

# A GUIDE TO THE YOUNG OFFENDERS ACT IN ALBERTA

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<b>federal statutes:</b>	laws of the Government of Canada.
<b>young person:</b>	from 12 to 17 years (inclusive).
<b>"the Act:"</b>	the Young Offenders Act.
<b>the youth justice system (process):</b>	all of the people, proceedings and stages that a youth experiences once he or she has come into contact with the law.

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## INTRODUCTION

The YOUNG OFFENDERS ACT came into effect on April 2, 1984. The federal government created the law to deal with young persons who come into conflict with the law. The law outlines how young persons will be dealt with by police and the court system, and how they can be dealt with if they are found guilty of committing offences against federal statutes.

### Definition of Young Person

The Act defines a young person as being aged 12 through 17 years inclusive. Therefore, an 11 year old who appears to have committed an offence cannot be prosecuted under the Young Offenders Act. However, under provincial law, police are allowed to return children under 12 to their parents or legal guardians. If there is evidence that the child is neglected, the police may take the child to a Social Services facility or social worker.

### Offences Covered

The Young Offenders Act applies only to offences defined by federal statutes and regulations. To deal with less serious offences such as under-age drinking or careless driving which are defined by provincial statutes and municipal by-laws, a provincial act has been passed, the Alberta Young Offenders Act. This booklet is concerned only with the federal Young Offenders Act.

### Amendment

Amendments (changes) to the federal Young Offenders Act were proclaimed into (became) law in September 1986, December 1991 and December 1995 and have been included in this edition of the Guide.

### Approach of the Act

The Act sets out its approach in a "Declaration of Principle" which states:

- that the long term protection of society rests with crime prevention which requires a multi- disciplinary approach which addresses the underlying causes of crime and responds to the needs of children at risk of offending;

- that the main objective of the Act is the protection of society which is best achieved through the rehabilitation of young offenders when possible;
- that young persons will be responsible for their actions when they break the law;
- that there should be minimal intervention into the lives of young persons;
- that informal responses to youth offending should be used when it would not be inconsistent with the protection of society, and;
- that young persons should have special rights and guarantees to protect their rights and freedoms, taking into consideration their particular needs and circumstances.

## **The Youth Justice System**

The chart on the following page shows the processes and alternatives of the youth justice system with respect to young persons alleged to have committed an offence. The young person will go through 3 major steps, but he or she may be diverted from the system at any one of these steps. These stages and steps will be discussed in more detail in the remainder of this booklet.

\*Young Offender Case Process Diagram from original document not available

<b>informal action:</b>	giving guidance or a warning.
<b>formal action:</b>	charging and/or arresting the young person.
<b>custody:</b>	detained in jail.
<b>disposition:</b>	the decision of the court (the sentence).

\*STEP #1 diagram from original document not available.

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## **ROLE OF THE POLICE**

The police may initiate contact with young persons if they have reasonable grounds to believe the young persons have, or are about to, commit an offence. This is the first point of contact with the youth justice system.

The police have a number of options as to how they can proceed. They have the choice between taking formal or informal action. This choice is referred to as police discretion.

### **Informal Action**

If police officers choose to take informal action against young persons they may, for

example, warn young persons of the consequences of their actions and speak with their parents. The police may also refer the young persons to any program or community resource as long as it is not punishment oriented. With this informal route, there would be no further action taken by the justice system.

## **Formal Action**

If police officers choose to take formal action against a young person, they may either:

- arrest the young person, in which case the young person is taken to the police station:

OR

- issue a summons or appearance notice to the young person, in which case the young person would not be held any longer but would be required to appear in court at a later date.

NOTE: The young person's parents or guardians must be notified of the court appearance. However, a failure to notify the young person's parents or guardians of the court appearance does not stop the proceedings.

After deciding on formal action, the police are required to immediately notify young persons of their rights. In other words, the officer who arrests the young person must make sure the young person understands that he/she has the right to not make a statement and that he/she has the right to consult with a lawyer or another adult before making a statement. The police officer must tell the young person that if he/she does decide to make a statement, it could be used as evidence in the courtroom. Under Section 56 of the Act, a statement made by the young person to the police can only be used as evidence if it was voluntarily made.

However, Section 56 of the Act allows statements made by the young person to be used as evidence if the young person claimed to be 18 years of age or older. For the statement to be admissible, the person who received the statement must have made a reasonable attempt to determine the age of the young person and it must have been reasonable to believe that the young person was an adult. Only those statements which would be admissible in adult court can be used as evidence.

The police must notify the parents if a young person is going to be held for a substantial period of time or detained in custody awaiting court.

If the young person is arrested, the police would then take the young person to the police station, where he or she may be asked to make a statement. A youth must be given reasonable time and opportunity to consult with a lawyer, parent or another adult of his or her choosing before making a statement. If a young person does not want to consult with someone before making a statement, the young person must waive his/her right to consultation in writing.

