



NOVA SCOTIA

**POCKET
GUIDE**

YCJA

**YOUTH
CRIMINAL
JUSTICE
ACT**



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GUIDE**

2013 YCJA

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CRIMINAL
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LEGEND

AS	adult sentence
CC	Criminal Code
EJM	extrajudicial measures
EJS	extrajudicial sanctions
IRCS	intensive rehabilitative custody and supervision order
NIRCS	non-IRCS cases
JDA	Juvenile Delinquents Act
JP	Justice of the Peace
RJ	restorative justice
SVO	serious violent offence
SS&CA	Safe Streets and Communities Act S.C. 2012, c.1
YCJA	Youth Criminal Justice Act
YJA	Youth Justice Act (NS)
YOA	Young Offenders Act
YP	young person
⌚	time limit

Green type indicates sections of the YCJA.

Violet background indicates a legislative change under the SS&CA 2012.

Violet type indicates references to section in the SS&CA 2012.

Note: The word "court" in this document means youth justice court.

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INTRODUCTION

Background

The Juvenile Delinquents Act was in force from 1908 until 1984.

The Young Offenders Act (YOA) was in force from 1984 until 2003.

The Youth Criminal Justice Act (YCJA) is the federal legislation that replaced the YOA in April 2003. The Pocket Guide *Moving Forward* summarized the changes that were brought about when the YCJA was implemented in 2003 and some of the YOA provisions that were kept in the YCJA. This new guide, *Nova Scotia Pocket Guide to the Youth Criminal Justice Act 2013 Edition*, adds summaries of the key changes made to the YCJA by the [Safe Streets and Communities Act S.C. 2012, c.1, \(SS&CA\) effective October 23, 2012](#).

The key components of the YCJA are presented in eleven sections which correspond to the divider tabs in the *Pocket Guide*. A twelfth section describes the impact of the Youth Justice Act (YJA), the Nova Scotia legislation which deals with YPs in relation to provincial offences and municipal by-laws. The guide also includes “Fundamental questions” under the divider tab **Questions & Definitions**.

General Rule – Application of the CC

The YCJA is a procedural statute which creates specific rules that apply when dealing with YPs. It does not stand alone and the general rule is that the provisions of the CC apply, except to the extent that they are inconsistent with or excluded by the YCJA. [s.140](#)

In particular, Part XXVII of the CC, the rules for Summary Conviction offences, applies to the YCJA with a few additional provisions and except to the extent that Part XXVII is inconsistent with the YCJA. [s.142](#)

Declaration of principle

[s.3](#)

The principles in [s.3](#) must be used to interpret the entire act. The act must be liberally construed 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 extrajudicial measures, youth sentencing, and custody and supervision are set out in those sections.

(see “Principles governing extrajudicial measures,” [s.4](#), p.10, “Youth sentencing principles,” [s.38\(2\)](#), p.26, and “Principles of custody and supervision,” [s.83\(2\)](#), p.77)

The Declaration in [s.3\(1\)](#) contains the following principles

- a** the youth criminal justice system is intended to protect the public by
 - i** holding YPs accountable through measures that are in proportion to both how serious the offence is and the level of the YP’s responsibility for the offence
 - ii** helping to rehabilitate and reintegrate YPs who have committed offences
 - iii** helping prevent crime by referring YPs to programs or agencies in the community that can address the circumstances underlying their offending behaviour

- b** the criminal justice system for YPs must be separate from that of adults and MUST
- be based on the principle of a YP's diminished moral responsibility or culpability in relation to their age and experience
 - emphasize the following
 - i** rehabilitation and reintegration
 - ii** accountability that is fair and in proportion with YPs' greater dependency and reduced level of maturity
 - iii** enhanced procedural protections to protect YPs' rights, including their privacy, and to make sure they are treated fairly
 - iv** timely intervention that reinforces the link between offending and consequences
- AND
- v** promptness and speed by persons responsible for enforcing the act given YPs' perception of time
- c** within the limits of fair and proportionate accountability, the measures taken against a YP should
- i** reinforce a YP's respect for the values of society
 - ii** encourage the repair of harm done to victims and the community

- iii** have meaning for the YP given their 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

- iv** respect gender, ethnic, cultural, and linguistic differences and respond to the needs of aboriginal YPs and of YPs with special needs

AND

- d** proceedings against YPs are required to apply these special considerations
- i** YPs have rights and freedoms which are specially guaranteed, including the right to be heard, and to participate in the process of making decisions that affect them
 - ii** victims should be treated with courtesy, compassion, and respect, and should suffer the minimum degree of inconvenience
 - iii** victims should be provided with information and given an opportunity to participate and be heard
- AND
- iv** parents should be informed of measures or proceedings and encouraged to support their children as the YPs address their offending behaviour

Jurisdiction of the youth justice court

All of the proceedings under the YCJA take place in the youth justice court. This court has exclusive jurisdiction over any offence that a person is alleged to commit while they are a YP, subject only to the Contraventions Act and the National Defence Act. [s.14\(1\)](#)

What constitutes a youth justice court and judge

youth justice court [s.13](#)

any court that a province designates as a youth justice court for the purposes of the YCJA

youth justice court judge [s.13](#)

a person who is appointed or designated as a judge of the youth justice court or a judge sitting in a court created or designated as a youth justice court

If a YP elects to be tried by a judge without a jury, or a judge and jury, the judge and court elected are the superior court of criminal jurisdiction in the province. The court and judge which the YP elects are deemed to be a youth justice court and youth justice court judge. [s.13\(2\),\(3\)](#)

Admissibility of statements

In order for a YP's statement to be admitted in evidence it **MUST** be taken in accordance with [s.146](#) of the YCJA. The rules are comprehensive. When the rules are not followed, the statement may be **EXCLUDED FROM EVIDENCE**.

(see [s.146](#) and *"Short sections: 'Appeals' to 'Statements'," p.105*)

After a YP reaches age 18

Extrajudicial measures taken, or judicial proceedings which are started under the YCJA against a YP, may be continued under the YCJA after the person reaches age 18. [s.14\(4\)](#)

(see *"Transitional Provisions," p.123*)

The YCJA applies to persons 18 and over who are alleged to have committed an offence while a YP. [s.14\(5\)](#)

Offences during a period that includes a YP's 18th birthday [s.16](#)

The youth justice court has jurisdiction over an offence which a YP is alleged to have committed during a period that includes the date of their 18th birthday.

(see [s.16](#) of the YCJA for details)

Jurisdiction of a justice of the peace

Justices of the peace may carry out any proceedings that may be carried out before a justice under the CC except for plea, trial, and adjudication. [s.20\(1\)](#)

A justice of the peace may decide on judicial interim release. After their decision, an application may be made to the youth justice court to release the YP or to detain them. This application must be heard as an original application. [s.33\(1\)](#)

A justice of the peace 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 issue to a youth justice court. [s.20\(2\)](#)

(see “Short sections: ‘Appeals’ to ‘Statements’: Peace Bonds,” p.112)

EXTRAJUDICIAL MEASURES (EJM)

What extrajudicial measures are

EJM are measures other than court proceedings used to deal with a YP who has committed an offence (DOJ Canada).

Part 1 of the YCJA, Extrajudicial Measures, sets out the particulars for authorized non-court options. These non-court options fall into three

basic categories

- listed options that police MUST consider [s.6](#)
- caution programs for police and Crown that MAY be established by the Attorney General [ss.7&8](#)
AND
- the more-formal program of extrajudicial sanctions which requires a referral. The referral may come from police, Crown, or both depending on the rules of the program [s.10](#)

Principles governing extrajudicial measures

s.4

(in addition to the overall principles in s.3)

EJM

- a** are often the most **appropriate and effective** way to address youth crime
- b** allow for **effective and timely** interventions that focus on correcting a YP's offending behaviour
- c** are **presumed to be adequate** to hold a YP accountable if the offence was non-violent and the YP had no previous finding of guilt

AND

- d** should be used when they are adequate to hold a YP accountable for their offending behaviour. The act allows the use of EJM when these measures satisfy the principles in this section even if the YP has previously been dealt with by EJM or has been found guilty of an offence

Objectives of extrajudicial measures

s.5

EJM should be designed to

- a** provide an effective and timely response to offending behavior outside of judicial proceedings
- b** encourage YPs to acknowledge and repair the harm they caused to the victim and the community
- c** encourage families of YPs to get involved in designing and implementing the measures. This includes extended families where appropriate and members of the community
- d** give victims a chance to take part in making decisions that relate to the measures that are selected, and to receive reparation

AND

- e** respect the rights and freedoms of YPs, and be proportionate to the seriousness of the offence

Less-formal measures

Take no further action, warnings, cautions, and referrals

These are measures that can be used by police and crown attorneys to deal with YPs without using the formal youth justice court system. EJM include extrajudicial sanctions. EJS is the formal program known as Alternative Measures under the YOA.

Before laying a charge or referring the matter to EJS, a police officer MUST consider whether one of these actions would satisfy the principles set out in [s.4](#)

- take no further action [s.6\(1\)](#)
- warn the YP [s.6\(1\)](#)
- administer a caution [s.6\(1\),7](#)
(if a program is established under [s.7](#))
- refer the YP to a program or agency in the community that may help the YP to not commit offences. The YP must consent to the referral [s.6\(1\)](#)
 - examples include recreation, addiction services, counseling programs, or a YP working with a tradesperson

All future charges against the YP for the offence continue to be valid even if a police officer does not consider any of these extrajudicial measures. [s.6\(2\)](#)

The Crown may also administer a caution if a program is established. [s.8](#)

The youth justice court does not admit evidence of the offence, or any of the following evidence, as a way to prove prior offending behaviour: the YP received a warning, caution, or referral, or no further action was taken. [s.9](#)

More-formal measures

Extrajudicial Sanctions (EJS) – Background

EJS are the most-formal type of extrajudicial measures and are part of a program authorized by the Attorney General, [s.10\(2\)\(a\)](#). In Nova Scotia this program is delivered through the Nova Scotia Restorative Justice Program, which is delivered by 8 community justice agencies throughout the province and the Mi'kmaw Legal Support Network (MLSN). [s.10](#)

The Restorative Justice Program creates a forum for YPs, victims, and other parties to develop ways for a YP to make up for the harm caused by their offence, as an alternative to the formal court process.

The Nova Scotia Restorative Justice Program delivers the EJS Program as well as a number of other programs. For more information go to www.gov.ns.ca/just.rj

Restorative justice is a response to crime that focuses on restoring the losses suffered by victims and communities. It holds offenders accountable for the harm they have caused. Restorative justice is a different way of thinking about crime and our response to crime.

Pre-conditions for using extrajudicial sanctions s.10(2)

An EJS may be used for these reasons only

- a it is part of an authorized program of sanctions
- b the program is considered appropriate to the needs of the YP and the interests of society
- c the YP gives their informed consent to participate
- d the YP knows they have the right to be represented by counsel and has the opportunity to consult counsel before they agree to attend the program
- e the YP accepts responsibility for the actions that form the basis of the alleged offence
- f the crown attorney believes there is enough evidence to prosecute the offence
- g the law does not bar prosecuting the offence s.10(2)

Limitations on using extrajudicial sanctions

EJS may be used only if a YP cannot be adequately dealt with by a warning, caution, or referral because of

- the seriousness of the offence
- the nature and number of previous offences they committed
- any other aggravating circumstances s.10(1)

Before a police officer can refer a matter to the formal EJS program or lay a charge, they must consider whether it would be sufficient based on the principles of EJM set out in s.4 to use the s.6 options.

When an extrajudicial sanction may NOT be used

An EJS may not be used for these reasons s.10(3)

- the YP denies that they were involved
- the YP asks for the youth justice court to hear the case

Informing parents of a YP who chooses an extrajudicial sanction

The person who administers the program must inform the parents of the YP about the sanction. s.11

Informing a victim about a YP and an extrajudicial sanction

s.12

If a victim asks to know, a police officer, Crown Attorney, provincial director, or representative from Victims' Services must tell them the identity of the YP and how the offence has been dealt with.

