

**POCKET  
GUIDE**

2014  
**YCJA**

**YOUTH  
CRIMINAL  
JUSTICE  
ACT**



Ontario

# 2014 POCKET GUIDE

# YCJA

# YOUTH CRIMINAL JUSTICE ACT

# 2014 Ontario Pocket Guide

## Youth Criminal Justice Act Canada

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## LEGEND

AS	Adult sentence
CC	Criminal Code
CFSA	Child and Family Services Act
EJM	Extrajudicial measures
EJS	Extrajudicial sanctions
IRCS	Intensive rehabilitative custody and supervision order
JDA	Juvenile Delinquents Act
JP	Justice of the Peace
POA	Provincial Offences Act
RJ	Restorative justice
SVO	Serious violent offence
SS & CA	Safe Streets and Communities Act S.C. 2012, c.1
YCJA	Youth Criminal Justice Act
YOA	Young Offenders Act
YP	Young person
	Time limit

**Green type** indicates sections of the YCJA.

**Violet background** indicates a legislative change under the SS & CA 2012.

**Violet type** indicates references to section in the SS & CA 2012.

Note: The word "court" in this document means youth justice court.

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# INTRODUCTION

## Background

The Juvenile Delinquents Act was in force from 1908 until 1984.

The Young Offenders Act (YOA) was in force from 1984 until 2003.

The Youth Criminal Justice Act (YCJA) is the federal legislation that replaced the YOA in April 2003. A Youth Criminal Justice Act Pocket Guide dated 2003 summarized the changes that were brought about when the YCJA was implemented in 2003 and some of the YOA provisions that were kept in the YCJA. This new guide, *Ontario Pocket Guide to the Youth Criminal Justice Act 2014 Edition*, adds summaries of the key changes made to the YCJA by the [Safe Streets and Communities Act S.C. 2012, c.1, \(SS & CA\) effective October 23, 2012](#).

The key components of the YCJA are presented in eleven sections which correspond to the divider tabs in the *Pocket Guide*. The guide also includes “Considerations and Definitions” to support best practices.

## General Rule - Application of the CC

The YCJA is a procedural statute which creates specific rules that apply when dealing with YPs. It does not stand alone and the general rule is that the provisions of the CC apply. Except to the extent that it is inconsistent with the YCJA, the provisions of the criminal code apply to offences alleged to have been committed by a YP, with any modifications the circumstances may require. [s.140](#)

In particular, Part XXVII of the CC, the rules for Summary Conviction offences, applies to the YCJA with a few additional provisions and except to the extent that Part XXVII is inconsistent with the YCJA. [s.142](#)

There are several specific provisions set out in the YCJA that make specific reference to sections or parts of the CC, including [ss.14\(2\),15\(4\),20\(2\),28,50,67\(8\) & \(9\),141 & 142](#).

## Declaration of Principle

s.3

The principles in s.3 must be used to interpret the entire act. The act must be liberally construed to make sure these principles govern all dealings with YPs. 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,”* s.4, p.9, *“Youth sentencing principles,”* s.38(2), p.15

, and *“Principles of custody and supervision,”* s.83(2), p.37)

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

- a the youth criminal justice system is intended to protect the public by
  - i holding YPs accountable through measures that are in proportion to both how serious the offence is and the level of the YP’s responsibility for the offence
  - ii helping to rehabilitate and reintegrate YPs who have committed offences
  - iii helping prevent crime by referring YPs to programs or agencies in the community that can address the circumstances underlying their offending behaviour
- b the criminal justice system for YPs must be separate from that of adults and **MUST**
  - be based on the principle of a YP’s diminished moral responsibility or culpability in relation to their age and

experience

- emphasize the following
  - i rehabilitation and reintegration
  - ii accountability that is fair and in proportion with YPs' greater dependency and reduced level of maturity
  - iii enhanced procedural protections to protect YPs' rights, including their privacy, and to make sure they are treated fairly
  - iv timely intervention that reinforces the link between offending and consequences

AND

- v 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
- i reinforce a YP's respect for the values of society
  - ii encourage the repair of harm done to victims and the community
  - iii have meaning for 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

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

AND

- d proceedings against YPs are required to apply these special considerations
  - i YPs have rights and freedoms which are specially guaranteed, including the right to be heard, and to participate in the process of making decisions that affect them
  - ii victims should be treated with courtesy, compassion, and respect, and should suffer the minimum degree of inconvenience
  - iii victims should be provided with information and given an opportunity to participate and be heard

AND

- iv parents should be informed of measures or proceedings and encouraged to support their children as the YPs address their offending behaviour

## Jurisdiction of the youth justice court

All of the proceedings under the YCJA take place in the youth justice court. This court has exclusive jurisdiction over any offence that a person is alleged to commit while they are a YP, subject only to the Contraventions Act and the National Defence Act. [s.14\(1\)](#)

### What constitutes a youth justice court and judge

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

any court that a province designates as a youth justice court for the purposes of the YCJA

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

a person who is appointed or designated as a judge of the youth justice court or a judge sitting in a court created or designated as a youth justice court

If a YP elects to be tried by a judge without a jury, or a judge and jury, the judge and court elected are the superior court of criminal jurisdiction in the province. The court and judge which the YP elects are deemed to be a youth justice court and youth justice court judge. [s.13\(2\),\(3\)](#)



## Admissibility of statements

In order for a YP's statement to be admitted in evidence it MUST be taken in accordance with s.146 of the YCJA. The rules are comprehensive. When the rules are not followed, the statement may be EXCLUDED FROM EVIDENCE.

(see s.146 and "Short sections: 'Appeals' to 'Statements'," p.121)

## After a YP reaches age 18

Extrajudicial measures taken, or judicial proceedings which are started under the YCJA against a YP, may be continued under the YCJA after the person reaches age 18. s.14(4)

(see "Transitional Provisions," p.123)

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 the date of their 18th birthday.

(see s.16 of the YCJA for details)

## Jurisdiction of a justice of the peace

Justices of the peace may carry out any proceedings that may be carried out before a justice under the CC 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 – bail de novo – may be made to the youth justice court judge to release the YP or to detain them. It may be brought by either the defence or Crown with two clear days written notice to the other side and the court. 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 (recognizance – fear of injury or damage) under s.810 of the CC. However, if the YP refuses to enter into a recognizance then the JP MUST refer this issue to a youth justice court. s.20(2)

*(see “Short sections: ‘Appeals’ to ‘Statements’: Peace Bonds,” p.111)*

# Extrajudicial Measures (EJM)

## What extrajudicial measures are

EJM are measures other than court proceedings used to deal with a YP who has committed an offence.

Part 1 of the YCJA, Extrajudicial Measures, sets out the particulars for authorized non-court options. These non-court options fall into three basic categories

- listed options that police **MUST** consider **s.6**
- caution programs for police and Crown that **MAY** be established by the Attorney General **ss.7 & 8**

AND

- the more-formal program of extrajudicial sanctions which requires a referral. The referral may come from police, Crown, or both depending on the rules of the program **s.10**

## Principles governing extrajudicial measures

s.4

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

### EJM

- a are often the most appropriate and effective way to address youth crime
- b allow for effective and timely interventions that focus on correcting a YP's offending behaviour
- c are presumed to be adequate to hold a YP accountable if the offence was non-violent and the YP had no previous finding of guilt

### AND

- d should be used when they are adequate to hold a YP accountable for their offending behaviour. The act allows the use of EJM when these measures satisfy the principles in this section even if the YP has previously been dealt with by EJM or has been found guilty of an offence

## Objectives of extrajudicial measures

s.5

EJM should be designed to

- a** provide an effective and timely response to offending behaviour outside of judicial proceedings
- b** encourage YPs to acknowledge and repair the harm they caused to the victim and the community
- c** encourage families of YPs to get involved in designing and implementing the measures. This includes extended families where appropriate and members of the community
- d** give victims a chance to take part in making 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

## Less-formal measures

### Take no further action, warnings, cautions, and referrals

These are measures that can be used by police and crown attorneys to deal with YPs without using the formal youth justice court system. EJM include extrajudicial sanctions. EJS is the formal program known as Alternative Measures under the YOA.

Before laying a charge or referring the matter to EJS, a police officer **MUST** consider whether one of these actions would satisfy the principles set out in [s.4](#)

- 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 under [s.7](#))
- refer the YP to a program or agency in the community that may help the YP to not commit offences. The YP must consent to the referral [s.6\(1\)](#)

All future charges against the YP for the offence continue to be valid even if a police officer does not consider any of these extrajudicial measures. [s.6\(2\)](#)

The Crown may also administer a caution if a program is established. [s.8](#)

The youth justice court does not admit evidence of the offence, or any of the following evidence, as a way to prove prior offending behaviour: the YP received a warning, caution, or referral, or no further action was taken. [s.9](#)

## More-formal measures

### Extrajudicial Sanctions (EJS)

EJS are the most formal type of extrajudicial measures and are part of a program authorized by the Attorney General, s.10(2)(a).

In Ontario, formal EJS programs are funded by both the Ministry of Attorney General (MAG) and the Ministry of Children and Youth Services (MCYS):

- Youth Justice Committees (YJC) – The YJC program funded by MAG is based on a restorative justice approach. Young persons can be referred either pre-charge by police (via EJM) or post-charge by the Crown (via EJS). Trained community volunteers set meetings with the youth, his/her parent(s) and the victim (if s/he chooses to participate) to negotiate appropriate ways by which the youth can make amends and be held accountable for his/her actions. Each YJC site has a Steering Committee chaired by the local Crown/Assistant Crown. The committee provides oversight to the YJC and includes representation from Police, Probation, Legal Aid Ontario, defence counsel and victim services.
- MCYS Extrajudicial sanctions (EJS) programs –Post-charge sanctions are referred by the Crown where a young person cannot adequately be dealt with by police caution or warning (extrajudicial measures).EJS are community-based and can include apology to victim, community service work, restitution, cognitive/behaviour skills, anger management, life skills

and substance abuse counselling/treatment.

### **Pre-conditions for using extrajudicial sanctions**

#### s.10(2)

An EJS may be used for these reasons only

- a** it is part of an authorized program of sanctions
- b** the program is considered appropriate to the needs of the YP and the interests of society
- c** the YP gives their informed consent to participate
- d** the YP knows they have the right to be represented by counsel and has the opportunity to consult counsel before they agree to attend the program
- e** the YP accepts responsibility for the actions that form the basis of the alleged offence
- f** the crown attorney believes there is enough evidence to prosecute the offence
- g** the law does not bar prosecuting the offence s.10(2)

### **Limitations on using extrajudicial sanctions**

EJS may be used only if a YP cannot be adequately dealt with by a warning, caution, or referral because of

- the seriousness of the offence
- the nature and number of previous offences they committed
- any other aggravating circumstances s.10(1)

Before a police officer can refer a matter to the formal EJS program or lay a charge, they must consider whether it would be sufficient based on the principles of EJM set out in s.4 to use the s.6 options.



## **When an extrajudicial sanction may NOT be used**

An EJS may not be used for these reasons [s.10\(3\)](#)

- the YP denies that they were involved
- the YP asks for the youth justice court to hear the case

## **Informing parents of a YP who chooses an extrajudicial sanction**

The person who administers the program must inform the parents of the YP about the sanction. [s.11](#)

## **Informing a victim about a YP and an extrajudicial sanction** [s.12](#)

If a victim asks to know, a police officer, Crown Attorney, provincial director, or victim services representative must tell them the identity of the YP and how the offence has been dealt with.

## Notes to police, Crown

### Notes to police on EJM & EJS generally

Police **MUST** consider these measures: take no further action, warnings, cautions, and referrals. **s.6**

EJS should be used **ONLY** when an officer determines that warnings, cautions, and referrals are not adequate. **s.10(1)**

Nothing in the YCJA prevents using EJM more than once. **s.4(d)**

Police **MUST** keep records of EJM as per **s.115(1.1)**, however the use of these records is strictly controlled **s.119(4)**

### Note a key change

The amendment to **s.39(1)(c)** now includes, for indictable offences, **EJS** in the “history that indicates a pattern” as one of the preconditions for imposing a custodial sentence. **s.39**

# Pre-trial procedures

## Judicial interim release ss.28 to 33

### General rule ss.28 & 29

All provisions in Part XVI of the CC that apply to judicial interim release for adults apply to YPs, except where they are inconsistent with or excluded by the YCJA. ss.28 & 29

### Key provisions for judicial interim release

*YP must first appear before a judge or justice* s.32(1)

The youth justice court judge or justice **MUST**

- a** have the information or indictment read to the YP
- b** if the YP is NOT represented by counsel, inform the YP of that right  
AND
- c** If notified by the Crown of its intention to seek an adult sentence OR where the status (age) of the young person is uncertain – notify the YP that an adult sentence might be imposed.

