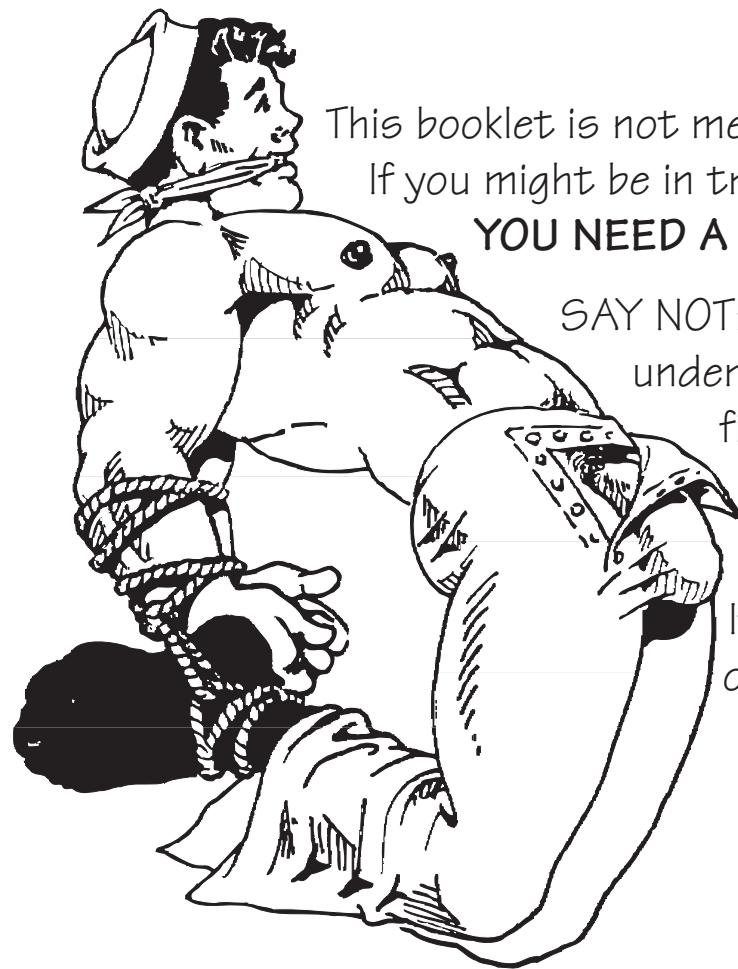




# Who's Jail Bait?

*What the law really says  
about sex for young people.*





This booklet is not meant to replace legal advice.

If you might be in trouble with the law,

**YOU NEED A LAWYER!**

SAY NOTHING TO THE POLICE! If you are under arrest: co-operate, be polite, DON'T fight or swear, and SAY NOTHING but your name and address until you have spoken to a lawyer!

If you need help getting a lawyer, or are harassed by police, contact:



*Maggie's*

The Toronto Prostitutes' Community Service Project

**(416) 964-0150**

## When can you say yes?

If one person doesn't agree to have sex and sex takes place, it's a crime: **sexual assault**. Laws about **age of consent** make it a crime to have sex with someone because of their age. It doesn't matter whether you both agreed to have sex together or not.



Someone under the age of consent is considered by law to not be old enough to agree to have sex.

Many people don't know what Canadian laws say about age of consent. Some people think you can't consent to sex before you turn 16: that's not true. The

age of consent in Canada for most sex is 14. But there are also laws about having sex with someone who is 'in a position of trust,' having anal sex, and having sex for money.

The **Criminal Code of Canada** isn't clear about what counts as sex with someone under 14; you can be charged with '**sexual interference**' for just touching someone. You can



be charged with '**invitation to sexual touching**' for even asking someone to touch you, themselves or anyone else in a sexual way.

## ***Sexual interference***

### **section 151**

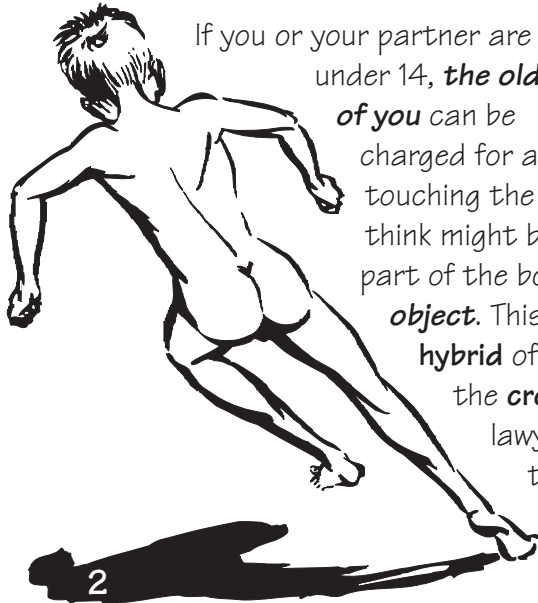
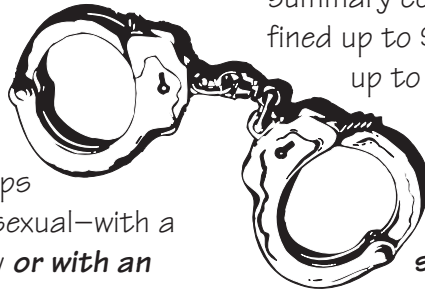
If you or your partner are under 14, **the older of you** can be charged for any touching the cops think might be sexual—with a part of the body **or with an object**. This charge is a **hybrid** offence which means the **crown attorney** (the lawyer who works with the police) decides whether to treat the charge

