CHAPTER TWO: YOUTH JUSTICE

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CHAPTER TWO: YOUTH JUSTICE

This Manual is intended for informational purposes only and does not constitute legal advice or an opinion on any issue. Nothing herein creates a solicitor-client relationship. All information in this Manual is of a general and summary nature that is subject to exceptions, different interpretations of the law by courts, and changes to the law from time to time. LSLAP and all persons involved in writing and editing this Manual provide no representations or warranties whatsoever as to the accuracy of, and disclaim all liability and responsibility for, the contents of this Manual. **Persons reading this Manual should always seek independent legal advice particular to their circumstances.**

I. INTRODUCTION

A. Recent History

As of April 1, 2003, the *Youth Criminal Justice Act*, SC 2002, c 1 ["*YCJA*"] came into effect. The *YCJA* represents the culmination of nearly a century of evolution in how the legal system understands young offenders. The *YCJA* recognizes that youths have rights under the *Charter,* the *Canadian Bill of Rights* SC 1960, c 44, and the United Nations *Convention on the Rights of the Child* ["UN*CRC*"], which Canada signed and ratified in the early 1990s.

The *YCJA* focuses on three key objectives to better protect the public (*YCJA*, s 3):

1. Preventing youth crime by addressing underlying causes;
2. Meaningful consequences for offences; and
3. Increased focus on rehabilitation and reintegration for youth returning to the community.

The *YCJA* also encourages judges to impose non-custodial sentences on young persons who are found guilty under the Act where it is consistent with the general principles. This does not mean that it seeks to prohibit custodial sentences, but rather to ensure that custodial sentences are the last option.

Victims play a significant role in the process. While victims have no rights *per se* as they are not a party to criminal proceedings, the *YCJA* holds that victims will be heard and treated with courtesy, compassion, and respect for their privacy, and be minimally inconvenienced. Also, consequences will include educating the offender about the impact of the crime and focusing on repairing the damage or paying back society in a constructive manner. In some respects, BC legislation dealing with victims of crime has already incorporated a number of these principles, particularly in the *Victims of Crime Act*, RSBC 1996, c 478. In 2015, Parliament enacted the *Canadian Victims Bill of Rights,* SC 2015, c 13, s 2 ("*CVBR*"). The Act guarantees victims of crime various rights, including the right to information about the criminal justice system, their rights as victims of crime, and their right to have their security and privacy considered by the appropriate authorities in the criminal justice system. For more information on victims' rights, and resources for victims of crime see **Chapter 4: Victims.**

The *YCJA* was amended by Bill C-10 ("*The Safe Streets and Communities Act*") on October 23, 2012. Bill C-10 added individual deterrence and denunciation of unlawful conduct as a sentencing principle to the *YCJA*. It also sets out that youths are presumed to have diminished moral culpability or blameworthiness in comparison to adult offenders. Furthermore, Bill C-10 states that the youth justice system is intended to protect the public by holding young persons convicted of offences accountable through using proportionate measures, promoting rehabilitation and reintegration, and preventing crime by directing youths to programs that address underlying causes of their actions. Bill C-10 also sets out definitions for a "serious offence" and a "violent offence" which are broader than previous definitions given in the case law.

The *YCJA* was further amended by Bill C-75, passed on June 21, 2019. On September 19, 2019, the first amendments to the *YCJA* came into force. Firstly, it repealed sections 64(1.1) and (1.2) of the *YCJA*, which required the Attorney General to determine whether to seek an adult sentence in certain cases. It further required the Attorney General to advise the Youth Justice Court (bill section 376) if they decide not to make an application. Secondly, it repealed sections 75 and 110(2)(b), which required the court to decide whether to lift a ban on publishing the identity of a young person who is convicted of a violence offence (bill ss 377 and 379). The changes that came into effect on December 18, 2019 mainly decrease the number of charges for administration of justice offences (e.g., breach of conditions) and incarceration rates related to those offences when no harm to society has been done. The changes include a new assumption of the appropriateness of extrajudicial measures in certain breach of condition/failure to appear charges and an increase in the threshold for holding young offenders in custody for breach of conditions. In cases where extrajudicial measures may not be appropriate, judicial referral hearings at the bail stage or judicial reviews of youth sentences are recommended. Bill C-75 also includes changes that explicitly require imposed bail conditions to be appropriately related to the nature of the offence, the protection or safety of the public, victims, witnesses and that the offender will be reasonably able to comply with them, and that they not be a "substitute for appropriate child protection, mental health or other social measures".

II. GOVERNING LEGISLATION AND RESOURCES

A. *Legislation and Web Links*

Criminal Code, RSC 1985, c C-46.
Website: http://laws-lois.justice.gc.ca/eng/acts/C-46/

United Nations *Convention on the Rights of the Child* ["UN*CRC*"].
Website: www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

Youth Criminal Justice Act, SC 2002, c 1 ["*YCJA*"].
Website: http://laws-lois.justice.gc.ca/eng/acts/Y-1.5/index.html

- Note: Bill C-75 amended parts of YCJA in 2019 (http://canlii.ca/t/53rgg)

Youth Justice Act, SBC 2003, c 85 ["*YJA*"].
Website: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_03085_01

B. *Books*

Youth Criminal Justice Act Manual, Loose-leaf service. (Canada Law Book)

Nicholas Bala & Sanjeet Anand. *Youth Criminal Justice Law***,** 3d ed. Essentials of Canadian Law Series (Irwin Law: 2012),

Lee Tustin and Robert E. Lutes. *A Guide to the Youth Criminal Justice Act,* updated yearly, (LexisNexis Canada Inc: 2020).

C. *Websites*

Directory of Youth Justice Resources: http://www.justice.gc.ca/eng/cj-jp/yj-jj/index.html

Youth Criminal Justice Act FAQs: http://www.law-faqs.org/national-faqs/youth-and-the-law-national/youth-criminal-justice-act-ycja/

Department of Justice *YCJA Overview:* http://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/sheets-feuillets/oycja-alssj.html

Youth Justice Fact Sheets: http://www.justice.gc.ca/eng/rp-pr/cj-jp/yj-jj/index.html

III. CRIMINAL OFFENCES: YOUTH CRIMINAL JUSTICE ACT

A. Applicable Age

A "Child" is defined in Section 2(1) of the *YCJA* as "a person who is, or, in the absence of evidence to the contrary, appears to be less than 12 years old". Section 13 of the *Criminal Code* states that no person under the age of twelve years will be convicted of an offence.

A "Young person" is defined in section 2(1) of the *YCJA* as "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".

Section 14(5) states that the *YCJA* applies to "persons 18 years old or older who are alleged to have committed an offence while a young person". Section 14(4) states that "extrajudicial measures taken or judicial proceedings commenced against a young person" under the Act may be continued "after the person attains the age of 18 years".

B. Applicable Court

Under section 2(5) of the *Provincial Court Act*, RSBC 1996, c 379, the Provincial Court is designated as the Youth Justice Court for the purposes of the *YCJA*, and a Provincial Court judge is a Youth Justice Court judge. The superior court of British Columbia (BC) has concurrent jurisdiction as a Youth Justice Court where the Crown is seeking an adult sentence for a young person.

