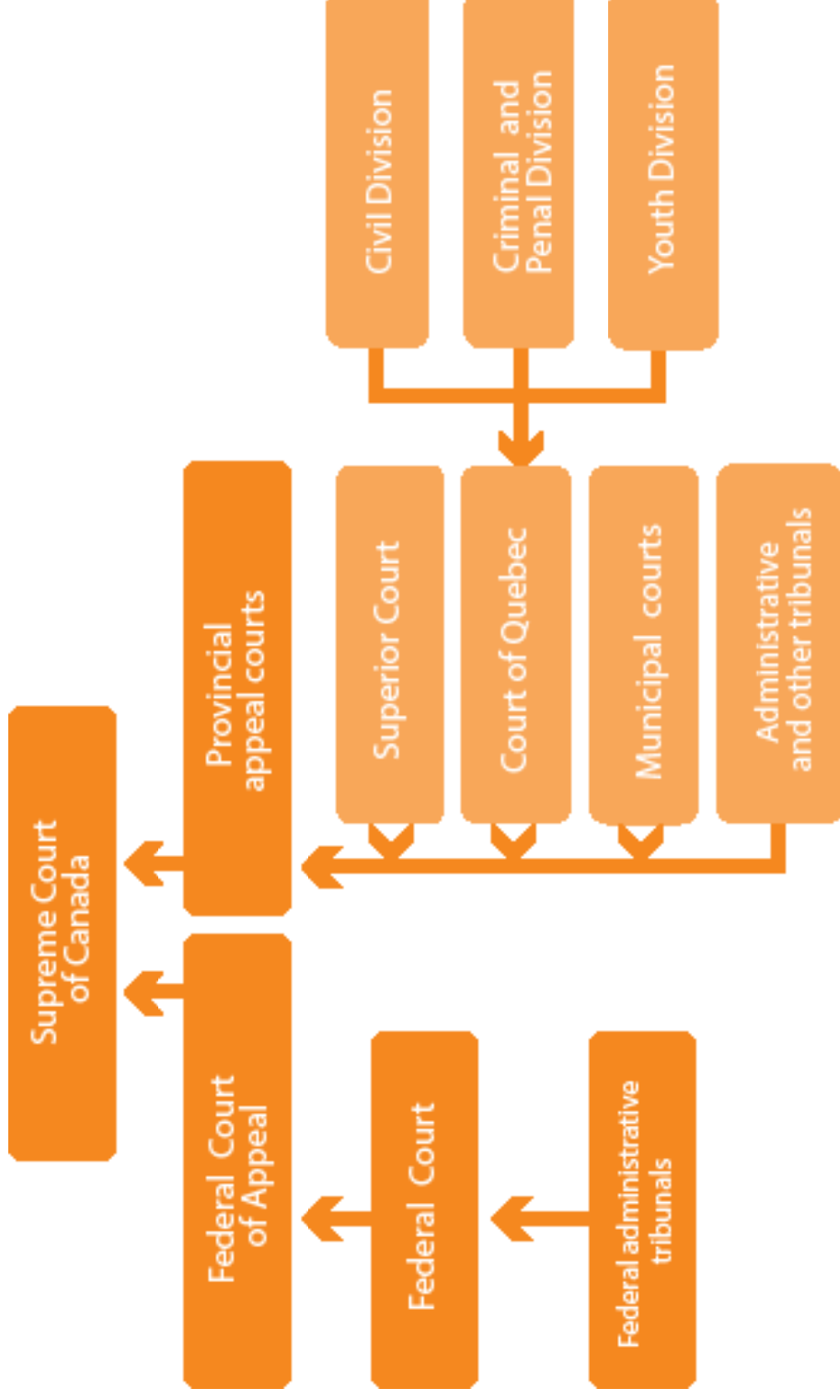
The Supreme Court of Canada is the **top court in the country**.

