

Introduction to the Youth Criminal Justice Act

The following is an introduction and overview of the Youth Criminal Justice Act (YCJA). This brief was created to provide classroom teachers with a basic understanding of the act and to be used as a reference resource. Teachers may also choose to copy sections of the brief for direct use in the classroom. To facilitate referring directly to the source material, this brief follows the organization set out in the actual *Youth Criminal Justice Act* which is available from the Department of Justice Canada Website (<http://canada.justice.gc.ca/en/ps/yj/ycja/ycja.html>).

The information presented in this brief is intended to facilitate the instruction of law-related education and is not intended to be legal advice. Changes may occur in the act that are not reflected here and various jurisdictions may apply the law and administer the act differently than it is presented here. If you need advice regarding the law please consult a legal professional.

The Youth Criminal Justice Act consists of a Declaration of Principle and nine parts:

- DECLARATION OF PRINCIPLE
- PART 1 : EXTRAJUDICIAL MEASURES
- PART 2 : ORGANIZATION OF YOUTH CRIMINAL JUSTICE SYSTEM
- PART 3 : JUDICIAL MEASURES
- PART 4 : SENTENCING
- PART 5 : CUSTODY AND SUPERVISION
- PART 6 : PUBLICATION, RECORDS AND INFORMATION
- PART 7 : GENERAL PROVISIONS
- PART 8 : TRANSITIONAL PROVISIONS
- PART 9 : CONSEQUENTIAL AMENDMENTS, REPEAL AND COMING INTO FORCE

Brief explanations are given for each part of the act with the exception of parts 7,8, and 9, which have been excluded from this brief as they offer technical detail beyond the focus of this brief.

DECLARATION OF PRINCIPLE

Youth and the Law: The Youth Criminal Justice Act (YCJA)

The Scope of the Act

Laws and regulations can be created by the federal government, the provincial government and the municipal government (by-laws). The YCJA applies to youth who break federal laws and regulations. Each province has separate laws for dealing with youth who break provincial laws or municipal by-laws. The Youth Criminal Justice Act is administered by primarily by local police and through the provincial courts and judicial system.

The YCJA applies to youth ages 12 to 17.

Children younger than 12 who commit a crime are dealt with outside of the youth justice system. This may include the involvement of police, social workers, the school, the community, and parents or guardians. Children under 12 may be removed from their home and placed in care for their own safety or for the safety of their community.

The Principles of the Act

The act focuses on the basic principles of crime prevention, rehabilitation, reintegration, meaningful consequences, protection of the public, and accountability.

It considers the unique nature of youth, in particular their level of maturity, and gives special consideration to fair treatment, protection of rights and privacy, and timely intervention.

It is meant to reflect social values while taking into account each individual's unique social, cultural and developmental situation, and meaningfully involve the community, social agencies, family, and the victim in the rehabilitation and reintegration process.

The act encourages compassion, empowerment, respect, dignity, participation, and facilitating understanding by sharing information and offering support among the immediate parties involved.

These items are specifically laid out in the act as follows:

The purpose of the youth justice system is to

3.1a

- (i) prevent crime by addressing the circumstances underlying a young person's offending behaviour,
- (ii) rehabilitate young persons who commit offences and reintegrate them into society, and
- (iii) ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public;

There is an emphasis on

3.1b

- (i) rehabilitation and reintegration,
- (ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
- (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,
- (iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and
- (v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;

The measures taken against young persons who commit offences should

3.1c

- (i) reinforce respect for societal values,
- (ii) encourage the repair of harm done to victims and the community,
- (iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and
- (iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and

Special considerations apply in respect of proceedings against young persons:

3.1d

- (i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,
- (ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,
- (iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and
- (iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

For more detailed information visit the following sites (students may also access these sites for a variety of activities)

Department of Justice Canada

Additional and more in depth information on the YCJA is available from the Department of Justice Canada Website (<http://canada.justice.gc.ca/en/ps/yj/ycja/ycja.html>)

- This includes links to the full Youth Criminal Justice Act *Youth Criminal Justice Act (YCJA)*,
- [YCJA Explained](#) which offers descriptions of each component of the act as well as linked flowcharts of the judicial process,
- [The Youth Criminal Justice Act: Summary and Background \(PDF\)](#) provides a briefer overview of the act.

