

YOUTH CRIMINAL JUSTICE ACT
CANADA

MOVING
FORWARD



POCKET GUIDE

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
YJA	Youth Justice Act (NS)
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.

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INTRODUCTION

Background

The Youth Criminal Justice Act (YCJA) is the federal legislation that replaces the Young Offenders Act (YOA) in April 2003. This pocket guide is designed to summarize the changes which will be 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. An additional section describes the impact of the Youth Justice Act of Nova Scotia, the new legislation which deals with YPs in relation to provincial offences and municipal by-laws.

Declaration of principle

s.3

The principles outlined in s.3 must be used to interpret the entire Act. The Act must be liberally construed to ensure that all YPs are dealt with according to these principles. s.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 s.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 must 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 *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.

s.14(1)

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*. s.13(2),(3)

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

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. s.14(4) The YCJA applies to persons 18 and over who are alleged to have committed an *offence* while a YP. s.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 MUST

- 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. s.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 must be heard as an original application. s.33(1)

A justice of the peace may place a YP on a peace bond, but ONLY if the YP consents. s.20(2)

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 **MUST** consider whether it would be sufficient to

- take no further action s.6(1)
- warn the YP s.6(1)
- administer a caution s.6(1),7
(if a program is established s.7)
- refer the YP to a 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 s.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. s.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

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 must 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*. [s.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. [s.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 the Nova Scotia Restorative Justice program which is delivered by 8 community justice agencies throughout the province. The Restorative Justice program creates a forum for YPs, victims, and other parties to develop ways for a YP 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 [s.10\(1\)](#)

Similar to alternative measures

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

Informing parents of YP

Parents of a YP must be informed of an *extrajudicial sanction* by the person who administers the program.

s.11

Informing a victim

A police officer, Crown, *provincial director*, or representative from Victims' Services must, 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

All of the CC provisions that apply to judicial interim release for *adults* apply to YPs.

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

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 **MUST NOT** be detained in custody before sentencing as a substitute for appropriate child protection, mental health, or other social measures. [s.29\(1\)](#)

When considering the protection or safety of the public under CCs.515(10)(b), the court must 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 s.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). s.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 s.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 must inquire about the availability of a responsible person and the willingness of the YP to be placed in that person's care. s.31(2)

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

Under the YCJA, a YP MUST 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*
- the Crown has given notice 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 [s.67\(1\)](#)

The YP MAY ELECT 1 of 3 possible options s.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. s.67(2)

Even if a YP ELECTS OTHERWISE, the Crown may require a trial by a judge and jury. s.67(6)

If a YP ELECTS A PRELIMINARY INQUIRY with either a trial by a judge alone or by a judge and jury, the trial judge must be a judge of a superior court of criminal jurisdiction. The superior court judge will be deemed to be a *youth justice court judge* for the purpose of the proceedings. s.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 CCs.650(2) is entitled to be represented in court by counsel s.67(9)

YOUTH SENTENCES

Summary

The YCJA

- defines the purpose of *youth sentences*
- provides the principles and factors that must be considered when a *youth sentence* is imposed
- creates some new *youth sentences*
- sets out conditions that must 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

s.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

s.38(2)

(subject to the overall principles in s.3)

- a the sentence must 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 must 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 must 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 must
 - i be the least restrictive sentence and consistent with the purpose of the *youth sentence* in s.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 must consider in determining a youth sentence

s.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

s.39(1)

The court must 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

Note: If one of paragraphs a to c applies, the court must 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.

s.39(2)

Other sentencing considerations

s.39(3)

The court must consider submissions related 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 which have been used for similar *offences* committed by YPs in similar circumstances s.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. s.39(4)

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

Under the YCJA, all custodial sentences have a supervision portion. When setting the length of a custodial sentence, the court must 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. s.39(8)

A court which decides to impose a custodial sentence must 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 must give reasons why the case is exceptional. s.39(9) (see "Restrictions on custody," p. 22)