C. Declaration of Principle

The *YCJA* contains a declaration of principle. The principles are set out in section 3 of the *YCJA* and must be used to interpret the entire Act.

1. The youth criminal justice system is intended to protect the public by:
    a. Holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person,
    b. Promoting the rehabilitation and reintegration of young persons who have committed offences, and
    c. Supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour.
2. The criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability, and must emphasize the following:
    a. Rehabilitation and reintegration,
    b. Fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
    c. Enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,
    d. Timely intervention that reinforces the link between the offending behaviour and its consequences, and
    e. The promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time.

3. Within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should:

    a. Reinforce respect for societal values,

    b. Encourage the repair of harm done to victims and the community,

    c. Be meaningful for the individual young person 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 young person's rehabilitation and reintegration, and

    d. Respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements.

4. Special considerations apply in respect of proceedings against young persons. In particular,

    a. Young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,

    b. Victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,

    c. Victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and

    d. Parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

D. Right to Counsel

Under section 25 of the *YCJA*, "a young person has the right to retain and instruct counsel without delay…at any stage of the proceedings". A police officer must inform young persons of their right to counsel upon their arrest or detention. Legal Aid BC provides legal services for young persons, regardless of their income or their parents' income.

E. Right to Notice

Notice must be given to the parents as soon as possible in any of the following circumstances:

- The young person is arrested and detained in custody
- A summons or appearance notice is issued to the young person
- The young person is released on giving a promise to appear, or
- Upon the young person entering into a recognizance (ss 26 (1) and (2))

When the whereabouts of the parents of a young person are unknown, notice may be given to an adult relative or to any other adult, who is known by the young person and who is likely to assist the young person (s 26(4)). When notice has not been given, the court may adjourn the proceedings until notice is given or may dispense with notice if the court thinks it would be appropriate (s 26(11)).

Notice is not required if the person has attained the age of 20 at the time of their first appearance before a Youth Justice Court (s 26(12)).

The court may, if necessary, order the attendance of a parent at proceedings against a young person. A parent who then fails to attend may be held in contempt of court (s 27).

F. Alternatives to the Court Process: Extrajudicial Measures and Sanctions

1. Extrajudicial Measures

Extrajudicial measures (EJM) are an alternative to the formal court process. The principles applicable to the use of EJM's are set out in section 4 of the *YCJA*. There is a presumption that EJM's are adequate to hold a young person accountable for their offending behaviour if the young person has committed a non-violent offence and has not previously been found guilty of an offence.

However, it may also be appropriate even if there has been a prior use of EJM's or a prior finding of guilt. The addition of section 4.1(1) to Bill C-75 sets out the direction that EJM's are also presumed to be adequate to hold a young person accountable in certain cases of breach of sentencing conditions or failure to appear at court, subject to the violations not having caused harm or safety concerns to the public or the young person having a history of failures or breaches. Section 4.1(2) of Bill C-75 sets out that EJM's should be used if they are adequate to hold the young person accountable for their failure to appear or refusal. If EJM's are inadequate, the next measures the court should consider before proceeding with a charge are 1) issuing an appearance notice for a judicial referral hearing, or 2) applying for a review of the youth sentence. Only once these measures are deemed inadequate should the court proceed with a charge.

Section 5 of the *YCJA* outlines the objectives of EJM's. EJM's should be designed to:

- provide an effective and timely response to offending behaviour,
- to encourage young persons to acknowledge and repair the harm caused,
- to encourage families of the young persons and the community to become involved in the design and implementation of those measures,
- to provide an opportunity for victims to participate in decisions, and
- to respect the rights and freedoms of young persons and be proportionate to the seriousness of the offence.

Both summary and indictable offences (in exceptional circumstances) may be considered for EJM's.

Forms of EJM available:

- To a police officer are (s 6):
    - To take no further action
    - To warn the young person
    - To administer a caution, or
    - To refer the young person to a program or agency in the community (with the consent of the young person).
    - *Bill C-75 states that a police officer must consider whether one of these EJM's will be sufficient before taking any other action.*
- To Crown Counsel are (s 8):
    - To administer a caution.

Section 6 of the Act requires police officers to consider extrajudicial measures and to refer cases to community agencies and programs when appropriate. Community Accountability

Programs (CAPs) are funded by the province of BC and offer alternatives to the traditional justice system.

Many CAPs accept criminal case referrals from the police as well as the community. The programs use Restorative Justice principles. Restorative Justice is a philosophy that aims to address the harms caused by criminal acts and work towards a resolution for the offender, victim, and community. While approaches may vary across programs, many use one-to-one facilitation, talking circles, and conferences to work towards a confidential resolution that does not result in a criminal record for the young person who has caused harm. To participate, the youth offender must take responsibility for their actions. The participation of other parties, such as victims, parents, and community members may depend on the case and the CAP.

2. Extrajudicial Sanctions

Extrajudicial sanctions (EJS) may be used where the seriousness of the offence, the nature and number of previous offences committed by the young person, or any other aggravating circumstances make a warning, caution, or referral inadequate (s 10 *YCJA*).

EJSs may be used only if (s 10(2)):

a. they are part of a program of sanctions authorized by the Attorney General;
b. the sanctions are considered appropriate having regard to the needs of the young person and the interests of society;
c. the young person, having been informed of the EJS, fully and freely consents to be subject to it;
d. the young person has, before consenting to be subject to the EJS, been advised of their right to be represented by counsel and been given a reasonable opportunity to consult with counsel;
e. the young person accepts responsibility for the act or omission that forms the basis of the alleged offence;
f. there is, in the opinion of the Attorney General, sufficient evidence to proceed with the prosecution of the offence.
g. the prosecution of the offence is not in any way barred at law.

This procedure commonly involves an interview with a youth worker (through the local probation office), who will recommend a plan to the prosecutor that may include conditions such as counselling, restitution, community service, victim-offender mediation, or an apology. Section 10(3) precludes EJSs in circumstances where the young person denies culpability or expresses a desire to have the charges proceed against them in Youth Justice Court. Statements accepting responsibility, made as a condition of being dealt with through EJSs, are not admissible in evidence in any subsequent civil or criminal proceedings (s 10(4)). If EJSs are imposed, the person who administers the program must inform the parents of the young person about the sanctions (s 11). Victims, upon request, are entitled to be informed of the identity of the young person and how the offence was dealt with when an EJS is used (s 12).

G. Court Process

1. Compelling a Young Person's Appearance in Court

The procedure for compelling a young person to attend court is generally the same as that for adults as set out in the *Criminal Code*. A police officer may release a young person on either an Appearance Notice or a Promise to Appear (an Undertaking). These documents will indicate a time, date, and location for the young person's first appearance in Court. If the Information is not laid prior to this first appearance the Appearance Notice or the

Promise to Appear will be rendered a nullity. The Undertaking, however, will continue in force as long as the charges are before the Court.

