

PART 5

CUSTODY AND SUPERVISION

Purpose	<p>83. (1) The purpose of the youth custody and supervision system is to contribute to the protection of society by</p> <ul style="list-style-type: none"> (a) carrying out sentences imposed by courts through the safe, fair and humane custody and supervision of young persons; and (b) assisting young persons to be rehabilitated and reintegrated into the community as law-abiding citizens, by providing effective programs to young persons in custody and while under supervision in the community.
Principles to be used	<p>(2) In addition to the principles set out in section 3, the following principles are to be used in achieving that purpose:</p> <ul style="list-style-type: none"> (a) that the least restrictive measures consistent with the protection of the public, of personnel working with young persons and of young persons be used; (b) that young persons sentenced to custody retain the rights of other young persons, except the rights that are necessarily removed or restricted as a consequence of a sentence under this Act or another Act of Parliament; (c) that the youth custody and supervision system facilitate the involvement of the families of young persons and members of the public; (d) that custody and supervision decisions be made in a forthright, fair and timely manner, and that young persons have access to an effective review procedure; and (e) that placements of young persons where they are treated as adults not disadvantage them with respect to their eligibility for and conditions of release.
Young person to be held apart from adults	<p>84. Subject to subsection 30(3) (pre-trial detention), paragraphs 76(1)(b) and (c) (placement in adult facilities with adult sentence) and sections 89 to 93 (placement in adult facilities with youth sentence), a young person who is committed to custody shall be held separate and apart from any adult who is detained or held in custody.</p>
Levels of custody	<p>85. (1) In the youth custody and supervision system in each province there must be at least two levels of custody for young persons distinguished by the degree of restraint of the young persons in them.</p>
Designation of youth custody facilities	<p>(2) Every youth custody facility in a province that contains one or more levels of custody shall be designated by</p> <ul style="list-style-type: none"> (a) in the case of a youth custody facility with only one level of custody, being the level of custody with the least degree of restraint of the young persons in it, the lieutenant governor in council or his or her delegate; and (b) in any other case, the lieutenant governor in council.
Provincial director to specify custody level - committal to custody	<p>(3) The provincial director shall, when a young person is committed to custody under paragraph 42(2)(n), (o), (q) or (r) or an order is made under subsection 98(3), paragraph 103(2)(b), subsection 104(1) or paragraph</p>

109(2)(b), determine the level of custody appropriate for the young person, after having taken into account the factors set out in subsection (5).

Provincial director to specify custody level - transfer

(4) The provincial director may determine a different level of custody for the young person when the provincial director is satisfied that the needs of the young person and the interests of society would be better served by doing so, after having taken into account the factors set out in subsection (5).

Factors

(5) The factors referred to in subsections (3) and (4) are

(a) that the appropriate level of custody for the young person is the one that is the least restrictive to the young person, having regard to

(i) the seriousness of the offence in respect of which the young person was committed to custody and the circumstances in which that offence was committed,

(ii) the needs and circumstances of the young person, including proximity to family, school, employment and support services,

(iii) the safety of other young persons in custody, and

(iv) the interests of society;

(b) that the level of custody should allow for the best possible match of programs to the young person's needs and behaviour, having regard to the findings of any assessment in respect of the young person; and

(c) the likelihood of escape.

Placement and transfer at appropriate level

(6) After the provincial director has determined the appropriate level of custody for the young person under subsection (3) or (4), the young person shall be placed in the youth custody facility that contains that level of custody specified by the provincial director.

Notice

(7) The provincial director shall cause a notice in writing of a determination under subsection (3) or (4) to be given to the young person and a parent of the young person and set out in that notice the reasons for it.

Procedural safeguards

86. (1) The lieutenant governor in council of a province shall ensure that procedures are in place to ensure that the due process rights of the young person are protected with respect to a determination made under subsection 85(3) or (4), including that the young person be

(a) provided with any relevant information to which the provincial director has access in making the determination, subject to subsection (2);

(b) given the opportunity to be heard; and

(c) informed of any right to a review under section 87.

Withholding of information

(2) Where the provincial director has reasonable grounds to believe that providing the information referred to in paragraph (1)(a) would jeopardize the safety of any person or the security of a facility, he or she may authorize the withholding from the young person of as much information as is strictly necessary in order to protect such safety or security.

Review

87. (1) A young person may apply for a review under this section of a determination