Imposing a youth sentence

Before imposing a *youth sentence*, the court must 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. s.42(1)

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

Possible youth sentences

s.42(2)

Section 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 **I**, or an attendance program **m** s.42(11)

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

- e an order to pay compensation or special damages to another person
- the court must consider present and future means of the YP to pay s.54(1)
 - the court may consider representations made by the recipient s.54(4)
 - notice of the terms of the order MUST be given to the recipient s.54(5)
 - the YP may apply to extend the time to pay s.54(10)
- f an order for the restitution of property to another person
- the court may consider representations made by the recipient s.54(4)
 - notice of the terms of the order MUST be given to the recipient s.54(5)
 - the YP may apply to extend the time to pay s.54(10)

- g** an order to compensate any innocent purchaser of property when the court has made a restitution order
- the court must consider present and future means of the YP to pay s.54(1)
 - the court may consider representations made by the recipient s.54(4)
 - notice of the terms of the order MUST be given to the recipient s.54(5)
 - the YP may apply to extend the time to pay s.54(10)
- h** an order to compensate any person, in kind or by way of personal services
- 🕒 the time limit is 240 hours within 12 months s.54(8)
 - the person who will receive compensation in this way must give their consent s.54(6)
 - the court may consider representations made by the recipient s.54(4)
 - notice of the terms of the order MUST be given to the recipient s.54(5)
 - the court MUST decide whether the YP is a suitable candidate and ensure that the order will NOT interfere with normal hours of work or education s.54(7)
 - the YP may apply to extend the time s.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 time limit is 240 hours during a period of up to 12 months s.54(8)
 - the court MUST decide whether the YP is a suitable candidate and ensure that the order will NOT interfere with normal hours of work or education s.54(7)
 - the community service MUST be part of a program approved by the *provincial director* OR the placement must consent s.54(9)
 - the YP may apply to extend the time to pay s.54(10)
- j 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
 - service of order is 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* must determine that a program to enforce the order is available [s.42\(3\)](#)
- 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* MUST determine that a program to enforce the order is available [s.42\(3\)](#)
 - the court MUST decide whether the YP is a suitable candidate and ensure that the order will NOT interfere with normal hours of work or education [s.54\(7\)](#)

n custody and community supervision order (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 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 s.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 1/3 of the sentence **s.98** (see "Extending the custodial portion of custody and supervision orders under s.42(2)(n)," p. 78)

- o custody and conditional supervision order 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 s.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 s.42(2)(o),(q),(r) sentences” p. 81)

- p deferred custody and conditional supervision order (new)—this option is similar to a conditional sentence in *adult* court
 - ⌚ the time limit is 6 months, subject to appropriate conditions
 - the offence CANNOT be a *serious violent offence (SVO)* and MUST be consistent with the purpose and principles of sentencing in s.38 and the restrictions on custody in s.39 s.42(5)
 - conditions are set under s.105 and it is enforced as if it were a conditional supervision order s.42(6)

- q custody and conditional supervision 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 s.42(2)(o),(q),(r)...,” p. 74)

r intensive rehabilitative custody and conditional supervision (IRCS) (new) [s.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 must consent to the sentence (see “Transitional Provisions”, p.111)
 - the YP must have previously been found guilty at least twice of a *SVO*
 - 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 s.42(2)(n),(o),(q) (see “Conditions for conditional supervision for sentences under s.42(2)(o),(q),(r)...,” p. 74)
 - a YP given an IRCS sentence maintains the right to consent to treatment. [s.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 s.42(2)(q).