### Requirements for detention

*No detention allowed* s.29(1)

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)

*Justification for holding a YP in custody*

s.29(2)

A youth justice court judge or justice may detain a YP in custody ONLY IF

- a** the YP is charged with
    - i** a serious offence
    - OR
    - ii** an offence other than a serious offence where the YP's history shows a pattern of
      - outstanding charges
      - OR
      - findings of guilt
  - b** a youth justice court judge or justice is satisfied that on a balance of probabilities custody is necessary to
    - i** make sure the YP will appear in court as required
    - ii** protect the public, including a victim or witness, having regard to all of the circumstances
- OR

iii maintain confidence in the administration of justice for this reason

- a YP has been charged with a serious offence  
AND
- detention is not justified under (i) or (ii)  
BUT
- there are exceptional circumstances. The youth court judge or justice must consider the principles in s.3 as well as the four circumstances listed in s.29(2)(iii) in making this assessment

AND

c the youth justice court judge or justice is satisfied that on the balance of probabilities the conditions of release would NOT

- i be sufficient to make sure a YP will appear in court as required
- ii protect the public  
OR
- iii maintain confidence in the administration of justice s.29(2)

*The onus is on the Crown*

s.29(3)

The onus is on the Crown to meet the requirements for detention. s.29(3)

**Release to a responsible person**

s.31

A YP who has been arrested may be placed in the care of a responsible person, instead of being held in custody, if a justice or the youth justice court is satisfied that **s.31(1)**

- a** the YP would be detained, but for this subsection
- b** the person is willing and able to take care of and exercise control over the YP


AND

- c** the YP is willing to be placed in the care of the responsible person

If a YP would be detained because there is no responsible person, then the youth justice court judge or justice must ask whether a responsible person is available and whether the YP is willing to be placed in that person's care. **s.31(2)**

Before a YP is placed in the care of a responsible person the YP and the responsible person must both enter into undertakings to a youth justice court judge or justice.

**s.31(3)**

 Breach of an undertaking that places a YP in the care of a responsible person may be prosecuted as an indictable or a summary conviction offence. The maximum penalty if prosecuted by indictment is 2 years. **s.139**

### *Release from detention in custody*

If a YP is charged with an offence listed in CC s.469 then release can be ordered by a youth justice court judge ONLY, NOT by a justice. s.33(8)YCJA & CC s.522

The YCJA contains provisions that allow for review of orders for judicial interim release that were made by youth justice court judges or justices. s.33

**Election—choosing a mode of trial**

s.67

A YP must elect how they will be tried in ANY of these circumstances

- the Crown has given notice that they intend to seek an AS for an offence for which an adult could receive more than 2 years imprisonment when the offence is alleged to have occurred after the YP reached the age of 14 years s.64(1) & (2) & s.67(1)(b)
- the YP is charged with having committed 1st or 2nd degree murder when the offence is alleged to have occurred while they were age 12 or 13 s.67(1)(c)
- 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)(d)

The YP may elect 1 of 3 options s.67(2)

- trial by a youth justice court judge without a preliminary inquiry
- trial by a judge without a jury
- trial by a judge and jury



## **Trial before a judge without a jury or a judge and jury**

If the YP does not elect, then they are deemed to have elected to be tried by a judge and jury. s.67(2)

If the YP ELECTS to be tried by a judge without a jury, or elects or is deemed to have elected to be tried by a judge and jury, then there will be a preliminary inquiry ONLY IF the YP or the Crown asks for one. s.67(2)

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

When a YP is tried by either a judge without a jury, 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 and the court is deemed to be a youth justice court for the purpose of the proceedings. s.13(2),(3)

In addition, the trial will follow the CC provisions (parts XIX and XX) that govern the mode of trial that was elected, with any modifications that the circumstances require AND these exceptions s.67(9)

- the privacy provisions of the YCJA apply s.67(9)(a)  
AND
- a YP who is removed from court under CC s.650(2) is entitled to be represented in court by counsel s.67(9)(b)

# 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
- has a number of youth sentence options
- 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.

WHEN the court orders an adult sentence, then Part XXIII (sentencing) and Part XXIV (dangerous and long-term offenders) of the CC apply. [s.74\(1\)](#)

*(see “Adult Sentences,” p.47)*

**Purpose of youth sentence**

s.38(1)

The purpose of 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 societyAND
  - iii promote a sense of responsibility in the YP, and an acknowledgment of the harm done to the victims and the community
- f subject to (c) the sentence may have the following objectives
  - i to denounce unlawful conductAND
  - ii to deter the YP from committing offences

## Factors the court must consider in determining a youth sentence

s.38(3)

- a the degree the YP has participated in the offence
  - b the harm done to the victims and whether it was intentional or reasonably foreseeable
  - c any reparation the YP has made to the victim or the community
  - d any time the YP has already spent 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 one 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 has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than 2 years and has a history that indicates a pattern of either extrajudicial sanctions or of findings of guilt or both
- OR
- d** in EXCEPTIONAL cases, if the offence is indictable and the aggravating circumstances would make a non-custodial sentence inconsistent with the purpose and principles of youth sentencing set out in s.38

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### Note: If one of paragraphs 39(1)(a),(b) or (c) applies

- the court MUST consider all alternatives to custody that were raised at the sentencing hearing and that are reasonable in the circumstances

AND

- MUST NOT impose a custodial sentence unless it determines that no reasonable alternative or combination of alternatives would achieve the purpose

and principles of sentencing set out in  
ss.38 & 39(2)

## Other sentencing considerations s.39(3)

In determining whether there is a reasonable alternative to custody 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 YPs who have committed similar offences 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)

Before imposing a custodial sentence the court must consider a presentence report **UNLESS** the court is satisfied that it is not necessary and the Crown **AND** the YP or their lawyer gives their consent. s.39(6) & (7)

Under the YCJA, all custodial sentences have a supervision portion. When setting the length of a custodial sentence, the court **MUST** be guided by the purpose and principles in s.38

and must NOT take into consideration either 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 that 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 under s.38(1)(d). s.39(9)

(see “Restrictions on custody,” p.27)

## Imposing a youth sentence

Before imposing a youth sentence, the court must consider recommendations from a conference if one is held, any pre-sentence report that is prepared, representations made by the parties or their lawyer, 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.107 & “Pre-sentence reports,” p.114)

### Possible youth sentences


s.42(2)

Section 42(2) requires a court that finds a YP guilty of an offence to impose one of the following sanctions, or any combination that are not inconsistent with each other [the exception is murder s.42(2)(q) or (r)]


- a a reprimand – similar to a warning by a judge
- b an absolute discharge

- c** a conditional discharge – this may require supervision by the provincial director
  - the court may NOT combine the sentence of conditional discharge with (k) "probation," (l) Intensive Support and Supervision Program "ISSP", or (m) "attendance order" to attend an approved non-residential program 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 for specified losses or specified 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 an order for the restitution of the property to its owner or any other 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)
- h** subject to s.54, an order to compensate any person, in kind or by way of personal services
-  the time limit is 240 hours of service to be completed within 12 months s.54(8)
- the person who is offered 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** be satisfied that the YP is a suitable candidate and 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 subject to s.54, 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 of service to be completed within 12 months s.54(8)

- the court MUST be satisfied that 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 subject to s.51 (mandatory prohibition order), any order for prohibition, seizure, or forfeiture that could be imposed under federal legislation – other than an order under CCs.161 (order of prohibition)  
(see also “Prohibition Orders,” p.41)

k probation

 the time limit is 2 years

- mandatory and optional conditions for the order s.55
- communication of the order s.56
  - the order must be read to or by the YP s.56(1)(a)
  - the order must be explained to the YP and the YP must confirm that they understand it s.56(1)(b)
  - the court must make sure a copy of the order is given to the YP and to any parent who may attend the sentencing hearing s.56(1)(c)

- the court may also have a copy of the order given to a parent who does not attend the sentencing hearing if the parent is taking an active interest in the proceedings s.56(2)

**l** an intensive support and supervision program approved by the provincial director

Before the order is made, the provincial director must determine that a program to enforce the order is available. s.42(3)


This option is intended to provide more support and closer monitoring than a probation order.

Ss.55 & 56 apply as with probation.

**m** attendance order


This option requires that a YP attend a non-residential program approved by the provincial director, at specified times and on specified terms.

Before the order is made, the provincial director **MUST** determine that a program to enforce the order is available s.42(3)

 the time limit is 240 hours over a maximum period of 6 months

- the court **MUST** be satisfied that the YP is a suitable candidate and that the order will not interfere with normal hours of work or education s.54(7)

**n** custody and community supervision order

 2/3 of the sentence is served in custody and 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 custody and supervision order are in [s.97\(1\)](#)

AND

- other conditions can be added by the provincial director under [s.97\(2\)](#) (see “Conditions for community supervision in a custody and supervision order, [s.42\(2\)\(n\)](#),” p.85)
- 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 a period that does not exceed the remainder of the sentence, the last 1/3 [s.98](#) (see “Extending the custodial portion of custody and supervision orders, [s.42\(2\)\(n\)](#),” p.90)

- o custody and supervision order where the community supervision portion of the sentence is served under “conditional supervision” for the following offences: attempted murder, manslaughter, and aggravated sexual assault
  - 🕒 the time limit is 3 years—the court sets the relative times for custody and conditional supervision
    - the court sets the conditions for conditional supervision under [s.105](#) (see “Conditions for conditional supervision for sentences under [s.42\(2\)\(o\),\(q\) & \(r\)](#),” p.87)
    - 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 custodial portion of orders for custody that have conditional supervision for [s.42\(2\)\(o\),\(q\) & \(r\)](#) sentences,” p.93)
- p subject to [s.42\(5\)](#), deferred custody and supervision order—similar to the adult sentencing option of conditional sentence

The youth justice court can sentence a YP to a deferred custody and supervision order

ONLY IF [s.42\(5\)](#)

- a the YP is found guilty of an offence other than one where the YP causes or attempts to cause serious bodily harm in committing the offence

AND

- b it is consistent with the purpose and principles [s.38](#)

and the restrictions on custody s.39


- ⌚ the time limit is 6 months
    - it is subject to appropriate conditions s.105
    - the order is enforced as if it were a conditional supervision order
- 

Note: Ss.106 to 109 applies to a breach of a deferred custody and supervision order. s.42(6)

- q custody and conditional supervision for murder
  - i *murder 1<sup>st</sup> degree*
    - ⌚ the time limit is 10 years—custody up to 6 years followed by conditional supervision in the community
  - ii *murder 2<sup>nd</sup> 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), deferred custody and supervision orders under s.42(2)(p), and after a review s.94(19)(b),” p.42)
- r subject to s.42(7), intensive rehabilitative custody and conditional supervision (IRCS)

This option may be considered as an alternative to an AS

IRCS is available for a YP only if **s.42(7)**

- a**
- i** the YP has been found guilty of a SVO
- OR
- ii** the YP has been found guilty of an offence, where the YP caused or attempted to cause serious bodily harm and for which an adult is liable to imprisonment for a term of more than 2 years, and the YP had previously been found guilty at least twice of such an offence
- 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
- 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 limits for the maximum length of IRCS are:- 2 years
- 3 years for offences punishable by life imprisonment for adults
  - 10 years for first degree murder
  - 7 years for second degree murder

The rules for the periods of custody and community supervision apply. (see “Conditions for conditional supervision for sentences under s.42(2)(o),(q) & (r),” p.87)

- a YP given an IRCS sentence maintains all the rights regarding consent to treatment, which includes physical or mental health treatment or care 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

## Other sentencing provisions

### Maximum youth sentences

- 2 years
- 3 years for offences punishable by life imprisonment for adults
- 10 years for 1<sup>st</sup> degree murder
- 7 years for 2<sup>nd</sup> degree murder

Note: Maximum youth sentence must be comprised of pre-trial custody, custody and supervision order(s) and probation. See: Case Law Section R. v. D.S. 2008 ONCA 740 p.

Any single sentence under s.42(2) is generally limited to 2 years, with the EXCEPTIONS set out in s.42(14)

- j** order of prohibition, seizure or forfeiture
- n** custody and supervision order where the offence is one for which the punishment for adults is life imprisonment



**o** custody and supervision order for these offences:  
attempt to commit murder, manslaughter, and  
aggravated sexual assault

**q** 1<sup>st</sup> degree murder and 2<sup>nd</sup> degree murder

AND

**r** IRCS

### **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)(a) & (b)

Subject to ss.42(15) & (16), the court can give a consecutive custodial sentence if a YP is sentenced under paragraphs 42(2)(n),(o),(q) or (r)

**a** while they are already under sentence

OR

**b** if the YP is being sentenced for more than one offence under any one of those paragraphs

These sentences are subject to the limitations set out in s.42(2)(15) & (16).

