

YCJA

British Columbia




BRITISH
COLUMBIA



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YOUTH CRIMINAL JUSTICE ACT CANADA

POCKET GUIDE

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LEGEND

CC	Criminal Code
JDA	Juvenile Delinquents Act
SVO	Serious violent offence
YCJA	Youth Criminal Justice Act (Canada)
YJA	Youth Justice Act (British Columbia)
YOA	Young Offenders Act
YP	Young person
	Exception
	Time limit

Green background in the Youth Sentences section indicates new provisions.

Green type indicates references to sections in the YCJA, YJA or CC.

Italics means that the word is defined in the definitions section.

TABLE OF CONTENTS

Introduction	1
Background	1
Declaration of principle	2
Jurisdiction of the youth justice court	5
Jurisdiction of a justice of the peace	7
Extrajudicial Measures	9
Summary	9
Principles governing extrajudicial measures .	10
Objectives of extrajudicial measures	11
Warnings, cautions, and referrals	12
Extrajudicial sanctions	13
Pre-trial Procedures	15
Judicial interim release	15
Election—choosing a mode of trial	17
Youth Sentences	19
Summary	19
Purpose of youth sentence	19
Youth sentencing principles	20
Factors the court shall consider in determining a youth sentence	21
Restrictions on custody	22
Other sentencing considerations	23
Possible youth sentences	25
Other sentencing provisions	36
Where CC Part XXIII sentencing applies to youth sentencing	36
Victim fine surcharge	37

Orders with probation and intensive support and supervision	37
Probation for delayed custody	38
Review of non-custodial sentences	38
Adult Sentences	39
Summary of changes from the YOA	39
Presumptive and non-presumptive offences	40
Comparison of requirements for onus, notice provisions, publication rules, and included offences	42
Adult or youth sentence hearing	48
Custody placement hearing	49
Appeals heard as part of the sentence	50
Victims' Issues	51
Preamble	51
Peace Bonds	51
General principles	51
Principles of youth sentencing	52
Factors to consider in youth sentencing	52
Protective measures	52
Objectives of extrajudicial measures	53
Extrajudicial sanctions	53
Youth Justice Committees	53
Victim fine surcharge	53
Publication	53
Unchanged from the YOA	54
British Columbia Victims of Crime Act (1996)	54
Records and Sharing of Information	55
Summary	55
General rule	55
Adult sentences	56

Time periods	56
Exceptional cases of disclosure	57
Effect of termination of a youth sentence	61
Custody, Supervision, and Enforcement	63
Summary	63
Purpose of custody and supervision	64
Principles of custody and supervision	64
Level of custody	65
Youth workers and reintegration	66
Reintegration leave	66
Placement in or transfer to adult facilities . . .	67
Review of custodial sentences	70
Release upon recommendation of provincial director	71
Conditions for community supervision in a custody and supervision order under para.42(2)(n)	72
Conditions for conditional supervision for sentences under para.42(2)(o),(q),(r), deferred custody and supervision orders under para.42(2)(p), and after a review under para.94(19)(b)	74
Extending the custodial portion of custody and supervision orders under para.42(2)(n)	78
Extending the period of custody for para.42(2)(o),(q),(r) sentences	81
Breach of supervision conditions	83
Breach of custody and community supervision orders under para.42(2)(n)	83
Breach of conditional supervision orders under para.42(2)(o),(q),(r),(p), 94(19)(b)	86
Breach of other sentences	88

Notes on Several Topics	89
Appeals	89
Conferences	91
Mental health provisions	92
Notice to parents	96
Peace bonds	96
Pre-charge screening and private prosecutions	97
Pre-sentence reports	98
Publication	100
Referral to child welfare	103
Statements	104
Right to counsel	106
Two new provisions	106
 Transitional Provisions	 107
Summary	107
Starting a proceeding	108
Sentencing	110
 Youth Justice Act (British Columbia)	 113
 British Columbia Resource List	 117
 Definitions from the YCJA	 121

INTRODUCTION

Background

The Youth Criminal Justice Act (YCJA) is the federal legislation that replaced the Young Offenders Act (YOA) on **April 1, 2003**. This pocket guide is designed to summarize the changes brought about with the implementation of the new Act. Provisions of the new Act which do not represent a change to existing legislation may also be included to provide context. The key components of the YCJA are presented in eleven sections which correspond to the divider tabs in the pocket guide.

Paraphrases, descriptions, and formatting of sections of relevant legislation may differ from the official, printed versions. When accuracy is critical, official sources should be consulted

The principles outlined in s.3 shall be used to interpret the entire Act. The Act shall be liberally construed to ensure that all YPs are dealt with according to these principles. **subs.3(2)** Other principles that apply to specific sections of the YCJA, such as *extrajudicial measures*, youth sentencing, and custody and supervision are set out in those sections. (see “Principles governing extrajudicial measures,” p. 10, “Youth sentencing principles,” p. 20 and “Principles of custody and supervision,” p. 64)

The Declaration in subs.3(1) contains the following principles

- a** the youth criminal justice system is intended to promote the long-term protection of the public, by
 - preventing crime through addressing the circumstances underlying a YP’s offending behaviour
 - rehabilitating YPs who commit *offences* and reintegrating them into society
- AND
- ensuring meaningful consequences for *offences*

- b** the youth criminal justice system shall be separate from the adult system and emphasize
- rehabilitation and reintegration
 - fair and proportionate accountability which is consistent with the greater dependency and reduced level of maturity of YPs
 - enhanced procedural protections to ensure fair treatment and protect YPs' rights
 - timely intervention that reinforces the link between offending and consequences
- AND
- promptness and speed by persons responsible for enforcing the Act given YPs' perception of time
- c** within the limits of fair and proportionate accountability, the measures taken against a YP should
- reinforce respect for societal values
 - encourage the repair of harm done to victims and the community
 - be meaningful to the YP given their needs and level of development and, where appropriate, involve the *parents*, the extended family, the community, and social or other agencies in the YP's rehabilitation and reintegration
- AND

- respect gender, ethnic, cultural, and linguistic differences and respond to the needs of aboriginal YPs and of YPs with special requirements

AND

d proceedings against YPs are required to apply the following special considerations

- YPs have rights and freedoms which are specially guaranteed, including the right to be heard and to participate in the process of making decisions which affect them
- victims should be treated with courtesy, compassion, and respect, and should suffer the minimum degree of inconvenience
- victims should be provided with information and given an opportunity to participate and be heard

AND

- *parents* should be informed of measures or proceedings and encouraged to support their children as they address their offending behaviour

Jurisdiction of the youth justice court

All of the proceedings under the YCJA occur in the *youth justice court*. This court has exclusive jurisdiction over any federal *offence* alleged to have been committed by a person while they were a YP, subject only to the Contraventions Act and the National Defence Act. [subs.14\(1\)](#)

youth justice court [s.13](#)

any court that is established by a province as a youth justice court for the purposes of the YCJA

youth justice court judge [s.13](#)

a person appointed as a judge of a youth justice court or a judge sitting in a court established as a youth justice court

What constitutes a youth justice court and judge

If a YP elects to be tried by a judge alone or a judge and jury, the judge and court are the superior court of criminal jurisdiction in the province. For both, the court and judge are deemed to be a *youth justice court* and *youth justice court judge*. [subs.13\(2\),\(3\)](#)

After a YP reaches age 18

Extrajudicial measures taken, or judicial proceedings which are started under the Act against a YP, may be continued under the YCJA after the person reaches age 18. [subs.14\(4\)](#) The YCJA applies to persons 18 and over who are alleged to have committed an *offence* while a YP. [subs.14\(5\)](#)

Offences during a period that includes a YP's 18th birthday

s.16

The *youth justice court* has jurisdiction over an *offence* which a YP is alleged to have committed during a period that includes their 18th birthday.

After putting the YP to their election, when applicable, and if the court finds the YP guilty of the *offence*, the court SHALL

- if it has been proven that the *offence* was committed BEFORE the YP turned 18—impose a *youth sentence* under the YCJA
- if it has been proven that the *offence* was committed AFTER the YP turned 18—impose an *adult sentence* under the CC or any other Act
- if it has NOT been proven that the *offence* was committed AFTER the YP turned 18—impose a *youth sentence* under the YCJA

Jurisdiction of a justice of the peace

Justices of the peace may carry out proceedings except for plea, trial, and adjudication. [subs.20\(1\)](#)

A justice of the peace may decide on judicial interim release. After their decision, an application may be made to the *youth justice court* for detention in custody or release from custody. This application shall be heard as an original application. [subs.33\(1\)](#)

A justice of the peace may, as long as the document appointing the J.P. does not preclude this action, place a YP on a peace bond, but ONLY if the YP consents. [subs.20\(2\)](#)

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EXTRAJUDICIAL MEASURES

Summary

These are measures that can be used by the police and Crown attorneys to deal with YPs without using the formal *youth justice court* system.

Extrajudicial measures include *extrajudicial sanctions*, which is the formal program known as Alternative Measures under the YOA.

Before laying a charge or referring the matter to *extrajudicial sanctions*, a police officer SHALL consider whether it would be sufficient to

- take no further action [subs.6\(1\)](#)
- warn the YP [subs.6\(1\)](#)
- administer a caution [subs.6\(1\),7](#)
(if a program is established s.7) Note: The Attorney General in BC has not established a formal police caution program.
- refer the YP to a program e.g. community accountability program, police-based diversion program, or agency in the community that may assist the YP not to commit offences. This option requires that the YP consent to the referral [subs.6\(1\)](#)

The Crown may also issue a formal caution under s.8 if such a program is established.

If a YP cannot be adequately dealt with by warning, caution, or referral, the YP may be referred to an *extrajudicial sanctions* program. [subs.10\(1\)](#)

Principles governing extrajudicial measures

s.4

(subject to the overall principles in s.3)

Extrajudicial measures

- a** are often the most appropriate and effective way to address youth crime
- b** allow for effective and timely interventions focused on correcting offending behaviour
- c** are presumed to be adequate to hold first-time, non-violent offenders accountable (this presumption may be rebutted by appropriate evidence)

AND

- d** should be used when they are adequate to hold a YP accountable for their offending behaviour. Nothing in the YCJA prohibits the use of *extrajudicial measures* if the YP has previously been dealt with by *extrajudicial measures* or has been found guilty of an *offence*

Extrajudicial measures should be designed to

- a** provide an effective and timely response to offending behavior outside of judicial proceedings
- b** encourage YPs to acknowledge and repair the harm caused to the victim and the community
- c** encourage the involvement of families, including extended families and members of the community, in designing and implementing the measures
- d** provide victims with an opportunity to participate in decisions that relate to the measures that are selected, and to receive reparation

AND

- e** respect the rights and freedoms of YPs, and be proportionate to the seriousness of the *offence*

Warnings, cautions, and referrals

Before a police officer can refer a matter to the formal *extrajudicial sanctions* program or lay a charge, they shall consider whether it would be sufficient based on the principles of *extrajudicial measures* to

- take no further action
- warn the YP
- administer a caution if a program has been established
- with the YP's consent, refer them to a program or agency in the community that may assist the YP not to commit *offences*. **subs.6(1)** Examples include recreation, drug dependency, or counseling programs

The failure of a police officer to consider these options does not make any subsequent charges against the YP for the *offence* invalid. **subs.6(2)**

The Crown also has the option of administering a caution if a program is established. **s.8**

Evidence that the YP received a warning, caution, or referral, or that no further action was taken, and evidence of the *offence*, are NOT admissible to prove prior offending behaviour in a *youth justice court* against the YP. **s.9**

Extrajudicial sanctions

Background

Extrajudicial sanctions are an important part of *extrajudicial measures* and provides a good option for a YP to be held accountable and to make up for the harm caused by their *offence*, as an alternative to the formal court process.

Limitations on use

Extrajudicial sanctions may be used only if a YP cannot be appropriately dealt with by a warning, caution, or referral because of

- the seriousness of the *offence*
 - the nature and number of previous *offences* committed
- OR
- any other aggravating circumstances
[subs.10\(1\)](#)

Similar to alternative measures

Extrajudicial sanctions programs are subject to similar conditions as alternative measures programs were under the YOA. [subs.10\(2\)](#)

One of the important conditions for police is that there is 'sufficient evidence to proceed with the prosecution of the offence.' [para.10\(2\)\(f\)](#)

In British Columbia, referrals to *extrajudicial sanctions* programs must be approved by Crown Counsel.

Informing parents of YP

Parents of a YP shall be informed, by the person who administers the program, of the *extrajudicial sanction* used. **s.11**

Informing a victim

A police officer, Crown, *provincial director*, or representative from Victims' Services shall, on request, inform a victim of the identity of the YP dealt with by an *extrajudicial sanction* and how an *offence* has been dealt with. **s.12**

PRE-TRIAL PROCEDURES

Judicial interim release

ss.28–33

In addition to all of the CC provisions that apply to judicial interim release for *adults* there are additional rules and limitations that apply to YPs.