Notes to police, Crown, and restorative programs

Notes to police on EJM & EJS generally

Police **MUST** consider these measures: take no further action, warnings, cautions, and referrals. [s.6](#)

EJS should be used **ONLY** when an officer determines that warnings, cautions, and referrals are not adequate. [s.10\(1\)](#)

Nothing in the YCJA prevents using EJM more than once. [s.4\(d\)](#)

Police **MUST** keep records of EJM. [s.115\(1.1\)](#)

Notes to police, Crown, and restorative justice programs

Restorative justice and EJS policy

Referrals to restorative justice can be made

- by police for Level 1 offences
AND
- by police or the Crown for Level 2 offences

Note a key change

The amendment to [s.39\(1\)\(c\)](#) now includes, for indictable offences, **EJS** in the “history that indicates a pattern” as one of the preconditions for imposing a custodial sentence. [s.39](#)

PRE-TRIAL PROCEDURES

Judicial interim release

[ss.28 to 33](#)

General rule

[ss.28 & 29](#)

All provisions in Part XVI of the CC that apply to judicial interim release for adults apply to YPs, except where they are inconsistent with or excluded by the YCJA. [ss.28 & 29](#)

Key provisions for judicial interim release

YP must first appear before a judge or justice [s.32\(1\)](#)

The youth justice court judge or justice **MUST**

- a** have the information or indictment read to the YP
- b** if the YP is **NOT** represented by counsel, inform the YP of that right
AND
- c** advise the YP if there is a possibility of an adult sentence

No detention allowed

[s.29\(1\)](#)

A YP **MUST NOT** be detained in custody before sentencing as a substitute for appropriate child protection, mental health, or other social measures. [s.29\(1\)](#)

Justification for holding a YP in custody s.29(2)

A youth justice court judge or justice may hold a YP in custody ONLY IF

- a** the YP is charged with
 - i** a serious offence
OR
 - ii** an offence other than a serious offence where the YP's history shows a pattern of
 - outstanding charges
OR
 - findings of guilt
- b** a youth justice court judge or justice is satisfied that on a balance of probabilities custody is necessary to
 - i** make sure the YP will appear in court as required
 - ii** protect the public, including a victim or witness, having regard to all of the circumstances
OR

- iii** maintain confidence in the administration of justice for this reason
 - a YP has been charged with a serious offence
AND
 - detention is not justified under (i) or (ii)
BUT
 - there are exceptional circumstances. The youth court judge or justice must consider the principles in s.3 as well as the four circumstances listed in s.29(2)(iii) in making this assessment

AND

- c** the youth justice court judge or justice is satisfied that on the balance of probabilities the conditions of release would NOT
 - i** be sufficient to make sure a YP will appear in court as required
 - ii** protect the public
OR
 - iii** maintain confidence in the administration of justice s.29(2)

Note

Justification for holding a YP in custody, s.29(2), is a summary of the content. For accuracy and a comprehensive understanding of the section you must read the original legislation.

Requirements of CC s.515

An order for detention is made under CC s.515 and therefore the conditions set out in that section must also be met.

The onus is on the Crown

s.29(3)

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

Release to a responsible person

s.31

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

- a the YP would be detained, but for this subsection
 - b the person is willing and able to take care of and exercise control over the YP
- AND
- c the YP is willing to be placed in the care of the responsible person

If a YP would be detained because there is no responsible person, then the youth justice court judge or justice must ask whether a responsible person is available and whether the YP is willing to be placed in that person's care. s.31(2)

Before a YP is placed in the care of a responsible person the YP and the responsible person must both enter into undertakings to a youth justice court judge or justice. s.31(3)

⌚ Breach of an undertaking that places a YP in the care of a responsible person may be prosecuted as an indictable or a summary conviction offence. The maximum penalty if prosecuted by indictment is 2 years. s.139

Release from detention in custody

If a YP is charged with an offence listed in CC s.469 then release can be ordered by a youth justice court judge ONLY, NOT by a justice. s.33(8)YCJA & CC s.522

The YCJA contains provisions that allow for review of orders for judicial interim release that were made by youth justice court judges or justices. s.33

Election—choosing a mode of trial s.67

A YP must elect how they will be tried in ANY of these circumstances

- the Crown has given notice that they intend to seek an AS for an offence for which an adult could receive more than 2 years imprisonment when the offence is alleged to have occurred after the YP reached the age of 14 years s.64(1)&(2)&s.67(1)(b)
- the YP is charged with having committed 1st or 2nd degree murder when the offence is alleged to have occurred while they were age 12 or 13 s.67(1)(c)
- it is unclear whether the person was a YP or an adult at the time of the offence, but they were at least 14 AND they are charged with committing an offence for which an adult would receive an election s.67(1)(d)

The YP may elect 1 of 3 options s.67(2)

- trial by a youth justice court judge without a preliminary inquiry
- trial by a judge without a jury
- trial by a judge and jury

Trial before a judge without a jury or a judge and jury

If the YP does not elect, then they are deemed to have elected to be tried by a judge and jury. s.67(2)

If the YP ELECTS to be tried by a judge without a jury, or elects or is deemed to have elected to be tried by a judge and jury, then there will be a preliminary inquiry ONLY IF the YP or the Crown asks for one. s.67(2)

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

When a YP is tried by either a judge without a jury, or by a judge and jury, the trial judge must be a judge of a superior court of criminal jurisdiction. The superior court judge will be deemed to be a youth justice court judge and the court is deemed to be a youth justice court for the purpose of the proceedings. s.13(2),(3)

In addition, 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 AND these exceptions s.67(9)

- the privacy provisions of the YCJA apply s.67(9)(a)
AND
- a YP who is removed from court under CC s.650(2) is entitled to be represented in court by counsel s.67(9)(b)

YOUTH SENTENCES

Summary

The YCJA

- defines the purpose of youth sentences
- provides the purpose, principles, and factors that must be considered when a youth sentence is imposed
- has a number of youth sentence options
- sets out conditions that must exist before a custodial sentence is imposed
- includes a supervision portion as part of all custodial sentences

These sections apply **ONLY** when a YP is given a youth sentence.

WHEN the court orders an adult sentence, then Part XXIII (sentencing) and Part XXIV (dangerous and long-term offenders) of the CC apply. [s.74\(1\)](#)
(see *“Adult Sentences,” p.53*)

Purpose of youth sentence s.38(1)

The purpose of the youth sentencing is to hold the YP accountable for the offence by imposing just sanctions

- that have meaningful consequences for the YP
- AND
- that promote their rehabilitation and reintegration into society
- thereby contributing to the long term protection of society

Youth sentencing principles s.38(2)

(subject to the overall principles in s.3)

- a** 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
 - b** 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
 - c** the sentence must be proportionate to the seriousness of the offence and the YP's degree of responsibility for it
 - d** all available alternatives to custody that are reasonable in the circumstances should be considered, with particular attention to the circumstances of aboriginal youth
- AND

- e** subject to (c), the sentence must
 - i** be the least restrictive sentence and consistent with the purpose of the youth sentence in s.38(1)
 - ii** be the sentence most likely to rehabilitate the YP and reintegrate them into society
 AND
 - iii** promote a sense of responsibility in the YP, and an acknowledgment of the harm done to the victims and the community
- f** subject to (c) the sentence may have the following objectives
 - i** to denounce unlawful conduct
 AND
 - ii** to deter the YP from committing offences

Factors the court must consider in determining a youth sentence s.38(3)

- a the degree the YP has participated in the offence
 - b the harm done to the victims and whether it was intentional or reasonably foreseeable
 - c any reparation the YP has made to the victim or the community
 - d any time the YP has already spent in detention as a result of the offence
 - e previous findings of guilt against the YP
- AND
- f any other aggravating and mitigating circumstances relevant to the purpose and principles of youth sentencing

Restrictions on custody s.39(1)

The court must NOT impose a custodial sentence UNLESS at least one of the following conditions is met

- a the YP has been found guilty of a violent offence
 - b the YP has failed to comply with non-custodial sentences
 - c 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 extrajudicial sanctions or of findings of guilt or both
- OR
- d in EXCEPTIONAL cases, if the offence is indictable and the aggravating circumstances would make a non-custodial sentence inconsistent with the purpose and principles of youth sentencing set out in s.38

Note: If one of paragraphs 39(1)(a),(b) or (c) applies

- the court MUST consider all alternatives to custody that were raised at the sentencing hearing and that are reasonable in the circumstances
- AND
- MUST NOT impose a custodial sentence unless it determines that no reasonable alternative or combination of alternatives would achieve the purpose and principles of sentencing set out in ss.38 & 39(2)

Other sentencing considerations s.39(3)

In determining whether there is a reasonable alternative to custody the court **MUST** consider submissions related to

- a** alternatives to custody that are available
 - b** the likelihood that the YP will comply with a non-custodial sentence, taking into account their compliance with previous non-custodial sentences
- AND
- c** alternatives to custody which have been used for YPs who have committed similar offences in similar circumstances s.39(3)

It is possible for the court to use the same non-custodial sentence, or any other non-custodial sentence, for a YP who has previously received a non-custodial sentence. 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 presentence report **UNLESS** the court is satisfied that it is not necessary and the Crown **AND** the YP or their lawyer gives their consent. s.39(6)&(7)

Under the YCJA, all custodial sentences have a supervision portion. When setting the length of a custodial sentence, the court **MUST** be guided by the purpose and principles in s.38 and 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 would **NOT** achieve the purpose of youth sentencing. If a custodial sentence is imposed for a case which is considered **EXCEPTIONAL**, the court must give reasons why the case is exceptional under s.38(1)(d). s.39(9)
(see "Restrictions on custody," p.29)

Imposing a youth sentence

Before imposing a youth sentence, the court must consider recommendations from a conference if one is held, any pre-sentence report that is prepared, representations made by the parties or their lawyer, representations made by the parents of the YP if any, and any other relevant information that is before the court. [s.42\(1\)](#)

(see “Conferences,” p.108 and “Pre-sentence reports,” p.114)

Possible youth sentences [s.42\(2\)](#)

Section [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\(r\)](#)]

- a** a reprimand – similar to a warning by a judge
- b** an absolute discharge
- c** a conditional discharge – this may require supervision by the provincial director
 - the court may NOT combine the sentence of conditional discharge with (k) "probation," (l) "ISSP", or (m) "attendance order" to attend an approved non-residential program [s.42\(11\)](#)

Note: To learn more about the Nova Scotia Fine Option Program go to novascotia.ca/just/Corrections/fine_option.asp

- d** a fine to a maximum of \$1,000
 - the court **MUST** consider present and future means of the YP to pay [s.54\(1\)](#)
 - the fine may be discharged through fine options if a program is established [s.54\(2\)](#)
 - the YP may apply to extend the time to pay [s.54\(10\)](#)
- e** an order to pay compensation for specified losses or specified damages to another person
 - 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\(10\)](#)
- f** an order for the restitution of property to another person
 - 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\(10\)](#)

- g** an order to compensate any innocent purchaser of property when the court has made an order for the restitution of the property to its owner or any other person
- 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)
- h** subject to s.54, an order to compensate any person, in kind or by way of personal services
- Ⓞ the time limit is 240 hours of service to be completed 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)
- i** subject to s.54, an order to perform a community service and to report to, and be supervised by, the provincial director or a person designated by the court
- Ⓞ the time limit 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 provincial director OR the placement must consent s.54(9)
 - the YP may apply to extend the time to pay s.54(10)
- j** subject to s.51 (mandatory prohibition order), any order for prohibition, seizure, or forfeiture that could be imposed under federal legislation – other than an order under CCs.161 (order of prohibition) (see also “Prohibition Orders,” p.48)

k probation

- ⓪ the time limit is 2 years
- mandatory and optional conditions for the order [s.55](#)
- communication of the order [s.56](#)
 - the order must be read to or by the YP [s.56\(1\)\(a\)](#)
 - the order must be explained to the YP and the YP must confirm that they understand 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 may attend 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\(2\)](#)

l an intensive support and supervision program approved by the provincial director

Before the order is made, the provincial director must determine that a program to enforce the order is available. [s.42\(3\)](#)

This option is intended to provide more support and closer monitoring than a probation order.