## Where CC Part XXIII sentencing applies to youth sentencing

Generally, the sentencing provisions for adults set out in the CC do not apply to youth sentencing. s.50

### EXCEPTIONS

- sentencing principle for aboriginal offenders  
CC s.718.2(e)
  - provision for admitting victim impact statements  
CC ss.722,722.1,722.2
- continuation in force of appearance notice, promise to appear, summons, undertaking, or recognizance in certain situations CC s.730(2)
- provisions dealing with pardons, remission of sentence, and the royal prerogative of mercy  
CC s.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 under s.42(2)(d) be used to help 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% of the fine imposed. s.53(2)

## Prohibition orders for offences

Referred to in CC ss.109(1)(a)to(d)&110(1)(a)or(b)  
ss.42(2)(j) & 51


### Mandatory prohibition order

When a YP is found guilty of an offence referred to in CC 109(1)(a)to(d) the youth justice court **MUST**, in addition to any sentence imposed under s.42 of the YCJA, make an order that prohibits the YP from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance. s.51(1)

 The minimum duration of a mandatory order is 2 years after the YP completes the custody portion of the sentence or, if no custody, 2 years after a finding of guilt. s.51(2)

### Discretionary prohibition order

There are also discretionary prohibition orders, which the youth justice court **MUST** consider for offences referred to in paragraphs CC 110(1)(a)or(b). s.51(3)

 The maximum duration of a discretionary order is 2 years after the YP completes the custody portion of the sentence or, if no custody, 2 years after a finding of guilt. s.51(4)

## Reasons – Prohibition Order

Reasons must be given for

- making the prohibition order s.51(5)  
AND
- failing to make a discretionary order or failing to prohibit the YP from possessing everything referred to in s.51(3).  
s.51(6)

## Review – Prohibition Order

There is also provision for the youth justice court to review prohibition orders that are made under s.51. s.52

## Definitions for serious offence, violent offence & serious violent offence

NEW definitions (as of October 23, 2012) in [s.2\(2\)](#). Some sentences and procedures will vary depending on which definition the offence falls under.

**serious offence** means an indictable offence under an Act of Parliament for which the maximum punishment is imprisonment for five years or more

**serious violent offence (SVO)** means an offence under one of the following provisions of the Criminal Code:

- a** section [231](#) or [235](#)  
(first degree murder or second degree murder);
- b** section [239](#) (attempt to commit murder);
- c** section [232](#), [234](#) or [236](#) (manslaughter); or
- d** section [273](#) (aggravated sexual assault).

**violent offence** means

- a** an offence committed by a YP that includes as an element the causing of bodily harm;
- b** an attempt or a threat to commit an offence referred to in paragraph [\(a\)](#); or
- c** an offence in the commission of which a YP endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.

## Orders with probation and intensive support and supervision program

### Conditions imposed

When a probation order, [s.42\(2\)\(k\)](#), or an intensive support and supervision program order, [s.42\(2\)\(l\)](#), is imposed there are mandatory conditions that a youth justice court judge **MUST** impose, [s.55\(1\)](#), and discretionary conditions that a youth court judge **MAY** impose, [s.55\(2\)](#).

### Validity of orders

These orders are valid whether or not the YP endorses them or the parent receives a copy. [s.56\(4\)](#)

## Starting probation or intensive support and supervision program

The general rule is that an order under [s.42\(2\)\(k\)](#) or [\(l\)](#) comes into force

- on the date on which it is made  
OR
- if the sentence includes continuous custody and supervision, at the end of the period of supervision  
[s.56\(5\)](#)

### Starting probation or intensive support and supervision program where custody is delayed


It is possible under the YCJA for a youth sentence or any part of it to be delayed in coming into force. This includes a delay in starting the period of custody if one is ordered.

[s.42\(12\)](#)

If the youth justice court orders a delay in starting the period of custody, then [s.56\(6\)](#) allows a court to divide probation or intensive support and supervision orders so that they are served in two parts – before and after a period of delayed custody and supervision. The first part of the order begins on the day it is made and ends at the start of custody. The remainder takes effect when the supervision portion of the sentence ends.

## Review of sentences

### 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)

There are a number of grounds for review. s.59(2)

### Review of custodial sentences

For sentences involving custody s.94

- there is an annual review s.94(1) & (2)
- there are optional reviews s.94(3)
- there are a number of other grounds for review s.94(6)

(see “*Review of custodial sentences,*” p.82)



# ADULT SENTENCES (AS)

## Key Provisions under the YCJA

Eligibility for an AS	s.64(1)
Notice of intention to seek an AS	s.64(2)
Application by the Crown for an AS	s.64(1)
Hearing: adult or youth sentence	ss.71 & 72
General Rules	
Test for an AS	s.72(1)
Onus on the Crown	s.72(2)
Orders for AS or youth sentence	s.72(1) & (1.1)
When an AS has been ordered	s.72(1)
When a youth sentence has been ordered	s.72(1.1)
Sentences available	
Custody placement	s.76
Publication	s.75
Appeals	ss.37(4),72(5),75(4) & 76(5)
Key section changes made by the SS & CA 2012	

## Key provisions under the YCJA

- all proceedings dealing with YPs are heard in the youth justice court
- the Crown may seek an AS for a YP who was 14 or older at the time of the offence, and has been found guilty of an offence for which an adult is liable to imprisonment for more than 2 years s.64(1)
- the hearing to determine whether the YP should receive an AS takes place in the youth justice court after a finding of guilt at the beginning of the sentencing hearing s.71
- the youth justice court MUST impose an AS for certain offences that meet the test for appropriateness of an AS s.72(1)
- the onus to prove an AS should be imposed under s.72(1) is on the Crown s.72(2)
- the YCJA eliminates transfer hearings, a procedure that was used under the YOA

## Eligibility for an adult sentence

s.64(1)

The Crown may seek an AS for a YP who was 14 or older at the time of the offence, and has been found guilty of an offence for which an adult is liable to imprisonment for more than 2 years. s.64(1)

## Notice of intention to seek an adult sentence

s.64(2)

### When notice is to be given

The Crown who intends to seek an AS must give notice either before the YP enters a plea or, with leave of the youth justice court, before the trial begins.

They must give this notice to both the YP and the youth justice court. s.64(2)

### Included offences

A notice of intention to seek an AS is also considered notice for any included offence for which

- a YP is found guilty

AND

- 🕒 an adult could be imprisoned for more than 2 years
- s.64(3)

### How notices are given

An application or notice under s.64 or s.76 is given as follows: oral notice must be given in the presence of the other party; written notice must be served personally. s.81

## Application by the Crown for an adult sentence

s.64(1)

### Crown may seek an AS s.64(1)

The Crown may seek an AS for a YP who was 14 or older at the time of the offence, and has been found guilty of an offence for which an adult is liable to imprisonment for more than 2 years. s.64(1)

### Crown must consider an AS s.64(1.1)

The Crown must consider making an application for an AS if the offence is a SVO and the YP was 14 years or older at the time of the offence. If the Crown will not make an application they must advise the youth justice court before a plea or, with leave, before the trial begins. s.64(1.1)

### When to make the application

The Crown makes an application in the youth justice court before evidence is called on sentencing or, if no evidence is called, before submissions are made on sentencing. s.64(1)

### Notice requirements

The requirements for notice must also be met. ss.64(2) & 81

## **Included offences** s.69(2)

The Crown may also seek an AS for a YP who was 14 or older at the time of the offence, and has been found guilty of an included offence for which an adult is liable to imprisonment for more than 2 years. s.69(2)

A notice of intention to seek an AS for an offence is also considered notice for any included offence for which an adult could be imprisoned for more than 2 years. s.69(2)

## **Hearing: adult or youth sentence** ss.71 & 72

### **General rules**

#### *Purpose*

The purpose of a hearing under s.71 is to determine whether the court will impose an AS or a youth sentence under s.72(1) or 72(1.1).

#### *Opportunity to be heard*

The youth justice court will make sure that the YP, the Crown, and the YP's parent have an opportunity to be heard at the hearing to determine whether to impose an AS or a youth sentence. s.71

#### *Onus on the Crown*

The onus is on the Crown to satisfy the youth justice court that the requirements of s.72(1) are met. s.72(2)

#### *Pre-sentence Report*

The court **MUST** consider a pre-sentence report in making an order under s.72(1) or (1.1). s.72(3)

*Reasons for decision*

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

*The test for an AS* [s.72\(1\)](#)

The youth justice court **MUST** order an AS to be imposed if it is satisfied that

- the presumption of diminished moral blameworthiness or culpability of the YP is rebutted

AND

- a youth sentence imposed in accordance with the purpose and principles set out in subparagraph [3\(1\)\(b\)\(ii\)](#) & [s.38](#) would not be sufficient to hold the YP accountable for their offending behaviour.

**Onus on the Crown**[s.72\(2\)](#)

The onus is on the Crown to satisfy the youth justice court that the requirements of [s.72\(1\)](#) have been met. [s.72\(2\)](#)

**Orders for an AS or youth sentence**[ss.71 & 72](#)

If the requirements set out in [s.72\(1\)](#) are satisfied an AS must be imposed. [s.72\(1\)](#)

If the requirements in [s.72\(1\)](#) are **NOT** satisfied then the court must impose a youth sentence. [s.72\(1.1\)](#)

## **When a youth sentence has been ordered under s.72(1.1)**

When the court orders a youth sentence then all of the provisions of the YCJA apply including Part 4 Sentencing and the specific sentences set out in s.42(2).

## **When an AS has been ordered under s.72(1)** *Sentences available*

WHEN the court orders an AS, then Part XXIII (sentencing) and Part XXIV (dangerous and long-term offenders) of the CC apply. s.74(1)

The finding of guilt becomes a conviction as soon as either the appeal is completed or the appeal period ends. s.74(2)

### *Custody placement s.76*

Order for placement

Subject to s.76(2) & (9), 79 & 80, when a YP is sentenced to an AS the youth justice court may order any part of the sentence be served in

- a youth custody facility separate from any adult detained in custody
  - a provincial correctional facility for adults
  - a penitentiary, if the sentence is for 2 years or more
- s.76(1)

YPs under 18 held in youth facility

No YP who is under the age of 18 is to serve any portion of their sentence in a provincial correctional facility for adults or a penitentiary. s.76(2)

## Opportunity to be heard

Before making an order under **s.76(1)** the youth justice court **MUST** give the YP, a parent, the Crown, the provincial director, and representatives of the provincial and federal correctional systems an opportunity to be heard. **s.76(3)**

## Appeal or review of placement decision

The decision to place a YP in a custody facility under **s.76(1)** may be appealed as part of a sentence. **ss.37(4) & 76(5)**

The decision on placement may also be reviewed after the appeal period expires if the court is satisfied that there has been a material change in circumstances. Placement options after the review are the same as before the initial placement. **ss.76(6) & (7)**

## Presumption at age 20

There is a presumption that a YP will be moved to an adult facility after the age of 20, unless the youth justice court that makes the order under **s.76(1)**, or reviews the placement order under **s.76(6)**, is satisfied that remaining in a youth custody facility would be in the best interests of the YP and would not jeopardize the safety of others. **s.76(9)**

## *Publication ban is the general rule* Publication **ss.75 & 110**

The general rule is that no person may publish the name of a YP or any other information related to the YP if it would identify the YP as a YP dealt with under this act. **s.110(1)**



## Exceptions to the general rule of publication ban s.110

- the YP has received an AS s.110(2)(a)
- the YP has received a youth sentence for a violent offence and the youth justice court has lifted the publication ban because the court
  - has considered the purpose and principles set out in ss.3 & 38
  - believes the YP poses a significant risk of committing another violent offenceAND
  - believes that lifting the ban is necessary to protect the public against that risk ss.75(2) & 110(2)(b)OR
- the information is published to administer justice and NOT for the purpose of making it known to the community s.110(2)(c)

## Appeal of the order to lift a publication ban

The decision to lift the publication ban under s.75(2) may be appealed as part of the sentence. ss.37(4) & 75(4)

*(for more information on publication, see "Publication," p.115)*

## Appeals ss.37(4),72(5),75(4) & 76(5)

### Appeals heard as part of the sentence

The order for an AS under s.72(1) or a youth sentence under s.72(1.1) MUST be appealed as part of the sentence. ss.37(4) & 72(5)

The decision to lift the publication ban under s.75(2) may be appealed as part of the sentence. ss.37(4) & 75(4)

The decision to place a YP in a custody facility under s.76(1) may be appealed as part of the sentence. ss.37(4) & 76(5)

*(for more information on appeals see "Appeals," p.104)*

## Key changes to the provisions for adult sentencing by the SS & CA 2012

- The SS&CA 2012 REPEALED the following sections of the YCJA: ss.61,62,63,64(4),64(5),65,66,68,69(1) & 70
- The SS&CA 2012 REPLACED the following sections of the YCJA:  
ss.64(1),64(2),67(1),67(3),69(2),71,72(1),72(2),72(3),72(5),73,75,76(2) & 81
- The SS&CA 2012 ADDED the following new sections of the YCJA: ss.64(1.1),64(1.2) & 72(1.1)

## REFERENCES TO VICTIMS

### Ontario Victim Services

Victims are mentioned in several provisions of the act. The Preamble notes that Canadian society should have a youth criminal justice system that takes into account the interests of victims.