If the illegal act was or could be an indictable (serious) offence, the alleged young offender can be fingerprinted and/or photographed. These records will be included in the young person's file and used in court as evidence. Any photographs or fingerprint records

must be destroyed if the individual is acquitted (found not guilty), the charge is dismissed or no further proceedings are taken. The fingerprints and photographs of young offenders who are convicted may be kept with the records.

If a young person is temporarily detained (held by the police) during an investigation and if the police decide to lay a charge, they must then decide whether to detain or release the young person.

**Detain:** Young persons may only be detained if the police believe they present a danger to themselves or to the community, or if the police believe that they may not appear in court. If detained, young persons must be brought to court for a hearing within 24 hours, or as soon as possible.

Young persons must be detained apart from adults, with 2 exceptions:

1. where the young person might be in physical danger as a result of detention with other young persons. This exception includes any danger which the young person may present to other inmates or staff. For example, a 16-year-old repeat offender may be a serious threat to younger and less experienced youth, and;
2. where no place of detention for a young person is available within a reasonable distance. The court is allowed to balance the ill effects of detention with adults against the benefits of family and local community support. These benefits may be sacrificed if the young person is detained in a distant facility for young persons.

**Release:** If young persons are to be released, the police either have them sign a statement promising to appear in court on a certain date, or have a summons issued to order the youth to appear in court.

If the police decide on formal proceedings, an Information (a written statement claiming that a person has committed an offence) is sworn, a charge is laid and the case is given to the Crown counsel (prosecutor).

At this point in the process, the role of the police has ended. Once the young person enters the youth justice system, the police involvement, other than as witnesses at the Youth Court trial, is complete. However, there are 3 occasions when police may become involved after a young person has entered the youth justice system:

- picking up a young person on an arrest warrant (for example, where the young person has broken a term of his or her probation and a review of disposition is ordered);
- arresting a young person who has been temporarily released from custody, and;
- charging anyone who interferes with a young person's disposition.

**indictable offence:** serious offence.

**summary offence:** less serious offence.

<b>counsel:</b>	lawyer or advisor.
<b>Crown counsel:</b>	prosecutor.
<b>Alternative Measures:</b>	instead of laying a charge against the young person, Crown counsel may divert the young person into a program that may keep him/her out of the court system and prevent the youth from having a criminal record.

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## RIGHT TO COUNSEL

Under the Young Offenders Act, young persons have full rights to legal representation. The Act guarantees access to a lawyer at all stages of the youth justice process.

Every young person who is arrested or detained will be advised by the police of his or her right to a lawyer and will be given an opportunity to obtain counsel. A youth may even have a lawyer present when a decision is made about whether to enter an Alternative Measures Program.

If a young person wants counsel but is unable to obtain a lawyer through parents or legal aid, then the court will order that counsel be provided for the following situations: a hearing, trial, review of disposition or transfer to adult court.

If it appears to the judge that the interests of the young person and his/her parents are in conflict, "...the judge or justice shall ensure that the young person is represented by counsel independent of his parents." (Section 11 (8) of Act).

## ROLE OF CROWN COUNSEL

If the police have decided to proceed against a young person, they send a report to Crown counsel (the prosecutor) describing the situation. Crown counsel is responsible for determining what action should be taken in that young offender's case.

The Crown counsel has to screen the case to ensure that there is a valid and prosecutable case against the young person. If there is not, no further action is taken and the young person is free to go.

If there is a valid and prosecutable case, Crown counsel has several options:

### **No Further Action**

In some situations, Crown counsel may decide that no further action needs to be taken even though there is enough evidence to proceed. This would only be done under special circumstances.

### **Alternative Measures (Diversion)**

The Crown counsel, on the recommendation of the police, may decide not to take the

young person to court. Instead, Crown counsel may decide to refer the young person to an Alternative Measures (diversion) Program. Alternative Measures may be used to deal with the young person if:

- there is enough evidence to proceed with the prosecution;
- the Crown counsel agrees that these measures would be appropriate, taking into consideration the needs of the young person and the interests of society;
- the prosecution of the case is not in any way barred at law (i.e., the time limit for prosecution has not expired);
- the young person has, before agreeing to participate, been advised of his or her right to counsel, and;
- the young person voluntarily agrees to participate and accepts responsibility for the offence.

In Alberta, young offenders who have committed a first or second offence are automatically referred to Alternative Measures Programs. However, young offenders who have committed any of the following offences will not be accepted into Alternative Measures Programs:

- violent offences or offences involving threats of violence (with the exception of non-domestic simple assault);
- driving offences;
- break and enter offences involving private residences, and;
- drug offences (with the exception of simple possession of marijuana).

If Crown counsel decides to opt for an Alternative Measures Program and the above eligibility criteria have been met, the young person will be referred to the Justice Department, which refers youth to specific programs.