A person who wants the Supreme Court to consider a case must get the court's permission first. Decisions of the Supreme Court are final, which means they cannot be changed afterwards.

Nine judges sit on the Supreme Court of Canada. Not all judges need to hear each case, but there must be a minimum of five. Also, it is important for an odd number of judges to hear a case so a decision can be made by a majority. Supreme Court decisions do not have to be unanimous.



Organization of the Courts



2. Basic Criminal Law Concepts

PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

A presumption of innocence is the right of the accused of a crime to be **presumed innocent until proven guilty**.

From the Criminal Code

“A person shall be deemed not to be guilty of the offence until he is convicted.”

From the Canadian Charter of Rights and Freedoms

“Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.”

From the Charter of Human Rights and Freedoms (Quebec)

“Every accused person is presumed innocent until proven guilty according to law.”

In other words, a person accused of an offence is presumed innocent until found guilty by a judge or jury.

This means the accused is not required to prove his or her innocence. Rather, it is up to the criminal and penal prosecuting attorney (the “prosecutor”) to present evidence and convince the judge or jury that the accused is guilty. Therefore, the “**burden of proof**” is on the prosecutor.

For an accused to be found guilty, the prosecutor must prove guilt **beyond a reasonable doubt**. If there is a doubt in the mind of the judge or jury, then the accused must be found not guilty.

Did you know that Crown prosecutors are now called “criminal and penal prosecuting attorneys”?

3. Introduction to the *Youth Criminal Justice Act*

In Canada, a special law called the *Youth Criminal Justice Act* (YCJA) applies to teenagers aged 12 to 17.

The purpose of the YCJA is to protect the rights of teenagers and the public. More specifically, the goals of the law are as follows:

- hold teens responsible for their actions
- encourage their rehabilitation and reintegration into society
- prevent crime

The YCJA sets out specific guiding principles. For example, a teen's punishment must meet these criteria:

- fair and proportional to the seriousness of the crime
- appropriate given the teen's level of maturity

Special Provisions of the YCJA

The YCJA provides special protection for teens found guilty of crimes:

- The teen's name cannot be disclosed.
- The teen's punishment must be lighter than an adult's for the same crime.
- The teen must be eligible for a punishment other than being held in custody, such as community work.

This law applies to youths between the ages of 12 and 17 who have been accused of a crime.

Respect for Privacy

Under the YCJA, a teenager's right to privacy must be respected. For example, there are special rules about access to files regarding teens.

Also, in almost all cases, no one can reveal a teen's name or information that could reveal that the teen was in trouble with the law.

In written decisions of the courts, teens are only identified by their initials. This prevents people who read the decisions from identifying them.

FOR FEDERAL CRIMES ONLY

The YCJA applies only to teens who commit a **federal crime**, that is, a crime defined in a federal law such as the Criminal Code. The YCJA does not apply to violations of provincial laws, such as the *Highway Safety Code*.

What happens when someone under the age of 12 commits a crime?

Children under the age of 12 cannot be accused of crimes because the law does not consider them mature enough to understand all the consequences of their actions.

However, there can be other consequences. For example, the Director of Youth Protection (DYP) can intervene in cases involving youths under the age of 18 who have serious behavioural problems.

Also, if a victim of a crime takes a civil lawsuit for damages against the youth and her parents and wins the case, then they would have to pay a certain amount of money to the victim.

When a Teenager Is Arrested

After arresting a teen, a police officer has these options:

- apply extrajudicial measures or sanctions (see the explanation below)
- refer the case to a criminal and penal prosecuting attorney (prosecutor)

In all cases, **the teen's parents must be notified about the police intervention.**

If the case is referred to a prosecutor, the prosecutor can either bring the case to court or refer the case to the Director of Youth Protection, who will then apply extrajudicial sanctions.

Extrajudicial Measures and Sanctions

What is an “extrajudicial measure”?

An “extrajudicial measure” is a measure other than a criminal court case. If the crime is not a serious one, then the teen might be eligible for an extrajudicial measure. Police officers could then decide to:

- not take any action;
- give a warning;
- refer the teen to a community organization that can help.