Detention of a YP is justified ONLY on the same grounds used for adults. These are listed in CCsubs.515(10). [s.28](#)

NOTE the limitations on para.515(10)(b) pre-trial detention set out in subs.39(1).

If an order is made under CCs.515 by a justice who is not a *youth justice court judge*, an application can be made to a *youth justice court* for release from custody, or detention in custody. This has not changed from the YOA. [s.33](#)

Key changes to judicial interim release

- The YCJA expressly states that a YP SHALL NOT be detained in custody before sentencing as a substitute for appropriate child protection, mental health, or other social measures. [subs.29\(1\)](#)

- When considering the protection or safety of the public under CCpara.515(10)(b), the court shall presume that detention of the YP is NOT necessary if the YP could not, after being found guilty, be committed to custody on the grounds set out in para.39(1)(a) (violent offence), (b) (failure to comply with non-custodial sentences), OR (c) (indictable offence for which an adult could receive more than 2 years imprisonment and a history which shows a pattern of findings of guilt).
[subs.29\(2\)](#)

As with the YOA, a YP who has been arrested may be placed in the care of a responsible person, instead of being detained in custody, if the *youth justice court* or a justice is satisfied that [subs.31\(1\)](#)

- a** the YP would have been detained, but for this subsection
 - b** the person is willing and able to take care of the YP
- AND
- c** the YP is willing to be placed in the care of the responsible person

With the YCJA, if a YP would be detained in custody, in the absence of a responsible person, the court or the justice shall inquire about the availability of a responsible person and the willingness of the YP to be placed in that person's care. [subs.31\(2\)](#)

- Police may wish to inquire about whether there is a responsible person who will step forward for the YP.

The maximum penalty for breaching an undertaking which places a YP in the care of a responsible person has increased to 2 years.

s.139

The YCJA contains provisions similar to those in the YOA for review of judicial interim release orders and hearings by *youth justice court judges* for the most serious offences. s.33

Election—choosing a mode of trial

subs.67(1)

Under the YCJA, a YP SHALL ELECT how they will be tried in any of these circumstances

- the YP is charged with having committed 1st or 2nd degree murder, attempted murder, manslaughter, or aggravated sexual assault that allegedly occurred AFTER they reached the age for *presumptive offences* s.61
- the Crown has given notice under subs.64(2) of their intention to seek an *adult sentence* for an offence, for which an adult could receive more than 2 years imprisonment, which allegedly occurred after the YP attained the age of 14 years
- the YP is charged with having committed 1st or 2nd degree murder which allegedly occurred while they were 12 or 13
- it is unclear whether the person was a YP or an adult at the time of the *offence*, but they were at least 14 AND they are charged with committing an *offence* for which an *adult* would receive an election subs.67(1)

The YP MAY ELECT 1 of 3 possible options

[subs.67\(2\),\(3\)](#)

- no preliminary inquiry and tried by a *youth justice court judge* without a jury
- a preliminary inquiry and tried by a judge without a jury
- a preliminary inquiry and tried by a judge and jury

If the YP DOES NOT ELECT, they are deemed to have elected a preliminary inquiry and to be tried by a judge and jury. [subs.67\(2\)](#)

Even if a YP ELECTS OTHERWISE, the Crown may require a trial by a judge and jury. [subs.67\(6\)](#)

If a YP ELECTS A PRELIMINARY INQUIRY with a trial by a judge alone the trial shall be before a judge defined in s.552 of the CC or if it is an offence set out in s.469 of the CC or a trial by judge and jury, then the judge shall be a judge of a superior court of criminal jurisdiction. In either case the judge will be deemed to be a *youth justice court judge* for the purpose of the proceedings. [subs.13\(2\),\(3\)](#)

When a YP ELECTS A JUDGE ALONE OR JUDGE AND JURY, the trial is conducted according to the CC provisions which govern the procedure for the mode of trial elected EXCEPT

the privacy provisions of the YCJA apply

a YP who is removed from court under CCsubs.650(2) is entitled to be represented in court by counsel [subs.67\(9\)](#)

YOUTH SENTENCES

Summary

The YCJA

- defines the purpose of *youth sentences*
- provides the principles and factors that shall be considered when a *youth sentence* is imposed
- creates some new *youth sentences*
- sets out conditions that shall exist before a custodial sentence is imposed
- includes a supervision portion as part of all custodial sentences

These sections apply ONLY when a YP is given a *youth sentence*. If an *adult sentence* is imposed, the Criminal Code rules and principles for sentencing apply, with some modifications.

Purpose of youth sentence subs.38(1)

The purpose of the youth sentencing is to hold the YP accountable for the offence by imposing just sanctions

that have meaningful consequences for the YP

AND

that promote their rehabilitation and reintegration into society

thereby contributing to the long term protection of society.

Youth sentencing principles subs.38(2)

(subject to the overall principles in s.3)

- a** the sentence shall not result in a greater punishment than would be appropriate for an *adult* convicted of the same *offence* committed in similar circumstances
- b** the sentence shall be similar to the sentences imposed in the region, on similar YPs found guilty of the same *offence* committed in similar circumstances
- c** the sentence shall be proportionate to the seriousness of the *offence* and the YP's degree of responsibility for it
- d** all available alternatives to custody that are reasonable in the circumstances should be considered, with particular attention to the circumstances of aboriginal youth

AND

- e** subject to **c**, the sentence shall
 - i** be the least restrictive sentence and consistent with the purpose of the *youth sentence* in subs.38(1)
 - ii** be the sentence most likely to rehabilitate the YP and reintegrate them into society
- AND
- iii** promote a sense of responsibility in the YP, and an acknowledgment of the harm done to the victims and the community

Factors the court shall consider in determining a youth sentence [subs.38\(3\)](#)

- a** the degree of participation of the YP in the *offence*
- b** the harm done to the victims and whether it was intentional or reasonably foreseeable
- c** any reparation made by the YP to the victim or the community
- d** any time already spent by the YP in detention as a result of the *offence*
- e** previous findings of guilt against the YP
AND
- f** any other aggravating and mitigating circumstances relevant to the purpose and principles of youth sentencing

Restrictions on custody

subs.39(1)

The court shall NOT impose a custodial sentence UNLESS at least 1 of the following conditions is met

- a** the YP has been found guilty of a violent *offence*
- b** the YP has failed to comply with non-custodial sentences
- c** the YP is guilty of an indictable *offence* for which an *adult* can be sentenced to imprisonment for more than 2 years AND has a history of findings of guilt
OR
- d** in EXCEPTIONAL cases, the court MAY impose a custodial sentence if the *offence* is indictable and the aggravating circumstances would make a non-custodial sentence inconsistent with the purpose and principles of youth sentencing set out in s.38

Note: If one of paragraphs **a** to **c** applies, the court shall consider all alternatives to custody that are reasonable in the circumstances, and may not impose a custodial sentence unless it determines that no alternative or combination of alternatives would achieve the purpose and principles of sentencing. [subs.39\(2\)](#)

Other sentencing considerations

subs.39(3)

The youth justice court shall consider submissions relating to

- a alternatives to custody that are available
- b the likelihood that the YP will comply with a non-custodial sentence, taking into account their compliance with previous non-custodial sentences

AND

- c alternatives to custody that have been used for similar *offences* committed by YPs in similar circumstances [subs.39\(3\)](#)

It is possible for the court to use the same non-custodial sentence, or any other non-custodial sentence, for a YP who has previously received a non-custodial sentence. [subs.39\(4\)](#)

Custodial sentences may NOT be used as a substitute for appropriate child protection, mental health, or other social measures. [subs.39\(5\)](#)

Under the YCJA, all custodial sentences have a supervision portion. When setting the length of a custodial sentence, the court shall NOT take into consideration the fact that the supervision portion of the sentence may not be served in custody, or that the sentence may be reviewed. [subs.39\(8\)](#)

A court which decides to impose a custodial sentence shall give reasons why a non-custodial sentence would NOT achieve the purpose of youth sentencing. If a custodial sentence is imposed for a case which is considered EXCEPTIONAL, the court shall give reasons why the case is exceptional. [subs.39\(9\)](#) (see “Restrictions on custody,” p. 22)

Imposing a youth sentence

Before imposing a *youth sentence*, the court shall consider *conference* recommendations if one is held, any *pre-sentence report* that is prepared, representations made by the parties, representations made by the *parents* of the YP, if any, and any other relevant information that is before the court. [subs.42\(1\)](#)

(see “Conferences,” p. 91 and “Pre-sentence reports,” p. 97)

Possible youth sentences

subs.42(2)

Subs.42(2) requires a court that finds a YP guilty of an *offence* to impose one or any combination of the following sanctions that are not inconsistent with each other

- a** a reprimand (new)—similar to a warning by a judge

- b** an absolute discharge

- c** a conditional discharge—supervision by the *provincial director* may be required
 - the court may NOT combine this sentence with probation **k**, ISSP **l**, or an attendance program **m** subs.42(11)

- d** a fine to a maximum of \$1,000
 - the court SHALL consider present and future means of the YP to pay subs.54(1)
 - the fine may be discharged through fine options, if a program is established subs.54(2)
 - the YP may apply to extend the time to pay subs.54(10)

- e an order to pay compensation or damages to another person
 - the court shall consider present and future means of the YP to pay [subs.54\(1\)](#)
 - the court may consider representations made by the recipient [subs.54\(4\)](#)
 - notice of the terms of the order SHALL be given to the recipient [subs.54\(5\)](#)
 - the YP may apply to extend the time to pay [subs.54\(10\)](#)

- f an order for the restitution of property to another person
 - the court may consider representations made by the recipient [subs.54\(4\)](#)
 - notice of the terms of the order SHALL be given to the recipient [subs.54\(5\)](#)
 - the YP may apply to extend the time to pay [subs.54\(10\)](#)

- g** an order to compensate any innocent purchaser of property when the court has made a restitution order
- the court shall consider present and future means of the YP to pay [subs.54\(1\)](#)
 - the court may consider representations made by the recipient [subs.54\(4\)](#)
 - notice of the terms of the order SHALL be given to the recipient [subs.54\(5\)](#)
 - the YP may apply to extend the time to pay [subs.54\(10\)](#)
- h** an order to compensate any person, in kind or by way of personal services
- the court may consider representations made by the recipient [subs.54\(4\)](#)
 - notice of the terms of the order SHALL be given to the recipient [subs.54\(5\)](#)
 - the person who will receive compensation in this way shall give their consent [subs.54\(6\)](#)
 - the court SHALL decide whether the YP is a suitable candidate and ensure that the order will NOT interfere with normal hours of work or education [subs.54\(7\)](#)
the time limit is 240 hours within 12 months [subs.54\(8\)](#)
 - the YP may apply to extend the time [subs.54\(10\)](#)

- i an order to perform a community service and to report to, and be supervised by, the *provincial director* or a person designated by the court
- the court SHALL decide whether the YP is a suitable candidate and ensure that the order will NOT interfere with normal hours of work or education
[subs.54\(7\)](#)
the time limit is 240 hours during a period of up to 12 months [subs.54\(8\)](#)
 - the community service SHALL be part of a program approved by the *provincial director* OR the placement shall consent [subs.54\(9\)](#)
 - the YP may apply to extend the time to pay [subs.54\(10\)](#)
- j Subject to s.51 (mandatory prohibition order), make any order for prohibition, seizure, or forfeiture that could be imposed under federal legislation
EXCEPT an order under CCs.161
- k probation
- the time limit is 2 years
 - conditions for order are in s.55
 - communication, service and special rules for orders in s.56

- l** an intensive support and supervision program (ISSP) approved by the *provincial director*. (new) This option provides more support and closer monitoring than a probation order
- before the order is made, the *provincial director* shall determine that a program to enforce the order is available [subs.42\(3\)](#)
 - for conditions in orders see s.55
 - communication, service and special rules for orders are in s.56
- m** attendance order. (new) This option requires that a YP attend a non-residential program approved by the *provincial director* at specified times and on specified terms
- the time limit is up to 240 hours over a period of up to 6 months
- before the order is made, the *provincial director* SHALL determine that a program to enforce the order is available [subs.42\(3\)](#)
 - the court SHALL decide whether the YP is a suitable candidate and ensure that the order will NOT interfere with normal hours of work or education [subs.54\(7\)](#)

- n** custody and supervision order (community supervision) (new)
- 2/3 of the sentence is served in custody
 - 1/3 is served under supervision in the community
- the time limit is 2 years for most *offences*, 3 years for those *offences* for which an *adult* could receive life imprisonment
- mandatory conditions for the supervision in the community order are in s.97. Other conditions can be added by the *provincial director* under s.97 (see “Conditions for community supervision in a custody and supervision order under para.42(2)(n),” p. 72)
 - the Crown or the *provincial director* may apply to the court under s.98 to keep the YP in custody and NOT release them on supervision for the final 1/3 of the sentence **s.98** (see “Extending the custodial portion of custody and supervision orders under para.42(2)(n),” p. 78)
- o** custody and supervision order (conditional supervision) for *presumptive offences* of attempted murder, manslaughter, and aggravated sexual assault (new)
- the time limit is 3 years—the court sets the relative times for custody and conditional supervision

- the conditions for conditional supervision are set by the court under s.105 (see “Conditions for conditional supervision for sentences under para.42(2)(o),(q),(r)...,” p. 74)
- the Crown may apply to the court under s.104 to keep the YP in custody and not release them on conditional supervision (see “Extending the period of custody for para.42(2)(o),(q),(r) sentences” p. 81)

p deferred custody and supervision order (conditional supervision) (new)

the time limit is 6 months, subject to appropriate conditions

- the offence CANNOT be a *serious violent offence (SVO)* and SHALL be consistent with the purpose and principles of sentencing in s.38 and the restrictions on custody in s.39 [subs.42\(5\)](#)
- conditions are set under s.105 and it is enforced as if it were a conditional supervision order [subs.42\(6\)](#)

- q** custody and conditional supervision order for murder
 - i** murder 1st degree
 - the time limit is 10 years—custody up to 6 years followed by conditional supervision in the community
 - ii** murder 2nd degree
 - the time limit is 7 years—custody up to 4 years followed by conditional supervision in the community (see “Conditions for conditional supervision for sentences under para.42(2)(o),(q),(r)...,” p. 74)

r intensive rehabilitative custody and supervision order (conditional supervision) (IRCS) (new) [subs.42\(7\)](#)

This option may be considered as an alternative to an adult sentence.