Prohibition orders under CCs.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 [s.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 [s.51\(4\)](#)

Reasons must be given. [s.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. The information or indictment is endorsed accordingly. [s.42\(9\)](#)

Other sentencing provisions

Coming into force of youth sentence s.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 s.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

- ⊗ sentencing principle for aboriginal offenders CCs.718.2(e)
- ⊗ provision for the admission of victim impact evidence CCs722,722.1,722.2
- ⊗ continuation in force of appearance notice, promise to appear, summons, undertaking, or recognizance in certain situations CCs.730(2)
- ⊗ provisions dealing with pardons, remission of sentence, and the royal prerogative of mercy CCs.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. [s.53\(1\)](#)

If no percentage is set by the lieutenant governor, the court may order a victim fine surcharge of up to 15%. [s.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. [s.54\(2\)](#)

Orders with probation and intensive support and supervision

The optional conditions for s.42(2)(k) (probation orders), and s.42(2)(l) (orders for intensive support and supervision) have only 1 addition from the YOA [s.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. [s.56\(4\)](#)

Probation for delayed custody s.56(6)

It is possible under the YCJA for custody to be delayed. Section 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. s.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 s.59(2)(c)

Review of custodial sentences s.94

(see "Review of custodial sentences," p. 70)

ADULT SENTENCES

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*
- the age for presumption of *adult sentence* is 14 unless set by a province at 15 or 16
- the Crown may give notice that they will not seek an *adult sentence* on *presumptive offences*

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, s.2(1), sets out 2 types of *presumptive offences*.

In order for the presumption to take effect in either type, the YP must 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*. s.42(9)

To fall under the presumption of an *adult sentence* for a presumptive (b) offence or 3rd *SVO*, the YP must s.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

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
[s.2\(1\) presumptive offence \(a\)](#)

Onus

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

Publication

- permitted if *adult sentence* imposed [s.110\(2\)\(a\)](#)
- permitted if *youth sentence* imposed for presumptive offence. [s.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](#)

Notice and applications... for Adult Sentence

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

Note: 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. [s.69\(1\)](#)

- notice is NOT required from the Crown to try to establish that the *offence* is a 3rd SVO [s.69\(1\)\(b\)](#)
- if the YP indicates that they will not apply for a *youth sentence* under s.63(1), the court MUST order that an *adult sentence* be imposed [s.70\(2\)](#)

for Youth Sentence

- YP may make an application for a *youth sentence* any time before the sentencing hearing begins [s.63\(1\)](#). Before a sentencing hearing the court MUST ask if the YP wishes to apply for a youth sentence under s.63(1) and, if so, whether the Crown will oppose the application. [s.70\(1\)](#)
- Crown may give notice that they will NOT oppose the application and a *youth sentence* is imposed [s.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* s.72(2)

Procedure

- the Crown must first establish, under s.42(9), that the offence is a SVO
- then EITHER the YP must admit to the 2 prior judicial determinations of SVO OR the Crown MUST establish proof s.68(3)
- if the court is NOT satisfied that the *offence* is a 3rd SVO or *presumptive offence*, the Crown may apply for an *adult sentence* as a non-presumptive offence s.68(5) (see "Non-presumptive offence," p. 46)

Publication

- permitted if *adult sentence* imposed s.110(2)(a)
- permitted if *youth sentence* imposed for *presumptive offence*. s.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

Notice and applications... for Adult Sentence

Crown notice required

- to BOTH the court AND the YP, to seek an *adult sentence*. Notice must be given before plea or, with leave of the court, before trial s.64(2)

AND

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

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

The Crown may then apply to have the *offence* found to be a *SVO* under s.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. s.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* must be an *offence* for which an *adult* could be imprisoned for more than 2 years. s.64(3) The Crown may then make an application for an *adult sentence* when these requirements are met. s.69(2)

If the YP indicates that they will NOT seek a *youth sentence*, the court MUST order that an *adult sentence* be imposed. s.70(2)

for Youth Sentence

YP may make an application for a youth sentence any time before the sentencing hearing begins. s.63(1)

After a judicial determination of 3rd SVO and before a sentencing hearing, the court MUST ask if the YP wishes to apply for a *youth sentence* under s.63(1) and, if so, whether the Crown will oppose the application. s.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 must be 14 years old or older at the time of the *offence*. s.62(b)

Onus

- on Crown to show why YP SHOULD receive *adult sentence* s.72(2)

Publication

- permitted if *adult sentence* imposed s.110(2)(a)

Notice

Crown

- notice required to BOTH the court and the YP, of intent to seek an *adult sentence*. Notice must be given before plea or, with leave of the court, before trial s.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.

s.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 s.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 s.72(2)

Factors the court must 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?” s.72(1)

The options...

