

Introduction to the Youth Criminal Justice Act

The following is an introduction and overview of the Youth Criminal Justice Act (YCJA). This document was created to provide classroom teachers with a basic understanding of the Act and to be used as a reference resource. Teachers may also choose to copy sections of this document for direct use in the classroom. To facilitate referring directly to the source material, this document follows the organization set out in the actual Youth Criminal Justice Act, which is available from the Department of Justice Canada website:

<http://laws.justice.gc.ca/en/Y-1.5/index.html>

DISCLAIMER: The information presented in this brief is intended to facilitate the instruction of law-related education and is not intended to be legal advice. The Act may have been amended since this document was created; also, various jurisdictions may apply the law and administer the Act differently than it is presented here. If you need advice regarding the law, please consult a legal professional.

NOTE: In 2012, the Government of Canada made a number of changes to the Youth Criminal Justice Act. These changes are noted in this document with a dotted underline.

The Youth Criminal Justice Act is divided up as follows:

- Declaration of Principle
- Part 1: Extrajudicial Measures
- Part 2: Organization of Youth Criminal Justice System
- Part 3: Judicial Measures
- Part 4: Sentencing
- Part 5: Custody and Supervision
- Part 6: Publication, Records And Information
- Part 7: General Provisions
- Part 8: Transitional Provisions
- Part 9: Consequential Amendments, Repeal and Coming Into Force

Brief explanations are given for each part of the Act, except for parts 7, 8, and 9. These parts of the Act provide detail and support for the preceding sections, or are transitional, and are therefore beyond the scope of this introduction.

Declaration of Principle

The Scope of the Act

Laws and regulations can be created by the federal government, provincial governments or municipal governments. (Municipal regulations are called by-laws.) The YCJA applies to youth who break federal laws and regulations. Each province has separate laws for dealing with youth who break provincial laws or municipal by-laws. The Youth Criminal Justice Act is administered primarily by local police, and through the provincial courts and judicial system.

The YCJA applies to youth ages 12 to 17. Children younger than 12 who commit a crime are dealt with outside of the youth justice system. This may include the involvement of police, social workers, the school, the community, and parents or guardians. Children under 12 may be removed from their home and placed in care for their own safety or for the safety of their community.

The Principles of the Act

The Act focuses on the basic principles of crime prevention, rehabilitation, reintegration, meaningful consequences, protection of the public, and accountability.

It considers the unique nature of youth, in particular their level of maturity, and gives special consideration to fair treatment, protection of rights and privacy, and timely intervention.

It is meant to reflect social values while taking into account each individual's unique social, cultural and developmental situation, while meaningfully involving the community, social agencies, family, and the victim in the rehabilitation and reintegration process.

The Act encourages compassion, empowerment, respect, dignity, participation, and facilitating understanding by sharing information and offering support among the immediate parties involved.

These items are specifically laid out in the Act as follows.

Section 3.1a of the Declaration of Principle reads:

- (a) the youth criminal justice system is intended to protect the public by
 - (i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person,
 - (ii) promoting the rehabilitation and reintegration of young persons who have committed offences, and
 - (iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour;

Section 3.1b says the criminal justice system for youth must be separate from that of adults, and also “must be based on the principle of diminished moral blameworthiness or culpability”. The system must also emphasize:

- (i) rehabilitation and reintegration,
- (ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
- (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,
- (iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and
- (v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons’ perception of time;

The measures taken against young persons who commit offences should (3.1c):

- (i) reinforce respect for societal values,
- (ii) encourage the repair of harm done to victims and the community,
- (iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person’s rehabilitation and reintegration, and
- (iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and

Special considerations apply to proceedings against young persons (3.1d):

- (i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,
- (ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,
- (iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and
- (iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

More Information Online

The following links may be useful for students as well.

