

**Youth Criminal Justice Act (2002, c. 1)**

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Act current to September 3rd, 2008

Attention: See coming into force provision and notes, where applicable.

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Youth Criminal Justice Act

2002, c. 1

Y-1.5

[Assented to February 19th, 2002]

An Act in respect of criminal justice for young persons and to amend and repeal other Acts

Preamble

WHEREAS members of society share a responsibility to address the developmental challenges and the needs of young persons and to guide them into adulthood;

WHEREAS communities, families, parents and others concerned with the development of young persons should, through multi-disciplinary approaches, take reasonable steps to prevent youth crime by addressing its underlying causes, to respond to the needs of young persons, and to provide guidance and support to those at risk of committing crimes;

WHEREAS information about youth justice, youth crime and the effectiveness of measures taken to address youth crime should be publicly available;

WHEREAS Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights and freedoms, including those stated in the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, and have special guarantees of their rights and freedoms;

AND WHEREAS Canadian society should have a youth criminal justice system that commands respect, takes into account the interests of victims, fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Youth Criminal Justice Act*.

INTERPRETATION

Definitions

2. (1) The definitions in this subsection apply in this Act. "adult"

«*adulte*»

"adult" means a person who is neither a young person nor a child.

"adult sentence"
«*peine applicable aux adultes*»

"adult sentence", in the case of a young person 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.

"Attorney General"
«*procureur général*»

"Attorney General" means the Attorney General as defined in section 2 of the *Criminal Code*, read as if the reference in that definition to "proceedings" were a reference to "proceedings or extrajudicial measures", and includes an agent or delegate of the Attorney General.

"child"
«*enfant*»

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

"conference"
«*groupe consultatif*»

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

"confirmed delivery service"
«*service de messagerie*»

"confirmed delivery service" means certified or registered mail or any other method of service that provides proof of delivery.

"custodial portion"
«*période de garde*»

"custodial portion", with respect to a youth sentence imposed on a young person under paragraph 42(2)(n), (o), (q) or (r), means the period of time, or the portion of the young person'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 paragraph 42(2)(n) or under conditional supervision under paragraph 42(2)(o), (q) or (r).

"disclosure"
«*communication*»

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

"extrajudicial measures"
«*mesures extrajudiciaires*»

"extrajudicial measures" means measures other than judicial proceedings under this Act used to deal with a young person alleged to have committed an offence and includes extrajudicial sanctions.

"extrajudicial sanction"
«*sanction extrajudiciaire*»

"extrajudicial sanction" means a sanction that is part of a program referred to in section 10.

"offence"
«*infraction*»

"offence" means an offence created by an Act of Parliament or by 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"
«*père ou mère*» ou

«*père et mère* »

"parent" includes, in respect of a young person, any person who is under a legal duty to provide for the young person or any person who has, in law or in fact, the custody or control of the young person, but does not include a person who has the custody or control of the young person by reason only of proceedings under this Act.

"pre-sentence report"
«*rapport prédécisionnel* »

"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.

"presumptive offence"
«*infraction désignée* »

"presumptive offence" means

(a) an offence committed, or alleged to have been committed, by a young person who has attained the age of fourteen years, or, in a province where the lieutenant governor in council has fixed an age greater than fourteen years under section 61, the age so fixed, under one of the following provisions of the *Criminal Code*:

- (i) section 231 or 235 (first degree murder or second degree murder within the meaning of section 231),
- (ii) section 239 (attempt to commit murder),
- (iii) section 232, 234 or 236 (manslaughter), or
- (iv) section 273 (aggravated sexual assault); or

(b) a serious violent offence for which an adult is liable to imprisonment for a term of more than two years committed, or alleged to have been committed, by a young person after the coming into force of section 62 (adult sentence) and after the young person has attained the age of fourteen years, or, in a province where the lieutenant governor in council has fixed an age greater than fourteen years under section 61, the age so fixed, if at the time of the commission or alleged commission of the offence at least two judicial determinations have been made under subsection 42(9), at different proceedings, that the young person has committed a serious violent offence.

"provincial director"
«*directeur provincial* » ou
«*directeur* »

"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"
«*publication* »

"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.

"record"
«*dossier* »

"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 of an offence that is or could be prosecuted under this Act.

"review board"
«*commission d'examen* »

"review board" means a review board referred to in subsection 87(2).

"serious violent offence"

«*infraction grave avec violence* »

"serious violent offence" means an offence in the commission of which a young person causes or attempts to cause serious bodily harm.

"young person"
«*adolescent* »

"young person" means a person who is or, in the absence of evidence to the contrary, appears to be twelve years old or older, but less than eighteen years old and, if the context requires, includes any person who is charged under this Act with having committed an offence while he or she was a young person or who is found guilty of an offence under this Act.

"youth custody facility"
«*lieu de garde* »

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

"youth justice court"
«*tribunal pour adolescents* »

"youth justice court" means a youth justice court referred to in section 13.

"youth justice court judge"
«*juge du tribunal pour adolescents* »

"youth justice court judge" means a youth justice court judge referred to in section 13.

"youth sentence"
«*peine spécifique* »

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

"youth worker"
«*délégué à la jeunesse* »

"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.

Words and expressions

(2) Unless otherwise provided, words and expressions used in this Act have the same meaning as in the *Criminal Code*.

Descriptive cross-references

(3) If, in any provision of this Act, a reference to another provision of this Act or a provision of any other Act is followed by words in parentheses that are or purport to be descriptive of the subject-matter of the provision referred to, those words form no part of the provision in which they occur but are inserted for convenience of reference only.

2002, c. 1, s. 2, c. 7, s. 274.

DECLARATION OF PRINCIPLE

Policy for Canada with respect to young persons

3. (1) The following principles apply in this Act:

(a) the youth criminal justice system is intended to

- (i) prevent crime by addressing the circumstances underlying a young person's offending behaviour,
 - (ii) rehabilitate young persons who commit offences and reintegrate them into society, and
 - (iii) ensure that a young person is subject to meaningful consequences for his or her offence
- in order to promote the long-term protection of the public;

(b) the criminal justice system for young persons must be separate from that of adults and emphasize the following:

- (i) rehabilitation and reintegration,
- (ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
- (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,
- (iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and
- (v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;

(c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should

- (i) reinforce respect for societal values,
- (ii) encourage the repair of harm done to victims and the community,
- (iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and
- (iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and

(d) special considerations apply in respect of proceedings against young persons and, in particular,

- (i) 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,
- (ii) 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,
- (iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and
- (iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

Act to be liberally construed

(2) This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1).

PART 1

EXTRAJUDICIAL MEASURES

PRINCIPLES AND OBJECTIVES

Declaration of principles

4. The following principles apply in this Part in addition to the principles set out in section 3:

- (a) extrajudicial measures are often the most appropriate and effective way to address youth crime;
- (b) extrajudicial measures allow for effective and timely interventions focused on correcting offending behaviour;
- (c) extrajudicial measures are presumed to be adequate to hold a young person accountable for his or her offending behaviour if the young person has committed a non-violent offence and has not previously been found guilty of an offence; and
- (d) extrajudicial measures should be used if they are adequate to hold a young person accountable for his or her offending behaviour and, if the use of extrajudicial measures is consistent with the principles set out in this section, nothing in this Act precludes their use in respect of a young person who
 - (i) has previously been dealt with by the use of extrajudicial measures, or
 - (ii) has previously been found guilty of an offence.

Objectives

- 5.** Extrajudicial measures should be designed to
- (a) provide an effective and timely response to offending behaviour outside the bounds of judicial measures;
 - (b) encourage young persons to acknowledge and repair the harm caused to the victim and the community;
 - (c) encourage families of young persons — including extended families where appropriate — and the community to become involved in the design and implementation of those measures;
 - (d) provide an opportunity for victims to participate in decisions related to the measures selected and to receive reparation; and
 - (e) respect the rights and freedoms of young persons and be proportionate to the seriousness of the offence.

WARNINGS, CAUTIONS AND REFERRALS

Warnings, cautions and referrals

6. (1) A police officer shall, before starting judicial proceedings or taking any other measures under this Act against a young person alleged to have committed an offence, consider whether it would be sufficient, having regard to the principles set out in section 4, to take no further action, warn the young person, administer a caution, if a program has been established under section 7, or, with the consent of the young person, refer the young person to a program or agency in the community that may assist the young person not to commit offences.

Saving

(2) The failure of a police officer to consider the options set out in subsection (1) does not invalidate any subsequent charges against the young person for the offence.

Police cautions

7. The Attorney General, or any other minister designated by the lieutenant governor of a province, may establish a program authorizing the police to administer cautions to young persons instead of starting judicial proceedings under this Act.

Crown cautions

8. The Attorney General may establish a program authorizing prosecutors to administer cautions to young persons instead of starting or continuing judicial proceedings under this Act.

Evidence of measures is inadmissible

9. Evidence that a young person has received a warning, caution or referral mentioned in section 6, 7 or 8 or that a police officer has taken no further action in respect of an offence, and evidence of the offence, is inadmissible for the purpose of proving prior offending behaviour in any proceedings before a youth justice court in respect of the young person.

EXTRAJUDICIAL SANCTIONS

Extrajudicial sanctions

10. (1) An extrajudicial sanction may be used to deal with a young person alleged to have committed an offence only if the young person cannot be adequately dealt with by a warning, caution or referral mentioned in section 6, 7 or 8 because of the seriousness of the offence, the nature and number of previous offences committed by the young person or any other aggravating circumstances.

Conditions

(2) An extrajudicial sanction may be used only if

(a) it is part of a program of sanctions that may be authorized by the Attorney General or authorized by a person, or a member of a class of persons, designated by the lieutenant governor in council of the province;

(b) the person who is considering whether to use the extrajudicial sanction is satisfied that it would be appropriate, having regard to the needs of the young person and the interests of society;

(c) the young person, having been informed of the extrajudicial sanction, fully and freely consents to be subject to it;

(d) the young person has, before consenting to be subject to the extrajudicial sanction, been advised of his or her 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 offence that he or she is alleged to have committed;

(f) there is, in the opinion of the Attorney General, sufficient evidence to proceed with the prosecution of the offence; and

(g) the prosecution of the offence is not in any way barred at law.

Restriction on use

(3) An extrajudicial sanction may not be used in respect of a young person who

(a) denies participation or involvement in the commission of the offence; or

(b) expresses the wish to have the charge dealt with by a youth justice court.

Admissions not admissible in evidence

(4) Any admission, confession or statement accepting responsibility for a given act or omission that is made by a young person as a condition of being dealt with by extrajudicial measures is inadmissible in evidence against any young person in civil or criminal proceedings.

No bar to judicial proceedings

(5) The use of an extrajudicial sanction in respect of a young person alleged to have committed an offence is not a bar to judicial proceedings under this Act, but if a charge is laid against the young person in respect of the offence,

(a) the youth justice court shall dismiss the charge if it is satisfied on a balance of probabilities that the young person has totally complied with the terms and conditions of the extrajudicial sanction; and

(b) the youth justice court may dismiss the charge if it is satisfied on a balance of probabilities that the young

person has partially complied with the terms and conditions of the extrajudicial sanction and if, in the opinion of the court, prosecution of the charge would be unfair having regard to the circumstances and the young person's performance with respect to the extrajudicial sanction.

Laying of information, etc.

(6) Subject to subsection (5) and section 24 (private prosecutions only with consent of Attorney General), nothing in this section shall be construed as preventing any person from laying an information or indictment, obtaining the issue or confirmation of any process or proceeding with the prosecution of any offence in accordance with law.

Notice to parent

11. If a young person is dealt with by an extrajudicial sanction, the person who administers the program under which the sanction is used shall inform a parent of the young person of the sanction.

Victim's right to information

12. If a young person is dealt with by an extrajudicial sanction, a police officer, the Attorney General, the provincial director or any organization established by a province to provide assistance to victims shall, on request, inform the victim of the identity of the young person and how the offence has been dealt with.

PART 2

ORGANIZATION OF YOUTH CRIMINAL JUSTICE SYSTEM

YOUTH JUSTICE COURT

Designation of youth justice court

13. (1) A youth justice court is any court that may be established or designated by or under an Act of the legislature of a province, or designated by the Governor in Council or the lieutenant governor in council of a province, as a youth justice court for the purposes of this Act, and a youth justice court judge is a person who may be appointed or designated as a judge of the youth justice court or a judge sitting in a court established or designated as a youth justice court.

Deemed youth justice court

(2) When a young person elects to be tried by a judge without a jury, the judge shall be a judge as defined in section 552 of the *Criminal Code*, or if it is an offence set out in section 469 of that Act, the judge shall be a judge of the superior court of criminal jurisdiction in the province in which the election is made. In either case, the judge is deemed to be a youth justice court judge and the court is deemed to be a youth justice court for the purpose of the proceeding.

Deemed youth justice court

(3) When a young person elects or is deemed to have elected to be tried by a court composed of a judge and jury, the superior court of criminal jurisdiction in the province in which the election is made or deemed to have been made is deemed to be a youth justice court for the purpose of the proceeding, and the superior court judge is deemed to be a youth justice court judge.

Court of record

(4) A youth justice court is a court of record.

Exclusive jurisdiction of youth justice court

14. (1) Despite any other Act of Parliament but subject to the *Contraventions Act* and the *National Defence Act*, a youth justice court has exclusive jurisdiction in respect of any offence alleged to have been committed by a person while he or she was a young person, and that person shall be dealt with as provided in this Act.

Orders

(2) A youth justice court has jurisdiction to make orders against a young person under sections 810 (recognizance — fear of injury or damage), 810.01 (recognizance — fear of criminal organization offence) and 810.2 (recognizance — fear of serious personal injury offence) of the *Criminal Code*. If the young person fails or refuses to enter into a recognizance referred to in any of those sections, the court may impose any one of the sanctions set out in subsection 42(2) (youth sentences) except that, in the case of an order under paragraph 42(2)(n) (custody and supervision order), it shall not exceed thirty days.

Prosecution prohibited

(3) Unless the Attorney General and the young person agree, no extrajudicial measures shall be taken or judicial proceedings commenced under this Act in respect of an offence after the end of the time limit set out in any other Act of Parliament or any regulation made under it for the institution of proceedings in respect of that offence.

Continuation of proceedings

(4) Extrajudicial measures taken or judicial proceedings commenced under this Act against a young person may be continued under this Act after the person attains the age of eighteen years.

Young persons over the age of eighteen years

(5) This Act applies to persons eighteen years old or older who are alleged to have committed an offence while a young person.

Powers of youth justice court judge

(6) For the purpose of carrying out the provisions of this Act, a youth justice court judge is a justice and a provincial court judge and has the jurisdiction and powers of a summary conviction court under the *Criminal Code*.

Powers of a judge of a superior court

(7) A judge of a superior court of criminal jurisdiction, when deemed to be a youth justice court judge for the purpose of a proceeding, retains the jurisdiction and powers of a superior court of criminal jurisdiction.

Contempt against youth justice court

15. (1) Every youth justice court has the same power, jurisdiction and authority to deal with and impose punishment for contempt against the court as may be exercised by the superior court of criminal jurisdiction of the province in which the court is situated.

Jurisdiction of youth justice court

(2) A youth justice court has jurisdiction in respect of every contempt of court committed by a young person against the youth justice court whether or not committed in the face of the court, and every contempt of court committed by a young person against any other court otherwise than in the face of that court.

Concurrent jurisdiction of youth justice court

(3) A youth justice court has jurisdiction in respect of every contempt of court committed by a young person against any other court in the face of that court and every contempt of court committed by an adult against the youth justice court in the face of the youth justice court, but nothing in this subsection affects the power, jurisdiction or authority of any other court to deal with or impose punishment for contempt of court.

Youth sentence — contempt

(4) When a youth justice court or any other court finds a young person guilty of contempt of court, it may impose as a youth sentence any one of the sanctions set out in subsection 42(2) (youth sentences), or any number of them that are not inconsistent with each other, but no other sentence.

Section 708 of *Criminal Code* applies in respect of adults

(5) Section 708 (contempt) of the *Criminal Code* applies in respect of proceedings under this section in youth justice court against adults, with any modifications that the circumstances require.

Status of offender uncertain

16. When a person is alleged to have committed an offence during a period that includes the date on which the person attains the age of eighteen years, the youth justice court has jurisdiction in respect of the offence and shall, after putting the person to their election under section 67 (adult sentence) if applicable, and on finding the person guilty of the offence,

- (a) if it has been proven that the offence was committed before the person attained the age of eighteen years, impose a sentence under this Act;
- (b) if it has been proven that the offence was committed after the person attained the age of eighteen years, impose any sentence that could be imposed under the *Criminal Code* or any other Act of Parliament on an adult who has been convicted of the same offence; and
- (c) if it has not been proven that the offence was committed after the person attained the age of eighteen years, impose a sentence under this Act.

Youth justice court may make rules

17. (1) The youth justice court for a province may, subject to the approval of the lieutenant governor in council of the province, establish rules of court not inconsistent with this Act or any other Act of Parliament or with any regulations made under section 155 regulating proceedings within the jurisdiction of the youth justice court.

Rules of court

- (2) Rules under subsection (1) may be made
 - (a) generally to regulate the duties of the officers of the youth justice court and any other matter considered expedient to attain the ends of justice and carry into effect the provisions of this Act;
 - (b) subject to any regulations made under paragraph 155(b), to regulate the practice and procedure in the youth justice court; and
 - (c) to prescribe forms to be used in the youth justice court if they are not otherwise provided for by or under this Act.

Publication of rules

(3) Rules of court that are made under the authority of this section shall be published in the appropriate provincial gazette.

YOUTH JUSTICE COMMITTEES

Youth justice committees

18. (1) The Attorney General of Canada or a province or any other minister that the lieutenant governor in council of the province may designate may establish one or more committees of citizens, to be known as youth justice committees, to assist in any aspect of the administration of this Act or in any programs or services for young persons.

Role of committee

- (2) The functions of a youth justice committee may include the following:
 - (a) in the case of a young person alleged to have committed an offence,
 - (i) giving advice on the appropriate extrajudicial measure to be used in respect of the young person,
 - (ii) supporting any victim of the alleged offence by soliciting his or her concerns and facilitating the reconciliation of the victim and the young person,
 - (iii) ensuring that community support is available to the young person by arranging for the use of services from within the community, and enlisting members of the community to provide short-term mentoring and supervision, and

- (iv) when the young person is also being dealt with by a child protection agency or a community group, helping to coordinate the interaction of the agency or group with the youth criminal justice system;
- (b) advising the federal and provincial governments on whether the provisions of this Act that grant rights to young persons, or provide for the protection of young persons, are being complied with;
- (c) advising the federal and provincial governments on policies and procedures related to the youth criminal justice system;
- (d) providing information to the public in respect of this Act and the youth criminal justice system;
- (e) acting as a conference; and
- (f) any other functions assigned by the person who establishes the committee.

CONFERENCES

Conferences may be convened

19. (1) A youth justice court judge, the provincial director, a police officer, a justice of the peace, a prosecutor or a youth worker may convene or cause to be convened a conference for the purpose of making a decision required to be made under this Act.

Mandate of a conference

(2) The mandate of a conference may be, among other things, to give advice on appropriate extrajudicial measures, conditions for judicial interim release, sentences, including the review of sentences, and reintegration plans.

Rules for conferences

(3) The Attorney General or any other minister designated by the lieutenant governor in council of a province may establish rules for the convening and conducting of conferences other than conferences convened or caused to be convened by a youth justice court judge or a justice of the peace.

Rules to apply

(4) In provinces where rules are established under subsection (3), the conferences to which those rules apply must be convened and conducted in accordance with those rules.

JUSTICES OF THE PEACE

Certain proceedings may be taken before justices

20. (1) Any proceeding that may be carried out before a justice under the *Criminal Code*, other than a plea, a trial or an adjudication, may be carried out before a justice in respect of an offence alleged to have been committed by a young person, and any process that may be issued by a justice under the *Criminal Code* may be issued by a justice in respect of an offence alleged to have been committed by a young person.

Orders under section 810 of *Criminal Code*

(2) A justice has jurisdiction to make an order under section 810 (recognizance — fear of injury or damage) of the *Criminal Code* in respect of a young person. If the young person fails or refuses to enter into a recognizance referred to in that section, the justice shall refer the matter to a youth justice court.

CLERKS OF THE COURT

Powers of clerks

21. In addition to any powers conferred on a clerk of a court by the *Criminal Code*, a clerk of the youth justice court may exercise the powers ordinarily exercised by a clerk of a court, and, in particular, may

- (a) administer oaths or solemn affirmations in all matters relating to the business of the youth justice court; and
- (b) in the absence of a youth justice court judge, exercise all the powers of a youth justice court judge relating to adjournment.

PROVINCIAL DIRECTORS

Powers, duties and functions of provincial directors

22. The provincial director may authorize any person to exercise the powers or perform the duties or functions of the provincial director under this Act, in which case the powers, duties or functions are deemed to have been exercised or performed by the provincial director.

PART 3

JUDICIAL MEASURES

CONSENT TO PROSECUTE

Pre-charge screening

23. (1) The Attorney General may establish a program of pre-charge screening that sets out the circumstances in which the consent of the Attorney General must be obtained before a young person is charged with an offence.

Pre-charge screening program

(2) Any program of pre-charge screening of young persons that is established under an Act of the legislature of a province or by a directive of a provincial government, and that is in place before the coming into force of this section, is deemed to be a program of pre-charge screening for the purposes of subsection (1).

Private prosecutions

24. No prosecutions may be conducted by a prosecutor other than the Attorney General without the consent of the Attorney General.

RIGHT TO COUNSEL

Right to counsel

25. (1) A young person has the right to retain and instruct counsel without delay, and to exercise that right personally, at any stage of proceedings against the young person and before and during any consideration of whether, instead of starting or continuing judicial proceedings against the young person under this Act, to use an extrajudicial sanction to deal with the young person.

Arresting officer to advise young person of right to counsel

(2) Every young person who is arrested or detained shall, on being arrested or detained, be advised without delay by the arresting officer or the officer in charge, as the case may be, of the right to retain and instruct counsel, and be given an opportunity to obtain counsel.

Justice, youth justice court or review board to advise young person of right to counsel

(3) When a young person is not represented by counsel

(a) at a hearing at which it will be determined whether to release the young person or detain the young person in custody prior to sentencing,

(b) at a hearing held under section 71 (hearing — adult sentences),

(c) at trial,

(d) at any proceedings held under subsection 98(3) (continuation of custody), 103(1) (review by youth justice court), 104(1) (continuation of custody), 105(1) (conditional supervision) or 109(1) (review of decision),

(e) at a review of a youth sentence held before a youth justice court under this Act, or

(f) at a review of the level of custody under section 87,

the justice or youth justice court before which the hearing, trial or review is held, or the review board before which the review is held, shall advise the young person of the right to retain and instruct counsel and shall give the young person a reasonable opportunity to obtain counsel.

Trial, hearing or review before youth justice court or review board

(4) When a young person at trial or at a hearing or review referred to in subsection (3) wishes to obtain counsel but is unable to do so, the youth justice court before which the hearing, trial or review is held or the review board before which the review is held

(a) shall, if there is a legal aid program or an assistance program available in the province where the hearing, trial or review is held, refer the young person to that program for the appointment of counsel; or

(b) if no legal aid program or assistance program is available or the young person is unable to obtain counsel through the program, may, and on the request of the young person shall, direct that the young person be represented by counsel.

Appointment of counsel

(5) When a direction is made under paragraph (4)(b) in respect of a young person, the Attorney General shall appoint counsel, or cause counsel to be appointed, to represent the young person.

Release hearing before justice

(6) When a young person, at a hearing referred to in paragraph (3)(a) that is held before a justice who is not a youth justice court judge, wishes to obtain counsel but is unable to do so, the justice shall

(a) if there is a legal aid program or an assistance program available in the province where the hearing is held,

(i) refer the young person to that program for the appointment of counsel, or

(ii) refer the matter to a youth justice court to be dealt with in accordance with paragraph (4)(a) or (b); or

(b) if no legal aid program or assistance program is available or the young person is unable to obtain counsel through the program, refer the matter without delay to a youth justice court to be dealt with in accordance with paragraph (4)(b).

Young person may be assisted by adult

(7) When a young person is not represented by counsel at trial or at a hearing or review referred to in subsection (3), the justice before whom or the youth justice court or review board before which the proceedings are held may, on the request of the young person, allow the young person to be assisted by an adult whom the justice, court or review board considers to be suitable.

Counsel independent of parents

(8) If it appears to a youth justice court judge or a justice that the interests of a young person and the interests of a parent are in conflict or that it would be in the best interests of the young person to be represented by his or her own counsel, the judge or justice shall ensure that the young person is represented by counsel independent of the parent.

Statement of right to counsel

(9) A statement that a young person has the right to be represented by counsel shall be included in

(a) any appearance notice or summons issued to the young person;

(b) any warrant to arrest the young person;

(c) any promise to appear given by the young person;

(d) any undertaking or recognizance entered into before an officer in charge by the young person;

(e) any notice given to the young person in relation to any proceedings held under subsection 98(3) (continuation of custody), 103(1) (review by youth justice court), 104(1) (continuation of custody), 105(1) (conditional supervision) or 109(1) (review of decision); or

(f) any notice of a review of a youth sentence given to the young person.

Recovery of costs of counsel

(10) Nothing in this Act prevents the lieutenant governor in council of a province or his or her delegate from establishing a program to authorize the recovery of the costs of a young person's counsel from the young person or the parents of the young person. The costs may be recovered only after the proceedings are completed and the time allowed for the taking of an appeal has expired or, if an appeal is taken, all proceedings in respect of the appeal have been completed.

Exception for persons over the age of twenty

(11) Subsections (4) to (9) do not apply to a person who is alleged to have committed an offence while a young person, if the person has attained the age of twenty years at the time of his or her first appearance before a youth justice court in respect of the offence; however, this does not restrict any rights that a person has under the law applicable to adults.

NOTICES TO PARENTS

Notice in case of arrest or detention

26. (1) Subject to subsection (4), if a young person is arrested and detained in custody pending his or her appearance in court, the officer in charge at the time the young person is detained shall, as soon as possible, give or cause to be given to a parent of the young person, orally or in writing, notice of the arrest stating the place of detention and the reason for the arrest.