If the young person does not appear when they are supposed to or fails to comply with an undertaking, they can be charged with failure to comply. If the original charge for which they made the Promise to Appear/Undertaking is dismissed, withdrawn, or stayed, or the young person is acquitted, the Attorney General must review the charge for failure to comply before that prosecution can proceed (Bill C-75 s 24.1).

The Ontario Court of Appeal in *R v Oliveira*, 2009 ONCA 219 held that a Promise to Appear and an Undertaking serve two distinct and separate purposes. The Court went on to explain that the purpose of the Promise to Appear is to secure the initial attendance of the Accused in Court. The Undertaking, in contrast, constitutes a promise by the Accused to comply with certain conditions in exchange for their release from custody pending the resolution of the charges.

Alternatively, and after an Information has been laid, a young person will be compelled to Court by either a Summons or a Warrant. A Warrant is issued where:

- Crown Counsel is either seeking the detention of the young person or conditions of release for the young person, or
- the whereabouts of the young person are unknown.

2. Time Limitations

The time limitation for commencing a prosecution is the same for both adults and youth. Time limitations vary depending on the nature of the offences and are set out in the *Criminal Code*. See **Chapter 1: Criminal Law**.

3. Proof of Age

The age of the young person must be established. This is usually done at the early stages of the proceedings. There are a number of ways that this can be accomplished:

- a parent can testify as to the age of the young person (s 148(1) *YCJA*),
- a birth or baptismal certificate can be evidence of the age of a young person (s 148(2) *YCJA*),
- Defence Counsel may attest to having spoken with a parent or guardian, and on that basis, admit the age of the young person (s 149 *YCJA*), or
- the Court may act on any other information it considers reliable to determine the age of a young person (s 148(3) *YCJA*).

4. Proof of Notice

It must be shown that a young person's parent or guardian has been notified of the charges against the young person.

- If detained, a police officer must contact the parents (in writing or orally) as soon as possible and tell them the location where the young person is being held and the reason for their arrest.
- If released on a Promise to Appear or an Undertaking, the police officer must give written notice to the parents as soon as possible.
- If given a ticket under the *Contraventions Act* (SC 1992, c 47) (other than a parking ticket), the parents should be given written notice as soon as possible.
- If the parents cannot be located, notice can be given to another relative or adult who is likely to assist the young person and is deemed appropriate.

5. Pre-Trial Detention and Conditions

The rules of pre-trial detention are set out in sections 28 and 29 of the *YCJA*. A young person cannot be detained in custody or have conditions included in an undertaking as a substitute for appropriate child protection, mental health, or other social measures.

Moreover, starting December 18, 2019, a young person may be subjected to a condition only if the judge/justice is satisfied that (s 29(1)):

- The condition is needed to ensure their court appearance or keep safe or protect the public;
- The condition is reasonable to the circumstances of the offending behaviour; and,
- The young person will reasonably be able to comply with the condition.

A young person may only be detained in custody where the Crown has proven, on a balance of probabilities, that (s 29(2)):

1. The young person has either:
    - been charged with a serious offence (as defined in s 2, *YCJA*), or
    - has a history that indicates a pattern of either outstanding charges or findings of guilt.
2. There is either:
    - a substantial likelihood that the young person will not appear in court, or
    - evidence that detention is necessary for the protection of the public, having regard to all the circumstances, including a substantial likelihood that the young person will commit a serious offence, or
    - evidence that the young person has been charged with a serious offence and detention is necessary to maintain confidence in the administration of justice having regard to the declaration of principle and all the circumstances, including: the strength of the prosecution's case, the gravity of the offence, circumstances surrounding the commission of the offence, and the young person is liable for a potentially lengthy custodial sentence.
3. There are no conditions that would:
    - reduce the likelihood that the young person would not appear in court, or
    - offer adequate protection to the public, or
    - maintain confidence in the administration of justice.

Bill C-75 added the requirement that if a young person is charged with a summary offence (or the Crown is proceeding summarily), the need for detention must be reviewed every 30 days.

A young person may be placed in the care of a responsible person instead of being held in custody if a Youth Justice Court is satisfied that (s 31(1)):

1. the young person would otherwise be detained in custody;
2. the person is willing and able to take care of and exercise control over the young person; and,

3. the young person is willing to be placed in the care of that person.

If the young person would otherwise be detained in custody, the Youth Justice Court is obligated_inquire as to the availability of a responsible person and the young person's willingness to be placed in the care of the person (s 31(2)).

A responsible person who agrees to care for a young person under section 31(3) adopts a very serious responsibility. The responsible person must sign an undertaking that binds them to oversee and essentially police the young person's bail order. This undertaking often includes a term that the responsible person report any breaches of the bail conditions to the police and the bail supervisor. Wilful failure to comply with the terms of the undertaking may result in the responsible person being charged with an offence punishable with up to two years imprisonment (s 139).

Section 30 of the *YCJA* provides that a young person who has been detained in custody prior to being sentenced must be placed in a youth facility. When that person attains the age of 20 years, they shall be placed in an adult facility.

6. Pleas

A young person may plead guilty or not guilty (s 36). The plea of not guilty by reason of mental disorder is also available. Pleas must be entered before a Youth Justice Court judge (not a judicial justice of the peace).

After a guilty plea is entered a Youth Justice Court judge may order the preparation of:

1. a pre-sentence report (s 40), or
2. a medical, psychiatric, and/or psychological report (s 34). The Judge may also convene a section 19 Conference.

Where a not guilty plea is entered a Trial Date is set.

7. The Trial Process

The trial process is the same for young persons as it is for adults.

a) Admissibility of Statements

The law relating to the admissibility of statements made by adult accused persons to persons in authority also applies to youths (s 146(1)). There are, however, specific provisions that ensure a young person understands both the consequences of making such a statement and is given the opportunity to seek and/or consult counsel (s 146(2)). The right to counsel may be waived but must be done so either by a signed written statement or a recorded statement (s 146(4) and (5)). A judge may rule inadmissible any statement given by a young person if satisfied that it was given under duress (s 146(7)). Voluntary statements can be admitted into evidence even where there has been a technical irregularity in complying with a young person's statutory protection. That is, provided that the Youth Justice Court is satisfied that the admission of the statement would not offend the principle that young persons are entitled to enhanced procedural protection to ensure that they are treated fairly and that their rights are protected (s 146(6)).

In *R v AD,* 2010 BCSC 1715, the statement of the 15-year-old accused was found inadmissible for non-compliance with section 146(2)(*d*) of the *YCJA.* In that case, Justice Stromberg-Stein notes that "[i]nforming a young person they are *entitled* to have a lawyer or third party with whom they have consulted present, rather than phrasing this as a *requirement*, is 'deficient' and 'not completely accurate', as s

146 draws an important distinction between the rights of the young person and the requirements placed upon the police." (*R v AD,* at para 24). In that case, counsel for the accused was out of town and unable to immediately come to the police station where the accused was detained. Although the police informed AD of his right to have his lawyer present during the interview, it was clear that they were going to interview him that same day, regardless of his lawyer's availability.