Department of Justice Canada

- Main YCJA page: <http://www.justice.gc.ca/eng/pi/yj-jj/ycja-lsja/index.html>
- Full text of the Youth Criminal Justice Act (YCJA): <http://laws.justice.gc.ca/en/Y-1.5>
- *The Youth Criminal Justice Act: Summary and Background* gives a brief overview of the Act.
 - Web page version: <http://www.justice.gc.ca/eng/pi/yj-jj/ycja-lsja/back-hist.html>
 - PDF version: <http://www.justice.gc.ca/eng/pi/yj-jj/pdf/back-hist.pdf>

Canadian Legal FAQs: University of Alberta Legal Studies Program

Basic information about youth and the law in an informative question and answer format:
http://www.law-faqs.org/wiki/index.php/Youth_and_the_Law

Alberta Justice and Solicitor General

Information on Young Offenders and the YCJA:

https://www.solgps.alberta.ca/programs_and_services/correctional_services/young_offenders/Pages/default.aspx

This website also contains extended information on alternative measures, bail, criminal records, extrajudicial sanctions, facilities (adults and youth), offenders (adults and youth), record suspensions (formerly pardons), probation, parole, Youth Justice Committees, and a comprehensive Glossary of Terms.

Part 1 : Extrajudicial Measures

Extrajudicial Measures

- **Extrajudicial:** Justice that is administered without the intervention of a judge

The purpose of these measures is to deal with offenders in a timely and meaningful way. The court process can be lengthy, and any consequences for a youth's actions can be so delayed that they lose meaning for the youth. Immediate response—involving the youth, the youth's family, the victim, the community and the police—is intended to have a greater impact by holding the youth immediately accountable for his or her behaviour.

The police must consider these measures before taking any other actions. These measures are administered on an offence-by-offence basis, and are not graduated or based on the youth's prior experiences with the law.

Actions may include:

- Taking no further action
- Warning the young person
- Administering a police caution
- Administering a crown caution (a caution given by the crown counsel)
- Referring the young person to a program or agency in the community that may assist the young person not to commit offences (the youth must voluntarily agree to this)

These consequences do not become part of the court record. While records of these measures must be kept by individual police jurisdictions, these records cannot be used as evidence in court, with the exception of extrajudicial sanctions.

Records are dealt with in more detail in **Part 6: Publication, Records and Information** on page 16.

Extrajudicial Sanctions

If sufficient evidence exists against a young person, that youth may receive an extrajudicial sanction. The youth must accept responsibility for his or her actions and must consent to the sanction. While there will be no official court record for a sanction, the youth will have a police record that will exist for two years. This record may be referred to in future sentencing for other offences.

There are many possible extrajudicial sanctions. The youth may be required to:

- Give a personal or written apology to the victim(s)
- Give personal service to the victim(s)
- Create an essay or poster
- Give community service to a non-profit community or government agency (maximum of 60 hours)
- Return property or make restitution to the victim
- Attend and participate in a community counselling or intervention program such as AADAC, Alberta Mental Health, etc. (counselling will not occur on a fee-for-service basis unless alternative funding can be obtained)
- Participate in Aboriginal cultural/spiritual activities
- Be supervised by a youth justice committee member
- Participate in a victim/young person reconciliation program
- Donate to a registered charity

Source document on Government of Alberta Solicitor General website:

https://www.solgps.alberta.ca/programs_and_services/correctional_services/young_offenders/Publications/Youth%20Justice%20Committee%20Resources%20Extrajudicial%20Sanctions%20Program.pdf

If the youth denies involvement or responsibility, their case may enter the formal prosecution and trial process. If the youth accepts responsibility for his or her actions through an admission or statement as part of an extrajudicial sanction, this evidence cannot be used for further prosecution.

In cases where the youth proceeds to trial despite receiving an extrajudicial sanction, consideration will be given to completion or carrying out of the sanction, and the charges may be dropped as a result.

If a youth receives an extrajudicial sanction, the youth's parents must be informed of that sanction. The victim also has the right to request the identity of the offender, and to be informed of the consequences the youth faces. The victim may be consulted in the process of deciding on sanctions, and is given primary consideration in terms of restitution. A maximum of three sanctions at a time may be imposed.

Part 2 : Organization of Youth Criminal Justice System

Youth Justice Court

Youth Justice Court is a special court for youth, administered within the provincial courts system. (A higher level of court may be declared a Youth Justice Court to deal with youth cases, particularly for appeals.) Court is presided over by a Youth Court Judge who deals specifically with Youth Court cases. The Crown Counsel, a lawyer who works on behalf of the Crown, represents the Crown. Special protections and measures are in place to inform youths of their rights and to protect those rights, particularly their right to be represented by a lawyer.