	<p>(a) under subsection 85(3) that would place the young person in a facility at a level of custody that has more than a minimal degree of restraint; or</p> <p>(b) under subsection 85(4) that would transfer a young person to a facility at a level of custody with a higher degree of restraint or increase the degree of restraint of the young person in the facility.</p>
Procedural safeguards	<p>(2) The lieutenant governor in council of a province shall ensure that procedures are in place for the review under subsection (1), including that</p> <p>(a) the review board that conducts the review be independent;</p> <p>(b) the young person be provided with any relevant information to which the review board has access, subject to subsection (3); and</p> <p>(c) the young person be given the opportunity to be heard.</p>
Withholding of information	<p>(3) Where the review board has reasonable grounds to believe that providing the information referred to in paragraph (2)(b) would jeopardize the safety of any person or the security of a facility, it may authorize the withholding from the young person of as much information as is strictly necessary in order to protect such safety or security.</p>
Factors	<p>(4) The review board shall take into account the factors referred to in subsection 85(5) in reviewing a determination.</p>
Decision is final	<p>(5) A decision of the review board under this section in respect of a particular determination is final.</p>
Functions to be exercised by youth justice court	<p>88. The lieutenant governor in council of a province may order that the power to make determinations of the level of custody for young persons and to review those determinations be exercised in accordance with the <i>Young Offenders Act</i>, chapter Y-1 of the Revised Statutes of Canada, 1985. The following provisions of that Act apply, with any modifications that the circumstances require, to the exercise of those powers:</p> <p>(a) the definitions "review board" and "progress report" in subsection 2(1);</p> <p>(b) section 11;</p> <p>(c) sections 24.1 to 24.3; and</p> <p>(d) sections 28 to 31.</p>
Exception if young person is twenty years old or older	<p>89. (1) When a young person is twenty years old or older at the time the youth sentence is imposed on him or her under paragraph 42(2)(n), (o), (q) or (r), the young person shall, despite section 85, be committed to a provincial correctional facility for adults to serve the youth sentence.</p>
If serving youth sentence in a provincial correctional facility	<p>(2) If a young person is serving a youth sentence in a provincial correctional facility pursuant to subsection (1), the youth justice court may, on application of the provincial director at any time after the young person begins to serve a portion of the youth sentence in a provincial correctional facility for adults, after giving the young person, the provincial director and representatives of the provincial and federal correctional systems an opportunity to be heard, authorize the provincial director to direct that the young person serve the remainder of the youth sentence in a penitentiary if the court considers it to be in the best interests of the young person or in the public interest and if, at the time</p>

of the application, that remainder is two years or more.

Provisions to apply

(3) If a young person is serving a youth sentence in a provincial correctional facility for adults or a penitentiary under subsection (1) or (2), the *Prisons and Reformatories Act* and the *Corrections and Conditional Release Act*, and any other statute, regulation or rule applicable in respect of prisoners or offenders within the meaning of those Acts, statutes, regulations and rules, apply in respect of the young person except to the extent that they conflict with Part 6 (publication, records and information) of this Act, which Part continues to apply to the young person.

Youth worker

90. (1) When a youth sentence is imposed committing a young person to custody, the provincial director of the province in which the young person received the youth sentence and was placed in custody shall, without delay, designate a youth worker to work with the young person to plan for his or her reintegration into the community, including the preparation and implementation of a reintegration plan that sets out the most effective programs for the young person in order to maximize his or her chances for reintegration into the community.

Role of youth worker when young person in the community

(2) When a portion of a young person's youth sentence is served in the community in accordance with section 97 or 105, the youth worker shall supervise the young person, continue to provide support to the young person and assist the young person to respect the conditions to which he or she is subject, and help the young person in the implementation of the reintegration plan.

Reintegration leave

91. (1) The provincial director of a province may, subject to any terms or conditions that he or she considers desirable, authorize, for a young person committed to a youth custody facility in the province further to an order under paragraph 76(1)(a) (placement when subject to adult sentence) or a youth sentence imposed under paragraph 42(2)(n), (o), (q) or (r),

(a) a reintegration leave from the youth custody facility for a period not exceeding thirty days if, in the opinion of the provincial director, it is necessary or desirable that the young person be absent, with or without escort, for medical, compassionate or humanitarian reasons or for the purpose of rehabilitating the young person or reintegrating the young person into the community; or

(b) that the young person be released from the youth custody facility on the days and during the hours that the provincial director specifies in order that the young person may

(i) attend school or any other educational or training institution,

(ii) obtain or continue employment or perform domestic or other duties required by the young person's family,

(iii) participate in a program specified by the provincial director that, in the provincial director's opinion, will enable the young person to better carry out employment or improve his or her education or training, or

(iv) attend an out-patient treatment program or other program that provides services that are suitable to addressing the young person's needs.

Renewal of reintegration leave	(2) A reintegration leave authorized under paragraph (1)(a) may be renewed by the provincial director for one or more thirty-day periods on reassessment of the case.
Revocation of authorization	(3) The provincial director of a province may, at any time, revoke an authorization made under subsection (1).
Arrest and return to custody	(4) If the provincial director revokes an authorization under subsection (3) or if a young person fails to comply with any term or condition of a reintegration leave or a release from custody under this section, the young person may be arrested without warrant and returned to custody.
Transfer to adult facility	92. (1) When a young person is committed to custody under paragraph 42(2)(n), (o), (q) or (r), the youth justice court may, on application of the provincial director made at any time after the young person attains the age of eighteen years, after giving the young person, the provincial director and representatives of the provincial correctional system an opportunity to be heard, authorize the provincial director to direct that the young person, subject to subsection (3), serve the remainder of the youth sentence in a provincial correctional facility for adults, if the court considers it to be in the best interests of the young person or in the public interest.
If serving youth sentence in a provincial correctional facility	<p>(2) The youth justice court may authorize the provincial director to direct that a young person, subject to subsection (3), serve the remainder of a youth sentence in a penitentiary</p> <p>(a) if the youth justice court considers it to be in the best interests of the young person or in the public interest;</p> <p>(b) if the provincial director applies for the authorization at any time after the young person begins to serve a portion of a youth sentence in a provincial correctional facility for adults further to a direction made under subsection (1);</p> <p>(c) if, at the time of the application, that remainder is two years or more; and</p> <p>(d) so long as the youth justice court gives the young person, the provincial director and representatives of the provincial and federal correctional systems an opportunity to be heard.</p>
Provisions to apply	(3) If the provincial director makes a direction under subsection (1) or (2), the <i>Prisons and Reformatories Act</i> and the <i>Corrections and Conditional Release Act</i> , and any other statute, regulation or rule applicable in respect of prisoners and offenders within the meaning of those Acts, statutes, regulations and rules, apply in respect of the young person except to the extent that they conflict with Part 6 (publication, records and information) of this Act, which Part continues to apply to the young person.
Placement when adult and youth sentences	<p>(4) If a person is subject to more than one sentence, at least one of which is a youth sentence imposed under paragraph 42(2)(n), (o), (q) or (r) and at least one of which is a sentence referred to in either paragraph (b) or (c), he or she shall serve, in a provincial correctional facility for adults or a penitentiary in accordance with section 743.1 (rules respecting sentences of two or more years) of the <i>Criminal Code</i>, the following:</p> <p>(a) the remainder of any youth sentence imposed under paragraph 42(2)(n),</p>