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

The court **MUST** consider a *pre-sentence report*.

s.72(3)

The court **MUST** state the reasons for the decision it reaches. s.72(4)

If an *adult sentence* is imposed, the CC sections on long-term and dangerous offenders apply. The finding of guilt becomes a conviction as soon as either the appeal or the appeal period ends. s.74

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 s.76(2)

This placement decision may be appealed as part of a sentence appeal under s.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. s.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. s.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 must be appealed as part of the sentence. s.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.

General principles

Measures taken against a YP should encourage the repair of harm done to victims and communities. [s.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 [s.3\(1\)\(d\)\(ii\)](#)
- victims should be provided with information about the proceedings and given an opportunity to participate and be heard [s.3\(1\)\(d\)\(iii\)](#)

Principles of youth sentencing

s.38(2)(e)(iii)

Subject to the limit of proportionality, the sentence **MUST** 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 **MUST** take into account

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

Objectives of extrajudicial measures

s.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.

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.

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 s.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. s.119(1)(d) (see "Victims' access to records," p. 60)

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. [s.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 s.119(1) of the YCJA **MUST**, 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 s.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 s.119(4).

After the end of the period set out in s.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 s.119(2) [s.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 [s.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 [s.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 [s.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 [s.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 s.125(5)

youth worker s.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 s.125(6)

The person to whom information is disclosed under s.125(6) MUST s.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 s.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 s.119(2). s.127(4)

The court MUST be satisfied that the disclosure is necessary, having regard to the following circumstances s.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 **MUST** be given an opportunity to be heard before the court grants an order. [s.127\(2\)](#) The Crown **MAY** apply on an *ex parte* basis when reasonable efforts to locate the YP were made and were not successful. [s.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

[s.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)

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 s.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 s.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 s.63(1) (application for *youth sentence*) or s.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 s.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*. s.82(2)

Certain application forms must NOT contain a question which would require the YP to disclose the *offence* after the termination of the *youth sentence*. s.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. s.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 must operate

- the focus of every custody sentence must be on reintegration and on measures aimed at assisting the YP not to reoffend
- a *youth worker* MUST 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 must serve their youth sentence in youth custody, though there are provisions in the legislation governing 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 community supervision under sentences imposed under s.42(2)(n), and the second governs conditional supervision imposed under s.42(2)(o),(p),(q),(r) and s.94(19)(b).

Purpose of custody and supervision s.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 s.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 must have at least 2 levels of youth custody that are distinguished by the degree of restraint. s.85(1)

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

In Nova Scotia, the court will continue to make this determination following the applicable provisions of the YOA. These YOA provisions will continue to apply, with necessary changes, to the determination of the level of custody and its review: YOA s.2(1) "review board" and "progress report," ss.11, 24.1-24.3, 28-31. s.88

Youth workers and reintegration

The *provincial director* must 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. s.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. s.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 MUST be committed to a provincial correctional facility for *adults*. s.89(1)

Once a YP has served some time in a provincial adult facility under s.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 must be met s.89(2)

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

AND

- the court must 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

s.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
- s.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.

s.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 s.92(4),(5)

If a YP is serving an *adult sentence* with placement in an adult facility under s.76(1)(b) or (c) and a custodial *youth sentence* at the same time, they **MUST** serve both sentences in an adult facility. s.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 s.76(1)(a). s.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 **MUST** be transferred to a provincial adult correctional facility, **UNLESS** the *provincial director* orders otherwise. s.93(1)

If the YP is transferred, s.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 s.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. ss.89(3),92(3),93(3)

Review of custodial sentences

s.94

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 the court may no longer release a YP on probation, but **MUST** place them on conditional supervision. Also, the court may change an IRCS sentence into another custodial sentence.