IRCS is available for a YP ONLY IF

- a** the YP has been found guilty of one of the following categories of *offences*
 - murder, attempted murder, manslaughter, or aggravated sexual assault OR
 - a *SVO* for which an *adult* could be imprisoned for more than 2 years AND the YP has been previously found guilty at least twice of a *SVO*
- b** the YP suffers from a mental illness or disorder, a psychological disorder, or an emotional disturbance

c a plan of treatment and intensive supervision is developed for the YP and there are reasonable grounds to believe that the plan might reduce the risk of the YP repeating the *offence* or committing a *SVO*

AND

d the *provincial director* has determined that an IRCS program is available and appropriate

Note: The term 3rd *SVO* is also used in the Adult Sentence section to create a new presumption for an *adult sentence*. (see “Presumptive offences,” p. 40)

The requirements for the use of IRCS are different from those that trigger the presumption of an *adult sentence* in the following ways

- the 3rd *SVO* can occur before the YCJA comes into force but the YP shall consent to the sentence (see “Transitional Provisions”, p.111)
ss.160 & 161
- the YP shall have previously been found guilty at least twice of a *SVO*
subpara.42(7)(a)(ii)
- the YP does NOT have to be 14 or older at the time of the *offence*. The court may impose IRCS on any YP aged 12 to 17 who meets the criteria

the time limit for the maximum length of IRCS depends on the *offence* and is the same as those for the custody and supervision sentences in para.42(2)(n),(o),(q) (see “Conditions for conditional supervision for sentences under para.42(2)(o),(q),(r)...,” p. 74)

- a YP given an IRCS sentence maintains the right to consent to treatment. [subs.42\(8\)](#)

s any other reasonable and ancillary conditions that the court considers advisable and in the best interests of the YP and the public

Any single sentence is limited to 2 years duration, with the EXCEPTION of **j, n, o, q, r**. Custody and supervision sentences are limited to 2 years for most *offences*, and 3 years when the adult punishment for the *offence* is life imprisonment. The limits for murder are set out with the sanctions for para.42(2)(q).

Prohibition orders under CCss.109,110

minimum duration of a mandatory order under CCs.109(1)(a)-(d): 2 years after completion of custody portion of sentence or, if no custody, 2 years after a finding of guilt [subs.51\(2\)](#)

maximum duration of a discretionary order under CCs.110(1)(a) or (b): 2 years after completion of custody portion of sentence or, if no custody, 2 years after a finding of guilt [subs.51\(4\)](#)

Reasons shall be given. [subs.51\(5\),\(6\)](#)

Section 52 provides for the review of such orders by the court.

Serious violent offence

After a finding of guilt, the Crown may apply for a judicial determination of *SVO*. The court can make the determination, after both parties have an opportunity to be heard. If the court makes this judicial determination the information or indictment is endorsed accordingly. [subs.42\(9\)](#)

Other sentencing provisions

Coming into force of youth sentence [subs.42\(12\)](#)

A *youth sentence* comes into force on the date on which it is imposed or on any later date that the court specifies.

Consecutive sentences [subs.42\(13\)](#)

The court can give a consecutive custodial sentence if a YP is sentenced while already under sentence, or if a YP is being sentenced for more than one *offence*.

Where CC Part XXIII sentencing applies to youth sentencing

Generally, the CC does not apply to youth sentencing. [s.50](#)

EXCEPTIONS

when an adult sentence is imposed [s.74](#)

sentencing principle for aboriginal offenders [CCpara.718.2\(e\)](#)

provision for the admission of victim impact evidence [CCss.722,722.1,722.2](#)

continuation in force of appearance notice, promise to appear, summons, undertaking, or recognizance in certain situations [CCsubs.730\(2\)](#)

provisions dealing with pardons, remission of sentence, and the royal prerogative of mercy [CCss.748,748.1,749](#)

Victim fine surcharge

The YCJA allows the lieutenant governor of the province to order that a percentage of a fine imposed be used for the assistance of victims of offences. [subs.53\(1\)](#)

If no percentage is set by the lieutenant governor, the court may order a victim fine surcharge of up to 15%. [subs.53\(2\)](#)

The YP may work off both the fine and the surcharge using credits earned for work performed under a fine option program, if one is established. [subs.54\(2\)](#)

Orders with probation and intensive support and supervision

The optional conditions for para.42(2)(k) (probation orders), and para.42(2)(l) (orders for intensive support and supervision) have only 1 addition from the YOA [para.55\(2\)\(i\)](#)

- not to own, possess, or have control of any weapon, ammunition, prohibited ammunition, prohibited device, or explosive substance, except as authorized

The order is valid whether or not the YP endorses it, or the *parent* receives a copy of it. [subs.56\(4\)](#)

Probation for delayed custody subs.56(6)

It is possible under the YCJA for custody to be delayed. Subs.56(6) allows a court to divide probation or intensive support and supervision orders so that they are served in 2 parts, before and after a period of delayed custody and supervision. The first part of the order ends at the start of custody, and the remainder takes effect at the end of the supervision portion of the sentence.

Review of non-custodial sentences

Non-custodial sentences may be reviewed 6 months after they are imposed, or earlier with permission of the court. subs.59(1)

One of the grounds for review is new

- a YP has contravened a condition of an order for probation or intensive support and supervision without reasonable excuse para.59(2)(c)

Review of custodial sentences s.94

(see “Review of custodial sentences,” p. 70)

ADULT SENTENCES

Caveat

The *adult sentence* provisions for *presumptive offences* were declared invalid by the Québec Court of Appeal. As of the revision date of this Pocket Guide, that issue has not been considered by a BC Court. The procedures outlined in this guide for *adult sentences* on *presumptive offences* may change at any time as a result of new case law or amendments.

Summary of changes from the YOA

- the YCJA eliminates transfer hearings
- the hearing to determine whether the YP should receive an *adult sentence* takes place AFTER a finding of guilt
- all proceedings take place in the *youth justice court*
- the *youth justice court* may impose an *adult sentence* for certain offences if the test for appropriateness of an *adult sentence* is met
- 3rd *serious violent offence (SVO)* is added to the list of *presumptive offences*: Definition 2(b)
- the age for presumption of *adult sentence* is 14 unless set by a province at 15 or 16 [s.61](#)
- the Crown may give notice that they will not seek an *adult sentence* on *presumptive offences* [s.65](#)

Presumptive and non-presumptive offences

A YP may receive an *adult sentence* for both *presumptive* and non-presumptive *offences*. Once the court finds the YP guilty of a *presumptive offence*, the YP has the onus to show why an *adult sentence* should NOT be imposed. When the court finds a YP guilty of a non-presumptive offence, the Crown has the onus to show why an *adult sentence* should be imposed.

Presumptive offences

The definition section of the YCJA, subs.2(1), sets out 2 types of *presumptive offences*.

In order for the presumption to take effect in either type, the YP shall have reached the age of presumption of an adult sentence at the time of the offence, which is 14 unless a province sets it at 15 or 16. The 2 types of presumptive offences in the Act are

Presumptive (a)

an offence committed or alleged to have been committed by a YP under one of these sections: CCss.231,235 (murder), 239 (attempted murder), 232,234,236 (manslaughter), or 273 (aggravated sexual assault)

AND

Presumptive (b)

a 3rd SVO committed or alleged to have been committed by a YP

serious violent offence (SVO)

an offence in the commission of which a YP causes, or attempts to cause, serious bodily harm

After a finding of guilt, the Crown may apply for a judicial determination of *SVO*. The court may make the determination, after both parties have had an opportunity to be heard. The information or indictment is endorsed accordingly if a finding of *SVO* is made, by the *youth justice court*. [subs.42\(9\)](#)

To fall under the presumption of an *adult sentence* for a presumptive (b) offence or 3rd *SVO*, the YP shall [subs.2\(1\)](#)

- be charged with an *offence* for which an *adult* is liable to imprisonment for more than 2 years
 - be charged with an *offence* which the YP is alleged to have committed after the YCJA came into force
 - meet the age requirement
- AND
- have, at the time of the *offence*, at least 2 judicial determinations of *SVO* made at different proceedings

Non-presumptive offences

The Crown may seek an *adult sentence* for a YP who was 14 or older at the time of the *offence*, and charged with an indictable *offence* for which an *adult* is liable to imprisonment for more than 2 years.

Comparison of requirements for onus, notice provisions, publication rules, and included offences

How notices are given

Notices can be given orally in the presence of the other party, or served personally in writing. [s.81](#)

Presumptive (a) offence

Offences

- 1st and 2nd degree murder, attempted murder, manslaughter, aggravated sexual assault
[subs.2\(1\) presumptive offence \(a\)](#)

Onus

- on YP to show why they should NOT receive an *adult sentence* [subs.72\(2\)](#)

Publication

- permitted if *adult sentence* imposed
[para.110\(2\)\(a\)](#)
- permitted if *youth sentence* imposed for presumptive offence. [para.110\(2\)\(b\)](#) YP OR Crown may apply for *publication* ban if *youth sentence* imposed [s.75](#)
- NOT permitted if Crown gives notice that *adult sentence* will NOT be sought [s.65](#)

Presumptive (a) offence (continued)

Notice and applications...for Adult Sentence

- notice is NOT required from the Crown to seek an *adult sentence*

Note: 1. Notice is NOT required when YP is found guilty of an included, non-presumptive offence for which an *adult* would receive a sentence greater than 2 years. [subs.69\(1\)](#)

2. Notice is NOT required from the Crown to try to establish that the *offence* is a 3rd SVO [para.69\(1\)\(b\)](#)

- if the YP indicates that they will not apply for a *youth sentence* under subs.63(1), the court SHALL order that an *adult sentence* be imposed [subs.70\(2\)](#)

for Youth Sentence

- YP may make an application for a *youth sentence* any time before evidence is called as to sentence or if no evidence is called before submissions are made as to sentence. [subs.63\(1\)](#) Before a sentencing hearing the court SHALL ask if the YP wishes to apply for a youth sentence under subs.63(1) and, if so, whether the Crown will oppose the application. [subs.70\(1\)](#)
- Crown may give notice that they will NOT oppose the application and a *youth sentence* is imposed [subs.63\(2\)](#)
- Crown may also give notice that they will NOT seek an *adult sentence*. When that happens, a *youth sentence* and a *publication* ban are imposed [s.65](#)

Presumptive (b) offence

Offences

- 3rd SVO becomes a *presumptive offence*

Onus

- on YP to show why they should NOT receive an *adult sentence* [subs.72\(2\)](#)

Procedure

- the Crown shall first establish, under [subs.42\(9\)](#), that the offence is a SVO
- then EITHER the YP shall admit to the 2 prior judicial determinations of SVO OR the Crown SHALL establish proof [subs.68\(3\)](#)
- if the court is NOT satisfied that the *offence* is a 3rd SVO and therefore not a *presumptive offence*, the Crown may apply for an *adult sentence* as a non-presumptive offence [subs.68\(5\)](#) (see “Non-presumptive offence,” p. 46)