(o), (q) or (r);

(b) an adult sentence to which an order under paragraph 76(1)(b) or (c) (placement in adult facility) applies; and

(c) any sentence of imprisonment imposed otherwise than under this Act.

Youth sentence and adult sentence

(5) If a young person is committed to custody under a youth sentence under paragraph 42(2)(n), (o), (q) or (r) and is also already subject to an adult sentence to which an order under paragraph 76(1)(a) (placement when subject to adult sentence) applies, the young person may, in the discretion of the provincial director, serve the sentences, or any portion of the sentences, in a youth custody facility, in a provincial correctional facility for adults or, if the unexpired portion of the sentence is two years or more, in a penitentiary.

When young person reaches twenty years of age

93. (1) When a young person who is committed to custody under paragraph 42(2)(n), (o), (q) or (r) is in a youth custody facility when the young person attains the age of twenty years, the young person shall be transferred to a provincial correctional facility for adults to serve the remainder of the youth sentence, unless the provincial director orders that the young person continue to serve the youth sentence in a youth custody facility.

If serving youth sentence in a provincial correctional facility

(2) If a young person is serving a portion of a youth sentence in a provincial correctional facility for adults pursuant to a transfer under subsection (1), the youth justice court may, on application of the provincial director after the transfer, after giving the young person, the provincial director and representatives of the provincial and federal correctional systems an opportunity to be heard, authorize the provincial director to direct that the young person serve the remainder of the youth sentence in a penitentiary if the court considers it to be in the best interests of the young person or in the public interest and if, at the time of the application, that remainder is two years or more.

Provisions to apply

(3) If the provincial director makes the direction, the *Prisons and Reformatories Act* and the *Corrections and Conditional Release Act*, and any other statute, regulation or rule applicable in respect of prisoners and offenders within the meaning of those Acts, statutes, regulations and rules, apply in respect of the young person except to the extent that they conflict with Part 6 (publication, records and information) of this Act, which Part continues to apply to the young person.

Annual review

94. (1) When a young person is committed to custody pursuant to a youth sentence under paragraph 42(2)(n), (o), (q) or (r) for a period exceeding one year, the provincial director of the province in which the young person is held in custody shall cause the young person to be brought before the youth justice court without delay at the end of one year from the date of the most recent youth sentence imposed in respect of the offence - and at the end of every subsequent year from that date - and the youth justice court shall review the youth sentence.

Annual review

(2) When a young person is committed to custody pursuant to youth sentences imposed under paragraph 42(2)(n), (o), (q) or (r) in respect of more than one offence for a total period exceeding one year, the provincial director of the province in which the young person is held in custody shall cause the young person to be brought before the youth justice court without delay at the end of one year from the date of the earliest youth sentence imposed - and at the end of every subsequent year from that date - and the youth justice court shall review

the youth sentences.

Optional review

(3) When a young person is committed to custody pursuant to a youth sentence imposed under paragraph 42(2)(n), (o), (q) or (r) in respect of an offence, the provincial director may, on the provincial director's own initiative, and shall, on the request of the young person, the young person's parent or the Attorney General, on any of the grounds set out in subsection (6), cause the young person to be brought before a youth justice court to review the youth sentence,

(a) when the youth sentence is for a period not exceeding one year, once at any time after the expiry of the greater of

(i) thirty days after the date of the youth sentence imposed under subsection 42(2) in respect of the offence, and

(ii) one third of the period of the youth sentence imposed under subsection 42(2) in respect of the offence; and

(b) when the youth sentence is for a period exceeding one year, at any time after six months after the date of the most recent youth sentence imposed in respect of the offence.

Time for optional review

(4) The young person may be brought before the youth justice court at any other time, with leave of the youth justice court judge.

Review

(5) If a youth justice court is satisfied that there are grounds for review under subsection (6), the court shall review the youth sentence.

Grounds for review

(6) A youth sentence imposed in respect of a young person may be reviewed under subsection (5)

(a) on the ground that the young person has made sufficient progress to justify a change in the youth sentence;

(b) on the ground that the circumstances that led to the youth sentence have changed materially;

(c) on the ground that new services or programs are available that were not available at the time of the youth sentence;

(d) on the ground that the opportunities for rehabilitation are now greater in the community; or

(e) on any other ground that the youth justice court considers appropriate.