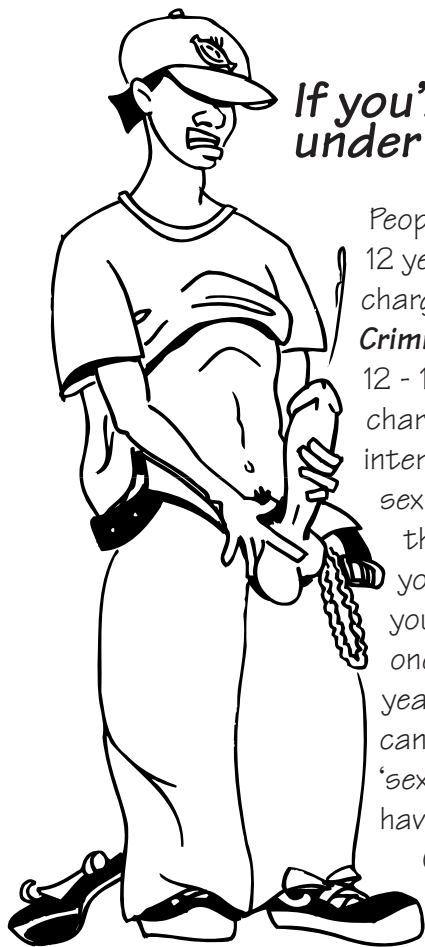
as minor (a **summary conviction**) or more serious (**indictable**). You can get up to ten years in jail if found guilty on an indictable offence of this charge in adult criminal court. A summary conviction can get you fined up to \$2,000, go to jail for up to six months, or both.

## ***Invitation to sexual touching***

### **section 152**

You can be charged with 'invitation to sexual touching' for asking someone under 14 to touch **anyone** – even themselves – in a sexy way. This charge is also a hybrid offence and carries the same punishment as 'sexual interference.'





## If you're under 16

People under 12 years old cannot be charged under the **Criminal Code**. If you are 12 - 15, you can be charged with 'sexual interference' for having sex with anyone more than two years younger than you. If you are under 14, anyone more than two years older than you can be charged with 'sexual interference' for having sex with you.

Once you turn 14,



you can have sex with someone your own age or older without either of you breaking the law. But there are still other laws you could break:

If you have sex with someone **under 18 who is in your trust** (like if you're their babysitter or coach), you can be charged with '**sexual exploitation**' – even if you're younger than they are!

If you bum fuck with someone under the age of 18, you can **both** be charged with '**anal intercourse**.' (You could also be made to testify against your partner.)

Remember, if you have sex with someone under 14 and you are more than two years





older than them, you can be charged with 'sexual

interference.' If you even come on to someone who is under 14 and you're more than two years older than them, you can be charged with 'invitation to sexual touching.'

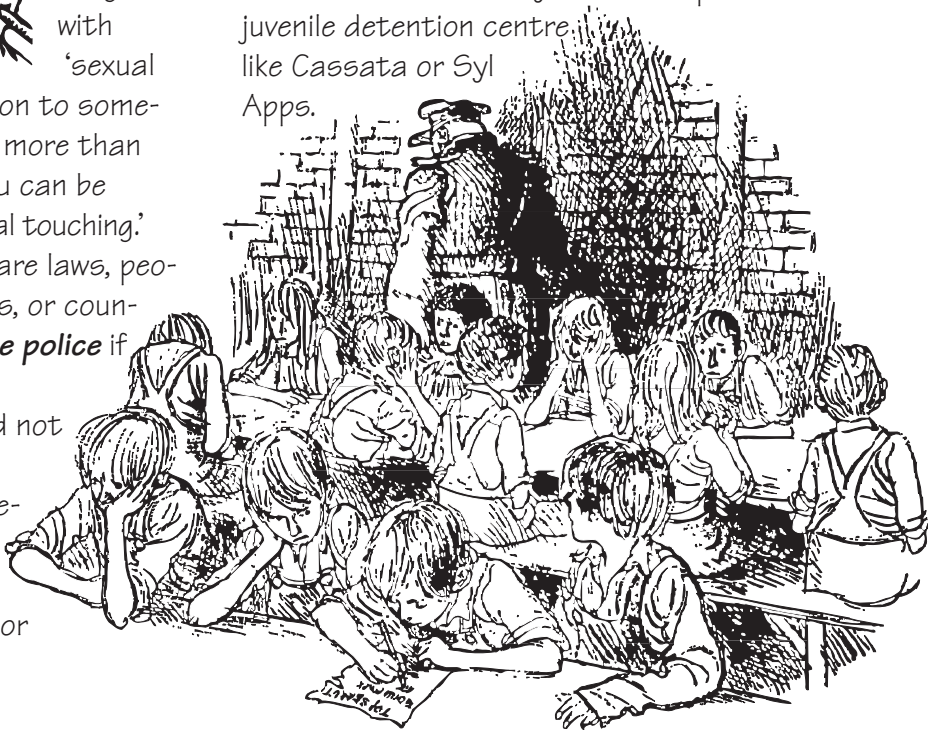
In order to obey child welfare laws, people like social workers, teachers, or counsellors **must report you to the police** if

they know or think:

- that you are under 16 and not in your parents' care;
- that you or someone you had sex with broke one of these laws; or

- that you are working as a prostitute

If you're under 16 and get caught selling sex, police can turn you over to the Children's Aid or have you locked up in a juvenile detention centre like Cassata or Syl Apps.



