

BILL NO. 93

(as passed, with amendments)



*2nd Session, 58th General Assembly
Nova Scotia
50 Elizabeth II, 2001*

Government Bill

Youth Justice Act

CHAPTER 38 OF THE ACTS OF 2001

The Honourable Michael G. Baker, Q.C.
Minister of Justice

[First Reading](#): November 15, 2001 (LINK TO BILL AS INTRODUCED)

Second Reading: November 16, 2001

[Third Reading](#): November 22, 2001 (WITH COMMITTEE AMENDMENTS)

Royal Assent: November 22, 2001



**An Act Providing for Summary
Proceedings against Young Persons**

Be it enacted by the Governor and Assembly as follows:

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

2 The purpose of this Act is to provide procedures for persons under the age of eighteen years who violate Provincial enactments, including municipal by-laws, and to recognize that the following special considerations apply in respect of proceedings against young persons:

- (a) young persons have rights and freedoms in their own right such as a right to be heard in the course of and to participate in the process, other than the decision to prosecute, that leads to decisions that affect them;
- (b) young persons should have special guarantees of their rights and freedoms;
- (c) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

3 In this Act,

- (a) "agency" means an agency as defined in the *Children and Family Services Act*;
- (b) "Attorney General" means the Attorney General as defined in section 2 of the *Criminal Code* (Canada), read as if a reference in that definition to "proceedings" were a reference to "proceedings or extrajudicial measures", and includes an agent or delegate of the Attorney General;
- (c) "by-law" includes an ordinance;
- (d) "child in need of protective services" means a child in need of protective services as set out in the *Children and Family Services Act*;
- (e) "conference" means a group of persons who are convened to give advice in accordance with Section 16;
- (f) "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;
- (g) "extrajudicial sanction" means a sanction that is part of a program of sanctions referred to in Section 10;
- (h) "justice" means a justice of the peace or a judge of the provincial court and includes two or more justices where two or more justices are, by law, required to act or, by law, act or have jurisdiction;
- (i) "Minister" means the Minister of Justice and Attorney General;
- (j) "offence" means an offence created by a Provincial enactment, including a municipal by-law;
- (k) "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;
- (l) "pre-sentence report" means a report on the personal and family history and present environment of a young person prepared by a person authorized by the provincial director to prepare such reports;
- (m) "provincial director" means a person, a group or class of persons or a body appointed or designated by the Governor in Council to perform, either generally or in a specific case or classes of cases, the duties or functions of the provincial director under this Act;
- (n) "publication" means the communication of information by making it known or accessible to the public through any means including print, radio or television broadcast, telecommunication or electronic means;

(o) "record" includes anything containing information, regardless of its physical form or characteristics, including microform, sound recording, video tape, machine-readable record and any copy of any of those things, that is created or kept for the purpose of this Act or for the investigation of an offence that is or could be prosecuted under this Act;

(p) "young person" means a person who is or, in the absence of evidence to the contrary, appears to be twelve years of age or older, but less than eighteen years of age and, where the context requires, includes any person who is charged under this Act with having committed an offence while the person was a young person or who is found guilty of an offence under this Act;

(q) "youth justice court" means a court established under Section 13;

(r) "youth justice court judge" means a youth justice court judge referred to in Section 13;

(s) "youth worker" means any person appointed or designated to perform any of the duties or functions of a youth worker under this Act.

4 No person shall be found guilty of an offence in respect of an act or omission on the person's part while the person was under the age of twelve years.

5 The following principles, in addition to those set out in Section 2, apply when considering whether to commence a proceeding against a young person under this Act:

(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; and

(c) extrajudicial measures should be used if they are adequate to hold a young person accountable for the young person's offending behaviour, and 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, including an offence created by federal legislation.

6 (1) Before starting proceedings or taking any other measures under this Act against a young person alleged to have committed an offence, a police officer shall consider whether it would be sufficient, having regard to the principles set out in Section 5, to

(a) take no further action;

(b) have the young person dealt with in accordance with the *Children and Family Services Act*;

(c) warn the young person;

(d) administer a caution;

(e) 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.

(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.

7 The Minister may establish a program authorizing the police to administer cautions to young persons instead of starting judicial proceedings under this Act.

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

9 Evidence that any of the options referred to in subsection 6(1) have been taken and evidence of the alleged 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.

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 the options referred to in subsection 6(1) because of the seriousness of the offence, the nature and number of previous offences committed by the young person or any other aggravating circumstances.

