

YCJA

British Columbia



FOURTH EDITION, OCTOBER 2021

2021 British Columbia Pocket Guide

Youth Criminal Justice Act

This pocket guide is provided for your convenience and personal use. Paraphrases, description and formatting of sections of relevant legislation may differ from the official version. This guide is intended to be a quick reference – it is an overview of the legislation. It follows plain language and design where possible. Accuracy is critical so please consult official sources.

Any person may reproduce this pocket guide without payment of royalty provided it is done accurately and not for profit. This document was originally published by the Nova Scotia Department of Justice, revised by Saskatchewan, and updated for use in British Columbia. The BC version was substantially re-written in 2015 and further updated in 2021.

The publishers of this guide would like to thank the provinces of Nova Scotia and Saskatchewan for granting permission to use their guides as the basis for the initial BC version, and Justice Canada for providing funding for the development and updating of the BC editions.

© 2021 Her Majesty the Queen in right of the Province of British Columbia

LEGEND

AS	adult sentence
CC	<i>Criminal Code</i>
CSO	custody and supervision order
CCSO	custody and conditional supervision order
DCSO	deferred custody and supervision order
EJM	extrajudicial measures
EJS	extrajudicial sanction
IRCS	intensive rehabilitative custody and supervision order
ISSO	intensive support and supervision program order
JDA	<i>Juvenile Delinquents Act</i>
JRH	judicial referral hearing
JP	justice of the peace
PD	provincial director
PSR	pre-sentence report
SVO	serious violent offence
SSCA	<i>Safe Streets and Communities Act</i>
YCJA	<i>Youth Criminal Justice Act</i>
YJA	<i>Youth Justice Act (British Columbia)</i>
YOA	<i>Young Offenders Act</i>
YP	young person

Note: Unless otherwise noted, in this document "court" means youth justice court, and "judge" means youth justice court judge.

Green type in the right hand column of a page indicates a reference to sections in the *YCJA*, *YJA* (BC) or *CC*.

Table of Contents

YCJA Definitions	5
Introduction and Key Provisions	7
Background	7
Application of the <i>Criminal Code</i>	7
Declaration of Principle	7
Victim Considerations	8
Youth Justice Court Jurisdiction	8
Right to Counsel	9
Notices to Parents	9
Admissibility of Statements	9
Peace Bonds	10
After a Young Person Reaches Age 18	10
Offences During a Period that Includes a Young Person's 18th Birthday	10
Jurisdiction of a Justice of the Peace	10
Review of Charges for Offences under s 145(2)-(5) CC	10
Extrajudicial Measures (EJM)	11
Summary	11
Extrajudicial Measures Principles	11
Extrajudicial Measures Objectives	11
Warnings, Cautions and Referrals	11
Extrajudicial Sanctions	12
Victim Considerations	12
Pre-trial Procedures	13
Detention and Release	13
Review of Charges for Offences under s 145(2)-(5) CC	14
Bail & Detention Reviews	14
Election—Choosing a Mode of Trial	14
Youth Sentences	15
Summary	15
Purpose of Youth Sentencing	15
Youth Sentencing Principles	15
Factors the Court Must Consider in Determining a Youth Sentence	15
Restrictions on Custody	16
Alternatives to Custody	16
Before Imposing a Youth Sentence	16
Pre-sentence Report	16
Available Youth Sentences	17
Other Sentencing Provisions	19
Prohibition Orders	19
Funding for Victims	20

Probation and Intensive Support and Supervision Program Orders.....	20
Commencement of Probation and Intensive Support and Supervision Program Orders	20
Review of Sentences	20
Custody and Supervision	22
Summary.....	22
Purpose of Custody and Supervision	22
Principles of Custody and Supervision.....	22
Level of Custody	22
Conditions for Community Supervision in a Custody and Supervision Order	22
Conditions for Custody and Conditional Supervision Orders under ss 42(2)(o), (q), & (r), for Deferred Custody and Supervision Orders under s 42(2)(p), and After a Review under s 94(19)(b).....	23
Extending the Custodial Portion of Custody and Supervision Orders	24
Reintegration Leave	24
Placement in or Transfer to Adult Facilities.....	24
Enforcement	25
Breach of Non-Custodial Sentences	25
Breach of Custody and Supervision Order Conditions.....	25
Adult Sentences	27
Summary.....	27
Application by the Crown for an Adult Sentence	27
Notice of Intention to Seek an Adult Sentence.....	27
Adult Sentence Application Hearing.....	27
Custody Placement When Subject to an Adult Sentence	28
Publication, Records and Information	29
Summary.....	29
Publication – Protection of Privacy of Young Persons – General Rule	29
Publication of Victim or Witness Information	29
Publication Ban No Longer Applies.....	29
Disclosure of Information – General Rule	30
Adult Sentences	30
Time Periods	30
Exceptional Cases of Disclosure.....	30
Court Ordered Disclosure to Authorized Persons	31
Disclosure to Victims.....	31
BC's Order of the Lieutenant Governor in Council	31
Other Provisions to Note	32
Consent to Prosecute.....	32
Conferences.....	32
Mental Health Provisions	32
Referral to a Child Welfare Agency.....	33
Appeals	33
Effect of Termination of a Youth Sentence.....	33
Transitional Provisions	33
Youth Justice Act (BC).....	34

YCJA Definitions

This section contains some of the terms used in this Pocket Guide that are defined in s 2(1) YCJA.

s 2(1)

Words and expressions used in the YCJA have the same meaning as in the CC unless they are defined differently in the YCJA.

s 2(2)

adult means a person who is neither a YP nor a child.

adult sentence (AS), in the case of a YP who is found guilty of an offence, means any sentence that could be imposed on an adult who has been convicted of the same offence.

child means a person who is or, in the absence of evidence to the contrary, appears to be less than 12 years old.

conference means a group of persons who are convened to give advice in accordance with s 19.

(for more information, see Conferences in the "Other Provisions to Note" section of this Pocket Guide)

custodial portion, with respect to a youth sentence imposed on a YP under paragraphs 42(2)(n),(o),(q) or (r), means the period of time, or the portion of the YP's youth sentence, that must be served in custody before he or she begins to serve the remainder under supervision in the community subject to conditions under s 42(2)(n) or under conditional supervision under s 42(2)(o),(q) or (r).

disclosure means the communication of information other than by way of publication.

extrajudicial measures (EJM) means measures other than judicial proceedings under the YCJA used to deal with a YP alleged to have committed an offence and includes extrajudicial sanctions (EJS).

extrajudicial sanction (EJS) means a sanction that is part of a program referred to in s 10.

offence means an offence created by an Act of Parliament.

parent includes any person who is under a legal duty to provide for the YP or any person who has the custody or control of the YP, but does not include a person who has the custody or control of the YP by reason only of proceedings under the YCJA.

pre-sentence report (PSR) means a report on the personal and family history and present environment of a YP made in accordance with s 40.

provincial director (PD) means a person or group designated to perform any of the duties or functions of a PD under the YCJA.

Note: In BC, the provincial director is a senior manager within the Ministry of Children and Family Development, and duties are delegated to various ministry youth justice staff.

publication means the communication of information by making it known or accessible to the general public through any means, including print, radio or television broadcast, telecommunication or electronic means.

(for more information, see the "Publication, Records and Information" section of this Pocket Guide)

record includes any thing containing information, regardless of its physical form or characteristics, that is created or kept for the purposes of the YCJA or for the investigation of an offence that is or could be prosecuted under the YCJA.

serious offence means an indictable offence under an Act of Parliament for which the maximum punishment is imprisonment for five years or more.

serious violent offence (SVO) means an offence under one of the following provisions of the CC:

- a) s 231 or 235 (first degree murder or second degree murder),
- b) s 239 (attempt to commit murder),
- c) s 232, 234, or 236 (manslaughter), or
- d) s 273 (aggravated sexual assault).

violent offence means

- a) an offence committed by a YP that includes as an element the causing of bodily harm,
- b) an attempt or a threat to commit an offence referred to in paragraph (a), or
- c) an offence in the commission of which a YP endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.

young person (YP) means a person who is or, in the absence of evidence to the contrary, appears to be 12 years old or older, but less than 18 years old and, if the context requires, includes any person who is charged under the YCJA with having committed an offence while he or she was a YP or who is found guilty of an offence under the YCJA.

youth custody facility means a facility designated under subsection 85(2) for the placement of YPs.

“open custody” (s 24.1(1) YOA*) means custody in

- a) a community residential centre, group home, child care institution, or forest or wilderness camp, or
- b) any other like place or facility designated by the Lieutenant Governor in Council of a province or his delegate as a place of open custody for the purposes of the YCJA.

“secure custody” (s 24.1(1) YOA*) means custody in a place or facility designated by the Lieutenant Governor in Council of a province for the secure containment or restraint of YPs.

*(*these YOA provisions apply because BC has opted to have the Court determine the level of custody at sentencing - see additional information in the “Custody and Supervision: Levels of Custody” section of this Pocket Guide)*

youth justice court means a youth justice court referred to in s 13.

(for more information, see Youth Justice Court Jurisdiction in the “Introduction and Key Provisions” section of this Pocket Guide).

youth justice court judge means a youth justice court judge referred to in s 13.

(for more information, see Youth Justice Court Jurisdiction in the “Introduction and Key Provisions” section of this Pocket Guide).

youth sentence means a sentence imposed under s 42, 51 or 59 or any of ss 94 to 96 and includes a confirmation or a variation of that sentence.

youth worker means any person appointed or designated, whether by title of youth worker or probation officer or by any other title, to perform in that province any of the duties or functions of a youth worker under the YCJA.

Note: *In BC, youth workers are youth probation officers employed by the Ministry of Children and Family Development.*

Introduction and Key Provisions

Background

The *YCJA* is federal legislation that came into force in April 2003. The first editions of the Pocket Guide summarized the changes brought about when the *YCJA* was implemented in 2003 and some of the *YOA* provisions retained in the *YCJA*.

The *British Columbia Pocket Guide to the Youth Criminal Justice Act 2015 Edition*, added key changes made to the *YCJA* by the *Safe Streets and Communities Act (SSCA)* effective October 23, 2012, as well as BC policy and practice directives. This 2021 edition incorporates amendments to the *YCJA* made in 2019.

Application of the *Criminal Code*

The *YCJA* is a procedural statute which creates specific rules that apply when dealing with YPs. It does not stand alone. The general rule is that the provisions of the *CC* apply except where they are inconsistent with or excluded by the *YCJA*. s 140

Part XXVII of the *CC* (summary conviction offences) and related trial provisions of the *CC* apply to proceedings under the *YCJA* in respect of s 810 Peace Bonds and other recognizances, summary conviction offences and indictable offences. s 142

The *CC* sentencing provisions generally do not apply to YPs, with the following exceptions: s 50

- aboriginal offenders [s 718.2(e)]
- victim impact statements [ss 722, 722.1 & 722.2]
- court processes [s 730(2)]
- pardons (records suspensions), remissions and royal prerogative [ss 748, 748.1 & 749]

In addition, there are several provisions set out in the *YCJA* that make specific reference to the incorporation of sections or parts of the *CC*, including ss 14(2) [orders under s 810 and other recognizances], 15(4) [contempt of court], 20(2) [justices' jurisdiction to make an order under s 810], 28 [Part XVI: detention and release], 67(8) [preliminary hearing], 67(9) [Nunavut process], & 141 [Part XX.1: mental disorder].