Extrajudicial measures are often applied for a first offence or for non-violent crimes such as shoplifting.

The purpose of extrajudicial measures is to rehabilitate teens who break the law and have them take responsibility for their actions. If extrajudicial measures are applied, the teen usually does not have to face criminal charges in court.

What is an “extrajudicial sanction”?

If the police officer who arrested the teen refers the case to prosecutor, then the prosecutor must consider the possibility of extrajudicial sanctions. If the teen is eligible for extrajudicial sanctions, then the case is referred to the Director of Youth Protection.

An extrajudicial sanction is a **tougher extrajudicial measure** and applies to more serious crimes or if the teen has committed crimes in the past.

An extrajudicial sanction could involve:

- making amends to the victim;
- making amends to the community; or
- participating in a social skills program.

The prosecutor also has the option of starting a criminal court case against the teen, who will then have to appear in Youth Justice Court.

When a Teen Is Found Guilty in Court: Choosing a Sentence

A teen who is arrested will be judged in Youth Justice Court if

- the teen pleads not guilty (that is, denies committing the crime), or
- the teen is not eligible for extrajudicial measures or sanctions.

What is a sentence?

If the judge finds the teen guilty at the end of the trial, she will choose an appropriate sentence. A sentence is the consequences of being found guilty.

Sentences for teens are usually different from sentences for adults. In some cases, however, the court imposes a sentence usually reserved for adults. If a teen **14 years or over** commits a serious crime in Quebec, the prosecutor can ask for an adult sentence. In this case, the prosecutor must prove to the judge that the sentence is necessary given the circumstances.

A judge will order an adult sentence if

- the teenager should not receive special treatment, even if the teenager is still a minor, and
- a youth sentence is not harsh enough for the teen to assume responsibility for the crime and dissuade the teen from repeating the behaviour.

To reach a decision, the judge can rely in part on a “pre-sentence report” prepared by a youth worker. The pre-sentence report is actually a **psychosocial assessment of the teenager**. When preparing the report, the youth worker can meet with the teen and family members, and sometimes with the victim, to obtain more information about the teen’s life and the circumstances of the crime. By meeting with these people, the youth worker can include recommendations and information in the pre-sentence report that will help the judge choose a sentence.

Here are some examples of serious crimes:

- assault causing bodily harm
- murder
- sexual assault

Receiving an adult sentence can make a big difference for a teen. For example, the maximum sentence for attempted murder by a teen is three years. In contrast, the sentence for an adult for the same crime is much longer and can be as long as life imprisonment. Also, the YCJA does not protect the identities of teens who receive adult sentences.

Choosing a Sentence: Factors Considered

A judge considers these factors when choosing a sentence for a teenager:

- the **degree of the teen’s participation** in the crime
- the **damage to the victim** (especially if the damage was predictable or intentional)
- whether the **teen repaired the damage** to the victim or society
- the **amount of time the teen spent in custody** before the sentence was given
- the teen’s **previous convictions**
- any **aggravating circumstances** that support a harsher sentence, and any **attenuating circumstances** that support a lighter sentence

Activity 1 - Discussion

Questions	Notes (Write down the main points raised in the discussion.)
Do you agree that teens should be treated differently from adults if they commit a crime?	
In your opinion, does an 18-year-old have a better sense of right and wrong than a 17-year-old?	
The YCJA applies to youths aged 12 to 17. Should this law apply to all people under the age of 21? What arguments would support this type of change?	
Should the YCJA apply instead to youths under the age of 16 only? What arguments would support this type of change?	
In your opinion, what factors should guide the choice of minimum and maximum age limits (e.g., maturity level)?	
Are 12-year-olds who commit crimes able to understand the seriousness and consequences of their actions? What about 11-year-olds? Do you agree that the Criminal Code should only apply to people 12 and over?	
Should the media be allowed to publish the names of teens who receive adult sentences?	