The Justice Department also has certain guidelines to follow before placing an offender in an Alternative Measures Program. The young person must freely consent to the Program and if he/she refuses to participate, the case will be returned to the Crown counsel, and then proceed to Youth Court.

If the young person does consent, the Justice Department will refer the young person to an Alternative Measures Program operated by itself or by a community agency.

Each young person who participates in the Alternative Measures Program must sign an Alternative Measures Agreement which outlines one or several conditions the youth must follow. For example, Alternative Measures may involve an apology, community service, compensation or restitution to the victim(s) or a charitable donation. The young person may be required to participate in a counselling program, Aboriginal cultural/spiritual activities or a victim/young offender reconciliation program. The young person may also be placed under the supervision of a Youth Justice Committee member. A Youth Justice

Committee is made up of volunteer members of the community who assist in the administration of the Young Offenders Act and/or in programs and services for young offenders.

In Alberta, Youth Justice Committees act as a diversion from Youth Court similar to an Alternative Measures Program. Youth Justice Committees in Alberta also make sentencing recommendations to the Youth Court. Youth Justice Committees are operating in many communities across the province.

It is not intended that the consequences under Alternative Measures be more severe than if the young person went to court. The time period that a youth can be in an Alternative Measures Program will not exceed 3 months. All records of Alternative Measures Programs held in the RCMP Central Repository are to be destroyed and any other records are not to be disclosed 2 years after the young person consents to participate in the Alternative Measures Program.

### **Court Proceedings**

If the Crown counsel decides that Alternative Measures or taking no action are not appropriate responses under the circumstances, a charge will be laid and the matter dealt with in court.

### **Transfer to Adult (Ordinary) Court**

All young persons 16 or 17 years of age charged with murder, attempted murder, manslaughter or aggravated sexual assault are automatically transferred to adult (ordinary) court. The young person, the young person's counsel, the Attorney General or an agent of the Attorney General may apply to have the proceedings in Youth Court. The defendant (the young person and/or counsel) must convince the Youth Court that the interests of society, which includes public protection and the rehabilitation of the young person, can be met by hearing the case in Youth Court.

Depending on the nature and seriousness of the alleged offence, the Crown counsel may decide to apply to transfer youths charged with crimes other than those listed above to adult court. The young person may also apply for a transfer to adult court.

Transfers to adult court are only possible if the young person is 14 years of age or older. For a transfer hearing to take place, the law requires that a written predisposition report be prepared and the youth has an absolute right to counsel. In a transfer hearing, the court considers the seriousness of the offence and the interests of society, which includes the objectives of providing protection to the public and serving the needs of the young person. The court may decide that these 2 objectives cannot be met if the youth remains in the young offender system. If this happens, protection of the public will be more important and the young person will be transferred to adult court.

The Youth Court's decision about transfer can be reviewed by a higher court if applied for within 30 days of the decision. Either the prosecutor or the young person may wish to have the decision reviewed.

If a young person is transferred to adult court and is convicted of first or second degree murder, the court must sentence the young person to life imprisonment. This will mean

that young persons under 16 years of age must serve between 5 and 7 years in prison before becoming eligible for parole. Youths who were 16 or 17 years of age at the time of the offence must serve ten years in prison before becoming eligible for parole.

<b>temporary detention:</b>	held in custody until the youth's court date.
<b>predisposition report:</b>	a report on the young person's background that will help the judge decide on the disposition (sentence).
<b>Justice of the Peace:</b>	a judicial officer who has the power to make a decision regarding the release or detention of a young person, and to hear other pre-trial matters.

\*STEP #2 diagram from original document not available.

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## YOUTH COURT

Under the Young Offenders Act, cases are heard in Youth Court. In Youth Court:

- the young person has an absolute right to legal representation. This means that if the young person is unable to get a lawyer through parents or legal aid, then the court will provide counsel. In Alberta, this is done by the Legal Aid Society of Alberta;
- the trial, in most cases, will be open to the public and members of the news media. It is not possible to publish or broadcast any information which reveals the identity of any young person involved in the trial, and;
- the young person's parents must be notified of all proceedings and are encouraged, or may be required, to attend.

Where a parent has not attended court proceedings, the judge may, by order in writing, require the parent to attend at any stage of proceedings.

### First Appearance

At a youth's first appearance in Youth Court, the judge will have the charge read to the young person and inform the young person of his or her right to be represented by legal counsel. Before accepting a plea of "guilty" or "not guilty," the judge must be sure that the young person understands the charge. If the court is not satisfied that the young person understands the charge, the court will direct that a "not guilty" plea be entered.

If a "guilty" plea is entered and the Youth Court judge is satisfied that the facts presented by the Crown counsel support the charge, a conviction is entered and a disposition (sentence) may be given right away. Or, there may be an adjournment (courtroom

proceedings postponed) so that a predisposition report can be prepared by a probation officer. A predisposition report is always required before a sentence involving custody is given.

If a "not guilty" plea is entered, there will generally be an adjournment and a date for a trial will be set.