Notice in other cases

(2) Subject to subsection (4), if a summons or an appearance notice is issued in respect of a young person, the person who issued the summons or appearance notice, or, if a young person is released on giving a promise to appear or entering into an undertaking or recognizance, the officer in charge, shall, as soon as possible, give or cause to be given to a parent of the young person notice in writing of the summons, appearance notice, promise to appear, undertaking or recognizance.

Notice to parent in case of ticket

(3) Subject to subsection (4), a person who serves a ticket under the *Contraventions Act* on a young person, other than a ticket served for a contravention relating to parking a vehicle, shall, as soon as possible, give or cause to be given notice in writing of the ticket to a parent of the young person.

Notice to relative or other adult

(4) If the whereabouts of the parents of a young person are not known or it appears that no parent is available, a notice under this section may be given to an adult relative of the young person who is known to the young person and is likely to assist the young person or, if no such adult relative is available, to any other adult who is known to the young person and is likely to assist the young person and who the person giving the notice considers appropriate.

Notice on direction of youth justice court judge or justice

(5) If doubt exists as to the person to whom a notice under this section should be given, a youth justice court judge or, if a youth justice court judge is, having regard to the circumstances, not reasonably available, a justice may give directions as to the person to whom the notice should be given, and a notice given in accordance with those directions is sufficient notice for the purposes of this section.

Contents of notice

(6) Any notice under this section shall, in addition to any other requirements under this section, include

- (a) the name of the young person in respect of whom it is given;
- (b) the charge against the young person and, except in the case of a notice of a ticket served under the *Contraventions Act*, the time and place of appearance; and
- (c) a statement that the young person has the right to be represented by counsel.

Notice of ticket under *Contraventions Act*

(7) A notice under subsection (3) shall include a copy of the ticket.

Service of notice

(8) Subject to subsections (10) and (11), a notice under this section that is given in writing may be served personally or be sent by confirmed delivery service.

Proceedings not invalid

(9) Subject to subsections (10) and (11), failure to give a notice in accordance with this section does not affect the validity of proceedings under this Act.

Exception

(10) Failure to give a notice under subsection (2) in accordance with this section in any case renders invalid any subsequent proceedings under this Act relating to the case unless

- (a) a parent of the young person attends court with the young person; or
- (b) a youth justice court judge or a justice before whom proceedings are held against the young person
 - (i) adjourns the proceedings and orders that the notice be given in the manner and to the persons that the judge or justice directs, or
 - (ii) dispenses with the notice if the judge or justice is of the opinion that, having regard to the circumstances, the notice may be dispensed with.

Where notice is not served

(11) Where there has been a failure to give a notice under subsection (1) or (3) in accordance with this section and none of the persons to whom the notice may be given attends court with the young person, a youth justice court judge or a justice before whom proceedings are held against the young person may

- (a) adjourn the proceedings and order that the notice be given in the manner and to the persons that the judge or justice directs; or
- (b) dispense with the notice if the judge or justice is of the opinion that, having regard to the circumstances, the notice may be dispensed with.

Exception for persons over the age of twenty

(12) This section does not apply to a person who is alleged to have committed an offence while a young person, if the person has attained the age of twenty years at the time of his or her first appearance before a youth justice court in respect of the offence.

Order requiring attendance of parent

27. (1) If a parent does not attend proceedings held before a youth justice court in respect of a young person, the court may, if in its opinion the presence of the parent is necessary or in the best interests of the young person, by order in writing require the parent to attend at any stage of the proceedings.

No order in ticket proceedings

(2) Subsection (1) does not apply in proceedings commenced by filing a ticket under the *Contraventions Act*.

Service of order

(3) A copy of the order shall be served by a peace officer or by a person designated by a youth justice court by delivering it personally to the parent to whom it is directed, unless the youth justice court authorizes service by confirmed delivery service.

Failure to attend

(4) A parent who is ordered to attend a youth justice court under subsection (1) and who fails without reasonable excuse, the proof of which lies on the parent, to comply with the order

(a) is guilty of contempt of court;

(b) may be dealt with summarily by the court; and

(c) is liable to the punishment provided for in the *Criminal Code* for a summary conviction offence.

Warrant to arrest parent

(5) If a parent who is ordered to attend a youth justice court under subsection (1) does not attend when required by the order or fails to remain in attendance as required and it is proved that a copy of the order was served on the parent, a youth justice court may issue a warrant to compel the attendance of the parent.

DETENTION BEFORE SENTENCING

Application of Part XVI of *Criminal Code*

28. Except to the extent that they are inconsistent with or excluded by this Act, the provisions of Part XVI (compelling appearance of an accused and interim release) of the *Criminal Code* apply to the detention and release of young persons under this Act.

Detention as social measure prohibited

29. (1) A youth justice court judge or a justice shall not detain a young person in custody prior to being sentenced as a substitute for appropriate child protection, mental health or other social measures.

Detention presumed unnecessary

(2) In considering whether the detention of a young person is necessary for the protection or safety of the public under paragraph 515(10)(b) (substantial likelihood — commit an offence or interfere with the administration of justice) of the *Criminal Code*, a youth justice court or a justice shall presume that detention is not necessary under that paragraph if the young person could not, on being found guilty, be committed to custody on the grounds set out in paragraphs 39(1)(a) to (c) (restrictions on committal to custody).

Designated place of temporary detention

30. (1) Subject to subsection (7), a young person who is arrested and detained prior to being sentenced, or who is detained in accordance with a warrant issued under subsection 59(6) (compelling appearance for review of sentence), shall be detained in any place of temporary detention that may be designated by the lieutenant governor in council of the province or his or her delegate or in a place within a class of places so designated.

Exception

(2) A young person who is detained in a place of temporary detention under subsection (1) may, in the course of being transferred from that place to the court or from the court to that place, be held under the

supervision and control of a peace officer.

Detention separate from adults

(3) A young person referred to in subsection (1) shall be held separate and apart from any adult who is detained or held in custody unless a youth justice court judge or a justice is satisfied that, having regard to the best interests of the young person,

(a) the young person cannot, having regard to his or her own safety or the safety of others, be detained in a place of detention for young persons; or

(b) no place of detention for young persons is available within a reasonable distance.

Transfer to adult facility

(4) When a young person is detained under subsection (1), the youth justice court may, on application of the provincial director made at any time after the young person attains the age of eighteen years, after giving the young person an opportunity to be heard, authorize the provincial director to direct, despite subsection (3), that the young person be temporarily detained in a provincial correctional facility for adults, if the court considers it to be in the best interests of the young person or in the public interest.

When young person is twenty years old or older

(5) When a young person is twenty years old or older at the time his or her temporary detention under subsection (1) begins, the young person shall, despite subsection (3), be temporarily detained in a provincial correctional facility for adults.

Transfer by provincial director

(6) A young person who is detained in custody under subsection (1) may, during the period of detention, be transferred by the provincial director from one place of temporary detention to another.

Exception relating to temporary detention

(7) Subsections (1) and (3) do not apply in respect of any temporary restraint of a young person under the supervision and control of a peace officer after arrest, but a young person who is so restrained shall be transferred to a place of temporary detention referred to in subsection (1) as soon as is practicable, and in no case later than the first reasonable opportunity after the appearance of the young person before a youth justice court judge or a justice under section 503 of the *Criminal Code*.

Authorization of provincial authority for detention

(8) In any province for which the lieutenant governor in council has designated a person or a group of persons whose authorization is required, either in all circumstances or in circumstances specified by the lieutenant governor in council, before a young person who has been arrested may be detained in accordance with this section, no young person shall be so detained unless the authorization is obtained.

Determination by provincial authority of place of detention

(9) In any province for which the lieutenant governor in council has designated a person or a group of persons who may determine the place where a young person who has been arrested may be detained in accordance with this section, no young person may be so detained in a place other than the one so determined.

Placement of young person in care of responsible person

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

(a) the young person would, but for this subsection, be detained in custody under section 515 (judicial interim release) of the *Criminal Code*;

(b) the person is willing and able to take care of and exercise control over the young person; and

(c) the young person is willing to be placed in the care of that person.

Inquiry as to availability of a responsible person

(2) If a young person would, in the absence of a responsible person, be detained in custody, the youth justice court or the justice shall inquire as to the availability of a responsible person and whether the young person is willing to be placed in that person's care.

Condition of placement

(3) A young person shall not be placed in the care of a person under subsection (1) unless

(a) that person undertakes in writing to take care of and to be responsible for the attendance of the young person in court when required and to comply with any other conditions that the youth justice court judge or the justice may specify; and

(b) the young person undertakes in writing to comply with the arrangement and to comply with any other conditions that the youth justice court judge or the justice may specify.

Removing young person from care

(4) A young person, a person in whose care a young person has been placed or any other person may, by application in writing to a youth justice court judge or a justice, apply for an order under subsection (5) if

(a) the person in whose care the young person has been placed is no longer willing or able to take care of or exercise control over the young person; or

(b) it is, for any other reason, no longer appropriate that the young person remain in the care of the person with whom he or she has been placed.

Order

(5) When a youth justice court judge or a justice is satisfied that a young person should not remain in the custody of the person in whose care he or she was placed under subsection (1), the judge or justice shall

(a) make an order relieving the person and the young person of the obligations undertaken under subsection (3); and

(b) issue a warrant for the arrest of the young person.

Effect of arrest

(6) If a young person is arrested in accordance with a warrant issued under paragraph (5)(b), the young person shall be taken before a youth justice court judge or a justice without delay and dealt with under this section and sections 28 to 30.

APPEARANCE

Appearance before judge or justice

32. (1) A young person against whom an information or indictment is laid must first appear before a youth justice court judge or a justice, and the judge or justice shall

(a) cause the information or indictment to be read to the young person;

(b) if the young person is not represented by counsel, inform the young person of the right to retain and instruct counsel;

(c) if notified under subsection 64(2) (intention to seek adult sentence) or if section 16 (status of accused uncertain) applies, inform the young person that the youth justice court might, if the young person is found guilty, order that an adult sentence be imposed; and

(d) if the young person is charged with having committed an offence set out in paragraph (a) of the definition "presumptive offence" in subsection 2(1), inform the young person in the following words of the

consequences of being charged with such an offence:

An adult sentence will be imposed if you are found guilty unless the court orders that you are not liable to an adult sentence and that a youth sentence must be imposed.

Waiver

(2) A young person may waive the requirements of subsection (1) if the young person is represented by counsel and counsel advises the court that the young person has been informed of that provision.

Young person not represented by counsel

(3) When a young person is not represented by counsel, the youth justice court, before accepting a plea, shall

(a) satisfy itself that the young person understands the charge;

(b) if the young person is liable to an adult sentence, explain to the young person the consequences of being liable to an adult sentence and the procedure by which the young person may apply for an order that a youth sentence be imposed; and

(c) explain that the young person may plead guilty or not guilty to the charge or, if subsection 67(1) (election of court for trial — adult sentence) or (3) (election of court for trial in Nunavut — adult sentence) applies, explain that the young person may elect to be tried by a youth justice court judge without a jury and without having a preliminary inquiry, or to have a preliminary inquiry and be tried by a judge without a jury, or to have a preliminary inquiry and be tried by a court composed of a judge and jury and, in either of the latter two cases, a preliminary inquiry will only be conducted if requested by the young person or the prosecutor.

If youth justice court not satisfied

(4) If the youth justice court is not satisfied that a young person understands the charge, the court shall, unless the young person must be put to his or her election under subsection 67(1) (election of court for trial — adult sentence) or, with respect to Nunavut, subsection 67(3) (election of court for trial in Nunavut — adult sentence), enter a plea of not guilty on behalf of the young person and proceed with the trial in accordance with subsection 36(2) (young person pleads not guilty).

If youth justice court not satisfied

(5) If the youth justice court is not satisfied that a young person understands the matters set out in subsection (3), the court shall direct that the young person be represented by counsel.

2002, c. 1, s. 32, c. 13, s. 91.

RELEASE FROM OR DETENTION IN CUSTODY

Application for release from or detention in custody

33. (1) If an order is made under section 515 (judicial interim release) of the *Criminal Code* in respect of a young person by a justice who is not a youth justice court judge, an application may, at any time after the order is made, be made to a youth justice court for the release from or detention in custody of the young person, as the case may be, and the youth justice court shall hear the matter as an original application.

Notice to prosecutor

(2) An application under subsection (1) for release from custody shall not be heard unless the young person has given the prosecutor at least two clear days notice in writing of the application.

Notice to young person

(3) An application under subsection (1) for detention in custody shall not be heard unless the prosecutor has given the young person at least two clear days notice in writing of the application.

Waiver of notice

(4) The requirement for notice under subsection (2) or (3) may be waived by the prosecutor or by the young person or his or her counsel, as the case may be.

Application for review under section 520 or 521 of *Criminal Code*

(5) An application under section 520 or 521 of the *Criminal Code* for a review of an order made in respect of a young person by a youth justice court judge who is a judge of a superior court shall be made to a judge of the court of appeal.

Nunavut

(6) Despite subsection (5), an application under section 520 or 521 of the *Criminal Code* for a review of an order made in respect of a young person by a youth justice court judge who is a judge of the Nunavut Court of Justice shall be made to a judge of that court.

No review

(7) No application may be made under section 520 or 521 of the *Criminal Code* for a review of an order made in respect of a young person by a justice who is not a youth justice court judge.

Interim release by youth justice court judge only

(8) If a young person against whom proceedings have been taken under this Act is charged with an offence referred to in section 522 of the *Criminal Code*, a youth justice court judge, but no other court, judge or justice, may release the young person from custody under that section.

Review by court of appeal

(9) A decision made by a youth justice court judge under subsection (8) may be reviewed in accordance with section 680 of the *Criminal Code* and that section applies, with any modifications that the circumstances require, to any decision so made.

MEDICAL AND PSYCHOLOGICAL REPORTS

Medical or psychological assessment

34. (1) A youth justice court may, at any stage of proceedings against a young person, by order require that the young person be assessed by a qualified person who is required to report the results in writing to the court,

(a) with the consent of the young person and the prosecutor; or

(b) on its own motion or on application of the young person or the prosecutor, if the court believes a medical, psychological or psychiatric report in respect of the young person is necessary for a purpose mentioned in paragraphs (2)(a) to (g) and

(i) the court has reasonable grounds to believe that the young person may be suffering from a physical or mental illness or disorder, a psychological disorder, an emotional disturbance, a learning disability or a mental disability,

(ii) the young person's history indicates a pattern of repeated findings of guilt under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, or

(iii) the young person is alleged to have committed a serious violent offence.

Purpose of assessment

(2) A youth justice court may make an order under subsection (1) in respect of a young person for the purpose of

(a) considering an application under section 33 (release from or detention in custody);

(b) making its decision on an application heard under section 71 (hearing — adult sentences);

(c) making or reviewing a youth sentence;

- (d) considering an application under subsection 104(1) (continuation of custody);
- (e) setting conditions under subsection 105(1) (conditional supervision);
- (f) making an order under subsection 109(2) (conditional supervision); or
- (g) authorizing disclosure under subsection 127(1) (information about a young person).

Custody for assessment

(3) Subject to subsections (4) and (6), for the purpose of an assessment under this section, a youth justice court may remand a young person to any custody that it directs for a period not exceeding thirty days.

Presumption against custodial remand

(4) A young person shall not be remanded in custody in accordance with an order made under subsection (1) unless

- (a) the youth justice court is satisfied that
 - (i) on the evidence custody is necessary to conduct an assessment of the young person, or
 - (ii) on the evidence of a qualified person detention of the young person in custody is desirable to conduct the assessment of the young person, and the young person consents to custody; or
- (b) the young person is required to be detained in custody in respect of any other matter or by virtue of any provision of the *Criminal Code*.

Report of qualified person in writing

(5) For the purposes of paragraph (4)(a), if the prosecutor and the young person agree, evidence of a qualified person may be received in the form of a report in writing.

Application to vary assessment order if circumstances change

(6) A youth justice court may, at any time while an order made under subsection (1) is in force, on cause being shown, vary the terms and conditions specified in the order in any manner that the court considers appropriate in the circumstances.

Disclosure of report

- (7) When a youth justice court receives a report made in respect of a young person under subsection (1),
- (a) the court shall, subject to subsection (9), cause a copy of the report to be given to
 - (i) the young person,
 - (ii) any parent of the young person who is in attendance at the proceedings against the young person,
 - (iii) any counsel representing the young person, and
 - (iv) the prosecutor; and
 - (b) the court may cause a copy of the report to be given to
 - (i) a parent of the young person who is not in attendance at the proceedings if the parent is, in the opinion of the court, taking an active interest in the proceedings, or
 - (ii) despite subsection 119(6) (restrictions respecting access to certain records), the provincial director, or the director of the provincial correctional facility for adults or the penitentiary at which the young person is serving a youth sentence, if, in the opinion of the court, withholding the report would jeopardize the safety of any person.

Cross-examination

- (8) When a report is made in respect of a young person under subsection (1), the young person, his or her

counsel or the adult assisting the young person under subsection 25(7) and the prosecutor shall, subject to subsection (9), on application to the youth justice court, be given an opportunity to cross-examine the person who made the report.

Non-disclosure in certain cases

(9) A youth justice court shall withhold all or part of a report made in respect of a young person under subsection (1) from a private prosecutor, if disclosure of the report or part, in the opinion of the court, is not necessary for the prosecution of the case and might be prejudicial to the young person.

Non-disclosure in certain cases

(10) A youth justice court shall withhold all or part of a report made in respect of a young person under subsection (1) from the young person, the young person's parents or a private prosecutor if the court is satisfied, on the basis of the report or evidence given in the absence of the young person, parents or private prosecutor by the person who made the report, that disclosure of the report or part would seriously impair the treatment or recovery of the young person, or would be likely to endanger the life or safety of, or result in serious psychological harm to, another person.

Exception — interests of justice

(11) Despite subsection (10), the youth justice court may release all or part of the report to the young person, the young person's parents or the private prosecutor if the court is of the opinion that the interests of justice make disclosure essential.

Report to be part of record

(12) A report made under subsection (1) forms part of the record of the case in respect of which it was requested.

Disclosure by qualified person

(13) Despite any other provision of this Act, a qualified person who is of the opinion that a young person held in detention or committed to custody is likely to endanger his or her own life or safety or to endanger the life of, or cause bodily harm to, another person may immediately so advise any person who has the care and custody of the young person whether or not the same information is contained in a report made under subsection (1).

Definition of "qualified person"

(14) In this section, "qualified person" means a person duly qualified by provincial law to practice medicine or psychiatry or to carry out psychological examinations or assessments, as the circumstances require, or, if no such law exists, a person who is, in the opinion of the youth justice court, so qualified, and includes a person or a member of a class of persons designated by the lieutenant governor in council of a province or his or her delegate.

REFERRAL TO CHILD WELFARE AGENCY

Referral to child welfare agency

35. In addition to any order that it is authorized to make, a youth justice court may, at any stage of proceedings against a young person, refer the young person to a child welfare agency for assessment to determine whether the young person is in need of child welfare services.

ADJUDICATION

When young person pleads guilty

36. (1) If a young person pleads guilty to an offence charged against the young person and the youth justice court is satisfied that the facts support the charge, the court shall find the young person guilty of the offence.

When young person pleads not guilty

(2) If a young person charged with an offence pleads not guilty to the offence or pleads guilty but the youth justice court is not satisfied that the facts support the charge, the court shall proceed with the trial and shall, after considering the matter, find the young person guilty or not guilty or make an order dismissing the charge,

as the case may be.

APPEALS

Appeals

37. (1) An appeal in respect of an indictable offence or an offence that the Attorney General elects to proceed with as an indictable offence lies under this Act in accordance with Part XXI (appeals — indictable offences) of the *Criminal Code*, which Part applies with any modifications that the circumstances require.

Appeals for contempt of court

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

Appeal

(3) Section 10 of the *Criminal Code* applies if a person is convicted of contempt of court under subsection 27 (4) (failure of parent to attend court).

Appeals to be heard together

(4) A judicial determination under subsection 42(9) (judicial determination of serious violent offence), or an order under subsection 72(1) (court order — adult or youth sentence), 75(3) (ban on publication) or 76(1) (placement when subject to adult sentence), may be appealed as part of the sentence and, unless the court to which the appeal is taken otherwise orders, if more than one of these is appealed they must be part of the same appeal proceeding.

Appeals for summary conviction offences

(5) An appeal in respect of an offence punishable on summary conviction or an offence that the Attorney General elects to proceed with as an offence punishable on summary conviction lies under this Act in accordance with Part XXVII (summary conviction offences) of the *Criminal Code*, which Part applies with any modifications that the circumstances require.

Appeals where offences are tried jointly

(6) An appeal in respect of one or more indictable offences and one or more summary conviction offences that are tried jointly or in respect of which youth sentences are jointly imposed lies under this Act in accordance with Part XXI (appeals — indictable offences) of the *Criminal Code*, which Part applies with any modifications that the circumstances require.

Deemed election

(7) For the purpose of appeals under this Act, if no election is made in respect of an offence that may be prosecuted by indictment or proceeded with by way of summary conviction, the Attorney General is deemed to have elected to proceed with the offence as an offence punishable on summary conviction.

If the youth justice court is a superior court

(8) In any province where the youth justice court is a superior court, an appeal under subsection (5) shall be made to the court of appeal of the province.

Nunavut

(9) Despite subsection (8), if the Nunavut Court of Justice is acting as a youth justice court, an appeal under subsection (5) shall be made to a judge of the Nunavut Court of Appeal, and an appeal of that judge's decision shall be made to the Nunavut Court of Appeal in accordance with section 839 of the *Criminal Code*.

Appeal to the Supreme Court of Canada

(10) No appeal lies under subsection (1) from a judgment of the court of appeal in respect of a finding of guilt or an order dismissing an information or indictment to the Supreme Court of Canada unless leave to appeal is granted by the Supreme Court of Canada.

No appeal from youth sentence on review

(11) No appeal lies from a youth sentence under section 59 or any of sections 94 to 96.

PART 4 SENTENCING

PURPOSE AND PRINCIPLES

Purpose

38. (1) The purpose of sentencing under section 42 (youth sentences) 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 his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

Sentencing principles

(2) A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:

- (a) the sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;
- (b) the sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;
- (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 that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons; and
- (e) subject to paragraph (c), the sentence must
 - (i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),
 - (ii) be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and
 - (iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community.

Factors to be considered

(3) In determining a youth sentence, the youth justice court shall take into account

- (a) the degree of participation by the young person in the commission of the offence;
- (b) the harm done to victims and whether it was intentional or reasonably foreseeable;
- (c) any reparation made by the young person to the victim or the community;
- (d) the time spent in detention by the young person as a result of the offence;
- (e) the previous findings of guilt of the young person; and
- (f) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section.

Committal to custody

39. (1) A youth justice court shall not commit a young person to custody under section 42 (youth sentences) unless

- (a) the young person has committed a violent offence;
- (b) the young person has failed to comply with non-custodial sentences;
- (c) the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of findings of guilt under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985; 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.

Alternatives to custody

(2) If any of paragraphs (1)(a) to (c) apply, a youth justice court shall not impose a custodial sentence under section 42 (youth sentences) unless the court has considered all alternatives to custody raised at the sentencing hearing that are reasonable in the circumstances, and determined that there is not a reasonable alternative, or combination of alternatives, that is in accordance with the purpose and principles set out in section 38.

Factors to be considered

(3) In determining whether there is a reasonable alternative to custody, a youth justice court shall consider submissions relating to

- (a) the alternatives to custody that are available;
- (b) the likelihood that the young person will comply with a non-custodial sentence, taking into account his or her compliance with previous non-custodial sentences; and
- (c) the alternatives to custody that have been used in respect of young persons for similar offences committed in similar circumstances.

Imposition of same sentence

(4) The previous imposition of a particular non-custodial sentence on a young person does not preclude a youth justice court from imposing the same or any other non-custodial sentence for another offence.

Custody as social measure prohibited

(5) A youth justice court shall not use custody as a substitute for appropriate child protection, mental health or other social measures.

Pre-sentence report

(6) Before imposing a custodial sentence under section 42 (youth sentences), a youth justice court shall consider a pre-sentence report and any sentencing proposal made by the young person or his or her counsel.

Report dispensed with

(7) A youth justice court may, with the consent of the prosecutor and the young person or his or her counsel, dispense with a pre-sentence report if the court is satisfied that the report is not necessary.

Length of custody

(8) In determining the length of a youth sentence that includes a custodial portion, a youth justice court shall be guided by the purpose and principles set out in section 38, and shall not take into consideration the fact that the supervision portion of the sentence may not be served in custody and that the sentence may be reviewed

by the court under section 94.

Reasons

(9) If a youth justice court imposes a youth sentence that includes a custodial portion, the court shall state the reasons why it has determined that a non-custodial sentence is not adequate to achieve the purpose set out in subsection 38(1), including, if applicable, the reasons why the case is an exceptional case under paragraph (1)(d).

PRE-SENTENCE REPORT

Pre-sentence report

40. (1) Before imposing sentence on a young person found guilty of an offence, a youth justice court

(a) shall, if it is required under this Act to consider a pre-sentence report before making an order or a sentence in respect of a young person, and

(b) may, if it considers it advisable,

require the provincial director to cause to be prepared a pre-sentence report in respect of the young person and to submit the report to the court.