The *YCJA* does not specify the standard of proof the Crown must meet to show compliance with section 146. In *R v LTH,* 2008 SCC 49 (CanLii) the Supreme Court of Canada stated each component of section 146 must be proven beyond a reasonable doubt. If a young person has been interviewed, Crown must prove the person taking the young person's statement took reasonable steps to ensure the young person understood their rights (*Ibid,* at para 6). Simply reading a standardized form will likely not fulfill the caution requirement of section 146(2)(*b*). The person in authority must make reasonable efforts to determine the level of comprehension of the specific young person to ensure their explanation is appropriate. In *R v LTH,* the majority of the Court found the police officer, when reading the accused his rights, failed to take into account that the accused had a learning disability, and, as a result, found the statement inadmissible. In *R v LTH,* the Court also notes that Crown Counsel does not have to prove the young person actually understood the rights explained to them. If the judge is satisfied beyond a reasonable doubt that the young person's rights and options were explained as required by section 146, the judge may infer the young person understood those rights and the consequences of waiving them. The burden then shifts to the defence to point to evidence showing the young person did not, in fact, understand their rights or the consequences of waiving those rights (*Ibid,* at para 48).

b) Children and Young Persons as Witnesses

Where a child is a witness at a Youth Court trial, the judge or justice must instruct that child as to the duty to speak the truth and the consequences of failing to do so. Where a young person is a witness the judge or justice may instruct the young person as to this duty "if he/she considers it necessary" (s 151).

There are special protections under the *Criminal Code* for witnesses who are under the age of 18 years. A justice/judge has the discretion under section 486 of the *Criminal Code* to exclude members of the public from the courtroom if they are of the opinion that such an order is in the interest of public morals, the maintenance of order or the proper administration of justice. The "proper administration of justice" includes ensuring that the interests of witnesses under the age of 18 years are safeguarded in all proceedings (s 486(2)(b)). A witness who is under the age of 18 years may also be entitled to have a support person present in the courtroom while testifying (*Criminal Code*, s 486.1), to testify outside the courtroom or to testify behind a screen (*Criminal Code,* s 486.2). The child or young person must be advised of these options.

Section 16.1 of the *Canada Evidence Act* provides that a person under 14 years of age is presumed to have the capacity to testify. Any person who challenges the capacity of such a witness bears the burden of satisfying the Court that there is an issue as to the witness' capacity to understand and respond to questions. It must be shown that the witness does not understand the duty of speaking the truth.

8. Section 19 Conferences

Section 19 conferences are a proceeding unique to Youth Justice Court. Conferences can be an effective means of coordinating services, broadening the range of perspectives on a case, and

arriving at more creative and appropriate resolutions. Conferences can be composed of a number of different people, including the victim, the accused, their parents, community resource professionals, and members of the justice system including a judge or justice of the peace, police officer, and Crown Counsel. Conferences are non-adversarial and collaborative, and may elicit advice on decisions such as a suitable extrajudicial measure, a condition for release from pre-trial detention, appropriate sentencing (see below) and plans for reintegrating the young person back into the community after release from custody.

H. Sentences

1. Youth Sentences

The purpose and principles of sentencing under the *YCJA* are set out in sections 3 and 38 of the Act. The purpose of sentencing is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote their rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public (s 38(1)). The principles of sentencing are set out in section 38(2) and include that:

a) the sentence must not result in a punishment greater than would be appropriate for an adult convicted of the same offence committed in similar circumstances,
b) the sentence must be similar to that which would be imposed in other regions,
c) the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence,
d) all available sanctions other than custody should be considered, with particular attention to the circumstances of Aboriginal young persons,
e) subject to paragraph (c) the sentence must:
    i. be one that is the least restrictive, the most likely to rehabilitate and that will promote a sense of responsibility in the young person and an acknowledgement of the harm done to the victim(s) and society. None of these factors should be considered in isolation from each other, the other principles in 38(2), or the purposes and objectives of the act as a whole.
f) any condition imposed as a part of the sentence can only be imposed if it is necessary to achieve the purpose set out in 38(1), if the young offender would reasonably be able to comply with it, and if it is not used as a substitute for appropriate child protection, mental health, or other social measures.
g) Subject to paragraph (c), the sentence may have the objective to denounce unlawful conduct and deter the young person from committing offences.

General deterrence is not a sentencing principle under the *YCJA*.

Although all elements listed under section 38(2) should be taken into consideration during sentencing, the BC Court of Appeal has indicated that there is a hierarchy within that section. In *R v SNJS*, [2013] BCJ No 1847, the court noted that “to the extent that there is any hierarchy within the principles laid down in s. 38(2), it is (c) which is at the top of that hierarchy”. In *R v SNJS* at paragraphs 26-29 the Court reviewed the interplay between sections 38(2)(d) and (e) with section 38(2)(c), and indicated that section 38(2)(e) is subject to section 38(2)(c). The court also indicated that the need to impose a sentence

proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence is at the top of the hierarchy. Further, the court indicated that in respect of the criteria within section 38(2)(e), there is no hierarchy between the three principles, and there is no reason for a judge to treat (e)(i) as trumping (e)(ii) or (iii). The judge must consider all of those requirements, along with the other principles laid down in section 38(2), and the principles set out in section 3, in determining a sentence. Additionally, the court opined that the *YCJA* is not entirely "offender-centric"(para 28).

In determining a youth sentence, section 38(3) requires a Youth Justice Court to consider:

a) the degree of participation of the young person in the offence,
b) the harm done to victims,
c) any reparation made by the young person,
d) the time the young person has already spent in detention as a result of the offence,
e) any previous findings of guilt of the young person, and
f) any other aggravating and mitigating circumstances.

A Youth Justice Court shall, before imposing a youth sentence, consider a pre-sentence report prepared by a youth worker, representations made by the parties, other relevant information and recommendations submitted as a result of a section 19 Conference (s 42(1)). Mandatory minimum sentences under adult or provincial statutes do not apply to young persons. The maximum duration of youth sentences is set out in section 42(14) to (16). A custodial sentence cannot be used as a substitute for appropriate child protection, mental health, or other social measures (s 39(5)).

Sentencing options are set out in section 42(2) *YCJA*. Non-custodial sentence options include:

a) A judicial reprimand,
b) An absolute discharge,
c) A conditional discharge,
d) A fine to a maximum of $1000,
e) Compensation and restitution,
f) Community work service,
g) Probation,
h) An Intensive Support and Supervision Program Order (ISSO), and
i) Non-residential programs

Upon a finding of guilt, a Youth Justice Court judge may order that the young person be discharged absolutely or conditionally (42(2)(b) and (c)). The two-part test for discharges outlined in section 730 of the *Criminal Code* that applies to adult offenders (that a discharge is in the best interest of the accused and not contrary to public interest), only applies to absolute discharges for youths (*R v RP*, 2004 ONCJ 190). The test is not applicable when considering a conditional discharge for youths (*R v CSW*, 2004 ABCA 352).