## **Released or Detained Awaiting Trial**

Where the young person has been detained (held) in custody after an arrest, the first court appearance will, in most cases, be concerned with the granting of bail (release into the community under certain conditions) or the continued detention of the young person until trial and sentencing. A young person arrested and detained in custody must be brought before the court or a justice of the peace for a bail hearing within 24 hours where possible.

If Crown counsel believes that detaining the young person is justified, a "show cause" court hearing must be set where the Crown counsel must show that:

- the youth might not show up in court if he/she is not detained, or;
- the youth needs to be detained in order to protect the public.

These criteria mean that young persons cannot be detained for their own protection or "best interest," or for "a shock," or simply because they do not have a place to go such as home.

If the judge has some doubts that the youth would show up for a court hearing, the judge could require that the youth put up money or other form of "surety" to guarantee his or her return. Other conditions of bail could be set. For example, the young person may be required to be home by a certain time every night or report to a probation officer while awaiting trial.

In more serious cases, or if the judge believes the young person would not appear at a trial or might commit another offence, the judge could decide to keep the youth in temporary detention. This means that the young person would be sent to a detention centre for youths, where there would be constant supervision. If the judge believes safety is a concern or if a detention centre for youths is far away, a young person can be held in an adult facility awaiting the next court appearance.

The Act encourages judges to re-unite young persons with their families unless there are good reasons for not doing so. Further, the Act recognizes the right of the young person to least possible interference with his/her freedom. Therefore, the judge may allow the young person to be placed in the care of a "responsible person." This option may be used instead of detention in custody. The young person and the responsible person must agree in writing to such an arrangement. The judge or a justice of the peace may make an order ending the arrangement if the responsible person, the young person or any other person applies in writing to end the arrangement. A responsible person who fails to fulfill his/her duties with respect to the care of the young person may be charged with a summary offence.

The Act lets the province decide where young persons will be held in temporary detention. Currently in Alberta, the Young Offender Centres in Edmonton and Calgary, and the Youth Assessment Centres in Fort McMurray, Lac La Biche, Grande Prairie, High Prairie, Red Deer, Lethbridge and Medicine Hat, have been designated as places of temporary detention.

Young persons can also be detained for medical or psychological examinations to determine their fitness to stand trial. If a young person is to be held in custody so that an examination can be done, it must not take longer than 8 days. If more time is asked for by a qualified examiner, the examination cannot take more than 30 days.

## **Trial**

At the trial, the Crown counsel and counsel representing the young person (if the young person has counsel) present their cases and may call witnesses. The judge must then make a decision based on what has been heard. In the case of a youth charged with first or second degree murder, the youth can choose how the case will be tried. The youth may elect (choose) to be tried by (1) a superior court judge, appointed as a Youth Court judge, with a jury or (2) by a Youth Court judge alone.

If the young person is found not guilty, he or she will be acquitted. This ends the case and the young person is free to leave. Any records will be deemed to have been destroyed after a specified time period. (see [Destruction and Disclosure of Records](#))

If the judge finds the young person guilty, the judge may request a probation officer to prepare a predisposition report. Under some circumstances, such as the possibility of a sentence involving custody, a predisposition report **must** be ordered. However, a predisposition report does not need to be prepared if the young person, Crown counsel and the judge agree to not having one. A predisposition report is an assessment of the young person's age, behaviour, attitude, previous contact with the law, experience in Alternative Measures Programs, school records and relationships with family members. The report will also look at where the court can send the youth for treatment or custody, particularly whether space is available in these programs for the youth. The probation officer preparing the report will interview the young person, the parents or guardians and the victim (where there is an identifiable victim and where an interview is appropriate). The probation officer may also interview school officials and employers where appropriate. Under most circumstances, copies of the report must be made available to the young person, the parents and legal counsel.

The court can send a young person for an assessment if the young person has committed a serious personal injury offence or is forming a pattern of offending. Assessments may also be ordered to decide whether an application to reveal a young person's identity should be granted. If the judge suspects that the young person has a physical or mental illness, the judge can ask for a medical, psychological or psychiatric assessment. The probation officer preparing the predisposition report may also request such an assessment and include it as part of the report.

### **disposition:**

the sentence given by the judge to the young person.

<b>prohibition:</b>	prevention from doing something.
<b>restitution:</b>	a return of the property which was wrongfully taken.
<b>compensation:</b>	to pay for damage caused.
<b>Provincial Director:</b>	the person (or office) designated by the provincial government to carry out the dispositions in regard to young persons.

\*STEP #3 diagram from original document not available.

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## DISPOSITION (SENTENCE)

In arriving at a disposition, the judge will consider several things. The judge will look at the findings of the predisposition report (if one was prepared). The judge will also consider any request made by the people involved in the offence or the parents. Other relevant information would include the seriousness of the offence, whether the young person has a previous criminal record, the young person's age, the young person's attitude and any previous involvement in Alternative Measures Programs.