The Ministry of the Attorney General's Ontario Victim Services provides direct services to vulnerable victims of crime across Ontario and also funds community organizations to deliver support services to victims, including victims of crimes committed by YPs.

To find out about the available services, please contact the Victim Support Line, toll-free 1-888-579-2888, or go to the Victim Services Directory at <http://services.findhelp.ca/ovss/>

The Ministry of Community Safety and Correctional Services operates the Victim Notification System (VNS.) At this time, victims of crimes committed by young persons are not permitted any information from the VNS nor can they register for these services.

Victims are able to register for "call block" on a case-by-case basis which ensures that the dialing of certain telephone numbers by inmates using the Offender Telephone Management System is not permitted.

## General principles

Measures taken against a YP should encourage them to repair the harm they have 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 from being involved with the youth criminal justice system

s.3(1)(d)(ii)

- victims should be provided with information about the proceedings, and given a chance to participate and be heard

s.3(1)(d)(iii)

## Objectives of extrajudicial measures s.5(b) & (d)

EJM should be designed to

- encourage YPs to acknowledge and repair the harm they caused to the victim and the community
- give victims a chance to take part in making decisions that relate to the measures that are selected, and to receive reparation

s.5(b)  
s.5(d)

## Extrajudicial sanctions

s.12

Victims who ask are entitled to have information about the identity of the YP and how the offence was dealt with when EJS were used.

## 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 the YP has made to the victim or the community s.38(3)(c)

**Victim fine surcharge**

ss.53 &amp; 54

When a YP is given a fine, the YCJA allows for the lieutenant governor of the province to order a percentage of it to go to help 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% of fine imposed. s.53(2)

**Publication**

s.111

(see *“Rules governing young witnesses and victims”* p.69)

the identity of child or young victims and witnesses may be published ONLY as the act provides (see *“Rules governing young witnesses and victims,”* p.116) s.111

**Additional provisions relating to victims**

- victims should be interviewed for a pre-sentence report if applicable and reasonably possible  
s.40(2)(b)
- provisions for victim impact statements in CC ss.722,722.1 & 722.2 apply to youth sentence proceedings s.50

- except to the extent that they are inconsistent with or excluded by the YCJA
  - s.16 (defence of mental disorder)

AND

- Part XX.1 (mental disorder) of the CC applies with any modifications that the circumstances require for proceedings under the YCJA in relation to offences alleged to have been committed by young persons

This also includes provisions for notifying a victim and dealing with victim impact statements in CC ss.672.5(5.1),(14) to (16) and apply to Review Board proceedings (mental disorder) [s.141](#)

- victims who ask must have access to court records and may have access to police records under the YCJA [s.119\(1\)\(d\)](#) if the time periods for access have not expired (see below).

(see “Victims’ access to records” p. 72)

- a youth justice court has jurisdiction to make orders against a YP under the following sections of the CC [s.14\(2\)](#)
  - 810 (recognizance – fear of injury or damage)
  - 810.01 (recognizance – fear of criminal organization offence)
  - 810.2 (recognizance – fear of serious personal offence)

# RECORDS AND SHARING OF INFORMATION

ss.110 to129

## Summary

The act specifically sets out what records may be kept, who may have access to records or receive the information contained in them, and the time periods during which access is allowed.

S.114 to 120

## 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 in them. s.118(1). Those authorizations are found in the YCJA from s.117 to 129

The privacy provisions of the YCJA should be viewed in context of rehabilitative focus of the Act. This includes protecting youth from stigma of having a criminal record that could hinder rehabilitation.

YCJA principles related to information sharing:

- Right to Confidentiality - young people have a legal right to confidentiality and to protection from illegal and unwarranted disclosures of confidential information.



- Respect for Confidentiality - those mandated to work with young persons and with information relating to young persons, respect a young person's right to confidentiality.
- Need to Know - information should be released to third parties based on a "need to know" principle, ensuring that the third party is aware of the limitations and the penalty for violating confidentiality.
- Case on Case Basis - each case should be considered on an individual basis and also in the context of the specific legislation that applies.

A person who is entitled to access a record is 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.

*(see "Publication," p.115)*

## Records, access and time limits

Information regarding who may have access to these court, police and government records, and under what conditions.

s.117 to 124

Information regarding time limits after which information about a young person cannot be disclosed s. 119(2)

Permission to disclose information in records kept under the Act by the Attorney General, the provincial director, youth workers, peace officers and other persons engaged in providing services to young persons to certain persons in specified circumstances. s.125 to 127

## Access for Schools, professionals and those involved in supervision of the young person

The YCJA protects the privacy of a young person's personal information. However, the sharing of information to a representative of any school board or school or any other educational or training institution, or to any professional or other person engaged in the supervision or care of the young person for certain specified purposes is permitted for

the following reasons:

- to ensure that educational, rehabilitative and reintegration supports are in place;
- to satisfy safety concerns regarding the young person, victim and witnesses, as well as other children, youth and adults, including school staff; and
- to ensure compliance with court orders; s. 125(6)
- to obtain information for the preparation of reports.

s.125 (6)

## Handling information

Description of how information provided under the Act is to be protected, shared, stored and destroyed by persons, such as school representatives, who have received the information. [s. 125\(7\)](#), [s. 128](#)

Restriction of further disclosure of records and information by persons, such as school representatives, who have been given access to information, or to whom information has been disclosed, under the Act. [s.129](#)

### NOTE TO POLICE

Here is one key change made to the record keeping provisions by the [SS & CA 2012](#):

The police force **MUST** keep a record of any extrajudicial measures that they use to deal with a YP. [s.115\(1.1\)](#)

The limitations on access to extrajudicial measures records still apply. [s.119\(4\)](#)

## Adult sentences

Sections [118](#) to [129](#) do NOT apply to records kept of an offence for which an AS has been imposed

- after the time for appeals has run out
- OR
- after appeals have been completed.

The record of an AS delivered in youth justice court is treated the same as other adult records. s.117

## Time periods

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

Until the non-disclosure period begins, 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 and government records under ss.115 & 116.

Persons having access under s. 119 (1) (a) through s.119(1) (s) include:

- Young person to whom the record relates
- Young person's counsel or representative of counsel
- Attorney General including Crown Attorney, Assistant Crown Attorney
- Victim of offence or alleged offence to which the record relates
- Parents, including legal guardian of the young person during the course of any offence proceedings or during term of youth sentence
- Any adult assisting the young person under s. 25(7) during offence proceeding or during term of the youth sentence
- Any peace officer for law enforcement purposes or purpose relating to the administration of the case, during proceedings or during term of sentence

- Judge, court or review board for purpose of proceedings against young person
- Provincial Director or Director of provincial adult correctional facility or penitentiary person participating in a conference or in the administration of EJM
- Ombudsman; Information and Privacy Commissioner for purposes of investigating a complaint
- Coroner
- Child Advocate acting in the course of their duties under their respective Acts
- Person acting under the Firearms Act
- government employee or person under contract with government, for specific purposes see [s.119\(1\)\(n\)](#);
- Person for the purpose of carrying out criminal records check for purposes of employment with or provision of services to municipal, provincial, or federal government
- An employee or agent of the federal government for purposes under the federal Statistics Act
- Accused who swears affidavit that access is needed for full answer and defence
- Persons designated by Order-in-Council and persons who obtain a youth justice court order for access.

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 EJM other than EJS can be disclosed **ONLY** in the limited circumstances set out in [s.119\(4\)](#).

Where the person is not listed in s. 119, or where they are but the access periods in s. 119(2) have expired, access to the record can be given **ONLY** by a court order. [s.123](#)

The only exception is a YP to whom a record relates, and their counsel, who may have access to the record at any time. [s.124](#)

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

There are special disclosure provisions and time periods for CPIC records for what are considered more-serious offences in the schedule attached to the YCJA. **s.120**

Note changes in the description of the offences in **s.120(3)(a) & (b)**.

## **Exceptional cases of disclosure** **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 for investigating an offence **s.125(1)**
- the Crown may, during the course of a proceeding, disclose any information contained in police 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 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)**
- a provincial director or youth worker may disclose information in a record if the disclosure is necessary for gathering information to prepare a report that is required under the YCJA **s.125(5)**
- a provincial director, youth worker, Crown, peace officer, or any other person who is providing services to YPs, may disclose any information contained in court, police, or government records to any professional or other person who is supervising or caring for a YP, including a representative of a school, school board, or any other educational or training institution, if it is necessary
  - a** to ensure the YP's compliance with an order by a youth justice court or the terms of reintegration leave under **s.91**
  - b** to ensure safety of staff, students, or other persons
  - c** to help rehabilitate the YP **s.125(6)**

The person to whom information is disclosed under **subsection 6** MUST

- 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 **subsection 6**



- c** destroy their copy of the record when the information is no longer required for the purpose for which it was disclosed    s.125(7)

### **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 following circumstances make it necessary to disclose the information  
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** disclosing the information is relevant to avoiding 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). (see "References to Victims," for more information on victims p.18)

## 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, other than a mandatory prohibition order, has ceased to have effect s.51 (mandatory prohibition order) or YOA s.20.1 (mandatory prohibition order)

then the YP is deemed NOT to have been found guilty or convicted of the offence.

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**EXCEPTIONS under s.82(1)**

- a** the YP may plead "autrefois convict" to a subsequent charge related to the offence
- b** the court may consider the finding of guilt in hearing an application under s.64(1) (application for AS)
- 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 for a record suspension under the Criminal Records Act s.82(1)

The termination of a youth sentence removes any disqualification under any act of parliament to which the YP is subject for an offence by a finding of guilt. s.82(2)

Certain application forms must NOT contain a question that 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 where a greater punishment is prescribed because of a previous conviction, except when it is used to determine an AS to be imposed. s.82(4)(b)

Note: "a finding of guilt under the YCJA is NOT considered a previous conviction under any act of Parliament..." This cites 82(4)(b). In *R.v. Able* 2013 385. ONCA the Ontario Court of appeal ruled that a youth finding of guilt IS a prior conviction

for an increased penalty if the youth record remains “active” when the offender commits the second offence as a young adult. (Able’s minimum went from 3-5 years accordingly.)

# CUSTODY, SUPERVISION, AND ENFORCEMENT

ss.83 to 109

## Summary

### Purpose and principles

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 helping the YP to not 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 two levels of youth custody
- all YPs under 18 must serve their youth sentence in youth custody

“no young person who is under the age of 18 years is to serve any portion of the imprisonment in a provincial correctional facility or a penitentiary” s.76(2)

There are provisions, however, in the legislation governing placement in or transfer to an adult facility for those YPs 18 and over.

## Two different sets of procedures

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

- setting conditions for supervision in the community (community supervision) and conditional supervision
- extending the custodial portion of a youth sentence
- responding to a breach of a condition

The first governs community supervision under sentences imposed under [s.42\(2\)\(n\)](#).

The second governs conditional supervision imposed under [s.42\(2\)\(o\),\(p\),\(q\),\(r\)](#) & [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 two ways

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

AND

- by helping 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 keep the same rights as other YPs except for those rights which are removed or restricted because of their sentence
- c** help both families of YPs and members of the public to become involved with the YP
- 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. [ss.85\(3\),\(4\) & 88](#)

Note: In Ontario, Order in Council 498/2004 grants the power to set the level of custody at sentencing to the youth court judge. The requirements of the YOA 24.1 - 24.3 must be used in determining the level of custody. See: R. v. L.B. 2008 ONCA 333

The provincial director must designate a youth worker to be assigned to work with a YP as soon as the YP is sentenced to custody. During the custodial portion of the sentence, an assigned 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\(2\)](#)

In Ontario, probation officers of the Ministry of Children and Youth Services fulfill these functions.



## Reintegration leave

s.91

The provincial director may grant reintegration leave to any YP committed to a youth custody facility under a youth sentence. The YCJA also allows reintegration leave to be granted to a YP serving an AS in a youth facility

- ⌚ it is available on any terms and conditions that the provincial director considers desirable for a period not exceeding 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
  - if the YP is not complying, or the leave is revoked, the YP can be arrested without warrant and returned to custody

Note: There is no provision for youth in detention to receive reintegration leaves.