The Youth Court is specifically required to deal with youth from 12 to 17 years old. If youths under 18 commit an offence, the YCJA specifies that they be dealt with in Youth Court for that offence even after they become 18. Even extrajudicial measures put in place when a youth is under 18 may continue after he or she turns 18.

If a person first appears before a court after he or she is 20 years of age for an offence that occurred while younger than 18, many of the special considerations, reminders, and notifications in the process to support and protect the youth are set aside. This is done because persons age 20 and older are now considered independent adults, capable of making decisions and managing their affairs independent of their parents or guardians.

When a youth turns 18, they may be detained in an adult facility, even though they may still be dealt with in a Youth Court.

Youth Justice Committees

Individual provinces are empowered under the Act to set up Youth Justice Committees. These committees advise on determining extrajudicial measures, work with both the victim and the offender

to enable satisfactory outcomes, and engage the community in the support process. They also advise the government on how the Act is being implemented, and provide information to the public. A judge may also involve a Youth Justice Committee in the sentencing process as part of a conference.

For more detailed information on youth Justice Committees in Alberta, visit:

https://www.solgps.alberta.ca/programs_and_services/correctional_services/young_offenders/youth_justice_committees/Pages/default.aspx

For a list of committees by region:

https://www.solgps.alberta.ca/programs_and_services/correctional_services/young_offenders/youth_justice_committees/Pages/YJC_Alberta.aspx

Conferences

Conferences are meetings that are arranged

“...to give advice on appropriate extrajudicial measures, conditions for judicial interim release, sentences, including the review of sentences, and reintegration plans.” (19(2))

Conference participants may include a judge, the provincial director, a police officer, a justice of the peace, a prosecutor or a youth worker. The Youth Justice Committees may also act as a conference. (The provincial director is a provincial government staff person designated by the province to manage youth justice.)

In addition to police officers, Youth Court Justices, and Crown Prosecutors, other people have specific roles in the youth justice process: Justices of the Peace, Clerks of the Court, and provincial directors. More details on their roles can be found in sections 20, 21, and 22 of the Act.

Part 3 : Judicial Measures

Consent to Prosecute

If an offence is serious enough, formal charges are laid and the youth is required to attend court. The Attorney General, usually through a representative, must consent to charges being laid. This is different from adult court, where charges may be presented without police or crown involvement. Pre-charge screening programs ensure all other options (i.e. extrajudicial measures) are considered before charges are laid and the case is brought before the courts.

In Alberta, Youth Court is part of the Alberta Provincial Courts. Some of the courts are held daily, and others only on specific weekdays or days of the month. To find the times and location of the youth court nearest you, visit the Alberta Courts website:

<http://www.albertacourts.ab.ca/calendar/>

You can take a virtual tour of an Alberta courtroom here:

<http://www.albertacourts.ab.ca/Home/Contact/VirtualCourtTours/tabid/111/Default.aspx>

There are also many publications about Youth Court available from the Alberta courts. The following page contains links to information about youth court, judicial interim release (bail hearing), youth appeals and reviews, Youth Criminal Justice Act publications, youth penalties, and youth records.

<http://www.albertacourts.ab.ca/ProvincialCourt/YouthCourt/tabid/100/Default.aspx>

Right to Counsel

From the moment of arrest, and at every stage in the process, the youth is told of his or her right to obtain counsel, and must be given the opportunity to do so.

This includes at trials, hearings, determinations of custody, or review. This notice of right to counsel is also

contained in any summons, warrants, appearance or other notices. These repeated reminders are one of the special considerations offered specifically to youth to ensure they are fairly represented.

A suitable adult of the youth's choice may be allowed to represent the youth if counsel has not been obtained. Youths may also be referred to a legal aid program if they are not able to obtain counsel on their own. If they do not qualify for legal aid, they may be directed to be represented by counsel.

If the interests of a parent and child are at conflict, the judge will ensure that the child receives independent counsel. Consultations between lawyers and their youth clients are kept confidential and not shared with parents unless a youth agrees to involve the parent or share this information with them.

Legal aid may not be free. The costs incurred as part of any legal aid program may be recovered after all proceedings and appeals are completed.