Declaration of Principle

The principles in s 3 must be used to interpret the entire *YCJA*. The *YCJA* must be liberally interpreted to make sure these principles govern all dealings with YPs. s 3(2)

Other principles that apply to specific sections of the *YCJA*, such as EJM (s 4), youth sentencing (s 38(2)) and custody (s 83(2)) are set out in separate sections.

The Declaration of Principle in s 3(1) contains the following :

- The youth criminal justice system is intended to protect the public by s 3(1)(a)
 - holding YPs accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the YP,
 - promoting the rehabilitation and reintegration of YPs who have committed offences, and
 - supporting the prevention of crime by referring YPs to programs or agencies in the community to address the circumstances underlying their offending behaviour.
- The criminal justice system for YPs must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize s 3(1)(b)
 - rehabilitation and reintegration,
 - fair and proportionate accountability that is consistent with the greater dependency of YPs and their reduced level of maturity,
 - enhanced procedural protection to ensure that YPs are treated fairly and that their rights, including their right to privacy, are protected,
 - timely intervention that reinforces the link between the offending behaviour and its consequences, and
 - the promptness and speed with which persons responsible for enforcing this *YCJA* must act, given YPs' perception of time.
- Within the limits of fair and proportionate accountability, the measures taken against YPs who commit offences should s 3(1)(c)
 - reinforce respect for societal values,
 - encourage the repair of harm done to victims and the community,
 - be meaningful for the individual YP 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 YP's rehabilitation and reintegration, and
 - respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal YPs and of YPs with special requirements.

- Special considerations apply in respect of proceedings against YPs and, in particular, s 3(1)(d)
 - YPs 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 YPs have special guarantees of their rights and freedoms,
 - 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,
 - victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and
 - parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

Victim Considerations

Victims are mentioned in several provisions of the *YCJA*.

In BC, Victim Services can assist victims of all crimes, including those crimes committed by YPs.

The Preamble to the *YCJA* states:

“Canadian society should have a youth criminal justice system that takes into account the interests of victims”.

The Declaration of Principle in s 3 of the *YCJA* states:

- The measures taken against a YP should “encourage the repair of harm done to victims and the community”. s 3(1)(c)(ii)
- “special considerations apply in respect of proceedings against [YPs] and, in particular” s 3(1)(d)
 - 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, [and] s 3(1)(d)(ii)
 - victims should be provided with information about the proceedings and given an opportunity to participate and be heard.” s 3(1)(d)(iii)

Additional provisions relating to victims

- A PSR should include the results of an interview with the victim if applicable and reasonably possible. s 40(2)(b)
- For the purpose of determining a youth sentence the youth justice court shall consider a Victim Impact Statement if it is provided. s 50
- Except to the extent that they are inconsistent with or excluded by the *YCJA*, s 16 (defence of mental disorder) and Part XX.1 (mental disorder) of the *CC* apply to proceedings under the *YCJA* in relation to offences alleged to have been committed by YPs. s 141
 - This includes provisions for notifying a victim and dealing with victim impact statements at Review Board proceedings under ss 672.5(5.1), (14) to (16) of the mental disorder provisions of the *CC*.
- Victims, on request, may be given access to court, police and government records under the *YCJA*. s 119(1)(d)
(see “Disclosure to Victims” in the “Publication, Records and Information” section of this Pocket Guide)
- For the protection of victims the court has jurisdiction to make orders against a YP under the following sections of the *CC*: s 14(2)
 - s 83.3 (recognizance – terrorist activity)
 - s 810 (recognizance – fear of injury or damage)
 - s 810.01 (recognizance – fear of criminal organization offence)
 - s 810.011 (recognizance – fear of terrorism offence)
 - s 810.02 (recognizance – fear of forced marriage / marriage under age 16)
 - s 810.2 (recognizance – fear of serious personal offence)

The identity of a child or a YP shall not be published if it would identify that person as having been a victim or witness in connection with an offence committed by a YP. Exceptions are set out in ss 111(2) & (3). s 111

Youth Justice Court Jurisdiction

A youth justice court has exclusive jurisdiction over any offence that a person is alleged to have committed while a YP. s 14(1)

Youth justice court and judge

A youth justice court is defined as any court that a province designates as a youth justice court for the purposes of the *YCJA*. In BC, the Provincial Court is designated as such. A youth justice court judge is a person appointed as a judge of the youth justice court. s 13

When a YP elects to be tried by either a court composed of a judge without a jury or a judge and jury, the superior court of criminal jurisdiction in the province [BC Supreme Court] is deemed to be a youth justice court and a superior court judge a youth justice court judge for the purpose of the proceedings. s 13(2) & (3)

Right to Counsel

- A YP has the right to retain and instruct counsel without delay, and to exercise that right, s 25
 - at any stage of the proceedings, and
 - before and during any consideration of whether to use an EJS instead of starting or continuing judicial proceedings under the YCJA.
- An arresting officer, upon arrest or detention, must advise the YP without delay of their right to retain and instruct counsel and give the YP an opportunity to obtain counsel.
- When a YP is not represented by counsel either at a hearing, trial or review, the justice, judge, or review board must advise the YP of their right to counsel and give the YP a reasonable opportunity to obtain counsel.
- When a YP at a hearing, trial or review wishes to obtain counsel but is unable to do so, the court shall refer the YP to legal aid or an assistance program, for the appointment of counsel.
- Where neither legal aid nor an assistance program is available and the YP has requested counsel the court shall direct that the YP be represented by counsel.
- Where there is a direction for counsel to be appointed under s 25(4)(b) the Crown must appoint counsel to represent the YP.
- The judge must make sure the YP is represented by counsel who is independent of the parent where it appears that
 - the interests of the YP and the parents of the YP are in conflict, or
 - it would be in the best interests of the YP.
- A statement that a YP has the right to be represented by counsel shall be included in any documents listed in s 25(9), including any appearance notices, undertakings/release orders, warrants and notices.
- A province can establish a cost-recovery program to recover the cost of legal counsel from a YP or his/her parents after the appeal period has expired or after all appeals are completed; BC has not done so.
- Ss 25(4-9) above do not apply to a person who is 20 years of age or older at the time of their first appearance for the offence s/he is alleged to have committed as a YP.

Notices to Parents

There are detailed provisions for giving notice to parents under the YCJA. s 26

Notice to parents does not need to be given if the person has reached the age of 20 at the time of their first appearance before the court for the offence s/he is alleged to have committed as a YP. s 26(12)

In certain circumstances, and at any stage of the proceedings, a parent may be ordered by the court to attend court. s 27

Admissibility of Statements

In order for a statement made by a YP to be admissible against a YP it must be taken in accordance with s 146 of the YCJA. The rules are comprehensive. s 146

Criteria for admissibility of statements

- Subject to the provisions of s 146, the law relating to the admissibility of statements made by adults applies to statements made by YPs.
- The section applies to any oral or written statement made by a YP, who is less than 18 years old, to a peace officer or to any person in authority, on the arrest or detention of the YP, or in circumstances where the peace officer or other person has reasonable grounds for believing the YP has committed an offence.
- A statement will be admissible against a young person only when the requirements set out in s 146(2) are met, including:
 - the YP's statement was made voluntarily,
 - before the statement was made, the person taking the statement clearly explained to the YP, in a language appropriate to his or her age and understanding, that
 - ♦ the YP is under no obligation to make a statement,
 - ♦ any statement made by the YP may be used as evidence in proceedings against the YP,
 - ♦ the YP has the right to consult counsel and a parent or other person, and
 - ♦ any statement made by the YP must be made in the presence of counsel or other person the YP has consulted unless the YP desires otherwise,
 - the YP has, before the statement was made, been given a reasonable opportunity to consult
 - ♦ with counsel, and
 - ♦ with a parent or other appropriate adult chosen by the YP, and
 - if the YP consults someone the YP must be given a reasonable opportunity to make the statement in the presence of that person.
- The requirements set out in s 146(2) do not apply to spontaneous oral statements.

- A YP may waive his/her right to consult but the waiver must be audio or video recorded or must be in writing and contain a statement that he/she has been informed of the right being waived.
- If a waiver of the right to consult is not recorded properly due to a technical irregularity, a judge may still find the waiver valid if they find that the YP was informed of his/her rights and voluntarily waived them.
- Where there has been a technical irregularity in complying with the rights under s 146(2), the judge may still admit the YP's statement into evidence if satisfied that the admission of the statement would not bring into disrepute the principle that YPs are entitled to enhanced procedural protection to ensure that they are treated fairly and their rights are protected.

Peace Bonds

Jurisdiction

The court has explicit jurisdiction to place a YP on a peace bond under the following CC sections:

s. 14(2)

- s 83.3 (recognizance – terrorist activity)
- s 810 (recognizance – fear of injury or damage)
- s 810.01 (recognizance – fear of criminal organization offence)
- s 810.011 (recognizance – fear of terrorism offence)
- s 810.02 (recognizance – fear of forced marriage / marriage under age 16)
- s 810.2 (recognizance – fear of serious personal offence)

Entering into a Peace Bond

A JP may place a YP on a peace bond under s 810 CC. If the YP fails or refuses to enter into the peace bond the JP must refer the matter to the court.

s 20(2)

If the YP fails or refuses to enter into the peace bond the court may impose any one of the sanctions set out in s 42(2) except that a CSO must not exceed 30 days.

s 14(2)

After a Young Person Reaches Age 18

EJMs taken or judicial proceedings commenced under the YCJA may be continued after the person reaches age 18.

s 14(4)

The YCJA applies to persons 18 years old or older who are alleged to have committed an offence while a YP.

s 14(5)

A person aged 18 or older can be charged with committing a YCJA offence such as breaching a disposition under s 137 as an adult if the non-compliance takes place after his/her 18th birthday. The charge is laid under the YCJA, but the person is charged as an adult and if found guilty, the sentence is imposed under the CC.

Offences During a Period that Includes a Young Person's 18th Birthday

The court has jurisdiction over an offence which a person is alleged to have committed during a period that includes the date of his/her 18th birthday. If it is unclear whether the offence occurred before or after their 18th birthday, s 16 governs the process and the YP is entitled to an election and mode of trial if the offence is indictable.

s 16

- If found guilty and it is proven the offence took place prior to turning 18, the YP is sentenced under the YCJA.
- If found guilty and it is proven the offence took place after their 18th birthday, an adult sentence is imposed.
- If found guilty, but it is not proven that the offence took place in either the youth or adult period, a youth sentence is to be imposed.

Jurisdiction of a Justice of the Peace

A JP's authority under the YCJA is the same as that of a Justice under the CC except that a JP can't deal with a plea, trial or an adjudication involving a YP.

s 20(1)

A JP may place a YP on a peace bond (recognizance – fear of injury or damage) under s 810 of the CC. However, if the YP refuses to enter into a recognizance then the JP must refer this matter to the court.

s 20(2)

A JP may make an order for judicial interim release. However, a YP or the Crown may make a subsequent application, at any time after the order is made, to a court for release from or detention in custody. This is an original application and is not considered a review of the original decision.

s 33(1)

Review of Charges for Offences under s 145(2)-(5) CC

If a youth is charged with failing to comply with an appearance notice, summons, release order or undertaking, and the substantive offence for which the notice, summons or order was issued is not proceeding or the YP is acquitted, Crown Counsel must review the charge under s 145(2)-(5) to determine if the charge should proceed.

s 24.1

Extrajudicial Measures (EJM)

Summary

EJMs are measures other than court proceedings used to deal with a YP alleged to have committed an offence and include an extrajudicial sanction (EJS).