The Young Offenders Act gives the judge a wide range of choices for sentencing. The choices available are:

- an absolute discharge. There are no further consequences for the young person;
- a conditional discharge. The court may attach any conditions it considers appropriate;
- a fine of up to \$1,000, taking into account the young person's ability to pay;
- a payment to the victim of the offence (compensation). The young person can also be asked to provide compensation "in kind," meaning that the youth works off the debt to the victim. The victim must consent;
- the return of any property obtained in the offence to the owner (make restitution);
- a payment to an innocent third party (compensation). If any property obtained as a result of an offence has been sold to an innocent purchaser, the young person can be asked to pay the purchaser;
- a community service order which would require the young person to perform a specified amount of work for the community. This community work cannot be for more than 240 hours and must be completed within 12 months;
- order of prohibition, seizure or forfeiture (may be for longer than 2 years);

- probation for up to 2 years ([see next section](#));
- open or secure custody. The young person may be held in custody for up to 2 years. In cases where an adult would be subject to life imprisonment, the youth may be held for up to 3 years, and;
- any conditions that the judge considers are in the best interests of society or the young person.

There are specific sentencing options for murder:

- a youth convicted of first degree murder would serve a disposition of up to 10 years comprised of up to 6 years in custody from the date the young person was sentenced to jail, followed by conditional supervision in the community. A youth convicted of second degree murder would be subject to a disposition of up to 7 years comprised of up to 4 years in custody and the remainder to be served in the community on conditional supervision, and;
- in some cases, the Crown counsel may want to keep a youth who is serving a sentence for murder in custody until the end of the disposition rather than releasing the youth on conditional supervision. In order to do this, the Crown counsel would have to make an application to the court prior to the end of the custody term. If the court makes the order, the young person would not be released on conditional supervision.

The youth may receive any combination of the above dispositions, so long as the combined length is not greater than the following maximums:

- if one offence (other than murder) is involved, the combined length cannot be longer than 2 years;
- if multiple offences (none of which is murder) are involved, the combined length cannot be greater than 3 years;
- if subsequent offences (other than murder) are committed while the young person is already serving a disposition, the combined length may be longer than 3 years;
- if multiple offences (one of which is murder) are involved, the combined length cannot be longer than 10 years in the case of first degree murder, or 7 years in the case of second degree murder;
- if subsequent offences are committed while the young person is already serving a disposition for murder, the combined length may be greater than 10 years in the case of first degree murder, or greater than 7 years in the case of second degree murder.

More detailed descriptions of the conditions involved in probation and custody are outlined in the next sections.

## **The Provincial Director**

In Alberta, the responsibility for carrying out the sentence or disposition ordered by the court is that of the Correctional Services Division of Alberta Justice. The Correctional Services Division has appointed a Provincial Director to be responsible for the Young Offender Branch. The Provincial Director is also responsible for preparing predisposition reports. Whether a disposition is to be a custody sentence, a period of probation or any other order, the Provincial Director, or her/his delegate, is the administrator of the disposition.

<b>probation:</b>	a period of time during which a young offender is under court ordered supervision of his/her behavior.
<b>probation officer/youth worker:</b>	a delegate of the Provincial Director who supervises young persons who are on probation.

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## PROBATION

The Young Offenders Act allows the court to sentence the young person to probation for up to 2 years. Probation may be combined with a number of other dispositions which are consistent with one another. However, where multiple dispositions are given for **one** offence, the combined duration of the dispositions cannot exceed 2 years. The judge or the court staff must make sure the young person understands the probation order.

Two conditions must appear in any probation order:

- that the young person bound by the probation order shall keep the peace and be of good behaviour, and;
- that the young person appear before the Youth Court when required by the court to do so.

Probation orders **may** also require that the young person:

- notify the clerk of the Youth Court of any change of address or any change in his or her place of employment, training or education;
- report to a youth probation officer;
- remain within a specific geographic area;
- make reasonable efforts to obtain and maintain suitable employment;
- attend school or other training;
- live with a parent or other adult who is willing to provide for the care and maintenance of the young person;

- live in a specified place;
- attend a treatment or counselling program as directed by the probation officer, and;
- comply with other conditions decided by the judge. For example, the judge may impose a curfew on the youth as an additional condition.

A young person who willfully fails or refuses to comply with (breaches) the terms of his or her probation may be charged with a summary offence. This means that if a youth ignores or breaks one of the rules on a probation order, he/she will be charged with a new offence. If a young person fails to appear before the Youth Court for a review of his/her probation order, a warrant for arrest may be issued and a young person may be detained in custody awaiting his/her review. If a young person has a problem complying with the terms of his or her probation, the young person may apply to the court for a review of the conditions.