These orders are reviewed under s.94 [s.95](#)

- conditions of supervision under ss.97(2),105(1)
- continuation of custody under ss.98(3),104(1)
- to remain in custody for breach of supervision under s.103(2)(b)
- continuation of suspension of conditional supervision under s.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. [ss.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* s.96(2)

Where else this procedure can and cannot be used

Because Nova Scotia continues 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 community supervision in a custody and supervision order under s.42(2)(n)

s.97

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

The YP MUST s.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 s.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* MUST 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 s.42(2)(o),(q),(r), deferred custody and supervision orders under s.42(2)(p), and after a review under s.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 s.42(2)(o) for attempted murder, manslaughter, and aggravated sexual assault
- under s.42(2)(q) for murder
- under s.42(2)(r) for intensive rehabilitative custody and supervision

AND

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

AND

the process for setting conditions for release after a review of a custodial *youth sentence* s.94(19)(b)

Unlike sentencing under s.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 s.105(2).

Discretionary conditions that the court may impose are set out in s.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. [s.105\(4\)](#)

Mandatory conditions

s.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 must appear before the *youth justice court* when required by the court to do so s.105(2)(b)
- the YP must report to the *provincial director* immediately upon release s.105(2)(c)
- the YP must 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 s.105(2)(h)

Discretionary conditions

s.105(3)

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

- a go directly to their place of residence or to any other specific place, upon release
- 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. s.105(8)

Extending the custodial portion of custody and supervision orders under s.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. s.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. s.98(2)

Who must be heard

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

Test to extend custodial portion of sentence s.98(3)

The court **MUST** 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 must consider under s.98(4)

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

Court order

s.100

The court MUST state the reasons for an order. It MUST 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. s.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, is 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 s.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 s.42(2)(o) for attempted murder, manslaughter and aggravated sexual assault
- under s.42(2)(q) for murder
- under s.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 s.42(2)(n)," p. 78)

Test

s.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 **MUST** consider are the same as those listed under "Factors the court must consider under s.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

s.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

ss.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 s.42(2)(n) are dealt with in one way, while breaches of conditional supervision under ss.42(2)(o),(q),(r),(p),94(19)(b) are dealt with in another.

Breach of custody and community supervision orders under s.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 s.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 to apprehend the YP. Until apprehended, the YP is deemed to be NOT serving their sentence. s.107

The *provincial director* must 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 [s.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 **MUST** 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 [s.103\(2\)](#)

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

OR

- the YP **MUST** 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 must consider

For breach of supervision conditions the court MUST consider s.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 MUST be prepared, reasons given, and a s.101 review of the order is available.

s.109(5)-(8)

Breach of conditional supervision orders under ss.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 s.42(2)(n)," p. 83. [ss.107,108](#)

Options for the court [s.109](#)

The court must give the YP an opportunity to be heard [s.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 MUST 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 s.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 s.42(2)(n) orders would apply s.109(3)

The factors for consideration, the report, and the review set out under "Breach of supervision conditions," p. 83-85, all apply to conditional supervision. s.109(4)-(8)

Breach of other sentences

s.137

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 ss.42(2)(c)-(m)
(conditional discharge to attendance order)
or (s) (other conditions)
- a victim fine surcharge
- OR
- a disposition under the YOA

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

Contempt of court

Under the YCJA, contempt of court findings or sentences are appealed using the indictable provisions in the CC. s.37(2)

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

Appeals heard as part of the sentence s.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 must be appealed as part of the sentence. ss.37(4),72(5)

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

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

If more than 1 of these is appealed, they must all be part of the same proceeding. s.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

a group of people convened or called together to give advice to, or assist, someone named as a decision maker under the YCJA

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

Who may call a conference

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

How conferences work

If the province establishes rules for *conferences*, all *conferences* EXCEPT those called by judges or justices of the peace must be convened and conducted according to those rules. s.19(3),(4)

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 s.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 s.34(1)(a) or (b) the court may order an assessment and a *report* for one of these purposes s.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 s.104(1)
- e setting conditions for conditional supervision under s.105(1)
- f making an order after a review of a breach or alleged breach of conditional supervision under s.109(2)
- g authorizing *disclosure* of information about a YP under s.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 s.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 MUST receive a copy of the *report*. s.34(7)(a)

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

- to a parent who is not in court s.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 s.34(7)(b)(ii)

Who may have access to the report s.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*. s.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.