Notices to Parents

Parents of a youth must be notified when the youth is arrested and when detained. This notice includes the reasons for the arrest and the location of detention. This notice may be oral or written. Parents are also notified of the details of any summons, appearance notices, undertakings, tickets (other than a parking ticket), or recognizances. (A recognizance is a kind of formal promise the youth makes to



appear in court at a later date.) Where a parent or relative is unavailable, notice may be given to a responsible relative or other adult the youth knows who may be able to assist the youth. The youth's parent may be required to attend any proceeding involving the youth, if the court decides it's in the best interest of the youth.

Detention before Sentencing

The courts have very specific conditions under which they may hold youth in detention. It is reserved for charges where custody is a sentencing option. Detention of youth can be considered detrimental or counterproductive.

Detention may be considered when: the youth has been charged with a serious offence; "detention is necessary to maintain confidence in the administration of justice" (29(2)(b)(iii)); the court deems the youth to be a threat to the community; or where it is possible the youth may not show up for trial.

Youths are not detained for their protection, such as child protection, mental health, or as a social measure. Youth are also not held with adults, with some exceptions: no other facility is available; they are being transferred or temporarily held under the direct supervision of a peace officer; it would be unsafe for the youth to be held in a facility; or it would be unsafe for the other youths in a youth facility.

Youth may be released into the care of their family or another responsible person, if they are willing and able to receive the youth, and the youth is willing to be placed in their care. Wherever possible, the youth is returned to the care of their family, except in cases where the youth may not be safe. Both the youth and the adult who takes the youth into care must agree to conditions of release set by the court. The responsible person or the youth may later apply for this arrangement to be changed if they consider it inappropriate. A justice court may also decide the situation is inappropriate, revoke the conditions, and issue a warrant for the youth's arrest.

Conditions may be applied to the release of a youth prior to appearance in court, such as specific requirements (curfew, attending school) and prohibitions (not associating with certain people).

Appearance

When the youth appears in court, the charges that are laid against the youth are read, and the youth is informed of his or her rights (i.e. to obtain counsel). The youth may plead guilty or not guilty. If the youth is not represented by counsel, and does not understand the charges, the court will enter a not guilty plea on their behalf, and may appoint a lawyer.

Release from or Detention in Custody

A youth held in custody may apply to be released from custody at a special hearing. The Crown may also apply to hold a youth in custody at a similar hearing. In either case, two days' notice must be given for the hearing to be held. Arguments for detention relate to the safety of the public and the possibility the youth will not return to court for their trial (i.e. risk of flight).

Medical and Psychological Reports

Medical and psychological reports may be requested to assist with determining and reviewing sentence and supervision, detention, fitness for trial, conditions of release, and for gathering necessary information about the youth. This information may be released to counsel, the youth and parents, or the court may withhold it if the information may cause harm to the youth. If it is considered necessary, the youth may be detained for up to 30 days for the assessment to be completed.

Referral to Child Welfare Agency

The court may refer the youth to child welfare for assessment to determine if the youth requires child welfare services.

Adjudication

The youth may plead guilty or not guilty. If a "not guilty" plea is made, or there is lack of support for a guilty plea, the case will proceed to trial to determine guilt, innocence, or if there is sufficient evidence for the trial to proceed or be dismissed.

Appeals

A youth has the right to appeal the decision of the youth court judge. If the youth disagrees with either the finding of guilt or the sentence, the youth can ask a higher court to review the decision. The appeal court may agree with the finding of guilt, change the decision about the finding of guilt or change the sentence.

The Act also gives the Crown the right to appeal if a young person is found not guilty, or if the Crown feels that the sentence is not appropriate.

Part 4 : Sentencing

Purpose and Principles

"38. (1) The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful

consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public. “

The important key words in this section are accountable, meaningful, rehabilitation, and reintegration.

A conscious omission from this section is the word “deterrent”. Sentencing is not intended to set an example or be a warning to others. It is intended to be fair and reasonable, so care is made to ensure that sentencing is applied equitably in a given jurisdiction – that youth who commit similar offences under similar circumstances receive similar sentences, and that youth are not given a sentence that is greater than an adult who may have committed a similar offence.