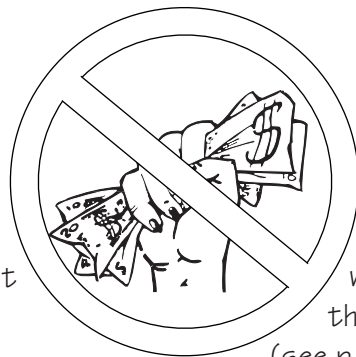


## If you are 16 or 17

You can have sex with anyone who is 14 or older without either of you breaking the law

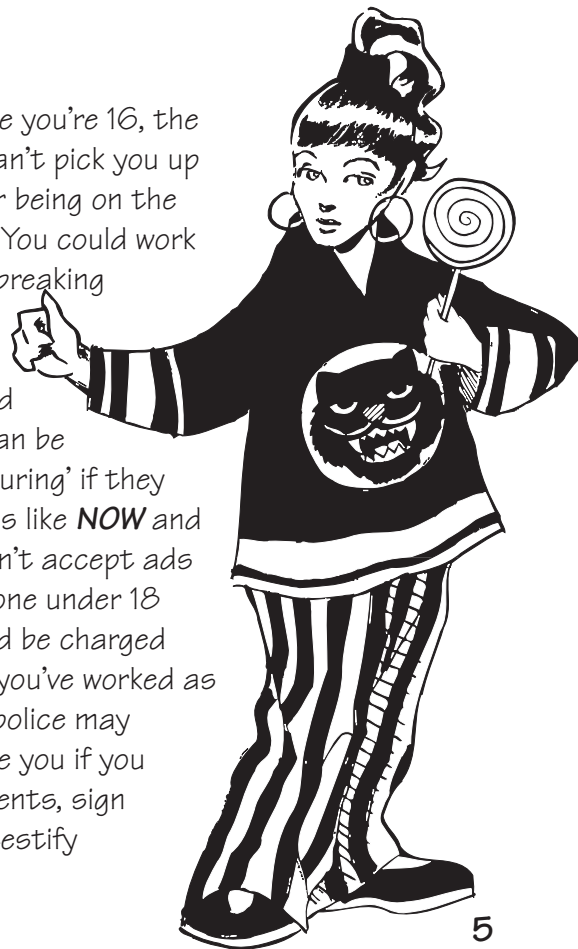
### UNLESS:

- You bum fuck. Anal sex is illegal if one of you is (or both of you are) under 18 (no matter who fucks or gets fucked).
- You have sex with someone under 18 who is in your care (like if you're their coach or baby sitter). You can be charged with 'sexual exploitation'—even if you're younger than they are!
- You pay someone under 18 for sex.



Once you're 16, the cops can't pick you up just for being on the street. You could work without breaking the law (see p. 10)

but customers and escort agencies can be charged with 'procuring' if they hire you. Magazines like **NOW** and phone sex lines don't accept ads for sex with someone under 18 because they could be charged with 'procuring.' If you've worked as a prostitute, the police may threaten to charge you if you refuse to name clients, sign statements and testify against them.

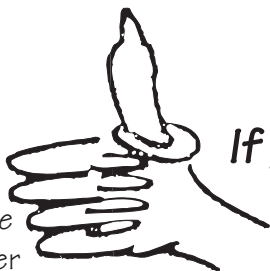






If you cooperate, you'll be  
used to charge  
these people  
whether

you want to or  
not. You can be  
charged with 'sex-  
ual interference'  
for having sex  
with anyone  
under 14. If  
you come on to  
someone under  
14, you can be  
charged with  
'invitation to  
sexual  
touching.'



## If you're 18 or older

Once you turn 18, you can have sex  
with people who are  
14 or older without  
breaking the law