Activity 2

You Be the Judge!

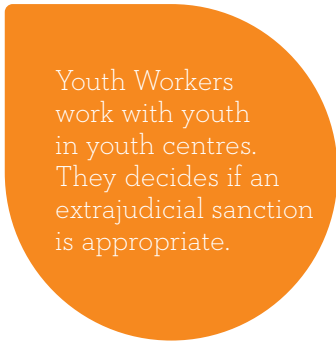
I. Introduction

In small groups, you will be asked to discuss fact situations that involve teenagers in trouble with the law. Then you have to decide how the law should deal with these teenagers. You will find out about factors taken into account in choosing a sentence for a teenager, and about alternatives to the traditional court process.

II. Steps in the Activity

1. Preparation

- The class will be divided into groups of six students.
- Each student will be given a number from one to six. Each number corresponds to one of these roles:
 1. Accused
 2. Youth Worker
 3. Police officer
 4. Victim
 5. Criminal and Penal Prosecuting Attorney (Prosecutor)
 6. Lawyer for the accused
 7. Judge
- The teacher will give your group a fact situation.
- Read over the facts.



Youth Workers work with youth in youth centres. They decide if an extrajudicial sanction is appropriate.

Step 2 - Are extrajudicial measures or sanctions appropriate in this case?

(20 minutes)

- You can refer back to the section on extrajudicial measures and sanctions in this guide. You can also refer to the box below entitled “Are extrajudicial measures or sanctions appropriate?”
- These four characters discuss whether it is appropriate to apply extrajudicial measures or sanctions:
 1. Accused
 2. Youth Worker
 3. Police officer
 4. Victim

The two other characters can take part in the negotiations and give their opinions, but they have no decision-making power.

After the discussion, the group must reach a conclusion:

1. Extrajudicial measures or sanctions are the best solution to the problem, in which case the students must develop a specific intervention plan for the teenager who committed the crime.

OR

2. Extrajudicial measures and sanctions are not appropriate and the teenager must face a trial in court.

Step 3 - What is the appropriate sentence? (20 minutes)

For this step, assume that no extrajudicial measures or sanctions were ordered or that they were not followed.

The case therefore went to court, and the teen was found guilty by a judge or jury. It is now time to choose a sentence.

These three characters take part in the discussion:

1. Prosecutor
2. Lawyer for the accused
3. Judge

The prosecutor and the lawyer for the accused have two minutes to prepare their arguments on the appropriate sentence and one minute to present them. The judge then makes a decision, that is, accepts one of the recommended sentences or orders an entirely different sentence.

For help on deciding on a sentence, see the box below entitled “What is the appropriate sentence?”

Step 4 - Each group presents its fact situation and conclusion to the class. (15 minutes)

Step 5 - Write a personal journal reflection (optional).

Are extrajudicial measures or sanctions appropriate? (Step 2)

Your group can consider the following options when deciding whether extrajudicial measures or sanctions are appropriate:

- Do not take any measures against the teen.
- Give the teen a warning. (A police officer explains to the teen the consequences of his or her actions.)
- Reach an agreement with the teen to take part in a support and awareness program aimed at changing the youth's behaviour and getting him or her to stop committing crimes.
- Reach an agreement with the teen to pay an amount of money to the victim or an organization, or do community work.
- Decide that the crime is too serious for extrajudicial measures or sanctions.

What is the appropriate sentence? (Step 3)

Option 1: No Detention

When a teen commits a crime and is tried in court, the judge begins by considering sentences that do not involve sending the teen to a youth detention centre.

These are some sentences that do not involve detention:

- **reprimand** (lecture from the judge)
- **absolute discharge** (a finding of guilty but with no sentence)
- **fine** of up to \$1,000, depending on whether the teen can pay
- **payment to the victim** to compensate for the harm done
- **community service order** to do a certain number of hours of community work

In addition, the teen could agree to **attend a rehab program**.