## Placement in or transfer to adult facilities

### Summary

If a YP is 18 or over but under 20 the court can, if certain criteria are met, authorize their transfer to a provincial custodial facility for adults. [s.92](#)

If a YP turns 20 while in a youth custody facility they **MUST** be transferred to a provincial custodial facility for adults unless the provincial director orders that they remain in the youth custody facility. [s.93](#)


If a YP is 20 at the time of sentencing, they must be placed in a provincial custodial facility for adults. [s.89](#)

### **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 is serving a youth sentence 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, the Youth Justice Court, upon application of the provincial director or others, may order a YP to serve the remainder of the youth sentence in a provincial correctional facility for adults, provided that

- the YP, provincial director, and representatives of the provincial adult system have an opportunity to be heard
- AND
- the court considers the transfer to be in the best interests of the YP or in the public interest s.92(1)

Once the YP is serving a youth sentence in the provincial adult facility, the provincial director may apply to the court for authorization to move the YP to a federal penitentiary.

s.92(2)

## **Where a sentence is served** s.92(4) & (5)

If a YP is serving an AS 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 has been transferred to a provincial adult correctional facility under s.93(1) the provincial director may apply to the youth justice court to transfer them to a federal penitentiary. s.93(2)

The court may order the transfer to a penitentiary if

- the court considers it in the best interests of the YP or in the public interest

AND

- ⌚ if at the time of the application there are 2 years or more remaining on the sentence s.93(2)


### **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

There is a mandatory annual review of custodial sentences of more than one year, s.94(1) & (2), and optional reviews that can be initiated by the provincial director, the YP, the parent of the YP, or the Attorney General. s.94(3)

 Five clear days notice of any review is required in accordance with [s.94\(13\)](#) or [\(14\)](#).

## **Orders deemed to be youth sentences for the purpose of review**

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

- [s.97\(2\)](#) Conditions for community supervision
- [s.98\(3\)](#) Continuation of custody
- [s.103\(2\)\(b\)](#) Continuation of custody for a serious breach of conditions
- [s.104\(1\)](#) Continuation of custody
- [s.105\(1\)](#) Conditions for conditional supervision
- [s.109\(2\)\(b\)](#) Continuation of suspension of conditional supervision

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**

[s.88](#) of the *YCJA* permits the lieutenant governor of a province to order that the determination of level of custody to be exercised in accordance with [S.28.1](#) *YOA*. In Ontario, that order was made pursuant to Order-In-Council 498/2004. These provisions must be considered when determining the level of custody to impose on the young person at the time of sentencing.

Where a young person is placed in secure custody by the youth court [s.24.1\(3\)YOA](#) or transferred to secure custody by the Provincial Director [s.24.2\(11\)YOA](#) the youth court shall review the level of custody if an application is made by the young person or the young person's parent. (*also see "Level of custody," p.78*)

### **Decision of the youth justice court after review**

#### **s.94(19)**

When a youth justice court reviews a sentence under [s.94](#) the court may, after giving the parties the opportunity to be heard

- a** confirm the sentence
- b** release the YP on conditional supervision
- OR
- c** convert an IRCS sentence to a custodial sentence

### **Release upon recommendation of provincial director**

**s.96**

The youth justice court may release a YP from custody on conditional supervision on the recommendation of the provincial director without the need for a hearing. [s.96\(5\)](#)

There will be a hearing, however, if an application to review the provincial director's recommendations is made by the YP, the YP's parent, or the Attorney General. [s.96\(3\)](#)

The provincial director may request a review of the court order if the youth justice court does not release the YP. [s.96\(7\)](#)

Notice provisions are set out in [s.96](#).

## Where else this procedure can and cannot be used

Because Ontario continues to authorize the court to determine the 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.

### Mandatory conditions included in all s.42(2)(n) sentences.

These include the following conditions set out in s.97(1)

The YP MUST s.97(1)

- a** keep the peace and be of good behaviour
- 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

### **Additional conditions**

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), for deferred custody and supervision orders under s.42(2)(p), and after a review under s.94(19)(b)**

s.105

S.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

- for attempted murder, manslaughter, and aggravated sexual assault s.42(2)(o)
  - for murder s.42(2)(q)
  - for intensive rehabilitative custody and supervision s.42(2)(r)
- AND
- for the processes of setting conditions for
    - deferred custody and supervision s.42(2)(p)
- AND
- release after a review of a custodial youth sentence s.94(19)(b)

Unlike sentencing under s.42(2)(n), the court sets the optional 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 for sentences under s.42(o),(q) & (r) is as follows s.105

### Step 1

The YP is brought before the youth justice court one month before the custodial portion of the sentence ends. s.105(1)

### Step 2

The court holds a hearing. s.105(1)

### Step 3

The court sets the conditions for the YP's conditional supervision. s.105(1)

### 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—conditional supervision s105(2)

These include all conditions set out in s.97, and listed under "Conditions for community supervision in a custody and supervision order," pp. 85 & 86, 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 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—conditional supervision**

### **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 one 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 under **s.105(1)** to set conditions for 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 remain in custody for a period not exceeding their entire sentence **s.98(1)**

- this is a procedure used for sentences imposed **s.42(2)(n)**

### 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. **s.98(3)**

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

## Factors the court must consider

### 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 behaviour and, in particular
    - i** the number of offences committed that caused physical or psychological harm to another person
    - ii** difficulties in controlling violent impulses, to the point of endangering the safety of others
    - iii** the use of weapons in committing any offence
    - iv** explicit threats of violence
    - v** brutal behaviour associated with the commission of an offence
- AND
- vi** a substantial degree of indifference to the reasonably foreseeable consequences to others of the YP's behaviour
- 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** make sure a report is prepared under s.99 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 help the court.

## **Reasons for the court order**

s.100

The court **MUST** state the reasons for an order. It **MUST** provide to the YP, counsel, parents, Crown, and provincial director

- a** a copy of the order  
AND, on request
- b** a transcript or copy of the reasons for the order

## **Court of appeal may review order under s.98**

s.101

The court of appeal may review the order by the youth justice court for continued custody under s.98, or the refusal to make such an order. An application starts the review.

After the review the court of appeal may confirm or reverse the decision of the youth justice court. s.101

## Extending the custodial portion of orders for custody that have conditional supervision – 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

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

The hearing is similar to an application s.98

*(see “Extending the custodial portion of the custody and supervision orders under s.42(2)(n),” p.90)*

### Application of ss.99,100 & 101

Ss.99,100 & 101 apply, with any modifications the circumstances may require in respect to an order or the refusal to make an order under this section. s.104(5)

### 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?

### 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.104(2)

### **Who must be heard**

Both parties and a parent of the YP **MUST** have an opportunity to be heard. s.104(1)

### **Factors to consider**

s.104(3)

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

- a** evidence of a pattern of persistent, violent behaviour and, in particular
    - i** the number of offences committed that caused physical or psychological harm to another person
    - ii** difficulties in controlling violent impulses, to the point of endangering the safety of others
    - iii** the use of weapons in committing any offence
    - iv** explicit threats of violence
    - v** brutal behaviour associated with the commission of an offence
- AND
- vi** a substantial degree of indifference to the reasonably foreseeable consequences to others of the YP's behaviour



- b** psychiatric or psychological evidence that, as a result of a physical or mental illness or disorder, the YP is likely to commit an offence causing death or serious harm to another person before the sentence ends
- c** reliable information that satisfies the youth justice court that the YP is planning to commit an offence causing death or serious harm to another person 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

### **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 under s.105(1).

### **Court of appeal may review order**

ss.104(5) & 101

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

## Breach of sentences not involving custody

s.137

A YP who willfully fails or refuses to comply with ANY of the following sentences, surcharges, or dispositions to which they are subject, is guilty of a summary conviction offence

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

## Breach of supervision conditions

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

### Summary

Under the YCJA there are two 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

They have similar procedures but there are some differences, including the test for remanding a YP in custody.

Apprehending a YP for a breach is by a warrant issued by the provincial director when the criteria for issuing a warrant are met.

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

S.107 (Apprehension) and s.108 (Review by provincial director) apply, with any modifications the circumstances require, to an order under s.102(1)(b). s.102(2)

If s.102(1)(b) applies the provincial director may issue a warrant 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. ss.108 & 103

**Referral by the provincial director under s.108 and review by the youth justice court s.103***Options for the court for a review*

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 make an order s.103(2)

*Factors the court must consider*

Ss.109(4) to (8) apply, with any modifications that the circumstances require, to a review by the youth justice court under s.103. s.103(3)

For a YP who breaches the conditions of supervision 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 and reasons given, and on application there MUST be a review of the order by the court of appeal.

ss.109(5) to (8) & 101

Court order on completion of review **s.103(2)**

The court may order that

**a** the YP must CONTINUE to serve the sentence in the community. The court may vary the conditions or impose new conditions

OR

**b** 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

When the youth justice court makes an order under **s.103(2)** it must state the reasons for the order and make sure that the YP, counsel for the YP, the parents of the YP, and the crown receive a copy of the order and, upon request, a transcript of copy of the reasons for the order. **s.109(5)**

### *Review by the court of appeal*

A review under **s.101** (Review of youth justice court order) by the court of appeal applies with any modifications the circumstances may require. **s.109(8)**

## **Breach of conditional supervision orders (including deferred custody and supervision orders) under**

**ss.42(2)(o),(q),(r),(p) & 94(19)(b) ss.106 to 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 s.106

- a** suspend the conditional supervision  
AND
- b** order the YP to be remanded into custody until a review is conducted

If the conditional supervision of a YP is suspended under s.106, the provincial director may issue a warrant 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 suspension of the conditional supervision or refer the case to the youth justice court for review. ss.108 & 109

## Referral by the provincial director under s.108 and review by the youth justice court s.109

### *Options for the court for a review*

After giving 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 of the conditional supervision, the court **MUST** cancel the suspension and reinstate the conditional supervision

OR

**b** if the court is satisfied, on reasonable grounds, that the YP has breached or was about to breach a condition of the conditional supervision, review the decision of the provincial director to suspend the conditional supervision and make an order under s.109(2)

### *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 purposes of a review under s.109(1) the youth justice court requires the provincial director to have a report prepared and to submit it to the court. s.109(6)

*Court order on completing a review*

s.109(2)

The court **MUST** order

- a** that the suspension of the conditional supervision be cancelled and the YP **MUST** continue to serve the sentence in the community. The court may vary the conditions of the conditional supervision or impose new conditions
- b** that the suspension of the conditional supervision continue **AND** the YP remain in custody for a period not to exceed the remainder of the sentence. This does **NOT** apply to deferred custody and supervision orders

OR

- c** for a deferred custody and supervision order under s.42(2)(p), that the YP serve the remainder of the order as if it were a custody and supervision order under s.42(2)(n)

After a decision has been made under s.109(2)(c), the provisions of the YCJA that apply to orders under s.42(2)(n) also apply to the deferred custody and supervision order. s.109(3)

When the youth justice court makes an order under s.109(2) it must state the reasons for the order and make sure that the YP, counsel for the YP, the parents of the YP, and the crown receive a copy of the order and, upon request, a transcript of copy of the reasons for the order. s.109(5)



## **Review by the court of appeal**

A review under [s.101](#) (Review of youth justice court order) by the court of appeal applies with any modifications the circumstances may require. [s.109\(8\)](#)

# APPEALS

## Appeal provisions

s.37

- summary and indictable appeals are governed by the appropriate CC provisions s.37(1) & (5)
- summary conviction and indictable offences can be appealed together in certain instances. The appeal is governed by the indictable appeal provisions s.37(6)
- no appeal can be made under s.37(1) from judgments of the court of appeal to the Supreme Court of Canada for a finding of guilt or an order dismissing an information or indictment UNLESS leave to appeal is granted s.37(10)

## Contempt of court

A finding of guilt under s.15, for contempt of court or a sentence imposed for that finding, may be appealed as if the finding were a conviction or the sentence were a sentence in a prosecution by indictment. s.37(2)

CC s.10 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)

The following orders may be appealed as part of the sentence, unless the court orders otherwise

- adult or youth sentence s.72(1) or (1.1)
- lifting the ban on publication s.75(2)
- placement when subject to an AS s.76(1)

If more than one 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

# CONFERENCES

## Conference Overview

s.19

### *conference*

means a group of persons who are convened to give advice as set out in [s.19](#)

Conferences can be used to look for advice on appropriate EJM, 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 bring together professionals to discuss services and programs available for the YP in the community. A restorative justice type of conference may also be held if authorized [s.19](#).