Part 1 of the *YCJA* sets out the available non-court options, which fall into two basic categories:

- warnings, cautions and referrals, and
- the more formal EJSs.

s 6-9

s 10

Extrajudicial Measures Principles

In addition to the principles set out in s 3, there are specific principles applicable to EJMs, including that EJMs:

s 4

- are often the most appropriate and effective way to address youth crime,
- allow for effective and timely interventions focused on correcting offending behaviour,
- are presumed to be adequate to hold a YP accountable if the YP has committed a non-violent offence and the YP has no previous findings of guilt, and
- should be used if they are adequate to hold a YP accountable for their offending behaviour.

The *YCJA* encourages the use of EJMs when these measures satisfy the principles in this section even when the YP has previously been dealt with by the use of EJMs or has been found guilty of an offence.

s 4(d)

EJMs are presumed to be adequate to hold a YP accountable for failing to comply with a youth sentence (s 137) or failing to appear in court for a judicial referral hearing (s 496 CC) unless:

s 4.1(1)

- the YP has a history of repeated failures to comply; or
- the failure caused harm, or a risk of harm, to public safety.

Even if a YP has a history of failing to comply or the failure caused harm or risk of harm to public safety, EJM should be used if they are adequate to hold the youth accountable.

s 4.1(2)(a)

If a YP has a history of failing to comply or the failure caused harm or risk of harm to public safety, and EJM would not be adequate to hold the YP accountable, but a JRH or review of the youth sentence would be adequate, the JRH or sentence review (as applicable) should be used instead of laying charges.

s 4.1(2)(b)

Extrajudicial Measures Objectives

EJMs should be designed to:

s 5

- provide an effective and timely response to offending behavior outside of judicial proceedings,
- encourage YPs to acknowledge and repair the harm caused to the victim and the community,
- encourage families of YPs and the community to become involved in the design and implementation of the measures,
- provide victims an opportunity to participate in making decisions that relate to the measures selected and to receive reparation, and
- respect the rights and freedoms of YPs and be proportionate to the seriousness of the offence.

Warnings, Cautions and Referrals

These are EJMs that can be used by a police officer to deal with YPs alleged to have committed an offence without using the formal court system.

s 6(1)

Before starting judicial proceedings or taking any other measures under the *YCJA*, a police officer must consider whether one of these actions would satisfy the principles set out in s 4 and 4.1, including:

- take no further action,
- warn the YP,
- administer a caution (if a program has been established under s 7), or
- with the consent of the YP, refer the YP to a program or agency in the community that may assist the YP not to commit offences.

s 7

Note: examples include recreation, substance abuse or other counseling programs or a YP working with an elder.

The failure of a police officer to consider these options does not invalidate any subsequent charges against the YP.

s 6(2)

The Crown also has the option of administering a caution if a program is established.

s 8

The fact that a YP has received a warning, caution or referral from a police officer is not admissible for the purpose of proving prior offending behaviour in a subsequent proceeding against the YP.

s 9

Extrajudicial Sanctions

Background

EJSs are a more formal type of EJM and are part of an authorized program of sanctions.

Pre-conditions for using an extrajudicial sanction

An EJS may be used only if:

s 10(2)

- it is part of an authorized program of sanctions,
- the sanction is considered appropriate to the needs of the YP and the interests of society,
- the YP gives their informed consent to participate,
- the YP has, before giving his/her consent, been advised of his/her right to counsel and has had a reasonable opportunity to consult with counsel,
- the YP accepts responsibility for the actions that form the basis of the alleged offence,
- there is sufficient evidence for Crown Counsel to prosecute the offence, and
- the law does not bar prosecution of the offence.

An EJS can only be used if the YP cannot be adequately dealt with by a warning, caution or referral by a police officer because of the seriousness of the offence, the nature and number of prior offences committed by the YP or any other aggravating circumstances.

s 10(1)

Nothing in the YCJA prevents using EJMs, including an EJS, more than once. Even if the YP has been found guilty of an offence, subsequent conduct can be handled extrajudicially.

s 4(d)

When an extrajudicial sanction may not be used

An EJS may not be used in respect of a YP who:

s 10(3)

- denies they were involved in the commission of the offence, or
- asks the youth justice court to hear the case.

Informing parents of a young person who is dealt with by extrajudicial sanctions

The person who administers the program must inform the parents of the YP about the sanction

s 11

Victim Considerations

EJMs should be designed to

- encourage YPs to acknowledge and repair the harm caused to the victim and the community, and
- give victims an opportunity to participate in making decisions that relate to the measures selected and to receive reparation.

s 5(b)

s 5(d)

Extrajudicial Sanctions

Victims, upon request, are entitled to be informed of the identity of the YP and how the offence was dealt with when an EJS is used.

s 12

Pre-trial Procedures

Detention and Release

Application of *Criminal Code*

All provisions in Part XVI of the *CC* that apply to the judicial interim release of adults, including s 515, apply to YPs, except where they are inconsistent with or excluded by the *YCJA*. ss 28

The grounds for detaining a YP are different from those that apply to adults.

Key Provisions for detention and release

Once an information or indictment is laid a YP must first appear before either a judge or justice who must: s 32(1)

- have the information or indictment read to the YP,
- if the YP is not represented by counsel, inform the YP of that right, and
- if Crown Counsel indicates an intention to seek an adult sentence, advise the YP that there is a possibility that an adult sentence will be imposed.

Substitute for social measures prohibited

A YP must not be detained in custody or ordered to comply with release conditions as a substitute for appropriate child protection, mental health or other social measures. s 28.1

Release order with conditions

Conditions under s 515(4)-(4.2) *CC* may only be imposed on a YP if: s 29(1)

- the condition is necessary to ensure attendance at court or to protect public safety, including the safety of a victim/witness;
- the condition is reasonable having regard to the circumstances of the offence; and
- the young person will reasonably be able to comply.

Justification for detention in custody

A judge or justice may hold a YP in custody only if **all three** elements below are satisfied s 29(2)

- the YP is charged with
 - a serious offence (as defined in s 2), or
 - the YP has a history that indicates a pattern of either outstanding charges or findings of guilt;

AND

- the judge or justice is satisfied, on a balance of probabilities,
 - that there is a substantial likelihood that the YP will not appear in court,
 - that detention is necessary for the protection or safety of the public having regard to all the circumstances, including a substantial likelihood that the YP will commit a serious offence, or
 - where a YP has been charged with a serious offence and detention is not otherwise justified, that there are exceptional circumstances that warrant detention and that detention is necessary to maintain confidence in the administration of justice including
 - the apparent strength of the Crown's case,
 - the gravity of the offence,
 - the circumstances of the offence, and
 - the fact that the YP may potentially receive a lengthy custodial sentence;

AND

- prior to ordering detention, the court must be satisfied on a balance of probabilities that there are no conditions which would
 - reduce the likelihood that the YP would fail to appear in court,
 - adequately protect the public, or
 - maintain confidence in the administration of justice.

The onus is on the Crown to meet the requirements for detention. s 29(3)

Release to a responsible person

A YP who has been arrested may be placed in the care of a responsible person instead of being held in custody if a court or a justice is satisfied that s 31(1)

- the YP would otherwise be detained in custody,
- the person is willing and able to take care of and exercise control over the YP, and
- the YP is willing to be placed in the care of the responsible person.

If a YP would, in the absence of a responsible person, be detained in custody, a judge or justice must inquire as to whether there is an available responsible person and whether the YP is willing to be placed in that person's care. s 31(2)

Both the responsible person and the YP must enter into undertakings to a judge or justice. s 31(3)

A responsible person who has failed to fulfill his or her obligations under s 31 can be prosecuted. The maximum penalty if prosecuted by Indictment is 2 years in custody. s 139

Review of Charges for Offences under s 145(2)-(5) CC

If a youth is charged with failing to comply with an appearance notice, summons, release order or undertaking, and the substantive offence for which the notice, summons or order was issued is not proceeding or the YP is acquitted, Crown Counsel must review the charge under s 145(2)-(5) to determine if the charge should proceed. s 24.1

Bail & Detention Reviews

The *YCJA* contains provisions that allow for review of orders for judicial interim release and detention that were made by a judge or justice. s 33

Where a YP has been detained in custody, on the expiration of 90 days (for indictable offences) or 30 days (for summary offences), the "person having custody of the accused" (i.e. youth custody centre representative) is required to apply to the court for a hearing to determine if the YP should be released from custody (s 525(1) CC). This provision does not apply to offences listed in s 469 CC (including murder and attempt murder). s 30.1 & s 525 CC

If a YP is charged with an offence listed in s 522 of the CC, release can only be ordered by a judge. s 33(8)

Election—Choosing a Mode of Trial

The court must put the YP to his/her election when:

- the Crown has given notice of intent to seek an adult sentence. s 67(1)(b)
- the YP is charged with having committed either 1st or 2nd degree murder, or s 67(1)(c)
- it is unclear whether the person charged was a YP or an adult at the time of the offence and it is alleged that the person was at least 14 years old and s/he is charged with committing an offence for which an adult would be entitled to an election. s 67(1)(d)

The YP has the same elections as an adult, including:

- trial by a youth justice court judge without a jury and without a preliminary inquiry, s 67(2)
- trial by a supreme court judge without a jury, or
- trial by a supreme court judge and jury.

If the YP does not elect, then s/he is deemed to have elected to be tried by a supreme court judge and jury. s 67(2)

There will be a preliminary inquiry only if either the YP or the Crown asks for one. s 67(7)

Even if a YP elects otherwise, the Crown may require the YP be tried by a supreme court judge and jury. s 67(6)

When a YP is tried by a supreme court judge with or without a jury the trial judge will be a BC Supreme Court Justice. The Justice is deemed to be a youth justice court judge and the court is deemed to be a youth justice court for the purpose of the proceeding. s 13(2) & (3)

The trial will follow the CC provisions (parts XIX and XX) that govern the mode of trial that was elected, with any modifications that the circumstances require with two exceptions: s 67(9)

- the privacy provisions of the *YCJA* continue to apply, and
- a YP who is removed from court under s 650(2) of the CC is entitled to be represented in court by counsel.

Youth Sentences

Summary

The *YCJA*

- defines the purpose of youth sentences,
- provides the principles and factors that must be considered when a youth sentence is imposed,
- sets out a number of youth sanctions,
- sets out conditions that must exist before a custodial sentence is imposed, and
- provides that a portion of a custodial sentence must be served in the community under supervision.

These sections only apply when a YP is given a youth sentence.

Please refer to the "Adult Sentences" section in this Pocket Guide for applicable information when the court orders an AS and Part XXIII (sentencing) [s 74\(1\)](#) and Part XXIV (dangerous and long-term offenders) of the *CC* apply.