Publication

- permitted if *adult sentence* imposed [para.110\(2\)\(a\)](#)
- permitted if *youth sentence* imposed for *presumptive offence*. [para.110\(2\)\(b\)](#) YP OR Crown may apply for *publication* ban if *youth sentence* imposed [s.75](#)
- NOT permitted if Crown gives notice that *adult sentence* will NOT be sought [s.65](#)

Presumptive (b) offence (continued)

Notice and applications...for Adult Sentence

Crown notice required

- to BOTH the court AND the YP, to seek an *adult sentence*. Notice shall be given before plea or, with leave of the court, before trial [subs.64\(2\)](#)

AND

- to ONLY the YP, that they will seek to establish that an *offence* is a *SVO* and a presumptive (b) offence [subs.64\(4\)](#)

For the Crown to establish that an *offence* is a 3rd *SVO*, and therefore a *presumptive (b) offence*, the Crown shall satisfy the court that they DID give notice to the YP before plea. [subs.68\(1\)](#)

The Crown may then apply to have the *offence* found to be a *SVO* under subs.42(9) and then a *presumptive (b) offence*. [s.68](#)

If the court is NOT satisfied that the *offence* is a *presumptive (b) offence*, the Crown may still apply for an *adult sentence* if the *offence* is one for which an *adult* is liable to imprisonment for more than 2 years. [subs.68\(5\)](#)

A notice of intention to seek an *adult sentence* also applies to any included *offence* for which a YP is found guilty. However, the included *offence* shall be an *offence* for which an *adult* could be imprisoned for more than 2 years. [subs.64\(3\)](#)

The Crown may then make an application for an *adult sentence* when these requirements are met. [subs.69\(2\)](#)

Presumptive (b) offence (continued)

If the YP indicates that they will NOT seek a *youth sentence*, the court SHALL order that an *adult sentence* be imposed. [subs.70\(2\)](#)

for Youth Sentence

YP may make an application for a youth sentence any time before the sentencing hearing begins. [subs.63\(1\)](#)

After a judicial determination of 3rd SVO and before any evidence is called as to sentence or where no evidence is called before submissions as to sentence, the court SHALL ask if the YP wishes to apply for a *youth sentence* under [subs.63\(1\)](#) and, if so, whether the Crown will oppose the application. [subs.70\(1\)](#)

Non-presumptive offence

Offences

- any indictable offence for which an *adult* is liable to imprisonment for more than 2 years that is not a *presumptive offence*. The YP shall be 14 years old or older at the time of the *offence*. [para.62\(b\)](#)

Onus

- on Crown to show why YP SHOULD receive *adult sentence* [subs.72\(2\)](#)

Publication

- permitted if *adult sentence* imposed [para.110\(2\)\(a\)](#)

Non-presumptive offence (continued)

Notice

Crown

- notice required to BOTH the court and the YP, of intent to seek an *adult sentence*. Notice shall be given before plea or, with leave of the court, before trial [subs.64\(2\)](#)

No further notice is required when a YP is found guilty of included, non-presumptive offences for which an adult is liable to imprisonment for more than 2 years. [subs.64\(3\)](#)

YP

- can give notice that they do NOT oppose the application for an *adult sentence*, which means that an *adult sentence* will be imposed without a hearing if they are found guilty [subs.64\(5\)](#)

(For additional information on *publication*, see “Publication,” p. 100)

Adult or youth sentence hearing

s.71

Purpose

- to determine whether a YP is liable to *adult* or *youth sentence*

Reason

- either a YP or the Crown has applied after a finding of guilt

Court hears from

- both parties and the *parents* of YP

Onus

- on the applicant [subs.72\(2\)](#)

Factors the court shall consider [s.72](#)

- seriousness and circumstances of the *offence*
- age, maturity, character, background, and previous *record* of the YP
- any other factors that the court considers relevant

The test

Would a *youth sentence* imposed in accordance with the principle of fair and proportionate accountability that is consistent with the greater dependency of YPs and their reduced level of maturity and the purpose and principles of sentencing in s.38 have sufficient length to hold the YP accountable for his or her offending behaviour? [subs.72\(1\)](#)

The options...

- if yes, *youth sentence* imposed
- if no, *adult sentence* imposed

The court SHALL consider a *pre-sentence report*.
[subs.72\(3\)](#)

The court SHALL state the reasons for the decision it reaches. [subs.72\(4\)](#)

If an *adult sentence* is imposed, the CC sections on sentencing (Part XXIII) long-term and dangerous offenders (Part XXIV) apply.
[subs.74\(1\)](#)

The finding of guilt becomes a conviction as soon as either the appeal or the appeal period ends.
[subs.74\(2\)](#)

Custody placement hearing [s.76](#)

There are presumptions about where a YP will serve time when they receive an *adult sentence*. The presumption depends on the age of the YP at the time they are sentenced.

- under 18—a *youth custody facility* separate from *adults*
- 18 or older—an adult provincial correctional facility
- 18 or older AND the sentence is 2 years or more—a federal penitentiary

UNLESS the court is satisfied that the presumed placement would NOT be in the best interests of the YP or would jeopardize the safety of others
[subs.76\(2\)](#)

This placement decision may be appealed as part of a sentence appeal under subs.76(5), or may be reviewed after the appeal period expires if the court is satisfied that there has been a material change in circumstances. [subs.76\(6\),\(7\)](#)

Placement options after the review are the same as before the initial placement.

There is a presumption that a YP would move to an adult facility after the age of 20 unless the court orders otherwise. [subs.76\(9\)](#)

Appeals heard as part of the sentence

To appeal an *adult sentence* under the YOA, an application for a wide review of a transfer hearing could be made to a court of appeal.

Under the YCJA, the decision to give an *adult sentence* under s.72 shall be appealed as part of the sentence. [subs.37\(4\), 72\(5\)](#)
(see "Appeals," p. 89)

VICTIMS' ISSUES

Victims are mentioned in several provisions of the Act.

Preamble

Canadian society should have a youth criminal justice system that...takes into account the interests of victims.

Peace Bonds

Peace Bonds may be ordered under subs.14(2) (youth court judges) & subs.20(2) (JPs—where the jurisdiction permits and authorizes).

General principles

Measures taken against a YP should encourage the repair of harm done to victims and communities. [subpara.3\(1\)\(c\)\(ii\)](#)

Special considerations apply to proceedings against YPs. In particular

- 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 [subpara.3\(1\)\(d\)\(ii\)](#)
- victims should be provided with information about the proceedings and given an opportunity to participate and be heard [subpara.3\(1\)\(d\)\(iii\)](#)

Principles of youth sentencing

subpara.38(2)(e)(iii)

Subject to the limit of proportionality, the sentence SHALL promote a sense of responsibility in the YP and an acknowledgement of the harm done to victims and the community.

Factors to consider in youth sentencing

In determining a *youth sentence* the court SHALL take into account

- the harm done to victims and whether it was intentional or reasonably foreseeable
para.38(3)(b)
- any reparation made by the YP to the victim or the community para.38(3)(c)

Protective Measures

A Justice has jurisdiction to make an order under Section 810 (recognizance - fear or injury of damage) of the Criminal Code in respect of a YP
subs.20(2)

Objectives of extrajudicial measures

para.5(d)

Extrajudicial measures provide an opportunity for victims to participate in decisions related to the measures selected and to receive reparation.

Extrajudicial sanctions

s.12

Victims are entitled, on request, to information about the identity of the YP and how the *offence* was dealt with when *extrajudicial sanctions* were used.

Youth Justice Committees

s.18

Youth Justice Committees may support the victim by soliciting their concerns or facilitating reconciliation.

Victim fine surcharge

s.53

The YCJA allows the province to use a percentage of a fine for the assistance of victims and allows for a surcharge to be ordered where the province does not establish one.

In BC, an order-in-council provides that 15% of fines collected pursuant to the YCJA are applied to victim services.

Publication

s.111

(see “Rules governing young witnesses and victims”, p. 102)

Unchanged from the YOA

As with the YOA

- victims should be interviewed for a *pre-sentence report* if reasonably possible [para.40\(2\)\(b\)](#)
- victim impact statement provisions of the CC apply to *youth sentence* proceedings [s.50](#)
- *publication* of the identity of *child* or young victims and witnesses is NOT permitted except as provided for in the Act (see “Rules governing young witnesses and victims,” p. 102) [s.111](#)

Victims may have access to certain *records* under the YCJA. [para.119\(1\)\(d\)](#) (see “Victims’ access to records,” p. 60)

British Columbia Victims of Crime Act (1996)

- to be treated with courtesy and respect;
- to information on the justice system, victims services, crime victim assistance and related legislation;
- to be given a reasonable opportunity to provide a victim impact statement;
- on request (and subject to the YCJA*), the right to receive certain case-specific information on the investigation, prosecution and sentencing and release of an accused/offender; and
- to independent legal representation, provided free of charge where they cannot afford it, concerning the disclosure of their personal records.

RECORDS AND SHARING OF INFORMATION

Summary

The YCJA, similar to the YOA, allows police forces, courts, *extrajudicial measures* organizations, and the government to keep *records* about a YP who is dealt with under the Act. [ss.114-116](#)

The Act specifically sets out who may have access to *records* or receive the information contained in them, and the time periods during which access is allowed. [s.119](#)

General rule

Information about a YP may NOT be disclosed if it would identify them as someone who has been dealt with under the Act. For that reason, ONLY those people who are authorized under the YCJA may have access to *records* or receive the information contained within them. [subs.118\(1\)](#) Those authorizations are found in the YCJA from [ss.117-129](#).

If a person is entitled to access to a *record*, they are entitled to the information in the *record* and a copy of any part of the *record*. [s.122](#)

The purpose of the request and the type of information requested may limit disclosure.

Adult sentences

After the time for appeals has run out, or appeals have been completed, the *record* of an *adult sentence* delivered in *youth justice court* is treated the same as other *adult records*. The *records* provisions of the YCJA do not apply. [s.117](#)

Time periods

Access to *records* and disclosure of *records* are subject to time limitations.

Before the non-disclosure period, persons listed in subs.119(1) of the YCJA SHALL, on request, be given access to court *records* under s.114 and MAY be given access to police, extrajudicial measures, and government *records* under ss.115,116.

The time periods for access to the *records* set out in subs.119(2) differ according to the way the YP is dealt with by the court and the type of *offence*. Access to *extrajudicial measures* such as warnings or cautions can be disclosed ONLY in very limited circumstances set out in subs.119(4).

After the end of the period set out in subs.119(2), other than the YP and their counsel s.124, no access to the *record* can be given without a court order under s.123.

Destruction of *records* and disclosure after the access periods have ended are dealt with in s.128 and s.123 respectively.

There are special disclosure provisions and time periods for what are considered more serious *offences* in the schedule attached to the YCJA.
[s.120](#)

Exceptional cases of disclosure [s.125](#)

Under s.125, various justice professionals are given the discretion to disclose information for specific purposes. The information may be disclosed only during the access period set out in subs.119(2) [subs.125\(8\)](#)

- a peace officer may disclose information contained in police or court *records* to any person when it is necessary in the investigation of an offence [subs.125\(1\)](#)
- the Crown may, during the course of a proceeding, disclose any information contained in police *records* or court *records* to a person who is co-accused, with the YP, of the *offence* for which the record is kept [para.125\(2\)\(a\)](#)
- the Crown may, during the course of a proceeding, disclose information from police *records* or court *records* to an accused that identifies a witness as a YP who was dealt with under the YCJA [para.125\(2\)\(b\)](#)
- a peace officer may disclose information contained in police or court *records* to an insurance company for the purpose of investigating a claim arising out of an *offence* committed or alleged to have been committed by the YP to whom the record relates [subs.125\(4\)](#)

- *provincial director* or *youth worker* may disclose information in a record if the disclosure is necessary to gather information in the preparation of a report required under the YCJA [subs.125\(5\)](#)

youth worker [subs.2\(1\)](#)

any person appointed or designated by the legislature or lieutenant governor of a province, or their designate, to perform the duties of a youth worker set out in the YCJA. A youth worker under the YCJA could have the title of youth worker, probation officer, etc.