Canadian Legal FAQs: University of Alberta Legal studies Program

The Canadian Legal FAQs website produced by the University of Alberta Legal studies Program contains basic information regarding youth and the law in an informative question and answer format (<http://www.law-faqs.org/nat/youth.htm>)

Alberta Solicitor General and Public Security

More information on Young Offenders and the YCJA are available from the Alberta Solicitor General and Public Security website

http://www.solgen.gov.ab.ca/corrections/offenders_youth.aspx

There is also available a downloadable version of the *Youth Criminal Justice Act* Canada Pocket Guide (<http://www.solgen.gov.ab.ca/downloads/documentloader.aspx?id=45626>)

This website also contains extended information on

[Alternative Measures](#), [Bail](#), [Criminal records](#), [Extrajudicial Sanctions](#), [Facilities \(adults & youth\)](#), [Glossary of terms](#), [Offenders \(adults\)](#), [Offenders \(youth\)](#), [Pardons](#), [Probation & Parole](#), and [Youth Justice Committees](#),

As well as a comprehensive glossary of terms (<http://www.solgen.gov.ab.ca/corrections/glossary.aspx>)

PART 1 : EXTRAJUDICIAL MEASURES

Extrajudicial Measures

Extrajudicial = Justice that is administered without the intervention of a judge.

The purpose of these measures is to actively deal with offenders in a timely and meaningful manner. The court process can be lengthy and lose meaning to the individual over time. Immediate response involving the youth, their family, the victim, the community and the police are intended to have a greater impact by holding the youth immediately accountable for their behaviour. The police must consider these measures before taking any other actions. These measures are administered on an offence by offence basis and are not graduated or based on the youths prior experiences with the law.

Actions may include:

- taking no further action,
- warning the young person,
- administering a police caution,
- administering a crown caution, (a caution given by the crown counsel)
- referring the young person to a program or agency in the community that may assist the young person not to commit offences (the youth must voluntarily agree to this).

These consequences do not become part of the court record. While record of these measures may be kept within individual police jurisdictions, these records can not be used as evidence in court, the exception being extrajudicial sanctions. Records will be dealt with in more detail in PART 6 : PUBLICATION, RECORDS AND INFORMATION

Extrajudicial Sanctions

If sufficient evidence exists against the young person they may receive an extrajudicial sanction. The youth must accept responsibility for their actions and must consent to the sanction. While there will be no official court record for a sanction, the youth will have a police record that will exist for two years. This record may be referred to in future sentencing for other offences.

An extrajudicial sanction may consist of:

- Personal or written apology to victim(s)
- Personal service to victim(s)
- Essay/Poster
- Community service to a non-profit community or government agency (maximum of 60 hours).
- Return of property/restitution to the victim;
- Attendance and participation in an available community counseling or intervention program such as AADAC, Alberta Mental Health, etc. (Counseling will not occur on a fee-for-service basis unless alternative funding can be obtained).
- Participation in Aboriginal cultural/spiritual activities.
- To be under the supervision of a youth justice committee member.
- Participation in a victim/young person reconciliation program.
- Donation to a registered charity.

(from http://www.solgen.gov.ab.ca/corrections/extrajudicial_sanctions.aspx?id=2732)

If the youth denies involvement or responsibility, their case may enter the formal prosecution and trial process. If the youth accepts responsibility for their actions through an admission or statement as part of an extrajudicial sanction, this evidence can not be used for further prosecution.

In cases where the youth proceeds to trial despite receiving an extrajudicial sanction, consideration will be given to completion or carrying out of the sanction and the charges may, as a result, be dropped.

If a youth receives an extrajudicial sanction, the parents must be informed of that sanction. A victim also has the right to request the identity of the offender and be informed of the consequences the youth faces. The victim may be consulted in the process of deciding on sanctions, and are given primary consideration in terms of restitution. Up to a combination of three sanctions may be imposed.

PART 2 : ORGANIZATION OF YOUTH CRIMINAL JUSTICE SYSTEM

Youth Justice Court

Youth Justice Court is a special court for youth. It is administered within the provincial courts system. Higher levels of court may be declared a Youth Justice Court for the purpose of dealing with youth cases, particularly in the case of appeals. Court is presided over by a Youth Court Judge who deals specifically with Youth Court cases. The Crown is represented by the Crown Counsel – a lawyer who works on behalf of the Crown. Special protections and measures are in place to inform and protect the rights of youth, particularly in relation to being informed of their rights to be represented by a lawyer.