[Ss.55&56](#) apply as with probation.

m attendance order

This option requires that a YP attend a non-residential program approved by the provincial director, at specified times and on specified terms

Before the order is made, the provincial director **MUST** determine that a program to enforce the order is available [s.42\(3\)](#)

- ⓪ the time limit is 240 hours over a maximum period of 6 months
- 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\(7\)](#)

- n** custody and community supervision order
- ⌚ 2/3 of the sentence is served in custody and 1/3 is served under supervision in the community
 - ⌚ the time limit is
 - 2 years for most offences
 - 3 years for those offences for which an adult could receive life imprisonment
 - mandatory conditions for the custody and supervision order are in [s.97\(1\)](#)
- AND
- other conditions can be added by the provincial director under [s.97\(2\)](#)
- (see “Conditions for community supervision in a custody and supervision order, [s.42\(2\)\(n\)](#),” p.85)*
- the Crown or the provincial director may apply to the court under [s.98](#) to keep the YP in custody and NOT release them on supervision for a period that does not exceed the remainder of the sentence, the last 1/3 [s.98](#)

(see “Extending the custodial portion of custody and supervision orders, [s.42\(2\)\(n\)](#),” p.90)

- o custody and supervision order where the community supervision portion of the sentence is served under “conditional supervision” for the following offences: attempted murder, manslaughter, and aggravated sexual assault
 - ⌚ the time limit is 3 years—the court sets the relative times for custody and conditional supervision
 - the court sets the conditions for conditional supervision under [s.105](#)
- (see “Conditions for conditional supervision for sentences under [s.42\(2\)\(o\),\(q\)&\(r\)](#),” p.87)*
- the Crown may apply to the court under [s.104](#) to keep the YP in custody and not release them on conditional supervision

(see “Extending the custodial portion of orders for custody that have conditional supervision for [s.42\(2\)\(o\),\(q\)&\(r\)](#) sentences,” p.93)

- p** subject to [s.42\(5\)](#), deferred custody and supervision order—similar to the adult sentencing option of conditional sentence

The youth justice court can sentence a YP to a deferred custody and supervision order

ONLY IF [s.42\(5\)](#)

- a** the YP is found guilty of an offence other than one where the YP causes or attempts to cause serious bodily harm in committing the offence

AND

- b** it is consistent with the purpose and principles [s.38](#)

and the restrictions on custody [s.39](#)

⌚ the time limit is 6 months

- it is subject to appropriate conditions [s.105](#)
- the order is enforced as if it were a conditional supervision order

- q** custody and conditional supervision for murder

i *murder 1st degree*

⌚ the time limit is 10 years—custody up to 6 years followed by conditional supervision in the community

ii *murder 2nd degree*

⌚ the time limit is 7 years—custody up to 4 years followed by conditional supervision in the community

(see “Conditions for conditional supervision for sentences under [s.42\(2\),\(o\),\(q\)&\(r\)](#), deferred custody and supervision orders under [s.42\(2\)\(p\)](#), and after a review [s.94\(19\)\(b\)](#),” p.87)

Note

[Ss.106 to 109](#) apply to a breach of a deferred custody and supervision order. [s.42\(6\)](#)

- r** subject to s.42(7), intensive rehabilitative custody and conditional supervision (IRCS)

This option may be considered as an alternative to an AS

IRCS is available for a YP only if s.42(7)

- a i** the YP has been found guilty of a SVO
OR
ii 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

- b** the YP suffers from a mental illness or disorder, a psychological disorder, or an emotional disturbance

- c** 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

- d** the provincial director has determined that an IRCS program is available and appropriate
- the YP does NOT have to be 14 or older at the time of the offence. The court may impose IRCS on any YP aged 12 to 17 who meets the criteria
- ⊙ the time limits for the maximum length of IRCS are:
- 2 years
 - 3 years for offences punishable by life imprisonment for adults
 - 10 years for first degree murder
 - 7 years for second degree murder

The rules for the periods of custody and community supervision apply.

(see “Conditions for conditional supervision for sentences under s.42(2)(o),(q)&(r),” p.87)

- 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)

- s** any other reasonable and ancillary conditions that the court considers advisable and in the best interests of the YP and the public

IRCS POLICY
DEPARTMENT OF JUSTICE
CORRECTIONAL SERVICES

The Executive Director, Correctional Services is designated as the Provincial Director under the Youth Criminal Justice Act (YCJA), by Order in Council, for the purpose of determining that 1.3.1, an intensive rehabilitative custody and supervision program, is available in accordance with section 42(7)(d) YCJA.

(see the Policy of the Department of Justice – Correctional Services)

NON-IRCS POLICY (NIRCS)
DEPARTMENT OF JUSTICE
CORRECTIONAL SERVICES

There is also a policy for Non-IRCS cases and offences that qualify for special treatment due to the nature of the offence and the particular circumstances of the YP.

(see the Policy of the Department of Justice – Correctional Services)

Other sentencing provisions

Ⓞ Maximum youth sentences

- 2 years
- 3 years for offences punishable by life imprisonment for adults
- 10 years for 1st degree murder
- 7 years for 2nd degree murder

Any single sentence under s.42(2) is generally limited to 2 years, with the EXCEPTIONS set out in s.42(14)

- j** order of prohibition, seizure or forfeiture
 - n** custody and supervision order where the offence is one for which the punishment for adults is life imprisonment
 - o** custody and supervision order for these offences: attempt to commit murder, manslaughter, and aggravated sexual assault
 - q** 1st degree murder and 2nd degree murder
- AND
- r** IRCS

Coming into force of youth sentence s.42(12)

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

Consecutive sentences s.42(13)(a)&(b)

Subject to ss.42(15)&(16), the court can give a consecutive custodial sentence if a YP is sentenced under paragraphs 42(2)(n),(o),(q) or (r)

- a while they are already under sentence
OR
- b if the YP is being sentenced for more than one offence under any one of those paragraphs

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

Where CC Part XXIII sentencing applies to youth sentencing

Generally, the sentencing provisions for adults set out in the CC do not apply to youth sentencing. s.50

EXCEPTIONS

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

Victim fine surcharge

The YCJA allows the lieutenant governor of the province to order that a percentage of a fine imposed under s.42(2)(d) be used to help victims of offences. s.53(1)

If no percentage is set by the lieutenant governor, the court may order a victim fine surcharge of up to 15%. s.53(2)

The YP may work off both the fine and the surcharge using credits earned for work performed under a fine option program, if one is established. s.54(2)&(3)

Prohibition orders for offences

Referred to in CC ss.109(1)(a) to (d) & 110(1)(a) or (b) [ss.42\(2\)\(j\) & 51](#)

Mandatory prohibition order

When a YP is found guilty of an offence referred to in CC 109(1)(a) to (d) the youth justice 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 no custody, 2 years after a finding of guilt. [s.51\(2\)](#)

Discretionary prohibition order

There are also discretionary prohibition orders, which the youth justice court MUST consider for offences referred to in paragraphs CC 110(1)(a) or (b). [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 no custody, 2 years after a finding of guilt. [s.51\(4\)](#)

Reasons – Prohibition Order

Reasons must be given for

- making the prohibition order [s.51\(5\)](#)
AND
- failing to make a discretionary order or failing to prohibit the YP from possessing everything referred to in [s.51\(3\)](#). [s.51\(6\)](#)

Review – Prohibition Order

There is also provision for the youth justice court to review prohibition orders that are made under [s.51](#). [s.52](#)

Definitions for some offences

Serious offence, violent offence, & serious violent offence

See these NEW definitions (as of October 23, 2012) in [s.2\(2\)](#) as some sentences and procedures will vary depending on which definition the offence falls under.

Orders with probation and intensive support and supervision program

Conditions imposed

When a probation order, [s.42\(2\)\(k\)](#), or an intensive support and supervision program order, [s.42\(2\)\(l\)](#), is imposed there are mandatory conditions that a youth justice court judge **MUST** impose, [s.55\(1\)](#), and discretionary conditions that a youth court judge **MAY** impose, [s.55\(2\)](#).

Validity of orders

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

Starting probation or intensive support and supervision program

The general rule is that an order under [s.42\(2\)\(k\)](#) or [\(l\)](#) comes into force

- on the date on which it is made
OR
- if the sentence includes continuous custody and supervision, at the end of the period of supervision [s.56\(5\)](#)

Starting probation or intensive support and supervision program 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 youth justice court orders a delay in starting the period of custody, then [s.56\(6\)](#) allows a court to divide probation or intensive support and supervision orders so that they are 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.

Review of sentences

Review of non-custodial sentences

⌚ Non-custodial sentences may be reviewed 6 months after they are imposed, or earlier with permission of the court. [s.59\(1\)](#)

There are a number of grounds for review. [s.59\(2\)](#)

Review of custodial sentences

For sentences involving custody [s.94](#)

- there is an annual review [s.94\(1\)&\(2\)](#)
- there are optional reviews [s.94\(3\)](#)
- there are a number of other grounds for review [s.94\(6\)](#)

(see “*Review of custodial sentences*,” [p.82](#))

ADULT SENTENCES (AS)

Summary of what you will find under Adult Sentences

Key Provisions under the YCJA

Eligibility for an AS [s.64\(1\)](#)

Notice of intention to seek an AS [s.64\(2\)](#)

Application by the Crown for an AS [s.64\(1\)](#)

Hearing: adult or youth sentence [ss.71&72](#)

General Rules

Test for an AS [s.72\(1\)](#)

Onus on the Crown [s.72\(2\)](#)

Orders for AS or youth sentence [s.72\(1\)&\(1.1\)](#)

When an AS has been ordered [s.72\(1\)](#)

When a youth sentence has been ordered [s.72\(1.1\)](#)

Sentences available

Custody placement [s.76](#)

Publication [s.75](#)

Appeals [ss.37\(4\),72\(5\),75\(4\)&76\(5\)](#)

Key section changes made by the [SS&CA 2012](#)

Key provisions under the YCJA

- all proceedings dealing with YPs are heard in the youth justice court
- the Crown may seek an AS for a YP who was 14 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 at the beginning of the sentencing hearing [s.71](#)
- the youth justice court MUST impose an AS for certain offences that meet the test for appropriateness of an AS [s.72\(1\)](#)
- the onus to prove an AS should be imposed under [s.72\(1\)](#) is on the Crown [s.72\(2\)](#)
- the YCJA eliminates transfer hearings, a procedure that was used under the YOA

Eligibility for an adult sentence

[s.64\(1\)](#)

The Crown may seek an AS for a YP who was 14 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\(1\)](#)

Notice of intention to seek an adult sentence

[s.64\(2\)](#)

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 youth justice court, before the trial begins.

They must give this notice to both the YP and the youth justice court. [s.64\(2\)](#)

Included offences

A notice of intention to seek an AS is also considered notice for any included offence for which

- a YP is found guilty
- AND
- Ⓞ an adult could be imprisoned for more than 2 years [s.64\(3\)](#)

How notices are given

An application or notice under [s.64](#) or [s.76](#) is given as follows: oral notice must be given in the presence of the other party; written notice must be served personally. [s.81](#)

Application by the Crown for an adult sentence

s.64(1)

Crown may seek an AS s.64(1)

The Crown may seek an AS for a YP who was 14 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)

Crown must consider an AS s.64(1.1)

The Crown must consider making an application for an AS if the offence is a SVO and the YP was 14 years or older at the time of the offence. If the Crown will not make an application they must advise the youth justice court before a plea or, with leave, before the trial begins. s.64(1.1)

When to make the application

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

Notice requirements

The requirements for notice must also be met. ss.64(2)&81

Included offences s.69(2)

The Crown may also seek an AS for a YP who was 14 or older at the time of the offence, and has been found guilty of an included offence for which an adult is liable to imprisonment for more than 2 years. s.69(2)

A notice of intention to seek an AS for an offence is also considered notice for any included offence for which an adult could be imprisoned for more than 2 years. s.69(2)

Hearing: adult or youth sentence ss.71&72

General rules

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).

Opportunity to be heard

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

Onus on the Crown

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

Pre-sentence Report

The court MUST consider a pre-sentence report in making an order under s.72(1) or (1.1). s.72(3)

Reasons for decision

The court **MUST** state the reasons for the decision it reaches. [s.72\(4\)](#)

The test for an AS [s.72\(1\)](#)

The youth justice court **MUST** order an AS to be imposed if it is satisfied that

- the presumption of diminished moral blameworthiness or culpability of the YP is rebutted
- AND
- a youth sentence imposed in accordance with the purpose and principles set out in subparagraph [3\(1\)\(b\)\(ii\)](#) & [s.38](#) would not be sufficient to hold the YP accountable for their offending behaviour.