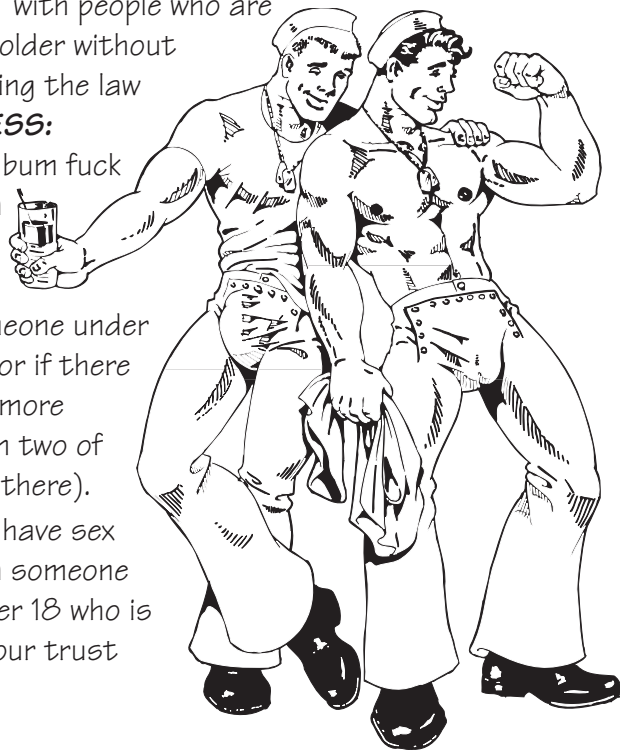
### **UNLESS:**

- You bum fuck  
with



someone under  
18 (or if there  
are more  
than two of  
you there).

- You have sex  
with someone  
under 18 who is  
in your trust







(like if you're their baby sitter, boss, or coach). It's called 'sexual exploitation.'

- You pay someone under 18 for sex.
- 'Procuring' laws also make helping someone sell or buy sex a crime.

You can be charged with '**living on the avails**' (pimping) if you take money for protection or for setting up dates. Once you're 18—if you're careful—you can sell sex without either you or your customer breaking the law. (For more about what the laws say about



selling sex see other sections of ***Trials of the Sex Trade.***

It's not against the law for you to be in sexy pictures, films or videos, as long as they do not break the **obscenity law** (see: ***The Bare Facts***) and you do not look or dress like you are under 18. **Pictures of you doing ANYTHING illegal are proof that you have broken the law.**

Sexy pictures can spark police investigations!

You must be 18 or older and pay for a "burlesque entertainer's licence" to work as a stripper in Toronto. (See: ***The Bare Facts.***)

**SAFE SEX!**

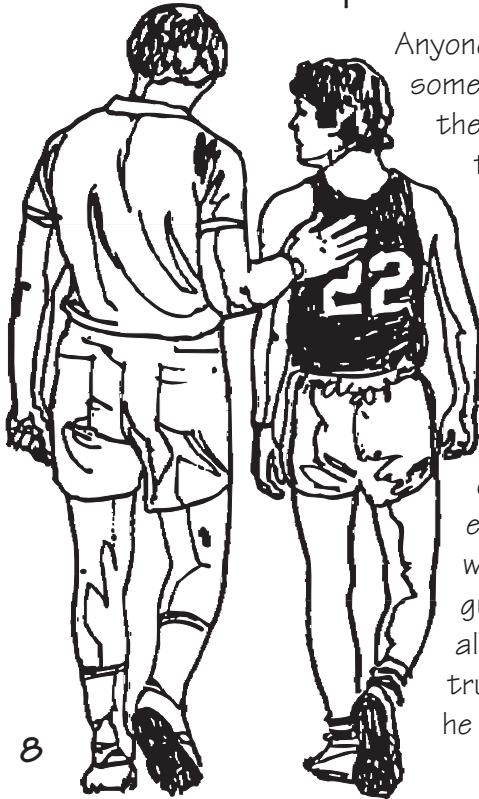


## *Positions of trust*

### **Sexual exploitation, section 153**

Anyone who has sex with someone under 18, who they are in a position of trust over, can be charged with 'sexual exploitation.' People in 'positions of trust and authority' include baby sitters, life-guards, and coaches, as well as parents, teachers, social workers, bosses and guardians. You are also in a position of trust over someone if he or she is under 18

and depends on you to support him or her. If you are found guilty of 'sexual exploitation' in adult criminal court the punishment will depend on the age of the person you had sex with. If the person is under the age of 14, you can get up to 10 years in jail; if the person is 14 to 17, you can get up to five years in jail.

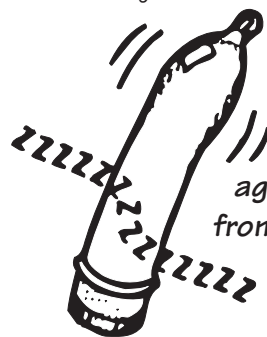




## Anal intercourse section 159

Bum-fucking is against the law if any of the people doing it are under the age of 18, unless they are married. It is illegal for more than two people to have anal sex or for anyone else to be there. It doesn't matter whether you are fucking them or they are fucking you, whether you are gay or straight, or a girl or a guy.

In law, anal intercourse is putting a dick in an asshole; it doesn't matter if anyone comes. The courts haven't said anything about licking, fingering, finger-fucking, or ass-fucking with dildos, so they're probably okay. **(Always guard against diseases you can catch from sex; NEVER fuck or get**



**fucked without a condom.)**

If you and the person you are having anal sex with are over 14 but under 18,

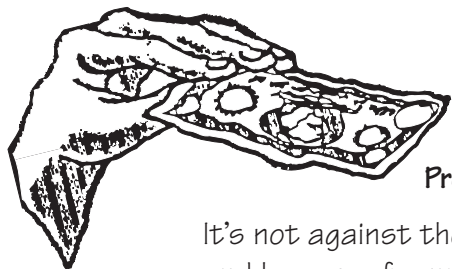
**you can BOTH be charged.** Breaking this law can get you up to ten years in jail.