<b>secure custody:</b>	detaining the young person in a guarded and enclosed facility.
<b>open custody:</b>	detaining the young person in a facility that is not as heavily supervised (eg., group home, child care institution, forest or wilderness camp).
<b>intermittent custody:</b>	a custody order that allows the young person to leave the facility for lengthy periods of time. (At the present time in Alberta, there are no facilities offering this for youth).
<b>incarceration:</b>	being placed in a custody facility.

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## CUSTODY

Youth Courts can only sentence young offenders to custody if the court considers it necessary for public protection. The seriousness of the offence, the circumstances in which it was committed and the needs and circumstances of the young person must be considered. Also, the court must consider the following:

1. that a youth should not be placed in custody because there are not adequate child protection, health or other facilities or programs to meet their needs in the community;
2. that non-violent offenders should be held accountable to society and the victim through community based sentences where appropriate, and;
3. that custody is only to be used as a last resort.

A predisposition report is also normally prepared for consideration. If the court chooses custody as the disposition for a young person, the judge has to say why other dispositions were not chosen.

There are 2 types of custody recognized under the Young Offenders Act: "open" and "secure." Each young offender custody facility is designated by the province as being "open" or "secure" or both. In Alberta, the judge decides whether the youth will go to open or secure custody.

## **Open Custody**

The Act defines open custody as a "community residential centre, group home, child care institution or forest or wilderness camp, or any other like place or facility designated by the Lieutenant Governor-in-Council." In Alberta, a combination of privately operated group homes and government institutions are used for open custody.

## **Secure Custody**

Secure custody is defined as "a place or facility designated by the Lieutenant Governor-in-Council...for the secure containment or restraint of young persons." Secure custody is often called closed custody.

## **Length of Custody Disposition**

With the exception of first and second degree murder, a custody disposition for any young person cannot be longer than 2 years unless there is more than one offence involved, in which case the sentence must not be longer than 3 years. In the case of first degree murder, a youth may serve up to 6 years in custody. In the case of second degree murder, a youth may serve up to 4 years in custody.

The court also has the option of sentencing a young person to intermittent custody, which means that he/she is allowed to leave custody for long periods of time (with the exception of cases involving murder). Before such an order is made, the Crown counsel must indicate the availability of a place of intermittent custody based on information from the predisposition report. If the report indicates that a place of intermittent custody is not available, the young person cannot be sentenced to intermittent custody. In Alberta, at present, there are no facilities for intermittent custody for young people.

**Determination of Level of Custody** In Alberta, the Youth Court decides whether a young person sentenced to a custodial disposition will be placed in open or secure custody. Several factors must be looked at:

1. youths should be placed in a facility using the least amount of restraint necessary. Four factors help to decide the level of restraint:
  - how serious the offence was,
  - the needs of the young person,
  - the safety of other youths in custody and
  - the interests of society;

2. the level of custody should allow the youth to receive programs which match their needs and behaviour;
3. the likelihood of escape if the youth were placed in open custody, and;
4. any recommendation made by the judge or the Provincial Director.

## **Temporary Release From Custody**

The Provincial Director (or Young Offender Branch) can authorize a young person's temporary release from custody for education or employment reasons (for a maximum of 15 days). Also, the young person can be released (for no more than 15 days) for "medical, compassionate or humanitarian reasons." Release for these reasons might include attending a funeral or seeing a special doctor.

## **Custody Transfers - From Secure to Open Custody**

A young person sentenced to secure custody may be transferred to open custody by the Young Offender Branch. This kind of transfer can only take place after going through the review procedures. (see [Review of Disposition](#))

## **Custody Transfers - From Open to Secure Custody**

If a young person in open custody is guilty of serious misconduct or has escaped or attempted to escape, the Provincial Director can transfer the young person from open to secure custody for up to 15 days.

The Provincial Director can also transfer a young person from open to secure custody if circumstances have changed materially since the young person's open custody placement. An example of this would be that the young person is suicidal and would be safer in a secure custody facility. The Provincial Director has to consider the same factors that were considered in deciding level of custody. (see above)

## **Custody Transfers - To Adult Correctional Facilities**

The Act allows the court to transfer a youth, sentenced to open or secure custody, to an adult correctional centre if:

- the youth is 18 years old, and;
- the court considers the transfer to be in the best interests of the young person or the public.

A transfer to an adult institution requires formal application to the court by the Provincial Director. A court hearing must be held and the youth has the right to speak and to have counsel.

## **Custody Transfers - Concurrent Adult Custody Sentences**

Sometimes a youth who is serving a youth custody sentence will then be sentenced on other charges to serve time in an adult jail. In cases like this, the Young Offender Branch decides whether the new adult sentence will be served in a youth custody centre or in the

adult system.

## Transfer to Another Province

Where a disposition has been made that does not involve custody and the young person moves to a different province, a judge may transfer the disposition to a Youth Court in the new province. An application to have the disposition transferred must be made by the Attorney General or his agent, or by the young person or parents with the consent of the Attorney General or his agent.