Section 38(2) of the YCJA specifies that sentences must be determined using the following principles:

- (a) the sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;
- (b) the sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;
- (c) the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;
- (d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons; and
- (e) subject to paragraph (c), the sentence must
 - (i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),
 - (ii) be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and
 - (iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community, and
- (f) subject to paragraph (c), the sentence may have the following objectives:
 - (i) to denounce unlawful conduct, and
 - (ii) to deter the young person from committing offences.

Prior to the YCJA, youth were receiving harsher penalties, longer sentences, and greater levels of incarceration than adults in Canada, and youth in other countries. Custody is now reserved for violent offences, situations where the youth has failed to comply with other sentencing, situations where adults would receive a sentence of two years or more for the same offence, or where the non-custodial sentence would be inappropriate considering the purpose of the Act. In the case of a custodial sentence the court must clearly state why a non-custodial sentence was not administered.

When sentencing, the courts must consider the following points from section 38(3):

- (a) the degree of participation by the young person in the commission of the offence;

- (b) the harm done to victims and whether it was intentional or reasonably foreseeable;
- (c) any reparation made by the young person to the victim or the community;
- (d) the time spent in detention by the young person as a result of the offence;
- (e) the previous findings of guilt of the young person; and
- (f) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section.

Pre-sentence Report

The Court may give consideration to a pre-sentence report (PSR) before sentencing. It *must* do so when a custodial sentence is being considered, but this can be waived if the Court is convinced that a PSR is not needed.

The PSR contains the results of conferences, and interviews with the youth, the youth's parents and family, and the victim. Information on the behaviour, maturity, character, plans, conduct, community service and involvement, previous involvement with the law, and responses to this involvement (including extrajudicial measures and sanctions) is included.

The PSR may also indicate community services and facilities available and acceptable to the youth, any school and employment records, and an evaluation of the influence the youth's family may have on the youth. Other information that may be relevant to determining a suitable sentence may also be included.

Youth Sentences

Many of the sentences present opportunities for the youth to engage in and practice responsible behaviour. Some restrict behaviour, but are not intended to be overly burdensome. Many enable the youth to continue to make many choices for themselves in their daily lives; however, not following through with the conditions of a sentence may mean the youth must return to court and face more restrictive consequences.

The following are sentences which may be employed in the sentencing process (42(2)a-r):

- a) **Reprimand.** The judge speaks to the youth and may issue a strong warning.
- (b) **Absolute discharge.** As with the reprimand the youth has no further consequence, although their record lasts for a longer period of time.
- (c) **Conditional discharge.** The youth has conditions such as reporting to or being supervised by the provincial director.
- (d) **Fine not exceeding \$1,000.** The court assigns the terms of payment. A Surcharge up to 15% may be added to this to support the victim assistance program. The fine may also be paid through a fine option program, where the offender works for fine credits.

(e) **Compensation.** A payment for loss or damaged property, loss of income or support, or special damages for personal injury is ordered. This compensation is made in consultation and consent of the victim to be compensated.

(f) **Restitution.** The youth must return any property obtained as a result of the offence to the owner within a specified period of time.

(g) **Reimbursement of innocent purchaser.** If in returning property as a part of a restitution order, the youth must compensate the person that property was sold to for the amount it was sold.

(h) **Personal Service.** Compensation in kind or by way of personal services to fix for any loss, damage or injury suffered by a victim or person affected by the offence.

(i) **Community Service.** The youth performs community service work designated by the court and reports back to the provincial director or someone designated by the director (maximum 240 hours 12 months).

(j) **Prohibition Order.** The youth may be prohibited from possessing specific items, such as firearms, weapons, and related items in the case of a violent offence as well as in cases of drug trafficking, production and import/export. The youth may need to give up (forfeiture) or have specific items removed from their possessions (seizure). Some prohibition orders are mandatory and last at least two years after release from custody, such as weapons restrictions for violent offences. Other prohibitions are up to the discretion of the judge and may not last more than two years.

(k) **Probation.** The youth may be placed on probation for a period of up to two years. The youth must be of good behaviour and keep the peace. This order may contain various restrictions, which require the youth to follow a curfew, attend school, continue employment, report to a parole officer regularly, remain within a jurisdiction, control where they may live and with whom, as well as other conditions which may prevent the youth from re-offending. Caution is taken to make the restrictions reasonable; however the purpose of sentencing is also kept in mind.