No review if appeal pending

(7) Despite any other provision of this section, no review of a youth sentence in respect of which an appeal has been taken shall be made under this section until all proceedings in respect of any such appeal have been completed.

Youth justice court may order appearance of young person for review

(8) When a provincial director is required under subsections (1) to (3) to cause a young person to be brought before the youth justice court and fails to do so, the youth justice court may, on application made by the young person, his or her parent or the Attorney General, or on its own motion, order the provincial director to cause the young person to be brought before the youth justice court.

Progress report

(9) The youth justice court shall, before reviewing under this section a youth sentence imposed in respect of a young person, require the provincial director to cause to be prepared, and to submit to the youth justice court, a progress report

on the performance of the young person since the youth sentence took effect.

Additional information in progress report

(10) A person preparing a progress report in respect of a young person may include in the report any information relating to the personal and family history and present environment of the young person that he or she considers advisable.

Written or oral report

(11) A progress report shall be in writing unless it cannot reasonably be committed to writing, in which case it may, with leave of the youth justice court, be submitted orally in court.

Subsections 40(4) to (10) to apply

(12) Subsections 40(4) to (10) (procedures respecting pre-sentence reports) apply, with any modifications that the circumstances require, in respect of progress reports.

Notice of review from provincial director

(13) When a youth sentence imposed in respect of a young person is to be reviewed under subsection (1) or (2), the provincial director shall cause any notice that may be directed by rules of court applicable to the youth justice court or, in the absence of such a direction, at least five clear days notice of the review to be given in writing to the young person, a parent of the young person and the Attorney General.

Notice of review from person requesting it

(14) When a review of a youth sentence imposed in respect of a young person is requested under subsection (3), the person requesting the review shall cause any notice that may be directed by rules of court applicable to the youth justice court or, in the absence of such a direction, at least five clear days notice of the review to be given in writing to the young person, a parent of the young person and the Attorney General.

Statement of right to counsel

(15) A notice given to a parent under subsection (13) or (14) shall include a statement that the young person whose youth sentence is to be reviewed has the right to be represented by counsel.

Service of notice

(16) A notice under subsection (13) or (14) may be served personally or may be sent by confirmed delivery service.

Notice may be waived

(17) Any of the persons entitled to notice under subsection (13) or (14) may waive the right to that notice.

If notice not given

(18) If notice under subsection (13) or (14) is not given in accordance with this section, the youth justice court may

(a) adjourn the proceedings and order that the notice be given in the manner and to the persons that it directs; or

(b) dispense with the notice if, in the opinion of the court, having regard to the circumstances, notice may be dispensed with.

Decision of the youth justice court after review

(19) When a youth justice court reviews under this section a youth sentence imposed in respect of a young person, it may, after giving the young person, a parent of the young person, the Attorney General and the provincial director an opportunity to be heard, having regard to the needs of the young person and the interests of society,

(a) confirm the youth sentence;

(b) release the young person from custody and place the young person under conditional supervision in accordance with the procedure set out in section 105, with any modifications that the circumstances require, for a period not

exceeding the remainder of the youth sentence that the young person is then serving; or

(c) if the provincial director so recommends, convert a youth sentence under paragraph 42(2)(r) to a youth sentence under paragraph 42(2)(q) if the offence was murder or to a youth sentence under paragraph 42(2)(n) or (o), as the case may be, if the offence was an offence other than murder.

Orders are youth sentences

95. Orders under subsections 97(2) (conditions) and 98(3) (continuation of custody), paragraph 103(2)(b) (continuation of custody), subsections 104(1) (continuation of custody) and 105(1) (conditional supervision) and paragraph 109(2)(b) (continuation of suspension of conditional supervision) are deemed to be youth sentences for the purposes of section 94 (reviews).

Recommendation of provincial director for conditional supervision of young person

96. (1) When a young person is held in custody pursuant to a youth sentence under paragraph 42(2)(n), (o), (q) or (r), the provincial director may, if satisfied that the needs of the young person and the interests of society would be better served by doing so, make a recommendation to the youth justice court that the young person be released from custody and placed under conditional supervision.

Notice

(2) If the provincial director makes a recommendation, the provincial director shall cause a notice to be given in writing that includes the reasons for the recommendation and the conditions that the provincial director would recommend be set under section 105 to the young person, a parent of the young person and the Attorney General and give a copy of the notice to the youth justice court.

Application to court for review of recommendation

(3) If notice of a recommendation is made under subsection (2) with respect to a youth sentence imposed on a young person, the youth justice court shall, if an application for review is made by the young person, the young person's parent or the Attorney General within ten days after service of the notice, review the youth sentence without delay.

Subsections 94(7), (9) to (12) and (14) to (19) apply

(4) Subject to subsection (5), subsections 94(7) (no review of appeal pending), (9) to (12) (progress reports) and (14) to (19) (provisions respecting notice and decision of the youth justice court) apply, with any modifications that the circumstances require, in respect of reviews made under this section and any notice required under subsection 94(14) shall also be given to the provincial director.