- *provincial director, youth worker, Crown, peace officer, or any other person engaged in providing services to YPs, may disclose to any professional or other person engaged in the supervision or care of a YP, including a representative of a school, school board, or any other educational or training institution, any information contained in court, police, or government records if it is necessary*
 - to ensure the YP's compliance with an order *by youth justice court* or reintegration leave under s.91
 - to ensure safety of staff, students, or other persons
 - to facilitate rehabilitation of the YP [subs.125\(6\)](#)

The person to whom information is disclosed under subs.125(6) SHALL [subs.125\(7\)](#)

- a keep the information separate from any other record of the YP to whom the information relates
- b ensure that no person has access to the information unless authorized by the Act. The person may disclose the information to another person if this is necessary for purposes of subs.125(6)
- c destroy their copy of the *record* when the information is no longer required for the purpose for which it was disclosed

Court authorization

[s.127](#)

The *provincial director*, the Crown, or a peace officer may apply to the *youth justice court* for authorization to disclose specific information about a YP to a specified person or persons. The information may be disclosed ONLY during the access period set out in subs.119(2). [subs.127\(4\)](#)

The court SHALL be satisfied that the disclosure is necessary, having regard to the following circumstances [subs.127\(1\)](#)

- a the YP has been found guilty of an offence involving serious personal injury
- b the YP poses a risk of serious harm to people
AND
- c the disclosure of the information is relevant to the avoidance of that risk

The YP, their *parents*, and the Crown SHALL be given an opportunity to be heard before the court grants an order. [subs.127\(2\)](#) The Crown MAY apply on an *ex parte* basis when reasonable efforts to locate the YP were made and were not successful. [subs.127\(3\)](#)

Restriction on further disclosure [s.129](#)

Anyone who is given access to a record, or to whom information is disclosed under the YCJA, may disclose that information to another person ONLY when authorized to do so under the Act.

Victims' access to records [para.119\(1\)\(d\)](#)

During the access period, victims have access to *records* kept under s.114 (court *records*) and may have access to *records* kept under ss.115 (police *records*) and 116 (government *records*).
(for additional information on victims, see "Victims' Issues," p. 51)

Unauthorized Disclosure

Unauthorized Disclosure is an offence punishable by indictment or on summary conviction. [s.138](#)

Effect of termination of a youth sentence

s.82

This is subject to the Canada Evidence Act, s.12 (examinations as to previous convictions).

If a YP is found guilty of an *offence* and

- the court directs an absolute discharge
[para.42\(2\)\(b\)](#)
- the *youth sentence* has ceased to have effect
OR
- the disposition under the YOA has ceased to have effect

other than a mandatory prohibition order
[s.51](#) or [YOA s.20.1](#)

... the YP is deemed NOT to have been found guilty or convicted of the *offence*, EXCEPT that, under subs.82(1)

- a the YP may plead 'autrefois convict' to a subsequent charge related to the *offence*. In making this plea, the YP is saying that they have already been found guilty and cannot be found guilty of an *offence* based on the same set of facts
- b the *youth justice court* may consider the finding of guilt in hearing an application under subs.63(1) (application for *youth sentence*) or subs.64(1) (application for *adult sentence*)

- c any court or justice may consider the finding of guilt while hearing an application for judicial interim release or in deciding what sentence to impose for any offence
- d the National Parole Board or any provincial parole board may consider the finding of guilt while hearing an application for conditional release or pardon [subs.82\(1\)](#)

The termination of a *youth sentence* removes any disqualification under any Act of Parliament to which the YP is subject for the *offence*. [subs.82\(2\)](#)

Certain application forms shall NOT contain a question which would require the YP to disclose the *offence* after the termination of the *youth sentence*. [subs.82\(3\)](#)

A finding of guilt under the YCJA is NOT considered a previous conviction under any Act of Parliament for which a greater punishment is prescribed because of a previous conviction, except when it is used to establish a 3rd *SVO* or determine the *adult sentence* to be imposed. [subs.82\(4\)](#)

CUSTODY, SUPERVISION, AND ENFORCEMENT

Summary

The YCJA sets out the purpose and principles for youth custody and supervision, and the rules under which the youth justice system shall operate

- the focus of every custody sentence shall be on reintegration and on measures aimed at assisting the YP not to reoffend
- a *youth worker* SHALL be designated to work with each YP as soon as they are sentenced to custody, to develop and implement a reintegration plan
- each province is required to have at least 2 levels of youth custody
- all YPs under 18 shall serve a youth sentence in youth custody, although there are provisions in the legislation to govern placement in an adult facility or transfer to one for those 18 and over

Two different sets of procedures have been put in place for each of the following

- setting conditions for supervision in the community
- extending the *custodial portion of a youth sentence*
- responding to a breach of a condition

The first set of procedures governs supervision in the community under sentences imposed under para.42(2)(n), and the second governs conditional supervision imposed under para.42(2)(o),(p),(q),(r) and para.94(19)(b).

Purpose of custody and supervision

subs.83(1)

The purpose of the youth custody and supervision system is to contribute to the protection of society in 2 ways

- by carrying out sentences in a safe, fair, and humane manner

AND

- by assisting the YP to be rehabilitated and reintegrated into society as a law-abiding citizen through effective custody and supervision programs

Principles of custody and supervision

subs.83(2)

(in addition to the overall principles in s.3)

- a use the least restrictive measures that are consistent with the protection of the public, people working with the YP, and the YP
- b ensure that YPs sentenced to custody retain the same rights as other YPs except those rights which are removed or restricted as a consequence of their sentence
- c facilitate the involvement of both families of YPs and members of the public
- d make custody and supervision decisions in a fair, forthright, and timely manner to ensure that YPs have access to an effective review procedure

AND

- e ensure that the placement of YPs where they are treated as *adults* does NOT disadvantage them for eligibility for and conditions of release

Level of custody

Each province shall have at least 2 levels of youth custody that are distinguished by the degree of restraint. [subs.85\(1\)](#)

The YCJA allows either the *provincial director* or the court to determine the level of custody.

In jurisdictions where the court will continue to make this determination these YOA provisions will continue to apply, with necessary changes, to the determination of the level of custody and its review: YOA subs.2(1) “review board” and “progress report,” ss.11, 24.1-24.3, 28-31. [s.88](#)

BC has opted to continue to use the YOA provisions – the court determines the level of custody (open or secure).

Youth workers and reintegration

The *provincial director* shall designate a *youth worker* to work with a YP as soon as the YP is sentenced to custody. During the custodial portion of the sentence, the *youth worker* prepares and implements a plan which sets out programs for the YP's reintegration into the community.

[subs.90\(1\)](#)

When the YP serves the remainder of their sentence under supervision in the community, the *youth worker* supervises them, continues to provide support, and helps the YP both respect the conditions of their release and implement their reintegration plan. [subs.90\(2\)](#)

Reintegration leave

[s.91](#)

As under the YOA, the *provincial director* may grant reintegration leave to any YP committed to a *youth custody facility* under a *youth sentence*. Unlike the YOA, however, the YCJA allows reintegration leave to be granted to a YP serving an *adult sentence* in a youth facility

- it is available on any terms and conditions that the *provincial director* considers desirable
- it has the same purpose as under the YOA
- the period is increased from 15 to 30 days
- renewal of the leave is specifically allowed for one or more 30-day periods on reassessment of the case

- the *provincial director* can revoke the leave at any time, as under the YOA
- if the YP is not complying, or the leave is revoked, the YP can be arrested without warrant and returned to custody

Placement in or transfer to adult facilities

YPs aged 20 at time of sentencing

A YP who is aged 20 or older at the time a custodial *youth sentence* is imposed SHALL be committed to a provincial correctional facility for adults. subs.89(1)

Once a YP has served some time in a provincial adult facility under subs.89(1), the *provincial director* may apply to the *youth justice court* for authorization to direct that the YP be moved to a federal penitentiary to serve the remainder of the *youth sentence*.

The following conditions shall be met subs.89(2)

- there shall be 2 years or more remaining in the sentence
- the YP, *provincial director*, and representatives of the provincial and federal correctional systems shall have an opportunity to be heard

AND

- the court shall be satisfied that transfer to a penitentiary is in either the best interests of the YP or the public interest

Turning 18 under a custodial sentence

subs.92(1),(2)

After turning 18, a YP may be sent to a provincial correctional facility for *adults* by the *youth justice court*, on the application of the *provincial director*, provided that

- the YP, *provincial director*, and representatives of the provincial system have an opportunity to be heard

AND

- the court is satisfied that the transfer is in either the best interests of the YP or the public interest [subs.92\(1\)](#)

Once the YP has served some time in the provincial facility, the *provincial director* may apply for authorization to move the YP to a federal penitentiary. [subs.92\(2\)](#)

The conditions are similar to those described on p.67 in relation to moving to a federal facility under s.89.

Where a sentence is served

subs.92(4),(5)

If a YP is serving an *adult sentence* with placement in an adult facility under para.76(b) or (c) and a custodial *youth sentence* at the same time, they SHALL serve both sentences in an adult facility. [subs.92\(4\)](#)

The placement of a YP is at the discretion of the *provincial director* when the YP is serving a custodial sentence in a youth facility under para.76(1)(a). [subs.92\(5\)](#)

Turning 20 under a custodial sentence

s.93

When a YP turns 20 while serving a custodial *youth sentence* in a youth facility, they SHALL be transferred to a provincial adult correctional facility, UNLESS the *provincial director* orders otherwise.

subs.93(1)

If the YP is transferred, subs.93(2) enables the *provincial director* to apply for their transfer to a federal penitentiary, on the same basis and using the same procedure as subs.92(2), if there are 2 years or more remaining in the sentence. (see “Turning 18 under a custodial sentence”, p. 68)

Provisions governing YPs serving a youth sentence in an adult facility

A YP who is serving a *youth sentence* in an adult facility by order of the court, is subject to the legislation governing other prisoners in those facilities, EXCEPT as the legislation conflicts with the provisions of Part 6 of the YCJA. These provisions, including access to youth *records* and *disclosure* of information in youth *records*, continue to apply to the YP. subs.89(3),92(3),93(3)

The time periods for applying for a review have not changed from the YOA. There is still an annual review, and a review is available at any time with leave of the court. The notice is still 5 clear days.

The changes to custodial review are that, if the court grants a youth an early release from custody the court may no longer release a YP on probation, but SHALL place them on conditional supervision. Also, the court may change an IRCS sentence into another custodial sentence.

Pursuant to s.95, the following orders are deemed to be youth sentences and are reviewed under s.94 & s.95

- conditions of supervision under subs.97(2),105(1)
- continuation of custody under subs.98(3),104(1)
- to remain in custody for breach of supervision under para.103(2)(b)
- continuation of suspension of conditional supervision under para.109(2)(b)

Like the YOA, there is no review of a sentence under either s.94 or s.96 while the sentence is under appeal. [subs.94\(7\),96\(4\)](#)

Review of level of custody

(see “Level of custody,” p. 65)

Release upon recommendation of provincial director

s.96

The YCJA continues to allow the court to release a YP from custody on conditional supervision

conditions: on the recommendation of the *provincial director*

notice: to the Crown, YP, and *parents* subs.96(2)

Where else this procedure can and cannot be used

For jurisdictions that continue to allow the court to decide level of custody, this procedure is also available to transfer a YP from secure to open custody under s.29 of the YOA.

Unlike the YOA, this procedure CANNOT be used to release a YP on probation.

Conditions for supervision in the community in a custody and supervision order under para.42(2)(n) s.97

The last 1/3 of a *youth sentence* of custody and supervision under para.42(2)(n) is served in the community, under supervision, with several conditions automatically applied.

The YP SHALL subs.97(1)

- a keep the peace and be of good behavior
- b report to the *provincial director* and be under the *provincial director's* supervision
- c inform the *provincial director* immediately if they are arrested or questioned by police
- d report to the police or any named individual, as instructed by the *provincial director*
- e advise the *provincial director* of their address of residence, and immediately report any changes in the following information
 - i address
 - ii occupation, employment, training, education, or volunteer work
 - iii family or financial situation

AND

- iv circumstances that might affect their ability to comply with the conditions of the sentence

AND

- f NOT own, possess, or have control over any weapon, ammunition, explosive, etc., except as authorized by the *provincial director* for the purposes of participating in a program

The *provincial director* may set additional conditions under subs.97(2) in order to

- support and address the needs of the YP
- promote the YP's reintegration into the community

AND

- adequately protect the public

In doing so, the *provincial director* SHALL take into account

- the needs of the YP
- the programs which would most effectively reintegrate them into the community
- the nature of the *offence*

AND

- the YP's ability to comply with the conditions

Conditions for conditional supervision for sentences under para.42(2)(o),(q),(r), deferred custody and supervision orders under para.42(2)(p), and after a review under para.94(19)(b) s.105

Section 105 sets out the process for setting conditions for releasing a YP on conditional supervision at the end of the *custodial portion* of a *youth sentence*

- under para.42(2)(o) for attempted murder, manslaughter, and aggravated sexual assault
- under para.42(2)(q) for murder
- under para.42(2)(r) for intensive rehabilitative custody and supervision

AND

the process for setting conditions for deferred custody and supervision under para.42(2)(p)

AND

the process for setting conditions for release after a review of a custodial *youth sentence*
[para.94\(19\)\(b\)](#)

Unlike sentencing under para.42(2)(n), the court sets the conditions for conditional supervision and deferred custody and supervision.

Conditions for deferred custody and supervision are set at the time of sentencing.