Contents of report

(2) A pre-sentence report made in respect of a young person shall, subject to subsection (3), be in writing and shall include the following, to the extent that it is relevant to the purpose and principles of sentencing set out in section 38 and to the restrictions on custody set out in section 39:

(a) the results of an interview with the young person and, if reasonably possible, the parents of the young person and, if appropriate and reasonably possible, members of the young person's extended family;

(b) the results of an interview with the victim in the case, if applicable and reasonably possible;

(c) the recommendations resulting from any conference referred to in section 41;

(d) any information that is applicable to the case, including

(i) the age, maturity, character, behaviour and attitude of the young person and his or her willingness to make amends,

(ii) any plans put forward by the young person to change his or her conduct or to participate in activities or undertake measures to improve himself or herself,

(iii) subject to subsection 119(2) (period of access to records), the history of previous findings of delinquency under the *Juvenile Delinquents Act*, chapter J-3 of the Revised Statutes of Canada, 1970, or previous findings of guilt for offences under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, or under this or any other Act of Parliament or any regulation made under it, the history of community or other services rendered to the young person with respect to those findings and the response of the young person to previous sentences or dispositions and to services rendered to him or her,

(iv) subject to subsection 119(2) (period of access to records), the history of alternative measures under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, or extrajudicial sanctions used to deal with the young person and the response of the young person to those measures or sanctions,

(v) the availability and appropriateness of community services and facilities for young persons and the willingness of the young person to avail himself or herself of those services or facilities,

(vi) the relationship between the young person and the young person's parents and the degree of control and influence of the parents over the young person and, if appropriate and reasonably possible, the relationship between the young person and the young person's extended family and the degree of control and influence of the young person's extended family over the young person, and

(vii) the school attendance and performance record and the employment record of the young person;

(e) any information that may assist the court in determining under subsection 39(2) whether there is an alternative to custody; and

(f) any information that the provincial director considers relevant, including any recommendation that the provincial director considers appropriate.

Oral report with leave

(3) If a pre-sentence report cannot reasonably be committed to writing, it may, with leave of the youth justice court, be submitted orally in court.

Report forms part of record

(4) A pre-sentence report shall form part of the record of the case in respect of which it was requested.

Copies of pre-sentence report

(5) If a pre-sentence report made in respect of a young person is submitted to a youth justice court in writing, the court

(a) shall, subject to subsection (7), cause a copy of the report to be given to

- (i) the young person,
- (ii) any parent of the young person who is in attendance at the proceedings against the young person,
- (iii) any counsel representing the young person, and
- (iv) the prosecutor; and

(b) may cause a copy of the report to be given to a parent of the young person who is not in attendance at the proceedings if the parent is, in the opinion of the court, taking an active interest in the proceedings.

Cross-examination

(6) If a pre-sentence report made in respect of a young person is submitted to a youth justice court, the young person, his or her counsel or the adult assisting the young person under subsection 25(7) and the prosecutor shall, subject to subsection (7), on application to the court, be given the opportunity to cross-examine the person who made the report.

Report may be withheld from private prosecutor

(7) If a pre-sentence report made in respect of a young person is submitted to a youth justice court, the court may, when the prosecutor is a private prosecutor and disclosure of all or part of the report to the prosecutor might, in the opinion of the court, be prejudicial to the young person and is not, in the opinion of the court, necessary for the prosecution of the case against the young person,

(a) withhold the report or part from the prosecutor, if the report is submitted in writing; or

(b) exclude the prosecutor from the court during the submission of the report or part, if the report is submitted orally in court.

Report disclosed to other persons

(8) If a pre-sentence report made in respect of a young person is submitted to a youth justice court, the court

(a) shall, on request, cause a copy or a transcript of the report to be supplied to

- (i) any court that is dealing with matters relating to the young person, and
- (ii) any youth worker to whom the young person's case has been assigned; and

(b) may, on request, cause a copy or a transcript of all or part of the report to be supplied to any person not otherwise authorized under this section to receive a copy or a transcript of the report if, in the opinion of the court, the person has a valid interest in the proceedings.

Disclosure by the provincial director

(9) A provincial director who submits a pre-sentence report made in respect of a young person to a youth justice court may make all or part of the report available to any person in whose custody or under whose supervision the young person is placed or to any other person who is directly assisting in the care or treatment of the young person.

Inadmissibility of statements

(10) No statement made by a young person in the course of the preparation of a pre-sentence report in respect of the young person is admissible in evidence against any young person in civil or criminal proceedings except those under section 42 (youth sentences), 59 (review of non-custodial sentence) or 71 (hearing — adult sentences) or any of sections 94 to 96 (reviews and other proceedings related to custodial sentences).

YOUTH SENTENCES

Recommendation of conference

41. When a youth justice court finds a young person guilty of an offence, the court may convene or cause to be convened a conference under section 19 for recommendations to the court on an appropriate youth sentence.

Considerations as to youth sentence

42. (1) A youth justice court shall, before imposing a youth sentence, consider any recommendations submitted under section 41, any pre-sentence report, any representations made by the parties to the proceedings or their counsel or agents and by the parents of the young person, and any other relevant information before the court.

Youth sentence

(2) When a youth justice court finds a young person guilty of an offence and is imposing a youth sentence, the court shall, subject to this section, impose any one of the following sanctions or any number of them that are not inconsistent with each other and, if the offence is first degree murder or second degree murder within the meaning of section 231 of the *Criminal Code*, the court shall impose a sanction set out in paragraph (q) or subparagraph (r)(ii) or (iii) and may impose any other of the sanctions set out in this subsection that the court considers appropriate:

- (a) reprimand the young person;
- (b) by order direct that the young person be discharged absolutely, if the court considers it to be in the best interests of the young person and not contrary to the public interest;
- (c) by order direct that the young person be discharged on any conditions that the court considers appropriate and may require the young person to report to and be supervised by the provincial director;
- (d) impose on the young person a fine not exceeding \$1,000 to be paid at the time and on the terms that the court may fix;
- (e) order the young person to pay to any other person at the times and on the terms that the court may fix an amount by way of compensation for loss of or damage to property or for loss of income or support, or an amount for, in the Province of Quebec, pre-trial pecuniary loss or, in any other province, special damages, for personal injury arising from the commission of the offence if the value is readily ascertainable, but no order shall be made for other damages in the Province of Quebec or for general damages in any other province;
- (f) order the young person to make restitution to any other person of any property obtained by the young person as a result of the commission of the offence within the time that the court may fix, if the property is owned by the other person or was, at the time of the offence, in his or her lawful possession;
- (g) if property obtained as a result of the commission of the offence has been sold to an innocent purchaser, where restitution of the property to its owner or any other person has been made or ordered, order the young

person to pay the purchaser, at the time and on the terms that the court may fix, an amount not exceeding the amount paid by the purchaser for the property;

(h) subject to section 54, order the young person to compensate any person in kind or by way of personal services at the time and on the terms that the court may fix for any loss, damage or injury suffered by that person in respect of which an order may be made under paragraph (e) or (g);

(i) subject to section 54, order the young person to perform a community service at the time and on the terms that the court may fix, and to report to and be supervised by the provincial director or a person designated by the youth justice court;

(j) subject to section 51 (mandatory prohibition order), make any order of prohibition, seizure or forfeiture that may be imposed under any Act of Parliament or any regulation made under it if an accused is found guilty or convicted of that offence, other than an order under section 161 of the *Criminal Code*;

(k) place the young person on probation in accordance with sections 55 and 56 (conditions and other matters related to probation orders) for a specified period not exceeding two years;

(l) subject to subsection (3) (agreement of provincial director), order the young person into an intensive support and supervision program approved by the provincial director;

(m) subject to subsection (3) (agreement of provincial director) and section 54, order the young person to attend a non-residential program approved by the provincial director, at the times and on the terms that the court may fix, for a maximum of two hundred and forty hours, over a period not exceeding six months;

(n) make a custody and supervision order with respect to the young person, ordering that a period be served in custody and that a second period — which is one half as long as the first — be served, subject to sections 97 (conditions to be included) and 98 (continuation of custody), under supervision in the community subject to conditions, the total of the periods not to exceed two years from the date of the coming into force of the order or, if the young person is found guilty of an offence for which the punishment provided by the *Criminal Code* or any other Act of Parliament is imprisonment for life, three years from the date of coming into force of the order;

(o) in the case of an offence set out in subparagraph (a)(ii), (iii) or (iv) of the definition “presumptive offence” in subsection 2(1), make a custody and supervision order in respect of the young person for a specified period not exceeding three years from the date of committal that orders the young person to be committed into a continuous period of custody for the first portion of the sentence and, subject to subsection 104(1) (continuation of custody), to serve the remainder of the sentence under conditional supervision in the community in accordance with section 105;

(p) subject to subsection (5), make a deferred custody and supervision order that is for a specified period not exceeding six months, subject to the conditions set out in subsection 105(2), and to any conditions set out in subsection 105(3) that the court considers appropriate;

(q) order the young person to serve a sentence not to exceed

(i) in the case of first degree murder, ten years comprised of

(A) a committal to custody, to be served continuously, for a period that must not, subject to subsection 104(1) (continuation of custody), exceed six years from the date of committal, and

(B) a placement under conditional supervision to be served in the community in accordance with section 105, and

(ii) in the case of second degree murder, seven years comprised of

(A) a committal to custody, to be served continuously, for a period that must not, subject to subsection 104(1) (continuation of custody), exceed four years from the date of committal, and

(B) a placement under conditional supervision to be served in the community in accordance with section 105;

(r) subject to subsection (7), make an intensive rehabilitative custody and supervision order in respect of the young person

(i) that is for a specified period that must not exceed

(A) two years from the date of committal, or

(B) if the young person is found guilty of an offence for which the punishment provided by the *Criminal Code* or any other Act of Parliament is imprisonment for life, three years from the date of committal,

and that orders the young person to be committed into a continuous period of intensive rehabilitative custody for the first portion of the sentence and, subject to subsection 104(1) (continuation of custody), to serve the remainder under conditional supervision in the community in accordance with section 105,

(ii) that is for a specified period that must not exceed, in the case of first degree murder, ten years from the date of committal, comprising

(A) a committal to intensive rehabilitative custody, to be served continuously, for a period that must not exceed six years from the date of committal, and

(B) subject to subsection 104(1) (continuation of custody), a placement under conditional supervision to be served in the community in accordance with section 105, and

(iii) that is for a specified period that must not exceed, in the case of second degree murder, seven years from the date of committal, comprising

(A) a committal to intensive rehabilitative custody, to be served continuously, for a period that must not exceed four years from the date of committal, and

(B) subject to subsection 104(1) (continuation of custody), a placement under conditional supervision to be served in the community in accordance with section 105; and

(s) impose on the young person any other reasonable and ancillary conditions that the court considers advisable and in the best interests of the young person and the public.

Agreement of provincial director

(3) A youth justice court may make an order under paragraph (2)(l) or (m) only if the provincial director has determined that a program to enforce the order is available.

Youth justice court statement

(4) When the youth justice court makes a custody and supervision order with respect to a young person under paragraph (2)(n), the court shall state the following with respect to that order:

You are ordered to serve (*state the number of days or months to be served*) in custody, to be followed by (*state one-half of the number of days or months stated above*) to be served under supervision in the community subject to conditions.

If you breach any of the conditions while you are under supervision in the community, you may be brought back into custody and required to serve the rest of the second period in custody as well.

You should also be aware that, under other provisions of the *Youth Criminal Justice Act*, a court could require you to serve the second period in custody as well.

The periods in custody and under supervision in the community may be changed if you are or become subject to another sentence.

Deferred custody and supervision order

(5) The court may make a deferred custody and supervision order under paragraph (2)(p) if

(a) the young person is found guilty of an offence that is not a serious violent offence; and

(b) it is consistent with the purpose and principles set out in section 38 and the restrictions on custody set out in section 39.

Application of sections 106 to 109

(6) Sections 106 to 109 (suspension of conditional supervision) apply to a breach of a deferred custody and supervision order made under paragraph (2)(p) as if the breach were a breach of an order for conditional supervision made under subsection 105(1) and, for the purposes of sections 106 to 109, supervision under a deferred custody and supervision order is deemed to be conditional supervision.

Intensive rehabilitative custody and supervision order

(7) A youth justice court may make an intensive rehabilitative custody and supervision order under paragraph (2)(r) in respect of a young person only if

(a) either

(i) the young person has been found guilty of an offence under one of the following provisions of the *Criminal Code*, namely, section 231 or 235 (first degree murder or second degree murder within the meaning of section 231), section 239 (attempt to commit murder), section 232, 234 or 236 (manslaughter) or section 273 (aggravated sexual assault), or

(ii) the young person has been found guilty of a serious violent offence for which an adult is liable to imprisonment for a term of more than two years, and the young person had previously been found guilty at least twice of a serious violent offence;

(b) the young person is suffering from a mental illness or disorder, a psychological disorder or an emotional disturbance;

(c) a plan of treatment and intensive supervision has been developed for the young person, and there are reasonable grounds to believe that the plan might reduce the risk of the young person repeating the offence or committing a serious violent offence; and

(d) the provincial director has determined that an intensive rehabilitative custody and supervision program is available and that the young person's participation in the program is appropriate.

Safeguard of rights

(8) Nothing in this section abrogates or derogates from the rights of a young person regarding consent to physical or mental health treatment or care.

Determination by court

(9) On application of the Attorney General after a young person is found guilty of an offence, and after giving both parties an opportunity to be heard, the youth justice court may make a judicial determination that the offence is a serious violent offence and endorse the information or indictment accordingly.

Appeals

(10) For the purposes of an appeal in accordance with section 37, a determination under subsection (9) is part of the sentence.

Inconsistency

(11) An order may not be made under paragraphs (2)(k) to (m) in respect of an offence for which a conditional discharge has been granted under paragraph (2)(c).

Coming into force of youth sentence

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

Consecutive youth sentences

(13) Subject to subsections (15) and (16), a youth justice court that sentences a young person may direct that a sentence imposed on the young person under paragraph (2)(n), (o), (q) or (r) be served consecutively if the young person

(a) is sentenced while under sentence for an offence under any of those paragraphs; or

(b) is found guilty of more than one offence under any of those paragraphs.

Duration of youth sentence for a single offence

(14) No youth sentence, other than an order made under paragraph (2)(j), (n), (o), (q) or (r), shall continue in force for more than two years. If the youth sentence comprises more than one sanction imposed at the same time in respect of the same offence, the combined duration of the sanctions shall not exceed two years, unless the sentence includes a sanction under paragraph (2)(j), (n), (o), (q) or (r) that exceeds two years.

Duration of youth sentence for different offences

(15) Subject to subsection (16), if more than one youth sentence is imposed under this section in respect of a young person with respect to different offences, the continuous combined duration of those youth sentences shall not exceed three years, except if one of the offences is first degree murder or second degree murder within the meaning of section 231 of the *Criminal Code*, in which case the continuous combined duration of those youth sentences shall not exceed ten years in the case of first degree murder, or seven years in the case of second degree murder.

Duration of youth sentences made at different times

(16) If a youth sentence is imposed in respect of an offence committed by a young person after the commencement of, but before the completion of, any youth sentences imposed on the young person,

(a) the duration of the sentence imposed in respect of the subsequent offence shall be determined in accordance with subsections (14) and (15);

(b) the sentence may be served consecutively to the sentences imposed in respect of the previous offences; and

(c) the combined duration of all the sentences may exceed three years and, if the offence is, or one of the previous offences was,

(i) first degree murder within the meaning of section 231 of the *Criminal Code*, the continuous combined duration of the youth sentences may exceed ten years, or

(ii) second degree murder within the meaning of section 231 of the *Criminal Code*, the continuous combined duration of the youth sentences may exceed seven years.

Sentence continues when adult

(17) Subject to sections 89, 92 and 93 (provisions related to placement in adult facilities) of this Act and section 743.5 (transfer of jurisdiction) of the *Criminal Code*, a youth sentence imposed on a young person continues in effect in accordance with its terms after the young person becomes an adult.

Additional youth sentences

43. Subject to subsection 42(15) (duration of youth sentences), if a young person who is subject to a custodial sentence imposed under paragraph 42(2)(n), (o), (q) or (r) that has not expired receives an additional youth sentence under one of those paragraphs, the young person is, for the purposes of the *Corrections and Conditional Release Act*, the *Criminal Code*, the *Prisons and Reformatories Act* and this Act, deemed to have been sentenced to one youth sentence commencing at the beginning of the first of those youth sentences to be served and ending on the expiry of the last of them to be served.

Custodial portion if additional youth sentence

44. Subject to subsection 42(15) (duration of youth sentences) and section 46 (exception when youth sentence in respect of earlier offence), if an additional youth sentence under paragraph 42(2)(n), (o), (q) or (r) is imposed on a young person on whom a youth sentence had already been imposed under one of those paragraphs that has not expired and the expiry date of the youth sentence that includes the additional youth

sentence, as determined in accordance with section 43, is later than the expiry date of the youth sentence that the young person was serving before the additional youth sentence was imposed, the custodial portion of the young person's youth sentence is, from the date the additional sentence is imposed, the total of

(a) the unexpired portion of the custodial portion of the youth sentence before the additional youth sentence was imposed, and

(b) the relevant period set out in subparagraph (i), (ii) or (iii):

(i) if the additional youth sentence is imposed under paragraph 42(2)(n), the period that is two thirds of the period that constitutes the difference between the expiry of the youth sentence as determined in accordance with section 43 and the expiry of the youth sentence that the young person was serving before the additional youth sentence was imposed,

(ii) if the additional youth sentence is a concurrent youth sentence imposed under paragraph 42(2)(o), (q) or (r), the custodial portion of the youth sentence imposed under that paragraph that extends beyond the expiry date of the custodial portion of the sentence being served before the imposition of the additional sentence, or

(iii) if the additional youth sentence is a consecutive youth sentence imposed under paragraph 42(2)(o), (q) or (r), the custodial portion of the additional youth sentence imposed under that paragraph.

Supervision when additional youth sentence extends the period in custody

45. (1) If a young person has begun to serve a portion of a youth sentence in the community subject to conditions under paragraph 42(2)(n) or under conditional supervision under paragraph 42(2)(o), (q) or (r) at the time an additional youth sentence is imposed under one of those paragraphs, and, as a result of the application of section 44, the custodial portion of the young person's youth sentence ends on a day that is later than the day on which the young person received the additional youth sentence, the serving of a portion of the youth sentence under supervision in the community subject to conditions or under conditional supervision shall become inoperative and the young person shall be committed to custody under paragraph 102(1)(b) or 106(b) until the end of the extended portion of the youth sentence to be served in custody.

Supervision when additional youth sentence does not extend the period in custody

(2) If a youth sentence has been imposed under paragraph 42(2)(n), (o), (q) or (r) on a young person who is under supervision in the community subject to conditions under paragraph 42(2)(n) or under conditional supervision under paragraph 42(2)(o), (q) or (r), and the additional youth sentence would not modify the expiry date of the youth sentence that the young person was serving at the time the additional youth sentence was imposed, the young person may be remanded to the youth custody facility that the provincial director considers appropriate. The provincial director shall review the case and, no later than forty-eight hours after the remand of the young person, shall either refer the case to the youth justice court for a review under section 103 or 109 or release the young person to continue the supervision in the community or the conditional supervision.

Supervision when youth sentence additional to supervision

(3) If a youth sentence has been imposed under paragraph 42(2)(n), (o), (q) or (r) on a young person who is under conditional supervision under paragraph 94(19)(b) or subsection 96(5), the young person shall be remanded to the youth custody facility that the provincial director considers appropriate. The provincial director shall review the case and, no later than forty-eight hours after the remand of the young person, shall either refer the case to the youth justice court for a review under section 103 or 109 or release the young person to continue the conditional supervision.

Exception when youth sentence in respect of earlier offence

46. The total of the custodial portions of a young person's youth sentences shall not exceed six years calculated from the beginning of the youth sentence that is determined in accordance with section 43 if

(a) a youth sentence is imposed under paragraph 42(2)(n), (o), (q) or (r) on the young person already serving a youth sentence under one of those paragraphs; and

(b) the later youth sentence imposed is in respect of an offence committed before the commencement of the earlier youth sentence.

Committal to custody deemed continuous

47. (1) Subject to subsections (2) and (3), a young person who is sentenced under paragraph 42(2)(n) is deemed to be committed to continuous custody for the custodial portion of the sentence.

Intermittent custody

(2) If the sentence does not exceed ninety days, the youth justice court may order that the custodial portion of the sentence be served intermittently if it is consistent with the purpose and principles set out in section 38.

Availability of place of intermittent custody

(3) Before making an order of committal to intermittent custody, the youth justice court shall require the prosecutor to make available to the court for its consideration a report of the provincial director as to the availability of a youth custody facility in which an order of intermittent custody can be enforced and, if the report discloses that no such youth custody facility is available, the court shall not make the order.

Reasons for the sentence

48. When a youth justice court imposes a youth sentence, it shall state its reasons for the sentence in the record of the case and shall, on request, give or cause to be given a copy of the sentence and the reasons for the sentence to

(a) the young person, the young person's counsel, a parent of the young person, the provincial director and the prosecutor; and

(b) in the case of a committal to custody under paragraph 42(2)(n), (o), (q) or (r), the review board.

Warrant of committal

49. (1) When a young person is committed to custody, the youth justice court shall issue or cause to be issued a warrant of committal.

Custody during transfer

(2) A young person who is committed to custody may, in the course of being transferred from custody to the court or from the court to custody, be held under the supervision and control of a peace officer or in any place of temporary detention referred to in subsection 30(1) that the provincial director may specify.

Subsection 30(3) applies

(3) Subsection 30(3) (detention separate from adults) applies, with any modifications that the circumstances require, in respect of a person held in a place of temporary detention under subsection (2).

Application of Part XXIII of *Criminal Code*

50. (1) Subject to section 74 (application of *Criminal Code* to adult sentences), Part XXIII (sentencing) of the *Criminal Code* does not apply in respect of proceedings under this Act except for paragraph 718.2(e) (sentencing principle for aboriginal offenders), sections 722 (victim impact statements), 722.1 (copy of statement) and 722.2 (inquiry by court), subsection 730(2) (court process continues in force) and sections 748 (pardons and remissions), 748.1 (remission by the Governor in Council) and 749 (royal prerogative) of that Act, which provisions apply with any modifications that the circumstances require.

Section 787 of *Criminal Code* does not apply

(2) Section 787 (general penalty) of the *Criminal Code* does not apply in respect of proceedings under this Act.

Mandatory prohibition order

51. (1) Despite section 42 (youth sentences), when a young person is found guilty of an offence referred to in any of paragraphs 109(1)(a) to (d) of the *Criminal Code*, the youth justice court shall, in addition to imposing a sentence under section 42 (youth sentences), make an order prohibiting the young person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance during the period specified in the order as determined in accordance with subsection (2).

Duration of prohibition order

(2) An order made under subsection (1) begins on the day on which the order is made and ends not earlier than two years after the young person has completed the custodial portion of the sentence or, if the young person is not subject to custody, after the time the young person is found guilty of the offence.

Discretionary prohibition order

(3) Despite section 42 (youth sentences), where a young person is found guilty of an offence referred to in paragraph 110(1)(a) or (b) of the *Criminal Code*, the youth justice court shall, in addition to imposing a sentence under section 42 (youth sentences), consider whether it is desirable, in the interests of the safety of the young person or of any other person, to make an order prohibiting the young person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, and where the court decides that it is so desirable, the court shall so order.

Duration of prohibition order

(4) An order made under subsection (3) against a young person begins on the day on which the order is made and ends not later than two years after the young person has completed the custodial portion of the sentence or, if the young person is not subject to custody, after the time the young person is found guilty of the offence.

Reasons for the prohibition order

(5) When a youth justice court makes an order under this section, it shall state its reasons for making the order in the record of the case and shall give or cause to be given a copy of the order and, on request, a transcript or copy of the reasons to the young person against whom the order was made, the counsel and a parent of the young person and the provincial director.

Reasons

(6) When the youth justice court does not make an order under subsection (3), or when the youth justice court does make such an order but does not prohibit the possession of everything referred to in that subsection, the youth justice court shall include in the record a statement of the youth justice court's reasons.

Application of *Criminal Code*

(7) Sections 113 to 117 (firearm prohibition orders) of the *Criminal Code* apply in respect of any order made under this section.

Report

(8) Before making an order referred to in section 113 (lifting firearms order) of the *Criminal Code* in respect of a young person, the youth justice court may require the provincial director to cause to be prepared, and to submit to the youth justice court, a report on the young person.

Review of order made under section 51

52. (1) A youth justice court may, on application, review an order made under section 51 at any time after the end of the period set out in subsection 119(2) (period of access to records) that applies to the record of the offence that resulted in the order being made.

Grounds

- (2) In conducting a review under this section, the youth justice court shall take into account
- (a) the nature and circumstances of the offence in respect of which the order was made; and
 - (b) the safety of the young person and of other persons.

Decision of review

(3) When a youth justice court conducts a review under this section, it may, after giving the young person, a parent of the young person, the Attorney General and the provincial director an opportunity to be heard,

- (a) confirm the order;
- (b) revoke the order; or
- (c) vary the order as it considers appropriate in the circumstances of the case.

New order not to be more onerous

(4) No variation of an order made under paragraph (3)(c) may be more onerous than the order being reviewed.

Application of provisions

(5) Subsections 59(3) to (5) apply, with any modifications that the circumstances require, in respect of a review under this section.

Funding for victims

53. (1) The lieutenant governor in council of a province may order that, in respect of any fine imposed in the province under paragraph 42(2)(d), a percentage of the fine as fixed by the lieutenant governor in council be used to provide such assistance to victims of offences as the lieutenant governor in council may direct from time to time.

Victim fine surcharge

(2) If the lieutenant governor in council of a province has not made an order under subsection (1), a youth justice court that imposes a fine on a young person under paragraph 42(2)(d) may, in addition to any other punishment imposed on the young person, order the young person to pay a victim fine surcharge in an amount not exceeding fifteen per cent of the fine. The surcharge shall be used to provide such assistance to victims of offences as the lieutenant governor in council of the province in which the surcharge is imposed may direct from time to time.

Where a fine or other payment is ordered

54. (1) The youth justice court shall, in imposing a fine under paragraph 42(2)(d) or in making an order under paragraph 42(2)(e) or (g), have regard to the present and future means of the young person to pay.

Discharge of fine or surcharge

(2) A young person on whom a fine is imposed under paragraph 42(2)(d), including any percentage of a fine imposed under subsection 53(1), or on whom a victim fine surcharge is imposed under subsection 53(2), may discharge the fine or surcharge in whole or in part by earning credits for work performed in a program established for that purpose

- (a) by the lieutenant governor in council of the province in which the fine or surcharge was imposed; or
- (b) by the lieutenant governor in council of the province in which the young person resides, if an appropriate agreement is in effect between the government of that province and the government of the province in which the fine or surcharge was imposed.