Under the YCJA, a *youth justice court* is given explicit jurisdiction to place a YP on a peace bond under these CC sections s.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 must NOT exceed 30 days s.14(2)

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 consents. If the YP does NOT agree, the justice of the peace MUST refer the matter to a *youth justice court*. s.20(2)

Pre-charge screening and private prosecutions

The Crown may establish a pre-charge screening program that sets out the circumstances in which their consent MUST be obtained before a YP is charged with an *offence*. s.23(1)

No prosecutions may be conducted by a prosecutor other than the Attorney General without the consent of the Attorney General. s.24

Pre-sentence reports

s.40

New terminology

YOA "dispositions" become YCJA "sentences"

YOA "pre-disposition reports" become YCJA "*pre-sentence reports*"

When to use a pre-sentence report

A *pre-sentence report* may be ordered whenever a court considers it advisable. s.40(1)

As in the YOA, the court must order a *pre-sentence report* before ordering a custodial sentence s.39(6)

UNLESS

the court is satisfied that a report is NOT necessary

AND

the Crown and defence agree to dispense with it s.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 s.40(2) of the YCJA.

The requirements must 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 s.40(2)(c)
- information that will help the court to determine, under s.39(2), if there is an alternative to custody available s.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 s.119(2). s.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

- *reports* for applications for *adult sentences* or *youth sentences* under s.72
- 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.

s.110(1)

However

- *publication* is allowed when an *adult sentence* is imposed
- if the YP receives a *youth sentence* in relation to a *presumptive offence*, at the sentencing hearing the court MUST ask whether the Crown or the YP will apply for a *publication* ban under s.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 ss.75(1),(3)

- 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 s.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 s.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 s.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 s.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. s.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 s.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 s.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 s.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.

Statements

s.146

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* s.146(2)

Subject to the provisions of s.146, the law in relation to admissibility of statements for *adults* applies to statements for YPs. s.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*.

s.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.

s.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. s.146(5)

Technical irregularity in complying with rights - Where there has been a technical irregularity in complying with the rights or explanations under s.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. s.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.

The province can establish 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. s.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*. s.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 before the new Act is in force [s.161](#)

Starting a proceeding

Proceedings started after YCJA comes into force

No proceedings may be started under the YOA or the JDA once the YCJA is in force. They must 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. [s.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. [s.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 s.110(2)(b) is NOT allowed if they receive a *youth sentence* for a *presumptive offence* [s.161\(1\)\(a\)](#)
- ⊗ IRCS orders may be issued ONLY if the YP consents [s.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* MUST 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* s.160(a)
- ⊗ presumption of an *adult sentence* does NOT apply to 3rd SVO s.160(a)
- ⊗ publication of a YP's identity is NOT allowed if they receive a *youth sentence* for a *presumptive offence* s.160(b)
- ⊗ IRCS orders may be issued ONLY if the YP consents s.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 [s.161\(1\)\(b\)](#)
- ⊗ *publication* of a YP's identity under s.110(2)(b) is NOT allowed if they receive a *youth sentence* for a *presumptive offence* [s.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. s.160(a)

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

Once again, IRCS orders may be issued ONLY if the YP consents. s.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 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 [s.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. [s.161\(3\)](#)

YOUTH JUSTICE ACT (NS)

Summary

The provincial youth legislation, the Young Persons' Summary Proceedings Act (YPSPA), will be replaced by the provincial Youth Justice Act (YJA). This legislation establishes procedures for YPs alleged to have violated provincial enactments, including municipal by-laws. The changes make the provincial legislation consistent with the YCJA and update the legislation. This section outlines the changes from the YPSPA.

