



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

ARCS/ORCS FILE NUMBER: 58500-00	EFFECTIVE DATE: April 1, 2003	POLICY CODE: YOU 1
SUBJECT: <i>Youth Criminal Justice Act – Serious Violent Offences</i>		CROSS-REFERENCE: RES 1 YOU 1.1

POLICY

A serious violent offence determination under s.42(9) of the *Youth Criminal Justice Act* impacts sentence availability in both the case at bar and any future prosecutions against the young person.

Crown Counsel are strongly encouraged to apply for serious violent offence determinations in respect of offences committed by young persons that cause or attempt to cause any hurt or injury, whether physical or psychological, that interferes in a substantial way with the physical or psychological integrity, health or wellbeing of the complainant.

There may be exceptional cases which meet the above criteria but where an application for a serious violent offence determination is not in the public interest. Crown Counsel should discuss with Administrative Crown Counsel any decision not to make an application. Factors to consider include whether a deferred custody and supervision sentence is the most appropriate sentence in the circumstances of the case and whether the possibility of the young offender committing another offence which meets the criteria, is remote.

DISCUSSION

Serious offence determinations prevent a deferred custody and supervision sentence in the case at bar and permit, where other prerequisites are met, an intensive rehabilitative and supervision sentence. Future applications for an adult sentence for presumptive (B) offences are possible only for young persons with a history of prior serious violent offence determinations under s.42(9).

An application for a serious violent offence determination must be made after the conviction is recorded but before sentence is imposed. There is no statutory obligation to give notice of the application.

A “serious violent offence” is defined in the *Youth Criminal Justice Act* in s. 2 as “an offence in commission of which a young person causes or attempts to cause serious bodily harm”. The Supreme Court of Canada defined the term “serious bodily harm” in relation to then s. 264.1(1)(a) of the *Criminal Code* in R. v. McCraw (1991), 66 C.C.C. (3d) 517 as follows:

in summary, the meaning of “serious bodily harm” for the purposes of this section is any hurt or injury, whether physical or psychological, that interferes in a substantial way with the physical or psychological integrity, health or wellbeing of the complainant.

Although “bodily harm” is not defined in the *Youth Criminal Justice Act*, s. 2 of the *Criminal Code* defines it as “any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature.”

Incidents that result in actual serious bodily harm are likely to involve medical treatment of the complainant. Common indicators of serious psychological harm include counselling, therapeutic intervention, sleep disturbances, weight changes, persistent fears, and missed work or school. Where the young person attempts to cause serious bodily harm, the issue will normally be the amount of physical harm that would have occurred if the attempt had been successful.