Where *Criminal Code* Part XXIII sentencing applies to Young Persons

Generally, the sentencing provisions for adults set out in the *CC* do not apply to youth sentencing. [s 50](#)

Exceptions:

- sentencing principles applicable to aboriginal offenders, *s 718.2(e) CC*
- provision for admitting victim impact statements, *ss 722, 722.1, 722.2 CC*
- continuation in force of appearance notice, promise to appear, summons, undertaking, or release order in certain situations, *s 730(2) CC*
- provisions dealing with records suspensions (pardons), remission of sentence and the royal prerogative of mercy, *ss 748, 748.1, 749 CC*

Purpose of Youth Sentencing

The purpose of sentencing is to hold a YP accountable for an offence by imposing a just sanction that:

- has meaningful consequences for the YP, and
- promotes his/her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public. [s 38\(1\)](#)

Youth Sentencing Principles

Sentences shall be determined in accordance with *s 3 YCJA* and the following principles: [s 38\(2\)](#)

- the sentence must not result in a greater punishment than would be appropriate for an adult convicted of the same offence committed in similar circumstances;
- the sentence must be similar to the sentences imposed in the region on similar YPs found guilty of the same offence committed in similar circumstances;
- the sentence must be proportionate to the seriousness of the offence and the YP's degree of responsibility for that offence;
- all available alternatives to custody that are reasonable in the circumstances should be considered, with particular attention to the circumstances of aboriginal YPs; and
- subject to the third point above (i.e. proportionality), the sentence must
 - be the least restrictive sentence that is capable of achieving the purpose set out in *s 38(1)*,
 - be the sentence most likely to rehabilitate the YP and reintegrate him/her into society, and
 - promote a sense of responsibility in the YP, and an acknowledgment of the harm done to victims and the community;
- a condition may be imposed as part of a sentence only if the condition
 - is necessary to achieve the purpose of sentencing set out in *s 38(1)*,
 - the YP is reasonably able to comply with the condition, and
 - the condition is not a substitute for child protection, mental health or other social measures; and
- subject to the third point above (i.e. proportionality), the sentence may have the following objectives:
 - to denounce unlawful conduct, and
 - to deter the YP from committing offences.

Factors the Court Must Consider in Determining a Youth Sentence

The court must consider: [s 38\(3\)](#)

- the degree of participation by the YP in the offence,
- the harm done to the victims and whether it was intentional or reasonably foreseeable,
- any reparation made by the YP to the victim or the community,
- any time the YP has already spent in detention as a result of the offence,

- the previous findings of guilt of the YP, and
- any other aggravating and mitigating circumstances that are relevant to the purpose and principles of youth sentencing.

Restrictions on Custody

The court must not impose a custodial sentence unless at least one of the following conditions is met:

s 39(1)

- the YP has been found guilty of a violent offence;
- the YP has previously been found guilty of failing to comply with more than one non-custodial sentence and, if the court is imposing a sentence for failure to comply with a non-custodial sentence, appearance notice, summons, release order or undertaking, the YP caused harm or risk of harm to public safety in committing that offence;
- the YP has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than 2 years and has a history that indicates a pattern of either EJSs or of findings of guilt or both; or
- in exceptional cases, where the offence is indictable and the aggravating circumstances of the offence would make a non-custodial sentence inconsistent with the purpose and principles of youth sentencing set out in s 38.

Note: If any of the first three points above apply, the court must not impose a custodial sentence unless the court

s 39(2)

- has considered all alternatives to custody that are reasonable in the circumstances, and
- has determined that there is no reasonable alternative, or combination of alternatives, that would achieve the purpose and principles of sentencing set out in s 38.

Alternatives to Custody

In determining whether there is a reasonable alternative to custody the court must consider submissions relating to

s 39(3)

- the alternatives to custody that are available,
- the likelihood that the YP will comply with a non-custodial sentence, taking into account his/her compliance with previous non-custodial sentences, and
- the alternatives to custody which have been used in respect of YPs who have committed similar offences in similar circumstances.

The fact that a YP has previously been given a non-custodial sentence does not prevent a court from imposing another one.

s 39(4)

Custodial sentences may not be used as a substitute for appropriate child protection, mental health or other social measures.

s 39(5)

Before imposing a custodial sentence the court must consider a PSR unless the court is satisfied that it is not necessary and the Crown and the YP or his/her lawyer consents.

s 39(6) & (7)

Under the YCJA, all custodial sentences have a portion served in the community under supervision. When setting the length of a custodial sentence, the court must not take into consideration either the fact that the supervision portion of the sentence may not be served in custody or that the sentence may be reviewed.

s 39(8)

A court that decides to impose a custodial sentence must give reasons why a non-custodial sentence is not adequate.

s 39(9)

Before Imposing a Youth Sentence

Before imposing a youth sentence, the court must consider any recommendations from a conference (*see additional information in the "Other Provisions to Note" section of this Pocket Guide*), a PSR, any representations made by the parties or their lawyers and by the parents of the YP and any other relevant information that is before the court.

s 42(1)

Pre-sentence Report

When to use a Pre-sentence Report

s 40

Before imposing a sentence on a YP, a PSR must be ordered if it is either required under the YCJA or the court considers it advisable

s 40(1)

A PSR must be ordered before a custodial sentence can be imposed unless the court is satisfied that a PSR is not necessary and the Crown and defence agree to dispense with it.

s 39(6) & (7)

The court must consider a PSR when deciding whether to impose an AS.

s 72(3)

A PSR must be in writing (unless the court grants leave for it to be submitted orally in court) and include the following:

s 40(2)

- the results of an interview with the YP and, if reasonably possible, the parents of the YP and members of the YP's extended family if reasonably possible or appropriate,
- the results of an interview with the victim, if applicable and reasonably possible,
- the recommendations of any conference referred to in s 41,
- any information that is applicable to the case (see the listed information set out in s 40(2)(d) of the YCJA),
- any information that will assist the court to determine under s 39(2), whether there is an alternative to custody, and
- any information that the PD considers relevant, including any recommendation that the PD considers appropriate.

The time limit on access to records set out in s 119(2) of the YCJA applies for the information specifically referred to in ss 40(2)(d)(iii) [previous findings of guilt] & 40(2)(d)(iv) [previous EJS history].

Using Pre-sentence Report procedures for other purposes

The procedure for PSRs is used for various other reports in the YCJA such as:

- reviews of sentences (progress reports), ss 59(3) & 94(12)
- placement hearings respecting adult sentences, s 76(4)
- applications to continue custody, s 98, 99 & 104
- setting conditions for conditional supervision, and s 105(6)
- hearings on breach of conditions of supervision. ss 109(6) & (7)

Available Youth Sentences

S 42(2) requires a court that finds a YP guilty of an offence, to impose one of the following sanctions, or any combination that are not inconsistent with each other [the exception is murder - s 42(2) (q) or (r)]: s 42(2)

- a reprimand (similar to a warning by a judge), s 42(2)(a)
- an absolute discharge, s 42(2)(b)
- a conditional discharge (this may require supervision by the PD), s 42(2)(c)
 - discretionary conditions must be consistent with the sentencing principle set out in s 38(2)(e.1), including the YP is reasonably able to comply, and the condition is not a substitute for social measures s 42(2)(c)
 - unlike adult sentences, a youth conditional discharge is a distinct, stand-alone sentence and cannot be combined with **either** a probation order or an ISSO s 42(11)
- a fine to a maximum of \$1,000, s 42(2)(d)
 - the court must consider present and future means of the YP to pay s 54(1)
 - the YP may apply to extend the time to pay s 54(10)
- an order to pay compensation for specified losses or specified damages to another person, s 42(2)(e)
 - the court must consider present and future means of the YP to pay s 54(1)
 - the court may consider representations made by the recipient s 54(4)
 - notice of the terms of the order must be given to the recipient s 54(5)
 - the YP may apply to extend the time to pay s 54(10)
- an order for the restitution of property to any other person, s 42(2)(f)
 - the court may consider representations made by the recipient s 54(4)
 - notice of the terms of the order must be given to the recipient s 54(5)
 - the YP may apply to extend the time to pay s 54(10)
- an order to pay the innocent purchaser of property when the court has made an order for the restitution of the property to its owner or any other person, s 42(2)(g)
 - the court must consider present and future means of the YP to pay s 54(1)
 - the court may consider representations made by the recipient s 54(4)
 - notice of the terms of the order must be given to the recipient s 54(5)
 - the YP may apply to extend the time to pay s 54(10)
- subject to s 54, an order to compensate any person, in kind or by way of personal services that the court may fix for any loss, damage or injury suffered, s 42(2)(h)
 - the services must be completed in 240 hours and within 12 months s 54(8)
 - the person who is offered compensation in this way must give their consent s 54(6)
 - the court may consider representations made by the recipient s 54(4)
 - notice of the terms of the order must be given to the recipient s 54(5)
 - the court must be satisfied that the YP is a suitable candidate and that the order will not interfere with normal hours of work or education s 54(7)
 - the YP may apply to extend the time s 54(10)
- subject to s 54, an order to perform a community service and to report to, and be supervised by the PD or a person designated by the court; s 42(2)(i)
 - the maximum number of hours is 240 hours of service to be completed within 12 months s 54(8)
 - the court must be satisfied that the YP is a suitable candidate and ensure that the order will not interfere with normal hours of work or education s 54(7)
 - the community service must be part of a program approved by the PD or the placement must consent s 54(9)
 - the YP may apply to extend the time to complete the work s 54(10)

Note: Unlike adult sentences, an order to perform community service is a stand-alone order and is not part of a probation order.

- subject to s 51 (mandatory prohibition order), an order for prohibition, seizure or forfeiture that may be imposed under any Act – other than an order under s 161 of the CC (order regarding contact with persons under 16 years);
(see also “Prohibition Orders”) s 42(2)(j)
- a probation order, s 42(2)(k)
 - the maximum length of a probation order is 2 years s 42(2)(k)
 - mandatory and optional conditions for the order are listed in s 55 s 42(2)(k)
 - the order must be read to or by the YP s 56(1)(a)
 - the order must be explained to the YP and the court must confirm that the YP understands it s 56(1)(b)
 - the court must make sure a copy of the order is given to the YP and to any parent who is in attendance at the sentencing hearing s 56(1)(c)
 - the court may also have a copy of the order given to a parent who does not attend the sentencing hearing if the parent is taking an active interest in the proceedings s 56(2)
- an ISSO, s 42(2)(l)
 - an ISSO is similar to a probation order but implies a higher level of support and supervision, usually provided by a one-to-one worker.
 - before an order is made, the PD shall determine that a program to enforce the order is available. s 42(3)
 - ISSOs are widely available in BC; however, the program may also be accessed as a condition of other YCJA sentences
- a non-residential attendance order (**not** available in BC), s 42(2)(m) & s 42(3)
- a CSO, s 42(2)(n)
 - 2/3 of the sentence is served in custody and 1/3 is served under supervision in the community s 42(2)(n)
 - the maximum sentence length is s 42(2)(n) & (14)
 - 2 years for most offences
 - 3 years for those offences for which an adult could receive life imprisonment or where the YP is found guilty of multiple offences
 - mandatory conditions to be included in a CSO are set out in s 97(1) and s 97(1)
 - other conditions can be added by the PD under s 97(2) prior to release from custody s 97(2)

(see “Conditions for community supervision in a custody and supervision order”)