## MENTAL HEALTH PROVISIONS

### Medical and psychological reports, assessments & assessment reports

#### s.34

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
- b** on its own motion or on the application of the YP or the Crown if the youth justice court believes the report is necessary

AND

- i** the court has reasonable grounds to believe that the YP is suffering from one of a number of listed conditions
- ii** the YP has a history indicating a pattern of offences

OR

- iii** the YP is alleged to have committed a SVO

## Limited purposes

s.34(2)

An assessment report can also be ordered for a limited number of designated purposes

- a considering an application for release from or detention in custody s.33
- b deciding whether to impose an AS or a youth sentence s.71
- c making or reviewing a youth sentence
- d considering an application for continuation of custody s.104(1)
- e setting conditions for conditional supervision s.105(1)
- f making an order after a review of a breach or alleged breach of conditional supervision s.109(2)
- g authorizing disclosure of information about a YP s.127(1)

## YP may be remanded for the assessment

s.34(3)

There is a presumption against a custodial remand. s.34(4)

Generally, any statement made by a YP for the purpose or during the course of the assessment is NOT admissible in evidence. s.147(1)

There are exceptions to this rule. s.147(1) & (2)

### **Who receives a copy of the report**

When a youth justice court receives a report under [s.34\(1\)](#)

- under [s.34\(7\)\(a\)](#) the court **MUST**, subject to [s.34\(9\)](#), make sure a copy is given to
  - i the YP
  - ii any parent of the YP who attends any of the proceedings
  - iii the YP's counselAND
  - iv the Crown
- under [s.34\(7\)\(b\)](#) the court may give a copy of the report to
  - i a parent who is not in court
  - ii 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 in [s.119\(6\)](#)

### **Who may have access to the report** [s.119\(6\)](#)

Only certain people may have access to medical and psychological reports listed in [s.34](#). Those persons and positions are referred to in [s.119\(6\)](#).

### **Mental disorder provisions** [s.141](#)

The provisions of the CC for mental disorders apply except to the extent they are inconsistent with the YCJA.

## NOTICE TO PARENTS

### Notification to parents regarding proceedings against young persons

ss.26 & 27

There are detailed provisions for giving notice to parents for various proceedings against YPs. [s.26](#)

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

In certain circumstances a parent may be ordered by the youth justice court to attend court. This may be at any stage of the proceedings. [s.27](#)



## PEACE BONDS

### Requirements

#### Jurisdiction

The youth justice court has explicit jurisdiction to place a YP on a peace bond under the following CC sections

- fear of injury or damage [CC s.810](#)
- fear of criminal organization offence [CC s.810.01](#)
- fear of serious personal injury offence [CC s.810.2 s.14\(2\)](#)

#### 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 [CC s.810](#). If the YP fails or refuses to enter into a recognizance the justice of the peace MUST refer the matter to a youth justice court. [s.20\(2\)](#)

# PRE-CHARGE SCREENING AND PRIVATE PROSECUTIONS

## Role of the Crown and Attorney General

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

Ontario has no pre-charge screening program pursuant to 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

### When to use

s.40

#### When to use a pre-sentence report

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

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)

The youth justice court **MUST** consider a pre-sentence report when deciding whether to impose an adult or youth sentence under s.72(1) or (1.1). s.72(3)

The report must include the listed contents to the extent that they are relevant to the purpose and principles of sentencing and the restrictions on custody in ss.38 & 39.

The contents of the report set out in s.40(2) are as follows

- a the results of an interview with the YP and if reasonably possible the parents of the YP and possibly members of the YP's extended family
- b the results of an interview with the victim, if practicable and reasonably possible

- c** the recommendations of any conference referred to in [s.41](#) that is convened by the court to get advice on an appropriate sentence
- d** any information that is applicable (see the listed information set out in this paragraph)
- e** information that will help the court to determine, under [s.39\(2\)](#), if there is an alternative to custody available
- f** any information that the provincial director considers relevant, including a recommendation of the provincial director

The time limit on access to records set out in [s.119\(2\)](#) applies for the information specifically referred to in [s.40\(2\)\(d\)\(iii\) & \(iv\)](#).

## Using pre-sentence report procedures for other purposes

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

- reviews of sentences [ss.59\(3\) & 94\(9\)](#)
- applications to continue custody  
Applications for continuation of custody [ss.98 & 104](#)  
& Reports [s.99](#)
- setting conditions for conditional supervision  
[ss.105,105\(6\) & 99\(2\) to \(7\)](#)
- hearings on breach of conditions of supervision  
[ss.109\(7\) & 99\(2\) to \(7\)](#)

## PUBLICATION

### Protection of Privacy for YP, young witnesses and victims

#### Rules governing the protection of the YP's privacy

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, [s.110\(1\)](#) does NOT apply

- under [s.110\(2\)](#) where publication may be permitted
  - a where a YP has received an adult sentence
  - b where the information relates to a YP who has received a youth sentence for a violent offence and the youth justice court has ordered a lifting of the publication ban under [s.75\(2\)](#)
  - c 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
- under [ss.110\(3\),\(4\),\(5\) & \(6\)](#) for a YP who has been dealt with under the act
  - 3 the YP may publish or allow publication after they turn 18 as long as they are NOT in custody under the YOA or the YCJA
  - 4 an order can be made allowing information to be published that identifies a YP when the YP is dangerous and at large
  - 5 the order made under (4) is in effect for 5 days

ONLY

- 6 the court may make an order to permit a YP who applies 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

## 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 s.111(1)

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.

However, there are exceptions s.111(2)

- a publication is permitted by a young witness or victim after they turn 18, or before that age with the consent of their parents

OR

- b by the parents of a young victim or witness who is deceased s.111(2)

**Application for leave to publish** s.111(3)

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.

**Ban on publication no longer applies** s.112

Once an application to publish the identity of a young victim, young witness, or YP dealt with under the act has been granted and the information has been published, the general publication ban does not apply.

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

# REFERRAL TO CHILD WELFARE

## Overview

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.



## RIGHT TO COUNSEL

### Rights of young person to counsel s.25

- 1** A YP has the right to retain and instruct counsel without delay and to exercise that right personally
  - at any stage of the proceedings against the YPAND
  - before and during any consideration of whether to use an EJS instead of starting or continuing judicial proceedings under the YCJA
- 2** The arresting officer must advise the YP without delay of their right to counsel.
- 3** When a YP is not represented by counsel the justice, youth court judge, or review board **MUST** advise the YP of their right to counsel and provide a reasonable opportunity for the YP to obtain counsel.
- 4** When a YP wishes to obtain counsel but is unable to do so the youth justice court before which the hearing, trial, or review is being held
  - a** **MUST** refer the YP to a legal aid program, where there is program in place, to obtain counselAND
  - b** **MAY** direct that the YP be represented by counsel if no legal aid program is available or if the YP is unable to obtain counsel through the programOR
  - MUST** direct that the YP be represented by counsel

if the YP requests it

- 5 Where there is a direction for counsel to be appointed under s.25(4)(b) the Attorney General MUST appoint counsel or make sure counsel is appointed to represent the YP.
- 8 The youth court judge MUST make sure the YP is represented by counsel independent of the parent if
  - the interests of the YP and the parents of the YP are in conflictOR
  - it would be in the best interests of the YP
- 9 A statement that a YP has the right to be represented by counsel MUST be included in a number of documents listed in this subsection.
- 10 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.
- 11 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.

## STATEMENTS

### Criteria for admissibility of statements s.146

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

**2** 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

When these criteria apply, a statement will be admissible in evidence **ONLY WHEN** the requirements set out in s.146(2) are met

**a** the YP's statement was voluntary

**b** the following were explained to the YP by the person taking the statement, in language appropriate to the YP's age,  
BEFORE the YP made the statement

**i** the YP is under no obligation to make a statement

**ii** any statement made may be used in proceeding against the YP

**iii** the YP has the right to consult counsel and a parent or another person

- iv the YP has the right to have counsel or any other person consulted, if any, present while any statement is made by the YP
    - c the YP had a reasonable opportunity, before the statement was made, to consult with
      - i counsel
      - AND
      - ii a parent or another specified adult, with some exceptions
    - d if the YP consults someone under (c), the YP is given a reasonable opportunity to make the statement in the presence of that person
- 3 The requirements set out in s.146(2)(b) to (d) do NOT apply to oral statements made spontaneously by a YP to a peace officer or other person in authority.
- 4 Waiver of rights – If a YP waives their rights before giving a statement, the waiver can be recorded on audio tape or video tape or given in writing.
- 5 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.
- 6 Technical irregularity in complying with rights – Where there has been a technical irregularity in complying with the rights under s.146(2)(b) to (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.

# TRANSITIONAL PROVISIONS

## Overview

When a new law comes into force there are often transitional provisions that set the rules for

- offences that took place before the new law comes into force
- proceedings that have either not started or have not concluded before the new law comes into force

Transitional provisions set the rules for the transition from the old to the new law.

There are two sets of Transitional Provisions for the YCJA.

For a complete understanding of the transitional provisions you must read both sets of provisions together.

## The most recent transitional provisions: offence occurred but no proceedings started BEFORE October 23, 2012

s.195 SS & CA 2012

This includes any person who

- committed an offence
  - before October 23, 2012
  - while they were a YP
- AND
- for which no proceedings were started

The YP MUST be dealt with under the YCJA as amended by this part as if the offence occurred after October 23, 2012

EXCEPT THAT certain provisions do not apply for the offence s.195(a) to (e)

- a the definition “violent offence” in subsection 2(1) of the YCJA SS & CA s.167(3)
  - b paragraph 3(1)(a) of that act SS & CA s.168(1)
  - c paragraph 38(2)(f) of that act SS & CA s.172
  - d paragraph 39(1)(c) of that act SS & CA s.173
- AND
- e s.75 of that act SS & CA s.185

For the transition from the YCJA as enacted April 1, 2003 to the YCJA as amended by the SS & CA October 23, 2012

See ss.193, 194 & 195 of the SS & CA 2012

## **The original transitional provisions from the JDA and YOA to the YCJA: offences committed BEFORE April 1, 2003**

For the transition from the JDA and YOA to the YCJA enacted April 1, 2003

See YCJA Part 8 Transitional Provisions:  
[ss.158,159,161,162,163,164](#) & [165](#)

(Note: [s.160](#) was repealed and [s.162](#) was replaced by [ss.193 & 194 SS & CA 2012](#))

### **Proceedings started under the YOA or JDA BEFORE April 1, 2003 when the YCJA came 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, subject to [s.161](#) (Applicable sentence).  
[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 delinquency were an offence that occurred AFTER the new act came into force, subject to [s.161](#) (Applicable sentence).  
[s.159\(2\)](#)

### **Proceedings started AFTER April 1, 2003 when the YCJA came into force**

No proceedings may be started under the YOA or the JDA after the YCJA came into force. They must be started under the YCJA. [s.158](#)

For the purposes of [ss.158 & 159](#), a proceeding is started by laying an information or indictment. [s.162](#)

### **Sentencing where proceedings started under the YOA or JDA BEFORE April 1, 2003 when the YCJA came into force**

Applicable sentence [ss.161\(1\)\(a\) & \(b\)](#): For proceedings that started under either the YOA or the JDA, the sentencing provisions of the YCJA apply EXCEPT THAT

**a** paragraph [110\(2\)\(b\)](#) [if a youth sentence is for a violent offence and the youth justice court has lifted the publication ban under [s.75\(2\)](#)] does NOT APPLY for the offence or delinquency

AND

**b** paragraph [42\(2\)\(r\)](#), (IRCS sentence) DOES APPLY IF the YP consents

### **Sentencing under YCJA while YP 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

- if either the Crown or the court MUST order that the remaining part of the disposition made under the YOA



be dealt with as if it were a custody and supervision sentence imposed under s.42(2)(n) or (q) of the YCJA  
YP applies

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 disposition came into effect under the YOA is the date used to determine when a sentence may be reviewed.

s.161(3)

# RELEVANT PROVINCIAL LEGISLATION

## Child and Family Services Act (CFSA)– Temporary Detention

### Overview

*Child and Family Services Act*, R.S.O. 1990, c. 11, Part IV  
– Youth Justice

The provincial director determines whether a young person is placed in secure or open detention pending sentencing, if they are detained after a bail hearing. This is subject to review before a youth justice court.

### Temporary Detention

#### Open detention unless provincial director determines otherwise

93. (1) A young person who is detained under the federal Act or the Young Offenders Act (Canada) in a place of temporary detention shall be detained in a place of open temporary detention unless a provincial director determines under subsection (2) that the young person is to be detained in a place of secure temporary detention. R.S.O. 1990, c. C.11, s. 93 (1); 2006, c. 19, Sched. D, s. 2 (18).