The Youth Court has specific requirements for who it deals with. It deals with youth from 12 to 17 years old

If a youth under 18 commits an offence, they may be dealt with under the act in Youth Court for that offence even after they become 18. Even extrajudicial measures put in place when a youth under 18 may continue after the person turns 18.

If a person's first appearance before a court occurs after they are 20 years of age, for an offence that occurred while they were under 18, many of the special considerations, reminders, and notifications in the process to support and protect the youth are set aside considering the person is now an independent adult capable of making their own decisions and managing their own affairs independent of their parents. When a youth turns 18, they may be detained in an adult facility even though they may still be dealt with in a Youth Court.

Youth Justice Committees

Individual Provinces are empowered under the act to set up Youth Justice Committees. These committees advise in the determination of extrajudicial measures, work with both the victim and the offender to enable satisfactory outcomes, and engage the community in the support process. They also advise the government on how the act is being implemented, and provide information to the public. A judge may also involve them in the sentencing process as part of a conference.

For more detailed information on youth Justice Committees in Alberta visit

http://www.solgen.gov.ab.ca/yjc/common_questions.aspx

For a list of committees by region : <http://www.solgen.gov.ab.ca/designatedComm/default.aspx>

Conferences

Conferences are meetings that are set “to give advice on appropriate extrajudicial measures, conditions for judicial interim release, sentences, including the review of sentences, and reintegration plans.” 19(2). Conference participants may include a judge, the provincial director, a police officer, a justice of the peace, a prosecutor or a youth worker. The Youth Justice Committees may also act as a conference.

In Addition to Police Officers, Youth Court Justices, and Crown Prosecutors, Justices of the Peace, Clerks of the Court, Provincial Directors each have specific roles in the youth justice process. More details on their specific roles can be found in sections 20, 21, and 22 of the act.

PART 3 : JUDICIAL MEASURES

Consent to Prosecute

Some offences are serious enough that formal charges are laid and the youth is required to attend court. The Attorney General, through their representatives, must consent to charges being laid. This is different from adult court where charges may be presented without police or crown involvement. Pre-charge screening programs ensure all other options (i.e. extrajudicial measures) are considered before charges are laid and the case brought before the courts.

In Alberta, Youth court is part of the Alberta Provincial Courts. Some of the courts are held permanently and some are only on specific days of the week or days during the month. To find the location of the youth court nearest you visit the Alberta Courts website <http://www.albertacourts.ab.ca/calendar/>

You may take a virtual tour of an Alberta court room here:

<http://www.albertacourts.ab.ca/Home/Contact/VirtualCourtTours/tabid/111/Default.aspx>

There are also many publications available from the Alberta courts

<http://www.albertacourts.ab.ca/ProvincialCourt/YouthCourt/tabid/100/Default.aspx> which include General Information & Frequently Asked Questions about Youth Court, Judicial Interim Release (Bail Hearing), Youth Appeals and Reviews, Youth Criminal Justice Act Publications, Youth Justice Court and You, Youth Penalties, and Youth Records.

Right to Counsel

COUNSEL = LAWYER

At every stage in proceedings from the time of arrest, the youth is informed of the right to obtain counsel and must be given the opportunity to do so. If the youth is not represented by counsel they are informed on arrest and at the beginning of any proceeding that they have this right. This includes at trials, hearings, determinations of custody, or review. This notice is also contained in any summons, warrants, appearance or other notices. These repeated reminders are one of the special considerations offered specifically for youth to ensure they are fairly represented.

A youth may be permitted to be represented by a suitable adult of their choice if they have not obtained counsel. The youth may also be referred to a legal aid program if they are not able to obtain counsel on their own. If they do not qualify for a legal aid program they may be directed to be represented by counsel. If the interests of a parent and child are at conflict the judge will ensure that the child receives independent counsel. Consultations between a lawyer and their youth client are kept confidential and not shared with the parent unless the youth agrees to involve the parent or have this information shared with them.