Note: Section number references found at the end of paragraphs under this heading refer to sections in the YJA only.

Changes from the YPSPA

Purpose

The purpose of the YJA now includes special considerations for YPs including a recognition of their rights and freedoms and a special guarantee of their rights. [s.2](#)

Terminology

The terminology has been changed to match the YCJA. Dispositions are sentences, *reports* are *pre-sentence reports*, courts are *youth justice courts*, and the terms *extrajudicial measures* and *extrajudicial sanctions* have been adopted.

Age range

The YJA covers alleged *offences* from YPs over 12 and under 18, unlike the YPSPA which covered *offences* for those over 12 and under 16 only. [ss.2,3\(p\)](#)

Extrajudicial measures and extrajudicial sanctions

Principles similar to the YCJA were added to the YJA. [s.5](#)

Police officers **MUST** consider the following before starting proceedings or taking any other measures

- taking no further action
- having the YP dealt with by the Children and Family Services Act
- warning the YP
- cautioning the YP
- referring the YP to a program or agency in the community, with their permission [s.6](#)

The more formal *extrajudicial sanctions* which go through the Nova Scotia Restorative Justice Program are set out in the YJA and are to be used **ONLY** if lesser measures are **NOT** adequate. [s.10](#)

Ticketing

A summary offence ticket can be issued to a YP. If the YP fails to appear in court, a judge is **NOT** required to enter a finding of guilt and may instead issue a summons. [s.13](#)

Pre-trial detention

Authorization is no longer required to hold a YP. Also, a YP can be released by the arresting officer or officer in charge. s.14(2),(3)

There is a presumption that detention is NOT necessary, and no YP can be detained as a substitute for appropriate child protection, mental health, or other social measures. s.14(4)

Notice to parent

s.14(5)-(11)

Notice to parent MUST be given in all cases for YPs aged 12 to 17.

⊗ Notice to parent is NOT required for a YP who is 16 or 17 years old at the time of an *offence* for an alleged offence under the Motor Vehicle Act. s.14(7)

Conferences

s.16

As with the YCJA, decision makers can call a *conference* to get advice when making a decision. Advice may be sought on, among other things, appropriate *extrajudicial measures*, sentences, conditions for release, and reviews of sentences. If the province establishes rules for *conferences*, all *conferences* EXCEPT those called by judges or justices of the peace MUST be convened and conducted according to those rules.

Sentences

s.19(1)

A reprimand has been added as a possible sentence, and probation has been eliminated as a possible sentence, for offences under the YJA.

Restrictions on custody

Unless a YP has failed to comply with non-custodial sentences and has a *record*, or has committed an *offence* that has threatened the safety of another person or caused them bodily harm, a court CANNOT order custody. s.21(1)

The court MUST consider all alternatives to custody and find no reasonable alternative or combination of alternatives before imposing custody. s.21(2)

In deciding whether reasonable alternatives to custody exist, the court MUST consider

- the alternatives
- previous compliance and the likelihood that the YP will comply with a non-custodial sentence

AND

- alternatives used for similar *offences* committed in similar circumstances s.21(3)

Custody CANNOT be used as a substitute for appropriate child protection, mental health, or other social measures. s.21(4)

The sentence MUST be proportionate to the seriousness of the *offence*. s.21(6)

Review of sentences

Sentences can be reviewed, and the grounds for review are the same as for reviews of non-custodial sentences under the YCJA. The sentence can be confirmed, terminated, varied, or extended. [s.22](#)

Records

No *record* can be disclosed after 2 years from a finding of guilt without an application to the court and notice to the YP. [s.32](#)

Statements

The provisions for admissibility of statements taken from YPs by persons in authority are included in the YJA. [s.35](#)

Transitional

If no proceedings are started before the YJA comes into force, a YP who is 16 or 17 can be dealt with under the YJA. [s.38](#)

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)

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

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

youth custody facility means a facility designated under s.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)