If no application for review made under subsection (3)

(5) A youth justice court that receives a notice under subsection (2) shall, if no application for a review is made under subsection (3),

(a) order the release of the young person and place the young person under conditional supervision in accordance with section 105, having regard to the recommendations of the provincial director; or

(b) if the court considers it advisable, order that the young person not be released.

For greater certainty, an order under this subsection may be made without a hearing.

Notice when no release ordered

(6) When a youth justice court orders that the young person not be released under paragraph (5)(b), it shall cause a notice of its order to be given to the

provincial director without delay.

Provincial director may request review

(7) When the provincial director is given a notice under subsection (6), he or she may request a review under this section.

When provincial director requests a review

(8) When the provincial director requests a review under subsection (7),

(a) the provincial director shall cause any notice that may be directed by rules of court applicable to the youth justice court or, in the absence of such a direction, at least five clear days notice of the review to be given in writing to the young person, a parent of the young person and the Attorney General; and

(b) the youth justice court shall review the youth sentence without delay after the notice required under paragraph (a) is given.

Conditions to be included in custody and supervision order

97. (1) Every youth sentence imposed under paragraph 42(2)(n) shall contain the following conditions, namely, that the young person, while serving the portion of the youth sentence under supervision in the community,

(a) keep the peace and be of good behaviour;

(b) report to the provincial director and then be under the supervision of the provincial director;

(c) inform the provincial director immediately on being arrested or questioned by the police;

(d) report to the police, or any named individual, as instructed by the provincial director;

(e) advise the provincial director of the young person's address of residence and report immediately to the provincial director any change

(i) in that address,

(ii) in the young person's normal occupation, including employment, vocational or educational training and volunteer work,

(iii) in the young person's family or financial situation, and

(iv) that may reasonably be expected to affect the young person's ability to comply with the conditions of the sentence; and

(f) not own, possess or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, except as authorized in writing by the provincial director for the purposes of the young person participating in a program specified in the authorization.

Other conditions

(2) The provincial director may set additional conditions that support and address the needs of the young person, promote the reintegration of the young person into the community and offer adequate protection to the public from the risk that the young person might otherwise present. The provincial director shall, in setting the conditions, take into account the needs of the young person, the most effective programs for the young person in order to maximize his or her chances for reintegration into the community, the nature of the offence and the ability of the young person to comply with the conditions.

Communication of conditions

(3) The provincial director shall

	<p>(a) cause the conditions to be read by or to the young person bound by them;</p> <p>(b) explain or cause to be explained to the young person the purpose and effect of the conditions, and confirm that the young person understands them; and</p> <p>(c) cause a copy of the conditions to be given to the young person, and to a parent of the young person.</p>
Provisions to apply	<p>(4) Subsections 56(3) (endorsement of order by young person) and (4) (validity of order) apply, with any modifications that the circumstances require, in respect of conditions under this section.</p>
Application for continuation of custody	<p>98. (1) Within a reasonable time before the expiry of the custodial portion of a young person's youth sentence, the Attorney General or the provincial director may apply to the youth justice court for an order that the young person remain in custody for a period not exceeding the remainder of the youth sentence.</p>
Continuation of custody	<p>(2) If the hearing for an application under subsection (1) cannot be completed before the expiry of the custodial portion of the youth sentence, the court may order that the young person remain in custody pending the determination of the application if the court is satisfied that the application was made in a reasonable time, having regard to all the circumstances, and that there are compelling reasons for keeping the young person in custody.</p>
Decision	<p>(3) The youth justice court may, after giving both parties and a parent of the young person an opportunity to be heard, order that a young person remain in custody for a period not exceeding the remainder of the youth sentence, if it is satisfied that there are reasonable grounds to believe that</p> <p>(a) the young person is likely to commit a serious violent offence before the expiry of the youth sentence he or she is then serving; and</p> <p>(b) the conditions that would be imposed on the young person if he or she were to serve a portion of the youth sentence in the community would not be adequate to prevent the commission of the offence.</p>
Factors	<p>(4) For the purpose of determining an application under subsection (1), the youth justice court shall take into consideration any factor that is relevant to the case of the young person, including</p> <p>(a) evidence of a pattern of persistent violent behaviour and, in particular,</p> <p>(i) the number of offences committed by the young person that caused physical or psychological harm to any other person,</p> <p>(ii) the young person's difficulties in controlling violent impulses to the point of endangering the safety of any other person,</p> <p>(iii) the use of weapons in the commission of any offence,</p> <p>(iv) explicit threats of violence,</p> <p>(v) behaviour of a brutal nature associated with the commission of any offence, and</p> <p>(vi) a substantial degree of indifference on the part of the young person as to the reasonably foreseeable consequences, to other persons, of the young person's behaviour;</p>

(b) psychiatric or psychological evidence that a physical or mental illness or disorder of the young person is of such a nature that the young person is likely to commit, before the expiry of the youth sentence the young person is then serving, a serious violent offence;

(c) reliable information that satisfies the youth justice court that the young person is planning to commit, before the expiry of the youth sentence the young person is then serving, a serious violent offence;

(d) the availability of supervision programs in the community that would offer adequate protection to the public from the risk that the young person might otherwise present until the expiry of the youth sentence the young person is then serving;

(e) whether the young person is more likely to reoffend if he or she serves his or her youth sentence entirely in custody without the benefits of serving a portion of the youth sentence in the community under supervision; and

(f) evidence of a pattern of committing violent offences while he or she was serving a portion of a youth sentence in the community under supervision.