 - the Crown or the PD may apply to the court under s 98 for an order that the YP remain in custody for a period not exceeding the remainder of the youth sentence s 98

(see “Extending the custodial portion of custody and supervision orders”)
- a CCSO, if the YP is being sentenced for attempt to commit murder, manslaughter or aggravated sexual assault, s 42(2)(o) & s 105
 - the community supervision portion of the CCSO is served under “conditional supervision”,
 - the sentence cannot exceed 3 years—the court sets the relative times for custody and conditional supervision and is not bound by the 2/3 - 1/3 rule
 - the court sets the conditions of conditional supervision under s 105

(see “Conditions for custody and conditional supervision orders under ss 42(2) (o), (q) & (r)”)

 - the Crown may apply to the court under s 104 to keep the YP in custody and not release him/her on conditional supervision s 104

(see “Extending the custodial portion of orders for custody that have conditional supervision for ss 42(2) (o), (q) & (r) sentences”)
- a DCSO, (similar to the adult sentencing option of a conditional sentence) s 42(2)(p)
 - The court can sentence a YP to a DCSO (which cannot exceed 6 months) only if: s 42(5)
 - the YP is found guilty of an offence other than one in the commission of which a YP causes or attempts to cause serious bodily harm, and
 - it is consistent with the purpose and principles set out in s 38 and the restrictions on custody set out in s 39
 - A DCSO is subject to conditions set out in s 105(2) and appropriate conditions set out in s 105(3) s 105(3)
 - ss 106 to 109 set out the procedures to be followed when there has been a breach of a DCSO s 42(6)
- a CCSO for murder; s 42(2)(q)
 - 1st degree murder: the maximum sentence is 10 years – custody for up to 6 years followed by conditional supervision in the community
 - 2nd degree murder: the maximum sentence is 7 years – custody for up to 4 years followed by conditional supervision in the community

(see “Conditions for custody and conditional supervision orders under ss 42(2) (o), (q) & (r), for deferred custody and supervision orders, and after a review under s 94(19)(b)”)
- an IRCS order– only available for a YP if: s 42(2)(r) & s 42(7)
 - **either**
 - the YP has been found guilty of a SVO (murder, manslaughter, attempt to commit murder or aggravated sexual assault), or
 - the YP has been found guilty of an offence, where the YP caused or attempted to cause serious bodily harm and for which an adult is liable to imprisonment for a term of more than 2 years, and the YP had previously been found guilty at least twice of such an offence,

- the YP suffers from a mental illness or disorder, a psychological disorder or an emotional disturbance,
- a plan of treatment and intensive supervision is developed for the YP, and there are reasonable grounds to believe that the plan might reduce the risk of the YP repeating the offence or committing a SVO, and
- the PD has determined that an IRCS program is available and that the YP's participation in the program is appropriate.
- the court may impose an IRCS order on any YP who was aged 12 to 17 at the time of the offence and who meets the criteria
- the maximum length of IRCS sentences are the same as for other youth custody and supervision sentences: s 42(2)(r)
 - 2 years for most offences
 - 3 years for offences punishable by life imprisonment for adults
 - 7 years for second degree murder (maximum 4 years custody portion)
 - 10 years for first degree murder (maximum 6 years custody portion)
- the rules for the periods of custody and conditional supervision apply.
(see "Conditions for custody and conditional supervision orders for sentences under ss 42(2) (o), (q) & (r)")
- a YP given an IRCS sentence maintains all the rights regarding consent to treatment, which includes physical or mental health treatment or care s 42(8)
- any other reasonable and ancillary conditions that the court considers advisable and in the best interests of the YP and the public s 42(2)(s)
 - discretionary conditions must be consistent with the sentencing principles set out above, including the YP is reasonably able to comply, and the condition is not a substitute for social measures.

Other Sentencing Provisions

Maximum length of youth sentences

The *YCJA* includes maximum lengths for:

- individual sanctions set out in section s 42(2), s 42(14)
- combined sanctions for a single offence, and s 42(14)
- combined sanctions and sentences for multiple offences. s 42(15)

Generally speaking, the maximum sentence length is 2 years for a single offence and 3 years for multiple offences. ss 42(14)-(16) & 46

Exceptions to the general rule of a 2 year maximum sentence include:

- prohibition orders may exceed 2 years,
- if the offence is one for which an adult could be sentenced to life imprisonment, a CSO under s 42(2)(n) may be for up to 3 years,
- if the offence is attempt to commit murder, manslaughter, or aggravated sexual assault, a CCSO under s 42(2)(o) may be for up to 3 years,
- if the offence is first or second degree murder, a CCSO under s 42(2)(q) may be for up to 10 years (maximum 6 in custody) or 7 years (maximum 4 in custody) respectively.

The *YCJA* contains additional provisions relating to the maximum duration of multiple sentences imposed at the same or different times for multiple offences. s 42(15), (16) & 46

Coming into force of a youth sentence

A youth sentence comes into force on the date on which it is imposed or on any later date that the court specifies. s 42(12)

Consecutive sentences

Subject to ss 42(15) & (16), the court that sentences a YP may direct that a sentence be served consecutively if the YP ss 42(13)(a) & (b)

- is sentenced while serving a sentence under paragraphs 42(2)(n), (o), (q) or (r), or
- is being sentenced for more than one offence under any one of those paragraphs

These sentences are subject to the time limitations set out in ss 42(2), (15) & (16).

Consecutive DCSOs are not permitted.

Intermittent sentences

Although the *YCJA* includes a provision for custodial sentences to be served intermittently, this option is not available in BC. The PD has determined that there are no youth custody facilities available for the serving of intermittent sentences. s 47(2)

Prohibition Orders

Referred to in 109(1)(a) to (d) & 110(1)(a) or (b) *CC*

Mandatory prohibition order

When a YP is found guilty of an offence referred to in s 109(1)(a) to (d) of the *CC* the court must, in addition to any sentence imposed under s 42 of the *YCJA*, make an order that prohibits the YP from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance. s 51(1)

The minimum duration of a mandatory order is 2 years after the YP completes the custody portion of the sentence or, if the YP is not subject to custody, after the time the YP is found guilty of the offence. s 51(2)

Discretionary prohibition order

There are also discretionary prohibition orders which the court must consider for offences referred to in ss 110(1)(a) or (b) of the CC. s 51(3)

The maximum duration of a discretionary order is 2 years after the YP completes the custody portion of the sentence or, if the YP is not subject to custody, after the time the YP is found guilty of the offence. s 51(4)

The court can only make the order if it finds that it is desirable, in the interests of the safety of the YP or of any other person. s 51(3)

When the court makes an order under this section it must state its reasons for making the order. s 51(5)

When the court does not make an order under s 51(3) it must provide reasons. s 51(6)

Review – Prohibition Order

There is provision for the court to review prohibition orders that are made under s 51. s 52

Funding for Victims

The YCJA allows for the lieutenant governor in council of the province to order a percentage of any fine imposed on a YP be used to assist victims of offences. In BC, an Order in Council has set this at 15%. s 53(2)

The victim surcharge provisions of s 737 CC do not apply to YPs.

Probation and Intensive Support and Supervision Program Orders

Conditions imposed

A probation order or an ISSO imposed under s 42(2)(k) or (l) must include the condition the YP appear before the court when required to do so. ss 55(1)

A probation order or an ISSO imposed under s 42(2)(k) or (l) may include other conditions the court considers appropriate. Discretionary conditions must be consistent with the sentencing principle set out in s 38(2)(e.1), including the YP is reasonably able to comply, and the condition is not a substitute for social measures. s 55(2)

Validity of orders

These orders are valid whether or not the YP endorses them or whether or not the parent receives a copy of them. s 56(4)

Commencement of Probation and Intensive Support and Supervision Program Orders

The general rule is that a probation order or an ISSO under s 42(2) (k) or (l) comes into force:

- on the date on which it is made, or s 56(5)(a)
- if the sentence includes a period of continuous custody and supervision, at the end of the period of supervision. s 56(5)(b)

Note: A sentence of deferred custody is considered "continuous custody" and if probation or ISSO are ordered as part of a sentence involving deferred custody, the probation/ISSO follows the period of deferred custody.

Starting a probation/ISSO where custody is delayed

It is possible under the YCJA for a youth sentence or any part of it to be delayed in coming into force. This includes a delay in starting the period of custody if one is ordered. s 42(12)

If the court orders a delay in starting the period of custody, then s 56(6) allows a court to divide a probation or ISSO so that it is served in two parts – before and after a period of delayed custody and supervision. The first part of the order begins on the day it is made and ends at the start of custody. The remainder takes effect when the supervision portion of the sentence ends. For policy reasons, use of this option is discouraged. s 56(6)

Review of Sentences

Review of non-custodial sentences

Non-custodial sentences may be reviewed by the court. The YP, the YP's parent, Crown Counsel or the Provincial Director may apply for a review at any time. If the court is satisfied there are grounds for a review, it must review the sentence. s 59(1)

There are a number of grounds for review: s 59(2)

- there has been a material change in circumstances,
- the YP is unable to comply with or is experiencing serious difficulty complying with the terms of the youth sentence,
- the YP has contravened a condition of a probation order or ISSO without reasonable excuse,
- the sentence terms are adversely affecting the opportunities available to the YP to obtain services, education or employment, or
- on any other ground the court considers appropriate.

Upon review the court may:

- confirm the sentence,
- terminate the sentence, or
- vary the sentence or impose a new non-custodial sentence for any period of time not exceeding the remainder of the period of the original sentence.

s 59(7)

If the court imposes a new sentence following a review, it cannot be more onerous than the remainder of the original sentence, with the following exceptions:

s 59(8)

- the court may extend the time to pay a fine/compensation, make restitution, or complete community/victim service by up to 12 months
- if the review is the result of the youth contravening a condition of a probation or ISSP order, the court may impose additional or more onerous conditions that would better protect the public or assist the YP in complying with previously imposed conditions; such conditions must comply with s 38(2)(e.1).

s 59(9)

s 59(10)

Review of custodial sentences

For sentences involving custody, there are annual reviews **and** optional reviews.

s 94

Annual reviews

Annual reviews are used for each CSO/CCSO that has a custody portion longer than one year, and the order is reviewed one year from the date of the most recent sentence (where there is more than one sentence imposed).

s 94(1) & (2)

Optional reviews

The court may review a sentence involving custody:

- for sentences up to one year: 30 days after imposition of the sentence or after 1/3 of the sentence has been served, whichever is later, and
- for sentences longer than one year: 6 months after the date of the most recent sentence, and
- at any time with leave of the court

s 94(3)

s 94(4)

Grounds for review

There are a number of grounds for review:

- the YP has made sufficient progress to justify a change in the sentence,
- the circumstances that led to the sentence have materially changed,
- there are new services or programs available that were not available at the time of sentencing,
- the opportunities for rehabilitation are now greater in the community, or
- any other ground the court considers appropriate.

s 94(6)

Following the review of a sentence involving custody the court may:

- confirm the sentence,
- release the YP from custody and place the YP under conditional supervision (i.e. early release), or
- convert an IRCS order to a non-IRCS order.

s 94(19)

Because BC has opted into the YOA provisions regarding levels of custody, another option upon review is to transfer the YP from secure custody to open custody.

s 28 YOA & s 88

Custody and Supervision

Summary

The *YCJA* sets out the purpose of and principles for administering CSOs/CCSOs and the rules under which the youth justice system must operate.

