



Policy:

Youth Criminal Justice Act – Continuation of Custody Hearings

Policy Code:

YOU 1.2

Effective Date:

March 1, 2018

Cross-references:

Sections 98 and 104 of the *Youth Criminal Justice Act* (YCJA) allow Crown Counsel to apply to the youth justice court for an order that a young person remain in custody beyond the expiry of the custodial portion of their custody sentence but not exceeding the remainder of the youth sentence.

Crown Counsel may receive information from various sources, including from the Provincial Director, director, or case manager at a youth custody center, youth probation officer, medical practitioner, or investigative agency, indicating there are concerns that the release of a young person into the community poses a significant risk to public safety. In such a case, Crown Counsel should consider making an application for a continuation of custody order.

Crown Counsel should be mindful that the tests for sections 98 and 104 are different. Before a court can make an order under either section, it must be satisfied there are reasonable grounds to believe that if the young person is released from custody, they are likely to commit certain offences before the expiration of the sentence. For section 98, the offence likely to be committed is, “a serious violent offence (as defined in section 2 of the YCJA)” and for section 104, it is, “an offence causing the death of or serious harm to another person.”

Because these applications are exceptional, and are requests to restructure a youth’s sentence, Crown Counsel must consult a Regional Crown Counsel, Director, or their respective deputy before making an application for a continuation of custody order.

When Crown Counsel makes an application for a continuation of custody order, they should advise the manager for the High-Risk Offenders Identification Program.

Wherever possible, a continuation of custody application should be made:

- in the original sentencing jurisdiction
- before the original sentencing youth justice court judge
- by the Crown Counsel who conducted the original sentencing hearing

Crown Counsel may consider making the application in a different jurisdiction if there are no concerns about file continuity, local transparency, or the return of the young person to the community where the offence occurred.

Crown Counsel should make every effort to commence an application for continuation of custody within a timeframe that would allow completion of the application before the expiration of the custody portion of the sentence.