Report

99. (1) For the purpose of determining an application under section 98 (application for continuation of custody), the youth justice court shall require the provincial director to cause to be prepared, and to submit to the youth justice court, a report setting out any information of which the provincial director is aware with respect to the factors set out in subsection 98(4) that may be of assistance to the court.

Written or oral report

(2) A report referred to in subsection (1) shall be in writing unless it cannot reasonably be committed to writing, in which case it may, with leave of the youth justice court, be submitted orally in court.

Provisions apply

(3) Subsections 40(4) to (10) (procedures respecting pre-sentence reports) apply, with any modifications that the circumstances require, in respect of a report referred to in subsection (1).

Notice of hearing

(4) When an application is made under section 98 (application for continuation of custody) in respect of a young person, the provincial director shall cause to be given, to the young person and to a parent of the young person, at least five clear days notice of the hearing in writing.

Statement of right to counsel

(5) Any notice given to a parent under subsection (4) shall include a statement that the young person has the right to be represented by counsel.

Service of notice

(6) A notice under subsection (4) may be served personally or may be sent by confirmed delivery service.

When notice not given

(7) When notice under subsection (4) is not given in accordance with this section, the youth justice court may

(a) adjourn the hearing and order that the notice be given in any manner and to any person that it directs; or

(b) dispense with the giving of the notice if, in the opinion of the youth justice court, having regard to the circumstances, the giving of the notice may be dispensed with.

Reasons

100. When a youth justice court makes an order under subsection 98(3)

(decision for continued custody), it shall state its reasons for the order in the record of the case and shall provide, or cause to be provided, to the young person in respect of whom the order was made, the counsel and a parent of the young person, the Attorney General and the provincial director

(a) a copy of the order; and

(b) on request, a transcript or copy of the reasons for the order.

Review of youth justice court decision

101. (1) An order made under subsection 98(3) (decision for continued custody) in respect of a young person, or the refusal to make such an order, shall, on application of the young person, the young person's counsel, the Attorney General or the provincial director made within thirty days after the decision of the youth justice court, be reviewed by the court of appeal, and that court may, in its discretion, confirm or reverse the decision of the youth justice court.

Extension of time to make application

(2) The court of appeal may, at any time, extend the time within which an application under subsection (1) may be made.

Notice of application

(3) A person who proposes to apply for a review under subsection (1) shall give notice of the application in the manner and within the period of time that may be directed by rules of court.

Breach of conditions

102. (1) If the provincial director has reasonable grounds to believe that a young person has breached or is about to breach a condition to which he or she is subject under section 97 (conditions to be included in custody and supervision orders), the provincial director may, in writing,

(a) permit the young person to continue to serve a portion of his or her youth sentence in the community, on the same or different conditions; or

(b) if satisfied that the breach is a serious one that increases the risk to public safety, order that the young person be remanded to any youth custody facility that the provincial director considers appropriate until a review is conducted.

Provisions apply

(2) Sections 107 (apprehension) and 108 (review by provincial director) apply, with any modifications that the circumstances require, to an order under paragraph (1)(b).

Review by youth justice court

103. (1) When the case of a young person is referred to the youth justice court under section 108 (review by provincial director), the provincial director shall, without delay, cause the young person to be brought before the youth justice court, and the youth justice court shall, after giving the young person an opportunity to be heard,

(a) if the court is not satisfied on reasonable grounds that the young person has breached or was about to breach one of the conditions under which he or she was being supervised in the community, order that the young person continue to serve a portion of his or her youth sentence in the community, on the same or different conditions; or

(b) if the court is satisfied on reasonable grounds that the young person has breached or was about to breach one of the conditions under which he or she was being supervised in the community, make an order under subsection (2).

Order

(2) On completion of a review under subsection (1), the youth justice court

- (a) shall order that the young person continue to serve the remainder of the youth sentence the young person is then serving in the community, and when the court does so, the court may vary the existing conditions or impose new conditions; or
- (b) shall, despite paragraph 42(2)(n) (custody and supervision order), order that the young person remain in custody for a period that does not exceed the remainder of the youth sentence the young person is then serving, if the youth justice court is satisfied that the breach of the conditions was serious.
- Provisions apply (3) Subsections 109(4) to (8) apply, with any modifications that the circumstances require, in respect of a review under this section.
- Continuation of custody **104.** (1) When a young person on whom a youth sentence under paragraph 42(2)(o), (q) or (r) has been imposed is held in custody and an application is made to the youth justice court by the Attorney General, within a reasonable time before the expiry of the custodial portion of the youth sentence, the provincial director of the province in which the young person is held in custody shall cause the young person to be brought before the youth justice court and the youth justice court may, after giving both parties and a parent of the young person an opportunity to be heard and if it is satisfied that there are reasonable grounds to believe that the young person is likely to commit an offence causing the death of or serious harm to another person before the expiry of the youth sentence the young person is then serving, order that the young person remain in custody for a period not exceeding the remainder of the youth sentence.
- Continuation of custody (2) If the hearing of an application under subsection (1) cannot be completed before the expiry of the custodial portion of the youth sentence, the court may order that the young person remain in custody until the determination of the application if the court is satisfied that the application was made in a reasonable time, having regard to all the circumstances, and that there are compelling reasons for keeping the young person in custody.
- Factors (3) For the purpose of determining an application under subsection (1), the youth justice court shall take into consideration any factor that is relevant to the case of the young person, including
- (a) evidence of a pattern of persistent violent behaviour and, in particular,
- (i) the number of offences committed by the young person that caused physical or psychological harm to any other person,
 - (ii) the young person's difficulties in controlling violent impulses to the point of endangering the safety of any other person,
 - (iii) the use of weapons in the commission of any offence,
 - (iv) explicit threats of violence,
 - (v) behaviour of a brutal nature associated with the commission of any offence, and
 - (vi) a substantial degree of indifference on the part of the young person as to the reasonably foreseeable consequences, to other persons, of the young person's behaviour;
- (b) psychiatric or psychological evidence that a physical or mental illness or