- The focus of every custody sentence must be on reintegration and on measures aimed at helping the YP to not reoffend.
- A youth probation officer must be designated to work with each YP as soon as they are sentenced to custody, to develop and implement a reintegration plan.
- Each province is required to have at least two levels of youth custody.
- All YPs under 18 must serve their youth sentence in youth custody - "No YP who is under the age of 18 years is to serve any portion of the imprisonment in a provincial correctional facility or a penitentiary."

s 90(1)

s 85(1)

ss 76(2) & 84

There are provisions in the legislation, however, governing placement in or transfer to an adult facility for those YPs 18 and over.

ss 89, 92 & 93

Purpose of Custody and Supervision

The purpose of the youth custody and supervision system is to contribute to the protection of society by

- carrying out sentences through the safe, fair and humane custody and supervision, and
- assisting YPs to be rehabilitated and reintegrated into the community as law-abiding citizens by providing effective custody and supervision programs.

s 83(1)

Principles of Custody and Supervision

In addition to the principles in s 3, the following principles are to be used in achieving the purposes set out in s 83(1):

- use the least restrictive measures that are consistent with the protection of the public, people working with the YP and the YP;
- ensure that YPs sentenced to custody keep the same rights as other YPs;
- facilitate both families of YPs and members of the public to be involved with the YP;
- make custody and supervision decisions in a forthright, fair and timely manner to ensure that YPs have access to an effective review procedure; and
- ensure that the placement of YPs where they are treated as adults does not disadvantage them with respect to their eligibility for and conditions of release.

s 83(2)

Level of Custody

Each province must have at least 2 levels of youth custody distinguished by the degree of restraint of the YP in them.

s 85(1)

Although the *YCJA* allows either the PD or the court to determine the level of custody, in BC, it is the court that determines the custody level in accordance with an Order in Council.

s 88

The following *YOA* provisions continue to apply, with necessary changes, to determine the level of custody and its review: s 2(1) *YOA* "review board" and "progress report"; ss 11, 24.1 to 24.3 & 28 to 31 *YOA*.

Youth probation officers and reintegration

The PD must designate a youth probation officer to be assigned to work with a YP as soon as the YP is sentenced to custody. During the custodial portion of the sentence, the assigned youth probation officer prepares and implements a plan which sets out programs for the YP's reintegration into the community.

s 90(1)

When the YP serves the remainder of their sentence under supervision in the community, the youth probation officer supervises the YP, continues to provide support to the YP, and helps the YP to respect the conditions of their release and implement their reintegration plan.

s 90(2)

Conditions for Community Supervision in a Custody and Supervision Order

The last 1/3 of a CSO, under s 42(2)(n), is served in the community. Unlike probation orders, the supervision conditions are set by the PD prior to the YP's release and not by the court.

s 97

Mandatory Conditions

Mandatory conditions included in all s 42(2)(n) supervision orders include

s 97(1)

The YP must:

- keep the peace and be of good behavior,
- report to the PD and then be under the PD's supervision,
- inform the PD immediately on being arrested or questioned by police,
- report to the police, or any named individual, as instructed by the PD,
- advise the PD of their address of residence and immediately report any changes in the following information,

- address,
- occupation, including employment, training and volunteer work,
- family or financial situation, and
- circumstances that might affect their ability to comply with the conditions of the sentence, and
- not own, possess or have control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, except as authorized by the PD for the purposes of participating in a program.

Discretionary conditions

The PD may also set additional conditions under s 97(2) that:

s 97(2)

- support and address the needs of the YP,
- promote the YP's reintegration into the community, and
- offer adequate protection to the public.

In doing so, the PD must take into account:

- the needs of the YP,
- the programs which would most effectively reintegrate them into the community,
- the nature of the offence, and
- the YP's ability to comply with the conditions.

Conditions for Custody and Conditional Supervision Orders under ss 42(2)(o), (q), & (r), for Deferred Custody and Supervision Orders under s 42(2)(p), and After a Review under s 94(19)(b)

For sentences for SVOs and for IRCS orders, the community portion of a CCSO is called conditional supervision.

s 105(1)

S 105 sets out the process for setting conditions for releasing a YP on conditional supervision at the end of the custodial portion of a youth sentence for:

- attempt to commit murder, manslaughter, and aggravated sexual assault [s 42(2) (o)],
- murder [s 42(2) (q)], and
- IRCS orders [s 42(2)(r)].

S 105 also applies to the setting of conditions for:

- DCSOs [s 42(2)(p)], and
- early release after a review of a custodial sentence [s 94(19)(b)].

Unlike sentencing under s 42(2)(n), the court, rather than the PD, sets all the conditions for conditional supervision and deferred custody and supervision, including the optional conditions.

Conditions for a DCSO are set at the time of sentencing.

The process for setting conditional supervision conditions for sentences under ss 42(2) (o), (q) & (r) is as follows:

- the YP is brought before the court one month before the custodial portion of the sentence ends,
- the court considers the PD's s 105(6) report and hears from the YP,
- the court sets the conditions for the YP's conditional supervision that will come into effect on release.

Mandatory conditions – conditional supervision

These include all conditions set out in s 97, and listed under "Conditions for community supervision in a CSO ", with these additions:

s 105(2)
s 105(2)(b)
s 105(2)(h)

- the YP must appear before the court when required by the court to do so, and
- the YP must comply with any reasonable instructions that the PD considers necessary in respect of any condition of conditional supervision to prevent a breach of that condition or to protect society.

Discretionary conditions – conditional supervision

The court may also require a YP to:

s 105(3)

- on release, travel directly to their place of residence or to any other specific place,
- make reasonable efforts to find and keep suitable employment,
- attend any appropriate place of learning, training or recreation if the court is satisfied that a suitable program is available,
- live with a parent, or other appropriate adult, who is willing to provide for the care and maintenance of the YP,
- live in any place that the PD may specify,
- remain within the territorial jurisdiction of one or more courts named in the order,
- comply with conditions set out in the order that support and address the YP's needs and promote the reintegration of the YP into the community, and
- comply with any other conditions set out in the order that the court considers appropriate, including conditions for securing the YP's good conduct and preventing their re-offending.

Conditions Generally

Because restitution and community service are available as separate sentences, it is suggested that these do not form part of any probation, ISSO, CSO/CCSO or DCSO.

Extending the Custodial Portion of Custody and Supervision Orders

In extremely unusual cases, the court may order a YP to remain in custody for a period not exceeding the original expiry date of the community portion of the sentence. ss 98 & 104

The Crown or the PD may apply to the court for an order that a YP remain in custody for a period not exceeding their entire sentence for sentences under 42(2)(n). s 98(1)

For CCSOs under ss 42(2)(o), (q), or (r), only Crown can apply. s 104(1)

Before an order can be made, the case must meet the test outlined in s 98(3) or 104(1), as applicable. Any relevant factor may be considered including those listed in ss 98(4) and 104(3).

Reintegration Leave

The PD may grant a reintegration leave to any YP committed to a youth custody facility under a youth sentence. The YCJA also allows reintegration leave to be granted to a YP serving an adult sentence in a youth facility. s 91

It is available on any terms and conditions that the PD considers desirable for a period not exceeding 30 days.

A reintegration leave may be renewed by the PD for one or more 30-day periods on reassessment of the case. s 91(2)

The PD can revoke the leave at any time. s 91(3)

If the YP is not complying, or the leave is revoked, the YP can be arrested without warrant and returned to custody. s 91(4)

Placement in or Transfer to Adult Facilities

Turning 18 while serving a youth custodial sentence

After turning 18, a YP may be transferred to a provincial correctional facility for adults by the court, on the application of the PD, provided that: s 92(1)

- the YP, PD, and representatives of the provincial correctional system have an opportunity to be heard; and
- the court is satisfied that the transfer is in the best interests of the YP or in the public interest.

Turning 20 while serving a custodial sentence

When a YP turns 20 while serving a custodial youth sentence in a youth facility, s/he must be transferred to a provincial adult correctional facility unless the PD orders otherwise. s 93(1)

Young persons aged 20 at time of sentencing

A YP who is aged 20 or older at the time a youth custodial sentence is imposed must be committed to a provincial correctional facility for adults. s 89(1)

Transfer to federal penitentiary

Once a YP is serving a youth custodial sentence in a provincial adult facility under s 89(1), 92 or 93, the PD may apply to the court for authorization to direct that the YP be moved to a penitentiary to serve the remainder of the youth sentence if the court considers it to be in the best interests of the YP or in the public interest and if, at the time of the application, there are 2 years or more of the sentence remaining. ss 89(2), 92(2) & 93(2)

Provisions governing YPs serving a youth sentence in an adult facility

A YP who is serving a youth custodial sentence in an adult facility by order of the court, is subject to the legislation governing other prisoners in those facilities, except as the legislation conflicts with the provisions of Part 6 YCJA. These provisions, including access to youth records and disclosure of information in youth records, continue to apply to the YP. ss 89(3), 92(3) & 93(3)

Enforcement

Breach of Non-Custodial Sentences

A YP who willfully fails or refuses to comply with any of the following sentences, surcharges, or dispositions, is guilty of a summary conviction offence:

s 137

- a sentence under ss 42(2)(c) to (m) or (s) (other conditions),
- a victim fine surcharge, or
- certain YOA dispositions.

If the YP had turned 18 years of age before the breach offence, the charge is dealt with as an adult charge, but still under s 137 YCJA.

Breach of Custody and Supervision Order Conditions

For detailed information regarding enforcement of CSOs/CCSOs, contact a youth probation officer or a youth custody facility.

Summary

Under the YCJA, the ways to deal with breaches of the community supervision portion of custody sentences depend on whether it is a CSO or CCSO. They have similar procedures but there are some critical differences, including the test for remanding a YP in custody.

ss 102, 103, 107, 108 & 109

For either order type, apprehending a YP for a breach is by a warrant issued by the PD when the criteria for issuing a warrant are met (note that a breach of the community portion of a custody sentence is not a new offence). If the YP is arrested for another offence and has also been non-compliant with supervision conditions, the PD may still issue a warrant and it can be processed concurrently with the new charge(s).

Process

The process to enforce a supervision order is as follows:

- alleged breach occurs,
- a PD warrant is requested via Burnaby Youth Custody Services (phone: 778-452-2051; fax: 778-452-2129) (**YP cannot be arrested without a PD warrant**)
- upon arrest, the YP is held in custody and the PD conducts a review within 48 hours of being notified of the arrest,
- following the review, the PD can either release the YP back to the CSO/CCSO or remand the youth in custody and refer the matter to court for further review.

s 102 & 107

s 107 & 108

s 108

Information for police who execute a PD warrant

Under s 107(2) YCJA, a warrant issued under s 107(1) shall be executed by any Peace Officer to whom it is given at any place in Canada and has the same force and effect in all parts of Canada as if it had been originally issued or subsequently endorsed by a judge.

s 107(2)

If a Peace Officer believes on reasonable grounds that a PD warrant is in force, the officer may arrest the YP without the warrant.

s 107(3)

A YP arrested on a PD warrant shall be brought before the PD without delay and within 24 hours of arrest. If the PD is not available within 24 hours, the YP shall be brought before the PD as soon as possible.

s 107(4)

Upon arrest, the YP should be immediately transported to the nearest youth custody centre or, where there is no youth custody centre in reasonable proximity, the local police lock-up. If the person has attained the age of 20 years, s/he should be transported to the nearest correctional centre for adults or, where there is no correctional centre in reasonable proximity, the local police lock-up.