The costs incurred as part of any legal aid program may be recovered after all proceedings and appeals are completed. This legal aid may not be free.

Notices to Parents

Parents of a youth must be notified on arrest and upon detention of the youth. This notice includes the reasons for the arrest and the location of detention. This notice may be oral or in writing. Parents are also notified of the details of any summons, appearance notices, undertakings, recognizances (a recognizance is like a formal promise or bond the youth may make to appear in court at a later date), or tickets (other than a parking ticket). Where a parent or relative are unavailable, this notice may be given to a responsible relative or other adult the youth knows who may be able to assist the youth. The court finds it in the best interest of the youth, they may require that the parent attend any proceeding involving the youth.

Detention before Sentencing

The courts have very specific conditions under which they may hold youth in detention. It is reserved for charges where custody is a sentencing option. Detention of youth can be considered detrimental or counter productive and is only taken in cases where the court deems the youth to be a threat to the community or in cases where they can show that the youth may not show up for trial. Youth are not detained for their own protection (child protection, mental health or as a social measure) and are not held with adults unless no other facility is available, they are being transferred or temporarily held under the direct supervision of a peace officer, or if it is unsafe for the youth or other youths to hold them in a youth facility.

Youth may be released into the care of their family or another responsible person if they are willing and able to receive the youth and the youth is willing to be placed in their care. Wherever possible the youth is returned to the care of their family except in cases where the youth may not be safe. Both the youth and the adult who takes the youth into care must agree to conditions of release set by the court. The responsible person, or the youth may later apply for this arrangement to be changed if they consider it inappropriate. A justice court may also determine the situation is inappropriate, revoke the conditions and issue a warrant for the youth's arrest.

Conditions may apply to the release of a youth prior to appearance in court which may contain specific requirements (curfew, attending school) and prohibitions (not associating with certain people).

Appearance

When the youth appears in court, they are read the charges that are held against them and they are informed of their rights (i.e. to obtain counsel). The youth may plead guilty or not guilty. If the youth is not represented by counsel, and does not understand the charges, the court will enter a not guilty plea on their behalf and may appoint a lawyer.

In the case of a "presumptive offence", a youth 14 or older is informed prior to their plea that they may receive an adult sentence if found guilty. Presumptive offences are first degree murder, second degree murder, attempt to commit murder, manslaughter, aggravated sexual assault or a repeated serious violent offence that an adult would receive two or more years of imprisonment for. These offences are called "presumptive" because it is presumed the youth will be tried as an adult. In these cases, the youth must make an application to be tried as a youth and receive a youth sentence. For other offences that may attract an adult sentence of two or more years, the court may make an application for the adult sentence to apply. Regardless of the type of sentence, all of these cases are held in a Youth Justice Court.

For a presumptive offence, youth are notified of the possibility of receiving an adult sentence in the following manner:

"An adult sentence will be imposed if you are found guilty unless the court orders that you are not liable to an adult sentence and that a youth sentence must be imposed." 32(1)(d)

If the possibility of an adult sentence applies, the youth has three choices for trial:

- Trial in youth justice court by a judge
- Preliminary inquiry and trial by judge without jury
- Preliminary inquiry and trial by judge and jury

The youth needs to “elect” or choose which type of trial they prefer at the time they enter their plea. A preliminary hearing is an exploration of facts surrounding the case to determine if there is enough evidence to continue with a formal trial. The preliminary hearing only occurs if it is requested by the youth and their counsel.

Release from or Detention in Custody

Youth held in custody may apply to be released from custody at a special hearing. The Crown may also apply to hold a youth in custody at a similar hearing. In either case, two days notice must be given for the hearing to be held. Arguments for detention relate to the safety of the public and the possibility the youth will not return to court for their trial (risk of flight).

Medical and Psychological Reports

Medical and Psychological reports may be requested to assist with determining and reviewing sentence and supervision, detention, fitness for trial, conditions of release, and for gathering necessary information about the youth. This information may be released to counsel, the youth and parents, or it may be withheld by the court if the information may cause harm to the youth. If it is deemed necessary, the youth may be detained for up to 30 days for the assessment to be completed.

Referral to Child Welfare Agency

The court may refer the youth to child welfare for assessment to determine if the youth requires child welfare services.