Under the *Criminal Code*, adult offenders who receive a conditional discharge are "deemed not to have been convicted" (s 730(3)), while youths are "deemed not to have been found guilty or convicted upon the expiry of the sentence or order" (s 82 *YCJA*). Moreover, section 42(11) of the *YCJA* provides that unlike conditional discharge for adult offenders, a probation cannot be combined with a conditional discharge for youths (*R v RP*). However, the access period for records flowing from a conditional discharge is longer than an absolute discharge (see Records: Access and Disclosure).

Where a fine or an order for compensation or restitution is imposed, a court must consider the present and future means of the young person to pay. If a fine is imposed, the *YCJA* allows for the lieutenant governor in council of the province to order a percentage of any fine imposed on a young person to be used to assist victims of offences (s 53(1)). In BC, an Order in Council has set this at 15%. Where a conditional discharge, probation or ISSO is imposed, the court must ensure that any conditions included complying with the requirements in section 38(2)(e.1) of the *YCJA*.

Section 39(1) of the *YCJA* provides that a young person cannot be committed to custody unless:

a) the young person has committed a violent offence,
b) the young person has previously been found guilty of an offence under section 137 in relation to more than one sentence and, if the court is imposing a sentence for an offence under subsections 145(2) to (5) of the *Criminal Code* or section 137, the young person must have caused harm, or a risk of harm, to the safety of the public in committing that offence
c) the young person 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
d) in exceptional cases where the young person has committed an indictable offence, the aggravating circumstances of the offence are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38.

The Youth Justice Court under section 39(2) of the *YCJA* is required to consider all alternatives to custody that are reasonable in the circumstances and, if custody is imposed, reasons must be given as to why the Court found a non-custodial sentence inadequate to achieve the purpose of sentencing as set out in section 38(1) (s 39(9)).

Prior to committing a young person to custody, the Judge must consider a pre-sentence report (s 39(6)). This requirement can be waived, with the consent of the prosecutor and the young person, and if the Youth Justice Court is satisfied that it is unnecessary (s 39(7)).

Custodial sentence options include:

a) **Deferred Custody and Supervision Order (s 42(2)(p))**.
This is a custodial sentence served in the community. It is not available where a young person has committed an offence that causes or attempts to cause serious bodily harm. The maximum duration of this sentence is 6 months. If the young person breaches a condition of the DCSO, a warrant may be issued and, after a hearing, the DCSO may be converted to a Custody and Supervision Order (see below).

b) **Custody and Supervision Order (s 42(2)(n))**. The maximum duration of a CSO is two years, or three years if an adult maximum sentence is life imprisonment. Two-thirds of the sentence must be served in custody while the remaining one-third is served under a community supervision order. The level of custody (open custody or secure custody) must be specified by the Youth Justice Court (s 88 and Order in Council 267/2003). The provincial director sets the mandatory and optional condition of the

community portion of the CSO (s 97). In [*R v RRJ*, 2009 BCCA 580](), the BC Court of Appeal held that pre-sentence detention is not part of the sentence imposed. The Court explained that the judge must consider time already served in custody when sentencing a young person but that the judge may still choose to impose the maximum period of custody and supervision available under the statute.

c) **Custody and Supervision Order (s 42(2)(o))**. A custody term of a maximum of three years can be imposed where a young person is convicted of either attempted murder, manslaughter, or aggravated sexual assault. There is no minimum time period that must be spent in custody. The time spent in custody is left up to the judge's discretion.

d) **Custody and Supervision Order (s 42(2)(q))**. Young persons convicted of murder can be committed to custody for longer periods of time. A young person convicted of first-degree murder can serve a custodial sentence of 10 years (no more than 6 years can be served in continuous custody). In the case of second-degree murder, a sentence of 7 years can be imposed (no more than 4 can be served in continuous custody).

e) **Intensive Rehabilitative Custody and Supervision Order (s. 42(2)(r) and 42(7))**. These orders are rare and are usually imposed when a young person has serious mental health issues.

The *YCJA* allows for a delay in the imposition of a custody order where appropriate. In these instances, the probation order commences prior to the custody order and stipulates that the custody sentence begin immediately after the designated period of delay (s 42(12)).

While in custody, a young person, with the assistance of a youth worker, must plan for their reintegration into the community, including the preparation and implementation of a reintegration plan that sets out the most effective programs for the young person in order to maximize their chances for reintegration in the community (s 90(1)).

Section 76(2) of the *YCJA* prohibits young persons under the age of 18 years from serving any portion of their custodial sentence in either a provincial correctional facility for adults or a penitentiary. A young person who is serving a youth custodial sentence may be transferred to an adult correctional facility if the Court considers it to be in the best interests of the young person or in the public interest (s 92). A young person who turns 20 years old while serving a custodial sentence will be transferred to an adult facility (s 93). A young person who has reached the age of 20 at the time the custodial youth sentence is imposed will be committed to a provincial correctional facility for adults (s 89(1)).

Section 19 Conferences
A Youth Justice Court may convene a conference under section 19 for insight on the young person's circumstances and recommendations as to an appropriate sentence (ss 41 and 19).

2. Adult Sentences

Crown Counsel may make an application to the Youth Justice Court for an order that a young person is liable to an adult sentence if the young person is or has been found guilty of an offence for which an adult is liable to imprisonment for a term of more than 2 years and that was committed after the young person attained the age of 14 years (s 64(1)). Prior to changes in Bill C-75, Crown Counsel was obligated to consider whether it would be

appropriate to seek an adult sentence for a young person over the age of 14 years, who committed a serious violent offence (murder, attempt murder, manslaughter, or aggravated sexual assault), and to advise the court of that decision. Provinces could also choose to fix an age greater than 14 years but not greater than 16 years for the purpose of this requirement to consider an adult sentence. As of September 19, 2019, the last two points have been repealed.

The Youth Justice Court shall order that an adult sentence be imposed if Crown Counsel has satisfied the Court that:

a) the presumption of diminished moral blameworthiness or culpability of the young person is rebutted (s 72(1)(a)), and
b) a youth sentence would not be of sufficient length to hold the young person accountable for their behaviour (s 72(1) (b)).

Although youths can be sentenced as adults the sentencing guidelines are not strictly the same as those that would be utilized in sentencing an adult. In *R v Pratt*, 2007 BCCA 206, the BC Court of Appeal recognized that the court must consider the principles of sentencing in section 3 *YCJA* when sentencing a youth, including a youth who receives an adult sentence.

3. Reintegration Leave

The Provincial Director may, subject to any terms or conditions that they consider desirable, authorize a young person committed to custody in a youth facility the opportunity to have leave from the facility. There are two categories of leave:

1. **Reintegration Leave:** This leave is granted for medical, compassionate, or humanitarian reasons, or for the purpose of rehabilitating the young person or reintegrating the young person into the community. The maximum length of time is 30 days (s 91(1)(a)).
2. **Day release**: This leave is to allow a youth to attend an educational facility, to attend work, to assist their family, to participate in programming related to school and/or work, or to attend an outpatient treatment program or other program that provides services to address the needs of the young person (s 91(1)(b)).

Reintegration leaves are also available to a young person serving an adult sentence in a youth facility.