Following arrest, if the YP is held in the local police lock-up, Burnaby Youth Custody Services (phone: 778-452-2051; fax: 778-452-2129 – **weekends / after hours**) or the local youth probation office (**Monday-Friday, business hours**) shall be notified forthwith. The PD will, within 48 hours, review the case under s 108 YCJA, and either cancel the suspension or refer the case to the court for review. The YP should not be taken to court or for a bail hearing prior to completion of the PD review.

Options for the court for a review

s 103 & 109

If after giving the YP an opportunity to be heard:

- the court is not satisfied on reasonable grounds that the YP has breached or was about to breach a condition, it must order that the YP continue to serve his/her sentence in the community on the same or different conditions, or
- the court is satisfied, on reasonable grounds, that the YP has breached or was about to breach a condition, it may make an order that the YP either continue to serve his/her sentence in the community on the same or different conditions or remain in custody for a period that does not exceed the remainder of the sentence.
- for DCSSOs, the court may convert the remainder of the sentence to a "regular" CSO.

s 103(1) & 109(1)

s 103(2) & 109(2)

s 109(2)(c)

Additional Notes:

- BC and other courts have ruled that bail may be granted where a YP has been referred to court for review by the PD and is awaiting a youth justice court hearing.
- The YP is deemed not to be serving the sentence from the time the warrant is issued until arrest.

Adult Sentences

Summary

- All proceedings dealing with YPs are heard in the youth justice court, from first appearance through trial and sentencing, even when an AS is a possible outcome upon a finding of guilt.
- The Crown may seek an AS for a YP who was 14 years old or older at the time of the offence and has been found guilty of an offence for which an adult is liable to imprisonment for more than 2 years. s 64(1)
- The hearing to determine whether the YP should receive an AS takes place in the youth justice court after a finding of guilt as part of the beginning of the sentencing process. s 71
- If an AS is to be imposed, it is imposed by the youth justice court. s 72(1)
- The onus to prove an AS should be imposed under s 72(1) is on the Crown. s 72(2)

Application by the Crown for an Adult Sentence

Eligible cases

The Crown may seek an AS for a YP who was 14 years old or older at the time of the offence, and has been found guilty of an offence for which an adult is liable to imprisonment for more than 2 years. s 64(1)

When to make the application

The Crown makes the AS application in the court before evidence is called on sentencing or, if no evidence is called, before submissions are made on sentencing. s 64(1)

Notice of Intention to Seek an Adult Sentence

When notice is to be given

The Crown who intends to seek an AS must give notice either before the YP enters a plea or, with leave of the court, before the trial begins. Notice must be given to both the YP and the court. s 64(2)

Included offences

A notice of intention to seek an AS is considered notice in respect of any included offence of which a YP is found guilty and for which an adult could be imprisoned for more than 2 years if convicted of the same offence. s 64(3)& 69(2)

How notices are given

An application or notice under s 64 may be given orally to the court in the YP's presence or in writing, a copy of which must be served personally on the YP. s 81

Adult Sentence Application Hearing

Purpose

The purpose of a hearing under s 71 is to determine whether the court will impose an AS or a youth sentence under s 72(1) or 72(1.1) respectively.

Opportunity to be heard

The court shall make sure that the YP, the Crown, and the YP's parents have an opportunity to be heard at the hearing to determine whether to impose an AS or a youth sentence. s 71

The test for an adult sentence

The court must order that an AS be imposed if it is satisfied that s 72(1)

- the presumption of diminished moral blameworthiness or culpability of the YP (YPs are not to be held to the same standard as adults) is rebutted; and
- a youth sentence imposed in accordance with the purpose and principles set out in ss 3(1)(ii) & 38 would not be of sufficient length to hold the YP accountable for his/her offending behavior.

Onus on the Crown

The onus is on the Crown to satisfy the court that the requirements of s 72(1) have been met. s 72(2)

Orders for an adult or a youth sentence

If the requirements set out in s 72(1) are satisfied an AS must be imposed.

s 72(1)

If the requirements in s 72(1) are not satisfied then the court must impose a youth sentence.

s 72(1.1)

The court must consider the PSR before making an order under s 72(1) or (1.1).

s 72(3)

The court must state the reasons for its decision.

s 72(4)

When a youth sentence has been ordered under s 72(1.1)

When the court orders a youth sentence then all of the provisions of the *YCJA* apply including Part 4 Sentencing and the specific sentences set out in s 42(2).

When an adult sentence has been ordered under s 72(1)

When the court orders an AS, then Part XXIII (sentencing) and Part XXIV (dangerous and long-term offenders) of the *CC* apply.

s 74(1)

The finding of guilt becomes a conviction as soon as either the appeal is completed or the appeal period ends.

s 74(2)

Appeals

The order for an AS under s 72(1) or a youth sentence under s 72(1.1) must be appealed as part of the sentence.

ss 37(4) & 72(5)

Publication of identity of young person (adult sentences)

s 110

The general rule in s 110 is that no person may publish the name of a YP or any other information related to the YP if it would identify the YP as a YP dealt with under the *YCJA*. An exception to the general rule of a publication ban is when a YP has received an AS.

s 110(2)(a)

(for more information on publication, see "Publication, Records and Information" in this Pocket Guide)

Custody Placement When Subject to an Adult Sentence

Order for placement

Once a decision has been made to impose an AS, the court shall determine where the YP will commence serving the sentence.

s 76

Subject to ss 76(2) & (9), 79 & 80, when a YP is sentenced to an AS the court may order any part of the sentence be served in

s 76(1)

- a youth custody facility separate from any adult who is detained in custody,
- a provincial correctional facility for adults, or
- a penitentiary, if the sentence is for 2 years or more.

Opportunity to be heard

Before making an order under s 76(1) the court must give the YP, a parent of the YP, the Crown, the PD, and representatives of the provincial and federal correctional systems an opportunity to be heard.

s 76(3)

Young Persons under 18 held in youth facility

No YP who is under the age of 18 years is to serve any portion of the imprisonment in a provincial correctional facility for adults or a penitentiary.

s 76(2)

Once a YP serving an AS in a youth facility turns 20, there is a presumption that the YP will be transferred to an adult facility, unless otherwise ordered by the court. The court must be satisfied that remaining in the youth custody facility would be in the best interests of the YP and would not jeopardize the safety of others.

s 76(9)

Where a sentence is served

If a YP is subject to an AS with placement in an adult facility under s 76(1)(b) or (c) and is also subject to a custodial youth sentence, s/he must serve both sentences in an adult facility.

s 92(4)

Appeal or review of placement decision

The decision to place a YP in a custody facility under s 76(1) may be appealed as part of a sentence.

ss 37(4) & 76(5)

The decision on placement may also be reviewed after the appeal period has expired if the court is satisfied that the circumstances that resulted in the initial order have changed materially. Placement options at the review are the same as those at the initial placement.

ss 76(6) & (7)

How notices are given

An application or notice under s 76 may be given orally to the court in the YP's presence or in writing, a copy of which must be served personally on the YP.

s 81

Publication, Records and Information

Note: This Pocket Guide Section "Publication, Records and Information" is a summary of the content of the relevant sections of the YCJA. For accuracy and a comprehensive understanding of these provisions, the original legislation must be read.

Summary

The YCJA contains specific provisions protecting the privacy of young persons including prohibiting publication of the identity of young persons with limited exceptions. ss 110-112

The YCJA allows police services, courts, government and other persons involved in the administration of EJSs or sentences to keep records about a YP who is dealt with under the YCJA. ss 114-116

The YCJA specifically sets out who may have access to records or receive the information contained in them, and the time periods during which access is allowed. ss 119-120 & 124

The YCJA defines *publication* and *disclosure*. s 2(2)

Publication – Protection of Privacy of Young Persons – General Rule

The YCJA does not allow publication of the name or any information that would lead a YP to be identified as having been dealt with under the YCJA, with some exceptions. s 110(1)

The publication ban does not apply in the following circumstances: s 110(2)

- where a YP has received an adult sentence, or
- where the publication is made in the course of the administration of justice, if it is not the purpose of publication to make the information known in the community.

Under ss 110(3) & (4) for a YP who has been dealt with under the YCJA: s 110(3)

- the YP may publish or allow publication after they turn 18 as long as they are not in custody under the YCJA at the time of publication.
- the court may make an order to permit a YP who applies to publish information that would identify them if the court is satisfied that publication would not be contrary to their best interests or the public interest.

Young person at large and dangerous

An order can be made allowing information to be published that identifies a YP when the court is satisfied that the YP is dangerous to others and that the publication of the information is necessary to assist in apprehending the YP. The order made is in effect for a maximum of 5 days. s 110(4) & (5)

Publication of Victim or Witness Information

This provision protects the privacy of someone under the age of 18 who has been a witness or a victim in connection with an offence committed or alleged to have been committed by a YP. s 111

General Rule

The YCJA does not permit publication of the name of a young witness or victim, or any information that would lead someone to be identified as having been a young witness or victim, in connection with an offence committed or alleged to have been committed by a YP, with some exceptions. s 111(1)

Publication is permitted: s 111(2)

- when a young witness or victim has turned 18 years old or before that age with the consent of their parents, or
- by the parents of a young victim or witness who is deceased.

Application for leave to publish

If a young victim or witness makes an application, the court may make an order to permit them to publish information that would identify them if the court is satisfied that publication would not be contrary to their best interests or the public interest. s 111(3)

Publication Ban No Longer Applies

Once information about the identity of the YP, a young victim, or a young witness has been legally published pursuant to the YCJA, the general publication ban no longer applies. s 112

The general publication ban does apply, however, after the end of the 5-day period for a YP who is dangerous and at large. ss 110(4) & (5)

Disclosure of Information – General Rule

Information about a YP may not be disclosed if it would identify them as someone who has been dealt with under the *YCJA*. For that reason, only those people who are authorized under the *YCJA* may have access to records or receive the information in them. Those authorizations are found in the *YCJA*, ss 119 to 129. s 118(1)

A person who is entitled to access to a record may be given the information in the record and a copy of any part of the record. s 122

Access must be for a purpose authorized in s 119.

Adult Sentences

Sections 118 to 129 do not apply to records kept of an offence for which an AS has been imposed after the time for filing an appeal has run out or after all appeals have been completed. The record of an AS is treated the same as other adult records. s 117

Time Periods

Access to records and disclosure of records are subject to time limitations. s 119(2) & 120(3)

Until the non-disclosure period begins, persons listed in s 119(1) of the *YCJA* must, on request, be given access to court records under s 114 and may be given access to police and government records under ss 115 & 116.

The time periods for access to the records set out in s 119(2) differ according to the way the YP is dealt with by the court and the type of offence.

Access to EJM's other than EJS's can be disclosed only in the limited circumstances set out in s 119(4).