As a general rule, custody dispositions are not transferred from one province to another. However, the possibility for such a transfer does exist.

**assessment:** a medical, psychological or psychiatric examination which helps to determine the presence of a wide variety of problems, including physical illness, mental illness, psychological disorder, emotional disturbance, learning disability and mental retardation.

**treatment:** programs and services designed to help a young person who has a problem that was found in an assessment.

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## ASSESSMENT AND TREATMENT

Under the Act, assessments may be ordered at any time during the court case to help decide whether the young person has any of the following kinds of problems: physical illness, mental illness, psychological disorder, emotional problems, learning disability and mental retardation. Assessments may also be ordered if the young person has committed a serious personal injury offence or is a repeat offender. Assessments may also be ordered to help decide whether the young person's identity should be made public.

Following the results of an assessment, prosecution and defence counsel are entitled to cross-examine (ask questions of) the person who made the assessment.

If the assessment is done to decide whether or not the young person is fit to stand trial and the young person is found to be unfit, the judge may commit him/her to treatment. The young person may still be tried for the offence after his or her treatment is done.

If the court decides that the young person is fit for trial but **was** mentally ill at the time of the offence, he/she will be sent to a mental health facility to serve their time.

In addition, a young person can be sent to programs that provide treatment for alcohol and drug problems. Inquiries should be directed to local Alberta Alcohol and Drug Abuse Commission (AADAC) centres or local health units.

**appeal:** a challenge to what the court has decided. The conviction or the disposition can be appealed by the young person or the prosecutor.

**review:** an examination of the status of the young person that may change his/her disposition, making it more severe or less severe. The young person, the parent, or the Provincial Director may apply for a review.

**custodial:** having to do with "custody."

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## APPEALS AND REVIEWS

### Appeals

The Act gives a young person the legal right to appeal the decision of the Youth Court judge. If a young person is found guilty but disagrees with the finding or disposition, he/she may appeal to a higher court. The appeal court may agree with the decision of the Youth Court, change the decision or change the disposition.

The prosecutor also has the right to appeal if a young person is found not guilty, or if the prosecutor feels the sentence is not appropriate.

### Review of Disposition

A review of disposition is not an appeal. It is a way for the court to look at the disposition a youth is serving. It allows the court to change a disposition if it is no longer best for the youth or society. Application for review can be made by the young person, the young person's parents or the Provincial Director. However, the court must have grounds (reasons) for allowing a review to take place.

Grounds for review of a **custodial** disposition are the following:

- the young person has made enough progress to justify a change in disposition;
- the circumstances of the case or the youth have changed;
- new services or programs are now available;
- there are now increased opportunities for rehabilitation in the community, and;
- "on such other grounds as the Youth Court considers appropriate."

### Automatic and Optional Reviews of Custody Dispositions

Young persons sentenced to custody for over one year automatically have their cases reviewed after serving one year of their custodial disposition.

A custodial disposition may also be reviewed at the request of the Provincial Director, the young person, the young person's parents, the Attorney General or an agent of the Attorney General on any of the above grounds. There are 3 possible times for an optional review of a custodial disposition:

1. Young persons sentenced to custody for less than one year can have their cases

reviewed after serving 30 days of their sentence or after they have served one-third of their sentence, whichever is longer.

2. Young persons sentenced to over one year of custody can have their cases reviewed after serving at least 6 months of their custodial disposition.
3. With the permission of a Youth Court judge, custodial dispositions can be reviewed at an earlier time than outlined above.

## **Review of Non-Custodial Dispositions**

A young person, a parent, the Attorney General (or agent), or Provincial Director may apply to have a non-custodial disposition reviewed by the Youth Court. The application may be made at any time after 6 months from the date of the disposition or, with permission from a Youth Court judge, at any earlier time. There are specific grounds in the Act under which such a review would occur:

- the circumstances of the case or the youth have changed;
- the young person is having serious difficulty in completing the disposition;
- the terms of the disposition are preventing the young person from working or going to school, and;
- "such other grounds as the Youth Court considers appropriate."

## **Early Release**

The Act allows the Provincial Director to recommend that a young person be released from custody and placed on probation. This will not necessarily involve a court hearing. Notice of the recommendation for release is given to the young person, the parents, the Attorney General (or agent) and the Youth Court. If none of these parties apply to have the recommendation reviewed, the judge may make the order based on the recommendation. If the judge does not make the order, the Provincial Director may ask for a court hearing to have the case reviewed.

If a young person is serving a sentence for murder made up of custody followed by conditional supervision, the youth must be brought into court one month prior to the end of the custody term. This will allow the court to set the conditions of the young person's conditional release.

This conditional release can be suspended and the young person placed back in custody if the conditions of the supervision are not followed.

If a young person serving a sentence for murder receives another custodial disposition, the conditional supervision will be suspended until all custodial dispositions have been served.

Also, if a custodial sentence is given for a new offence after the young person has been released on conditional supervision, the conditional supervision will be suspended until the young person has served the new custodial disposition.