Option 2: Detention

In the situations listed below, a judge can order a sentence that involves detention:

- if the **crime was violent**
- if the teen **did not respect a sentence that did not involve detention**
- if the teen committed a serious crime and has been ordered to follow **extrajudicial sanctions in the past or has several previous convictions**
- if the teen committed a serious crime, and other **aggravating circumstances** point to a sentence that involves custody

Fact Situations

Jean-François (17 years old)

Jean-François is no longer in school. During his free time, he plays guitar in a band. He had a steady job in a music store until last week and earned enough to pay his bills each month. He was laid off because the store was losing business.

Jean-François was arrested recently for assaulting an employee (**victim**) at the corner gas station while trying to steal money from the cash register. The employee was seriously injured and had to be hospitalized for two days.

Jean-François moved out of his parents' home last year because he wasn't getting along with them. Six months ago, he was caught stealing a computer and DVD player from his neighbour. As an extrajudicial measure, Jean-François was ordered to pay back the value of the stolen items by doing odd jobs for his neighbour for six months. He carried out the extrajudicial measures.

Roles: ● Accused = Jean-François
● Victim = gas station attendant



Costas (17 years old)

Costas was driving his friend Tim's new sports car in a street race when he was arrested by police for possession of a stolen car. He says his friend Tim never told him where he got the car and that he had no idea it really belonged to Mr. Popovici (**victim**).

Costas has been arrested twice for shoplifting in the past. Extrajudicial measures were ordered in each case. The first time, he received a warning. The second time, he was ordered to attend a crime prevention program in his community.

Costas lives with his mother. She makes sure that he participates in the crime prevention program and that he attends his CEGEP classes.

Roles: ● Accused = Costa
● Victim = Mr. Popovici

Dana (14 years old)

Dana lives with her mother and two sisters. Although she often skips class, she gets high grades in school. She has never taken part in any extracurricular activities, but her art teacher says she is very talented.

Dana was accused of assaulting her classmate Kim during a fight in a park near her school. She pleaded guilty and had to pay a fine but was not sent to detention. She was ordered to participate in a community service program for the elderly. The court also ordered her not to go near certain parks or the local mall.

She recently stopped taking part in the community service program, so she was held in a detention centre for two months while waiting for her trial date. Dana was involved in another fight at the detention centre. Would extrajudicial measures or sanctions be appropriate for the fight at the detention centre?

- Roles: ● Accused = Dana
● Victim = Kim (Dana's classmate)



Caroline (15 years old)

Caroline's parents separated six months ago. Around the time of the separation, she was asked to leave her old school because she was involved in a fight with other students. The principal took this decision even though Caroline has always been a quiet student and played piano in the school orchestra.

Since arriving at her new school, Caroline has been bullied constantly by a group of girls. While visiting her father recently, she stole his hunting knife so she could bring it to school. The principal found the knife in Caroline's backpack. Although she has never been in trouble with the law before, Caroline was arrested for bringing a hunting weapon to school.

- Roles: ● Accused = Caroline
● Victim (person who filed the complaint) = school principal



Maha (16 years old)

Maha lives with her parents. She gets high grades in school and is on the school soccer team. Maha has never been in trouble with the law before, but today she was arrested for drug possession.

The chairperson of the local crime prevention committee filed a complaint with the police because he suspected drug-trafficking around the school. The police have been carrying out surveillance of the area for some time, and that's when Maha was arrested. Police officers discovered several bags of marijuana in Maha's backpack at the time of the arrest. The two boys who were with her admitted they had been selling marijuana to her for the last two years.