Rates, crediting and other matters

(3) A program referred to in subsection (2) shall determine the rate at which credits are earned and may provide for the manner of crediting any amounts earned against the fine or surcharge and any other matters necessary for or incidental to carrying out the program.

Representations respecting orders under paragraphs 42(2)(e) to (h)

(4) In considering whether to make an order under any of paragraphs 42(2)(e) to (h), the youth justice court may consider any representations made by the person who would be compensated or to whom restitution or payment would be made.

Notice of orders under paragraphs 42(2)(e) to (h)

(5) If the youth justice court makes an order under any of paragraphs 42(2)(e) to (h), it shall cause notice of the terms of the order to be given to the person who is to be compensated or to whom restitution or payment is to be made.

Consent of person to be compensated

(6) No order may be made under paragraph 42(2)(h) unless the youth justice court has secured the consent of the person to be compensated.

Orders under paragraph 42(2)(h), (i) or (m)

(7) No order may be made under paragraph 42(2)(h), (i) or (m) unless the youth justice court is satisfied that

(a) the young person against whom the order is made is a suitable candidate for such an order; and

(b) the order does not interfere with the normal hours of work or education of the young person.

Duration of order for service

(8) No order may be made under paragraph 42(2)(h) or (i) to perform personal or community services unless those services can be completed in two hundred and forty hours or less and within twelve months after the date of the order.

Community service order

(9) No order may be made under paragraph 42(2)(i) unless

(a) the community service to be performed is part of a program that is approved by the provincial director; or

(b) the youth justice court is satisfied that the person or organization for whom the community service is to be performed has agreed to its performance.

Application for further time to complete youth sentence

(10) A youth justice court may, on application by or on behalf of the young person in respect of whom a youth sentence has been imposed under any of paragraphs 42(2)(d) to (i), allow further time for the completion of the sentence subject to any regulations made under paragraph 155(b) and to any rules made by the youth justice court under subsection 17(1).

Conditions that must appear in orders

55. (1) The youth justice court shall prescribe, as conditions of an order made under paragraph 42(2)(k) or (l), that the young person

(a) keep the peace and be of good behaviour; and

(b) appear before the youth justice court when required by the court to do so.

Conditions that may appear in orders

(2) A youth justice court may prescribe, as conditions of an order made under paragraph 42(2)(k) or (l), that a young person do one or more of the following that the youth justice court considers appropriate in the circumstances:

(a) report to and be supervised by the provincial director or a person designated by the youth justice court;

(b) notify the clerk of the youth justice court, the provincial director or the youth worker assigned to the case of any change of address or any change in the young person's place of employment, education or training;

(c) remain within the territorial jurisdiction of one or more courts named in the order;

(d) make reasonable efforts to obtain and maintain suitable employment;

(e) attend school or any other place of learning, training or recreation that is appropriate, if the youth justice court is satisfied that a suitable program for the young person is available there;

(f) reside with a parent, or any other adult that the youth justice court considers appropriate, who is willing to provide for the care and maintenance of the young person;

(g) reside at a place that the provincial director may specify;

(h) comply with any other conditions set out in the order that the youth justice court considers appropriate, including conditions for securing the young person's good conduct and for preventing the young person from repeating the offence or committing other offences; and

(i) not own, possess or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, except as authorized by the order.

Communication of order

56. (1) A youth justice court that makes an order under paragraph 42(2)(k) or (l) shall

(a) cause the order to be read by or to the young person bound by it;

(b) explain or cause to be explained to the young person the purpose and effect of the order, and confirm that the young person understands it; and

(c) cause a copy of the order to be given to the young person, and to any parent of the young person who is in attendance at the sentencing hearing.

Copy of order to parent

(2) A youth justice court that makes an order under paragraph 42(2)(k) or (l) may cause a copy to be given to a parent of the young person who is not in attendance at the proceedings if the parent is, in the opinion of the court, taking an active interest in the proceedings.

Endorsement of order by young person

(3) After the order has been read and explained under subsection (1), the young person shall endorse on the order an acknowledgement that the young person has received a copy of the order and had its purpose and effect explained.

Validity of order

(4) The failure of a young person to endorse the order or of a parent to receive a copy of the order does not affect the validity of the order.

Commencement of order

(5) An order made under paragraph 42(2)(k) or (l) comes into force

(a) on the date on which it is made; or

(b) if a young person receives a sentence that includes a period of continuous custody and supervision, at the end of the period of supervision.

Effect of order in case of custody

(6) If a young person is subject to a sentence that includes both a period of continuous custody and supervision and an order made under paragraph 42(2)(k) or (l), and the court orders under subsection 42(12) a delay in the start of the period of custody, the court may divide the period that the order made under paragraph 42(2)(k) or (l) is in effect, with the first portion to have effect from the date on which it is made until the start of the period of custody, and the remainder to take effect at the end of the period of supervision.

Notice to appear

(7) A young person may be given notice either orally or in writing to appear before the youth justice court under paragraph 55(1)(b).

Warrant in default of appearance

(8) If service of a notice in writing is proved and the young person fails to attend court in accordance with the notice, a youth justice court may issue a warrant to compel the appearance of the young person.

Transfer of youth sentence

57. (1) When a youth sentence has been imposed under any of paragraphs 42(2)(d) to (j), (k), (l) or (s) in respect of a young person and the young person or a parent with whom the young person resides is or becomes a resident of a territorial division outside the jurisdiction of the youth justice court that imposed the youth sentence, whether in the same or in another province, a youth justice court judge in the territorial division in which the youth sentence was imposed may, on the application of the Attorney General or on the application of the young person or the young person's parent, with the consent of the Attorney General, transfer to a youth justice court in another territorial division the youth sentence and any portion of the record of the case that is appropriate. All subsequent proceedings relating to the case shall then be carried out and enforced by that court.

No transfer outside province before appeal completed

(2) No youth sentence may be transferred from one province to another under this section until the time for an appeal against the youth sentence or the finding on which the youth sentence was based has expired or until all proceedings in respect of any such appeal have been completed.

Transfer to a province when person is adult

(3) When an application is made under subsection (1) to transfer the youth sentence of a young person to a province in which the young person is an adult, a youth justice court judge may, with the consent of the Attorney General, transfer the youth sentence and the record of the case to the youth justice court in the province to which the transfer is sought, and the youth justice court to which the case is transferred shall have full jurisdiction in respect of the youth sentence as if that court had imposed the youth sentence. The person shall be further dealt with in accordance with this Act.

Interprovincial arrangements

58. (1) When a youth sentence has been imposed under any of paragraphs 42(2)(k) to (r) in respect of a young person, the youth sentence in one province may be dealt with in any other province in accordance with any agreement that may have been made between those provinces.

Youth justice court retains jurisdiction

(2) Subject to subsection (3), when a youth sentence imposed in respect of a young person is dealt with under this section in a province other than that in which the youth sentence was imposed, the youth justice court of the province in which the youth sentence was imposed retains, for all purposes of this Act, exclusive jurisdiction over the young person as if the youth sentence were dealt with within that province, and any warrant or process issued in respect of the young person may be executed or served in any place in Canada outside the province where the youth sentence was imposed as if it were executed or served in that province.

Waiver of jurisdiction

(3) When a youth sentence imposed in respect of a young person is dealt with under this section in a province other than the one in which the youth sentence was imposed, the youth justice court of the province in which the youth sentence was imposed may, with the consent in writing of the Attorney General of that province and the young person, waive its jurisdiction, for the purpose of any proceeding under this Act, to the youth justice court of the province in which the youth sentence is dealt with, in which case the youth justice court in the province in which the youth sentence is dealt with shall have full jurisdiction in respect of the youth sentence as if that court had imposed the youth sentence.

Review of youth sentences not involving custody

59. (1) When a youth justice court has imposed a youth sentence in respect of a young person, other than a youth sentence under paragraph 42(2)(n), (o), (q) or (r), the youth justice court shall, on the application of the young person, the young person's parent, the Attorney General or the provincial director, made at any time after six months after the date of the youth sentence or, with leave of a youth justice court judge, at any earlier time, review the youth sentence if the court is satisfied that there are grounds for a review under subsection (2).

Grounds for review

(2) A review of a youth sentence may be made under this section

(a) on the ground that the circumstances that led to the youth sentence have changed materially;

(b) on the ground that the young person in respect of whom the review is to be made is unable to comply with or is experiencing serious difficulty in complying with the terms of the youth sentence;

(c) on the ground that the young person in respect of whom the review is to be made has contravened a condition of an order made under paragraph 42(2)(k) or (l) without reasonable excuse;

(d) on the ground that the terms of the youth sentence are adversely affecting the opportunities available to the young person to obtain services, education or employment; or

(e) on any other ground that the youth justice court considers appropriate.

Progress report

(3) The youth justice court may, before reviewing under this section a youth sentence imposed in respect of a young person, require the provincial director to cause to be prepared, and to submit to the youth justice court, a progress report on the performance of the young person since the youth sentence took effect.

Subsections 94(10) to (12) apply

(4) Subsections 94(10) to (12) apply, with any modifications that the circumstances require, in respect of any progress report required under subsection (3).

Subsections 94(7) and (14) to (18) apply

(5) Subsections 94(7) and (14) to (18) apply, with any modifications that the circumstances require, in respect of reviews made under this section and any notice required under subsection 94(14) shall also be given to the provincial director.

Compelling appearance of young person

(6) The youth justice court may, by summons or warrant, compel a young person in respect of whom a review is to be made under this section to appear before the youth justice court for the purposes of the review.

Decision of the youth justice court after review

(7) When a youth justice court reviews under this section a youth sentence imposed in respect of a young person, it may, after giving the young person, a parent of the young person, the Attorney General and the provincial director an opportunity to be heard,

(a) confirm the youth sentence;

(b) terminate the youth sentence and discharge the young person from any further obligation of the youth sentence; or

(c) vary the youth sentence or impose any new youth sentence under section 42, other than a committal to custody, for any period of time, not exceeding the remainder of the period of the earlier youth sentence, that the court considers appropriate in the circumstances of the case.

New youth sentence not to be more onerous

(8) Subject to subsection (9), when a youth sentence imposed in respect of a young person is reviewed under this section, no youth sentence imposed under subsection (7) shall, without the consent of the young person, be more onerous than the remainder of the youth sentence reviewed.

Exception

(9) A youth justice court may under this section extend the time within which a youth sentence imposed

under paragraphs 42(2)(d) to (i) is to be complied with by a young person if the court is satisfied that the young person requires more time to comply with the youth sentence, but in no case shall the extension be for a period of time that expires more than twelve months after the date the youth sentence would otherwise have expired.

Provisions applicable to youth sentences on review

60. This Part and Part 5 (custody and supervision) apply with any modifications that the circumstances require to orders made in respect of reviews of youth sentences under sections 59 and 94 to 96.

ADULT SENTENCE AND ELECTION

Age for purpose of presumptive offences

61. The lieutenant governor in council of a province may by order fix an age greater than fourteen years but not more than sixteen years for the purpose of the application of the provisions of this Act relating to presumptive offences.

Imposition of adult sentence

62. An adult sentence shall be imposed on a young person who is found guilty of an indictable offence for which an adult is liable to imprisonment for a term of more than two years in the following cases:

(a) in the case of a presumptive offence, if the youth justice court makes an order under subsection 70(2) or paragraph 72(1)(b); or

(b) in any other case, if the youth justice court makes an order under subsection 64(5) or paragraph 72(1)(b) in relation to an offence committed after the young person attained the age of fourteen years.

Application by young person

63. (1) A young person who is charged with, or found guilty of, a presumptive offence may, at any time before evidence is called as to sentence or, where no evidence is called, before submissions are made as to sentence, make an application for an order that he or she is not liable to an adult sentence and that a youth sentence must be imposed.

Application unopposed

(2) If the Attorney General gives notice to the youth justice court that the Attorney General does not oppose the application, the youth justice court shall, without a hearing, order that the young person, if found guilty, is not liable to an adult sentence and that a youth sentence must be imposed.

Application by Attorney General

64. (1) The Attorney General may, following an application under subsection 42(9) (judicial determination of serious violent offence), if any is made, and before evidence is called as to sentence or, where no evidence is called, before submissions are made as to sentence, make an application 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, other than a presumptive offence, for which an adult is liable to imprisonment for a term of more than two years, that was committed after the young person attained the age of fourteen years.

Notice of intention to seek adult sentence

(2) If the Attorney General intends to seek an adult sentence for an offence by making an application under subsection (1), or by establishing that the offence is a presumptive offence within the meaning of paragraph (b) of the definition "presumptive offence" in subsection 2(1), the Attorney General shall, before the young person enters a plea or with leave of the youth justice court before the commencement of the trial, give notice to the young person and the youth justice court of the intention to seek an adult sentence.

Included offences

(3) A notice of intention to seek an adult sentence given in respect of an offence is notice in respect of any included offence of which the young person is found guilty for which an adult is liable to imprisonment for a term of more than two years.

Notice to young person

(4) If a young person is charged with an offence, other than an offence set out in paragraph (a) of the definition “presumptive offence” in subsection 2(1), and the Attorney General intends to establish, after a finding of guilt, that the offence is a serious violent offence and a presumptive offence within the meaning of paragraph (b) of the definition “presumptive offence” in subsection 2(1) for which the young person is liable to an adult sentence, the Attorney General shall, before the young person enters a plea or, with leave of the youth justice court under subsection (2), before the commencement of the trial, give notice of that intention to the young person.

Application unopposed

(5) If the young person gives notice to the youth justice court that the young person does not oppose the application for an adult sentence, the youth justice court shall, without a hearing, order that if the young person is found guilty of an offence for which an adult is liable to imprisonment for a term of more than two years, an adult sentence must be imposed.

Presumption does not apply

65. If the Attorney General at any stage of proceedings gives notice to the youth justice court that an adult sentence will not be sought in respect of a young person who is alleged to have committed an offence set out in paragraph (a) of the definition “presumptive offence” in subsection 2(1), the court shall order that the young person is not liable to an adult sentence, and the court shall order a ban on publication of information that would identify the young person as having been dealt with under this Act.

No election if youth sentence

66. If the youth justice court has made an order under subsection 63(2) or section 65 before a young person is required to be put to an election under section 67, the young person shall not be put to an election unless the young person is alleged to have committed first degree murder or second degree murder within the meaning of section 231 of the *Criminal Code*.

Election — adult sentence

67. (1) Subject to section 66, the youth justice court shall, before a young person enters a plea, put the young person to his or her election in the words set out in subsection (2) if

(a) the young person is charged with having committed an offence set out in paragraph (a) of the definition “presumptive offence” in subsection 2(1);

(b) the Attorney General has given notice under subsection 64(2) of the intention to seek an adult sentence for an offence committed after the young person has attained the age of fourteen years;

(c) the young person is charged with having committed first or second degree murder within the meaning of section 231 of the *Criminal Code* before the young person has attained the age of fourteen years; or

(d) the person to whom section 16 (status of accused uncertain) applies is charged with having, after attaining the age of fourteen years, committed an offence for which an adult would be entitled to an election under section 536 of the *Criminal Code*, or over which a superior court of criminal jurisdiction would have exclusive jurisdiction under section 469 of that Act.

Wording of election

(2) The youth justice court shall put the young person to his or her election in the following words:

You have the option to elect to be tried by a youth justice court judge without a jury and without having had a preliminary inquiry; or you may elect to be tried by a judge without a jury; or you may elect to be tried by a court composed of a judge and jury. If you do not elect now, you are deemed to have elected to be tried by a court composed of a judge and jury. If you elect to be tried by a judge without a jury or by a court composed of a judge and jury or if you are deemed to have elected to be tried by a court composed of a judge and jury, you will have a preliminary inquiry only if you or the prosecutor requests one. How do you elect to be tried?

Election — Nunavut

(3) Subject to section 66, in respect of proceedings in Nunavut, the youth justice court shall, before a young person enters a plea, put the young person to his or her election in the words set out in subsection (4) if

(a) the young person is charged with having committed an offence set out in paragraph (a) of the definition “presumptive offence” in subsection 2(1);

(b) the Attorney General has given notice under subsection 64(2) of the intention to seek an adult sentence for an offence committed after the young person has attained the age of fourteen years;

(c) the young person is charged with having committed first or second degree murder within the meaning of section 231 of the *Criminal Code* before the young person has attained the age of fourteen years; or

(d) the person to whom section 16 (status of accused uncertain) applies is charged with having, after attaining the age of fourteen years, committed an offence for which an adult would be entitled to an election under section 536.1 of the *Criminal Code*.

Wording of election

(4) The youth justice court shall put the young person to his or her election in the following words:

You have the option to elect to be tried by a judge of the Nunavut Court of Justice alone, acting as a youth justice court without a jury and without a preliminary inquiry; or you may elect to be tried by a judge of the Nunavut Court of Justice, acting as a youth justice court without a jury; or you may elect to be tried by a judge of the Nunavut Court of Justice, acting as a youth justice court with a jury. If you elect to be tried by a judge without a jury or by a judge, acting as a youth justice court, with a jury or if you are deemed to have elected to be tried by a judge, acting as a youth justice court, with a jury, you will have a preliminary inquiry only if you or the prosecutor requests one. How do you elect to be tried?

Mode of trial where co-accused are young persons

(5) When two or more young persons who are charged with the same offence, who are jointly charged in the same information or indictment or in respect of whom the Attorney General seeks joinder of counts that are set out in separate informations or indictments are put to their election, then, unless all of them elect or re-elect or are deemed to have elected, as the case may be, the same mode of trial, the youth justice court judge

(a) may decline to record any election, re-election or deemed election for trial by a youth justice court judge without a jury, a judge without a jury or, in Nunavut, a judge of the Nunavut Court Justice without a jury; and

(b) if the judge declines to do so, shall hold a preliminary inquiry, if requested to do so by one of the parties, unless a preliminary inquiry has been held prior to the election, re-election or deemed election.

Attorney General may require trial by jury

(6) The Attorney General may, even if a young person elects under subsection (1) or (3) to be tried by a youth justice court judge without a jury or a judge without a jury, require the young person to be tried by a court composed of a judge and jury.

Preliminary inquiry

(7) When a young person elects to be tried by a judge without a jury, or elects or is deemed to have elected to be tried by a court composed of a judge and jury, the youth justice court referred to in subsection 13(1) shall, on the request of the young person or the prosecutor made at that time or within the period fixed by rules of court made under section 17 or 155 or, if there are no such rules, by the youth justice court judge, conduct a preliminary inquiry and if, on its conclusion, the young person is ordered to stand trial, the proceedings shall be conducted

(a) before a judge without a jury or a court composed of a judge and jury, as the case may be; or

(b) in Nunavut, before a judge of the Nunavut Court of Justice acting as a youth justice court, with or without a jury, as the case may be.

Preliminary inquiry if two or more accused

(7.1) If two or more young persons are jointly charged in an information and one or more of them make a request for a preliminary inquiry under subsection (7), a preliminary inquiry must be held with respect to all of them.

When no request for preliminary inquiry

(7.2) If no request for a preliminary inquiry is made under subsection (7), the youth justice court shall fix the date for the trial or the date on which the young person must appear in the trial court to have the date fixed.

Preliminary inquiry provisions of *Criminal Code*

(8) The preliminary inquiry shall be conducted in accordance with the provisions of Part XVIII (procedure on preliminary inquiry) of the *Criminal Code*, except to the extent that they are inconsistent with this Act.

Parts XIX and XX of *Criminal Code*

(9) Proceedings under this Act before a judge without a jury or a court composed of a judge and jury or, in Nunavut, a judge of the Nunavut Court of Justice acting as a youth justice court, with or without a jury, as the case may be, shall be conducted in accordance with the provisions of Parts XIX (indictable offences — trial without jury) and XX (procedure in jury trials and general provisions) of the *Criminal Code*, with any modifications that the circumstances require, except that

(a) the provisions of this Act respecting the protection of privacy of young persons prevail over the provisions of the *Criminal Code*; and

(b) the young person is entitled to be represented in court by counsel if the young person is removed from court in accordance with subsection 650(2) of the *Criminal Code*.

2002, c. 1, s. 67, c. 13, s. 91.

Proof of notice under subsection 64(4)

68. (1) When a young person is found guilty of an offence, other than an offence set out in paragraph (a) of the definition “presumptive offence” in subsection 2(1), committed after he or she attained the age of fourteen years, and the Attorney General seeks to establish that the offence is a serious violent offence and a presumptive offence within the meaning of paragraph (b) of the definition “presumptive offence” in subsection 2(1), the Attorney General must satisfy the youth justice court that the young person, before entering a plea, was given notice under subsection 64(4) (intention to prove prior serious violent offences).

Determination of serious violent offence

(2) If the youth justice court is satisfied that the young person was given notice under subsection 64(4) (intention to prove prior serious violent offences), the Attorney General may make an application in accordance with subsection 42(9) (judicial determination of serious violent offence).

Inquiry by court and proof

(3) If the youth justice court determines that the offence is a serious violent offence, it shall ask whether the young person admits to the previous judicial determinations of serious violent offences made at different proceedings. If the young person does not admit to any of it, the Attorney General may adduce evidence as proof of the previous judicial determinations in accordance with section 667 of the *Criminal Code*, with any modifications that the circumstances require. For the purposes of that section, a certified copy of the information or indictment endorsed in accordance with subsection 42(9) (judicial determination of serious violent offence) or a certified copy of a court decision is deemed to be a certificate.

Determination by court

(4) If the youth justice court, after making its inquiry under subsection (3), is satisfied that the offence is a presumptive offence within the meaning of paragraph (b) of the definition “presumptive offence” in subsection 2(1), the youth justice court shall endorse the information or indictment accordingly.

Determination by court

(5) If the youth justice court, after making its inquiry under subsection (3), is not satisfied that the offence is a presumptive offence within the meaning of paragraph (b) of the definition “presumptive offence” in subsection 2(1), the Attorney General may make an application under subsection 64(1) (application for adult sentence).

Paragraph (a) “presumptive offence” — included offences

69. (1) If a young person who is charged with an offence set out in paragraph (a) of the definition “presumptive offence” in subsection 2(1) is found guilty of committing an included offence for which an adult is liable to imprisonment for a term of more than two years, other than another presumptive offence set out in that paragraph,

(a) the Attorney General may make an application under subsection 64(1) (application for adult sentence) without the necessity of giving notice under subsection 64(2), if the finding of guilt is for an offence that is not a presumptive offence; or

(b) subsections 68(2) to (5) apply without the necessity of the Attorney General giving notice under subsection 64(2) (intention to seek adult sentence) or (4) (intention to prove prior serious violent offences), if the finding of guilt is for an offence that would be a presumptive offence within the meaning of paragraph (b) of the definition “presumptive offence” in subsection 2(1) if a judicial determination is made that the offence is a serious violent offence and on proof of previous judicial determinations of a serious violent offence.

Other serious offences — included offences

(2) If the Attorney General has given notice under subsection 64(2) of the intention to seek an adult sentence and the young person, after he or she has attained the age of fourteen years, is found guilty of committing an included offence for which an adult is liable to imprisonment for a term of more than two years, the Attorney General may make an application under subsection 64(1) (application for adult sentence) or seek to apply the provisions of section 68.

Inquiry by court to young person

70. (1) The youth justice court, after hearing an application under subsection 42(9) (judicial determination of serious violent offence), if any is made, and before evidence is called or, where no evidence is called, before submissions are made as to sentence, shall inquire whether a young person wishes to make an application under subsection 63(1) (application for youth sentence) and if so, whether the Attorney General would oppose it, if

(a) the young person has been found guilty of a presumptive offence;

(b) the young person has not already made an application under subsection 63(1); and

(c) no order has been made under section 65 (young person not liable to adult sentence).

No application by young person

(2) If the young person indicates that he or she does not wish to make an application under subsection 63(1) (application for youth sentence) or fails to give an indication, the court shall order that an adult sentence be imposed.

Hearing — adult sentences

71. The youth justice court shall, at the commencement of the sentencing hearing, hold a hearing in respect of an application under subsection 63(1) (application for youth sentence) or 64(1) (application for adult sentence), unless the court has received notice that the application is not opposed. Both parties and the parents of the young person shall be given an opportunity to be heard at the hearing.

Test — adult sentences

72. (1) In making its decision on an application heard in accordance with section 71, the youth justice court shall consider the seriousness and circumstances of the offence, and the age, maturity, character, background and previous record of the young person and any other factors that the court considers relevant, and

(a) if it is of the opinion that a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 would have sufficient length to hold the young person accountable for his or her offending behaviour, it shall order that the young person is not liable to an adult sentence and that a youth sentence must be imposed; and

(b) if it is of the opinion that a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 would not have sufficient length to hold the young person accountable for his or her offending behaviour, it shall order that an adult sentence be imposed.

Onus

(2) The onus of satisfying the youth justice court as to the matters referred to in subsection (1) is with the applicant.

Pre-sentence reports

(3) In making its decision, the youth justice court shall consider a pre-sentence report.

Court to state reasons

(4) When the youth justice court makes an order under this section, it shall state the reasons for its decision.

Appeals

(5) For the purposes of an appeal in accordance with section 37, an order under subsection (1) is part of the sentence.

Court must impose adult sentence

73. (1) When the youth justice court makes an order under subsection 64(5) or 70(2) or paragraph 72(1)(b) in respect of a young person, the court shall, on a finding of guilt, impose an adult sentence on the young person.

Court must impose youth sentence

(2) When the youth justice court makes an order under subsection 63(2), section 65 or paragraph 72(1)(a) in respect of a young person, the court shall, on a finding of guilt, impose a youth sentence on the young person.

Application of Parts XXIII and XXIV of *Criminal Code*

74. (1) Parts XXIII (sentencing) and XXIV (dangerous and long-term offenders) of the *Criminal Code* apply to a young person in respect of whom the youth justice court has ordered that an adult sentence be imposed.