Onus on the Crown [s.72\(2\)](#)

The onus is on the Crown to satisfy the youth justice court that the requirements of [s.72\(1\)](#) have been met. [s.72\(2\)](#)

Orders for an AS or youth sentence [ss.71&72](#)

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\(1.1\)](#)

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 AS has been ordered under [s.72\(1\)](#)

Sentences available

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\(2\)](#)

Custody placement [s.76](#)

Order for placement

Subject to [s.76\(2\)&\(9\),79&80](#), when a YP is sentenced to an AS the youth justice court may order any part of the sentence be served in

- a youth custody facility separate from any adult detained in custody
- a provincial correctional facility for adults
- a penitentiary, if the sentence is for 2 years or more [s.76\(1\)](#)

Opportunity to be heard

Before making an order under [s.76\(1\)](#) the youth justice court **MUST** give the YP, a parent, the Crown, the provincial director, and representatives of the provincial and federal correctional systems an opportunity to be heard. [s.76\(3\)](#)

YPs under 18 held in youth facility

No YP who is under the age of 18 is to serve any portion of their sentence in a provincial correctional facility for adults or a penitentiary. [s.76\(2\)](#)

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 expires if the court is satisfied that there has been a material change in circumstances. Placement options after the review are the same as before the initial placement. [ss.76\(6\)&\(7\)](#)

Presumption at age 20

There is a presumption that a YP will be moved to an adult facility after the age of 20, unless the youth justice court that makes the order under [s.76\(1\)](#), or reviews the placement order under [s.76\(6\)](#), is satisfied that remaining in a youth custody facility would be in the best interests of the YP and would not jeopardize the safety of others. [s.76\(9\)](#)

Publication [ss.75&110](#)

Publication ban is the general rule

The general rule 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 this act. [s.110\(1\)](#)

Exceptions to the general rule of publication ban [s.110](#)

- the YP has received an AS [s.110\(2\)\(a\)](#)
- the YP has received a youth sentence for a violent offence and the youth justice court has lifted the publication ban because the court
 - has considered the purpose and principles set out in [ss.3&38](#)
 - believes the YP poses a significant risk of committing another violent offence

AND

 - believes that lifting the ban is necessary to protect the public against that risk [ss.75\(2\)&110\(2\)\(b\)](#)

OR

- the information is published to administer justice and NOT for the purpose of making it known to the community [s.110\(2\)\(c\)](#)

Appeal of the order to lift a publication ban

The decision to lift the publication ban under [s.75\(2\)](#) may be appealed as part of the sentence. [ss.37\(4\)&75\(4\)](#)

(for more information on publication, see "Publication," p.116)

Appeals ss.37(4),72(5),75(4)&76(5)

Appeals heard as part of the sentence

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)

The decision to lift the publication ban under s.75(2) may be appealed as part of the sentence. ss.37(4) & 75(4)

The decision to place a YP in a custody facility under s.76(1) may be appealed as part of the sentence. ss.37(4) & 76(5)

(for more information on appeals see "Appeals," p.105)

Summary

Key changes to the provisions for adult sentencing by the SS&CA 2012

- The SS&CA 2012 REPEALED the following sections of the YCJA: ss.61,62,63,64(4),64(5),65,66,68,69(1) & 70
- The SS&CA 2012 REPLACED the following sections of the YCJA: ss.64(1),64(2),67(1),67(3),69(2),71,72(1), 72(2),72(3),72(5),73,75,76(2)&81
- The SS&CA 2012 ADDED the following new sections of the YCJA: ss.64(1.1),64(1.2),&72(1.1)

VICTIMS' ISSUES

Victims are mentioned in several provisions of the act.

Preamble

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

Nova Scotia Department of Justice's Victim Services can help all victims of crime, including crimes committed by YPs. Priority is given to victims of violent crime.

For contact information about Victim Services, please go to novascotia.ca/just/victim_Services/contact.asp

General principles

Measures taken against a YP should encourage them to repair the harm they have done to victims and communities. s.3(1)(c)(ii)

Special considerations apply to proceedings against YPs. In particular

- victims should be treated with courtesy, compassion, and respect for their dignity and privacy, and should suffer the minimum degree of inconvenience from being involved with the youth criminal justice system s.3(1)(d)(ii)
- victims should be provided with information about the proceedings, and given a chance to participate and be heard s.3(1)(d)(iii)

Objectives of extrajudicial measures [s.5\(b\)&\(d\)](#)

EJM should be designed to

- encourage YPs to acknowledge and repair the harm they caused to the victim and the community [s.5\(b\)](#)
- give victims a chance to take part in making decisions that relate to the measures that are selected, and to receive reparation [s.5\(d\)](#)

Extrajudicial sanctions [s.12](#)

Victims who ask are entitled to have information about the identity of the YP and how the offence was dealt with when EJS were used.

Principles of youth sentencing [s.38\(2\)\(e\)\(iii\)](#)

Subject to the limit of proportionality, the sentence must promote a sense of responsibility in the YP and an acknowledgement of the harm done to victims and the community.

Factors to consider in youth sentencing

In determining a youth sentence the court MUST take into account

- the harm done to victims and whether it was intentional or reasonably foreseeable [s.38\(3\)\(b\)](#)
- any reparation the YP has made to the victim or the community [s.38\(3\)\(c\)](#)

Victim fine surcharge [ss.53&54](#)

When a YP is given a fine, the YCJA allows for the lieutenant governor of the province to order a percentage of it to go to help victims of offences. [s.53\(1\)](#)

If no percentage is set by the lieutenant governor, the court may order a victim fine surcharge of up to 15%. [s.53\(2\)](#)

The YP may work off both the fine and the surcharge using credits they earn for work they do under a fine option program, if one is established. [s.54\(2\)](#)

Publication [s.111](#)

(see *“Rules governing young witnesses and victims,”* p.117)

Additional provisions relating to victims

- victims should be interviewed for a pre-sentence report if applicable and reasonably possible [s.40\(2\)\(b\)](#)
- provisions for victim impact statements in CC [ss.722,722.1&722.2](#) apply to youth sentence proceedings [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 applies

with any modifications that the circumstances require for proceedings under the YCJA in relation to offences alleged to have been committed by young persons

This also includes provisions for notifying a victim and dealing with victim impact statements in CC ss.672.5(5.1),(14)to(16) and apply to Review Board proceedings (mental disorder) [s.141](#)

- the identity of child or young victims and witnesses may be published ONLY as the act provides (*see "Rules governing young witnesses and victims," p.117*) [s.111](#)
- victims who ask must have access to court records and may have access to police records under the YCJA [s.119\(1\)\(d\)](#)
(*see "Victims' access to records," p. 73*)
- a youth justice court has jurisdiction to make orders against a YP under the following sections of the CC [s.14\(2\)](#)
 - 810 (recognizance – fear of injury or damage)
 - 810.01 (recognizance – fear of criminal organization offence)
 - 810.2 (recognizance – fear of serious personal offence)

RECORDS AND SHARING OF INFORMATION

[ss.110 to 129](#)

Summary

The YCJA allows police forces, courts, extrajudicial measures organizations, and the government to keep records about a YP who is dealt with under the act.

[ss.114 to 116](#)

The act 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.

[s.119 & 120](#)

General rule

Information about a YP may NOT be disclosed if it would identify them as someone who has been dealt with under the act. For that reason, only those people who are authorized under the YCJA may have access to records or receive the information in them. [s.118\(1\)](#)

Those authorizations are found in the YCJA from [s.117 to 129](#).

A person who is entitled to access to a record is entitled to the information in the record and a copy of any part of the record. [s.122](#)

The purpose of the request and the type of information requested may limit disclosure.

(*see "Publication," p.116*)

NOTE TO POLICE

Here is one key change made to the record keeping provisions by the [SS&CA 2012](#):

The police force **MUST** keep a record of any extrajudicial measures that they use to deal with a YP. [s.115\(1.1\)](#)

The limitations on access to extrajudicial measures records still apply. [s.119\(4\)](#)

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 appeals has run out
- OR

- after appeals have been completed.

The record of an AS delivered in youth justice court is treated the same as other adult records. [s.117](#)

Time periods

Access to records and disclosure of records are subject to time limitations.

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 other than EJS 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, [s.124](#), access to the record can be given **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 & 123](#) respectively.

There are special disclosure provisions and time periods for what are considered more-serious offences in the schedule attached to the YCJA. [s.120](#)

Note changes in the description of the offences in [s.120\(3\)\(a\)&\(b\)](#).

Exceptional cases of disclosure s.125

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\(2\)](#). [s.125\(8\)](#)

- a peace officer may disclose information contained in police or court records to any person when it is necessary for investigating an offence [s.125\(1\)](#)
- the Crown may, during the course of a proceeding, disclose any information contained in police or court records to a person who is co-accused, with the YP, 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\(4\)](#)
- a provincial director or youth worker 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\(5\)](#)

- a provincial director, youth worker, Crown, 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
 - a** to ensure the YP's compliance with an order by a youth justice court or the terms of reintegration leave under [s.91](#)
 - b** to ensure safety of staff, students, or other persons
 - c** to help rehabilitate the YP [s.125\(6\)](#)

The person to whom information is disclosed under [subsection 6](#) **MUST**

- a** keep the information separate from any other record of the YP to whom the information relates
- b** ensure that no person has access to the information unless authorized by the act. The person may disclose the information to another person if this is necessary for purposes of [subsection 6](#)
- c** destroy their copy of the record when the information is no longer required for the purpose for which it was disclosed [s.125\(7\)](#)

Court authorization

s.127

The provincial director, the Crown, or a peace officer may apply to the youth justice court for authorization to disclose specific information about a YP to a specified person or persons. 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)

- a** the YP has been found guilty of an offence involving serious personal injury
- b** the YP poses a risk of serious harm to people
AND
- c** disclosing 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

s.129

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 act.

Victims' access to records

s.119(1)(d)

During the access period, victims have access to records kept under s.114 (court records) and may have access to records kept under ss.115 (police records) and 116 (government records).

(see "Victims' Issues," for more information on victims p.63)

Effect of termination of a youth sentence s.82

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

If a YP is found guilty of an offence and

- the court directs an absolute discharge s.42(2)(b)
- the youth sentence has ceased to have effect
OR
- the disposition under the YOA, other than a mandatory prohibition order, has ceased to have effect s.51 (mandatory prohibition order)
or YOA s.20.1 (mandatory prohibition order)

then the YP is deemed **NOT** to have been found guilty or convicted of the offence.

EXCEPTIONS under [s.82\(1\)](#)

- a** the YP may plead "autrefois convict" to a subsequent charge related to the offence
- b** the court may consider the finding of guilt in hearing an application under [s.64\(1\)](#) (application for AS)
- c** any court or justice may consider the finding of guilt while hearing an application for judicial interim release or in deciding what sentence to impose for any offence
- d** the National Parole Board or any provincial parole board may consider the finding of guilt while hearing an application for conditional release or for a record suspension under the Criminal Records Act [s.82\(1\)](#)

The termination of a youth sentence removes any disqualification under any act of parliament to which the YP is subject for an offence by 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 considered a previous conviction under any act of parliament where a greater punishment is prescribed because of a previous conviction, except when it is used to determine an AS to be imposed. [s.82\(4\)\(b\)](#)

CUSTODY, SUPERVISION, AND ENFORCEMENT

[ss.83 to 109](#)

Summary

Purpose and principles

The YCJA sets out the purpose and principles for youth custody and supervision, 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 worker **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 young person 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.76\(2\)](#)

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

Two different sets of procedures

Two different sets of procedures have been put in place for each of the following

- setting conditions for supervision in the community (community supervision) and conditional supervision
- extending the custodial portion of a youth sentence
- responding to a breach of a condition

The first governs community supervision under sentences imposed under [s.42\(2\)\(n\)](#).

The second governs conditional supervision imposed under [s.42\(2\)\(o\),\(p\),\(q\),\(r\)](#) & [s.94\(19\)\(b\)](#).

Purpose of custody and supervision [s.83\(1\)](#)

The purpose of the youth custody and supervision system is to contribute to the protection of society in two ways

- by carrying out sentences in a safe, fair, and humane manner
- AND
- by helping the YP to be rehabilitated and reintegrated into society as a law-abiding citizen through effective custody and supervision programs

Principles of custody and supervision [s.83\(2\)](#)

(in addition to the overall principles in [s.3](#))

- a** use the least restrictive measures that are consistent with the protection of the public, people working with the YP, and the YP
 - b** ensure that YPs sentenced to custody keep the same rights as other YPs except for those rights which are removed or restricted because of their sentence
 - c** help both families of YPs and members of the public to become involved with the YP
 - d** make custody and supervision decisions in a fair, forthright, and timely manner to ensure that YPs have access to an effective review procedure
- AND
- e** ensure that the placement of YPs where they are treated as adults does NOT disadvantage them for eligibility for and conditions of release

Level of custody

Each province must have at least 2 levels of youth custody that are distinguished by the degree of restraint. [s.85\(1\)](#)

The YCJA allows either the provincial director or the court to determine the level of custody. [ss.85\(3\),\(4\) & 88](#)

In Nova Scotia, the court will continue to follow the applicable provisions of the YOA in making this determination. These YOA provisions will continue to apply, with necessary changes, to determine the level of custody and its review: YOA s.2(1) “review board” and “progress report,” ss.11,24.1 to 24.3 & 28 to 31. [s.88](#)

Order in Council #2003-131 dated May 28,2003

www.gov.ns.ca/exec_council/oic/view.asp?oicID=10939

Youth workers and reintegration

The provincial director must designate a youth worker to be assigned to work with a YP as soon as the YP is sentenced to custody. During the custodial portion of the sentence, an assigned youth worker 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 worker supervises them, continues to provide support, and helps the YP both respect the conditions of their release and implement their reintegration plan. [s.90\(2\)](#)

Reintegration leave

[s.91](#)

The provincial director may grant 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 AS in a youth facility

- ⊙ it is available on any terms and conditions that the provincial director considers desirable for a period not exceeding 30 days
- ⊙ renewal of the leave is specifically allowed for one or more 30-day periods on reassessment of the case
- the provincial director can revoke the leave at any time
- if the YP is not complying, or the leave is revoked, the YP can be arrested without warrant and returned to custody

Placement in or transfer to adult facilities

Summary

If a YP is 18 or over but under 20 the court can, if certain criteria are met, authorize their transfer to a provincial custodial facility for adults. [s.92](#)

If a YP turns 20 while in a youth custody facility they MUST be transferred to a provincial custodial facility for adults unless the provincial director orders that they remain in the youth custody facility. [s.93](#)

If a YP is 20 at the time of sentencing, they must be placed in a provincial custodial facility for adults. [s.89](#)

YPs aged 20 at time of sentencing

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

Once a YP is serving a youth sentence in a provincial adult facility under [s.89\(1\)](#), the provincial director may apply to the youth justice court for authorization to direct that the YP be moved to a federal penitentiary to serve the remainder of the youth sentence.