Adjudication

The youth may plead guilty or not guilty. If a not guilty plea is made or there is lack of support for a guilty plea the case will proceed to trial to determine guilt, innocence, or if there is sufficient evidence for the trial to proceed or be dismissed.

Appeals

The appeal process is similar to the appeal process under the criminal justice act.

PART 4 : SENTENCING

Purpose and Principles

“38. (1) The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.”

Important key words in this section are accountable, meaningful, rehabilitation, reintegration.

What is absent from this section? Consciously omitted are the words “deterrent”. Sentencing is not intended to set an example or be a deterrent to others. It is intended to be fair and reasonable, so care is made to ensure that sentencing is applied equitably in a given jurisdiction – that youth who commit similar offences under similar circumstances receive similar sentences, and that youth are not given a sentence which is greater than an adult who may have committed a similar offence.

In sentencing, the court is bound to ensure that the sentence is suitable given the offence, that the least restrictive sentence is administered that may promote rehabilitation, reintegration, the youth taking on responsibility, and acknowledgment and reparations of harm (victim recognition). All other options and alternatives should be considered before custody is considered. The concern was that prior to the YCJA, youth were receiving harsher penalties, longer sentences, and greater levels of incarceration than adults in Canada and in comparison to youth in other countries. Custody is reserved for violent offences, situations where the youth has failed to comply with other sentencing, situations where adults would receive a sentence of two years or more for the same offence, or where the non-custodial sentence would be inappropriate considering the purpose of the act. In the case of a custodial sentence the court must clearly state why a non-custodial sentence was not administered.

The courts are bound to consider 38(3):

- “(a) the degree of participation by the young person in the commission of the offence;
- (b) the harm done to victims and whether it was intentional or reasonably foreseeable;
- (c) any reparation made by the young person to the victim or the community;
- (d) the time spent in detention by the young person as a result of the offence;
- (e) the previous findings of guilt of the young person; and
- (f) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section.”

The court must give consideration to a pre-sentence report before sentencing.

Pre-sentence Report

The pre-sentence report contains the results of conferences, interviews with the youth, their parents and family, as well as the victim. Information on the behavior, maturity, character, plans, conduct, community service and involvement, previous involvement with the law and responses to this involvement (including extrajudicial measures and sanctions), is included. The report may also indicate community services and facilities available and acceptable to the youth as well as any school and employment records and an evaluation of the influence the youth’s family may have on the youth. Other information that may be relevant to determining a suitable sentence may also be included.

Youth Sentences

Many of the sentences present opportunities for the youth to engage in and practice responsible behaviour. Some restrict behaviour, but are not intended to be overly burdensome. Many enable the youth to continue to make many choices for themselves in their daily lives, however not following through with the conditions of a sentence may mean the youth must return to court and face more restrictive consequences.

The following are sentences which may be employed in the sentencing process (42(2)a-r):