The anal sex law was declared 'unconstitutional' by The Ontario Court of Appeal in May,

1995 because it discriminates against unmarried people under 18 (who can legally have other kinds of sex) and gay men. **Cops (outside Ontario) can still lay charges.**

**NO ONE SHOULD PLEAD GUILTY TO THIS CHARGE!**





## Selling sex

Procuring, section 212

It's not against the law to be a prostitute and have sex for money in Canada, although most of the ways that prostitutes work are against the law. For instance, if you are on the street or in a car and offer someone sex for money, you can be charged with

**'communicating for the purposes of prostitution in a public place.'** (See *Trick or*

*Trap?* for more about laws used against sex workers on the street.) If

you turn tricks in your place, you could be charged with **'keeping a common bawdy house'**; if you see

them at a brothel or bathhouse and it gets busted, you

could be charged with

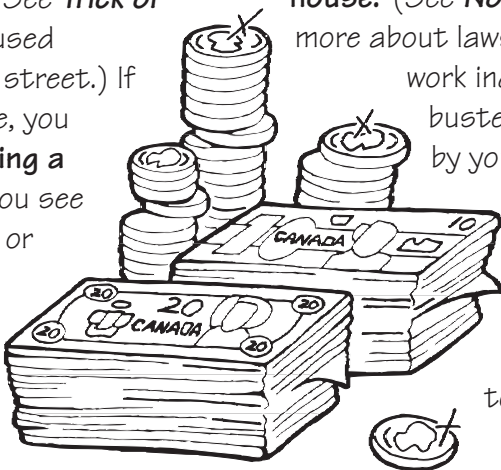


being an **'inmate of a common bawdy house.'** (See *No Bawdy's Business* for

more about laws used against pros who work indoors.) Basically, to not get

busted you must work by yourself, over the phone, and only see people at their place.

**'Procuring'** laws make it illegal to even **try** to pay



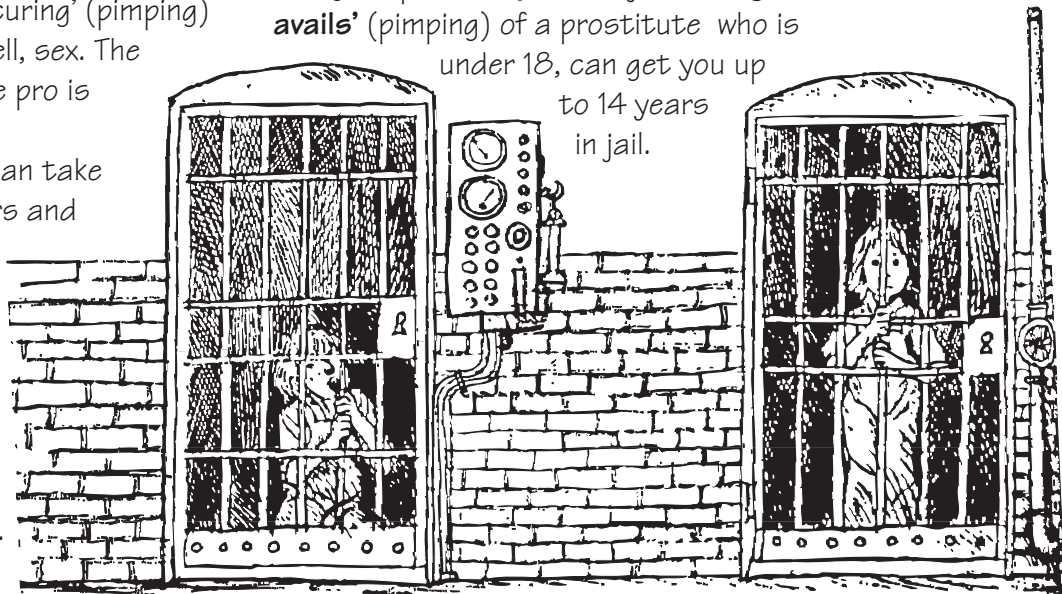


some-  
one  
under  
18 for sex

**even if you are also under 18!** ('Paying' includes gifts such as clothes, cigarettes or even food!) It is also 'procuring' (pimping) to **help** anyone pay for, or sell, sex. The charge is more serious if the pro is under 18.

If you're under 18, you can take money for sex but customers and escort agencies can't hire you without breaking the 'procuring' law. Magazines like **NOW** and phone sex lines could also be charged with 'procuring' and will not accept ads for sex with someone under 18 years old.

If you're under 16, police can turn you over to the Children's Aid Society or keep you locked up in a juvenile detention centre like Cassata. If you are found guilty (in adult court) of paying or trying to pay someone under 18 for sex ('procuring'), you can get up to ten years in jail. **'Living on the avails'** (pimping) of a prostitute who is under 18, can get you up to 14 years in jail.