The following conditions must be met [s.89\(2\)](#)

- Ⓞ there must be 2 years or more remaining in the sentence
 - the YP, provincial director, and representatives of the provincial and federal correctional systems must have an opportunity to be heard
- AND
- the court must be satisfied that transfer to a penitentiary is in either the best interests of the YP or the public interest

Turning 18 under a custodial sentence [s.92\(1\),\(2\)](#)

After turning 18, a YP may be transferred to a provincial correctional facility for adults by the youth justice court, on the application of the provincial director, provided that

- the YP, provincial director, and representatives of the provincial system have an opportunity to be heard
- AND

- the court is satisfied that the transfer is in either the best interests of the YP or the public interest [s.92\(1\)](#)

Once the YP is serving a youth sentence in the provincial facility, the provincial director may apply for authorization to move the YP to a federal penitentiary. [s.92\(2\)](#)

The conditions are similar to those described on p.80 (see “YPs aged 20 at the time of sentencing”) in relation to moving to a federal facility under [s.89](#).

Where a sentence is served [s.92\(4\)&\(5\)](#)

If a YP is serving an AS with placement in an adult facility under [s.76\(1\)\(b\) or \(c\)](#) and a custodial youth sentence at the same time, they MUST serve both sentences in an adult facility. [s.92\(4\)](#)

The placement of a YP is at the discretion of the provincial director when the YP is serving a custodial sentence in a youth facility under [s.76\(1\)\(a\)](#). [s.92\(5\)](#)

Turning 20 under a custodial sentence [s.93](#)

When a YP turns 20 while serving a custodial youth sentence in a youth facility, they MUST be transferred to a provincial adult correctional facility UNLESS the provincial director orders otherwise. [s.93\(1\)](#)

If the YP has been transferred to a provincial adult correctional facility under [s.93\(1\)](#) the provincial director may apply to the youth justice court to transfer them to a federal penitentiary. [s.93\(2\)](#)

The court may order the transfer to a penitentiary if

- the court considers it 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 remaining on the sentence [s.93\(2\)](#)

Provisions governing YPs serving a youth sentence in an adult facility

A YP who is serving a youth 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 of the 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\(3\)](#)

Review of custodial sentences [s.94](#)

There is a mandatory annual review of custodial sentences of more than one year, [s.94\(1\)&\(2\)](#), and

optional reviews that can be initiated by the provincial director, the YP, the parent of the YP, or the Attorney General. [s.94\(3\)](#)

- Ⓞ Five clear days notice of any review is required in accordance with [s.94\(13\) or \(14\)](#).

Orders deemed to be youth sentences for the purpose of review

These orders are reviewed under [s.94](#). [s.95](#)

[s.97\(2\)](#) Conditions for community supervision

[s.98\(3\)](#) Continuation of custody

[s.103\(2\)\(b\)](#) Continuation of custody for a serious breach of conditions

[s.104\(1\)](#) Continuation of custody

[s.105\(1\)](#) Conditions for conditional supervision

[s.109\(2\)\(b\)](#) Continuation of suspension of conditional supervision

There is no review of a sentence under either [s.94](#) or [s.96](#) while the sentence is under appeal. [ss.94\(7\)&96\(4\)](#)

Review of level of custody

(see "Level of custody," and the application of the YOA, in particular "s.28.1 YOA," p.78)

Decision of the youth justice court after review [s.94\(19\)](#)

When a youth justice court reviews a sentence under [s.94](#) the court may, after giving the parties the opportunity to be heard

a confirm the sentence

b release the YP on conditional supervision

OR

c convert an IRCS sentence to a custodial sentence

Release upon recommendation of provincial director

s.96

The youth justice court may release a YP from custody on conditional supervision on the recommendation of the provincial director without the need for a hearing. s.96(5)

There will be a hearing, however, if an application to review the provincial director's recommendations is made by the YP, the YP's parent, or the Attorney General. s.96(3)

The provincial director may request a review of the court order if the youth justice court does not release the YP. s.96(7)

Notice provisions are set out in s.96.

Where else this procedure can and cannot be used

Because Nova Scotia continues to authorize the court to decide the level of custody, this procedure is also available to transfer a YP from one level of custody to another under s.29 of the YOA.

Conditions for community supervision in a custody and supervision order under s.42(2)(n)

s.97

The last 1/3 of a youth sentence of custody and supervision under s.42(2)(n) is served in the community, under supervision.

Mandatory conditions included in all s.42(2)(n) sentences.

These include the following conditions set out in s.97(1)

The YP MUST s.97(1)

- a keep the peace and be of good behavior
- b report to the provincial director and be under the provincial director's supervision
- c inform the provincial director immediately if they are arrested or questioned by police
- d report to the police or any named individual, as instructed by the provincial director
- e advise the provincial director of their address of residence, and immediately report any changes in the following information
 - i address
 - ii occupation, employment, training, education, or volunteer work
 - iii family or financial situation

AND

- iv circumstances that might affect their ability to comply with the conditions of the sentence

AND

- f** NOT own, possess, or have control over any weapon, ammunition, explosive, etc. except as authorized by the provincial director for the purposes of participating in a program

Additional conditions

The provincial director may set additional conditions under [s.97\(2\)](#) in order to

- support and address the needs of the YP
 - promote the YP's reintegration into the community
- AND
- adequately protect the public

In doing so, the provincial director **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 conditional supervision for sentences under [s.42\(2\)\(o\),\(q\)&\(r\)](#), for deferred custody and supervision orders under [s.42\(2\)\(p\)](#), and after a review under [s.94\(19\)\(b\)](#) s.105

[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 attempted murder, manslaughter, and aggravated sexual assault [s.42\(2\)\(o\)](#)
 - for murder [s.42\(2\)\(q\)](#)
 - for intensive rehabilitative custody and supervision [s.42\(2\)\(r\)](#)
- AND
- for the processes of setting conditions for
 - deferred custody and supervision [s.42\(2\)\(p\)](#)
 AND
 - release after a review of a custodial youth sentence [s.94\(19\)\(b\)](#)

Unlike sentencing under [s.42\(2\)\(n\)](#), the court sets the optional conditions for conditional supervision and deferred custody and supervision.

Conditions for deferred custody and supervision are set at the time of sentencing.

The process for setting conditional supervision conditions for sentences under [s.42\(o\),\(q\)&\(r\)](#) is as follows [s.105](#)

Step 1

The YP is brought before the youth justice court one month before the custodial portion of the sentence ends. [s.105\(1\)](#)

Step 2

The court holds a hearing. [s.105\(1\)](#)

Step 3

The court sets the conditions for the YP's conditional supervision. [s.105\(1\)](#)

Step 4

Mandatory conditions are set out in [s.105\(2\)](#).

Discretionary conditions that the court may impose are set out in [s.105\(3\)](#).

The court sets temporary conditions if the YP cannot be brought before the court. A hearing is then held as soon as possible. A report is required to help the court set the conditions. [s.105\(4\)](#)

Mandatory conditions—conditional supervisions [105\(2\)](#)

These include all conditions set out in [s.97](#), and listed under “Conditions for community supervision in a custody and supervision order,” pp. 85 & 86, with THESE ADDITIONS

- the YP must appear before the youth justice court when required by the court to do so [s.105\(2\)\(b\)](#)
- the YP must comply with any reasonable instructions that the provincial director considers necessary, concerning a condition of conditional supervision, to prevent a breach of that condition or to protect society [s.105\(2\)\(h\)](#)

Discretionary conditions—conditional supervision [s.105\(3\)](#)

The youth justice court may also require a YP to

- a** go directly to their place of residence or to any other specific place, upon release
 - b** make reasonable efforts to find and keep suitable employment
 - c** attend any appropriate place of learning, training, or recreation the court finds to be available and suitable
 - d** live with a parent or other appropriate adult who is willing to provide for the care and maintenance of the YP
 - e** live in any place that the provincial director may specify
 - f** remain in the territorial jurisdiction of one or more courts named in the order
 - g** comply with conditions set out in the order that support and address the YP's needs and promote their reintegration into the community
- AND
- h** comply with any other condition set out in the order that the court considers appropriate, including conditions for securing the YP's good conduct and preventing their re-offending

The court of appeal may review the youth justice court's order under [s.105\(1\)](#) to set conditions for release on conditional supervision, if an application is made by the YP or the provincial director under [s.101](#). [s.105\(8\)](#)

Extending the custodial portion of custody and supervision orders under **s.42(2)(n)** s.98

Who applies

The Crown or the provincial director may apply to the youth justice court for an order that a YP remain in custody for a period not exceeding their entire sentence **s.98(1)**

- this is a procedure used for sentences imposed **s.42(2)(n)**

Time considerations

If this application cannot be heard before the YP is to be released from custody, the court may order the YP to remain in custody until the application is complete. **s.98(2)**

Who must be heard

Both parties and a parent of the YP MUST have an opportunity to be heard. **s.98(3)**

Test to extend custodial portion of sentence **s.98(3)**

The court MUST be satisfied that there are reasonable grounds to believe that

- the YP is likely to commit a SVO before the expiry of the sentence
AND
- conditions that would be imposed on the YP would not be adequate to prevent them from committing the offence

Factors the court must consider **s.98(4)**

The court must consider any factor relevant to the case of the YP including

- a** evidence of a pattern of persistent, violent behavior and, in particular
 - i** the number of offences committed that caused physical or psychological harm to another person
 - ii** difficulties in controlling violent impulses, to the point of endangering the safety of others
 - iii** the use of weapons in committing any offence
 - iv** explicit threats of violence
 - v** brutal behavior associated with the commission of an offence
AND
 - vi** a substantial degree of indifference to the reasonably foreseeable consequences to others of the YP's behaviour
- b** psychiatric or psychological evidence that, as a result of a physical or mental illness or disorder, the YP is likely to commit a SVO before the sentence ends
- c** reliable information that satisfies the youth justice court that the YP is planning to commit a SVO before the end of the sentence
- d** the availability of adequate supervision programs in the community for the protection of the public until the end of the sentence

e any increased likelihood that the YP will re-offend if they serve the entire sentence in custody without the benefit of supervision in the community

AND

f evidence of a pattern of committing violent offences while serving a portion of a youth sentence in the community under supervision

Report s.99

The provincial director **MUST** make sure a report is prepared under [s.99](#) for the hearing. The report **MUST** include any information the provincial director is aware of that applies to factors in [s.98\(4\)](#) that may help the court.

Reasons for the court order s.100

The court **MUST** state the reasons for an order. It **MUST** provide to the YP, counsel, parents, Crown, and provincial director

a a copy of the order

AND, on request

b a transcript or copy of the reasons for the order

Court of appeal may review order under [s.98](#) s.101

The court of appeal may review the order by the youth justice court for continued custody under [s.98](#), or the refusal to make such an order. An application starts the review.

After the review the court of appeal may confirm or reverse the decision of the youth justice court. [s.101](#)

Extending the custodial portion of orders for custody that have conditional supervision – for [s.42\(2\),\(o\),\(q\)&\(r\)](#) sentences s.104

Who applies

The Crown (not the provincial director) may apply to the youth justice court for an order that the YP serve a longer period or their entire sentence in custody for a youth sentence [s.104](#)

- for attempted murder, manslaughter and aggravated sexual assault [s.42\(2\)\(o\)](#)
- for murder [s.42\(2\)\(q\)](#)
- for intensive rehabilitative custody and supervision [s.42\(2\)\(r\)](#)

The hearing is similar to an application [s.98](#)
(see *“Extending the custodial portion of the custody and supervision orders under [s.42\(2\)\(n\)](#),” p.90*)

Application of [ss.99,100&101](#)

[Ss.99,100&101](#) apply, with any modifications the circumstances may require in respect to an order or the refusal to make an order under this section. [s.104\(5\)](#)

Test s.104(1)

Is the YP likely to commit an offence causing death or serious harm to another person before the end of the sentence?