The process for setting conditional supervision conditions is as follows

Step 1

The YP is brought before the *youth justice court* 1 month before the *custodial portion* of the sentence ends.

Step 2

The court holds a hearing.

Step 3

The court sets the conditions for the YP's conditional supervision.

Step 4

Mandatory conditions are set out in subs.105(2).

Discretionary conditions that the court may impose are set out in subs.105(3).

The court sets temporary conditions if the YP cannot be brought before the court. A hearing is then held as soon as possible. A report is required to help the court set the conditions. [subs.105\(4\)](#)

Mandatory conditions

subs.105(2)

These include all conditions set out under “Conditions for community supervision in a custody and supervision order,” p. 72, with these additions

- the YP shall appear before the *youth justice court* when required by the court to do so
para.105(2)(b)
- the YP shall report to the *provincial director* immediately upon release and then be under supervision para.105(2)(c)
- the YP shall comply with any reasonable instructions that the *provincial director* considers necessary, concerning a condition of conditional supervision, to prevent a breach of that condition or to protect society
para.105(2)(h)

Discretionary conditions

subs.105(3)

The *youth justice court* may also require a YP to

- a upon release go directly to their place of residence or to any other specific place
- b make reasonable efforts to find and keep suitable employment
- c attend any appropriate place of learning, training, or recreation the court finds to be available and suitable
- d live with a *parent* or other appropriate *adult* who is willing to provide for the care and maintenance of the YP
- e live in any place that the *provincial director* may specify
- f remain in the territorial jurisdiction of 1 or more courts named in the order
- g comply with conditions set out in the order that support and address the YP's needs and promote their reintegration into the community

AND

- h comply with any other condition set out in the order that the court considers appropriate, including conditions for securing the YP's good conduct and preventing their re-offending

The court of appeal may review the *youth justice court's* order which sets the conditions for a YP's release on conditional supervision, if an application is made by the YP or the *provincial director* under s.101. subs.105(8)

Extending the custodial portion of custody and supervision orders under para.42(2)(n)

s.98

Who applies

The Crown or the *provincial director* may apply to the *youth justice court* for an order that a YP serve a longer period or their entire sentence in custody. [subs.98\(1\)](#)

Time considerations

If this application cannot be heard before the YP is to be released from custody, the court may order the YP to remain in custody until the application is complete. [subs.98\(2\)](#)

Who shall be heard

Both parties and a *parent* of the YP SHALL have an opportunity to be heard.

Test to extend custodial portion of sentence

[subs.98\(3\)](#)

The court SHALL be satisfied that there are reasonable grounds to believe that

- the YP is likely to commit a *SVO* before the expiry of the sentence

AND

- the conditions that could be imposed on the YP would not be adequate to prevent them from committing the offence

Factors the court shall consider under subs.98(4)

The court shall consider any factor relevant to the case of the YP including

- a** evidence of a pattern of persistent, violent behavior and, in particular
- the number of *offences* committed that caused physical or psychological harm to another person
 - difficulties in controlling violent impulses, to the point of endangering the safety of others
 - the use of weapons in the commission of any *offence*
 - explicit threats of violence
 - behavior of a brutal nature associated with the commission of an *offence*
- AND
- a substantial degree of indifference to the reasonably foreseeable consequences of the YP's behaviour for others
- b** psychiatric or psychological evidence that, as a result of a physical or mental illness or disorder, the YP is likely to commit a *SVO* before the sentence ends
- c** reliable information that satisfies the *youth justice court* that the YP is planning to commit a *SVO* before the end of the sentence

- d the availability of adequate supervision programs in the community for the protection of the public until the end of the sentence
- e any increased likelihood that the YP will re-offend if they serve the entire sentence in custody without the benefit of supervision in the community

AND

- f evidence of a pattern of committing violent *offences* while serving a portion of a *youth sentence* in the community under supervision

Report

s.99

The *provincial director* SHALL prepare a *report*, under s.98, for the hearing. The report SHALL include any information the *provincial director* is aware of that applies to factors in subs.98(4) that may assist the court.

Court order

s.100

The court SHALL state the reasons for an order. It SHALL provide a copy of the order and, if requested, a transcript or copy of the reasons, to the YP, counsel, *parents*, Crown, and *provincial director*.

Time considerations

If this application to extend custody cannot be heard before the YP is to be released from custody, the court may order the YP to remain in custody until the application is complete.

subs.98(2)

Court of appeal may review order under s.98

s.101

An order by the *youth justice court* for continued custody under s.98, or the refusal to make such an order, shall be reviewed by the court of appeal on application. The court of appeal may confirm or reverse the decision of the *youth justice court*.

Extending the period of custody for para.42(2)(o),(q),(r) sentences

s.104

Who applies

The Crown (not the *provincial director*) may apply to the *youth justice court* for an order that the YP serve a longer period or their entire sentence in custody for a *youth sentence* s.104

- under para.42(2)(o) for attempted murder, manslaughter and aggravated sexual assault
- under para.42(2)(q) for murder
- under para.42(2)(r) for intensive rehabilitative custody and supervision

The hearing is similar to an application under s.98. (see “Extending the custodial portion of the custody and supervision orders under para.42(2)(n),” p. 78)

Test

subs.104(1)

Is the YP likely to commit an *offence* causing death or serious harm to another person before the end of the sentence?

Factors to consider

With 2 exceptions, the factors the court SHALL consider are the same as those listed under “Factors the court shall consider under subs.98(4),” p. 79. Factors **e** and **f** need NOT be considered in this type of application.

Setting conditions for supervision on denial of application

subs.104(6)

If the court denies the Crown’s application it may, with the consent of the YP, the Crown, and the *provincial director*, set conditions for conditional supervision.

Court of appeal may review order under s.104

s.101

An order by the *youth justice court* for continued custody under s.104, or the refusal to make such an order, is reviewed by the court of appeal on application. The court of appeal may confirm or reverse the decision of the *youth justice court*.

Breach of supervision conditions

para.42(2)(n),(o),(q),(r),(p), 94(19)(b)

Under the YCJA, there are 2 different ways to deal with breaches of supervision orders. Breaches of custody and supervision orders under para.42(2)(n) are dealt with in one way, while breaches of conditional supervision under para.42(2)(o),(q),(r),(p),94(19)(b) are dealt with in another.

Breach of custody and community supervision orders under para.42(2)(n)

When the *provincial director* has reasonable grounds to believe that a YP has breached or is about to breach a condition of their supervision made under s.97, they may, in writing [subs.102\(1\)](#)

- a** permit the YP to continue to serve the sentence in the community under the same or different conditions

OR

- b** order, if satisfied that the breach is serious and increases the risk to public safety, that the YP be remanded to custody until a review is conducted

A warrant can be issued by the provincial director to apprehend the YP. Until apprehended, the YP is deemed to be NOT serving their sentence. [s.107](#)

For information regarding how to obtain a provincial director warrant, contact your local youth probation office or a youth custody centre.

The *provincial director* shall review the case within 48 hours of the YP being either apprehended or remanded, and either cancel the remand or refer the case to the *youth justice court* for review. [s.108](#)

Options for the court

After giving the YP an opportunity to be heard
[subs.103\(1\)](#)

a if the court is NOT satisfied, on reasonable grounds, that the YP breached or was about to breach a condition, the court SHALL order continuation of supervision on the same or different conditions

OR

b if the court is satisfied, on reasonable grounds, that the YP has breached or was about to breach a condition, the court may order that [subs.103\(2\)](#)

- the YP SHALL continue to serve the sentence in the community. The court may vary the conditions or impose new conditions

OR

- the YP SHALL remain in custody for any period NOT exceeding the remainder of the sentence, if the court is satisfied that the breach was serious

Factors the court shall consider

For breach of supervision conditions the court SHALL consider [subs.109\(4\)](#)

- the length of time the YP was subject to the order
- whether the YP had previously contravened the order

AND

- the nature of the contravention

For the hearing, a report SHALL be prepared, reasons given, and a s.101 review of the order is available. [subs.109\(5\)-\(8\)](#)

Breach of conditional supervision orders under para.42(2)(o),(q),(r),(p),94(19)(b)

ss.106-109

Suspension of conditional supervision

When the *provincial director* has reasonable grounds to believe that a YP has breached or is about to breach a condition of a conditional supervision order made under s.105, they may, in writing

- suspend the conditional supervision
- AND
- order the YP to be remanded into custody until a review is conducted [s.106](#)

The provisions for obtaining a warrant, a review by the *provincial director*, and referral to the court for review, are the same as those set out under “Breach of custody and community supervision orders under para.42(2)(n),” p. 83. [ss.107,108](#)

Options for the court

[s.109](#)

The court shall give the YP an opportunity to be heard [subs.109\(1\)](#)

- a if the court is NOT satisfied, on reasonable grounds, that the YP breached or was about to breach a condition, the court SHALL cancel the suspension

- b** if the court is satisfied, on reasonable grounds, that the YP breached or was about to breach a condition, the court may review the decision and take the following action under subs.109(2)
- i** cancel the suspension and vary the conditions
- OR
- impose new conditions
- OR
- ii** order
- for OTHER THAN deferred custody and supervision, that the YP remain in custody AND that the suspension continue for any period not exceeding the remainder of the sentence

OR

 - for deferred custody and supervision, that the YP serve the remainder of the sentence as if it were a custody and supervision order, serving 2/3 in custody and 1/3 under supervision. The provisions in the Act that apply to para.42(2)(n) orders would apply [subs.109\(3\)](#)

The factors for consideration, the report, and the review set out under “Breach of supervision conditions,” pp. 83-85, all apply to conditional supervision. [subs.109\(4\)-\(8\)](#)

A YP who wilfully fails or refuses to comply with ANY one of the following sentences, surcharges, or dispositions to which they are subject, is guilty of an *offence* on summary conviction

- a sentence under para.42(2)(c)-(m)
(conditional discharge to attendance order)
or (s) (other conditions)
 - a victim fine surcharge
- OR
- a disposition under the YOA
para.20(1)(a.1)-(g), (j), or (l)

NOTES ON SEVERAL TOPICS

Appeals

s.37

Appeal provisions are similar to those in the YOA

- summary and indictable appeals are governed by the appropriate CC provisions [subs.37\(1\),\(5\)](#)
- summary and indictable *offences* can be appealed together in certain instances. The appeal is governed by the indictable appeal provisions [subs.37\(6\)](#)
- appeals to the Supreme Court of Canada still require leave to appeal from that court in all cases [subs.37\(10\)](#)

Contempt of court

Under the YCJA, contempt of court findings or sentences are appealed using the indictable provisions in the CC. [subs.37\(2\)](#)

Section 10 of the CC applies when appealing a finding against a *parent* who was in contempt for failing to attend court. [subs.37\(3\)](#)

Appeals heard as part of the sentence subs.37(4)

Under the YOA, an application for a wide review of a transfer hearing could be made to a court of appeal. Under the YCJA, the decision to give an *adult sentence* under s.72 shall be appealed as part of the sentence. subs.37(4),72(5)

Other orders or determinations that shall be appealed as part of the sentence include

- a judicial determination of *SVO* under subs.42(9)
- an order for a *youth or adult sentence* under subs.72(1)
- a ban on *publication* of a YP's identity for a *youth sentence* for a *presumptive offence* subs.75(3)
- a placement where the YP is subject to an *adult sentence* under subs.76(1)

If more than 1 of these is appealed, they shall all be part of the same proceeding. subs.37(4)

Appeal court review s.101

These court decisions may be reviewed by the appeal court

- when a YP is not released on the supervision portion of the sentence under ss.98,104
- when a YP is ordered into custody for a breach of conditions of supervision under ss.103,109
- to review the conditions in a conditional supervision order under s.105

The review is wider than an appeal.

conference

under s.19 of the YCJA a conference is defined as a group of persons who are convened to give advice in accordance with s.19 of the YCJA

- there are other kinds of practices in communities that may be called 'conferences', such as Community Justice Forums, Family Group Conferences and Community Group Conferences
- when discussing 'conferences' or 'conferencing', note that not all partners in the justice system use the same terminology
- for youth justice purposes, RCMP 'conferences' are defined in s.19 of the YCJA
- the RCMP will continue to use restorative justice practices that do not constitute 'conferences' under this legislation

If the province establishes rules for *conferences*, all *conferences* EXCEPT those called by judges or justices of the peace shall be convened and conducted according to those rules.

subs.19(3),(4)

Advice may be sought on appropriate *extrajudicial measures*, conditions for interim release, sentences, review of sentences, and reintegration, among other things. subs.19(2)

Who may call a conference

A *conference* may be called by, a police officer, a *youth justice court judge*, the *provincial director*, a justice of the peace, a prosecutor, or a *youth worker*. s.19(1)

How conferences work

There is more than one type of *conference*.
A case-planning *conference* can be held to bring together professionals to discuss services and programs available for the YP in the community.
A restorative justice type of *conference* can be held to hold the YP accountable and to help repair the harm done to the victim and the community.