## Posing for sexy pictures

child pornography, section 163.1

Canada's 1993 'kiddie' porn law makes it illegal to make or own pictures (photos, film, videos, magazine pictures) of anyone who is, or looks like they are, under 18 having sex. It doesn't matter if they are pictures of you or of your friends. Writing that encourages people to break the laws in this booklet or

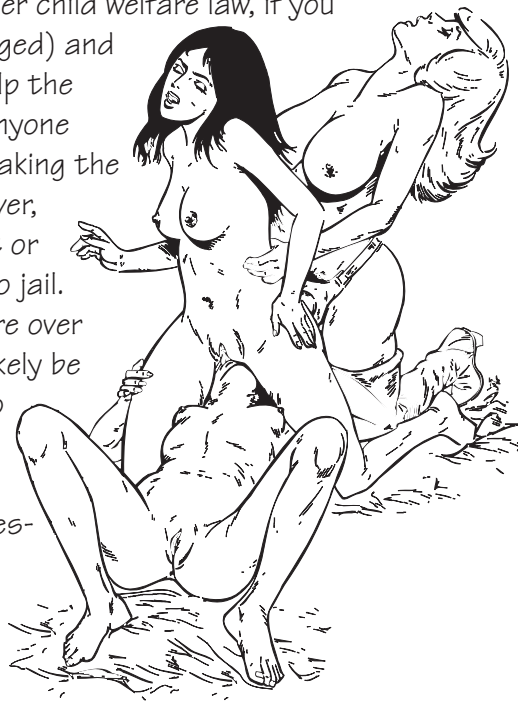
stories in which any of these laws are broken are also outlawed. If you are under 18, pictures of you doing anything sexual can spark police investigations that will make your sex life **VERY** public! You could get picked up, held for questioning and have your place searched.



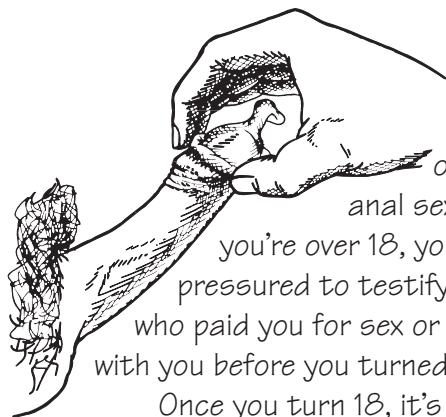
*You can be charged with making 'child pornography' for being in the pictures –  
**EVEN IF YOU ARE UNDER 18!***

If you are under 16, you could be picked up, held (under child welfare law, if you are not charged) and **forced** to help the cops send anyone involved in making the picture (a lover, friend, agent or customer) to jail.

If you are over 16, you will likely be pressured to name, sign statements about and testify against people who







paid you for sex or who you had anal sex with. Even if you're over 18, you can still be pressured to testify against people who paid you for sex or who had anal sex with you before you turned 18.

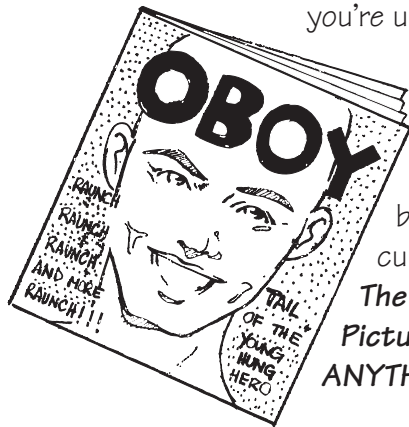
Once you turn 18, it's not against the law for you to be in sexy pictures, films or videos, as long as they do not break the

**obscenity** law and you don't look like you're under 18. Pictures of

sex that are 'degrading', or pictures of sex and violence are illegal (things like bondage, fist fucking, cum on the face). (See:

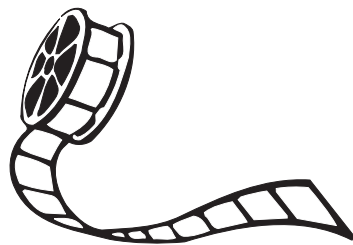
**The Bare Facts.)**

**Pictures of you doing ANYTHING illegal can and**



**likely will be used as evidence against you!**

Owning 'child pornography' can get you up to five years in jail. Owning more than one copy, or making, selling or trading it can get you up to ten years in jail.



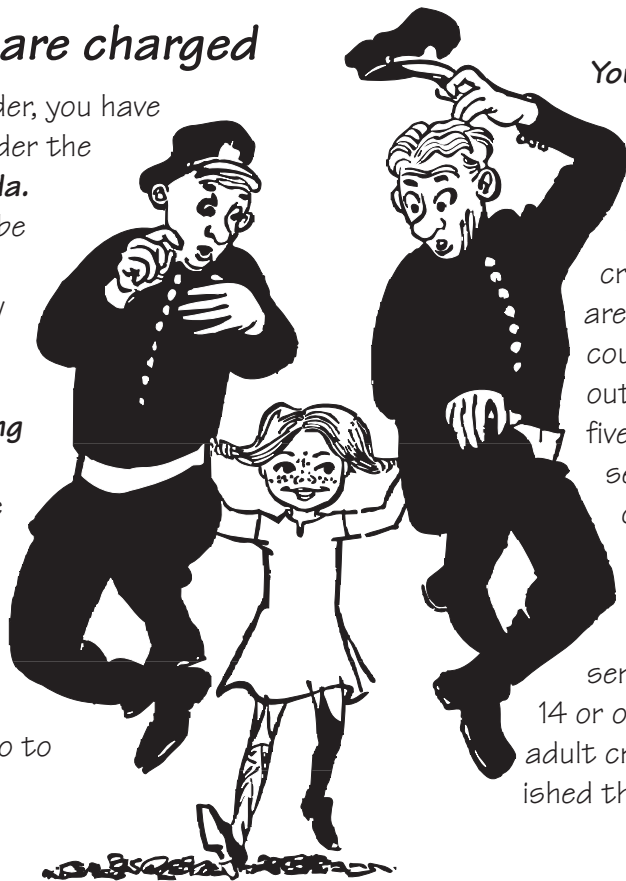
"Arrest them all - the laws of decency must be respected."