Time considerations

If this application cannot be heard before the YP is to be released from custody, the court may order the YP to remain in custody until the application is complete.

s.104(2)

Who must be heard

Both parties and a parent of the YP MUST have an opportunity to be heard. s.104(1)

Factors to consider

s.104(3)

The court must consider any factor relevant to the case of the YP including

- a evidence of a pattern of persistent, violent behavior and, in particular
 - i the number of offences committed that caused physical or psychological harm to another person
 - ii difficulties in controlling violent impulses, to the point of endangering the safety of others
 - iii the use of weapons in committing any offence
 - iv explicit threats of violence
 - v brutal behavior associated with the commission of an offence
- AND
- vi a substantial degree of indifference to the reasonably foreseeable consequences to others of the YP's behaviour

- b psychiatric or psychological evidence that, as a result of a physical or mental illness or disorder, the YP is likely to commit an offence causing death or serious harm to another person before the sentence ends
- c reliable information that satisfies the youth justice court that the YP is planning to commit an offence causing death or serious harm to another person before the end of the sentence
- d the availability of adequate supervision programs in the community for the protection of the public until the end of the sentence

Setting conditions for supervision on denial of application

s.104(6)

If the court denies the Crown's application it may, with the consent of the YP, the Crown, and the provincial director, set conditions for conditional supervision under s.105(1).

Court of appeal may review order

ss.104(5) & 101

The Court of Appeal may review an order by the youth justice court for continued custody under s.104, or the refusal to make such an order, on application. The court of appeal may confirm or reverse the decision of the youth justice court.

Breach of sentences not involving custody

s.137

A YP who willfully fails or refuses to comply with ANY of the following sentences, surcharges, or dispositions to which they are subject, is guilty of a summary conviction offence

- a sentence under [ss.42\(2\)\(c\) to \(m\)](#) (conditional discharge to attendance order) or [\(s\)](#) (other conditions)
 - a victim fine surcharge
- OR
- certain dispositions under the YOA

Breach of supervision conditions

[ss.42\(2\)\(n\),\(o\),\(q\),\(r\),\(p\) & 94\(19\)\(b\)](#)

Summary

Under the YCJA there are two different ways to deal with breaches of supervision orders

- breaches of custody and supervision orders under [s.42\(2\)\(n\)](#) are dealt with in one way, while
- breaches of conditional supervision under [ss.42\(2\)\(o\),\(q\),\(r\),\(p\) & 94\(19\)\(b\)](#) are dealt with in another

They have similar procedures but there are some differences, including the test for remanding a YP in custody.

Apprehending a YP for a breach is by a warrant issued by the provincial director when the criteria for issuing a warrant are met.

Breach of custody and community supervision orders under [s.42\(2\)\(n\)](#)

When the provincial director has reasonable grounds to believe that a YP has breached or is about to breach a condition of their supervision made under [s.97](#) they may, in writing [s.102\(1\)](#)

- a** permit the YP to continue to serve the sentence in the community under the same or different conditions
- OR
- b** order that the YP be remanded to custody until a review is conducted, if satisfied that the breach is serious and increases the risk to public safety

[S.107](#) (Apprehension) and [s.108](#) (Review by provincial director) apply, with any modifications the circumstances require, to an order under [s.102\(1\)\(b\)](#), [s.102\(2\)](#)

If [s.102\(1\)\(b\)](#) applies the provincial director may issue a warrant to apprehend the YP. Until apprehended, the YP is deemed to be NOT serving their sentence. [s.107](#)

The provincial director must review the case within 48 hours of the YP being either apprehended or remanded, and either cancel the remand or refer the case to the youth justice court for review.

[ss.108 & 103](#)

Referral by the provincial director under s.108 and review by the youth justice court s.103

Options for the court for a review

After giving the YP an opportunity to be heard s.103(1)

- a if the court is NOT satisfied, on reasonable grounds, that the YP breached or was about to breach a condition, the court MUST order continuation of supervision on the same or different conditions
OR
- b if the court is satisfied, on reasonable grounds, that the YP has breached or was about to breach a condition, the court may make an order s.103(2)

Factors the court must consider

Ss.109(4) to (8) apply, with any modifications that the circumstances require, to a review by the youth justice court under s.103. s.103(3)

For a YP who breaches the conditions of supervision the court MUST consider s.109(4)

- the length of time the YP was subject to the order
- whether the YP had previously contravened the order
AND
- the nature of the contravention

For the hearing, a report MUST be prepared and reasons given, and on application there MUST be a review of the order by the court of appeal.

ss.109(5) to (8) & 101

Court order on completion of review s.103(2)

The court may order that

- a the YP must CONTINUE to serve the sentence in the community. The court may vary the conditions or impose new conditions
OR
- b the YP must REMAIN IN CUSTODY for any period not exceeding the remainder of the sentence, if the court is satisfied that the breach was serious

When the youth justice court makes an order under s.103(2) it must state the reasons for the order and make sure that the YP, counsel for the YP, the parents of the YP, and the crown receive a copy of the order and, upon request, a transcript of copy of the reasons for the order. s.109(5)

Review by the court of appeal

A review under s.101 (Review of youth justice court order) by the court of appeal applies with any modifications the circumstances may require. s.109(8)

Breach of conditional supervision orders (including deferred custody and supervision orders) under **ss.42(2)(o),(q),(r),(p) &94(19)(b)**

ss.106 to 109

Suspension of conditional supervision

When the provincial director has reasonable grounds to believe that a YP has breached or is about to breach a condition of a conditional supervision order made under **s.105**, they may, in writing **s.106**

a suspend the conditional supervision

AND

b order the YP to be remanded into custody until a review is conducted

If the conditional supervision of a YP is suspended under **s.106**, the provincial director may issue a warrant to apprehend the YP. Until apprehended, the YP is deemed to be NOT serving their sentence. **s.107**

The provincial director must review the case within 48 hours of the YP being either apprehended or remanded, and either cancel the suspension of the conditional supervision or refer the case to the youth justice court for review. **ss.108 & 109**

Referral by the provincial director under **s.108** and review by the youth justice court

s.109

Options for the court for a review

After giving the YP an opportunity to be heard **s.109(1)**

a if the court is NOT satisfied, on reasonable grounds, that the YP breached or was about to breach a condition of the conditional supervision, the court **MUST** cancel the suspension and reinstate the conditional supervision

OR

b if the court is satisfied, on reasonable grounds, that the YP has breached or was about to breach a condition of the conditional supervision, review the decision of the provincial director to suspend the conditional supervision and make an order under **s.109(2)**

Factors the court must consider

For breach of supervision conditions the court **MUST** consider **s.109(4)**

- the length of time the YP was subject to the order
- whether the YP had previously contravened the order

AND

- the nature of the contravention

For the purposes of a review under **s.109(1)** the youth justice court requires the provincial director to have a report prepared and to submit it to the court. **s.109(6)**

Court order on completing a review s.109(2)

The court MUST order

- a** that the suspension of the conditional supervision be cancelled and the YP MUST continue to serve the sentence in the community. The court may vary the conditions of the conditional supervision or impose new conditions
 - b** that the suspension of the conditional supervision continue AND the YP remain in custody for a period not to exceed the remainder of the sentence. This does NOT apply to deferred custody and supervision orders
- OR
- c** for a deferred custody and supervision order under s.42(2)(p), that the YP serve the remainder of the order as if it were a custody and supervision order under s.42(2)(n)

After a decision has been made under s.109(2)(c), the provisions of the YCJA that apply to orders under s.42(2)(n) also apply to the deferred custody and supervision order. s.109(3)

When the youth justice court makes an order under s.109(2) it must state the reasons for the order and make sure that the YP, counsel for the YP, the parents of the YP, and the crown receive a copy of the order and, upon request, a transcript of copy of the reasons for the order. s.109(5)

Review by the court of appeal

A review under s.101 (Review of youth justice court order) by the court of appeal applies with any modifications the circumstances may require. s.109(8)

SHORT SECTIONS: APPEALS TO STATEMENTS

Appeals

s.37

Appeal provisions

- summary and indictable appeals are governed by the appropriate CC provisions s.37(1)&(5)
- summary conviction and indictable offences can be appealed together in certain instances. The appeal is governed by the indictable appeal provisions s.37(6)
- no appeal can be made under s.37(1) from judgments of the court of appeal to the Supreme Court of Canada for a finding of guilt or an order dismissing an information or indictment
UNLESS leave to appeal is granted s.37(10)

Contempt of court

A finding of guilt under s.15, for contempt of court or a sentence imposed for that finding, may be appealed as if the finding were a conviction or the sentence were a sentence in a prosecution by indictment. s.37(2)

CC s.10 applies when appealing a finding against a parent who was in contempt for failing to attend court. s.37(3)

Appeals heard as part of the sentence s.37(4)

The following orders may be appealed as part of the sentence, unless the court orders otherwise

- adult or youth sentence s.72(1)or(1.1)
- lifting the ban on publication s.75(2)
- placement when subject to an AS s.76(1)

If more than one of these is appealed, they must all be part of the same proceeding. s.37(4)

Appeal court review s.101

These court decisions may be reviewed by the appeal court

- when a YP is not released on the supervision portion of the sentence under ss.98&104
- when a YP is ordered into custody for a breach of conditions of supervision under ss.103&109
- to review the conditions in a conditional supervision order under s.105

Application of the Criminal Code

Except to the extent that it is inconsistent with the YCJA, the provisions of the criminal code apply to offences alleged to have been committed by a YP, with any modifications the circumstances may require. s.140

There are several specific provisions set out in the YCJA that make specific reference to sections or parts of the CC, including ss.14(2),15(5),20(2),28,50,67(8)&(9), 141 &142.

Conferences

s.19

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 interim release, sentences, review of sentences, and reintegration, among other things. [s.19\(2\)](#)

Who may call a conference

A conference may be called by a youth justice court judge, the provincial director, a police officer, a justice of the peace, a prosecutor, or a youth worker. [s.19\(1\)](#)

How conferences work

If the province establishes rules for conferences, all conferences EXCEPT those called by judges or justices of the peace must be convened and conducted according to those rules. [s.19\(3\)&\(4\)](#)

There is more than one type of conference. A case-planning conference can bring together professionals to discuss services and programs available for the YP in the community. A restorative justice type of conference may also be held if authorized by either [s.19](#) or the Nova Scotia Restorative Justice Program.

Mental health provisions

Medical and psychological reports

s.34

At any stage of the proceedings, the court may order an assessment of a YP by a qualified person, along with a written report [s.34\(1\)](#)

- a with the consent of the YP and the Crown
- b on its own motion or on the application of the YP or the Crown if the youth justice court believes the report is necessary

AND

- i the court has reasonable grounds to believe that the YP is suffering from one of a number of listed conditions
 - ii the YP has a history indicating a pattern of offences
- OR
- iii the YP is alleged to have committed a SVO

Limited purposes s.34(2)

An assessment report can also be ordered for a limited number of designated purposes

- a** considering an application for release from or detention in custody [s.33](#)
- b** deciding whether to impose an AS or a youth sentence [s.71](#)
- c** making or reviewing a youth sentence
- d** considering an application for continuation of custody [s.104\(1\)](#)
- e** setting conditions for conditional supervision [s.105\(1\)](#)
- f** making an order after a review of a breach or alleged breach of conditional supervision [s.109\(2\)](#)
- g** authorizing disclosure of information about a YP [s.127\(1\)](#)

YP may be remanded for the assessment s.34(3)

There is a presumption against a custodial remand. [s.34\(4\)](#)

Generally, any statement made by a YP for the purpose or during the course of the assessment is NOT admissible in evidence. [s.147\(1\)](#)

There are exceptions to this rule. [s.147\(1\)&\(2\)](#)

Who receives a copy of the report

When a youth justice court receives a report under [s.34\(1\)](#)

- under [s.34\(7\)\(a\)](#) the court MUST, subject to [s.34\(9\)](#), make sure a copy is given to
 - i** the YP
 - ii** any parent of the YP who attends any of the proceedings
 - iii** the YP's counselAND
 - iv** the Crown
- under [s.34\(7\)\(b\)](#) the court may give a copy of the report to
 - i** a parent who is not in court
 - ii** the provincial director 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 s.119(6)

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\(6\)](#).