disorder of the young person is of such a nature that the young person is likely to commit, before the expiry of the youth sentence the young person is then serving, an offence causing the death of or serious harm to another person;

(c) reliable information that satisfies the youth justice court that the young person is planning to commit, before the expiry of the youth sentence the young person is then serving, an offence causing the death of or serious harm to another person; and

(d) the availability of supervision programs in the community that would offer adequate protection to the public from the risk that the young person might otherwise present until the expiry of the youth sentence the young person is then serving.

Youth justice court to order appearance of young person

(4) If a provincial director fails to cause a young person to be brought before the youth justice court under subsection (1), the youth justice court shall order the provincial director to cause the young person to be brought before the youth justice court without delay.

Provisions to apply

(5) Sections 99 to 101 apply, with any modifications that the circumstances require, in respect of an order made, or the refusal to make an order, under this section.

If application denied

(6) If an application under this section is denied, the court may, with the consent of the young person, the Attorney General and the provincial director, proceed as though the young person had been brought before the court as required under subsection 105(1).

Conditional supervision

105. (1) The provincial director of the province in which a young person on whom a youth sentence under paragraph 42(2)(o), (q) or (r) has been imposed is held in custody or, if applicable, with respect to whom an order has been made under subsection 104(1) (continuation of custody), shall cause the young person to be brought before the youth justice court at least one month before the expiry of the custodial portion of the youth sentence. The court shall, after giving the young person an opportunity to be heard, by order, set the conditions of the young person's conditional supervision.

Conditions to be included in order

(2) The youth justice court shall include in the order under subsection (1) the following conditions, namely, that the young person

(a) keep the peace and be of good behaviour;

(b) appear before the youth justice court when required by the court to do so;

(c) report to the provincial director immediately on release, and then be under the supervision of the provincial director or a person designated by the youth justice court;

(d) inform the provincial director immediately on being arrested or questioned by the police;

(e) report to the police, or any named individual, as instructed by the provincial director;

(f) advise the provincial director of the young person's address of residence on release and after release report immediately to the clerk of the youth

justice court or the provincial director any change

- (i) in that address,
- (ii) in the young person's normal occupation, including employment, vocational or educational training and volunteer work,
- (iii) in the young person's family or financial situation, and
- (iv) that may reasonably be expected to affect the young person's ability to comply with the conditions of the order;

(g) not own, possess or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, except as authorized by the order; and

(h) comply with any reasonable instructions that the provincial director considers necessary in respect of any condition of the conditional supervision in order to prevent a breach of that condition or to protect society.

Other conditions

(3) In setting conditions for the purposes of subsection (1), the youth justice court may include in the order the following conditions, namely, that the young person

- (a) on release, travel directly to the young person's place of residence, or to any other place that is noted in the order;
- (b) make reasonable efforts to obtain and maintain suitable employment;
- (c) attend school or any other place of learning, training or recreation that is appropriate, if the court is satisfied that a suitable program is available for the young person at such a place;
- (d) reside with a parent, or any other adult that the court considers appropriate, who is willing to provide for the care and maintenance of the young person;
- (e) reside in any place that the provincial director may specify;
- (f) remain within the territorial jurisdiction of one or more courts named in the order;
- (g) comply with conditions set out in the order that support and address the needs of the young person and promote the reintegration of the young person into the community; and
- (h) comply with any other conditions set out in the order that the court considers appropriate, including conditions for securing the young person's good conduct and for preventing the young person from repeating the offence or committing other offences.

Temporary conditions

(4) When a provincial director is required under subsection (1) to cause a young person to be brought before the youth justice court but cannot do so for reasons beyond the young person's control, the provincial director shall so advise the youth justice court and the court shall, by order, set any temporary conditions for the young person's conditional supervision that are appropriate in the circumstances.

Conditions to be set at first opportunity

(5) When an order is made under subsection (4), the provincial director shall bring the young person before the youth justice court as soon after the order is

made as the circumstances permit and the court shall then set the conditions of the young person's conditional supervision.