J. Opper



## If you are charged

If you are 18 or older, you have to go to adult court under the **Criminal Code of Canada**. People under 12 cannot be charged under the **Criminal Code** (but they can be controlled with the **Child and Family Services Act**). The **Young Offenders' Act** is made up of rules for using the **Criminal Code** with people 12 - 18 years old. If you are charged for something they say you did when you were under 18, you will go to youth court under the



### **Young Offenders' Act.**

Right now, the most jail time you can get from youth court is five years. You get a criminal record if you are found guilty in youth court, but if you stay out of legal trouble for five years after your sentence is up, your convictions will no longer be on your record.

When charges are serious enough, someone 14 or older can be sent to adult criminal court and punished the same as an adult.

## Know your rights

You have the right to say **NOTHING** but your name and address to the police.

You have a right to your **OWN** lawyer. Even if cops say they only want to talk to you about someone else,

you should **NOT** talk to them without a lawyer you trust.

Legal Aid will pay for your lawyer if you are under 18 and facing criminal charges. If you don't already have your own lawyer, duty

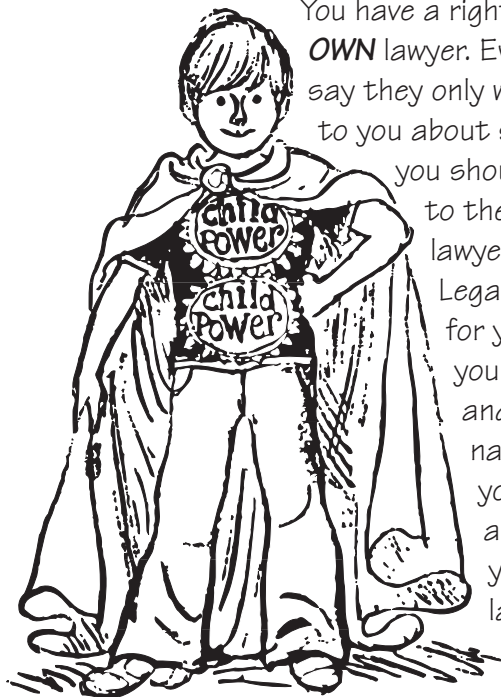


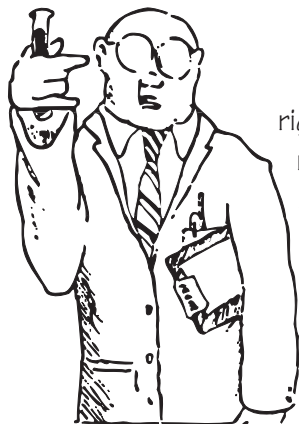
counsel (who you can phone from the police station or talk to in court) will help you get one. The police must give you a 24-hour number for duty counsel.

## If you're in residential care

Staff in group homes and detention centres are supposed to listen to you, to involve you in decisions about your treatment and to respect your right to be free of verbal, physical and emotional abuse. But the **Child and Family Services Act** and the **Mental Health Act** give staff a lot of power. Sometimes they see independence or sexuality as defiant or dangerous and don't respect your right to make decisions about your life.

Officially you're supposed to have some





rights. One of them is the right to refuse medical treatment, including drugs or HIV testing, unless a court has given the right to make those decisions to Children's Aid.

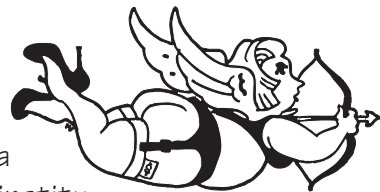
Medical staff can also label you 'mentally incapable' and deny you your right to refuse treatment under the **Consent to Treatment**

**Act.** If you're 14 or older you can get a rights advisor who can help you ask to have the decision reviewed or get a lawyer.

Police have also coerced people into testing for HIV. A

**"confidential" HIV test in a doctor's office or an institution is not private.**

For a **private** test go to an anonymous test site, like Hassle Free Clinic.



If you or your rights are abused in a group home or other institution you should find a lawyer or patient advocate. You could also call:

- **Child and Family Services Advocacy Office at 1-800-263-2841.**
- The **Ontario Ombudsman, at (416) 586-3300 or 1-800-263-1830**, who looks into government agencies, like medical centres and treatment programs.
- **Justice for Children and Youth, at (416) 920-1633**, which runs a legal clinic with a resource centre, for people under 18.