Mental disorder provisions s.141

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

Notice to parents

ss.26 & 27

There are detailed provisions for giving notice to parents for various proceedings against YPs. [s.26](#)

Notice to parents does NOT need to be given if the YP has reached the age of 20 at the time of their first appearance before the youth justice court for the offence. [s.26\(12\)](#)

In certain circumstances a parent may be ordered by the youth justice court to attend court. This may be at any stage of the proceedings. [s.27](#)

Peace bonds

Jurisdiction

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

- fear of injury or damage [CC s.810](#)
- fear of criminal organization offence [CC s.810.01](#)
- fear of serious personal injury offence [CC s.810.2 s.14\(2\)](#)

If a YP does not enter a peace bond

If the YP fails or refuses to enter into the peace bond the court may impose any of the sanctions set out in [s.42](#) EXCEPT that a custody and supervision order must NOT exceed 30 days. [s.14\(2\)](#)

A justice of the peace may place a YP on a peace bond for fear of damage or injury under [CC s.810](#). If the YP fails or refuses to enter into a recognizance the justice of the peace MUST refer the matter to a youth justice court. [s.20\(2\)](#)

Pre-charge screening and private prosecutions

The Crown may establish a pre-charge screening program that sets out the circumstances in which the Crown's consent MUST be obtained before a YP is charged with an offence. [s.23\(1\)](#)

No prosecutions may be conducted by a prosecutor other than the Attorney General without the consent of the Attorney General. [s.24](#)

Pre-sentence reports

s.40

When to use a pre-sentence report

A pre-sentence report may be ordered whenever a court considers it advisable. [s.40\(1\)](#)

The court **MUST** order a pre-sentence report before ordering a custodial sentence [s.39\(6\)](#)

UNLESS

the court is satisfied that a report is NOT necessary

AND

the Crown and defence agree to dispense with it [s.39\(7\)](#)

The youth justice court **MUST** consider a pre-sentence report when deciding whether to impose an adult or youth sentence under [s.72\(1\) or \(1.1\)](#). [s.72\(3\)](#)

The report must include the listed contents to the extent that they are relevant to the purpose and principles of sentencing and the restrictions on custody in [ss.38 & 39](#).

The contents of the report set out in [s.40\(2\)](#) are as follows

- a** the results of an interview with the YP and if reasonably possible the parents of the YP and possibly members of the YP's extended family
- b** the results of an interview with the victim, if practicable and reasonably possible
- c** the recommendations of any conference referred to in [s.41](#) that is convened by the court to get advice on an appropriate sentence

- d** any information that is applicable (see the listed information set out in this paragraph)
- e** information that will help the court to determine, under [s.39\(2\)](#), if there is an alternative to custody available
- f** any information that the provincial director considers relevant, including a recommendation of the provincial director

The time limit on access to records set out in [s.119\(2\)](#) applies for the information specifically referred to in [s.40\(2\)\(d\)\(iii\) & \(iv\)](#).

Using pre-sentence report procedures for other purposes

The procedure for pre-sentence reports is used for various other reports in the YCJA such as

- reviews of sentences [ss.59\(3\) & 94\(9\)](#)
- applications to continue custody
Applications for continuation of custody [ss.98 & 104 & Reports s.99](#)
- setting conditions for conditional supervision
[ss.105, 105\(6\) & 99\(2\) to \(7\)](#)
- hearings on breach of conditions of supervision
[ss.109\(7\) & 99\(2\) to \(7\)](#)

Publication

Rules governing the protection of the YP's privacy

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 act.

s.110(1)

However, s.110(1) does NOT apply

- under s.110(2) where publication may be permitted
 - a where a YP has received an adult sentence
 - b where the information relates to a YP who has received a youth sentence for a violent offence and the youth justice court has ordered a lifting of the publication ban under s.75(2)
 - c in the course of the administration of justice IF the purpose of publication is something other than to have the information made known in the community
- under ss.110(3),(4),(5)&(6) for a YP who has been dealt with under the act
 - 3 the YP may publish or allow publication after they turn 18 as long as they are NOT in custody under the YOA or the YCJA
 - 4 an order can be made allowing information to be published that identifies a the YP when the YP is dangerous and at large
 - 5 the order made under (4) is in effect for 5 days ONLY

- 6 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

Rules governing young witnesses and victims s.111

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

General Rule s.111(1)

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.

However, there are exceptions s.111(2)

- a publication is permitted by a young witness or victim after they turn 18, or before that age with the consent of their parents
OR
- b by the parents of a young victim or witness who is deceased s.111(2)

Application for leave to publish s.111(3)

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.

Ban on publication no longer applies s.112

Once an application to publish the identity of a young victim, young witness, or YP dealt with under the act has been granted and the information has been published, the general publication ban does not apply.

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

Referral to child welfare s.35

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.

Right to counsel s.25

- 1 A YP has the right to retain and instruct counsel without delay and to exercise that right personally
 - at any stage of the proceedings against the YP AND
 - before and during any consideration of whether to use an EJS instead of starting or continuing judicial proceedings under the YCJA
- 2 The arresting officer must advise the YP without delay of their right to counsel.
- 3 When a YP is not represented by counsel the justice, youth court judge, or review board **MUST** advise the YP of their right to counsel and provide a reasonable opportunity for the YP to obtain counsel.

Note

There are a number of specific circumstances listed in this subsection that should be reviewed.

- 4 When a YP wishes to obtain counsel but is unable to do so the youth justice court before which the hearing, trial, or review is being held
 - a **MUST** refer the YP to a legal aid program, where there is program in place, to obtain counselAND

- b** MAY direct that the YP be represented by counsel if no legal aid program is available or if the YP is unable to obtain counsel through the program
OR
MUST direct that the YP be represented by counsel if the YP requests it
- 5** Where there is a direction for counsel to be appointed under [s.25\(4\)\(b\)](#) the Attorney General MUST appoint counsel or make sure counsel is appointed to represent the YP.
- 8** The youth court judge MUST make sure the YP is represented by counsel independent of the parent if
- 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
- 9** A statement that a YP has the right to be represented by counsel MUST be included in a number of documents listed in this subsection.
- 10** The province can establish a cost-recovery program to recover the cost of legal counsel from a YP or their parents after the appeal period has expired or all appeals are completed.
- 11** The provisions which allow a court to direct that counsel be appointed for a YP, and some other right-to-counsel provisions, do NOT apply if the YP is 20 years of age or older at the time of their first appearance for the offence.

Statements

s.146

Criteria for admissibility of statements

- 1** Subject to the provisions of [s.146](#), the law in relation to admissibility of statements for adults applies to statements for YPs.
- 2** The section applies to
 - what*: an oral or written statement
 - made by*: a YP who is less than 18 years old
 - to*: a peace officer or any other person in authority
 - when*: on the arrest and detention of the YP, or in circumstances where the peace officer or other person has reasonable grounds for believing that the YP has committed an offence

When these criteria apply, a statement will be admissible in evidence ONLY WHEN the requirements set out in [s.146\(2\)](#) are met

- a** the YP's statement was voluntary
- b** the following were explained to the YP by the person taking the statement, in language appropriate to the YP's age, BEFORE the YP made the statement
 - i** the YP is under no obligation to make a statement
 - ii** any statement made may be used in proceeding against the YP
 - iii** the YP has the right to consult counsel and a parent or another person

- iv the YP has the right to have counsel or any other person consulted, if any, present while any statement is made by the YP
 - c the YP had a reasonable opportunity, before the statement was made, to consult with
 - i counsel
AND
 - ii a parent or another specified adult, with some exceptions
 - d if the YP consults someone under (c), the YP is given a reasonable opportunity to make the statement in the presence of that person
- 3 The requirements set out in s.146(2)(b) to (d) do NOT apply to oral statements made spontaneously by a YP to a peace officer or other person in authority.
- 4 Waiver of rights – If a YP waives their rights before giving a statement, the waiver can be recorded on audio tape or video tape or given in writing.
- 5 If a waiver of rights 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 their rights and voluntarily waived them.
- 6 Technical irregularity in complying with rights – Where there has been a technical irregularity in complying with the rights under s.146(2)(b) to (d), the court may admit the YP's statement into evidence ONLY 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.

TRANSITIONAL PROVISIONS

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

- 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

Transitional provisions set the rules for the transition from the old to the new law.

There are two sets of Transitional Provisions for the YCJA.

For a complete understanding of the transitional provisions you must read both sets of provisions together.

The most recent transitional provisions: offence occurred but no proceedings started BEFORE October 23, 2012

s.195 SS&CA 2012

This includes any person who

- committed an offence
 - before October 23, 2012
 - while they were a YP
- AND
- for which no proceedings were started

The YP MUST be dealt with under the YCJA as amended by this part as if the offence occurred after October 23, 2012

EXCEPT THAT certain provisions do not apply for the offence s.195(a) to (e)

- a** the definition “violent offence” in subsection 2(1) of the YCJA SS&CA s.167(3)
 - b** paragraph 3(1)(a) of that act SS&CA s.168(1)
 - c** paragraph 38(2)(f) of that act SS&CA s.172
 - d** paragraph 39(1)(c) of that act SS&CA s.173
- AND
- e** s.75 of that act SS&CA s.185

For the transition from the YCJA as enacted April 1, 2003 to the YCJA as amended by the SS&CA October 23, 2012

See ss.193,194&195 of the SS&CA 2012

The original transitional provisions from the JDA and YOA to the YCJA: offences committed BEFORE April 1, 2003

For the transition from the JDA and YOA to the YCJA enacted April 1, 2003

See YCJA Part 8 Transitional Provisions:

ss.158,159,161,162,163,164&165

(Note: s.160 was repealed and s.162 was replaced by ss.193&194 SS&CA 2012)

Proceedings started under the YOA or JDA BEFORE April 1, 2003 when the YCJA came into force

Proceedings which started under the YOA before the YCJA came into force will be dealt with as if the YCJA had NOT come into force, subject to s.161 (Applicable sentence). s.159(1)

Proceedings which started under the JDA before the YCJA came into force will be dealt with under the YCJA AS IF the delinquency were an offence that occurred AFTER the new act came into force, subject to s.161 (Applicable sentence). s.159(2)

Proceedings started AFTER April 1, 2003 when the YCJA came into force

No proceedings may be started under the YOA or the JDA after the YCJA came into force. They must be started under the YCJA. [s.158](#)

For the purposes of [ss.158 & 159](#), a proceeding is started by laying an information or indictment. [s.162](#)

Sentencing where proceedings started under the YOA or JDA BEFORE April 1, 2003 when the YCJA came into force

Applicable sentence [ss.161\(1\)\(a\)&\(b\)](#): For proceedings that started under either the YOA or the JDA, the sentencing provisions of the YCJA apply EXCEPT THAT

a paragraph [110\(2\)\(b\)](#) [if a youth sentence is for a violent offence and the youth justice court has lifted the publication ban under [s.75\(2\)](#)] does

NOT APPLY for the offence or delinquency

AND

b paragraph [42\(2\)\(r\)](#), (IRCS sentence) DOES APPLY IF the YP consents

Sentencing under YCJA while YP serving a custodial sentence under the YOA

IF

- a YP is serving a custodial sentence under the YOA

AND

- the YP is to be sentenced under the YCJA for another offence

THEN

- if either the Crown or the YP applies the court MUST order that the remaining part of the disposition made under the YOA be dealt with as if it were a custody and supervision sentence imposed under [s.42\(2\)\(n\) or \(q\)](#) of the YCJA

UNLESS

- to do so would bring the administration of justice into disrepute

This allows the sentence to include a period of supervision in the community. [s.161\(2\)](#)

Reviewing a sentence

The date a disposition came into effect under the YOA is the date used to determine when a sentence may be reviewed. [s.161\(3\)](#)

YOUTH JUSTICE ACT (NS)

Summary

The Nova Scotia Youth Justice Act (YJA) came into force on April 1, 2003 replacing the Young Person's Summary Proceedings Act (YPSPA). This legislation establishes procedures for YPs who are alleged to have violated provincial laws including municipal by-laws. The changes were made to make the provincial legislation consistent with the YCJA and update the legislation.

Note

Section number references found at the end of paragraphs under this heading refer to sections in the YJA only.

Purpose

The purpose of the YJA includes special considerations for YPs including recognition of their rights and freedoms and a special guarantee of their rights. s.2

Terminology

The terminology is consistent with that of the YCJA. The legislation uses terms such as sentences, pre-sentence reports, youth justice courts, and EJM and EJS.