Mental health provisions

Medical and psychological reports s.34

There are few changes from the relevant sections in the YOA.

At any stage of the proceedings, the court may order an assessment of a YP by a qualified person along with a written report subs.34(1)

- a with the consent of the YP and the Crown
- OR
- b on its own motion or on the application of the YP or the Crown, WHEN the court believes a report is necessary and any one of these conditions is met

- i** the court has reasonable grounds to believe that the YP may be suffering from
 - a physical or mental illness or disorder
 - a psychological disorder
 - an emotional disturbance
 - a learning disabilityOR
 - a mental disability
- ii** the YP's history indicates a pattern of repeated findings of guilt
OR
- iii** the YP is alleged to have committed a *SVO*

Under either para.34(1)(a) or (b) the court may order an assessment and a *report* for one of these purposes [subs.34\(2\)](#)

- a** considering an application for release from or detention in custody under s.33
- b** deciding whether to impose an *adult sentence* or a *youth sentence* under s.71
- c** making or reviewing a *youth sentence*
- d** considering an application for continuation of custody under subs.104(1)
- e** setting conditions for conditional supervision under subs.105(1)

- f** making an order after a review of a breach or alleged breach of conditional supervision under subs.109(2)
- g** authorizing *disclosure* of information about a YP under subs.127(1)

These provisions remain unchanged from the YOA

- the ability to remand a YP into custody to conduct the assessment required to complete the report [subs.34\(3\),\(4\)](#)
- admissibility of statements made during the assessment [s.147](#)

Who receives a copy of the report

The YP, any *parent* of the YP who is in attendance at the proceedings, the YP's counsel, and the Crown SHALL receive a copy of the *report*.
[para.34\(7\)\(a\)](#)

The court may still give a copy of the *report*

- to a parent who is not in court
[subpara.34\(7\)\(b\)\(i\)](#)
- to the *provincial director* or the director of the *adult* facility where a YP is serving a *youth sentence* if, in the court's opinion, withholding it would jeopardize the safety of any person, despite restrictions on access to records
[subpara.34\(7\)\(b\)\(ii\)](#)

Who may have access to the report subs.119(6)

Only these people may have access to s.34 medical and psychological *reports*

- the YP
- the YP's counsel
- the Crown
- the YP's *parents*
- any *adult* assisting the YP
- peace officers, for specific purposes
- a judge, court, or review board
- an accused or their counsel who swears an affidavit that the record is necessary to make full answer and defence

AND

- any person or member of a class of persons as directed by a judge who is satisfied that access is desirable in the interests of the proper administration of justice

Mental disorder provisions s.141

The mental disorder provisions of the CC continue to apply in virtually the same way as they did under the YOA.

Notice to parents

ss.26,27

The provisions of the YCJA that deal with notice to *parents* are similar to those in the YOA.

Notice to *parents* does NOT need to be given if the YP has reached the age of 20 years at the time of their first appearance before the *youth justice court* for the *offence*. subs.26(12)

Peace bonds

Jurisdiction

Under the YOA, there was confusion as to whether the court had jurisdiction to place a YP on a peace bond.

Youth Justice Court

Under the YCJA, a *youth justice court* is given explicit jurisdiction to place a YP on a peace bond under these CC sections subs.14(2)

- fear of injury or damage CCs.810
- fear of criminal organization *offence* CCs.810.01
- fear of serious personal injury *offence* CCs.810.2

If a YP does not enter a peace bond

If the YP fails or refuses to enter into the peace bond, the court may impose any of the sanctions set out in s.42

EXCEPT that a custody and supervision order shall NOT exceed 30 days subs.14(2)

Justice of the Peace

A justice of the peace may place a YP on a peace bond for fear of damage or injury under CCs.810. If the YP fails or refuses to enter into a recognizance, the justice of the peace SHALL refer the matter to a *youth justice court*. [subs.20\(2\)](#)

Pre-charge screening and private prosecutions

The Attorney General may establish a pre-charge screening program that sets out the circumstances in which their consent SHALL be obtained before a YP is charged with an *offence*. [subs.23\(1\)](#)

No prosecutions may be conducted by a prosecutor other than the Attorney General without the consent of the Attorney General. [s.24](#)

New terminology

YCJA “sentences” (YOA “dispositions”)

YCJA “*pre-sentence reports*” (YOA “pre-disposition reports”)

When to use a pre-sentence report

- A *pre-sentence report* may be ordered whenever a court considers it advisable. [subs.40\(1\)](#)
- As in the YOA, the court shall order a *pre-sentence report* before ordering a custodial sentence [subs.39\(6\)](#)
- In making a decision on whether an adult or youth sentence is appropriate [subs.72\(3\)](#)

UNLESS

the court is satisfied that a report is NOT necessary

AND

the Crown and defence agree to dispense with it [subs.39\(7\)](#)

Changes from the pre-disposition report to the pre-sentence report

The list of requirements for the *pre-sentence report* is found under [subs.40\(2\)](#) of the YCJA.

The requirements shall be included to the extent that they are relevant to the purpose and principles of sentencing and the restrictions on custody in [ss.38,39](#).

The previous list of requirements for the *pre-sentence report* has been expanded in the YCJA to include

- the recommendations of any *conference* convened by the court to obtain advice on an appropriate sentence [para.40\(2\)\(c\)](#)
- information that will help the court to determine, under subs.39(2), if there is an alternative to custody available [para.40\(2\)\(e\)](#)

In addition, the Act clarifies that information on alternative measures and *extrajudicial sanctions* is included in the *report* ONLY during the period of access under subs.119(2). [subpara.40\(2\)\(d\)\(iv\)](#)

Using pre-sentence report procedures for other purposes

The procedure for *pre-sentence reports* is used for various other *reports* in the YCJA such as

- reviews of sentences under ss.59,94
- applications to continue custody under ss.98,104
- the setting of conditions for conditional supervision under s.105
- hearings on breach of conditions of supervision, under s.109

Publication

publication

making information known or accessible to the general public through any means, including print, radio, or television broadcast, telecommunication, or electronic means

Rules governing a YP who has been dealt with under the Act

General rule: The YCJA does NOT allow *publication* of the name or any information that would lead a YP to be identified as having been dealt with under the Act. [subs.110\(1\)](#)

However

- *publication* is allowed when an *adult sentence* is imposed [para.110\(2\)\(a\)](#)
- if the YP receives a *youth sentence* in relation to a *presumptive offence*, at the sentencing hearing the court SHALL ask whether the Crown or the YP will apply for a *publication* ban under subs.75(3).
If it receives an application, the court may order a ban on *publication* IF the court considers it appropriate in the circumstances, taking into account the importance of rehabilitating the YP and the public interest [subs.75\(1\),\(3\)](#) [para.110\(2\)\(b\)](#)

- if the Crown gives notice that they will NOT seek an *adult sentence* in relation to a *presumptive offence*, *publication* is NOT permitted **s.65**
- *publication* may be permitted in the course of the administration of justice IF the purpose of *publication* is something other than to have the information made known in the community **para.110(2)(c)**
- a YP who has been dealt with under the YCJA may publish or allow publication after they turn 18 as long as they are NOT in custody under the YOA or the YCJA **subs.110(3)**
- if a YP who has been dealt with under the Act is dangerous and at large, an order can be made allowing information to be published that identifies them BUT the order is in effect for 5 days ONLY **subs.110(4),(5)**
- if a YP who has been dealt with under the Act makes an application, the court may make an order to permit them to publish information that would identify them IF the court is satisfied that *publication* would NOT be contrary to their best interests or the public interest **subs.110(6)**

Rules governing young witnesses and victims

s.111

This provision protects the privacy of someone under the age of 18 who has been a witness or victim in connection with an *offence* committed or alleged to have been committed by a YP.

General Rule: The YCJA does NOT permit *publication* of the name of a young witness or victim, or any information that would lead someone to be identified as having been a young witness or victim, in connection with an *offence* committed or alleged to have been committed by a YP. subs.111(1)

However

- *publication* is permitted by a young witness or victim after they turn 18, or before that age with the consent of their *parents*, or by the *parents* of a young victim or witness who is deceased subs.111(2)
- if a young victim or witness makes an application, the court may make an order to permit them to publish information that would identify them IF the court is satisfied that *publication* would NOT be contrary to their best interests or the public interest subs.111(3)

Application to publish identity of victim, witness, or YP

Once an application to publish the identity of a young victim, young witness, or YP dealt with under the Act has been granted, the general *publication* prohibition does NOT apply. **s.112**

The general publication prohibition does apply, however, after the end of the five-day period for a YP who is dangerous and at large under subs.110(4)&(5).

Referral to child welfare **s.35**

A court may refer a YP to a child welfare agency at any stage of the proceedings for assessment to determine whether the YP is in need of child welfare services. This referral can be made in addition to any order the court may make.

Criteria for admissibility of statements

The section applies to

what: an oral or written statement

made by: a YP who is less than 18 years old

to: a peace officer or any other person
in authority

when: on the arrest and detention of the YP,
or in circumstances where the peace
officer or other person has reasonable
grounds for believing that the YP has
committed an *offence* subs.146(2)

Subject to this section, the law in relation to
admissibility of statements for *adults* applies to
statements for YPs. subs.146(1)

Changes from the YOA

Explanation of Rights - The explanation and provision of rights to a YP before they make a statement remains the same as under the YOA. The one change is that the other appropriate person a YP may consult before making a statement cannot be a co-accused or someone under investigation for the same *offence*.

subpara.146(2)(c)(ii)

Waiver of rights - The YP's waiver of their rights before giving a statement can now be recorded on audio tape as well as recorded on video tape and given in writing. subs.146(4)

If a waiver of rights is NOT recorded properly due to a technical irregularity, a judge may still find the waiver valid IF they find that the YP was informed of their rights and voluntarily waived them.

subs.146(5)

Technical irregularity in complying with rights - Where there has been a technical irregularity in complying with the rights or explanations under para.146(2)(b)-(d), the court may admit the YP's statement into evidence ONLY IF satisfied that the admission of the statement would NOT bring into disrepute the principle that YPs are entitled to enhanced procedural protection to ensure that they are treated fairly and their rights are protected. subs.146(6)

The meaning of technical irregularity and other terms will NOT be clear until future court decisions interpret this subsection.

Right to counsel

s.25

The provisions under s.25 of the YCJA have changed very little from the equivalent provisions in the YOA.

Two new provisions

- Nothing in the YCJA prevents the province from establishing a cost-recovery program to recover the cost of legal counsel from a YP or their *parents* after the appeal period has expired or all appeals are completed.
[subs.25\(10\)](#)
- The provisions which allow a court to direct that counsel be appointed for a YP, and some other right to counsel provisions, do NOT apply if the YP is 20 years of age or older at the time of their first appearance for the *offence*. [subs.25\(11\)](#)

TRANSITIONAL PROVISIONS

Summary

The rules set out in this section apply to the transition from the Young Offenders Act (YOA) to the Youth Criminal Justice Act (YCJA). Some rules also apply to the Juvenile Delinquents Act (JDA) which was in place before the YOA.

Key points

- a proceeding is started by laying an information or indictment [s.162](#)
- YCJA sentencing provisions, with some modifications, are used in proceedings started but not completed before April 1, 2003 the date the new Act is in force [s.161](#)

Starting a proceeding

Proceedings started after YCJA comes into force April 1, 2003

No proceedings may be started under the YOA or the JDA once the YCJA is in force. They shall be started under the YCJA. [s.158](#)

Proceedings started before YCJA comes into force

Proceedings which started under the YOA before the YCJA came into force will be dealt with as if the YCJA HAD NOT come into force. [subs.159\(1\)](#)

Proceedings which started under the JDA before the YCJA came into force will be dealt with under the YCJA AS IF the *offence* had occurred AFTER the new Act came into force. [subs.159\(2\)](#)

EXCEPTIONS

For proceedings that started under either the YOA or the JDA

sentencing provisions of the YCJA apply
[s.161](#)

publication of a YP's identity under para.110(2)(b) is NOT allowed if they receive a *youth sentence* for a *presumptive offence*
[para.161\(1\)\(a\)](#)

IRCS orders may be issued ONLY if the YP consents [para.161\(1\)\(b\)](#)

Proceedings started after YCJA comes into force, offence occurred before YCJA comes into force

When a YP is alleged to have committed an *offence* before the YCJA comes into force and no proceedings have been started, the *offence* SHALL be dealt with under the YCJA.