- a) Reprimand.** The judge speaks to the youth and may issue a strong warning.
- (b) Absolute discharge.** As with the reprimand the youth has no further consequence, although their record lasts for a longer period of time.
- (c) Conditional discharge.** The youth has conditions such as reporting to or being supervised by the provincial director.
- (d) Fine not exceeding \$1,000.** The court assigns the terms of payment. A Surcharge up to 15% may be added to this to support the victim assistance program. The fine may also be paid through a fine option program, where the offender works for fine credits.
- (e) Compensation.** A payment for loss or damaged property, loss of income or support, or special damages for personal injury is ordered. This compensation is made in consultation and consent of the victim to be compensated.
- (f) Restitution.** The youth must return any property obtained as a result of the offence to the owner within a specified period of time.
- (g) Reimbursement of innocent purchaser.** If in returning property as a part of a restitution order, the youth must compensate the person that property was sold to for the amount it was sold.
- (h) Personal Service.** Compensation in kind or by way of personal services to fix for any loss, damage or injury suffered by a victim or person affected by the offence.
- (i) Community Service.** The youth performs community service work designated by the court and reports back to the provincial director or someone designated by the director. (maximum 240 hours 12 months)
- (j) Prohibition Order.** The youth may be prohibited from possessing specific items, such as firearms, weapons, and related items in the case of a violent offence as well as in cases of drug trafficking, production and import/export.. The youth may need to give up (forfeiture) or have specific items removed from their possessions (seizure). Some prohibition orders are mandatory and last at least two years after release from custody, such as weapons restrictions for violent offences. Other prohibitions are up to the discretion of the judge and may not last more than two years.
- (k) Probation.** The youth may be placed on probation for a period of up to two years. The youth must be of good behaviour and keep the peace. This order may contain various restrictions, which require the youth to follow a curfew, attend school, continue employment, report to a parole officer regularly, remain within a jurisdiction, control where they may live and with whom, as well as other conditions which may prevent the youth from re-offending. Caution is taken to make the restrictions reasonable, however the purpose of sentencing is also kept in mind.
- (l) Intensive Support and Supervision Program Order.** This is an option which is used in cases where custody may be called for but is inappropriate due to the mental health issues of the youth. Close supervision is combined with an intensive behaviour modification focus.
- (m) Attendance Order.** This is an order for the youth to attend a non-residential program for up to a maximum of two hundred and forty hours in a six month period. These programs may vary from community to community and the order may indicate times where the youth must attend.
- (n) (o) (q) Custody and Supervision Order.** This involves a sentence which combines a period of custody followed by a period of supervision. The period of custody is usually twice that of the period of supervision.
- (p) Deferred Custody and Supervision.** Instead of serving the sentence in custody, the youth has set conditions to serve the sentence in the community. If these conditions are not met the youth may be placed in custody. This sentence can be up to six months in duration.
- (r) Intensive Rehabilitative Custody and Supervision Order.** Under this sentence the youth is required to participate in an intensive rehabilitation program while in custody followed by conditional supervision in the community. This sentence is given in cases of murder, attempted murder, manslaughter, aggravated sexual assault and in cases of repeated violent offences, where the youth may have mental health issues and where the program is expected to prevent a repeat of the offence.

Sentences begin on the day they are imposed or on a later date determined by the court. Reasons for sentencing are submitted to the youth, their parents, their counsel, the prosecution and the director.

For single offences, Prohibition and Custody sentences may be for terms greater than two years. Other sentences, when combined may not exceed two years. In the case where a youth receives sentencing for several offences at the same time, when combined they may not exceed three years (exception 1st and 2nd degree murder where they may not exceed 10 and 7 years). If they are convicted of subsequent offences before completion of an earlier offence, they may serve the new sentence subsequent to the previous sentences, except in the case of custodial sentences where they expire at the end of longer of the sentences. Custody sentences for separate offences may be served consecutively.

Sentences do not terminate at age 18, they continue until completion. (If a youth receives a two-year probation order when they are 17, the probation order would continue until they are 19). If a custody sentence is less than 90 days it may be served intermittently, if a suitable facility exists. All other custody is continuous.

Regarding detention, the youth:

Shall be held separate and apart from any adult who is detained or held in custody unless a youth justice court judge or a justice is satisfied that, having regard to the best interests of the young person,

***(a) the young person cannot, having regard to his or her own safety or the safety of others, be detained in a place of detention for young persons; or
(b) no place of detention for young persons is available within a reasonable distance. 30(3)***

When a youth turns 18 they may be transferred to an adult facility. When they are 20 they are transferred to an adult facility to complete their sentence.

A sentence may be reviewed by the court if the conditions are not met, if the youths circumstances significantly change, if the youth sentence is affecting the youth's education or work, if the youth has become unable to comply with the sentence or if the court finds reason for a review. The sentence may be reduced, eliminated, or altered but may not be increased, unless the youth requires more time to complete the sentence.

If a youth moves to another province, the sentence may be transferred to that jurisdiction after the time for appeal has expired. The youth attends the court in the initial jurisdiction until this time has expired. The new court then deals with the case as though the sentence was given from that same court.

VICTIM IMPACT STATEMENT

Prior to sentencing, the judge will also consider a victim impact statement, which describes the harm to the victim, as well as any loss suffered. (CCC 722,722.1, 722.1). The Victim statement is a written form filed to the court, however the victim may request to read the statement in court or submit the request in another format suitable to the court. The court may also consider information regarding the victim impact other than the information on the statement in determining an appropriate sentence.