4. DNA Sample

When a young person is found guilty of certain designated offences (see *Criminal Code*, s 487.04), an order may be made for the young person to provide samples of one or more bodily substances for the purpose of forensic DNA analysis, under sections 487.051 and 487.052. The resulting DNA data is stored in a DNA databank, which is maintained by the RCMP.

The *DNA Identifications Act*, SC 1998, c 37, has been amended so as to limit the retention of DNA samples taken from a young person. DNA samples taken from young persons can be retained for shorter periods of time than those taken from adults (s 9.1) and shall be promptly destroyed when the record relating to the offence is expunged (s 10.1).

I. Review of Sentences

1. Custodial Sentences

An annual review is mandatory for all custodial sentences over one year. This review is to take place without delay at the end of one year from the date of the earliest youth sentence imposed and the end of every subsequent year from that date (ss 94 (1) and (2)).

A young person may be entitled to an optional review. When the youth sentence is for less than one year, a young person may request a review 30 days after the sentence is imposed or after serving one-third of the sentence, whichever is longer (ss 94(3)(a)(i) and (ii)). When the youth sentence exceeds one year, a young person may seek a review after serving six months of the sentence (s 94(3)(b)). In either case, the review will only take place where the Youth Justice Court is satisfied that there are grounds for such review (s 94(5)). Possible grounds for review are as follows:

- The young person has made sufficient progress to justify a change in the sentence
- The circumstances that led to the youth sentence have changed materially
- There are new services or programs available that were not available at the time of the youth sentence
- The opportunities for rehabilitation are now greater in the community, or
- Any other grounds the Youth Justice Court considers appropriate (s. 94(6)).

A progress report must be prepared for the purposes of review (s. 94(9)). A Youth Justice Court, after review, may confirm the sentence or it may release the young person from custody and place the young person on conditional supervision (s. 94(19)). The terms of the condition supervision will be imposed by the Youth Justice Court in accordance with section 105.

2. Non-Custodial Sentences

As of December 18, 2019, section 59(1) of the *YCJA* allows for non-custodial sentences to be reviewed at any time after they are imposed. They no longer require leave from a provincial court justice for a review within the first six-month period after sentencing. The application for review can be made by the provincial director, the young person, the young person's parent, or by Crown Counsel (s 59(1)). The grounds for review are:

- the circumstances that led to the youth sentence have changed materially,
- the young person is unable to comply with or is experiencing serious difficulty in complying with the terms of the youth sentence,
- the young person has contravened a condition of an order without reasonable excuse,
- the terms of the youth sentence are adversely affecting the opportunities available to the young person to obtain services, education or employment, or
- any other ground that the Youth Justice Court considers appropriate (s 59(2)).

A progress report may be ordered for the purposes of such a review (s 59(3)). A Youth Justice Court, after conducting a review, may confirm the youth sentence, terminate the youth sentence or vary the youth sentence (s 59(7)). Section 59(8) states that the varied sentence cannot be more onerous than the original youth sentence unless the young person

consents or more time is required to comply with the youth sentence (s 59(9)). The time to complete a community work service order or a restitution order may be extended for up to one year (s 59(9)). Further, the new section 59(10) allows for more onerous conditions to be added onto a sentence made under section 42(2) or (1) if they would either better protect the safety of the public from the risk of harm by the young offender, or if it would assist the young offender to comply with any conditions previously imposed as part of the sentence.

J. Appeals

Under the *YCJA*, young persons and the Crown have the same rights of appeal as adults under the *Criminal Code* (ss 37(1) and (5)). However, a young person cannot appeal a sentence review decision, whether mandatory or optional (s 37(11)).

K. Special Concerns

1. Public Hearings

Youth Justice Court hearings are open to the public. A justice may, however, exclude any person from all or part of the proceedings if the Justice considers that the person's presence is unnecessary to the conduct of the proceedings and the justice is of the opinion that:

- any information presented to the justice would be seriously injurious or seriously prejudicial to the young person, a witness, or a victim, or
- it would be in the interest of public morals, the maintenance of order, or the proper administration of justice to exclude any member of the public (s 132).

2. Publication of a Young Person's Identity

Section 110(1) of the *YCJA* states that no person shall publish the name of a young person or any other information that would result in the identification of a young person. This ban does not apply:

- where the information relates to a young person who has received an adult sentence, or
- where the publication of information is made in the course of the administration of justice and not for the purpose of making the information known in the community.

Bill C-75 eliminated the court-initiated lifting of publication ban for violent youth offenders as of September 19, 2019.

Once a young person attains the age of 18 years they may apply to lift the ban on publication for the purpose of permitting that person to publish information that would identify them as having been dealt with by the *YCJA*. The ban will only be lifted if the Youth Justice Court is satisfied that the publication would not be contrary to the young person' best interests or the public interest (s 110(6)).

3. Fingerprints and Photographs

The *Identification of Criminals Act*, RS 1995, c I-1, applies to young persons. Fingerprints and photographs of a young person can only be taken in circumstances in which an adult would be subject to the same procedures (*YCJA*, s 113).

4. Records: Access and Disclosure

Sections 114 to 129 of the *YCJA* govern the records relating to young people which are kept in relation to the Youth Justice Court process. These provisions set out who may keep records in relation to a young person who is charged under the Act, and restrict access and control the disclosure of information contained within these records.

Records that arise out of proceedings under the *YCJA* may be kept by:

- a Youth Justice Court, a review board, or any court dealing with matters arising out of proceedings under the *YCJA* (s 114),
- an investigating police force may keep a record relating to any alleged offence or any offence committed by a young person (s 115(1)),
- an investigating police force may keep a record of any extrajudicial measures that they use to deal with young persons (s 115(1.1)),
- a department or an agency of any government in Canada for the purpose of an investigation, use in proceedings against the young person, sentencing, and considering the young person for extrajudicial measures (s 116(1)).

Who has access to these records is set out in sections 117 to 124 *YCJA*. Except as authorized by the *YCJA*, no person is to be given access to a record kept under sections 114 to 116 and no information contained in it may be given to any person, where to do so would identify the young person as a person dealt with under the Act (s 118(1)). Section 119(1) and (2) list the persons to whom access to records may be granted and the period of time within which access can be granted, respectively. These periods of access vary in duration depending on the type of offence and the treatment of the young person by the court (s 119(2)):

a) if an extrajudicial sanction is used, the period ends two years after the young person consents to be the subject of the sanction;

b) if the young person is acquitted not by reason of a verdict of not criminally responsible on account of mental disorder, the period ends two months after the expiry of time allowed for the taking of an appeal or, if an appeal is taken, the period ends three months after all proceedings regarding the appeal have ended;

c) if the charge against the young person is dismissed not by reason of acquittal, is withdrawn, or the young person is found guilty, the period ends two months after the dismissal, withdrawal, or finding of guilt;

d) if the charge against the young person is stayed, the period ends once no proceedings have been taken against the young person for one year;

d.1. if an order is made under section 14(2) or 20(2), which include recognizance orders under sections 83.3, 810 to 810.02, and 810.2 of *the Criminal Code*, the period ends six months after the order expires;

e) if the young person is found guilty and the sentence is an absolute discharge, the period ends one year after the finding of guilt;

f) if the young person is found guilty and the sentence is a conditional discharge, the period ends three years after the finding of guilt;

g) if the young person is found guilty of a summary conviction offence, the period ends three years after the young person has completed the sentence imposed, subject to (i) and (j) and subsection (9);

h) if the young person is found guilty of an indictable offence, the period ends five years after the young person has completed the sentence imposed, subject to (i) and (j) and subsection (9);
i) subject to subsection (9), if the young person is found guilty of an offence punishable on summary conviction committed when they were a young person during the original access period (per (g) or (h)), the access period will be the later of
   (i) the original period of access (per (g) or (h), as applicable), or
   (ii) three years after the youth sentence imposed for that offence has been completed
j) subject to subsection (9), if the young person is found guilty of an indictable offence committed when they were a young person during the access period (per (g) or (h)), the period ends five years after the young person has complected the sentence imposed for that indictable offence.