Age range

The YJA covers alleged offences from YPs over 12 and under 18 ss.2,3(p)

EXCEPT if the YP

- is over 16 years of age
AND
- is charged under the Motor Vehicle Act
OR
- is charged with any other motor vehicle-related offence designated in the regulations
THEN
- the YJA does not apply s.13A(1)

Extrajudicial measures and extrajudicial sanctions

Principles similar to the YCJA were added to the YJA. s.5

Police officers MUST consider the following before starting proceedings or taking any other measures

- take no further action
- have the YP dealt with by the Children and Family Services Act
- warn the YP
- caution the YP
- refer the YP to a program or agency in the community, with their permission s.6

The more formal EJS which go through the Nova Scotia Restorative Justice Program are set out in the YJA and are to be used ONLY if lesser measures are NOT adequate. s.10

Ticketing

A summary offence ticket can be issued to a YP. If the YP fails to appear in court, a judge is NOT required to enter a finding of guilt and may instead issue a summons. s.13

EXCEPTION: This does not apply to a YP who is 16 years or older and is issued a ticket under the Motor Vehicle Act. s.13A(1)

Pre-trial detention

A police officer MUST release a YP from custody as soon as practicable if the YP was arrested without a warrant

- unconditionally
- unconditionally in the care of a parent or other responsible person
OR
- upon serving the YP with an appearance notice

unless reasonable and probable grounds show that detention is necessary in the public interest. Also, a YP can be released by the officer in charge. s.14(2),(3)

There is a presumption that detention is NOT necessary, and no YP can be detained as a substitute for appropriate child protection, mental health, or other social measures. s.14(4)

When a YP is arrested and detained in custody before they appear in front of a justice or a youth justice court, the officer in charge MUST give notice of the arrest, stating the place of detention and reason for arrest to the YP's parent. s.14(5)

Notice to parent s.14(5) to (11)

Notice to parent **MUST** be given in all cases for YPs aged 12 to 17.

Notice to parent is **NOT** required for a YP who is aged 16 or 17 years at the time of an offence for an alleged offence under the Motor Vehicle Act. s.14(7)

Conferences s.16

As with the YCJA, decision makers can call a conference to get advice when making a decision. Advice may be sought on, among other things, appropriate EJM, sentences, conditions for release, and reviews of sentences. If the province establishes rules for conferences, all conferences **EXCEPT** those called by judges or justices of the peace **MUST** be convened and conducted according to those rules.

Sentences s.19(1)

A reprimand has been added as a possible sentence, and probation has been eliminated as a possible sentence, for offences under the YJA.

Restrictions on custody

Unless a YP has failed to comply with non-custodial sentences and has a record, or has committed an offence that has threatened the safety of another person or caused them bodily harm, a court **CANNOT** order custody. s.21(1)

The court **MUST** consider all alternatives to custody and find no reasonable alternative or combination of alternatives before imposing custody. s.21(2)

In deciding whether reasonable alternatives to custody exist, the court **MUST** consider

- the alternatives
 - previous compliance and the likelihood that the YP will comply with a non-custodial sentence
- AND**
- alternatives used for similar offences committed in similar circumstances s.21(3)

Custody **CANNOT** be used as a substitute for appropriate child protection, mental health, or other social measures. s.21(4)

The sentence **MUST** be proportionate to the seriousness of the offence. s.21(6)

The youth justice court **MUST** state the reasons why a non-custodial sentence is not adequate. s. 21(7)

Review of sentences

Sentences can be reviewed, and the grounds for review are the same as for reviews of non-custodial sentences under the YCJA. The sentence can be confirmed, terminated, or varied. s.22

The youth justice court may also extend the time for the sentence to be complied with if the court is satisfied that the YP requires more time to comply with the sentence, but the time extension cannot exceed 12 months after the date the sentence would otherwise have expired. s.22(7)

Records

No record can be disclosed after 2 years from a finding of guilt without an application to the court and notice to the YP. s.32

Statements

The provisions for admissibility of statements taken from YPs by persons in authority are included in the YJA. s.35

Transitional

If no proceedings are started before the YJA comes into force, a YP who is 16 or 17 can be dealt with under the YJA. s.38

QUESTIONS & DEFINITIONS

Fundamental Questions for Youth Justice Court Judges

- 1 Was the YP **under 18** as of the date of the alleged offence?
- 2 Does this look like a case where the Crown might consider or reconsider **restorative justice**?
- 3 What arrangements have been made to **obtain legal advice** for the YP?
- 4 Is this a situation where an **election** should be made?
- 5 If **bail** is an issue keep the following in mind:
 - The onus is always on the Crown in youth bail matters and that there is never a reverse onus.
 - Is detention being considered as a substitute for child protection, mental health, or other measures? (Because **s.29(1)** prohibits this!)
 - Have the requirements of **s.29(2)** been considered before deciding on detention?
 - If bail would otherwise have been denied, has the requirement of placing the YP in the care of a responsible person been considered? **s.31**
 - Is this an appropriate case for convening a conference to deal with bail conditions? **s.19** (This question also applies to sentencing.)

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- 6** Are all of the conditions in any **form of judicial interim release** required for a specific purpose and has consideration been given to the implications for the YP breaching those conditions?
- 7** If the matter goes to trial and the YP's **statement** is presented, have the police complied with the provisions of [s.146](#) in a meaningful way, considering the kind of language used and age and level of understanding of the YP?
- 8** If a guilty plea is entered to a Criminal Code or CDSA offence do the **facts** presented to the court support the guilty plea so that a finding of guilt can be made under [s.36](#) of the YCJA or, for provincial offences, a finding under s.17 of the YJA?
- 9** Is the sentence the **least restrictive sentence** that is capable of addressing the purposes and principles of sentencing?
- 10** If there are a number of incidents, is it appropriate for there to be **one or more than one probation order**?
- 11** If **probation** is being considered, is probation the least restrictive sentencing option available? Would a reprimand, a conditional discharge, or a stand-alone community service order be sufficient?
- 12** When considering **terms of a conditional discharge or a probation order**, are the reasons clear for both the length (time) of the order and the terms or conditions of the order and can they be justified?
- 13** If a **custodial sentence** is being considered
- have the requirements for a Presentence Report been met [s.39\(6\)&\(7\)](#)
 - is the YP “custody eligible” [s.39](#) as amended by [s.39\(1\)\(c\)](#)
 - if custody is the proper sentence, and the offence is not one in which the YP caused or attempted to cause serious bodily harm, has a Deferred Custody and Supervision Order (DSCO), for no more than 6 months, been considered
- 14** If a YP is returned to the youth justice court because of an allegation of a breach of a condition of a DCSO
- has a finding under [s.109](#) been made
 - that the court is satisfied on “reasonable grounds” that the YP has breached or was about to breach a condition of the order
 - before considering whether the suspension should be cancelled or the order varied

Fundamental Questions for Crown Attorneys

- 1 **Information** – Have all aspects of the information been checked for compliance with the YCJA and the applicable criminal code provisions?
- 2 **Notice to Parent** – Have the requirements of [s.26](#) been met?
- 3 Is this a [violent offence](#), [serious offence](#), or a [serious violent offence](#) for which the adult sentencing provisions may apply? Is the YP entitled to make an **election** under [s.67](#)?
- 4 Is the YP custody eligible?
Check [ss.28,29,38,39 & 42](#) as well as the criminal record and any release orders.
- 5 Is this a case for the **restorative justice** program?
- 6 **Statements** – Have the requirements of [s.146](#) been met?
- 7 **Disclosure** – Has there been full disclosure and if there is an adult co-accused, has the adult file been reviewed for relevant information as well?
- 8 Is this a case for a [s.34 assessment](#) or a [s.19 conference](#)?
- 9 Do the [2012 amendments](#) to the YCJA affect the case?
- 10 If there is a **breach of a condition** of community supervision or conditional supervision, is it clear what the procedures are for breaches of these two different orders?

Fundamental Questions for Defense Counsel

- 1 Be aware of and take into consideration the principles of the act, in particular those relating to **EJM** (there is a presumption in favour of EJM for initial, non-violent offences). [s.4\(c\)](#)
Past convictions or referrals do not preclude future referrals. [s.4\(d\)](#)
- 2 What are the **extra steps** required during an arraignment for a YP? (These include confirm DOB, parent present or aware, and [ss.26 & 32.](#))
- 3 What are the implications of **elections** made by the Crown?
- 4 If dealing with **bail** what are the differences between the youth and the adult regimes? (Includes onus on Crown, availability of responsible person as an option where detention would otherwise occur, jail may not be used as a substitute for child protection, mental health, or other social measures.) [ss.28 to 33](#)
(see *“Pre-Trial procedures,” pp.17-23*)
- 5 If the YP gave a **statement** what are the requirements of [s.146](#) which must be complied with over and above Charter and voluntariness consideration?
- 6 Be familiar with the **sentencing** provisions of the YCJA, with attention to these:
 - The sentencing section of the Criminal Code does not, for the most part, apply to proceedings under the YCJA. [s. 50](#)

- What are the **19 possible sentences** authorized in s.42? (reprimands, personal service orders, and other options)
 - What are the **principles of sentencing** that apply to youth and how do they differ from the CC? (These include no general deterrence, no ladder principle, sentence may not be more onerous than that an adult would face, and that the court must impose the least restrictive sentence that meets the goals. s.38) (See the new paragraph s.38(2)(f) added in the 2012 amendments to include the words “denounce” and “deter,” which are subject to s.38(2)(c)”)
 - What are the **legislated pre-conditions** for custody? s.39
 - Is a **deferred custody and supervision order** an option in this case? What are the requirements for a deferred custody sentence? s.42(5)(a)&(b)
 - Keep in mind that the court must consider a **youth’s ability to pay** over the short term before a fine, compensation order, etc. is imposed. s.54
 - What is the **maximum sentence** that can be imposed in different circumstances?
- 7 Keep in mind that **conditions imposed in any sentence order** should be directly connected to the circumstances of the offence and prevention of re-occurrence.
- (Conditions must not be imposed because of a desire to generally improve the youth’s circumstances or as issues that would normally be considered in the realm of parenting, eg. general non-association clause where not getting in trouble with youth, curfew if not getting in trouble at night, mandating school or work if not part of what lead the offence to occur – even though those may well all be good ideas. This is the defence perspective and debate may take place at the time of sentencing.)
- 8 If the crown has given notice to seek an **AS**, what are the implications? (Includes court election triggered, jeopardy youth may be facing, what is the **test for an AS** to be imposed.) s.72
- 9 Would a **s.34 assessment** or a **s.19 conference** – or both – be appropriate or in the best interests of the YP?
- 10 Is the YP facing an allegation of **breaching** any of these: the supervision portion of a Custody and Supervision Order, a condition of a Conditional Supervision Order or a condition, or a Deferred Custody and Supervision Order? (What about the process, the differences in process, the onus on the Crown [reasonable grounds to believe the breach occurred], and the options available to the court?)
- (see “Custody, Supervision, Enforcement” – “Breach of Supervision Conditions,” p.96)

Definitions from the 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\(2\)](#)

This section contains some of the words that are defined differently in the YCJA that are used in this Pocket Guide. [s.2\(1\)](#)

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

adult sentence, 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," p.132*)

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 this act 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 or any regulation, rule, order, by-law, or ordinance made under an Act of Parliament other than an ordinance of the Northwest Territories or a law of the Legislature of Yukon or the Legislature for Nunavut

parent includes, in respect of a YP, any person who is under a legal duty to provide for the YP or any person who has, in law or in fact, 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 this act

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

provincial director means a person, a group or class of persons, or a body appointed or designated by or under an act of the legislature of a province or by the lieutenant governor in council of a province or his or her delegate to perform in that province, either generally or in a specific case, any of the duties or functions of a provincial director under this act

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 "Publication," pp.116-118*)

record includes any thing containing information, regardless of its physical form or characteristics, including microform, sound recording, videotape, machine-readable record, and any copy of any of those things that is created or kept for the purposes of this act or for the investigation an offence that is or could be prosecuted under this act

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 Criminal Code:

- a** section 231 or 235 (first degree murder or second degree murder);
- b** section 239 (attempt to commit murder);
- c** section 232, 234, or 236 (manslaughter); or
- d** section 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, it also includes any person who is charged under this act with having committed an offence while he or she was a YP, or who is found guilty of an offence under this act

youth custody facility means a facility designated under subsection 85(2) for the placement of YPs and, if so designated, includes a facility for the secure restraint of YPs, a community residential centre, a group home, a child care institution and a forest or wilderness camp

youth justice court means a youth justice court referred to in s.13 (*for more information, see "What constitutes a youth justice court and judge," p.6*)

youth justice court judge means a youth justice court judge referred to in s.13 (*for more information, see "What constitutes a youth justice court and judge," p.6*)

youth sentence means a sentence imposed under section 42,51or59 or any of sections 94to96 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, by or under an act of the legislature of a province or by the lieutenant governor in council of a province or his or her delegate to perform in that province, either generally or in a specific case, any of the duties or functions of a youth worker under this act (*for more information, see "Youth workers and reintegration," p.78*)