After the end of the period set out in s 119(2), other than to the YP and their counsel, access to the record can be granted only by a court order. s 123

A YP to whom a record relates, and their counsel, may have access to the record at any time. s 124

Destruction of records and disclosure after the access periods have ended are dealt with in ss 128 and 123 respectively.

There are special disclosure provisions and time periods with respect to police records for what are considered to be more serious offences in the schedule attached to the *YCJA*. s 120

Exceptional Cases of Disclosure

Various justice professionals are given the discretion to disclose information for specific purposes. The information may be disclosed only during the access period set out in s 119(2). ss 125 & 125(8)

- A peace officer may disclose information contained in police or court records to any person when it is necessary for the investigation of an offence. s 125(1)
- The Crown may, during the course of a proceeding, disclose information contained in police or court records to a person who is co-accused with the YP in respect of the offence for which the record is kept. s 125(2)(a)
- The Crown may, during the course of a proceeding, disclose information from police or court records to an accused that identifies a witness as a YP who was dealt with under the *YCJA*. s 125(2)(b)
- A peace officer may disclose information contained in police or court records to an insurance company for the purpose of investigating a claim arising out of an offence committed or alleged to have been committed by the YP to whom the record relates. s 125(4)
- The PD or a youth probation officer may disclose information in a record if the disclosure is necessary for gathering information to prepare a report that is required under the *YCJA*. s 125(5)
- The PD, a youth probation officer, the Crown, a peace officer or any other person who is providing services to YPs may disclose any information contained in court, police or government records to any professional or other person who is supervising or caring for a YP, including a representative of a school, school board or any other educational or training institution, if it is necessary:
 - to ensure the YP's compliance with an order of the youth justice court or the terms of a reintegration leave under s 91,
 - to ensure the safety of staff, students or other persons, or
 - to help rehabilitate the YP. s 125(6)
- The person to whom information is disclosed under s 125(6) must s 125(7)
 - keep the information separate from any other record of the YP to whom the information relates,
 - ensure that no other person has access to the information unless authorized by the *YCJA*. The person may disclose the information to another person if this is necessary for purposes of s 6, and
 - destroy their copy of the record when the information is no longer required for the purpose for which it was disclosed.

Court Ordered Disclosure to Authorized Persons

The PD, the Crown or a peace officer may apply to the court for authorization to disclose specific information about a YP to specified persons.

s 127

The information may be disclosed only during the access period set out in s 119(2).

s 127(4)

The court must be satisfied that the following circumstances make it necessary to disclose the information:

s 127(1)

- the YP has been found guilty of an offence involving serious personal injury,
- the YP poses a risk of serious harm to people, and
- the disclosure of the information is relevant to avoiding that risk.

The YP, their parents and the Crown must be given an opportunity to be heard before the court grants an order.

s 127(2)

The Crown may apply on an *ex parte* basis when reasonable efforts to locate the YP were made and were not successful.

s 127(3)

Restriction on further disclosure

Anyone who is given access to a record or to whom information is disclosed under the *YCJA* may disclose that information to another person only when authorized to do so under the *YCJA*.

s 129

Disclosure to Victims

Victims' access to records

Victims, on request, may be given access to court, police and government records.

s 119(1)(d)

Section 6 of BC's *Victims of Crime Act* provides for justice system personnel (as defined in that Act) to provide information to victims.

BC's Order of the Lieutenant Governor in Council

Section 119(1)(r) enables the Lieutenant Governor in Council to enact an Order in Council to permit individuals or classes of individuals to have access to records for a specified purpose during applicable access periods. BC has created an Order in Council which facilitates information sharing with several bodies, such as the Representative for Children and Youth, a Director under the *Crime Victim Assistance Act* and specified individuals under the *Criminal Records Review Act*.

s 119(1)(r)

Other Provisions to Note

Consent to Prosecute

In BC, s 2 of the *Crown Counsel Act* provides that the Criminal Justice Branch has the responsibility to "...approve and conduct, on behalf of the Crown, all prosecutions of offences in British Columbia". Crown have the responsibility of making a charge assessment decision which determines whether or not a prosecution will proceed.

Prosecutions may not be conducted by anyone other than the Crown without the consent of the Crown.

s 24

Conferences

"Conference" means a group of persons who are convened to give advice as set out in s 19.

Conferences can be used to look for advice on appropriate EJM, conditions for judicial interim release, sentences, reviews of sentences and reintegration plans, among other things.

s 19(2)

Who may call a conference

A conference may be called by a judge, the PD, a police officer, a justice of the peace, the Crown or a youth probation officer.

s 19(1)

How conferences work

There is more than one type of conference. An integrated case management conference brings together professionals and the YP to discuss services and programs available for the YP. A restorative justice type of conference may also be held

Mental Health Provisions

Medical and psychological reports

At any stage of the proceedings, the court may order an assessment of a YP by a qualified person who is required to report the results in writing:

s 34(1)

- with the consent of the YP and the Crown, or
- on its own motion or on the application of the YP or the Crown if the court believes a report is necessary for one of the purposes listed in s 34(2), and:
 - the court has reasonable grounds to believe that the YP is suffering from a physical or mental illness or disorder, a psychological disorder, an emotional disturbance, a learning disability or a mental disability,
 - the YP has a history indicating a pattern of offences, or
 - the YP is alleged to have committed a SVO.

Limited purposes

An assessment report can be ordered for a limited number of designated purposes, i.e. if the youth justice court is:

s 34(2)

- considering an application under s 33 (release from or detention in custody),
- deciding whether to impose an adult or a youth sentence,
- making or reviewing a youth sentence,
- considering an application for continuation of custody,
- setting conditions for conditional supervision,
- making an order after a review of a breach of conditional supervision, or
- authorizing disclosure of information about a YP.

A YP may be remanded in custody for the purpose of assessment but it cannot be for more than 30 days.

s 34(3)

There is a presumption against a custodial remand.

s 34(4)

A statement made by a YP for the purpose of or during the course of an assessment is not generally admissible in evidence.

s 147(1)

There are exceptions to this rule. See ss 147(1) & (2) for a complete list.

Who receives a copy of the report?

When the court receives a report under s 34(1)

s 34(7)

- under s 34(7)(a), the court must, subject to s 34(9), ensure a copy is given to
 - the YP,
 - any parent of the YP who attends any of the proceedings,
 - the YP's counsel, and
 - the Crown.
- under s 34(7)(b) the court may give a copy of the report to
 - a parent who is not in court, or
 - the PD or the director of the adult facility where a YP is serving a youth sentence if, in the court's opinion, withholding it would jeopardize the safety of any person, despite restrictions on access to records in s 119(6).

Who may have access to the report?

Only certain people may have access to medical and psychological reports listed in s 34. Those persons and positions are referred to in s 119(6). The PD is not entitled to a copy of the report unless the court has specifically authorized it as noted above.

s 119(6)

Mental disorder provisions

The CC provisions regarding mental disorders apply except to the extent they are inconsistent with the YCJA.

s 141

Referral to a Child Welfare Agency

A court may refer a YP to a child welfare agency at any stage of the proceedings for assessment to determine whether the YP is in need of child welfare services. This referral can be made in addition to any order the court may make. There is no obligation on the child welfare agency to report back to the court.

s 35

Appeals

The YCJA includes a number of provisions relating to appeals. Parties considering any kind of appeal should refer to the legislation.

s 37

Effect of Termination of a Youth Sentence

This is subject to the *Canada Evidence Act*, s 12 (examinations as to previous convictions).

s 82

If a YP is found guilty of an offence and

- the court directs an absolute discharge,
 - the youth sentence has ceased to have effect, or
 - a disposition under the YOA, other than a mandatory prohibition order under the YCJA or YOA, has ceased to have effect
- then the YP is deemed not to have been found guilty or convicted of the offence.

Exceptions under s 82(1)

- the YP may plead "autrefois convict" to a subsequent charge related to the offence,
- the court may consider the finding of guilt in considering an application for an AS,
- any court or justice may consider the finding of guilt in considering an application for judicial interim release or in considering what sentence to impose for any offence, and
- the Parole Board may consider the finding of guilt in considering an application for conditional release or for a record suspension under the *Criminal Records Act*.

s 82(1)

An absolute discharge or the termination of a youth sentence removes any disqualification in respect of the offence to which the YP is subject under any Act of Parliament by reason of a finding of guilt.

s 82(2)

Certain application forms must not contain a question that would require the YP to disclose the offence after the termination of the youth sentence.

s 82(3)

A finding of guilt under the YCJA is not a previous conviction for the purposes of any offence under any Act of Parliament where a greater punishment is prescribed because of a previous conviction, except when it is used to determine the AS to be imposed.

s 82(4)

Transitional Provisions

When a new law comes into force there are often transitional provisions that set the rules for:

Part 8

- offences that take place before the new law comes into force
- proceedings that have either not started or have not concluded before the new law comes into force.

The YCJA includes transitional provisions.

Youth Justice Act (BC)

Introduction

The *Youth Justice Act* (British Columbia) (*YJA*) came into force on April 1, 2004.

Part 1 of the *YJA* deals primarily with offence proceedings and sentences that are available for YPs that commit provincial statute offences.

Parts 2, 3 and 4 deal primarily with youth justice services that are provided through the Ministry of Children and Family Development (including youth probation officers, community-based programs and youth custody centres) for YPs who are subject to proceedings under the *YCJA* and the *YJA*.

Notices to parents

If a YP is released on a process to attend court on a provincial statute offence, the officer who issued the process must give written notice to the parent as soon as possible. s 5 *YJA*

If a YP is detained in custody pending a court appearance on a provincial statute offence, the officer in charge at the time of the detention must notify the parent of the detention as soon as possible.

Sentences

Sentencing provisions under the *YJA* are different than those under the *YCJA*.

Available sentences include: s 8 *YJA*

- an absolute or conditional discharge,
- a fine not exceeding \$1000,
- community services (maximum 240 hours),
- probation (maximum 6 months).
- custody not exceeding 30 days for specified offences (breach of a *YJA* order, contraband/trespassing at a youth custody or correctional centre, assisting an escape from a mental health facility, trespassing on school grounds); and,
- custody not exceeding 90 days for breaching a restraining order under the *Child, Family and Community Services Act* and for certain *Motor Vehicle Act* offences (driving while prohibited or suspended).

Note: Unlike the *YCJA*, custody sentences under the *YJA* do not include a period of community supervision. The court may, however, order a period of probation to follow a custody sentence if it considers it appropriate to do so.

Youth justice programs

The list of youth justice programs that may be established by the Minister reflects the range and types of community-based services that may be provided (e.g. extrajudicial sanctions, victim-offender mediation, intensive support and supervision, bail supervision, etc). s 28 *YJA*

Receiving and moving young persons in custody

A YP who is serving a *YJA* custody sentence may be placed in an adult facility after s/he attains the age of 18. s 31 *YJA*

Reintegration leave, day absences and employment

Provisions for reintegration leaves for YP's serving a *YJA* custody sentence are consistent with the *YCJA*. Given the shorter custody sentences available under the *YJA*, however, the maximum length of such leaves is 15 days, rather than the 30-day maximum under the *YCJA*. s 35 *YJA*

Enforcement

Failure to comply with a community-based sentence is an offence. s 17 *YJA*

A YP who is unlawfully at large from a youth custody centre may be arrested without a warrant and returned to custody. s 40 *YJA*