Report	(6) For the purpose of setting conditions under this section, the youth justice court shall require the provincial director to cause to be prepared, and to submit to the youth justice court, a report setting out any information that may be of assistance to the court.
Provisions apply	(7) Subsections 99(2) to (7) (provisions respecting reports and notice) and 104(4) (ordering appearance of young person) apply, with any modifications that the circumstances require, in respect of any proceedings held under subsection (1).
Provisions apply	(8) Subsections 56(1) to (4) (provisions respecting probation orders), (7) (notice to appear) and (8) (warrant in default) and section 101 (review of youth justice court decision) apply, with any modifications that the circumstances require, in respect of an order made under subsection (1).
Suspension of conditional supervision	<p>106. If the provincial director has reasonable grounds to believe that a young person has breached or is about to breach a condition of an order made under subsection 105(1), the provincial director may, in writing,</p> <p>(a) suspend the conditional supervision; and</p> <p>(b) order that the young person be remanded to any youth custody facility that the provincial director considers appropriate until a review is conducted under section 108 and, if applicable, section 109.</p>
Apprehension	<p>107. (1) If the conditional supervision of a young person is suspended under section 106, the provincial director may issue a warrant in writing, authorizing the apprehension of the young person and, until the young person is apprehended, the young person is deemed not to be continuing to serve the youth sentence the young person is then serving.</p>
Warrants	(2) A warrant issued under subsection (1) shall be executed by any peace officer to whom it is given at any place in Canada and has the same force and effect in all parts of Canada as if it had been originally issued or subsequently endorsed by a provincial court judge or other lawful authority having jurisdiction in the place where it is executed.
Peace officer may arrest	(3) If a peace officer believes on reasonable grounds that a warrant issued under subsection (1) is in force in respect of a young person, the peace officer may arrest the young person without the warrant at any place in Canada.
Requirement to bring before provincial director	<p>(4) If a young person is arrested under subsection (3) and detained, the peace officer making the arrest shall cause the young person to be brought before the provincial director or a person designated by the provincial director</p> <p>(a) if the provincial director or the designated person is available within a period of twenty-four hours after the young person is arrested, without unreasonable delay and in any event within that period; and</p> <p>(b) if the provincial director or the designated person is not available within that period, as soon as possible.</p>
Release or remand in custody	(5) If a young person is brought before the provincial director or a person designated by the provincial director under subsection (4), the provincial

director or the designated person

(a) if not satisfied that there are reasonable grounds to believe that the young person is the young person in respect of whom the warrant referred to in subsection (1) was issued, shall release the young person; or

(b) if satisfied that there are reasonable grounds to believe that the young person is the young person in respect of whom the warrant referred to in subsection (1) was issued, may remand the young person in custody to await execution of the warrant, but if no warrant for the young person's arrest is executed within a period of forty-eight hours after the time the young person is remanded in custody, the person in whose custody the young person then is shall release the young person.

Review by provincial director

108. Without delay after the remand to custody of a young person whose conditional supervision has been suspended under section 106, or without delay after being informed of the arrest of such a young person, the provincial director shall review the case and, within forty-eight hours, cancel the suspension of the conditional supervision or refer the case to the youth justice court for a review under section 109.

Review by youth justice court

109. (1) If the case of a young person is referred to the youth justice court under section 108, the provincial director shall, without delay, cause the young person to be brought before the youth justice court, and the youth justice court shall, after giving the young person an opportunity to be heard,

(a) if the court is not satisfied on reasonable grounds that the young person has breached or was about to breach a condition of the conditional supervision, cancel the suspension of the conditional supervision; or

(b) if the court is satisfied on reasonable grounds that the young person has breached or was about to breach a condition of the conditional supervision, review the decision of the provincial director to suspend the conditional supervision and make an order under subsection (2).

Order

(2) On completion of a review under subsection (1), the youth justice court shall order

(a) the cancellation of the suspension of the conditional supervision, and when the court does so, the court may vary the conditions of the conditional supervision or impose new conditions;

(b) in a case other than a deferred custody and supervision order made under paragraph 42(2)(p), the continuation of the suspension of the conditional supervision for any period of time, not to exceed the remainder of the youth sentence the young person is then serving, that the court considers appropriate, and when the court does so, the court shall order that the young person remain in custody; or

(c) in the case of a deferred custody and supervision order made under paragraph 42(2)(p), that the young person serve the remainder of the order as if it were a custody and supervision order under paragraph 42(2)(n).

Custody and supervision order

(3) After a court has made a direction under paragraph (2)(c), the provisions of this Act applicable to orders under paragraph 42(2)(n) apply in respect of the deferred custody and supervision order.

Factors to be considered	(4) In making its decision under subsection (2), the court shall consider the length of time the young person has been subject to the order, whether the young person has previously contravened it, and the nature of the contravention, if any.
Reasons	(5) When a youth justice court makes an order under subsection (2), it shall state its reasons for the order in the record of the case and shall give, or cause to be given, to the young person in respect of whom the order was made, the counsel and a parent of the young person, the Attorney General and the provincial director, (a) a copy of the order; and (b) on request, a transcript or copy of the reasons for the order.
Report	(6) For the purposes of a review under subsection (1), the youth justice court shall require the provincial director to cause to be prepared, and to submit to the youth justice court, a report setting out any information of which the provincial director is aware that may be of assistance to the court.
Provisions apply	(7) Subsections 99(2) to (7) (provisions respecting reports and notice) and 105(6) (report for the purpose of setting conditions) apply, with any modifications that the circumstances require, in respect of a review under this section.
Provisions apply	(8) Section 101 (review of youth justice court decision) applies, with any modifications that the circumstances require, in respect of an order made under subsection (2).