Adult Sentence and Election

Youth 14 or older may receive an adult sentence for committing a presumptive offence. At the outset of a trial, before the youth enters a plea, the court may also request an adult sentence for a presumptive offence or for an indictable offence to which an adult may receive a sentence greater than 2 years. The court waits until sentencing, after all the evidence is heard in the case, before determining whether an adult sentence is appropriate or not. Prior to sentencing the youth can apply not to receive an adult



sentence. The court may also indicate that it does not wish seek an adult sentence. A 12 or 13 year old can not receive an adult sentence.

In cases where an adult sentence is sought, the youth may elect to be tried in the youth court by a judge without a preliminary inquiry, by a judge with a preliminary inquiry, or by a judge and jury (with a preliminary inquiry). The attorney General may order a trial by judge and jury, particularly in the case of a murder, where this is usually automatic in an adult court.

If a person is sentenced to custody for an offence which occurred while they were an adult (18 or over), and they are currently serving a youth custody sentence, they will serve both sentences in an adult facility.

Effect of Termination of Youth Sentence

Upon completion of a sentence or absolute discharge, the youth is “deemed not to have been found guilty of the offence” 82(1) with several exceptions. The previous conviction may be considered in future applications for release and during sentencing. While a previous conviction does not automatically infer or necessitate a harsher sentence, this prior history may be considered.

The youth criminal record may persist for a period of time after the termination of the sentence. Although this record is automatically removed without the youth having to seek a pardon, the youth may wish to ensure that this removal occurs in a timely manner.

PART 5 : CUSTODY AND SUPERVISION

CUSTODY AND SUPERVISION

Youth are held in a youth custody facility called a YOC (Young Offenders Center). In Alberta there are currently facilities in Edmonton, Calgary, Grand Prairie and the Shunda Creek Youth Corrections Camp. Detention facilities have educational, work, spiritual, and various psychological and treatment services and programs to facilitate the youths’ development and transition back into the community. The Youth Attendance Centres (Edmonton and Calgary) are nonresidential centres which offer services including supervising fine option programs, educational services, and other programming which may be part of attendance orders or sentencing conditions.

When a youth is placed in custody, they are assigned a youth worker. The youth worker works with the youth to plan and prepare them for reintegration into the community. The youth worker continues to work with the youth when they reenter the community to support reintegration into the community. Custody orders are reviewed annually or more frequently. Custody may continue if there are psychological/psychiatric factors, behavioural factors, or other evidence that would indicate that it is in the best interest of the individual or the community for custody to continue for the duration of the sentence.

Open custody facilities allow for offenders to be supervised and reintegrate back into the community or offer support for conditional supervision sentences. One example of such a facility is Howard House (http://www.johnhoward.org/programs_and_services/residential_services/howard_house.html). If the youth breaches their conditions of release they may have their conditions altered or may be returned to custody to complete their sentence.

Again, at the age of 20 youth are transferred from youth facilities to adult facilities. This may occur at an earlier time (i.e. 18) if it is deemed that it is not appropriate for them to be in a youth facility.

PART 6 : PUBLICATION, RECORDS AND INFORMATION

Protection of Privacy of Young Persons

Youth are protected from having their names and other identifying information published. There are two cases where the young persons name may be published:

- 1) In cases where the young person receives an adult sentence
- 2) In cases where the young person is at large in the community and may be a danger to others, the youth's name may be published for five days in order to assist the police in finding and apprehending the person.

Youth are also protected from having their names and other identifying information published as the victim or witness of an offence committed by a youth.

Fingerprints and Photographs

Youth may be fingerprinted and photographed following the same criteria that is applied to the fingerprinting and photographing of adults (this information is in the *Identification of Criminals Act*) Anyone who is being charged with an potentially indictable offence, will be fingerprinted and photographed.

Records That May Be Kept

In the media one often hears the term "Criminal Record". In Canada a number of types of record are kept such as:

- court records, which record the proceedings in court.
- police records, which may be records kept within a local police jurisdiction, or within a national police database. Individual jurisdictions may keep a record of contacts with youth and may keep information about extrajudicial sanctions. CPIC (the Canadian Police Information Centre Database) contains information, including fingerprints and photographs, on people charged with hybrid and indictable offences.
- Other information may be kept by various organizations for the carrying out of sentencing and by government organizations for statistical and program evaluation purposes.

