

Policy:

Youth Criminal Justice Act – Adult Sentences

Policy Code:

YOU 1.1

Effective Date:

March 1, 2018

Cross-references:

[DAN 1](#) [DIR 1](#)

This policy provides guidance to Crown Counsel on when to seek an adult sentence for a young person being prosecuted under the *Youth Criminal Justice Act* (YCJA).

Section 64 of the YCJA provides that Crown Counsel may make an application for an order that a young person is liable to an adult sentence where the following conditions are met:

- the young person had attained the age of 14 years when the offence was committed
- the young person committed an offence for which an adult is liable to imprisonment for a term of more than two years

Notice

Crown Counsel must give notice to the youth justice court of its intention to seek an adult sentence. This notice must be given where either of the following conditions is met:

- before a young person enters a plea
- with leave of the youth justice court, before the commencement of the trial (sections 64(1.1) and 64(2) YCJA)

Although Crown Counsel must make an application for an order that a young person is liable to an adult sentence prior to the commencement of the trial, the youth justice court judge, as defined in sections 2 and 13 of the YCJA, decides the issue after the young person has been convicted.

Considerations

In deciding whether to seek an adult sentence, Crown Counsel should consider:

- the Declaration of Principle in section 3 of the YCJA
- the Purpose and Principles of Sentencing as set out in section 38 of the YCJA

- whether, pursuant to the threshold test in section 72(1) of the YCJA, there is an evidentiary basis for the youth justice court to conclude that following conditions are met:
 - the presumption of diminished moral blameworthiness or culpability of the young person is rebutted
 - a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 would not be of sufficient length to hold the young person accountable for their offending behaviour

Section 64(1.1) of the YCJA provides that where the offence the young person has committed is a “serious violent offence” as defined in section 2 of the YCJA (first and second-degree murder, attempt to commit murder, manslaughter and aggravated sexual assault), Crown Counsel has two additional mandatory obligations:

- Crown Counsel must consider whether it would be appropriate to make an application for an order that the young person is liable to an adult sentence
- Crown Counsel shall advise the youth justice court of their decision

For all cases in which a young person has been charged with a “serious violent offence,” Crown Counsel must consult a Regional Crown Counsel, Director, or their respective deputy when making a decision about whether to seek an adult sentence.

For all cases where a young person has not been charged with a “serious violent offence,” Crown Counsel should consult a Regional Crown Counsel, Director, or their respective deputy when making a decision to seek an adult sentence for a young person for which an adult is liable to imprisonment for a term of more than two years and the case involves a serious allegation about which there has been, or is likely to be, significant public concern with respect to the administration of justice.

Onus

The onus is on Crown Counsel to satisfy the youth justice court that an adult sentence should be imposed (section 72(3) YCJA).

Election

Where Crown Counsel has filed notice of intention to seek an adult sentence, a young person, prior to entering their plea, will be put to their election (section 67 YCJA).

A preliminary inquiry will be held in a youth justice court upon appropriate application (sections 67(7) and (8) YCJA). The procedure is governed by Part XVIII of the *Criminal Code*.

Crown Counsel can require that a young person be tried by a judge and jury (section 67(6) YCJA).

Direct Indictment

Crown Counsel can prefer a direct indictment (section 577 *Criminal Code*). The Supreme Court of Canada in *R v. S.J.L.* (2009 SCC 14) states that “preferring a direct indictment is consistent with the YCJA” (*Direct Indictments* ([DIR 1](#))).

Reports

A pre-sentence report must be considered by a youth justice court when deciding whether to impose an adult sentence (section 72(3) YCJA).

Medical, psychological, and psychiatric reports can be ordered for the purpose of considering an application for an adult sentence (section 34(2)(b) YCJA).

Dangerous and Long-Term Offenders

Parts XXIII (sentencing) and XXIV (dangerous and long-term offenders) of the *Criminal Code* apply to a young person who has been ordered to serve an adult sentence (*Dangerous Offenders and Long-Term Offenders* ([DAN 1](#))).

Publication

The name of a young person who has received an adult sentence may be published (section 110(2)(a) YCJA).

Custody

When an adult sentence is imposed, the court will decide whether the young person will be placed in a youth custody facility, an adult provincial correctional facility or a federal penitentiary (section 76 YCJA).

A young person under the age of 18 years must serve their sentence in a youth facility until they turn 18-years-old (section 76(2) YCJA). A young person can remain in a youth facility until the age of 20 years (section 76(9) YCJA).