(l) **Intensive Support and Supervision Program Order.** This is an option which is used in cases where custody may be called for but is inappropriate due to the mental health issues of the youth. Close supervision is combined with an intensive behaviour modification focus.

(m) **Attendance Order.** This is an order for the youth to attend a non-residential program for up to a maximum of two hundred and forty hours in a six month period. These programs may vary from community to community and the order may indicate times where the youth must attend.

(n) (o) (q) **Custody and Supervision Order.** This involves a sentence which combines a period of custody followed by a period of supervision. The period of custody is usually twice that of the period of supervision.

(p) **Deferred Custody and Supervision.** Instead of serving the sentence in custody, the youth has set conditions to serve the sentence in the community. If these conditions are not met the youth may be placed in custody. This sentence can be up to six months in duration.

(r) **Intensive Rehabilitative Custody and Supervision Order.** Under this sentence the youth is required to participate in an intensive rehabilitation program while in custody followed by conditional supervision in the community. This sentence given in cases of murder, attempted murder,

manslaughter, aggravated sexual assault and in cases of repeated violent offences, where they youth may have mental health issues and where the program is expected to prevent a repeat of the offence.

Sentences begin on the day they are imposed or on a later date determined by the court. Reasons for sentencing are submitted to the youth, their parents, their counsel, the prosecution and the director.

For single offences, Prohibition and Custody sentences may be for terms greater than two years. Other sentences, when combined may not exceed two years. In the case where a youth receives sentencing for several offences at the same time, when combined they may not exceed three years (exception 1st and 2nd degree murder where they may not exceed 10 and 7 years). If they are convicted of subsequent offences before completion of an earlier offence, they may serve the new sentence subsequent to the previous sentences, except in the case of custodial sentences where they expire at the end of longer of the sentences. Custody sentences for separate offences may be served consecutively.

Sentences do not terminate at age 18, they continue until completion. (For example, if a youth receives a two-year probation order when they are 17, the probation order would continue until they are 19.) If a custody sentence is less than 90 days it may be served intermittently, if a suitable facility exists. All other custody is continuous.

Regarding detention, the youth:

Shall be held separate and apart from any adult who is detained or held in custody unless a youth justice court judge or a justice is satisfied that, having regard to the best interests of the young person,

- (a) the young person cannot, having regard to his or her own safety or the safety of others, be detained in a place of detention for young persons; or
 - (b) no place of detention for young persons is available within a reasonable distance.
- 30(3)

When a youth turns 18 they may be transferred to an adult facility. When they are 20 they are transferred to an adult facility to complete their sentence.

A sentence may be reviewed by the court if the conditions are not met, if the youths circumstances significantly change, if the youth sentence is affecting the youth's education or work, if the youth has become unable to comply with the sentence or if the court finds reason for a review. The sentence may be reduced, eliminated, or altered but may not be increased, unless the youth requires more time to complete the sentence.

If a youth moves to another province, the sentence may be transferred to that jurisdiction after the time for appeal has expired. The youth attends the court in the initial jurisdiction until this time has expired. The new court then deals with the case as though the sentence was given from that same court.

Victim Impact Statement

Prior to sentencing, the judge will also consider a Victim Impact Statement, which describes the harm to the victim, as well as any loss suffered (CCC 722, 722.1, 722.1). The Statement is a written form filed to the court, however the victim may request to read the statement in court or submit the request in another format suitable to the court. The court may also consider information regarding the victim impact other than the information on the statement in determining an appropriate sentence.

Adult Sentence and Election

(NOTE: Adult sentencing can be a complicated process under the YCJA, so detailing every possible circumstance for it is beyond the scope of this document. Specific questions about adult sentences should be directed to a legal professional.)

If a youth is age 14 or older, he or she may receive an adult sentence. At the outset of a trial, before the youth enters a plea, the court may also request an adult sentence if the offence is one for which an adult may receive a sentence greater than 2 years. The court waits until sentencing, after all the evidence is heard in the case, before determining whether an adult sentence is appropriate. Prior to sentencing, the youth can apply to not receive an adult sentence. The court may also indicate that it does not wish to seek an adult sentence.