Finding of guilt becomes a conviction

(2) A finding of guilt for an offence in respect of which an adult sentence is imposed becomes a conviction once the time allowed for the taking of an appeal has expired or, if an appeal is taken, all proceedings in respect of the appeal have been completed and the appeal court has upheld an adult sentence.

Interpretation

(3) This section does not affect the time of commencement of an adult sentence under subsection 719(1) of the *Criminal Code*.

Inquiry by the court to the young person

75. (1) If the youth justice court imposes a youth sentence in respect of a young person who has been found guilty of having committed a presumptive offence set out in paragraph (a) of the definition "presumptive offence" in subsection 2(1), or an offence under paragraph (b) of that definition for which the Attorney General has given notice under subsection 64(2) (intention to seek adult sentence), the court shall at the sentencing hearing inquire whether the young person or the Attorney General wishes to make an application under subsection (3) for a ban on publication.

No application for a ban

(2) If the young person and the Attorney General both indicate that they do not wish to make an application under subsection (3), the court shall endorse the information or indictment accordingly.

Order for a ban

(3) On application of the young person or the Attorney General, a youth justice court may order a ban on publication of information that would identify the young person as having been dealt with under this Act if the court considers it appropriate in the circumstances, taking into account the importance of rehabilitating the young person and the public interest.

Appeals

(4) For the purposes of an appeal in accordance with section 37, an order under subsection (3) is part of the sentence.

Placement when subject to adult sentence

76. (1) Subject to subsections (2) and (9) and sections 79 and 80 and despite anything else in this Act or any other Act of Parliament, when a young person who is subject to an adult sentence in respect of an offence is sentenced to a term of imprisonment for the offence, the youth justice court shall order that the young person serve any portion of the imprisonment in

- (a) a youth custody facility separate and apart from any adult who is detained or held in custody;
- (b) a provincial correctional facility for adults; or
- (c) if the sentence is for two years or more, a penitentiary.

When young person subject to adult penalties

(2) The youth justice court that sentences a young person under subsection (1) shall, unless it is satisfied that to do so would not be in the best interests of the young person or would jeopardize the safety of others,

- (a) if the young person is under the age of eighteen years at the time that he or she is sentenced, order that he or she be placed in a youth custody facility; and
- (b) if the young person is eighteen years old or older at the time that he or she is sentenced, order that he or she not be placed in a youth custody facility and order that any portion of the sentence be served in a provincial correctional facility for adults or, if the sentence is two years or more, in a penitentiary.

Opportunity to be heard

(3) Before making an order under subsection (1), the youth justice court shall give the young person, a parent of the young person, the Attorney General, the provincial director and representatives of the provincial and federal correctional systems an opportunity to be heard.

Report necessary

(4) Before making an order under subsection (1), the youth justice court shall require that a report be prepared for the purpose of assisting the court.

Appeals

(5) For the purposes of an appeal in accordance with section 37, an order under subsection (1) is part of the sentence.

Review

(6) On application, the youth justice court shall review the placement of a young person under this section and, if satisfied that the circumstances that resulted in the initial order have changed materially, and after having given the young person, a parent of the young person, the Attorney General, the provincial director and the representatives of the provincial and federal correctional systems an opportunity to be heard, the court may order that the young person be placed in

- (a) a youth custody facility separate and apart from any adult who is detained or held in custody;
- (b) a provincial correctional facility for adults; or
- (c) if the sentence is for two years or more, a penitentiary.

Who may make application

(7) An application referred to in this section may be made by the young person, one of the young person's parents, the provincial director, representatives of the provincial and federal correctional systems and the Attorney General, after the time for all appeals has expired.

Notice

(8) When an application referred to in this section is made, the applicant shall cause a notice of the application to be given to the other persons referred to in subsection (7).

Limit — age twenty

(9) No young person shall remain in a youth custody facility under this section after the young person attains the age of twenty years, unless the youth justice court that makes the order under subsection (1) or reviews the placement under subsection (6) is satisfied that remaining in the youth custody facility would be in the best interests of the young person and would not jeopardize the safety of others.

Obligation to inform — parole

77. (1) When a young person is ordered to serve a portion of a sentence in a youth custody facility under paragraph 76(1)(a) (placement when subject to adult sentence), the provincial director shall inform the appropriate parole board.

Applicability of *Corrections and Conditional Release Act*

(2) For greater certainty, Part II of the *Corrections and Conditional Release Act* applies, subject to section 78, with respect to a young person who is the subject of an order under subsection 76(1) (placement when subject to adult sentence).

Appropriate parole board

(3) The appropriate parole board for the purposes of this section is

(a) if subsection 112(1) of the *Corrections and Conditional Release Act* would apply with respect to the young person but for the fact that the young person was ordered into a youth custody facility, the parole board mentioned in that subsection; and

(b) in any other case, the National Parole Board.

Release entitlement

78. (1) For greater certainty, section 6 of the *Prisons and Reformatories Act* applies to a young person who is ordered to serve a portion of a sentence in a youth custody facility under paragraph 76(1)(a) (placement when subject to adult sentence) only if section 743.1 (rules respecting sentences of two or more years) of the *Criminal Code* would direct that the young person serve the sentence in a prison.

Release entitlement

(2) For greater certainty, section 127 of the *Corrections and Conditional Release Act* applies to a young person who is ordered to serve a portion of a sentence in a youth custody facility under paragraph 76(1)(a) (placement when subject to adult sentence) only if section 743.1 (rules respecting sentences of two or more years) of the *Criminal Code* would direct that the young person serve the sentence in a penitentiary.

If person convicted under another Act

79. If a person who is serving all or a portion of a sentence in a youth custody facility under paragraph 76(1)(a) (placement when subject to adult sentence) is sentenced to a term of imprisonment under an Act of Parliament other than this Act, the remainder of the portion of the sentence being served in the youth custody facility shall be served in a provincial correctional facility for adults or a penitentiary, in accordance with section 743.1 (rules respecting sentences of two or more years) of the *Criminal Code*.

If person who is serving a sentence under another Act is sentenced to an adult sentence

80. If a person who has been serving a sentence of imprisonment under an Act of Parliament other than this Act is sentenced to an adult sentence of imprisonment under this Act, the sentences shall be served in a provincial correctional facility for adults or a penitentiary, in accordance with section 743.1 (rules respecting sentences of two or more years) of the *Criminal Code*.

Procedure for application or notice

81. An application or a notice to the court under section 63, 64, 65 or 76 must be made or given orally, in the presence of the other party, or in writing with a copy served personally on the other party.

EFFECT OF TERMINATION OF YOUTH SENTENCE

Effect of absolute discharge or termination of youth sentence

82. (1) Subject to section 12 (examination as to previous convictions) of the *Canada Evidence Act*, if a young person is found guilty of an offence, and a youth justice court directs under paragraph 42(2)(b) that the young person be discharged absolutely, or the youth sentence, or any disposition made under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, has ceased to have effect, other than an order under section 51 (mandatory prohibition order) of this Act or section 20.1 (mandatory prohibition order) of the *Young Offenders Act*, the young person is deemed not to have been found guilty or convicted of the offence except that

(a) the young person may plead *autrefois convict* in respect of any subsequent charge relating to the offence;

(b) a youth justice court may consider the finding of guilt in considering an application under subsection 63(1) (application for youth sentence) or 64(1) (application for adult sentence);

(c) any court or justice may consider the finding of guilt in considering an application for judicial interim release or in considering what sentence to impose for any offence; and

(d) the National Parole Board or any provincial parole board may consider the finding of guilt in considering an application for conditional release or pardon.

Disqualifications removed

(2) For greater certainty and without restricting the generality of subsection (1), an absolute discharge under paragraph 42(2)(b) or the termination of the youth sentence or disposition in respect of an offence for which a young person is found guilty removes any disqualification in respect of the offence to which the young person is subject under any Act of Parliament by reason of a finding of guilt.

Applications for employment

(3) No application form for or relating to the following shall contain any question that by its terms requires the applicant to disclose that he or she has been charged with or found guilty of an offence in respect of which he or she has, under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, been discharged absolutely, or has completed the youth sentence under this Act or the disposition under the *Young Offenders Act*.

(a) employment in any department, as defined in section 2 of the *Financial Administration Act*;

(b) employment by any Crown corporation, as defined in section 83 of the *Financial Administration Act*;

(c) enrolment in the Canadian Forces; or

(d) employment on or in connection with the operation of any work, undertaking or business that is within the legislative authority of Parliament.

Finding of guilt not a previous conviction

(4) A finding of guilt under this Act is not a previous conviction for the purposes of any offence under any Act

of Parliament for which a greater punishment is prescribed by reason of previous convictions, except for

(a) the purpose of establishing that an offence is a presumptive offence within the meaning of paragraph (b) of the definition "presumptive offence" in subsection 2(1); or

(b) the purpose of determining the adult sentence to be imposed.

PART 5 CUSTODY AND SUPERVISION

Purpose

83. (1) The purpose of the youth custody and supervision system is to contribute to the protection of society by

(a) carrying out sentences imposed by courts through the safe, fair and humane custody and supervision of young persons; and

(b) assisting young persons to be rehabilitated and reintegrated into the community as law-abiding citizens, by providing effective programs to young persons in custody and while under supervision in the community.

Principles to be used

(2) In addition to the principles set out in section 3, the following principles are to be used in achieving that purpose:

(a) that the least restrictive measures consistent with the protection of the public, of personnel working with young persons and of young persons be used;

(b) that young persons sentenced to custody retain the rights of other young persons, except the rights that are necessarily removed or restricted as a consequence of a sentence under this Act or another Act of Parliament;

(c) that the youth custody and supervision system facilitate the involvement of the families of young persons and members of the public;

(d) that custody and supervision decisions be made in a forthright, fair and timely manner, and that young persons have access to an effective review procedure; and

(e) that placements of young persons where they are treated as adults not disadvantage them with respect to their eligibility for and conditions of release.

Young person to be held apart from adults

84. Subject to subsection 30(3) (pre-trial detention), paragraphs 76(1)(b) and (c) (placement in adult facilities with adult sentence) and sections 89 to 93 (placement in adult facilities with youth sentence), a young person who is committed to custody shall be held separate and apart from any adult who is detained or held in custody.

Levels of custody

85. (1) In the youth custody and supervision system in each province there must be at least two levels of custody for young persons distinguished by the degree of restraint of the young persons in them.

Designation of youth custody facilities

(2) Every youth custody facility in a province that contains one or more levels of custody shall be designated by

(a) in the case of a youth custody facility with only one level of custody, being the level of custody with the least degree of restraint of the young persons in it, the lieutenant governor in council or his or her delegate; and

(b) in any other case, the lieutenant governor in council.

Provincial director to specify custody level — committal to custody

(3) The provincial director shall, when a young person is committed to custody under paragraph 42(2)(n), (o), (g) or (r) or an order is made under subsection 98(3), paragraph 103(2)(b), subsection 104(1) or paragraph 109(2)(b), determine the level of custody appropriate for the young person, after having taken into account the factors set out in subsection (5).

Provincial director to specify custody level — transfer

(4) The provincial director may determine a different level of custody for the young person when the provincial director is satisfied that the needs of the young person and the interests of society would be better served by doing so, after having taken into account the factors set out in subsection (5).

Factors

(5) The factors referred to in subsections (3) and (4) are

(a) that the appropriate level of custody for the young person is the one that is the least restrictive to the young person, having regard to

- (i) the seriousness of the offence in respect of which the young person was committed to custody and the circumstances in which that offence was committed,
- (ii) the needs and circumstances of the young person, including proximity to family, school, employment and support services,
- (iii) the safety of other young persons in custody, and
- (iv) the interests of society;

(b) that the level of custody should allow for the best possible match of programs to the young person's needs and behaviour, having regard to the findings of any assessment in respect of the young person; and

(c) the likelihood of escape.

Placement and transfer at appropriate level

(6) After the provincial director has determined the appropriate level of custody for the young person under subsection (3) or (4), the young person shall be placed in the youth custody facility that contains that level of custody specified by the provincial director.

Notice

(7) The provincial director shall cause a notice in writing of a determination under subsection (3) or (4) to be given to the young person and a parent of the young person and set out in that notice the reasons for it.

Procedural safeguards

86. (1) The lieutenant governor in council of a province shall ensure that procedures are in place to ensure that the due process rights of the young person are protected with respect to a determination made under subsection 85(3) or (4), including that the young person be

- (a) provided with any relevant information to which the provincial director has access in making the determination, subject to subsection (2);
- (b) given the opportunity to be heard; and
- (c) informed of any right to a review under section 87.

Withholding of information

(2) Where the provincial director has reasonable grounds to believe that providing the information referred to in paragraph (1)(a) would jeopardize the safety of any person or the security of a facility, he or she may

authorize the withholding from the young person of as much information as is strictly necessary in order to protect such safety or security.

Review

87. (1) A young person may apply for a review under this section of a determination

(a) under subsection 85(3) that would place the young person in a facility at a level of custody that has more than a minimal degree of restraint; or

(b) under subsection 85(4) that would transfer a young person to a facility at a level of custody with a higher degree of restraint or increase the degree of restraint of the young person in the facility.

Procedural safeguards

(2) The lieutenant governor in council of a province shall ensure that procedures are in place for the review under subsection (1), including that

(a) the review board that conducts the review be independent;

(b) the young person be provided with any relevant information to which the review board has access, subject to subsection (3); and

(c) the young person be given the opportunity to be heard.

Withholding of information

(3) Where the review board has reasonable grounds to believe that providing the information referred to in paragraph (2)(b) would jeopardize the safety of any person or the security of a facility, it may authorize the withholding from the young person of as much information as is strictly necessary in order to protect such safety or security.

Factors

(4) The review board shall take into account the factors referred to in subsection 85(5) in reviewing a determination.

Decision is final

(5) A decision of the review board under this section in respect of a particular determination is final.

Functions to be exercised by youth justice court

88. The lieutenant governor in council of a province may order that the power to make determinations of the level of custody for young persons and to review those determinations be exercised in accordance with the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985. The following provisions of that Act apply, with any modifications that the circumstances require, to the exercise of those powers:

(a) the definitions “review board” and “progress report” in subsection 2(1);

(b) section 11;

(c) sections 24.1 to 24.3; and

(d) sections 28 to 31.

Exception if young person is twenty years old or older

89. (1) When a young person is twenty years old or older at the time the youth sentence is imposed on him or her under paragraph 42(2)(n), (o), (q) or (r), the young person shall, despite section 85, be committed to a provincial correctional facility for adults to serve the youth sentence.

If serving youth sentence in a provincial correctional facility

(2) If a young person is serving a youth sentence in a provincial correctional facility for adults pursuant to subsection (1), the youth justice court may, on application of the provincial director at any time after the young person begins to serve a portion of the youth sentence in a provincial correctional facility for adults, after giving the young person, the provincial director and representatives of the provincial and federal correctional systems an opportunity to be heard, authorize the provincial director to direct that the young person serve the remainder of the youth sentence in a penitentiary if the court considers it to be in the best interests of the young person or in the public interest and if, at the time of the application, that remainder is two years or more.

Provisions to apply

(3) If a young person is serving a youth sentence in a provincial correctional facility for adults or a penitentiary under subsection (1) or (2), the *Prisons and Reformatories Act* and the *Corrections and Conditional Release Act*, and any other statute, regulation or rule applicable in respect of prisoners or offenders within the meaning of those Acts, statutes, regulations and rules, apply in respect of the young person except to the extent that they conflict with Part 6 (publication, records and information) of this Act, which Part continues to apply to the young person.

Youth worker

90. (1) When a youth sentence is imposed committing a young person to custody, the provincial director of the province in which the young person received the youth sentence and was placed in custody shall, without delay, designate a youth worker to work with the young person to plan for his or her 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 his or her chances for reintegration into the community.

Role of youth worker when young person in the community

(2) When a portion of a young person's youth sentence is served in the community in accordance with section 97 or 105, the youth worker shall supervise the young person, continue to provide support to the young person and assist the young person to respect the conditions to which he or she is subject, and help the young person in the implementation of the reintegration plan.

Reintegration leave

91. (1) The provincial director of a province may, subject to any terms or conditions that he or she considers desirable, authorize, for a young person committed to a youth custody facility in the province further to an order under paragraph 76(1)(a) (placement when subject to adult sentence) or a youth sentence imposed under paragraph 42(2)(n), (o), (q) or (r),

(a) a reintegration leave from the youth custody facility for a period not exceeding thirty days if, in the opinion of the provincial director, it is necessary or desirable that the young person be absent, with or without escort, for medical, compassionate or humanitarian reasons or for the purpose of rehabilitating the young person or reintegrating the young person into the community; or

(b) that the young person be released from the youth custody facility on the days and during the hours that the provincial director specifies in order that the young person may

(i) attend school or any other educational or training institution,

(ii) obtain or continue employment or perform domestic or other duties required by the young person's family,

(iii) participate in a program specified by the provincial director that, in the provincial director's opinion, will enable the young person to better carry out employment or improve his or her education or training, or

(iv) attend an out-patient treatment program or other program that provides services that are suitable to addressing the young person's needs.

Renewal of reintegration leave

(2) A reintegration leave authorized under paragraph (1)(a) may be renewed by the provincial director for one or more thirty-day periods on reassessment of the case.

Revocation of authorization

(3) The provincial director of a province may, at any time, revoke an authorization made under subsection (1).

Arrest and return to custody

(4) If the provincial director revokes an authorization under subsection (3) or if a young person fails to comply with any term or condition of a reintegration leave or a release from custody under this section, the young person may be arrested without warrant and returned to custody.

Transfer to adult facility

92. (1) When a young person is committed to custody under paragraph 42(2)(n), (o), (q) or (r), the youth justice court may, on application of the provincial director made at any time after the young person attains the age of eighteen years, after giving the young person, the provincial director and representatives of the provincial correctional system an opportunity to be heard, authorize the provincial director to direct that the young person, subject to subsection (3), serve the remainder of the youth sentence in a provincial correctional facility for adults, if the court considers it to be in the best interests of the young person or in the public interest.

If serving youth sentence in a provincial correctional facility

(2) The youth justice court may authorize the provincial director to direct that a young person, subject to subsection (3), serve the remainder of a youth sentence in a penitentiary

(a) if the youth justice court considers it to be in the best interests of the young person or in the public interest;

(b) if the provincial director applies for the authorization at any time after the young person begins to serve a portion of a youth sentence in a provincial correctional facility for adults further to a direction made under subsection (1);

(c) if, at the time of the application, that remainder is two years or more; and

(d) so long as the youth justice court gives the young person, the provincial director and representatives of the provincial and federal correctional systems an opportunity to be heard.

Provisions to apply

(3) If the provincial director makes a direction under subsection (1) or (2), the *Prisons and Reformatories Act* and the *Corrections and Conditional Release Act*, and any other statute, regulation or rule applicable in respect of prisoners and offenders within the meaning of those Acts, statutes, regulations and rules, apply in respect of the young person except to the extent that they conflict with Part 6 (publication, records and information) of this Act, which Part continues to apply to the young person.

Placement when adult and youth sentences

(4) If a person is subject to more than one sentence, at least one of which is a youth sentence imposed under paragraph 42(2)(n), (o), (q) or (r) and at least one of which is a sentence referred to in either paragraph (b) or (c), he or she shall serve, in a provincial correctional facility for adults or a penitentiary in accordance with section 743.1 (rules respecting sentences of two or more years) of the *Criminal Code*, the following:

(a) the remainder of any youth sentence imposed under paragraph 42(2)(n), (o), (q) or (r);

(b) an adult sentence to which an order under paragraph 76(1)(b) or (c) (placement in adult facility) applies; and

(c) any sentence of imprisonment imposed otherwise than under this Act.

Youth sentence and adult sentence

(5) If a young person is committed to custody under a youth sentence under paragraph 42(2)(n), (o), (q) or (r) and is also already subject to an adult sentence to which an order under paragraph 76(1)(a) (placement when subject to adult sentence) applies, the young person may, in the discretion of the provincial director, serve the sentences, or any portion of the sentences, in a youth custody facility, in a provincial correctional facility for adults or, if the unexpired portion of the sentence is two years or more, in a penitentiary.

When young person reaches twenty years of age

93. (1) When a young person who is committed to custody under paragraph 42(2)(n), (o), (q) or (r) is in a youth custody facility when the young person attains the age of twenty years, the young person shall be transferred to a provincial correctional facility for adults to serve the remainder of the youth sentence, unless the provincial director orders that the young person continue to serve the youth sentence in a youth custody facility.

If serving youth sentence in a provincial correctional facility

(2) If a young person is serving a portion of a youth sentence in a provincial correctional facility for adults pursuant to a transfer under subsection (1), the youth justice court may, on application of the provincial director after the transfer, after giving the young person, the provincial director and representatives of the provincial and federal correctional systems an opportunity to be heard, authorize the provincial director to direct that the young person serve the remainder of the youth sentence in a penitentiary if the court considers it to be in the best interests of the young person or in the public interest and if, at the time of the application, that remainder is two years or more.

Provisions to apply

(3) If the provincial director makes the direction, the *Prisons and Reformatories Act* and the *Corrections and Conditional Release Act*, and any other statute, regulation or rule applicable in respect of prisoners and offenders within the meaning of those Acts, statutes, regulations and rules, apply in respect of the young person except to the extent that they conflict with Part 6 (publication, records and information) of this Act, which Part continues to apply to the young person.

Annual review

94. (1) When a young person is committed to custody pursuant to a youth sentence under paragraph 42(2)(n), (o), (q) or (r) for a period exceeding one year, the provincial director of the province in which the young person is held in custody shall cause the young person to be brought before the youth justice court without delay at the end of one year from the date of the most recent youth sentence imposed in respect of the offence — and at the end of every subsequent year from that date — and the youth justice court shall review the youth sentence.

Annual review

(2) When a young person is committed to custody pursuant to youth sentences imposed under paragraph 42(2)(n), (o), (q) or (r) in respect of more than one offence for a total period exceeding one year, the provincial director of the province in which the young person is held in custody shall cause the young person to be brought before the youth justice court without delay at the end of one year from the date of the earliest youth sentence imposed — and at the end of every subsequent year from that date — and the youth justice court shall review the youth sentences.

Optional review

(3) When a young person is committed to custody pursuant to a youth sentence imposed under paragraph 42(2)(n), (o), (q) or (r) in respect of an offence, the provincial director may, on the provincial director's own initiative, and shall, on the request of the young person, the young person's parent or the Attorney General, on any of the grounds set out in subsection (6), cause the young person to be brought before a youth justice court to review the youth sentence,

(a) when the youth sentence is for a period not exceeding one year, once at any time after the expiry of the greater of

(i) thirty days after the date of the youth sentence imposed under subsection 42(2) in respect of the offence, and

(ii) one third of the period of the youth sentence imposed under subsection 42(2) in respect of the offence; and

(b) when the youth sentence is for a period exceeding one year, at any time after six months after the date of the most recent youth sentence imposed in respect of the offence.

Time for optional review

(4) The young person may be brought before the youth justice court at any other time, with leave of the youth justice court judge.

Review

(5) If a youth justice court is satisfied that there are grounds for review under subsection (6), the court shall review the youth sentence.

Grounds for review

(6) A youth sentence imposed in respect of a young person may be reviewed under subsection (5)

(a) on the ground that the young person has made sufficient progress to justify a change in the youth sentence;

(b) on the ground that the circumstances that led to the youth sentence have changed materially;

(c) on the ground that new services or programs are available that were not available at the time of the youth sentence;

(d) on the ground that the opportunities for rehabilitation are now greater in the community; or

(e) on any other ground that the youth justice court considers appropriate.

No review if appeal pending

(7) Despite any other provision of this section, no review of a youth sentence in respect of which an appeal has been taken shall be made under this section until all proceedings in respect of any such appeal have been completed.

Youth justice court may order appearance of young person for review

(8) When a provincial director is required under subsections (1) to (3) to cause a young person to be brought before the youth justice court and fails to do so, the youth justice court may, on application made by the young person, his or her parent or the Attorney General, or on its own motion, order the provincial director to cause the young person to be brought before the youth justice court.

Progress report

(9) The youth justice court shall, before reviewing under this section a youth sentence imposed in respect of a young person, require the provincial director to cause to be prepared, and to submit to the youth justice court, a progress report on the performance of the young person since the youth sentence took effect.

Additional information in progress report

(10) A person preparing a progress report in respect of a young person may include in the report any information relating to the personal and family history and present environment of the young person that he or she considers advisable.

Written or oral report

(11) A progress report shall be in writing unless it cannot reasonably be committed to writing, in which case it may, with leave of the youth justice court, be submitted orally in court.

Subsections 40(4) to (10) to apply

(12) Subsections 40(4) to (10) (procedures respecting pre-sentence reports) apply, with any modifications that the circumstances require, in respect of progress reports.

Notice of review from provincial director

(13) When a youth sentence imposed in respect of a young person is to be reviewed under subsection (1) or (2), the provincial director shall cause any notice that may be directed by rules of court applicable to the youth justice court or, in the absence of such a direction, at least five clear days notice of the review to be given in writing to the young person, a parent of the young person and the Attorney General.

Notice of review from person requesting it

(14) When a review of a youth sentence imposed in respect of a young person is requested under subsection (3), the person requesting the review shall cause any notice that may be directed by rules of court

applicable to the youth justice court or, in the absence of such a direction, at least five clear days notice of the review to be given in writing to the young person, a parent of the young person and the Attorney General.

Statement of right to counsel

(15) A notice given to a parent under subsection (13) or (14) shall include a statement that the young person whose youth sentence is to be reviewed has the right to be represented by counsel.

Service of notice

(16) A notice under subsection (13) or (14) may be served personally or may be sent by confirmed delivery service.

Notice may be waived

(17) Any of the persons entitled to notice under subsection (13) or (14) may waive the right to that notice.

If notice not given

(18) If notice under subsection (13) or (14) is not given in accordance with this section, the youth justice court may

(a) adjourn the proceedings and order that the notice be given in the manner and to the persons that it directs; or

(b) dispense with the notice if, in the opinion of the court, having regard to the circumstances, notice may be dispensed with.