### **Where secure detention available**

(2) A provincial director may detain a young person in a place of secure temporary detention if the provincial director is satisfied that it is necessary on one of the following grounds:

1. The young person is charged with an offence for which an adult would be liable to imprisonment for five years or more and,
  - i. the offence includes causing or attempting to cause serious bodily harm to another person,
  - ii. the young person has, at any time, failed to appear in court when required to do so under the federal Act or the *Young Offenders Act* (Canada) or escaped or attempted to escape from lawful detention, or
  - iii. the young person has, within the 12 months immediately preceding the offence on which the current charge is based, been convicted of an offence for which an adult would be liable to imprisonment for five years or more.
2. The young person is detained in a place of temporary detention and leaves or attempts to leave without the consent of the person in charge or is charged with having escaped or attempting to escape from lawful custody or being unlawfully at large under the *Criminal Code* (Canada).

3. The provincial director is satisfied, having regard to all the circumstances, including any substantial likelihood the young person will commit a criminal offence or interfere with the administration of justice if placed in a place of open temporary detention, that it is necessary to detain the young person in a place of secure temporary detention,

- i. to ensure the young person's attendance at court,
- ii. for the protection and safety of the public, or
- iii. for the safety or security within a place of temporary detention. 2009, c. 2, s. 5 (1).

Idem

(3) Despite subsection (1), a young person who is apprehended because he or she has left or has not returned to a place of secure custody may be detained in a place of secure temporary detention until he or she is returned to the first-named place of custody. R.S.O. 1990, c. C.11, s. 93 (3); 2006, c. 19, Sched. D, s. 2 (20).

Idem

(4) Despite subsection (1), a young person who is detained under the federal Act or under the Young Offenders Act (Canada) in a place of temporary detention may be detained in a place of secure temporary detention for a period not exceeding twenty-four hours while a provincial director makes a determination in respect of the young person under subsection (2). R.S.O. 1990, c. C.11, s. 93 (4); 2006, c. 19, Sched. D, s. 2 (21).

### **Review by youth justice court**

(5) A young person who is being detained in a place of secure temporary detention and who is brought before a youth justice court for a review of an order for detention made under the federal Act or the Criminal Code (Canada) may request that the youth justice court review the level of his or her detention. 2009, c. 2, s. 5 (2).

### **Same**

(6) The youth justice court conducting a review of an order for detention may confirm the provincial director's decision under subsection (2) or may direct that the young person be transferred to a place of open temporary detention. 2009, c. 2, s. 5 (2).

### **Application for return to secure temporary detention**

(7) A provincial director may apply to a youth justice court for a review of an order directing that a young person be transferred to a place of open temporary detention under subsection (6) on the basis that,

- (a) the provincial director is satisfied that *because of a material change in the circumstances*; or
- (b) *on any other grounds that the provincial director considers appropriate*,

*it is necessary that the young person be returned to a place of secure temporary detention. 2009, c. 2, s. 5 (2).*

## Same

(8) The youth justice court conducting a review of an order transferring a young person to a place of open temporary detention may confirm the court's decision under subsection (6) or may direct that the young person be transferred to a place of secure temporary detention. 2009, c. 2, s. 5 (2).

## Review of Detention - Criminal Code

The Criminal Code of Canada (CCC) s. 525 provides for a review of the detention of accused persons held in custody pending trial under certain circumstances in accordance with deadlines established in that section.

## Custody Review Board

## CFSA S. 97

A young person may apply to the Board for a review of:

The particular place where they are held or transferred  
CFSA s. 97(1)(b)

The Provincial Director's refusal to authorize the young person's temporary release under s.35 of the YOA or reintegration leave under the YCJA s. 91

The young person's transfer from a place of open custody to a place of secure custody under subsection 24.2 (9) of the YOA in accordance with the YCJA s. 88

# PROVINCIAL OFFENCES ACT (POA)

## Overview

In Ontario, provincial statute violations, such as those listed below are prosecuted under the Provincial Offences Act (POA):

- trespassing (Trespass to Property Act)
- careless driving (Highway Traffic Act)
- drinking under age (Liquor License Act)
- Habitual absence from school (Education Act)

Part VI of the POA applies where a young person is alleged to have committed a provincial offence.

Unlike the YCJA, the POA treats people who are 16 years old or more as adults. A “young person” under the POA is between 12 and 15 years of age at the time of the offence. s. 93 A person cannot be convicted under the POA for an offence committed while he or she was less than 12 years old. s. 94.

Provincial offences officers are not permitted to issue tickets to young persons for minor offences in the way they do for adults. Unless he or she is in custody, a young person must always receive a summons to attend court in person.



An officer must also serve a copy of the summons on the parent or guardian as soon as practicable after serving the summons or releasing the young person from custody. (Ss.93 and 96) Where a young person is detained, the officer in charge must notify the parent of the young person's arrest, the reason for the arrest and the place of detention. 107(4)

POA charges are heard in the Ontario Court of Justice and may be presided over by a judge or a justice of the peace. Unlike the YCJA, there is no provision requiring that officials dealing with youth provincial offences matters be designated Youth Court judges. However, a Justice of the Peace cannot preside over a breach of probation hearing for a young person (s. 108).

## **Arrest Without Warrant**

A provincial offences officer may arrest without warrant a young person if they have reasonable and probable grounds to believe it is necessary to: (a) identify the young person; or (b) prevent an offence that endangers the young person or the person or property of another. s. 106

## Release of Young Person

Section 107 of the POA sets out the process for releasing a young person who has been arrested for a provincial offence.

The young person must be released by the arresting officer unconditionally or after being served with a summons, unless the officer has reasonable and probable grounds to believe the detention is necessary to identify the young person, or to prevent an offence that is a serious danger to a person or property. s. 107(2)

If the circumstances justifying detention pass (107(2)), an officer in charge must release the young person unconditionally, serve him/her with a summons, or require the young person to enter into a recognizance without sureties. s. 107(3)

If the officer in charge does not release the young person, the bail process in section 150 of the POA and the expedited trial provision in s. 151 apply with necessary modifications. s. 107(5)

## **Trial**

The young person must be present during their trial, unless the court orders otherwise. s. 98(1)

Unlike adult POA matters, a young person cannot be charged with failing to appear, and the court cannot hold an ex parte trial. s. 98(3)

Processes for dealing with a young person who fails to appear are provided in ss. 98(4) and 98(5).

## **Exclusion of Public, Publication Bans, and Disclosure of Youth Matters**

The court may exclude any member of the public from a provincial offences hearing to maintain order in the courtroom, to protect the reputation of a minor, or to remove an influence that may affect the testimony of a witness. s. 52(2)

The court may also impose a publication ban on the evidence or the identity of a minor if there is a risk that it may impugn the reputation of the minor. s. 52(3)

In addition to these general provisions, s. 99(1) provides that no person shall publish by any means information that may identify a young person in connection with an offence or alleged offence. Anyone who does so, and every director, officer or employee of a corporation who authorizes, permits or acquiesces to such disclosure, is guilty of an offence under the POA and liable to a maximum \$10,000 fine. s. 99(2)

The publication ban provided in s. 99(1) does not prohibit:

disclosure by the young person concerned

- disclosure by the young person's parent or lawyer for the purpose of protecting the young person's interests
- disclosure by a police officer for the purpose of investigating an offence which the young person is suspected of having committed
- disclosure to an insurer investigating an offence committed or alleged to have been committed by the young person
- disclosure in the course of the administration of justice and not to make the information known generally in the community
- disclosure by a person prescribed by regulation for a designated purpose

## Pre-Sentence Reports

Where a young person is convicted of a provincial offence, the court may direct a Probation Officer to prepare and file a written Pre-Sentence Report (PSR) to assist the court in sentencing. ss. 56 (1), 100(1)

A PSR is mandatory where a young person is convicted of breach of probation under s.75 and the court is considering imposing a sentence of custody. s. 100(2)

The clerk of the court must ensure that the defendant, their representative, and the prosecutor receive a copy of any PSR. ss. 56, 100(2)

## Sentencing

When a young person is convicted of a provincial offence in a proceeding commenced by Certificate of Offence, they may be sentenced to:

- a maximum fine of \$300 s. 97(1)(a)(i)
- a probation order for a maximum of 90 days ss. 97(1)(a)(ii), 97(2) or
- an absolute discharge s. 97(1)(b).

When a young person is convicted of a provincial offence commenced by an Information under Part III, they may be sentenced to:

- a maximum fine of \$1000 s. 101(2)(a)(i)
- a probation order for a maximum of 1 year ss. 101(2)(a)(ii), 101(3) or
- an absolute discharge s. 101(2)(b).
- 

A young person may only be sentenced to custody if they have been convicted of breach of probation under s. 75(d). In these instances, they may only be sentenced for a maximum of 30 days. s. 101(1)(a)

Sections 68 and 69 provide the mechanisms for enforcing defaulted fines. Note that persons under the age of 18 cannot be imprisoned for defaulted fines. s. 69(20) and 102(1).

## **Detention/Custody Facility Placement**

The CFSA provides direction with respect to placement of a young person who has been ordered detained in custody pending trial or sentenced to custody under the POA. Even though a 16 or 17 year-old is not necessarily a young person under the POA, they are generally placed in a facility for young persons, as they are considered a young person under the CFSA.

### **Pre-Trial Detention**

When a young person is ordered detained in custody pending trial under s. 150 of the POA, the young person shall not be detained in a facility housing adults unless the court orders otherwise. s. 107(6)

Where practicable, a young person shall be detained in a place of temporary detention, as designated under s. 30(1) of the YCJA. s. 107(7). In Ontario, a place of temporary detention is as in s. 94(1) CFSA.

### **Sentence to Custody**

A young person shall not receive custody except for a breach of probation. s. 101(1)(a), 75 (d)).

A young person sentenced to custody under the POA serves his/her sentence in a place of open custody as defined by s. 24.1 of the Young Offenders Act, s. 103 POA and ss. 94(2)(a) and 95, CFSA.

## **Appeals**

Appeals of proceedings against young persons are made to the Superior Court of Justice. s. 105, 116(2)(b).

Appeal procedures and powers of the court are set out in ss. 116-139.

Further appeal to the Court of Appeal is permitted with leave of a judge of that court. s. 131, 139.

## Young Offenders Act – Reference for Level of Determination

### Young Offenders Act R.S.C. 1985, c .1, Y-1

(repealed by Y.C.J.A. S.C. 2002, c. 1. s. 199)<sup>1</sup>

Certain provisions of the YOA were incorporated into the YCJA by reference. They continue to have relevance as they provide the legislative provisions a court must consider when determining the level of custody to impose on a young person at the time of sentencing.

Note: Section 88 of the YCJA states:

“88. The lieutenant-governor in council of a province may order that the power to make determinations of the level of custody for young persons and to review the determinations be exercised in accordance with the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985. The following provisions of that Act apply, with any modifications that the circumstances required, to the exercise of those powers:           ...

                          (c) sections 24.1 to 24.3

                          ....”

The Ontario Government, by virtue of Order-in-Council 498/2004, has incorporated those provisions into the powers of Youth Justice Court Judges in Ontario. It is an error of law

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<sup>1</sup> Hereinafter “*YOA*”.



for a Youth Justice Court Judge to not determine the level of custody in accordance with these provisions.<sup>2</sup>

**Sections 24.1(1) – 24.1(4) of the YOA:**<sup>3</sup>

24.1 (1) In this section and sections 24.2, 24.3, 28 and 29,

“open custody”

“open custody” means custody in

(a) a community residential centre, group home, child care institution, or forest or wilderness camp, or

(b) any other like place or facility

designated by the Lieutenant Governor in Council of a province or his delegate as a place of open custody for the purposes of this Act, and includes a place or facility within a class of such places or facilities so designated; “secure custody”

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<sup>2</sup> *R. v. L.B.* 2008 ONCA 333

<sup>3</sup> While sections 24.1-24.3 of the YOA are technically incorporated by virtue of s. 88 of the YCJA, for the purposes of the Pocket Guide only the sections cited by the Ontario Court of Appeal in *L.B., supra.* are excerpted. Crowns must justify their position based on the applicable law, which includes these provisions.

“secure custody” means custody in a place or facility designated by the Lieutenant Governor in Council of a province for the secure containment or restraint of young persons, and includes a place or facility within a class of such places or facilities so designated.

### **Youth court to specify type of custody**

(2) Subject to subsection (3), where the youth court commits a young person to custody under paragraph 20(1)(k) or (k.1) or makes an order under subsection 26.1(1) or paragraph 26.6(2)(b), it shall specify in the order whether the custody is to be open custody or secure custody.