In cases where an adult sentence is sought, the youth may elect to be tried in the youth court by a judge without a preliminary inquiry, by a judge with a preliminary inquiry, or by a judge and jury (with a preliminary inquiry). The attorney General may order a trial by judge and jury, particularly in the case of a murder, where this is usually automatic in an adult court.

If a person is sentenced to custody for an offence that occurred while he or she was an adult (18 or over), and that person is also currently serving a youth custody sentence, they will serve both sentences in an adult facility.

Effect of Termination of Youth Sentence

Upon completion of a sentence or absolute discharge, the youth is “deemed not to have been found guilty of the offence” 82(1) with several exceptions. The previous conviction may be considered in future applications for release and during sentencing. While a previous conviction does not automatically infer or necessitate a harsher sentence, this prior history may be considered.

The youth criminal record may persist for a period of time after the termination of the sentence. Although this record is automatically removed without the youth having to seek a record suspension (formerly called a pardon), the youth may wish to ensure that this removal occurs in a timely manner.

Part 5 : Custody and Supervision

Youth are held in a youth custody facility called a YOC (Young Offenders Center). Currently in Alberta, there are facilities in Edmonton, Calgary, and the Shunda Creek Youth Corrections Camp. Detention facilities have educational, work, spiritual, and various psychological and treatment services and programs to facilitate the youths' development and transition back into the community. The Youth Attendance Centres (Edmonton and Calgary) are non-residential centres that offer services including supervising fine option programs, educational services, and other programming that may be part of attendance orders or sentencing conditions.

When a youth is placed in custody, they are assigned a youth worker. Together they plan and prepare the youth for reintegration into the community. Youth workers continue to work with youths after they re-enter the community, to support their reintegration.

Custody orders are reviewed annually or more frequently. Custody may continue if there are psychological or psychiatric factors, behavioural factors, or other evidence that would indicate that it is in the best interest of the individual or the community for custody to continue for the duration of the sentence.

Open custody facilities allow for offenders to be supervised and reintegrate back into the community or offer support for conditional supervision sentences. One example of such a facility is Howard House, run by the Edmonton John Howard Society:

<http://www.johnhoward.org/youth-programs/howard-house>

If a youth breaches her conditions of release, she may have her conditions altered or may be returned to custody to complete her sentence.

As mentioned before, at the age of 20, youth are transferred from youth facilities to adult facilities. This may occur at an earlier time (i.e. age 18) if it is deemed that it is not appropriate for them to be in a youth facility.

Part 6 : Publication, Records and Information

Protection of Privacy of Young Persons

Youth are protected from having their names and other identifying information published. There are three cases where the young person's name may be published:

- 1) In cases where the youth has received an adult sentence
- 2) In cases where the young person receives a youth sentence for a violent offence (specifically, causing, threatening, or creating a substantial likelihood of causing bodily harm)

- 3) In cases where the young person is at large in the community and may be a danger to others, the youth's name may be published for five days in order to assist the police in finding and apprehending the person.

Youth are also protected from having their names and other identifying information published as the victim or witness of an offence committed by a youth.

Fingerprints and Photographs

Youth may be fingerprinted and photographed following the same criteria that are applied to the fingerprinting and photographing of adults; this information is in the *Identification of Criminals Act*. Anyone who is being charged with a potentially indictable offence will be fingerprinted and photographed.

Records That May Be Kept

In the media one often hears the term "criminal record". In Canada a number of types of records are kept:

- Court records, which document the proceedings in court.
- Police records, which may be records kept within a local police jurisdiction, or within a national police database. Individual jurisdictions may keep a record of contacts with youth and may keep information about extrajudicial sanctions. The Canadian Police Information Centre Database (CPIC) contains information, including fingerprints and photographs, on people charged with hybrid and indictable offences.
- The police must also keep a record "of any extrajudicial measures that they use to deal with young persons." (115(1.1))
- Other information may be kept by various organizations for the carrying out of sentencing and by government organizations for statistical and program evaluation purposes.