**What if you don't want someone to be charged?**

Legal cases where someone has been harmed call the victim the **'complainant.'**



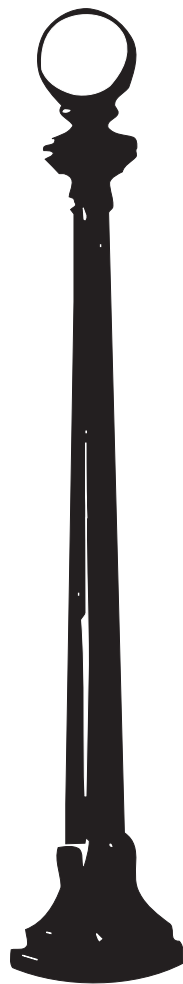
Laws that make it illegal for you to have sex with someone just because of how old you are need to name someone as the complainant. **If you're under 18 police or**

**other witnesses can make you a complainant EVEN if you DON'T want someone charged!**



**F**or more information about Canadian laws related to prostitution and sex work, look for other sections of ***Trials of the Sex Trade: A survival guide to Canada's legal jungle***. Information about court, drugs, family law and pressing charges can be found in ***Holding Court***. Legal information about stripping is in ***The Bare Facts***. Other sections include: ***No Bawdy's Business***, and ***Trick or Trap?*** Legal terms in **bold** are defined in ***Legal Ease***.

The illustrations in this booklet were taken from commercial and underground comics, from historical and modern satirical drawings, and from Australian, German, Swiss, French, Dutch, American and Canadian sex education materials. These works of art are intended to enhance the effectiveness of this material in serving its educational purpose. The drawings show imaginary people; no real models were used. No character in any illustration depicting or implying sexual activity is under the age of 18. For these reasons the possession or distribution of this educational booklet does not contravene sections 163 or 163.1 of the ***Criminal Code of Canada***. Thanks to Max Allen, Jim Monk, Kenn Quayle, Tim Potts, Irit Shimrat and many others for editorial and legal advice. This version of ***Who's Jail Bait?*** was written, assembled and published by Chris Bearchell and Andrew Sorfleet who are solely responsible for its content. Dedicated to Steven D., Joel S. and all the other under-age hustlers who get fucked around by the legal system.



## *Some legal services (416 area code)*

### **Legal Aid**

- Old City Hall .....598-0200
- College Park.....598-1260
- Duty Counsel (24 hours).....868-0720

Parkdale Community Legal Services .....531-2411

Community & Legal Aid Services (CLASP)....736-5029

Aboriginal Legal Services .....408-3967

Justice for Children and Youth (under 18) .....920-1633

Dial-a-law .....947-3333

Lawyer Referral Service  
(includes free half-hour consultation).....947-3330

### **Outside Metro Toronto**

Lawyer Referral Service.....1-800-268-8326

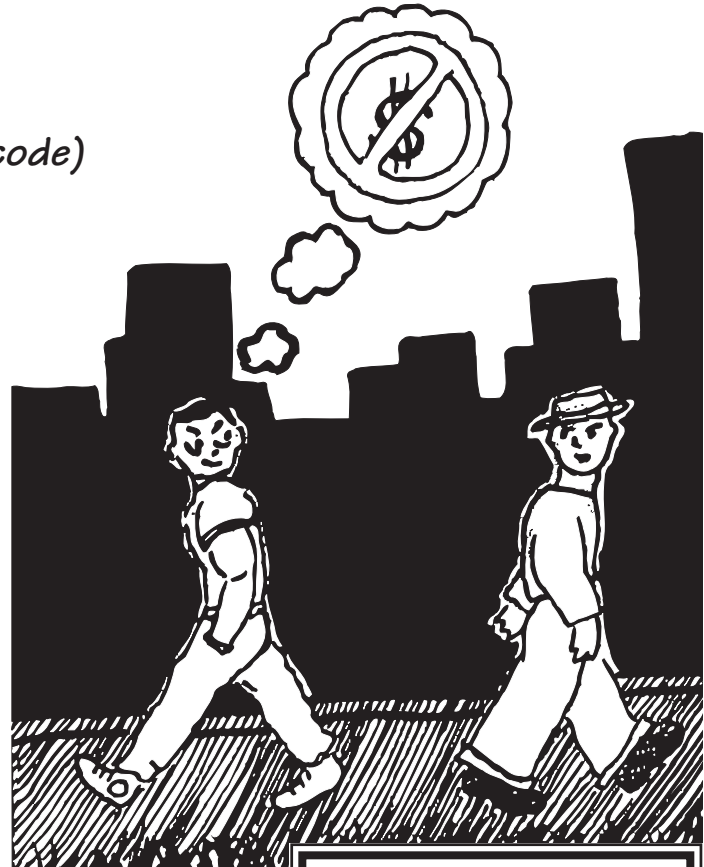
### **Student legal aid services**

Kingston.....1-613-545-2102

London.....1-519-661-3352

Ottawa.....1-613-564-5855

Windsor .....1-519-253-7150



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