119(9) If the young person is convicted of an offence committed when they were an adult during the access period under paragraphs (2)(g), (h), (i) or (j),

(a) section 82 (effect of absolute discharge or termination of youth sentence) does not apply to the young person in respect of the offence for which the record is kept under sections 114 to 116;
(b) the record shall be dealt with as a record of an adult; and
(c) the finding of guilt in respect of the offence for which the record is kept is deemed to be a conviction.

During the period of access, individuals not expressly named in section 199(1) can make an application under subsection (s) by to access a young person's court records. A Youth Justice Court judge may grant access where they are satisfied that access to the record is (i) desirable in the public interest for research or statistical purposes, or (ii) desirable in the interest of the proper administration of justice (s 119(1)(s)).

After the applicable access period has ended, a person must apply to a Youth Justice Court judge to gain access to the records and the application must meet the requirements set out in section 123(1). The group of persons to whom access will be granted with respect to extrajudicial sanctions has special limitations (s 119(4)).

Not all records concerning young persons are governed by the same rules with respect to access. Under section 120 of the *YCJA*, RCMP records may be accessed by:

- the young person to whom the record relates,
- the young person's counsel,
- a government of Canada employee for statistical purposes,
- any person with a valid interest in the record if a judge is satisfied that access is desirable in the public interest for research or statistical purposes,
- the Attorney General or a peace officer for the purpose of investigating an offence,
- the Attorney General or a peace officer to establish the existence of an order in any offence involving a breach of an order, and
- any person for the purposes of the Firearms Act.

Sections 125 to 127 of the Act deals with disclosure of the information in a record. These rules may disclose information which is in their possession, to whom they may disclose the information, and when such disclosure will be permitted. Before any information is disclosed, the young person must have an opportunity to be heard unless reasonable efforts locate the young person have been unsuccessful.

5. Mental Health Provisions

Young persons who come into contact with the criminal justice system may suffer from mental health issues. The *Criminal Code* provisions regarding mental disorders apply to the *YCJA* except to the extent they are inconsistent with the *YJCA* (s 141). Section 34 of the *YCJA* allows the Court to take into account the mental health of a young person and order a report in certain circumstances.

Pursuant to section 34, at any stage of the proceedings, the Court may order an assessment of a young person by a qualified person who is required to report the results of the assessment in writing: i) with the consent of the young person and the Crown, or ii) on its own motion or on application of the young person or the Crown if the court believes a report is necessary and:

a) the Court has reasonable grounds to believe that the young person is suffering from a physical or mental illness or disorder, a psychological disorder, an emotional disturbance, a learning disability, or a mental disability,
b) the young person has a history of indicating a pattern of offences, or
c) the young person is alleged to have committed a serious violent offence.

In practice, the threshold for meeting 34(a) is broader than it appears. In *R v DP* (6 July 2017), Vancouver 23695-2-C, 23664-1 (BC Youth Div) the Youth Division of the BC Provincial Court clarified that to order a report under section 34 (1) the court does not need to conclude or even suspect that the evaluation would indicate that a person has a "diagnosed condition". Instead, section 34(1) is satisfied if there is some indication that there is information relating to the young person's medical condition that would assist the court in carrying out its purpose.

An assessment report can be ordered under section 34(2) of the *YCJA* for a limited number of designated purposes, i.e., if the Youth Justice Court is:

- considering an application under section 33 (release from or detention in custody),
- deciding whether to impose an adult sentence under section 71,
- making or reviewing a youth sentence,
- considering an application for continuation of custody (s 104(1)),
- setting conditions for conditional supervision (s 105(1)),
- making an order after a review of a breach of conditional supervision (s 109(2)), or
- authorizing disclosure of information about a young person (s 127(1))

Section 34(2)(a) seems to significantly narrow the purposes for which an assessment can be ordered and restricts it to instances where the court is reviewing a previous decision via a section 33 application. In practice, however, the courts suggest that section 34(2)(a) should be read to include bail hearings in the first instance. In *R v CL* (27 February 2014), Vancouver 22805-2-C (BC Youth Div) the Youth Division of the BC Provincial Court noted that restricting section 34 applications to a youth applying to release from detention "leads to an absurd result" because the same considerations apply before there has been a detention. Similarly, in *R v CB* (13 May 2014), Vancouver 23236-1; 23236-2-A (BC Youth Div) the court recognized that section 34(2), if read narrowly, is inconsistent with

other parts of the act. In *CB,* the court notes that section 34(2) should be read “expansively” so that it applies to “a release from or detention in custody of a young person who is before the court, whether it is by s.33 or by the more general process of arrest”. Both cases indicate that section 34(2)(a) is not limited to applications under section 33.

Only the people described in section 119 of the *YCJA* can have access to the medical and psychological reports outlined in section 34.

For more information on mental illness and the law, see **Chapter 14: Mental Health Law.**

6. Victims

Amendments have been made to the *Criminal Code* to enhance the role of the victim in the criminal trial process. The *YCJA* also aims to enhance the victim’s role. This is demonstrated by the references to victims’ rights in the general principles of section 3 and the fact that consideration of the harm done to victims and reparations are relevant in youth sentencing (s 38(3)).

BC is at the forefront when it comes to victim rights’ legislation, particularly in relation to the enactment of the *Victims of Crime Act*, which helps to ensure victims’ views and concerns will not go unnoticed. In 2015, Parliament enacted the *Canadian Victims’ Bill of Rights,* which guarantees victims’ rights throughout the criminal justice system across Canada. Refer to **Chapter 4: Victims** for more information.

7. Sex Offenders Information Registration Act

In April 2004, Parliament enacted the *Sex Offenders Information Registration Act*, SC 2004, c 10 [“*SOIRA*”], to help police investigate sexual crimes by providing them with up-to-date information from convicted sex offenders. The Act imposes an ongoing reporting process for sex offenders to provide information regarding residence, telephone numbers, employment, education, and physical description.