Access to Records

Youth records are accessible by:

- The young offender
- Their lawyer
- The court and those directly involved in the sentencing and supervision process
- The victim involved
- The youth's parents

- Police
- A person acting under the Firearms Act
- Statistics Canada (for statistical purposes)
- Government offices (for the purposes of a criminal records check)

A court may also offer access to others upon application if the court feels that this access is beneficial.

An employer or volunteer organization may require a potential employee or volunteer to submit a police security clearance check or a vulnerable sector search prior to employment or volunteering. The applicant needs to apply for this check or search, and sign a waiver allowing this information to be released to another person.

Information from the courts database, local police database, and CPIC database may be used in these searches. The searches may show past and current convictions, extrajudicial sanctions, as well as upcoming court appearances.

Different sentences have different access periods. Some of the more common ones are outlined in the following table.

Sentences and Access Periods

Type of Sentence	Access to Record Ends:
Extrajudicial Sanction	Two years after the sanction is agreed to
Acquittal	Two months after the time allowed for appeal expires, or three months after an appeal is completed
Dismissal, Withdrawal of Charges, Reprimand	Two months after dismissal, withdrawal or reprimand
A Stay in Charges <i>A stay is where a charge is left open, but proceedings against the person do not continue. The process may continue at any time during the stay, which can last for a period of one year.</i>	At the end of the stay <i>A stay may last for a period of one year.</i>
Absolute Discharge	One year after the youth is found guilty
Conditional Discharge	Three years after the youth is found guilty
Summary Offence	Three years after the sentence is completed

Type of Sentence	Access to Record Ends:
Indictable Offence	Five years after the sentence is completed <i>Access to RCMP records continues for another five years in the case of indictable offences. However, this access is limited to:</i> <ul style="list-style-type: none">• <i>The person involved</i>• <i>The person’s lawyer</i>• <i>Law enforcement officers</i>• <i>The courts</i>• <i>A person acting under the Firearms Act</i>• <i>Statistics Canada (for statistical purposes)</i>

Prohibition orders may exceed the time limits listed above. Even if the record is purged, the prohibition may continue until the designated expiry date.

If there are additional offences committed during these record access periods, they may extend some access periods from their original expiry to the expiry of the new charges. If youths commit an offence as an adult before the expiry of the access period for the youth charges, the youth charges become part of their adult record, they are treated as though the offence were committed as an adult for the determination of future sentencing, and they are subject to the conditions which apply to receiving a pardon, or “record suspension” as it is now called.

Disclosure of Information in a Record

Information in a record may be disclosed:

- To police officers,
- To co-accused and their counsel,
- To foreign states (under Mutual Assistance and Extradition programs),
- To insurance companies investigating a related claim
- For preparation of reports under the Act, or
- To schools to ensure compliance, school safety and rehabilitation.

The court may also disclose this information to an applicant in the case of offences involving personal injury, where the young person may cause harm, and where this disclosure can reduce this risk of harm. If you apply for a police security check, the information is released to you.

When you apply for a police security check, you may also sign a waiver authorizing the information to be released to the employer, volunteer agency, or program you are applying for.

Disposition or Destruction of Records and Prohibition on Use and Disclosure

Upon expiry of a record, the record is physically destroyed or deleted, unless it is transferred to the provincial or national archives, where only the archivists may access it.

Information that may be used to match crime scene information is kept in the same manner as for adults who have been granted record suspensions (formerly known as pardons).

Impact of a Youth Record

Having a youth criminal record can impact an individual in a number of ways.

Records can persist into adulthood for a number of years. An extrajudicial sanction received at age 17 would be on record until age 19. A record obtained at age 17 could last until that person is 22 or 23 (2 years' probation, plus 3 year record for a summary offence, plus the time it takes for the offence to come to trial). A record of several indictable offences may last from age 17 until age 25 or older (3 year sentence, plus a 5 year record, plus time for the court process). Adult sentences would exceed these times.

Some jobs, professions, educational programs and volunteer organizations require a police security clearance beforehand. You may be refused a visa to enter some countries, or may need to apply for special permission to enter, even after your record has expired. As different countries have different regulations and may treat a youth record differently than an adult record, it is best to inquire at your nearest consulate or embassy before traveling with a record.

It is important for youths to keep in mind the deep and long-lasting effect a criminal record can have on the rest of their lives.



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