Decision of the youth justice court after review

(19) When a youth justice court reviews under this section a youth sentence imposed in respect of a young person, it may, after giving the young person, a parent of the young person, the Attorney General and the provincial director an opportunity to be heard, having regard to the needs of the young person and the interests of society,

(a) confirm the youth sentence;

(b) release the young person from custody and place the young person under conditional supervision in accordance with the procedure set out in section 105, with any modifications that the circumstances require, for a period not exceeding the remainder of the youth sentence that the young person is then serving; or

(c) if the provincial director so recommends, convert a youth sentence under paragraph 42(2)(r) to a youth sentence under paragraph 42(2)(q) if the offence was murder or to a youth sentence under paragraph 42(2)(n) or (o), as the case may be, if the offence was an offence other than murder.

Orders are youth sentences

95. Orders under subsections 97(2) (conditions) and 98(3) (continuation of custody), paragraph 103(2)(b) (continuation of custody), subsections 104(1) (continuation of custody) and 105(1) (conditional supervision) and paragraph 109(2)(b) (continuation of suspension of conditional supervision) are deemed to be youth sentences for the purposes of section 94 (reviews).

Recommendation of provincial director for conditional supervision of young person

96. (1) When a young person is held in custody pursuant to a youth sentence under paragraph 42(2)(n), (o), (q) or (r), the provincial director may, if satisfied that the needs of the young person and the interests of society would be better served by doing so, make a recommendation to the youth justice court that the young person be released from custody and placed under conditional supervision.

Notice

(2) If the provincial director makes a recommendation, the provincial director shall cause a notice to be given in writing that includes the reasons for the recommendation and the conditions that the provincial director would recommend be set under section 105 to the young person, a parent of the young person and the Attorney

General and give a copy of the notice to the youth justice court.

Application to court for review of recommendation

(3) If notice of a recommendation is made under subsection (2) with respect to a youth sentence imposed on a young person, the youth justice court shall, if an application for review is made by the young person, the young person's parent or the Attorney General within ten days after service of the notice, review the youth sentence without delay.

Subsections 94(7), (9) to (12) and (14) to (19) apply

(4) Subject to subsection (5), subsections 94(7) (no review of appeal pending), (9) to (12) (progress reports) and (14) to (19) (provisions respecting notice and decision of the youth justice court) apply, with any modifications that the circumstances require, in respect of reviews made under this section and any notice required under subsection 94(14) shall also be given to the provincial director.

If no application for review made under subsection (3)

(5) A youth justice court that receives a notice under subsection (2) shall, if no application for a review is made under subsection (3),

(a) order the release of the young person and place the young person under conditional supervision in accordance with section 105, having regard to the recommendations of the provincial director; or

(b) if the court considers it advisable, order that the young person not be released.

For greater certainty, an order under this subsection may be made without a hearing.

Notice when no release ordered

(6) When a youth justice court orders that the young person not be released under paragraph (5)(b), it shall cause a notice of its order to be given to the provincial director without delay.

Provincial director may request review

(7) When the provincial director is given a notice under subsection (6), he or she may request a review under this section.

When provincial director requests a review

(8) When the provincial director requests a review under subsection (7),

(a) the provincial director shall cause any notice that may be directed by rules of court applicable to the youth justice court or, in the absence of such a direction, at least five clear days notice of the review to be given in writing to the young person, a parent of the young person and the Attorney General; and

(b) the youth justice court shall review the youth sentence without delay after the notice required under paragraph (a) is given.

Conditions to be included in custody and supervision order

97. (1) Every youth sentence imposed under paragraph 42(2)(n) shall contain the following conditions, namely, that the young person, while serving the portion of the youth sentence under supervision in the community,

(a) keep the peace and be of good behaviour;

(b) report to the provincial director and then be under the supervision of the provincial director;

(c) inform the provincial director immediately on being arrested or questioned by the police;

(d) report to the police, or any named individual, as instructed by the provincial director;

(e) advise the provincial director of the young person's address of residence and report immediately to the

provincial director any change

- (i) in that address,
- (ii) in the young person's normal occupation, including employment, vocational or educational training and volunteer work,
- (iii) in the young person's family or financial situation, and
- (iv) that may reasonably be expected to affect the young person's ability to comply with the conditions of the sentence; and

(f) not own, possess or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, except as authorized in writing by the provincial director for the purposes of the young person participating in a program specified in the authorization.

Other conditions

(2) The provincial director may set additional conditions that support and address the needs of the young person, promote the reintegration of the young person into the community and offer adequate protection to the public from the risk that the young person might otherwise present. The provincial director shall, in setting the conditions, take into account the needs of the young person, the most effective programs for the young person in order to maximize his or her chances for reintegration into the community, the nature of the offence and the ability of the young person to comply with the conditions.

Communication of conditions

(3) The provincial director shall

- (a) cause the conditions to be read by or to the young person bound by them;
- (b) explain or cause to be explained to the young person the purpose and effect of the conditions, and confirm that the young person understands them; and
- (c) cause a copy of the conditions to be given to the young person, and to a parent of the young person.

Provisions to apply

(4) Subsections 56(3) (endorsement of order by young person) and (4) (validity of order) apply, with any modifications that the circumstances require, in respect of conditions under this section.

Application for continuation of custody

98. (1) Within a reasonable time before the expiry of the custodial portion of a young person's youth sentence, the Attorney General or the provincial director may apply to the youth justice court for an order that the young person remain in custody for a period not exceeding the remainder of the youth sentence.

Continuation of custody

(2) If the hearing for an application under subsection (1) cannot be completed before the expiry of the custodial portion of the youth sentence, the court may order that the young person remain in custody pending the determination of the application if the court is satisfied that the application was made in a reasonable time, having regard to all the circumstances, and that there are compelling reasons for keeping the young person in custody.

Decision

(3) The youth justice court may, after giving both parties and a parent of the young person an opportunity to be heard, order that a young person remain in custody for a period not exceeding the remainder of the youth sentence, if it is satisfied that there are reasonable grounds to believe that

- (a) the young person is likely to commit a serious violent offence before the expiry of the youth sentence he or she is then serving; and
- (b) the conditions that would be imposed on the young person if he or she were to serve a portion of the youth sentence in the community would not be adequate to prevent the commission of the offence.

Factors

(4) For the purpose of determining an application under subsection (1), the youth justice court shall take into consideration any factor that is relevant to the case of the young person, including

- (a) evidence of a pattern of persistent violent behaviour and, in particular,
 - (i) the number of offences committed by the young person that caused physical or psychological harm to any other person,
 - (ii) the young person's difficulties in controlling violent impulses to the point of endangering the safety of any other person,
 - (iii) the use of weapons in the commission of any offence,
 - (iv) explicit threats of violence,
 - (v) behaviour of a brutal nature associated with the commission of any offence, and
 - (vi) a substantial degree of indifference on the part of the young person as to the reasonably foreseeable consequences, to other persons, of the young person's behaviour;
- (b) psychiatric or psychological evidence that a physical or mental illness or disorder of the young person is of such a nature that the young person is likely to commit, before the expiry of the youth sentence the young person is then serving, a serious violent offence;
- (c) reliable information that satisfies the youth justice court that the young person is planning to commit, before the expiry of the youth sentence the young person is then serving, a serious violent offence;
- (d) the availability of supervision programs in the community that would offer adequate protection to the public from the risk that the young person might otherwise present until the expiry of the youth sentence the young person is then serving;
- (e) whether the young person is more likely to reoffend if he or she serves his or her youth sentence entirely in custody without the benefits of serving a portion of the youth sentence in the community under supervision; and
- (f) evidence of a pattern of committing violent offences while he or she was serving a portion of a youth sentence in the community under supervision.

Report

99. (1) For the purpose of determining an application under section 98 (application for continuation of custody), the youth justice court shall require the provincial director to cause to be prepared, and to submit to the youth justice court, a report setting out any information of which the provincial director is aware with respect to the factors set out in subsection 98(4) that may be of assistance to the court.

Written or oral report

(2) A report referred to in subsection (1) shall be in writing unless it cannot reasonably be committed to writing, in which case it may, with leave of the youth justice court, be submitted orally in court.

Provisions apply

(3) Subsections 40(4) to (10) (procedures respecting pre-sentence reports) apply, with any modifications that the circumstances require, in respect of a report referred to in subsection (1).

Notice of hearing

(4) When an application is made under section 98 (application for continuation of custody) in respect of a young person, the provincial director shall cause to be given, to the young person and to a parent of the young person, at least five clear days notice of the hearing in writing.

Statement of right to counsel

(5) Any notice given to a parent under subsection (4) shall include a statement that the young person has the

right to be represented by counsel.

Service of notice

(6) A notice under subsection (4) may be served personally or may be sent by confirmed delivery service.

When notice not given

(7) When notice under subsection (4) is not given in accordance with this section, the youth justice court may

(a) adjourn the hearing and order that the notice be given in any manner and to any person that it directs; or

(b) dispense with the giving of the notice if, in the opinion of the youth justice court, having regard to the circumstances, the giving of the notice may be dispensed with.

Reasons

100. When a youth justice court makes an order under subsection 98(3) (decision for continued custody), it shall state its reasons for the order in the record of the case and shall provide, or cause to be provided, to the young person in respect of whom the order was made, the counsel and a parent of the young person, the Attorney General and the provincial director

(a) a copy of the order; and

(b) on request, a transcript or copy of the reasons for the order.

Review of youth justice court decision

101. (1) An order made under subsection 98(3) (decision for continued custody) in respect of a young person, or the refusal to make such an order, shall, on application of the young person, the young person's counsel, the Attorney General or the provincial director made within thirty days after the decision of the youth justice court, be reviewed by the court of appeal, and that court may, in its discretion, confirm or reverse the decision of the youth justice court.

Extension of time to make application

(2) The court of appeal may, at any time, extend the time within which an application under subsection (1) may be made.

Notice of application

(3) A person who proposes to apply for a review under subsection (1) shall give notice of the application in the manner and within the period of time that may be directed by rules of court.

Breach of conditions

102. (1) If the provincial director has reasonable grounds to believe that a young person has breached or is about to breach a condition to which he or she is subject under section 97 (conditions to be included in custody and supervision orders), the provincial director may, in writing,

(a) permit the young person to continue to serve a portion of his or her youth sentence in the community, on the same or different conditions; or

(b) if satisfied that the breach is a serious one that increases the risk to public safety, order that the young person be remanded to any youth custody facility that the provincial director considers appropriate until a review is conducted.

Provisions apply

(2) Sections 107 (apprehension) and 108 (review by provincial director) apply, with any modifications that the circumstances require, to an order under paragraph (1)(b).

Review by youth justice court

103. (1) When the case of a young person is referred to the youth justice court under section 108 (review by provincial director), the provincial director shall, without delay, cause the young person to be brought before the youth justice court, and the youth justice court shall, after giving the young person an opportunity to be heard,

(a) if the court is not satisfied on reasonable grounds that the young person has breached or was about to breach one of the conditions under which he or she was being supervised in the community, order that the young person continue to serve a portion of his or her youth sentence in the community, on the same or different conditions; or

(b) if the court is satisfied on reasonable grounds that the young person has breached or was about to breach one of the conditions under which he or she was being supervised in the community, make an order under subsection (2).

Order

(2) On completion of a review under subsection (1), the youth justice court

(a) shall order that the young person continue to serve the remainder of the youth sentence the young person is then serving in the community, and when the court does so, the court may vary the existing conditions or impose new conditions; or

(b) shall, despite paragraph 42(2)(n) (custody and supervision order), order that the young person remain in custody for a period that does not exceed the remainder of the youth sentence the young person is then serving, if the youth justice court is satisfied that the breach of the conditions was serious.

Provisions apply

(3) Subsections 109(4) to (8) apply, with any modifications that the circumstances require, in respect of a review under this section.

Continuation of custody

104. (1) When a young person on whom a youth sentence under paragraph 42(2)(o), (q) or (r) has been imposed is held in custody and an application is made to the youth justice court by the Attorney General, within a reasonable time before the expiry of the custodial portion of the youth sentence, the provincial director of the province in which the young person is held in custody shall cause the young person to be brought before the youth justice court and the youth justice court may, after giving both parties and a parent of the young person an opportunity to be heard and if it is satisfied that there are reasonable grounds to believe that the young person is likely to commit an offence causing the death of or serious harm to another person before the expiry of the youth sentence the young person is then serving, order that the young person remain in custody for a period not exceeding the remainder of the youth sentence.

Continuation of custody

(2) If the hearing of an application under subsection (1) cannot be completed before the expiry of the custodial portion of the youth sentence, the court may order that the young person remain in custody until the determination of the application if the court is satisfied that the application was made in a reasonable time, having regard to all the circumstances, and that there are compelling reasons for keeping the young person in custody.

Factors

(3) For the purpose of determining an application under subsection (1), the youth justice court shall take into consideration any factor that is relevant to the case of the young person, including

(a) evidence of a pattern of persistent violent behaviour and, in particular,

(i) the number of offences committed by the young person that caused physical or psychological harm to any other person,

(ii) the young person's difficulties in controlling violent impulses to the point of endangering the safety of any other person,

(iii) the use of weapons in the commission of any offence,

(iv) explicit threats of violence,

- (v) behaviour of a brutal nature associated with the commission of any offence, and
- (vi) a substantial degree of indifference on the part of the young person as to the reasonably foreseeable consequences, to other persons, of the young person's behaviour;

(b) psychiatric or psychological evidence that a physical or mental illness or disorder of the young person is of such a nature that the young person is likely to commit, before the expiry of the youth sentence the young person is then serving, an offence causing the death of or serious harm to another person;

(c) reliable information that satisfies the youth justice court that the young person is planning to commit, before the expiry of the youth sentence the young person is then serving, an offence causing the death of or serious harm to another person; and

(d) the availability of supervision programs in the community that would offer adequate protection to the public from the risk that the young person might otherwise present until the expiry of the youth sentence the young person is then serving.

Youth justice court to order appearance of young person

(4) If a provincial director fails to cause a young person to be brought before the youth justice court under subsection (1), the youth justice court shall order the provincial director to cause the young person to be brought before the youth justice court without delay.

Provisions to apply

(5) Sections 99 to 101 apply, with any modifications that the circumstances require, in respect of an order made, or the refusal to make an order, under this section.

If application denied

(6) If an application under this section is denied, the court may, with the consent of the young person, the Attorney General and the provincial director, proceed as though the young person had been brought before the court as required under subsection 105(1).

Conditional supervision

105. (1) The provincial director of the province in which a young person on whom a youth sentence under paragraph 42(2)(o), (q) or (r) has been imposed is held in custody or, if applicable, with respect to whom an order has been made under subsection 104(1) (continuation of custody), shall cause the young person to be brought before the youth justice court at least one month before the expiry of the custodial portion of the youth sentence. The court shall, after giving the young person an opportunity to be heard, by order, set the conditions of the young person's conditional supervision.

Conditions to be included in order

(2) The youth justice court shall include in the order under subsection (1) the following conditions, namely, that the young person

- (a) keep the peace and be of good behaviour;
- (b) appear before the youth justice court when required by the court to do so;
- (c) report to the provincial director immediately on release, and then be under the supervision of the provincial director or a person designated by the youth justice court;
- (d) inform the provincial director immediately on being arrested or questioned by the police;
- (e) report to the police, or any named individual, as instructed by the provincial director;
- (f) advise the provincial director of the young person's address of residence on release and after release report immediately to the clerk of the youth justice court or the provincial director any change
 - (i) in that address,

- (ii) in the young person's normal occupation, including employment, vocational or educational training and volunteer work,
- (iii) in the young person's family or financial situation, and
- (iv) that may reasonably be expected to affect the young person's ability to comply with the conditions of the order;

(g) not own, possess or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, except as authorized by the order; and

(h) comply with any reasonable instructions that the provincial director considers necessary in respect of any condition of the conditional supervision in order to prevent a breach of that condition or to protect society.

Other conditions

(3) In setting conditions for the purposes of subsection (1), the youth justice court may include in the order the following conditions, namely, that the young person

(a) on release, travel directly to the young person's place of residence, or to any other place that is noted in the order;

(b) make reasonable efforts to obtain and maintain suitable employment;

(c) attend school or any other place of learning, training or recreation that is appropriate, if the court is satisfied that a suitable program is available for the young person at such a place;

(d) reside with a parent, or any other adult that the court considers appropriate, who is willing to provide for the care and maintenance of the young person;

(e) reside in any place that the provincial director may specify;

(f) remain within 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 needs of the young person and promote the reintegration of the young person into the community; and

(h) comply with any other conditions set out in the order that the court considers appropriate, including conditions for securing the young person's good conduct and for preventing the young person from repeating the offence or committing other offences.

Temporary conditions

(4) When a provincial director is required under subsection (1) to cause a young person to be brought before the youth justice court but cannot do so for reasons beyond the young person's control, the provincial director shall so advise the youth justice court and the court shall, by order, set any temporary conditions for the young person's conditional supervision that are appropriate in the circumstances.

Conditions to be set at first opportunity

(5) When an order is made under subsection (4), the provincial director shall bring the young person before the youth justice court as soon after the order is made as the circumstances permit and the court shall then set the conditions of the young person's conditional supervision.

Report

(6) For the purpose of setting conditions under this section, the youth justice court shall require the provincial director to cause to be prepared, and to submit to the youth justice court, a report setting out any information that may be of assistance to the court.

Provisions apply

(7) Subsections 99(2) to (7) (provisions respecting reports and notice) and 104(4) (ordering appearance of young person) apply, with any modifications that the circumstances require, in respect of any proceedings held under subsection (1).

Provisions apply

(8) Subsections 56(1) to (4) (provisions respecting probation orders), (7) (notice to appear) and (8) (warrant in default) and section 101 (review of youth justice court decision) apply, with any modifications that the circumstances require, in respect of an order made under subsection (1).

Suspension of conditional supervision

106. If the provincial director has reasonable grounds to believe that a young person has breached or is about to breach a condition of an order made under subsection 105(1), the provincial director may, in writing,

(a) suspend the conditional supervision; and

(b) order that the young person be remanded to any youth custody facility that the provincial director considers appropriate until a review is conducted under section 108 and, if applicable, section 109.

Apprehension

107. (1) If the conditional supervision of a young person is suspended under section 106, the provincial director may issue a warrant in writing, authorizing the apprehension of the young person and, until the young person is apprehended, the young person is deemed not to be continuing to serve the youth sentence the young person is then serving.

Warrants

(2) A warrant issued under subsection (1) shall be executed by any peace officer to whom it is given at any place in Canada and has the same force and effect in all parts of Canada as if it had been originally issued or subsequently endorsed by a provincial court judge or other lawful authority having jurisdiction in the place where it is executed.

Peace officer may arrest

(3) If a peace officer believes on reasonable grounds that a warrant issued under subsection (1) is in force in respect of a young person, the peace officer may arrest the young person without the warrant at any place in Canada.

Requirement to bring before provincial director

(4) If a young person is arrested under subsection (3) and detained, the peace officer making the arrest shall cause the young person to be brought before the provincial director or a person designated by the provincial director

(a) if the provincial director or the designated person is available within a period of twenty-four hours after the young person is arrested, without unreasonable delay and in any event within that period; and

(b) if the provincial director or the designated person is not available within that period, as soon as possible.

Release or remand in custody

(5) If a young person is brought before the provincial director or a person designated by the provincial director under subsection (4), the provincial director or the designated person

(a) if not satisfied that there are reasonable grounds to believe that the young person is the young person in respect of whom the warrant referred to in subsection (1) was issued, shall release the young person; or

(b) if satisfied that there are reasonable grounds to believe that the young person is the young person in respect of whom the warrant referred to in subsection (1) was issued, may remand the young person in custody to await execution of the warrant, but if no warrant for the young person's arrest is executed within a period of forty-eight hours after the time the young person is remanded in custody, the person in whose custody the young person then is shall release the young person.

Review by provincial director

108. Without delay after the remand to custody of a young person whose conditional supervision has been suspended under section 106, or without delay after being informed of the arrest of such a young person, the provincial director shall review the case and, within forty-eight hours, cancel the suspension of the conditional supervision or refer the case to the youth justice court for a review under section 109.

Review by youth justice court

109. (1) If the case of a young person is referred to the youth justice court under section 108, the provincial director shall, without delay, cause the young person to be brought before the youth justice court, and the youth justice court shall, after giving the young person an opportunity to be heard,

(a) if the court is not satisfied on reasonable grounds that the young person has breached or was about to breach a condition of the conditional supervision, cancel the suspension of the conditional supervision; or

(b) if the court is satisfied on reasonable grounds that the young person 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 subsection (2).

Order

(2) On completion of a review under subsection (1), the youth justice court shall order

(a) the cancellation of the suspension of the conditional supervision, and when the court does so, the court may vary the conditions of the conditional supervision or impose new conditions;

(b) in a case other than a deferred custody and supervision order made under paragraph 42(2)(p), the continuation of the suspension of the conditional supervision for any period of time, not to exceed the remainder of the youth sentence the young person is then serving, that the court considers appropriate, and when the court does so, the court shall order that the young person remain in custody; or

(c) in the case of a deferred custody and supervision order made under paragraph 42(2)(p), that the young person serve the remainder of the order as if it were a custody and supervision order under paragraph 42(2)(n).

Custody and supervision order

(3) After a court has made a direction under paragraph (2)(c), the provisions of this Act applicable to orders under paragraph 42(2)(n) apply in respect of the deferred custody and supervision order.

Factors to be considered

(4) In making its decision under subsection (2), the court shall consider the length of time the young person has been subject to the order, whether the young person has previously contravened it, and the nature of the contravention, if any.

Reasons

(5) When a youth justice court makes an order under subsection (2), it shall state its reasons for the order in the record of the case and shall give, or cause to be given, to the young person in respect of whom the order was made, the counsel and a parent of the young person, the Attorney General and the provincial director,

(a) a copy of the order; and

(b) on request, a transcript or copy of the reasons for the order.

Report

(6) For the purposes of a review under subsection (1), the youth justice court shall require the provincial director to cause to be prepared, and to submit to the youth justice court, a report setting out any information of which the provincial director is aware that may be of assistance to the court.

Provisions apply

(7) Subsections 99(2) to (7) (provisions respecting reports and notice) and 105(6) (report for the purpose of setting conditions) apply, with any modifications that the circumstances require, in respect of a review under this section.

Provisions apply

(8) Section 101 (review of youth justice court decision) applies, with any modifications that the circumstances require, in respect of an order made under subsection (2).

PART 6 PUBLICATION, RECORDS AND INFORMATION

PROTECTION OF PRIVACY OF YOUNG PERSONS

Identity of offender not to be published

110. (1) Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.

Limitation

(2) Subsection (1) does not apply

(a) in a case where the information relates to a young person who has received an adult sentence;

(b) subject to sections 65 (young person not liable to adult sentence) and 75 (youth sentence imposed despite presumptive offence), in a case where the information relates to a young person who has received a youth sentence for an offence set out in paragraph (a) of the definition "presumptive offence" in subsection 2 (1), or an offence set out in paragraph (b) of that definition for which the Attorney General has given notice under subsection 64(2) (intention to seek adult sentence); and

(c) in a case where the publication of information is made in the course of the administration of justice, if it is not the purpose of the publication to make the information known in the community.

Exception

(3) A young person referred to in subsection (1) may, after he or she attains the age of eighteen years, publish or cause to be published information that would identify him or her as having been dealt with under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, provided that he or she is not in custody pursuant to either Act at the time of the publication.

Ex parte application for leave to publish

(4) A youth justice court judge shall, on the *ex parte* application of a peace officer, make an order permitting any person to publish information that identifies a young person as having committed or allegedly committed an indictable offence, if the judge is satisfied that

(a) there is reason to believe that the young person is a danger to others; and

(b) publication of the information is necessary to assist in apprehending the young person.

Order ceases to have effect

(5) An order made under subsection (4) ceases to have effect five days after it is made.

Application for leave to publish

(6) The youth justice court may, on the application of a young person referred to in subsection (1), make an order permitting the young person to publish information that would identify him or her as having been dealt with

under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, if the court is satisfied that the publication would not be contrary to the young person's best interests or the public interest.

Identity of victim or witness not to be published

111. (1) Subject to this section, no person shall publish the name of a child or young person, or any other information related to a child or a young person, if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person.

Exception

(2) Information that would serve to identify a child or young person referred to in subsection (1) as having been a victim or a witness may be published, or caused to be published, by

(a) that child or young person after he or she attains the age of eighteen years or before that age with the consent of his or her parents; or

(b) the parents of that child or young person if he or she is deceased.

Application for leave to publish

(3) The youth justice court may, on the application of a child or a young person referred to in subsection (1), make an order permitting the child or young person to publish information that would identify him or her as having been a victim or a witness if the court is satisfied that the publication would not be contrary to his or her best interests or the public interest.

Non-application

112. Once information is published under subsection 110(3) or (6) or 111(2) or (3), subsection 110(1) (identity of offender not to be published) or 111(1) (identity of victim or witness not to be published), as the case may be, no longer applies in respect of the information.

FINGERPRINTS AND PHOTOGRAPHS

Identification of Criminals Act applies

113. (1) The *Identification of Criminals Act* applies in respect of young persons.

Limitation

(2) No fingerprint, palmprint or photograph or other measurement, process or operation referred to in the *Identification of Criminals Act* shall be taken of, or applied in respect of, a young person who is charged with having committed an offence except in the circumstances in which an adult may, under that Act, be subjected to the measurements, processes and operations.

RECORDS THAT MAY BE KEPT

Youth justice court, review board and other courts

114. A youth justice court, review board or any court dealing with matters arising out of proceedings under this Act may keep a record of any case that comes before it arising under this Act.

Police records

115. (1) A record relating to any offence alleged to have been committed by a young person, including the original or a copy of any fingerprints or photographs of the young person, may be kept by any police force responsible for or participating in the investigation of the offence.

Police records

(2) When a young person is charged with having committed an offence in respect of which an adult may be subjected to any measurement, process or operation referred to in the *Identification of Criminals Act*, the police

force responsible for the investigation of the offence may provide a record relating to the offence to the Royal Canadian Mounted Police. If the young person is found guilty of the offence, the police force shall provide the record.