- Roles: ● Accused = Maha
● Victim (person who filed the complaint) = chairperson of the local crime prevention committee

Activity 3

Personal Journal Reflection

Your teacher might ask you to write a one to two page personal journal reflection on the activity *You Be the Judge!*

Here are some questions you can use to help you write your essay:

1. Did you feel that your character's opinion mattered and that it was taken into consideration?
2. Did you want to take part in all of the discussions, even the ones you were not involved in?
3. Did you agree with the judge's final decision? Was it appropriate given the crime?
4. Regardless of what the judge decided, do you think that extrajudicial measures or sanctions would have been appropriate?
5. To choose a sentence, were the factors set out in the Youth Criminal Justice Act helpful? (The factors are listed on page 8 of the Student Guide). Should other factors be taken into account?
6. Was it easy to make a decision about the extrajudicial measures and sanctions? When the case went to court, were you relieved that it was the judge who had to make the final decision?
7. In your opinion, what skills does a good judge need to have?

Fact Sheets on Various Crimes

Drug Possession and Trafficking

Having drugs in your possession is a crime. No matter what others say, **you're not allowed to have drugs, even in small amounts.** The amount can affect the consequences you might face, but possession of even a small amount is a crime.

Drugs are substances that our laws say are illegal. They include

- cannabis (marijuana),
- cocaine, and
- ecstasy.

Drug trafficking means possessing drugs for the purposes of doing one of these things:

- selling them
- giving them to someone
- transporting them
- delivering them

Assault

Assault means using or threatening to **use force against a person without his or her consent.**

There are several types of assault, including **common assault, aggravated assault, assault with a weapon, assault causing bodily harm (injury)** and various types of sexual assault.

Here are some examples of assault:

- holding a person's wrist, throwing a glass of water at someone, pushing a person (common assault)
- kicking someone in the mouth and breaking a tooth (assault causing bodily harm)
- stabbing a person or waving a stick in someone's face while threatening to use it (assault with a weapon)
- forcing a kiss on someone using your tongue (sexual assault)

Sexual Assault

Sexual assault, as its name suggests, is assault that is sexual in nature.

Sexual assault is **the use of force against someone in a sexual context without that person's agreement. This agreement is called "consent"**.

A person is using force against someone if there is touching or the threat of touching. Physical contact is an example of the use of force. The use of force is illegal if it is done without the victim's consent.

The difference between a sexual relationship and sexual assault is the consent of the people involved. Also, consent must be specific to the sexual activity. For example, if a girl agrees to let someone touch her hair, she's not consenting to this person touching her bottom.

Cyberbullying and Bullying

Cyberbullying is bullying someone using technology (e.g., by email, a forum, blog, social network or text messaging.).

Bullying, whether in the real or virtual world, includes these types of behaviours:

- saying **humiliating or insulting things** about a person
- making **threats**
- **pressuring** a person into giving you something
- **harassing** someone by repeatedly sending that person cruel messages
- **using one person's name to say humiliating things about another person**

Bullying can be devastating to victims, and this is why **the law prohibits some forms of bullying**.

Excluding a person, spreading rumours about her, playing tricks on her and laughing at her are generally not considered crimes.

But threatening to hurt someone, "taxing" someone and harassing someone to the point that this person feels threatened are all examples of bullying that are considered crimes.

Theft

Theft occurs when **a person intentionally takes something that belongs to someone else without permission.**

For example, if you realize that you brought home a classmate's book by mistake, thinking it was yours, this is not theft; it's a mistake. However, if you realize your mistake but decide to keep the book because it's in better shape than yours, then it's theft.

If theft is accompanied by violence or threats, then it's called "**robbery.**"

Mischief (Vandalism and Graffiti)

Mischief means **intentionally breaking objects** that belong to other people. Here are some examples of acts of vandalism:

- breaking a window
- ripping out a public trash can
- breaking down a door

Mischief also involves **damaging an object**, for example, by engraving your name into a park bench using a knife, scratching a bus window with a key or painting graffiti on a wall.

Damaging an object or making it unusable or dangerous is also considered mischief. For example, you are guilty of mischief if you let the air out of the tires of a moped.

If you are found guilty of mischief, a judge can order a sentence like having you pay for the damage.