## Progress Reports

Progress reports are mandatory for reviews of custodial dispositions and may be required by the court on review of non-custodial dispositions. (The same procedures are used as for predisposition reports). A progress report considers the behaviour of the young person since the disposition started.

Following the review, the court may confirm, change or end the disposition. However, in these kinds of reviews, the court may not make the disposition more severe unless the youth agrees or if he or she needs more time to finish community service hours.

## Failure to Comply

A young person who purposefully (willfully) fails or refuses to comply with a disposition of the court to pay a fine, make restitution to a victim, compensate by personal service or comply with the terms of a probation order will be charged with a summary (less serious) offence. This offence is often called a "breach."

The prosecution must prove "beyond a reasonable doubt" that the young person willfully failed or refused to comply with the disposition. If the young person is found guilty of not complying with the disposition, he/she will be convicted of a summary offence and may be ordered to serve any of the dispositions outlined [elsewhere](#) in this booklet. However, the young person cannot be sentenced to a period of custody longer than 6 months on the new charge of failure to comply. The court may postpone the first or existing disposition until the new period of custody is completed.

A young person who escapes from custody or attempts to escape from custody will be charged with an offence under Section 145 of the Criminal Code of Canada. Crown counsel will decide whether to charge the young person with an indictable (serious) offence or summary conviction (less serious) offence. If the Crown charges the young person with an indictable offence, he or she could be sentenced to custody for up to 2 years.

**record:** information kept by the RCMP about an offence that a young person has been charged with committing. This information includes fingerprints, palmprints and photographs of the young person.

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## COMPLETION

## RECORDS

The Young Offenders Act provides specific rules about the records related to federal offences. These rules say who keeps the records, where they are kept, who can see them and when they are to be destroyed. These rules apply to police department records (including fingerprints and photographs), Youth Court records, government and private

records.

Under Section 41 of the Young Offenders Act, the RCMP are obligated to keep a "Central Repository" record for all cases involving indictable (serious) offences. These records contain fingerprints and/or photographs and indicate the type of offence committed. Local police departments put cases into this Central Repository. In this section, we will refer to these records as "Central Repository records."

Other police records, court records, and records kept by government departments and organizations can also be kept. These records are to be made available to the young person, counsel to the young person, the prosecution, a parent or adult assisting the young person, the victim of the offence and other select individuals. In this section, we will refer to these records as "other records."

## **Destruction and Disclosure of Records**

The Central Repository records kept by the RCMP for identifying criminals are to be **destroyed** and any other records are **not to be disclosed** (they are sealed) after the following time periods and conditions have been met:

- where a young person has been acquitted (found not guilty) of an offence for reasons other than insanity, 2 months after the time for an appeal has expired or 3 months after appeal proceedings are completed;
- one year after charges have been dismissed or withdrawn;
- one year after charges were stayed (put on hold), as long as no court proceedings were started in that one year;
- one year after the young person was found guilty where an absolute discharge was granted;
- 2 years after the young person consents to participate in an Alternative Measures Program;
- 3 years after the young person was found guilty where the disposition was a conditional discharge;
- 3 years after the young person has completed the disposition for a summary conviction offence, and;
- 5 years after the young person has completed the disposition for an indictable offence.

The above time periods no longer apply if the young person is convicted of a subsequent offence prior to the destruction or sealing of his/her record. The record will then be subject to one of 3 provisions about keeping records:

1. if the young person is subsequently convicted of a summary offence as a **young person**, both the old and new records will not be destroyed or sealed until 3 years after the young person has completed the new disposition;

2. if the young person is subsequently convicted of an indictable offence as a **young person**, both the old and new records will not be destroyed or sealed until 5 years after the young person completed the new disposition, and;
3. if the young person is subsequently convicted of an offence as an **adult**, the young person's record is then subject to the provisions regarding the criminal records of adults.

If a youth does not re-offend and his/her records are sealed and destroyed, the young person is considered to "not have committed" the offence for which he/she was charged. Anyone who discloses the record of the young person is guilty of an offence. However, a Youth Court judge can order disclosure of records in special circumstances (for example, to assist in the investigation of an offence).

## IDENTITY

The Young Offenders Act does not allow a youth's name to be given to the public. However, there are certain exceptions to this.

### **Disclosure of Identity of Young Offender**

The identity of a young offender may be disclosed by a court order under the following circumstances:

1. for use in the administration of justice, where the information will not be given to the community;
2. to assist in the arrest of a young person who has committed, or who is believed to have committed, an indictable (serious) offence and is judged to be a danger to the community;
3. to assist in avoiding the risk of serious harm posed by a young person who has been convicted of a serious personal injury offence, and;
4. to a professional or other person involved in the supervision or care of the young person (for example, a school official), where it is necessary to:
  - ensure the young person's compliance with a court order or
  - ensure the safety of staff, students or other persons.