Records held by R.C.M.P.

(3) The Royal Canadian Mounted Police shall keep the records provided under subsection (2) in the central repository that the Commissioner of the Royal Canadian Mounted Police may, from time to time, designate for the purpose of keeping criminal history files or records of offenders or keeping records for the identification of offenders.

Government records

116. (1) A department or an agency of any government in Canada may keep records containing information obtained by the department or agency

- (a) for the purposes of an investigation of an offence alleged to have been committed by a young person;
- (b) for use in proceedings against a young person under this Act;
- (c) for the purpose of administering a youth sentence or an order of the youth justice court;
- (d) for the purpose of considering whether to use extrajudicial measures to deal with a young person; or
- (e) as a result of the use of extrajudicial measures to deal with a young person.

Other records

(2) A person or organization may keep records containing information obtained by the person or organization

- (a) as a result of the use of extrajudicial measures to deal with a young person; or
- (b) for the purpose of administering or participating in the administration of a youth sentence.

ACCESS TO RECORDS

Exception — adult sentence

117. Sections 118 to 129 do not apply to records kept in respect of an offence for which an adult sentence has been imposed once the time allowed for the taking of an appeal has expired or, if an appeal is taken, all proceedings in respect of the appeal have been completed and the appeal court has upheld an adult sentence. The record shall be dealt with as a record of an adult and, for the purposes of the *Criminal Records Act*, the finding of guilt in respect of the offence for which the record is kept is deemed to be a conviction.

No access unless authorized

118. (1) Except as authorized or required by this Act, no person shall 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 to whom it relates as a young person dealt with under this Act.

Exception for employees

(2) No person who is employed in keeping or maintaining records referred to in subsection (1) is restricted from doing anything prohibited under subsection (1) with respect to any other person so employed.

Persons having access to records

119. (1) Subject to subsections (4) to (6), from the date that a record is created until the end of the applicable period set out in subsection (2), the following persons, on request, shall be given access to a record kept under section 114, and may be given access to a record kept under sections 115 and 116:

- (a) the young person to whom the record relates;

- (b) the young person's counsel, or any representative of that counsel;
- (c) the Attorney General;
- (d) the victim of the offence or alleged offence to which the record relates;
- (e) the parents of the young person, during the course of any proceedings relating to the offence or alleged offence to which the record relates or during the term of any youth sentence made in respect of the offence;
- (f) any adult assisting the young person under subsection 25(7), during the course of any proceedings relating to the offence or alleged offence to which the record relates or during the term of any youth sentence made in respect of the offence;
- (g) any peace officer for
 - (i) law enforcement purposes, or
 - (ii) any purpose related to the administration of the case to which the record relates, during the course of proceedings against the young person or the term of the youth sentence;
- (h) a judge, court or review board, for any purpose relating to proceedings against the young person, or proceedings against the person after he or she becomes an adult, in respect of offences committed or alleged to have been committed by that person;
- (i) the provincial director, or the director of the provincial correctional facility for adults or the penitentiary at which the young person is serving a sentence;
- (j) a person participating in a conference or in the administration of extrajudicial measures, if required for the administration of the case to which the record relates;
- (k) a person acting as ombudsman, privacy commissioner or information commissioner, whatever his or her official designation might be, who in the course of his or her duties under an Act of Parliament or the legislature of a province is investigating a complaint to which the record relates;
- (l) a coroner or a person acting as a child advocate, whatever his or her official designation might be, who is acting in the course of his or her duties under an Act of Parliament or the legislature of a province;
- (m) a person acting under the *Firearms Act*;
- (n) a member of a department or agency of a government in Canada, or of an organization that is an agent of, or under contract with, the department or agency, who is
 - (i) acting in the exercise of his or her duties under this Act,
 - (ii) engaged in the supervision or care of the young person, whether as a young person or an adult, or in an investigation related to the young person under an Act of the legislature of a province respecting child welfare,
 - (iii) considering an application for conditional release or pardon made by the young person, whether as a young person or an adult,
 - (iv) administering a prohibition order made under an Act of Parliament or the legislature of a province, or
 - (v) administering a youth sentence, if the young person has been committed to custody and is serving the custody in a provincial correctional facility for adults or a penitentiary;
- (o) a person, for the purpose of carrying out a criminal record check required by the Government of Canada or the government of a province or a municipality for purposes of employment or the performance of services, with or without remuneration;
- (p) an employee or agent of the Government of Canada, for statistical purposes under the *Statistics Act*;
- (q) an accused or his or her counsel who swears an affidavit to the effect that access to the record is

necessary to make a full answer and defence;

(r) a person or a member of a class of persons designated by order of the Governor in Council, or the lieutenant governor in council of the appropriate province, for a purpose and to the extent specified in the order; and

(s) any person or member of a class of persons that a youth justice court judge considers has a valid interest in the record, to the extent directed by the judge, if the judge is 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.

Period of access

(2) The period of access referred to in subsection (1) is

(a) if an extrajudicial sanction is used to deal with the young person, the period ending two years after the young person consents to be subject to the sanction in accordance with paragraph 10(2)(c);

(b) if the young person is acquitted of the offence otherwise than by reason of a verdict of not criminally responsible on account of mental disorder, the period ending two months after the expiry of the time allowed for the taking of an appeal or, if an appeal is taken, the period ending three months after all proceedings in respect of the appeal have been completed;

(c) if the charge against the young person is dismissed for any reason other than acquittal, the charge is withdrawn, or the young person is found guilty of the offence and a reprimand is given, the period ending two months after the dismissal, withdrawal, or finding of guilt;

(d) if the charge against the young person is stayed, with no proceedings being taken against the young person for a period of one year, at the end of that period;

(e) if the young person is found guilty of the offence and the youth sentence is an absolute discharge, the period ending one year after the young person is found guilty;

(f) if the young person is found guilty of the offence and the youth sentence is a conditional discharge, the period ending three years after the young person is found guilty;

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

(h) subject to paragraphs (i) and (j) and subsection (9), if the young person is found guilty of the offence and it is an indictable offence, the period ending five years after the youth sentence imposed in respect of the offence has been completed;

(i) subject to subsection (9), if, during the period calculated in accordance with paragraph (g) or (h), the young person is found guilty of an offence punishable on summary conviction committed when he or she was a young person, the latest of

- (i) the period calculated in accordance with paragraph (g) or (h), as the case may be, and
 - (ii) the period ending three years after the youth sentence imposed for that offence has been completed;
- and

(j) subject to subsection (9), if, during the period calculated in accordance with paragraph (g) or (h), the young person is found guilty of an indictable offence committed when he or she was a young person, the period ending five years after the sentence imposed for that indictable offence has been completed.

Prohibition orders not included

(3) Prohibition orders made under an Act of Parliament or the legislature of a province, including any order made under section 51, shall not be taken into account in determining any period referred to in subsection (2).

Extrajudicial measures

(4) Access to a record kept under section 115 or 116 in respect of extrajudicial measures, other than extrajudicial sanctions, used in respect of a young person shall be given only to the following persons for the following purposes:

- (a) a peace officer or the Attorney General, in order to make a decision whether to again use extrajudicial measures in respect of the young person;
- (b) a person participating in a conference, in order to decide on the appropriate extrajudicial measure;
- (c) a peace officer, the Attorney General or a person participating in a conference, if access is required for the administration of the case to which the record relates; and
- (d) a peace officer for the purpose of investigating an offence.

Exception

(5) When a youth justice court has withheld all or part of a report from any person under subsection 34(9) or (10) (nondisclosure of medical or psychological report) or 40(7) (nondisclosure of pre-sentence report), that person shall not be given access under subsection (1) to that report or part.

Records of assessments or forensic DNA analysis

(6) Access to a report made under section 34 (medical and psychological reports) or a record of the results of forensic DNA analysis of a bodily substance taken from a young person in execution of a warrant issued under section 487.05 of the *Criminal Code* may be given only under paragraphs (1)(a) to (c), (e) to (h) and (g) and subparagraph (1)(s)(ii).

Introduction into evidence

(7) Nothing in paragraph (1)(h) or (g) authorizes the introduction into evidence of any part of a record that would not otherwise be admissible in evidence.

Disclosures for research or statistical purposes

(8) When access to a record is given to a person under paragraph (1)(p) or subparagraph (1)(s)(i), the person may subsequently disclose information contained in the record, but shall not disclose the information in any form that would reasonably be expected to identify the young person to whom it relates.

Application of usual rules

(9) If, during the period of access to a record under any of paragraphs (2)(g) to (j), the young person is convicted of an offence committed when he or she is an adult,

- (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) this Part no longer applies to the record and the record shall be dealt with as a record of an adult; and
- (c) for the purposes of the *Criminal Records Act*, the finding of guilt in respect of the offence for which the record is kept is deemed to be a conviction.

Records of offences that result in a prohibition order

(10) Despite anything in this Act, when a young person is found guilty of an offence that results in a prohibition order being made, and the order is still in force at the end of the applicable period for which access to a record kept in respect of the order may be given under subsection (2),

- (a) the record kept by the Royal Canadian Mounted Police pursuant to subsection 115(3) may be disclosed only to establish the existence of the order for purposes of law enforcement; and
- (b) the record referred to in section 114 that is kept by the youth justice court may be disclosed only to

establish the existence of the order in any offence involving a breach of the order.

Access to R.C.M.P. records

120. (1) The following persons may, during the period set out in subsection (3), be given access to a record kept under subsection 115(3) in respect of an offence set out in the schedule:

- (a) the young person to whom the record relates;
- (b) the young person's counsel, or any representative of that counsel;
- (c) an employee or agent of the Government of Canada, for statistical purposes under the *Statistics Act*;
- (d) any person or member of a class of persons that a youth justice court judge considers has a valid interest in the record, to the extent directed by the judge, if the judge is satisfied that access is desirable in the public interest for research or statistical purposes;
- (e) the Attorney General or a peace officer, when the young person is or has been charged with another offence set out in the schedule or the same offence more than once, for the purpose of investigating any offence that the young person is suspected of having committed, or in respect of which the young person has been arrested or charged, whether as a young person or as an adult;
- (f) the Attorney General or a peace officer to establish the existence of an order in any offence involving a breach of the order; and
- (g) any person for the purposes of the *Firearms Act*.

Access for identification purposes

(2) During the period set out in subsection (3), access to the portion of a record kept under subsection 115(3) that contains the name, date of birth and last known address of the young person to whom the fingerprints belong, may be given to a person for identification purposes if a fingerprint identified as that of the young person is found during the investigation of an offence or during an attempt to identify a deceased person or a person suffering from amnesia.

Period of access

(3) For the purposes of subsections (1) and (2), the period of access to a record kept under subsection 115(3) in respect of an offence is the following:

- (a) if the offence is an indictable offence, other than a presumptive offence, the period starting at the end of the applicable period set out in paragraphs 119(2)(h) to (j) and ending five years later; and
- (b) if the offence is an offence set out in paragraph (a) of the definition "presumptive offence" in subsection 2(1) or an offence set out in paragraph (b) of that definition for which the Attorney General has given notice under subsection 64(2) (intention to seek adult sentence), the period starting at the end of the applicable period set out in paragraphs 119(2)(h) to (j) and continuing indefinitely.

Subsequent offences as young person

(4) If a young person was found guilty of an offence set out in the schedule is, during the period of access to a record under subsection (3), found guilty of an additional offence set out in the schedule, committed when he or she was a young person, access to the record may be given to the following additional persons:

- (a) a parent of the young person or any adult assisting the young person under subsection 25(7);
- (b) a judge, court or review board, for a purpose relating to proceedings against the young person under this Act or any other Act of Parliament in respect of offences committed or alleged to have been committed by the young person, whether as a young person or as an adult; or
- (c) a member of a department or agency of a government in Canada, or of an organization that is an agent of, or is under contract with, the department or agency, who is

- (i) preparing a report in respect of the young person under this Act or for the purpose of assisting a court in sentencing the young person after the young person becomes an adult,
- (ii) engaged in the supervision or care of the young person, whether as a young person or as an adult, or in the administration of a sentence in respect of the young person, whether as a young person or as an adult, or
- (iii) considering an application for conditional release or pardon made by the young person after the young person becomes an adult.

Disclosure for research or statistical purposes

(5) A person who is given access to a record under paragraph (1)(c) or (d) may subsequently disclose information contained in the record, but shall not disclose the information in any form that would reasonably be expected to identify the young person to whom it relates.

Subsequent offences as adult

(6) If, during the period of access to a record under subsection (3), the young person is convicted of an additional offence set out in the schedule, committed when he or she was an adult,

(a) this Part no longer applies to the record and the record shall be dealt with as a record of an adult and may be included on the automated criminal conviction records retrieval system maintained by the Royal Canadian Mounted Police; and

(b) for the purposes of the *Criminal Records Act*, the finding of guilt in respect of the offence for which the record is kept is deemed to be a conviction.

Deemed election

121. For the purposes of sections 119 and 120, if no election is made in respect of an offence that may be prosecuted by indictment or proceeded with by way of summary conviction, the Attorney General is deemed to have elected to proceed with the offence as an offence punishable on summary conviction.

Disclosure of information and copies of record

122. A person who is required or authorized to be given access to a record under section 119, 120, 123 or 124 may be given any information contained in the record and may be given a copy of any part of the record.

Where records may be made available

123. (1) A youth justice court judge may, on application by a person after the end of the applicable period set out in subsection 119(2), order that the person be given access to all or part of a record kept under sections 114 to 116 or that a copy of the record or part be given to that person,

(a) if the youth justice court judge is satisfied that

- (i) the person has a valid and substantial interest in the record or part,
- (ii) it is necessary for access to be given to the record or part in the interest of the proper administration of justice, and
- (iii) disclosure of the record or part or the information in it is not prohibited under any other Act of Parliament or the legislature of a province; or

(b) if the youth court judge is satisfied that access to the record or part is desirable in the public interest for research or statistical purposes.

Restriction for paragraph (1)(a)

(2) Paragraph (1)(a) applies in respect of a record relating to a particular young person or to a record relating to a class of young persons only if the identity of young persons in the class at the time of the making of the application referred to in that paragraph cannot reasonably be ascertained and the disclosure of the record is necessary for the purpose of investigating any offence that a person is suspected on reasonable grounds of

having committed against a young person while the young person is, or was, serving a sentence.

Notice

(3) Subject to subsection (4), an application for an order under paragraph (1)(a) in respect of a record shall not be heard unless the person who makes the application has given the young person to whom the record relates and the person or body that has possession of the record at least five days notice in writing of the application, and the young person and the person or body that has possession have had a reasonable opportunity to be heard.

Where notice not required

(4) A youth justice court judge may waive the requirement in subsection (3) to give notice to a young person when the judge is of the opinion that

- (a) to insist on the giving of the notice would frustrate the application; or
- (b) reasonable efforts have not been successful in finding the young person.

Use of record

(5) In any order under subsection (1), the youth justice court judge shall set out the purposes for which the record may be used.

Disclosure for research or statistical purposes

(6) When access to a record is given to any person under paragraph (1)(b), that person may subsequently disclose information contained in the record, but shall not disclose the information in any form that would reasonably be expected to identify the young person to whom it relates.

Access to record by young person

124. A young person to whom a record relates and his or her counsel may have access to the record at any time.

DISCLOSURE OF INFORMATION IN A RECORD

Disclosure by peace officer during investigation

125. (1) A peace officer may disclose to any person any information in a record kept under section 114 (court records) or 115 (police records) that it is necessary to disclose in the conduct of the investigation of an offence.

Disclosure by Attorney General

(2) The Attorney General may, in the course of a proceeding under this Act or any other Act of Parliament, disclose the following information in a record kept under section 114 (court reports) or 115 (police records):

- (a) to a person who is a co-accused with the young person in respect of the offence for which the record is kept, any information contained in the record; and
- (b) to an accused in a proceeding, if the record is in respect of a witness in the proceeding, information that identifies the witness as a young person who has been dealt with under this Act.

Information that may be disclosed to a foreign state

(3) The Attorney General or a peace officer may disclose to the Minister of Justice of Canada information in a record that is kept under section 114 (court records) or 115 (police records) to the extent that it is necessary to deal with a request to or by a foreign state under the *Mutual Legal Assistance in Criminal Matters Act*, or for the purposes of any extradition matter under the *Extradition Act*. The Minister of Justice of Canada may disclose the information to the foreign state in respect of which the request was made, or to which the extradition matter relates, as the case may be.

Disclosure to insurance company

(4) A peace officer may disclose to an insurance company information in a record that is kept under section 114 (court records) or 115 (police records) for the purpose of investigating a claim arising out of an offence committed or alleged to have been committed by the young person to whom the record relates.

Preparation of reports

(5) The provincial director or a youth worker may disclose information contained in a record if the disclosure is necessary for procuring information that relates to the preparation of a report required by this Act.

Schools and others

(6) The provincial director, a youth worker, the Attorney General, a peace officer or any other person engaged in the provision of services to young persons may disclose to any professional or other person engaged in the supervision or care of a young person — including a representative of any school board or school or any other educational or training institution — any information contained in a record kept under sections 114 to 116 if the disclosure is necessary

(a) to ensure compliance by the young person with an authorization under section 91 or an order of the youth justice court;

(b) to ensure the safety of staff, students or other persons; or

(c) to facilitate the rehabilitation of the young person.

Information to be kept separate

(7) A person to whom information is disclosed under subsection (6) shall

(a) keep the information separate from any other record of the young person to whom the information relates;

(b) ensure that no other person has access to the information except if authorized under this Act, or if necessary for the purposes of subsection (6); and

(c) destroy their copy of the record when the information is no longer required for the purpose for which it was disclosed.

Time limit

(8) No information may be disclosed under this section after the end of the applicable period set out in subsection 119(2) (period of access to records).

Records in the custody, etc., of archivists

126. When records originally kept under sections 114 to 116 are under the custody or control of the Librarian and Archivist of Canada or the archivist for any province, that person may disclose any information contained in the records to any other person if

(a) a youth justice court judge is satisfied that the disclosure is desirable in the public interest for research or statistical purposes; and

(b) the person to whom the information is disclosed undertakes not to disclose the information in any form that could reasonably be expected to identify the young person to whom it relates.

2002, c. 1, s. 126; 2004, c. 11, s. 48.

Disclosure with court order

127. (1) The youth justice court may, on the application of the provincial director, the Attorney General or a peace officer, make an order permitting the applicant to disclose to the person or persons specified by the court any information about a young person that is specified, if the court is satisfied that the disclosure is necessary, having regard to the following circumstances:

- (a) the young person has been found guilty of an offence involving serious personal injury;
- (b) the young person poses a risk of serious harm to persons; and
- (c) the disclosure of the information is relevant to the avoidance of that risk.

Opportunity to be heard

(2) Subject to subsection (3), before making an order under subsection (1), the youth justice court shall give the young person, a parent of the young person and the Attorney General an opportunity to be heard.

Ex parte application

(3) An application under subsection (1) may be made *ex parte* by the Attorney General where the youth justice court is satisfied that reasonable efforts have been made to locate the young person and that those efforts have not been successful.

Time limit

(4) No information may be disclosed under subsection (1) after the end of the applicable period set out in subsection 119(2) (period of access to records).

DISPOSITION OR DESTRUCTION OF RECORDS AND PROHIBITION ON USE AND DISCLOSURE

Effect of end of access periods

128. (1) Subject to sections 123, 124 and 126, after the end of the applicable period set out in section 119 or 120 no record kept under sections 114 to 116 may be used for any purpose that would identify the young person to whom the record relates as a young person dealt with under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985.

Disposal of records

(2) Subject to paragraph 125(7)(c), any record kept under sections 114 to 116, other than a record kept under subsection 115(3), may, in the discretion of the person or body keeping the record, be destroyed or transmitted to the Librarian and Archivist of Canada or the archivist for any province, at any time before or after the end of the applicable period set out in section 119.

Disposal of R.C.M.P. records

(3) All records kept under subsection 115(3) shall be destroyed or, if the Librarian and Archivist of Canada requires it, transmitted to the Librarian and Archivist, at the end of the applicable period set out in section 119 or 120.

Purging CPIC

(4) The Commissioner of the Royal Canadian Mounted Police shall remove a record from the automated criminal conviction records retrieval system maintained by the Royal Canadian Mounted Police at the end of the applicable period referred to in section 119; however, information relating to a prohibition order made under an Act of Parliament or the legislature of a province shall be removed only at the end of the period for which the order is in force.

Exception

(5) Despite subsections (1), (2) and (4), an entry that is contained in a system maintained by the Royal Canadian Mounted Police to match crime scene information and that relates to an offence committed or alleged to have been committed by a young person shall be dealt with in the same manner as information that relates to an offence committed by an adult for which a pardon granted under the *Criminal Records Act* is in effect.

Authority to inspect

(6) The Librarian and Archivist of Canada may, at any time, inspect records kept under sections 114 to 116 that are under the control of a government institution as defined in section 2 of the *Library and Archives of Canada Act*, and the archivist for a province may at any time inspect any records kept under those sections that

the archivist is authorized to inspect under any Act of the legislature of the province.

Definition of "destroy"

(7) For the purposes of subsections (2) and (3), "destroy" , in respect of a record, means

(a) to shred, burn or otherwise physically destroy the record, in the case of a record other than a record in electronic form; and

(b) to delete, write over or otherwise render the record inaccessible, in the case of a record in electronic form.

2002, c. 1, s. 128; 2004, c. 11, s. 49.

No subsequent disclosure

129. No person who is given access to a record or to whom information is disclosed under this Act shall disclose that information to any other person unless the disclosure is authorized under this Act.

PART 7

GENERAL PROVISIONS

DISQUALIFICATION OF JUDGE

Disqualification of judge

130. (1) Subject to subsection (2), a youth justice court judge who, prior to an adjudication in respect of a young person charged with an offence, examines a pre-sentence report made in respect of the young person in connection with that offence or has, after a guilty plea or a finding of guilt, heard submissions as to sentence and then there has been a change of plea, shall not in any capacity conduct or continue the trial of the young person for the offence and shall transfer the case to another judge to be dealt with according to law.

Exception

(2) A youth justice court judge may, in the circumstances referred to in subsection (1), with the consent of the young person and the prosecutor, conduct or continue the trial of the young person if the judge is satisfied that he or she has not been predisposed by a guilty plea or finding of guilt, or by information contained in the pre-sentence report or submissions as to sentence.

SUBSTITUTION OF JUDGE

Powers of substitute youth justice court judge

131. (1) A youth justice court judge who acts in the place of another youth justice court judge under subsection 669.2(1) (continuation of proceedings) of the *Criminal Code* shall

(a) if an adjudication has been made, proceed to sentence the young person or make the order that, in the circumstances, is authorized by law; or

(b) if no adjudication has been made, recommence the trial as if no evidence had been taken.

Transcript of evidence already given

(2) A youth justice court judge who recommences a trial under paragraph (1)(b) may, if the parties consent, admit into evidence a transcript of any evidence already given in the case.

EXCLUSION FROM HEARING

Exclusion from hearing

132. (1) Subject to subsection (2), a court or justice before whom proceedings are carried out under this Act may exclude any person from all or part of the proceedings if the court or justice considers that the person's presence is unnecessary to the conduct of the proceedings and the court or justice is of the opinion that

- (a) any evidence or information presented to the court or justice would be seriously injurious or seriously prejudicial to
 - (i) the young person who is being dealt with in the proceedings,
 - (ii) a child or young person who is a witness in the proceedings, or
 - (iii) a child or young person who is aggrieved by or the victim of the offence charged in the proceedings;or
- (b) it would be in the interest of public morals, the maintenance of order or the proper administration of justice to exclude any or all members of the public from the court room.

Exception

(2) Subject to section 650 (accused to be present) of the *Criminal Code* and except if it is necessary for the purposes of subsection 34(9) (nondisclosure of medical or psychological report) of this Act, a court or justice may not, under subsection (1), exclude from proceedings under this Act

- (a) the prosecutor;
- (b) the young person who is being dealt with in the proceedings, the counsel or a parent of the young person or any adult assisting the young person under subsection 25(7);
- (c) the provincial director or his or her agent; or
- (d) the youth worker to whom the young person's case has been assigned.

Exclusion after adjudication or during review

(3) A youth justice court, after it has found a young person guilty of an offence, or a youth justice court or a review board, during a review, may, in its discretion, exclude from the court or from a hearing of the review board any person other than the following, when it is being presented with information the knowledge of which might, in its opinion, be seriously injurious or seriously prejudicial to the young person:

- (a) the young person or his or her counsel;
- (b) the provincial director or his or her agent;
- (c) the youth worker to whom the young person's case has been assigned; and
- (d) the Attorney General.

Exception

(4) The exception set out in paragraph (3)(a) is subject to subsection 34(9) (nondisclosure of medical or psychological report) of this Act and section 650 (accused to be present) of the *Criminal Code*.

TRANSFER OF CHARGES

Transfer of charges

133. Despite subsections 478(1) and (3) of the *Criminal Code*, a young person charged with an offence that is alleged to have been committed in one province may, if the Attorney General of the province consents, appear before a youth justice court of any other province and

- (a) if the young person pleads guilty to that offence and the youth justice court is satisfied that the facts support the charge, the court shall find the young person guilty of the offence alleged in the information or

indictment; and

(b) if the young person pleads not guilty to that offence, or pleads guilty but the court is not satisfied that the facts support the charge, the young person shall, if he or she was detained in custody prior to the appearance, be returned to custody and dealt with according to law.

FORFEITURE OF RECOGNIZANCES

Applications for forfeiture of recognizances

134. Applications for the forfeiture of recognizances of young persons shall be made to the youth justice court.

Proceedings in case of default

135. (1) When a recognizance binding a young person has been endorsed with a certificate under subsection 770(1) of the *Criminal Code*, a youth justice court judge shall

(a) on the request of the Attorney General, fix a time and place for the hearing of an application for the forfeiture of the recognizance; and

(b) after fixing a time and place for the hearing, cause to be sent by confirmed delivery service, not less than ten days before the time so fixed, to each principal and surety named in the recognizance, directed to his or her latest known address, a notice requiring him or her to appear at the time and place fixed by the judge to show cause why the recognizance should not be forfeited.