...<sup>4</sup>

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<sup>4</sup> Sub(3) refers to provinces where the Lieutenant Governor-in-Council delegated the authority to set the level of custody to the Provincial Director. As this does not apply to Ontario, it is not included in the Pocket Guide.

## **Factors**

(4) In deciding whether a young person shall be placed in open custody or secure custody, the youth court or the provincial director shall take into account the following factors:

(a) that a young person should be placed in a level of custody involving the least degree of containment and restraint, having regard to

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

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

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

(iv) the interests of society;

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

(c) the likelihood of escape if the young person is placed in open custody; and

(d) the recommendations, if any, of the youth court or the provincial director, as the case may be.

## Courts of Justice Act

*Provincial law grants authority over youth justice matters to the Ontario Court of Justice.*

### **Jurisdiction of Ontario Court of Justice**

#### **Criminal matters**

38. (1) A provincial judge has the power and authority of two or more justices of the peace when sitting in the Ontario Court of Justice and shall exercise the powers and perform the duties that any Act of the Parliament of Canada confers on a provincial court judge when sitting in the Ontario Court of Justice. R.S.O. 1990, c. C.43, s. 38 (1); 1996, c. 25, s. 9 (18).

...

#### **Youth court and youth justice court**

(3) The Ontario Court of Justice is a youth court for the purposes of the Young Offenders Act (Canada) and a youth justice court for the purposes of the Youth Criminal Justice Act (Canada). 2006, c. 19, Sched. D, s. 5 (1).

# CASE LAW

## Overview

### Principles of the YCJA – “Accountability” –

s. 3(1)(a)(i); s. 38(1)

→ **R. v. A.O. (2007), 218 C.C.C. 3d 409 (Ont. C.A.)**

Accountability requires the imposition of a meaningful consequence which properly reflects the moral culpability of the offender, having regard to:

- (1) The intentional risk-taking of the offender;
- (2) The consequential harm caused by the offender; and
- (3) The normative character of the offender's conduct.

### Principles of the YCJA – “Presumption of Diminished Moral Blameworthiness” – s. 3(1)(b)

→ **R. v. D.B. 2008 SCC 25**

Young persons are entitled to a presumption of diminished moral blameworthiness since because of their age, they have heightened vulnerability, less maturity, and a reduced capacity for moral judgment.

**→ R. v. S.J.L.-G 2009 SCC 14**

The creation of this separate youth justice system was based on recognition of the presumption of diminished moral blameworthiness of young persons and on their heightened vulnerability in dealing with the justice system. The effect of the objectives of the YCJA is that the courts are asked to favour rehabilitation, reintegration and a fair and proportionate accountability that is consistent with the young person's reduced level of maturity.

**Judicial Interim Release - “Responsible Person” s. 31****→ R. v. R.D. 2010 ONCA 899**

Section 31 contemplates a closer level of supervision by a “responsible person” than that normally expected of a surety.

It assists with the YCJA's purpose to reduce reliance on incarceration for young persons at all stages of proceedings and to give youth alternatives to imprisonment.

**Sentencing – Open v. Secure Custody – s. 42(n), (o)****→ R. v. L.B. 2008 ONCA 333**

Open custody is presumed appropriate. The burden rests on the Crown to prove to the court, beyond a reasonable doubt, why secure custody is required.

→ **R. v. J.S. 2006 O.J. No. 2654**

A youth justice court may impose a custody and supervision order that is comprised of secure custody, open custody, and community supervision.

**Sentencing – Maximum Youth Sentence – s. 42**

→**R. v. D.S. 2008 ONCA 740**

The maximum youth sentence available (either two years or three years) must include credit for pre-trial custody, any custody and supervision order, and any term of probation.

**Sentencing – Credit for Pre-Trial Custody →R. v. D.S. 2008 ONCA 740**

A young person is typically entitled to 1.5:1 credit for pre-trial custody. However, the court may deviate from this starting point based on the evidence presented at the sentencing hearing.

**Sentencing – Enhanced Mandatory Minimum Sentence – Adult Sentencing – s. 82(4)**

→ **R. v. Able [2013] O.J. No. 2675 (Ont. C.A.)**

A prior youth finding of guilt, if still active within the youth record retention periods found within Part VI of the YCJA, may constitute a prior conviction for the purposes of an enhanced mandatory minimum sentence. This may occur where the subsequent offence occurred when the offender was an adult, but the prior conviction was a finding of guilt when he was a young person.

## Sentencing – Adult Sentences – Onus – s. 72

→ *R. v. A.O. (2007)*, 218 C.C.C. 3d 409 (Ont. C.A.)

The youth justice court must determine if a youth sentence is sufficiently long to hold a young person accountable for his or her offending behaviour. It does not require proof beyond a reasonable doubt. The onus on the Crown is to satisfy the court, nothing more.

## Sentencing – “History that Indicates a Pattern of... Findings of Guilt” – s. 39(1)(c)

→ *R. v. S.A.C. 2008 SCC*

The threshold for demonstrating a “pattern” of findings of guilt is at least three prior convictions unless the sentencing court finds that the offences are so similar that pattern of findings of guilt can be found in only two **prior convictions**.

## Sentencing – “Exceptional Cases” – s. 39(1)(d)

→ *R. v. R.E.W. (2006)*, 205 C.C.C. (3d) 183 (Ont. C.A.)

Exceptional cases are those where any order, other than custody, would undermine the purposes and principles of sentencing out in s. 38. They are limited to the clearest of cases where a custodial disposition is obviously so shocking as to threaten widely shared community values.



## **Statements – Compliance with Statutory Requirements – s. 146(2)**

**→ *R. v. L.T. H.* 2008 SCC**

The test for compliance with the informational requirement is objective. The Crown must prove, beyond a reasonable doubt, that the person in authority took reasonable steps to ensure that the young person understood his or her rights under s. 146 YCJA. However, it does not require the Crown to prove that a young person in fact understood the rights and options explained to them.

## CONSIDERATIONS & DEFINITIONS

The *YCJA* directs many specific practices and provisions for youth that are not relevant for adults. The following considerations highlight some of the key areas and may assist learning and best practice by youth justice system participants.

Some Basics:

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- Was the YP **under 18** as of the date of the alleged offence?
- What arrangements have been made to **obtain legal advice** for the YP?
- **Notice to Parent** – Have the requirements of [s.26](#) been met?
- **Information** – Have all aspects of the information been checked for compliance with the *YCJA* and the applicable criminal code provisions?
- What are the **extra steps** required during an arraignment for a YP? (These include confirm DOB, parent present or aware, and [ss.26 & 32.](#))
- Do the [2012 amendments](#) to the *YCJA* affect the case?
- **Statements** – Have the requirements of [s.146](#) been met? (requirements over and above Charter and voluntariness considerations)
- **Disclosure** – Has there been full disclosure and if there is an adult co-accused, has the adult file been reviewed for relevant information as well?

- Is this a **violent offence**, **serious offence**, or a **serious violent offence** for which the adult sentencing provisions may apply? Is the YP entitled to make an **election** under **s.67**?

### Alternatives:

- Are there opportunities for **restorative justice**?
- Take into consideration the principles of the act, in particular those relating to **EJM** (there is a presumption in favour of EJM for initial, non-violent offences). **s.4(c)**. Past convictions or referrals do not preclude future referrals. **s.4(d)**
- Would a **s.34 assessment** or a **s.19 conference** – or both – be appropriate or in the best interests of the YP?

### Bail:

- Keep the following in mind:
  - The onus is always on the Crown in youth bail matters; there is never a reverse onus.
  - Is detention being considered as a substitute for child protection, mental health, or other measures? (**s.29(1)** prohibits this)
  - Have the requirements of **s.29(2)** been considered before deciding on detention?
  - If bail would otherwise have been denied, has the requirement of placing the YP in the care of a responsible person been considered? **s.31**

- Is this an appropriate case for convening a conference to deal with bail conditions? **s.19**
- Are all of the conditions in any **form of judicial interim release** required for a specific purpose and has consideration been given to the implications for the YP breaching those conditions?

### Sentences:

- Be familiar with the **sentencing** provisions of the *YCJA*, with attention to these:
  - The sentencing section of the *Criminal Code* does not, for the most part, apply to proceedings under the *YCJA*. **s. 50**
  - What are the **19 possible sentences** authorized in **s.42?** (reprimands, personal service orders, and other options)
  - What are the **principles of sentencing** that apply to youth and how do they differ from the *CC*? (These include no general deterrence, no ladder principle, sentence may not be more onerous than that an adult would face, and that the court must impose the least restrictive sentence that meets the goals. **s.38**) (See the new paragraph **s.38(2)(f)** added in the 2012 amendments to include the words “denounce” and “deter,” which are subject to **s.38(2)(c)**)”

- What are the **legislated pre-conditions** for custody? s.39
- Is a **deferred custody and supervision order** an option in this case? What are the requirements for a deferred custody sentence? s.42(5)(a) & (b)
- Keep in mind that the court must consider a **youth's ability to pay** over the short term before a fine, compensation order, etc. is imposed. s.54
- What is the **maximum sentence** that can be imposed in different circumstances?
- If **probation** is being considered, is probation the least restrictive sentencing option available?  
Would a reprimand, a conditional discharge, or a stand-alone community service order be sufficient?
- When considering **terms of a conditional discharge or a probation order**, are the reasons clear for both the length (time) of the order and the terms or conditions of the order and can they be justified?
- If a **custodial sentence** is being considered
  - have the requirements for a Presentence Report been met s.39(6) & (7)
  - is the YP "custody eligible" s.39 as amended by s.39(1)(c)
  - if custody is the proper sentence, and the offence is not one in which the YP caused or attempted to cause serious bodily harm, has a Deferred Custody and Supervision Order (DSCO), for no more than 6 months, been considered

- Keep in mind that **conditions imposed in any sentence order** should be directly connected to the circumstances of the offence and prevention of re-occurrence.

(Conditions must not be imposed because of a desire to generally improve the youth's circumstances or as issues that would normally be considered in the realm of parenting, eg. general non-association clause where not getting in trouble with youth, curfew if not getting in trouble at night, mandating school or work if not part of what lead the offence to occur – even though those may well all be good ideas. This is the defence perspective and debate may take place at the time of sentencing.)

- If the crown has given notice to seek an **AS**, what are the implications? (Includes court election triggered, jeopardy youth may be facing, what is the **test for an AS** to be imposed.) [s.72](#)

### Breaches:

- If a YP is returned to the youth justice court because of an allegation of a breach of a condition of a DCSO
  - has a finding under [s.109](#) been made
  - is the court is satisfied on “reasonable grounds” that the YP has breached or was about to breach a condition of the order
- If there is a **breach of a condition** of community supervision or conditional supervision, is it clear what the procedures are for breaches of these two different orders?

- Is the YP facing an allegation of **breaching** any of these: the supervision portion of a Custody and Supervision Order, a condition of a Conditional Supervision Order or a condition, or a Deferred Custody and Supervision Order? (What about the process, the differences in process, the onus on the Crown [reasonable grounds to believe the breach occurred], and the options available to the court?)

(see “Custody, Supervision, Enforcement” – “Breach of Supervision Conditions,” p.46)

## Definitions from the YCJA

s.2(1)

Words and expressions used in the YCJA have the same meaning as in the CC unless they are defined differently in the YCJA. s.2(2)

This section contains some of the words that are defined differently in the YCJA that are used in this Pocket Guide. s.2(1)

**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.51)

**custodial portion**, with respect to a youth sentence imposed on a YP under paragraphs 42(2)(n),(o),(q) or (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) or (r)

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



**extrajudicial measures (EJM)** 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 (EJS)

**extrajudicial sanction (EJS)** means a sanction that is part of a program referred to in [s.10](#)

**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 Northwest Territories or a law of the Legislature of Yukon or 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](#)

**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,” pp.58-59*)

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

**serious offence** means an indictable offence under an Act of Parliament for which the maximum punishment is imprisonment for five years or more

**serious violent offence (SVO)** means an offence under one of the following provisions of the Criminal Code:

- a** section 231 or 235 (first degree murder or second degree murder);
- b** section 239 (attempt to commit murder);
- c** section 232, 234 or 236 (manslaughter); or
- d** section 273 (aggravated sexual assault).

**violent offence** means

- a** an offence committed by a YP that includes as an element the causing of bodily harm;
- b** an attempt or a threat to commit an offence referred to in paragraph (a); or
- c** an offence in the commission of which a YP endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.

**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, it also 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 subsection 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 *“What constitutes a youth justice court and judge,”* p.7)

**youth justice court judge** means a youth justice court judge referred to in s.13 (for more information, see *“What constitutes a youth justice court and judge,”* p.8)

**youth sentence** means a sentence imposed under section 42, 51 or 59 or any of sections 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 “Youth workers and reintegration,” p.38*)