EXCEPTIONS

presumption of an *adult sentence* applies to 1st and 2nd degree murder, attempted murder, manslaughter, and aggravated sexual assault, but ONLY when the YP is 16 years or older at the time of the *offence* [para.160\(a\)](#)

presumption of an *adult sentence* does NOT apply to 3rd SVO [para.160\(a\)](#)

publication of a YP's identity is NOT allowed if they receive a *youth sentence* for a *presumptive offence* [para.160\(b\)](#)

IRCS orders may be issued ONLY if the YP consents [para.160\(c\)](#)

Sentencing

Proceedings started before YCJA comes into force

YCJA sentencing provisions are used in proceedings which were started before the YCJA comes into force.

EXCEPTIONS

IRCS orders may be issued ONLY if the YP consents [para.161\(1\)\(b\)](#)

publication of a YP's identity under para.110(2)(b) is NOT allowed if they receive a *youth sentence* for a *presumptive offence* [para.161\(1\)\(a\)](#)

**Proceedings started after YCJA comes into force,
offence occurred before YCJA comes into force**
s.160

YCJA sentencing provisions are also used when an *offence* occurs before the Act comes into force and proceedings are started after the Act comes into force.

In these situations, the presumption of an *adult sentence* applies to 1st and 2nd degree murder, attempted murder, manslaughter, and aggravated sexual assault, but ONLY when the YP is 16 years or older at the time of the *offence*. Furthermore, the presumption of an *adult sentence* does NOT apply to a 3rd SVO. para.160(a)

Publication of a YP's identity is NOT allowed if they receive a *youth sentence* for a *presumptive offence*. para.160(b)

Once again, IRCS orders may be issued ONLY if the YP consents. para.160(c)

YP sentenced under YCJA while serving a custodial sentence under the YOA

IF

a YP is serving a custodial sentence under the YOA

AND

the YP is to be sentenced under the YCJA for another *offence*

THEN

on the application of the Crown or the YP the court shall treat the remaining part of the first sentence as if it were a custody and supervision sentence imposed under the YCJA, UNLESS to do so would bring the administration of justice into disrepute. This allows the sentence to include a period of supervision in the community
[subs.161\(2\)](#)

Reviewing a sentence

The date a sentence came into effect under the YOA is the date used to determine when a sentence may be reviewed. [subs.161\(3\)](#)

YOUTH JUSTICE ACT (BRITISH COLUMBIA)

Introduction

The *Youth Justice Act* (British Columbia) was passed by the legislature on November 5, 2003, and is scheduled to come into force on April 1, 2004.

The *Youth Justice Act* (YJA) consolidates the provisions of the *Young Offenders (British Columbia) Act* and the youth provisions of the *Correction Act* into one comprehensive provincial statute written specifically for youth. The new YJA is more consistent with the federal YCJA and is up to date with current practice.

Part 1 of the YJA deals primarily with offence proceedings and sentences that are available for youth that commit provincial statute offences.

Parts 2, 3 and 4 of the Act deal primarily with youth justice services that are provided through the Ministry of Children and Family Development (including youth probation officers, community-based programs, and youth custody centres) for youth who are subject to proceedings under the YJA and the YCJA.

Part 5 of the Act addresses transitional issues and provides regulatory making powers.

Summary of Changes – Highlights

Notice to Parents

A provision has been added to require that, if a young person is detained in custody pending a court appearance on a provincial statute offence, the officer in charge at the time of the detention must notify the parent of the detention as soon as possible. This is in addition to the pre-existing requirement to notify parents if a youth is charged with a provincial statute offence and is to attend court. [s.5](#)

Sentences

Sentencing provisions and terminology have been revised where possible for consistency with the YCJA, although not all sentences available under the YCJA are available for provincial statute offences. [s.8](#)

Available sentences include:

- a** an absolute or conditional discharge;
- b** a fine not exceeding \$1,000;
- c** community service (maximum 240 hours);
- d** probation (maximum 6 months);

- e custody not exceeding 30 days for specified offences (breach of a YJA order, contraband/trespassing at a youth custody or correctional centre, assisting an escape from a mental health facility, trespassing on school grounds); and,
- f custody not exceeding 90 days for breaching a restraining order under the Child, Family and Community Services Act and for certain Motor Vehicle Act offences (driving while prohibited or suspended).

Note that, unlike the YCJA, custody sentences under the YJA do not automatically include a period of community supervision; however, the court may order a period of probation to follow a custody sentence if it considers it appropriate to do so.

Youth Justice Programs

The list of youth justice programs that may be established by the Minister has been expanded to reflect the range and types of community-based services that may be provided (e.g. extrajudicial sanctions, victim-offender mediation, intensive support and supervision, bail supervision, etc.).

s.28

Receiving and Moving Young Persons in Custody

A young person who is serving a youth custody sentence under the YJA may be placed in an adult facility after they attain the age of 18. **s.31**

Contraband and Trespassing

Provisions regarding the definition of contraband and what constitutes an offence have been expanded. [ss.1, 33](#)

Reintegration Leave, Day Absences and Employment

Provisions for reintegration leaves for youth serving YJA custody sentences have been revised for consistency with the YCJA. Given the shorter custody sentences available under the YJA, however, the maximum length of such leaves is 15 days, rather than the 30-day maximum under the YCJA. [s.35](#)

Inspection and Investigation

The Minister of Children and Family Development will have responsibility for inspections and investigations regarding youth justice programs and services. [ss.28, 37, 38](#)

Enforcement

Failure to comply with a community-based sentence is an offence [s.17](#)

A youth who is unlawfully at large from a youth custody centre may be arrested without a warrant and returned to custody [s.40](#)

BRITISH COLUMBIA RESOURCE LIST

ALCOHOL AND DRUG INFORMATION AND REFERRAL SERVICE

24 hours 604-660-9832
Toll free 1-800-663-1441

BC SAFE SCHOOL CENTRE

1-888-224-7233 (SAFE)

For more information on resource and contacts,
visit the Safe Schools website
www.safeschools.gov.bc.ca

BC YOUTH POLICE NETWORK (BCYPN)

<http://www.bcy pn.com>

CHILD FIND BC

Assists police with Missing Children
1-888-689-3463

CHILDREN OF THE STREET

Advise and support for families and police
working with sexually exploited youth
604-606-3113
Toll free 1-877-551-6611

COMMUNITY PROGRAMS DIVISION- SOLICITOR GENERAL OF BRITISH COLUMBIA

Grants, assistance and
Community Justice Strategy
1-866-668-2137

CRIMESTOPPERS

1-800-222-TIPS

DEPARTMENT OF JUSTICE CANADA

Current, up-to-date information on the YCJA and Youth Justice Renewal

www.canada.justice.gc.ca/youth

FACTS OF LIFE LINE

Information and Referral on reproductive health and sexual concerns

1-800-739-7367

HELP LINE FOR CHILDREN

Any child can report physical or sexual abuse

Toll free 310-1234

TELEPHONE DEVICE FOR DEAF

1-866-660-0505

http://www.mcf.gov.bc.ca/gettin_help/help.htm

after hours:

http://www.mcf.gov.bc.ca/getting_help/support.htm

KIDS HELP PHONE

Crisis intervention (24/7) Counseling for youth

1-800-668-6868

MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

After hours line:

Vancouver, North Shore Richmond . 604-660-4927

Lowermainland, Burnaby, Delta,

Maple Ridge, Langley 604-660-8180

Outside /Toll free 1-800-663-9122

NATIONAL CRIME PREVENTION CENTRE

Community Support and funding for
initiatives to mobilize communities
1-877-302-6272
www.prevention.gc.ca

NATIONAL MISSING CHILDREN'S SERVICES

Police clearing house for Missing Children
1-613-993-1525

RCMP NATIONAL YOUTH STRATEGY

<http://www.rcmp.ca/youth>

YOUTH AGAINST VIOLENCE LINE

Safe and confidential way to prevent
youth violence and crime
1-800-680-4264
www.takingastand.com

YOUTH CRISIS LINE

Provides Crisis Intervention for youth
1-866-661-3311

YOUTH DISTRESS LINE

Provides crisis intervention
1-866-661-3311

YOUTH QUEST

Lesbian and Gay Youth

Society of BC 604-523-9115

Toll free 1-866-NOT-ALONE

..... (668-2566)

fax 604-523-9116

email: info@youthquest.bc.ca

www.youthquest.bc.ca

WWW.DEAL.ORG

A site on youth related issues, learn about the cause and effects of drugs, violence, mental health, Internet Safety and discrimination

www.deal.org

DEFINITIONS FROM THE YCJA

adult means a person who is neither a YP nor a child

adult sentence, in the case of a YP who is found guilty of an offence, means any sentence that could be imposed on an adult who has been convicted of the same offence

child means a person who is or, in the absence of evidence to the contrary, appears to be less than 12 years old

conference means a group of persons who are convened to give advice in accordance with s.19 (for more information, see "Conferences," p. 91)

confirmed service delivery means certified or registered mail or any other method of service that provides proof of delivery

custodial portion, with respect to a youth sentence imposed on a YP under para.42(2)(n),(o),(q),(r), means the period of time, or the portion of the YP's youth sentence, that shall be served in custody before he or she begins to serve the remainder under supervision in the community subject to conditions under para.42(2)(n) or under conditional supervision under para.42(2)(o),(q),(r)

disclosure means the communication of information other than by way of publication

extrajudicial measures means measures other than judicial proceedings under this Act used to deal with a YP alleged to have committed an offence and includes extrajudicial sanctions

extrajudicial sanction means a sanction that is part of a program referred to in s.10 (for more information, see “Extrajudicial sanctions,” p. 13)

offence means an offence created by an Act of Parliament or any regulation, rule, order, by-law or ordinance made under an Act of Parliament other than an ordinance of the Yukon Territory or the Northwest Territories or a law of the Legislature for Nunavut

parent includes, in respect of a YP, any person who is under a legal duty to provide for the YP or any person who has, in law or in fact, the custody or control of the YP, but does NOT include a person who has the custody or control of the YP by reason ONLY of proceedings under this Act

pre-sentence report means a report on the personal and family history and present environment of a YP made in accordance with s.40 (for more information, see “Pre-sentence report,” p. 97)

presumptive offence means

- a** an offence committed, or alleged to have been committed, by a YP who has attained the age of 14 years, or, in a province where the lieutenant governor in council has fixed an age greater than 14 years under s.61, the age so fixed, under one of the following provisions of the CC:
 - i** s.231 or 235 (first degree murder or second degree murder within the meaning of s.231)
 - ii** s.239 (attempt to commit murder)
 - iii** s.232,234 or 236 (manslaughter)OR
 - iv** s.273 (aggravated sexual assault)OR
- b** a serious violent offence for which an adult is liable to imprisonment for a term of more than 2 years committed, or alleged to have been committed, by a YP after the coming into force of s.62 (adult sentence) and after the YP has attained the age of 14 years, or, in a province where the lieutenant governor in council has fixed an age greater than 14 years under s.61, the age so fixed, if at the time of the commission or alleged commission of the offence at least 2 judicial determinations have been made under subs.42(9), at different proceedings, that the YP has committed a serious violent offence (for more information, see "Presumptive offences", p. 40)

provincial director means a person, a group or class of persons or a body appointed or designated by or under an Act of the legislature of a province or by the lieutenant governor in council of a province or his or her delegate to perform in that province, either generally or in a specific case, any of the duties or functions of a provincial director under this Act

publication means the communication of information by making it known or accessible to the general public through any means, including print, radio or television broadcast, telecommunication or electronic means (for more information, see "Publication", p. 100)

record includes any thing containing information, regardless of its physical form or characteristics, including microform, sound recording, videotape, machine-readable record, and any copy of those things, that is created or kept for the purposes of this Act or for the investigation of an offence that is or could be prosecuted under this Act

review board means a review board referred to in subs.87(2)

serious violent offence (SVO) means an offence in the commission of which a YP causes or attempts to cause serious bodily harm (for information on 3rd SVO, see p. 33)

young person (YP) means a person who is or, in the absence of evidence to the contrary, appears to be 12 years old or older, but less than 18 years old and, if the context requires, includes any person who is charged under this Act with having committed an offence while he or she was a YP or who is found guilty of an offence under this Act (see also s.16)

youth custody facility means a facility designated under subs.85(2) for the placement of YPs and, if so designated, includes a facility for the secure restraint of YPs, a community residential centre, a group home, a child care institution and a forest or wilderness camp

youth justice court means a youth justice court referred to in s.13 (for more information, see p. 5)

youth justice court judge means a youth justice court judge referred to in s.13 (for more information, see p. 5)

youth sentence means a sentence imposed under ss.42,51 or 59 or any of ss.94 to 96 and includes a confirmation or a variation of that sentence

youth worker means any person appointed or designated, whether by title of youth worker or probation officer or by any other title, by or under an Act of the legislature of a province or by the lieutenant governor in council of a province or his or her delegate to perform in that province, either generally or in a specific case, any of the duties or functions of a youth worker under this Act (for more information, see p. 58 & 66)