Order for forfeiture of recognizance

(2) When subsection (1) is complied with, the youth justice court judge may, after giving the parties an opportunity to be heard, in his or her discretion grant or refuse the application and make any order with respect to the forfeiture of the recognizance that he or she considers proper.

Judgment debtors of the Crown

(3) If, under subsection (2), a youth justice court judge orders forfeiture of a recognizance, the principal and his or her sureties become judgment debtors of the Crown, each in the amount that the judge orders him or her to pay.

Order may be filed

(4) An order made under subsection (2) may be filed with the clerk of the superior court or, in the province of Quebec, the prothonotary and, if an order is filed, the clerk or the prothonotary shall issue a writ of *feri facias* in Form 34 set out in the *Criminal Code* and deliver it to the sheriff of each of the territorial divisions in which any of the principal and his or her sureties resides, carries on business or has property.

If a deposit has been made

(5) If a deposit has been made by a person against whom an order for forfeiture of a recognizance has been made, no writ of *feri facias* shall issue, but the amount of the deposit shall be transferred by the person who has custody of it to the person who is entitled by law to receive it.

Subsections 770(2) and (4) of *Criminal Code* do not apply

(6) Subsections 770(2) (transmission of recognizance) and (4) (transmission of deposit) of the *Criminal Code* do not apply in respect of proceedings under this Act.

Sections 772 and 773 of *Criminal Code* apply

(7) Sections 772 (levy under writ) and 773 (committal when writ not satisfied) of the *Criminal Code* apply in respect of writs of *feri facias* issued under this section as if they were issued under section 771 (proceedings in case of default) of that Act.

OFFENCES AND PUNISHMENT

Inducing a young person, etc.

136. (1) Every person who

(a) induces or assists a young person to leave unlawfully a place of custody or other place in which the young person has been placed in accordance with a youth sentence or a disposition imposed under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985,

(b) unlawfully removes a young person from a place referred to in paragraph (a),

(c) knowingly harbours or conceals a young person who has unlawfully left a place referred to in paragraph (a),

(d) wilfully induces or assists a young person to breach or disobey a term or condition of a youth sentence or other order of the youth justice court, or a term or condition of a disposition or other order under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, or

(e) wilfully prevents or interferes with the performance by a young person of a term or condition of a youth sentence or other order of the youth justice court, or a term or condition of a disposition or other order under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years or is guilty of an offence punishable on summary conviction.

Absolute jurisdiction of provincial court judge

(2) The jurisdiction of a provincial court judge to try an adult charged with an indictable offence under this section is absolute and does not depend on the consent of the accused.

Failure to comply with sentence or disposition

137. Every person who is subject to a youth sentence imposed under any of paragraphs 42(2)(c) to (m) or (s) of this Act, to a victim fine surcharge ordered under subsection 53(2) of this Act or to a disposition made under any of paragraphs 20(1)(a.1) to (g), (j) or (l) of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, and who wilfully fails or refuses to comply with that sentence, surcharge or disposition is guilty of an offence punishable on summary conviction.

Offences

138. (1) Every person who contravenes subsection 110(1) (identity of offender not to be published), 111(1) (identity of victim or witness not to be published), 118(1) (no access to records unless authorized) or 128(3) (disposal of R.C.M.P. records) or section 129 (no subsequent disclosure) of this Act, or subsection 38(1) (identity not to be published), (1.12) (no subsequent disclosure), (1.14) (no subsequent disclosure by school) or (1.15) (information to be kept separate), 45(2) (destruction of records) or 46(1) (prohibition against disclosure) of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985,

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

Provincial court judge has absolute jurisdiction on indictment

(2) The jurisdiction of a provincial court judge to try an adult charged with an offence under paragraph (1)(a) is absolute and does not depend on the consent of the accused.

Offence and punishment

139. (1) Every person who wilfully fails to comply with section 30 (designated place of temporary detention), or with an undertaking entered into under subsection 31(3) (condition of placement),

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

Offence and punishment

(2) Every person who wilfully fails to comply with section 7 (designated place of temporary detention) of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, or with an undertaking entered into under subsection 7.1(2) (condition of placement) of that Act is guilty of an offence punishable on summary conviction.

Punishment

(3) Any person who uses or authorizes the use of an application form in contravention of subsection 82(3) (application for employment) is guilty of an offence punishable on summary conviction.

APPLICATION OF CRIMINAL CODE

Application of *Criminal Code*

140. Except to the extent that it is inconsistent with or excluded by this Act, the provisions of the *Criminal Code* apply, with any modifications that the circumstances require, in respect of offences alleged to have been committed by young persons.

Sections of *Criminal Code* applicable

141. (1) Except to the extent that they are inconsistent with or excluded by this Act, section 16 (defence of mental disorder) and Part XX.1 (mental disorder) of the *Criminal Code* apply, with any modifications that the circumstances require, in respect of proceedings under this Act in relation to offences alleged to have been committed by young persons.

Notice and copies to counsel and parents

(2) For the purposes of subsection (1),

(a) wherever in Part XX.1 (mental disorder) of the *Criminal Code* a reference is made to a copy to be sent or otherwise given to an accused or a party to the proceedings, the reference shall be read as including a reference to a copy to be sent or otherwise given to

- (i) any counsel representing the young person,
- (ii) a parent of the young person who is in attendance at the proceedings against the young person, and
- (iii) a parent of the young person not in attendance at the proceedings who is, in the opinion of the youth justice court or Review Board, taking an active interest in the proceedings; and

(b) wherever in Part XX.1 (mental disorder) of the *Criminal Code* a reference is made to notice to be given to an accused or a party to proceedings, the reference shall be read as including a reference to notice to be given to a parent of the young person and any counsel representing the young person.

Proceedings not invalid

(3) Subject to subsection (4), failure to give a notice referred to in paragraph (2)(b) to a parent of a young person does not affect the validity of proceedings under this Act.

Exception

(4) Failure to give a notice referred to in paragraph (2)(b) to a parent of a young person in any case renders invalid any subsequent proceedings under this Act relating to the case unless

- (a) a parent of the young person attends at the court or Review Board with the young person; or
- (b) a youth justice court judge or Review Board before whom proceedings are held against the young person
 - (i) adjourns the proceedings and orders that the notice be given in the manner and to the persons that the judge or Review Board directs, or

(ii) dispenses with the notice if the youth justice court or Review Board is of the opinion that, having regard to the circumstances, the notice may be dispensed with.

(5) [Repealed, 2005, c. 22, s. 63]

Considerations of court or Review Board making a disposition

(6) Before making or reviewing a disposition in respect of a young person under Part XX.1 (mental disorder) of the *Criminal Code*, a youth justice court or Review Board shall consider the age and special needs of the young person and any representations or submissions made by a parent of the young person.

(7) to (9) [Repealed, 2005, c. 22, s. 63]

Prima facie case to be made every year

(10) For the purpose of applying subsection 672.33(1) (fitness to stand trial) of the *Criminal Code* to proceedings under this Act in relation to an offence alleged to have been committed by a young person, wherever in that subsection a reference is made to two years, there shall be substituted a reference to one year.

Designation of hospitals for young persons

(11) A reference in Part XX.1 (mental disorder) of the *Criminal Code* to a hospital in a province shall be construed as a reference to a hospital designated by the Minister of Health for the province for the custody, treatment or assessment of young persons.

Definition of "Review Board"

(12) In this section, "Review Board" has the meaning assigned by section 672.1 of the *Criminal Code*.
2002, c. 1, s. 141; 2005, c. 22, s. 63.

Part XXVII and summary conviction trial provisions of *Criminal Code* to apply

142. (1) Subject to this section and except to the extent that they are inconsistent with this Act, the provisions of Part XXVII (summary conviction offences) of the *Criminal Code*, and any other provisions of that Act that apply in respect of summary conviction offences and relate to trial proceedings, apply to proceedings under this Act

(a) in respect of an order under section 810 (recognizance — fear of injury or damage), 810.01 (recognizance — fear of criminal organization offence) or 810.2 (recognizance — fear of serious personal injury offence) of that Act or an offence under section 811 (breach of recognizance) of that Act;

(b) in respect of a summary conviction offence; and

(c) in respect of an indictable offence as if it were defined in the enactment creating it as a summary conviction offence.

Indictable offences

(2) For greater certainty and despite subsection (1) or any other provision of this Act, an indictable offence committed by a young person is, for the purposes of this Act or any other Act of Parliament, an indictable offence.

Attendance of young person

(3) Section 650 of the *Criminal Code* applies in respect of proceedings under this Act, whether the proceedings relate to an indictable offence or an offence punishable on summary conviction.

Limitation period

(4) In proceedings under this Act, subsection 786(2) of the *Criminal Code* does not apply in respect of an indictable offence.

Costs

(5) Section 809 of the *Criminal Code* does not apply in respect of proceedings under this Act.

PROCEDURE

Counts charged in information

143. Indictable offences and offences punishable on summary conviction may under this Act be charged in the same information or indictment and tried jointly.

Issue of subpoena

144. (1) If a person is required to attend to give evidence before a youth justice court, the subpoena directed to that person may be issued by a youth justice court judge, whether or not the person whose attendance is required is within the same province as the youth justice court.

Service of subpoena

(2) A subpoena issued by a youth justice court and directed to a person who is not within the same province as the youth justice court shall be served personally on the person to whom it is directed.

Warrant

145. A warrant issued by a youth justice court may be executed anywhere in Canada.

EVIDENCE

General law on admissibility of statements to apply

146. (1) Subject to this section, the law relating to the admissibility of statements made by persons accused of committing offences applies in respect of young persons.

When statements are admissible

(2) No oral or written statement made by a young person who is less than eighteen years old, to a peace officer or to any other person who is, in law, a person in authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless

- (a) the statement was voluntary;
- (b) the person to whom the statement was made has, before the statement was made, clearly explained to the young person, in language appropriate to his or her age and understanding, that
 - (i) the young person is under no obligation to make a statement,
 - (ii) any statement made by the young person may be used as evidence in proceedings against him or her,
 - (iii) the young person has the right to consult counsel and a parent or other person in accordance with paragraph (c), and
 - (iv) any statement made by the young person is required to be made in the presence of counsel and any other person consulted in accordance with paragraph (c), if any, unless the young person desires otherwise;
- (c) the young person has, before the statement was made, been given a reasonable opportunity to consult
 - (i) with counsel, and
 - (ii) with a parent or, in the absence of a parent, an adult relative or, in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person, as long as that person is not a co-accused, or under investigation, in respect of the same offence; and

(d) if the young person consults a person in accordance with paragraph (c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.

Exception in certain cases for oral statements

(3) The requirements set out in paragraphs (2)(b) to (d) do not apply in respect of oral statements if they are made spontaneously by the young person to a peace officer or other person in authority before that person has had a reasonable opportunity to comply with those requirements.

Waiver of right to consult

(4) A young person may waive the rights under paragraph (2)(c) or (d) but any such waiver

(a) must be recorded on video tape or audio tape; or

(b) must be in writing and contain a statement signed by the young person that he or she has been informed of the right being waived.

Waiver of right to consult

(5) When a waiver of rights under paragraph (2)(c) or (d) is not made in accordance with subsection (4) owing to a technical irregularity, the youth justice court may determine that the waiver is valid if it is satisfied that the young person was informed of his or her rights, and voluntarily waived them.

Admissibility of statements

(6) When there has been a technical irregularity in complying with paragraphs (2)(b) to (d), the youth justice court may admit into evidence a statement referred to in subsection (2), if satisfied that the admission of the statement would not bring into disrepute the principle that young persons are entitled to enhanced procedural protection to ensure that they are treated fairly and their rights are protected.

Statements made under duress are inadmissible

(7) A youth justice court judge may rule inadmissible in any proceedings under this Act a statement made by the young person in respect of whom the proceedings are taken if the young person satisfies the judge that the statement was made under duress imposed by any person who is not, in law, a person in authority.

Misrepresentation of age

(8) A youth justice court judge may in any proceedings under this Act rule admissible any statement or waiver by a young person if, at the time of the making of the statement or waiver,

(a) the young person held himself or herself to be eighteen years old or older;

(b) the person to whom the statement or waiver was made conducted reasonable inquiries as to the age of the young person and had reasonable grounds for believing that the young person was eighteen years old or older; and

(c) in all other circumstances the statement or waiver would otherwise be admissible.

Parent, etc., not a person in authority

(9) For the purpose of this section, a person consulted under paragraph (2)(c) is, in the absence of evidence to the contrary, deemed not to be a person in authority.

Statements not admissible against young person

147. (1) Subject to subsection (2), if a young person is assessed in accordance with an order made under subsection 34(1) (medical or psychological assessment), no statement or reference to a statement made by the young person during the course and for the purposes of the assessment to the person who conducts the assessment or to anyone acting under that person's direction is admissible in evidence, without the consent of the young person, in any proceeding before a court, tribunal, body or person with jurisdiction to compel the production of evidence.

Exceptions

- (2) A statement referred to in subsection (1) is admissible in evidence for the purposes of
- (a) making a decision on an application heard under section 71 (hearing — adult sentences);
 - (b) determining whether the young person is unfit to stand trial;
 - (c) determining whether the balance of the mind of the young person was disturbed at the time of commission of the alleged offence, if the young person is a female person charged with an offence arising out of the death of her newly-born child;
 - (d) making or reviewing a sentence in respect of the young person;
 - (e) determining whether the young person was, at the time of the commission of an alleged offence, suffering from automatism or a mental disorder so as to be exempt from criminal responsibility by virtue of subsection 16(1) of the *Criminal Code*, if the accused puts his or her mental capacity for criminal intent into issue, or if the prosecutor raises the issue after verdict;
 - (f) challenging the credibility of a young person in any proceeding if the testimony of the young person is inconsistent in a material particular with a statement referred to in subsection (1) that the young person made previously;
 - (g) establishing the perjury of a young person who is charged with perjury in respect of a statement made in any proceeding;
 - (h) deciding an application for an order under subsection 104(1) (continuation of custody);
 - (i) setting the conditions under subsection 105(1) (conditional supervision);
 - (j) conducting a review under subsection 109(1) (review of decision); or
 - (k) deciding an application for a disclosure order under subsection 127(1) (information about a young person).

Testimony of a parent

148. (1) In any proceedings under this Act, the testimony of a parent as to the age of a person of whom he or she is a parent is admissible as evidence of the age of that person.

Evidence of age by certificate or record

- (2) In any proceedings under this Act,
- (a) a birth or baptismal certificate or a copy of it purporting to be certified under the hand of the person in whose custody those records are held is evidence of the age of the person named in the certificate or copy; and
 - (b) an entry or record of an incorporated society that has had the control or care of the person alleged to have committed the offence in respect of which the proceedings are taken at or about the time the person came to Canada is evidence of the age of that person, if the entry or record was made before the time when the offence is alleged to have been committed.

Other evidence

(3) In the absence of any certificate, copy, entry or record mentioned in subsection (2), or in corroboration of that certificate, copy, entry or record, the youth justice court may receive and act on any other information relating to age that it considers reliable.

When age may be inferred

(4) In any proceedings under this Act, the youth justice court may draw inferences as to the age of a person from the person's appearance or from statements made by the person in direct examination or cross-examination.

Admissions

149. (1) A party to any proceedings under this Act may admit any relevant fact or matter for the purpose of dispensing with proof of it, including any fact or matter the admissibility of which depends on a ruling of law or of mixed law and fact.

Other party may adduce evidence

(2) Nothing in this section precludes a party to a proceeding from adducing evidence to prove a fact or matter admitted by another party.

Material evidence

150. Any evidence material to proceedings under this Act that would not but for this section be admissible in evidence may, with the consent of the parties to the proceedings and if the young person is represented by counsel, be given in such proceedings.

Evidence of a child or young person

151. The evidence of a child or a young person may be taken in proceedings under this Act only after the youth justice court judge or the justice in the proceedings has

(a) if the witness is a child, instructed the child as to the duty to speak the truth and the consequences of failing to do so; and

(b) if the witness is a young person and the judge or justice considers it necessary, instructed the young person as to the duty to speak the truth and the consequences of failing to do so.

Proof of service

152. (1) For the purposes of this Act, service of any document may be proved by oral evidence given under oath by, or by the affidavit or statutory declaration of, the person claiming to have personally served it or sent it by confirmed delivery service.

Proof of signature and official character unnecessary

(2) If proof of service of any document is offered by affidavit or statutory declaration, it is not necessary to prove the signature or official character of the person making or taking the affidavit or declaration, if the official character of that person appears on the face of the affidavit or declaration.

Seal not required

153. It is not necessary to the validity of any information, indictment, summons, warrant, minute, sentence, conviction, order or other process or document laid, issued, filed or entered in any proceedings under this Act that any seal be attached or affixed to it.

FORMS, REGULATIONS AND RULES OF COURT

Forms

154. (1) The forms prescribed under section 155, varied to suit the case, or forms to the like effect, are valid and sufficient in the circumstances for which they are provided.

If forms not prescribed

(2) In any case for which forms are not prescribed under section 155, the forms set out in Part XXVIII of the *Criminal Code*, with any modifications that the circumstances require, or other appropriate forms, may be used.

Regulations

155. The Governor in Council may make regulations

(a) prescribing forms that may be used for the purposes of this Act;

(b) establishing uniform rules of court for youth justice courts across Canada, including rules regulating the practice and procedure to be followed by youth justice courts; and

(c) generally for carrying out the purposes and provisions of this Act.

AGREEMENTS WITH PROVINCES

Agreements with provinces

156. Any minister of the Crown may, with the approval of the Governor in Council, enter into an agreement with the government of any province providing for payments by Canada to the province in respect of costs incurred by the province or a municipality in the province for care of and services provided to young persons dealt with under this Act.

PROGRAMS

Community-based programs

157. The Attorney General of Canada or a minister designated by the lieutenant governor in council of a province may establish the following types of community-based programs:

(a) programs that are an alternative to judicial proceedings, such as victim-offender reconciliation programs, mediation programs and restitution programs;

(b) programs that are an alternative to detention before sentencing, such as bail supervision programs; and

(c) programs that are an alternative to custody, such as intensive support and supervision programs, and programs to carry out attendance orders.

PART 8

TRANSITIONAL PROVISIONS

Prohibition on proceedings

158. On and after the coming into force of this section, no proceedings may be commenced under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, in respect of an offence within the meaning of that Act, or under the *Juvenile Delinquents Act*, chapter J-3 of the Revised Statutes of Canada, 1970, in respect of a delinquency within the meaning of that Act.

Proceedings commenced under *Young Offenders Act*

159. (1) Subject to section 161, where, before the coming into force of this section, proceedings are commenced under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, in respect of an offence within the meaning of that Act alleged to have been committed by a person who was at the time of the offence a young person within the meaning of that Act, the proceedings and all related matters shall be dealt with in all respects as if this Act had not come into force.

Proceedings commenced under *Juvenile Delinquents Act*

(2) Subject to section 161, where, before the coming into force of this section, proceedings are commenced under the *Juvenile Delinquents Act*, chapter J-3 of the Revised Statutes of Canada, 1970, in respect of a delinquency within the meaning of that Act alleged to have been committed by a person who was at the time of the delinquency a child as defined in that Act, the proceedings and all related matters shall be dealt with under this Act as if the delinquency were an offence that occurred after the coming into force of this section.

Offences committed before this section in force

160. Any person who, before the coming into force of this section, while he or she was a young person, committed an offence in respect of which no proceedings were commenced before the coming into force of this section shall be dealt with under this Act as if the offence occurred after the coming into force of this section, except that

(a) paragraph 62(a) applies only if the offence is one set out in paragraph (a) of the definition “presumptive offence” in subsection 2(1) and the young person was at least sixteen years old at the time of its commission;

(b) paragraph 110(2)(b) does not apply in respect of the offence; and

(c) paragraph 42(2)(r) applies in respect of the offence only if the young person consents to its application.

Applicable sentence

161. (1) A person referred to in section 159 who is found guilty of an offence or delinquency, other than a person convicted of an offence in ordinary court, as defined in subsection 2(1) of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, shall be sentenced under this Act, except that

(a) paragraph 110(2)(b) does not apply in respect of the offence or delinquency; and

(b) paragraph 42(2)(r) applies in respect of the offence or delinquency only if the young person consents to its application.

The provisions of this Act applicable to sentences imposed under section 42 apply in respect of the sentence.

Dispositions under paragraph 20(1)(k) or (k.1) of *Young Offenders Act*

(2) Where a young person is to be sentenced under this Act while subject to a disposition under paragraph 20(1)(k) or (k.1) of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, on the application of the Attorney General or the young person, a youth justice court shall, unless to do so would bring the administration of justice into disrepute, order that the remaining portion of the disposition made under that Act be dealt with, for all purposes under this Act or any other Act of Parliament, as if it had been a sentence imposed under paragraph 42(2)(n) or (q) of this Act, as the case may be.

Review of sentence

(3) For greater certainty, for the purpose of determining when the sentence is reviewed under section 94, the relevant date is the one on which the disposition came into force under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985.

Proceedings commence with information

162. For the purposes of sections 158 to 160, proceedings are commenced by the laying of an information or indictment.

Application to delinquency and other offending behaviour

163. Sections 114 to 129 apply, with any modifications that the circumstances require, in respect of records relating to the offence of delinquency under the *Juvenile Delinquents Act*, chapter J-3 of the Revised Statutes of Canada, 1970, and in respect of records kept under sections 40 to 43 of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985.

Agreements continue in force

164. Any agreement made under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, remains in force until it expires, unless it is amended or a new agreement is made under this Act.

Designation of youth justice court

165. (1) Any court established or designated as a youth court for the purposes of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, is deemed, as of the coming into force of this section, to have been established or designated as a youth justice court for the purposes of this Act.

Designation of youth justice court judges

(2) Any person appointed to be a judge of the youth court for the purposes of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, is deemed, as of the coming into force of this section, to have been appointed as a judge of the youth justice court for the purposes of this Act.

Designation of provincial directors and youth workers

(3) Any person, group or class of persons or body appointed or designated as a provincial director for the purposes of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, and any person appointed or designated as a youth worker for the purposes of that Act is deemed, as of the coming into force of this section, to have been appointed or designated as a provincial director or youth worker, as the case may be, for the purposes of this Act.

Designation of review boards and youth justice committees

(4) Any review board established or designated for the purposes of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, and any youth justice committee established for the purposes of that Act is deemed, as of the coming into force of this section, to have been established or designated as a review board or a youth justice committee, as the case may be, for the purposes of this Act.

Alternative measures continued as extrajudicial sanctions

(5) Any program of alternative measures authorized for the purposes of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, is deemed, as of the coming into force of this section, to be a program of extrajudicial sanctions authorized for the purposes of this Act.

Designation of places of temporary detention and youth custody

(6) Subject to subsection (7), any place that was designated as a place of temporary detention or open custody for the purposes of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, and any place or facility designated as a place of secure custody for the purposes of that Act is deemed, as of the coming into force of this section, to have been designated for the purposes of this Act as

(a) in the case of a place of temporary detention, a place of temporary detention; and

(b) in the case of a place of open custody or secure custody, a youth custody facility.

Exception

(7) If the lieutenant governor in council of a province makes an order under section 88 that the power to make determinations of the level of custody for young persons and to review those determinations be exercised in accordance with the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, the designation of any place as a place of open custody or secure custody for the purposes of that Act remains in force for the purposes of section 88, subject to revocation or amendment of the designation.

Designation of other persons

(8) Any person designated as a clerk of the youth court for the purposes of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, or any person or group of persons who were designated under that Act to carry out specified functions and duties are deemed, as of the coming into force of this section, to have been designated as a clerk of the youth justice court, or to carry out the same functions and duties, as the case may be, under this Act.

PART 9

CONSEQUENTIAL AMENDMENTS, REPEAL AND COMING INTO FORCE

CONSEQUENTIAL AMENDMENTS

166. to 198. [Amendments]

REPEAL

199. [Repeal]

COMING INTO FORCE

Coming into force

*200. The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council.

* [Note: Act in force April 1, 2003, see SI/2002-91.]

SCHEDULE

(Subsections 120(1), (4) and (6))

1. An offence under any of the following provisions of the *Criminal Code*:

- (a) paragraph 81(2)(a) (using explosives);
- (b) subsection 85(1) (using firearm in commission of offence);
- (c) section 151 (sexual interference);
- (d) section 152 (invitation to sexual touching);
- (e) section 153 (sexual exploitation);
- (f) section 155 (incest);
- (g) section 159 (anal intercourse);
- (h) section 170 (parent or guardian procuring sexual activity by child);
- (i) subsection 212(2) (living off the avails of prostitution by a child);
- (j) subsection 212(4) (obtaining sexual services of a child);
- (k) section 231 or 235 (first degree murder or second degree murder within the meaning of section 231);
- (l) section 232, 234 or 236 (manslaughter);
- (m) section 239 (attempt to commit murder);
- (n) section 267 (assault with a weapon or causing bodily harm);
- (o) section 268 (aggravated assault);
- (p) section 269 (unlawfully causing bodily harm);
- (q) section 271 (sexual assault);
- (r) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm);
- (s) section 273 (aggravated sexual assault);
- (t) section 279 (kidnapping);
- (u) section 344 (robbery);
- (v) section 433 (arson — disregard for human life);
- (w) section 434.1 (arson — own property);
- (x) section 436 (arson by negligence); and
- (y) paragraph 465(1)(a) (conspiracy to commit murder).

2. An offence under any of the following provisions of the *Criminal Code*, as they read immediately before July 1, 1990:

- (a) section 433 (arson);

(b) section 434 (setting fire to other substance); and

(c) section 436 (setting fire by negligence).

3. An offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 4, 1983:

(a) section 144 (rape);

(b) section 145 (attempt to commit rape);

(c) section 149 (indecent assault on female);

(d) section 156 (indecent assault on male); and

(e) section 246 (assault with intent).

4. An offence under any of the following provisions of the *Controlled Drugs and Substances Act*:

(a) section 5 (trafficking);

(b) section 6 (importing and exporting); and

(c) section 7 (production of substance).

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Last updated: 2008-09-22



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[Important Notices](#)