Section 490.011(2) of the *Criminal Code* provides that the *SOIRA* applies to young persons only if they are given adult sentences. Section 7 of the *SOIRA* allows a sex offender who is under 18 years to choose an adult to be in attendance when they report to a registration centre where information is collected.

8. Forfeiture

Forfeiture amounts may have been set out in an Undertaking or release order. Applications to follow through on the forfeiture are made to the Youth Justice Court (s 134 *YCJA*). A judge will arrange a hearing to decide if the forfeiture should be allowed or not.

IV. PROVINCIAL OFFENCES: YOUTH JUSTICE ACT

The original *Young Offenders (British Columbia) Act*, RSBC 1996, c 494 ["*YO(BC)A*"] was proclaimed in May, 1984 to complement the federal *Young Offenders Act*. In April 2004, the *YO(BC)A* was replaced with the *Youth Justice Act*, SBC 2003, c 85 ["*YJA*"]. The *YJA* imposes tougher sentences on young persons for gang activity, driving offences, and contraband activity within youth custody facilities. The *YJA* updates the provisions of the *YO(BC)A* in order to reflect new practices within the youth criminal justice system, as well as to render the provincial legislation more consistent with the federal *YCJA*. The *YJA* acts to narrowly expand custodial sentence options within the province, as well as to create a small number of new offences. Under the previous *YO(BC)A*, probation was the harshest sentence imposed on young persons, but under the new *YJA*, young persons may face jail time for six different offences. This legislation is not often used, and so only a brief overview is provided below.

A. Definition of Young Person

Under the *YJA*, "young person" is defined as a person who has reached 12 years of age but is less than 18 years of age (s 1).

B. Notice to Parents

If a young person is charged with an offence and is required to appear in court, the person who issued the process must immediately give written notice of the charge against the young person and the time and place of that young person's court appearance to a parent of the young person, if a parent is available. This section does not apply where proceedings are commenced by way of a violation ticket (ss 5(1) and (2)).

If a young person is going to be detained until their court appearance, the officer in charge at the time of the young person's detention must give written or oral notice of the arrest to a parent of the young person as soon as possible, if a parent is available. The notice must state the place of detention and the reason for the arrest of the young person (s 5(3)).

If notice is not given under sections 5(1) or (3), the proceedings are still valid (s 5(4)).

C. Sentencing

1. General

Once a young person is found guilty of an offence, the Court must impose one or more of the available sentences provided within the *YJA,* and no others (s 8(1)). The sentence is effective as of the date it is imposed by the court, unless the young person is already serving a custodial sentence, in which case the new sentence will be imposed on the date of expiry of the previous custodial sentence (ss 9(1) and (2)).

The possible sentences available to the court are:

- an absolute or conditional discharge, if there is no minimum penalty required for an adult convicted of that offence, and if it is in the best interest of the young person and not contrary to the public interest;
- a maximum fine of $1,000;
- community work service hours to a maximum of 240 hours and to be completed within a specified period no longer than one year;
- probation for a maximum of 6 months;
- custody not exceeding 30 days for specified offences under s 8(2)(e) (for example, trespassing on school grounds under section 177(2) of the *School Act*);
- custody not exceeding 90 days for other offences specified under section 8(2)(f) (for example, driving while prohibited or suspended under sections 95(1), 102, or

234(1) of the *Motor Vehicle Act*); and/or
- a driving prohibition for an offence under the *Motor Vehicle Act*.

The Court must not impose a sentence that results in punishment being imposed on a young person that is greater than the maximum punishment that could be imposed on an adult who has been convicted of the same offence (s 8(5)).

NOTE: Custodial sentences under the *YJA* do not include a period of community supervision, as under the *YCJA*. However, the Court may order a period of probation to follow a custodial sentence if it thinks it appropriate.

2. Sentence Review

A young person, a parent of the young person, or the Attorney General may apply for a review of the young person's sentence if the Court deems it appropriate (s 15(1)). The application may be made at any time after three months after the date the sentence was given, or with leave of the Court at any time.

In the case of custodial sentences under section 8(2)(e) or (f), an application may be made once the greater of 15 days or one-third of the sentence has been served (s 15(2)). Under a review, the Court may vary, rescind, or confirm the sentence, or make an entirely new sentence, but the new or varied sentence must not be more onerous than the sentence under review (ss 15(8) and (9)).

D. Special Concerns

1. Publication of a Young Person's Identity

The provisions under Part 6 of the *YCJA* that ban the publication of a young person's identity apply to the *YJA* (s 4(1)). See **Section III.J.2: Publication of a Young Person's Identity.**

2. Records

The provisions of the *YCJA* governing the records of young persons dealt with under that Act are deemed to apply to the *YJA* (s 4(1)). The sections of the YCJA which apply to the *YJA* are sections 114 to 116, sections 118 to 127, and s 129. See **Section III.J.4: Records: Access and Disclosure.**

APPENDIX A: GLOSSARY

Adult – means a person who is neither a young person nor a child.

Adult Sentence – in the case of a young person who is found guilty of an offence, means any sentence that would be imposed on an adult who has been convicted of the same offence.

Attorney General/Crown Counsel – means the government agency or agents who prosecute offences under the *Youth Criminal Justice Act, Youth Justice Act (BC),* and the *Criminal Code*.

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 section 19 of the *YCJA*.

Extrajudicial Measures – means measures other than judicial proceedings under the *YCJA* used to deal with a young person alleged to have committed an offence and includes extrajudicial sanctions.

Extrajudicial Sanction – means a sanction that is part of a program referred to in section 10 of the *YCJA*.

Offence – means an offence created by an Act of Parliament.

Parent – includes any person who is under a legal duty to provide for the young person or who has, in law or in fact, custody or control of the young person. However, this does not include a person who has custody or control of the young person by reason only of proceedings under the *Youth Criminal Justice Act* or *Youth Justice Act*.

Pre-sentence Report – means a report on the personal and family history and present environment of a young person made in accordance with section 40 of the *YCJA*.

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.

Serious Offence – means an indictable offence under an Act of Parliament (i.e., *Youth Criminal Justice Act* or *Criminal Code*) for which the maximum punishment is imprisonment for five years or more.

Serious Violent Offence – means an offence under one of the following provisions of the *Criminal Code:*
- (i) s 231 or 235 (first-degree murder or second-degree murder),
- (ii) s 239 (attempt to commit murder), or
- (iii) s 232, 234, or 236 (manslaughter), or
- (iv) s 273 (aggravated sexual assault).

Violent Offence – means
- (i) an offence committed by a young person that includes causing bodily harm as an element of the offence;
- (ii) an attempt or a threat to commit an offence that includes causing bodily harm as an element of the offence; or
- (iii) an offence during which a young person endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.

Young Person – means a person who is or, in the absence of evidence to the contrary, appears to be 12 years old or older, but less than 18 years old and, if the context requires, includes any person who is charged under the *YCJA* with having committed an offence while they were a young person or who is found guilty of an offence under the *YCJA.*

Youth Custody Facility – means a facility designated under section 85(2) for the placement of young persons.

Youth Sentence – means a sentence imposed under sections 42, 51, 59 or 94-96 of the *YCJA*.