Access to Records

Youth records are accessible by the young offender, their lawyer, the court and those directly involved in the sentencing and supervision process, the victim involved, the youth's parents, police, a person acting under the firearms act, statistics Canada for statistical purposes, and government offices for the purposes of a criminal records check. A court may also offer access to others upon application if the court feels that this access is beneficial.

An employer or volunteer organization may request a potential employee or volunteer to submit a police security clearance check or a vulnerable sector search prior to employment or volunteering. The applicant needs to apply for this and sign a waiver to allow for this information to be released to another person. Information from the courts database, local police database, and CPIC database may be used in these searches. The searches may show past and current convictions, extrajudicial sanctions, as well as upcoming court appearances. Sentences each have different access periods, outline in the following table:

Sentence Access Periods

| Type of Sentence | Length of Access to Record |
|---|--|
| Extrajudicial Sanction | Two years after the sanction is agreed to |
| Acquittal | Two months after the expiry of time for appeal or three months after an appeal is completed |
| Dismissal, Withdrawal of Charges, Reprimand | Two months after dismissal, withdrawal or reprimand. |
| A Stay in Charges (a stay is where a charge is left open, but proceedings against the person do not continue. The process may continue at any time during the stay, which can last for a period of one year.) | At the end of the stay (a stay may last for a period of one year) |
| Absolute Discharge | One year after the youth is found guilty |
| Conditional Discharge | Three years after the youth is found guilty |
| Summary Conviction | Three years after the sentence is completed |
| Indictable Offence | Five years after the sentence is completed (Access to RCMP records continue for another five years in the case of indictable offences and can remain for life in the case of presumptive offences however this access is limited to the individual involved, their lawyer, law enforcement officers the courts and a person acting under the firearms act, and statistics Canada for statistical purposes) |

Prohibition orders may exceed the lengths of time listed above. Even if the record above may be purged, the prohibition may continue until the designated expiry date.

Additional offences may continue the access period of charges which are not inactive until the expiry of the new charges. If the youth commits an offence as an adult before they expiry of access period for the youth charges, the youth charges become part of their adult record, is treated as though the offence were committed as an adult for the determination of future sentencing, and are subject to the conditions which apply to receiving a pardon.

Disclosure of Information in a Record

Information in a record may be disclosed to police officers, co-accused and their counsel, foreign states (under Mutual Assistance and Extradition programs), insurance companies investigating a related claim, for preparation of reports under the act, to schools to ensure compliance, school safety and rehabilitation. The court may also disclose this information to an applicant in the case of offences involving personal injury, where the young person may cause harm, and where this disclosure can reduce this risk of harm. If you apply for a police security check, the information is released to you. When you apply for a police security check you may also sign a waiver authorizing the information to be released to the employer, volunteer agency, or program you are applying for.

Disposition or Destruction of Records and Prohibition on Use and Disclosure

Upon expiry of a record, the record is physically destroyed or deleted unless it is transferred to the provincial or national archives, where it may only be accessed by the archivists. Information which may be used to match crime scene information is kept in the same manner as for pardoned adults.

Impact of a youth record

Having a youth criminal record can impact an individual in a number of ways. Records can persist into adulthood for a number of years. An extrajudicial sanction received at age 17 would be on record until

age 19. A record obtained at age 17 could last until that person is 22 or 23 (2 years probation plus, 3 year record for a summary offence, plus the time it takes for the offence to come to trial). A record several indictable offences may last from age 17 until age 25+ (3 year sentence, +5year record, +time for the court process). Adult sentences would exceed these times.

Various jobs, professions, educational programs and volunteer organizations require a police security clearance before employment or entry into a program. You may be refused a visa to enter many countries or may need to apply for special permission to enter, even after your record has expired. As different countries have different regulations and may treat a youth record differently than an adult record, it is best to inquire at your nearest consulate or embassy before traveling with a record.

PART 7 : GENERAL PROVISIONS

PART 8 : TRANSITIONAL PROVISIONS

PART 9 : CONSEQUENTIAL AMENDMENTS, REPEAL AND COMING INTO FORCE

Parts 7,8, and 9 offer detail and support for the earlier sections or are transitional. These parts have been excluded from this brief as they offer technical detail beyond the focus of this brief.