(2) An extrajudicial sanction may be used only if

(a) it is part of a program of sanctions that is authorized by the Minister or authorized by a person, or a member of a class of persons, designated by the Governor in Council;

(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 the young person's right to be represented by counsel and to be 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 the young person is alleged to have committed;

(f) there is, in the opinion of the Minister, 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.

(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.

(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 the young person in civil or criminal 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 in respect of the offence, the youth justice court

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

(b) 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.

(6) Subject to subsection (5), nothing in this Section shall be construed as preventing any person from laying an information or indictment or obtaining the issue or confirmation of any process or proceeding with the prosecution of any offence in accordance with law.

11 Where 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.

12 Where a young person is dealt with by an extrajudicial sanction, a police officer, the Minister, the provincial director or any organization established by the 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.

13 (1) Subject to subsection (2), and except to the extent that it is inconsistent with this Act or the regulations, the *Summary Proceedings Act*, with such modifications as the circumstances require, applies to an offence alleged to have been committed by a young person and to proceedings under this Act.

(2) Notwithstanding subsection 8(15) of the *Summary Proceedings Act*, a justice may, in addition to the powers referred to in that subsection, issue a summons to compel the appearance of a young person if the justice is not satisfied that it would be in the interests of justice to enter a finding of guilt against the young person.

(3) Proceedings under this Act shall be commenced in a youth justice court.

(4) The Governor in Council may designate courts to be youth justice courts for the purpose of this Act.

(5) The Governor in Council may designate a person to be a judge of a youth justice court.

(6) A youth justice court has the powers of a summary conviction court and is a court of record.

(7) In proceedings under this Act, a judge of a youth justice court has the powers of a judge of the provincial court under the *Summary Proceedings Act*.

(8) Notwithstanding subsection (3), an information may be laid before a justice, and the justice may issue a summons or warrant.

14 (1) No person shall exercise an authority under this or any other Provincial enactment, including a municipal by-law, to arrest a young person without warrant, unless the person has reasonable and probable grounds to believe that it is necessary in the public interest to do so in order to

(a) establish the identity of the young person; or

(b) prevent the continuation or repetition of an offence.

(2) Where a police officer arrests a young person without a warrant, the police officer shall, as soon as practicable, release the young person from custody

(a) unconditionally;

(b) unconditionally in the care of a parent or other responsible person; or

(c) upon serving the young person with an appearance notice,

unless the police officer has reasonable and probable grounds to believe that it is necessary in the public interest for the young person to be detained in order to

(d) establish the identity of the young person; or

(e) prevent the continuation or repetition of an offence.

(3) Where a young person is not released from custody pursuant to subsection (2), the officer in charge where the young person is held shall, where in the officer's opinion the conditions giving rise to detention pursuant to clauses (2)(d) and (e) do not or no longer exist, release the young person

- (a) unconditionally;
- (b) unconditionally in the care of a parent or other responsible person;
- (c) upon serving the young person with an appearance notice;
- (d) upon the young person giving a promise to appear; or
- (e) upon the young person entering into a recognizance without sureties conditioned upon the young person's appearance in court.

(4) In deciding whether or not to release a young person from custody it shall be presumed that detention is not necessary and no young person who has been arrested shall be detained in custody as a substitute for appropriate child protection, mental health or social measures.

(5) Where a young person is arrested and detained in custody pending an appearance before a justice or a youth justice court, the officer in charge at the time the young person is detained shall give or cause to be given, orally or in writing, to a parent of the young person notice of the arrest stating the place of detention and the reason for the arrest.

(6) Where a ticket, summons, promise to appear or appearance notice is issued in respect of a young person, the arresting officer or another peace officer shall give a notice in writing or cause a notice in writing to be given to a parent stating

- (a) the name of the young person in respect of whom it is given;
- (b) the charge against the young person; and
- (c) the time and place of the court appearance,

and requiring the parent to appear with the young person in court at that time and place.

(7) Notwithstanding subsections (5) and (6), a notice to a parent is not required but may be given in respect of an offence under the *Motor Vehicle Act* by a young person who was sixteen or seventeen years of age at the time of the alleged offence.

(8) Where doubt exists as to the person to whom a notice under this Section should be given, a youth justice court judge or, where 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 is to be given, and a notice given in accordance with such directions is sufficient notice for the purpose of this Section.

(9) A notice under this Section given in writing may be served personally or by ordinary mail sent to the last known address of the parent.

(10) Failure to give a notice in accordance with this Section does not affect the validity of proceedings but, where there has been such a failure or where no parent attends court with the young person, a youth justice court may

- (a) adjourn the proceedings in order that the notice be given in such manner and to such person as it directs; or
- (b) dispense with the notice or the attendance of a parent where, in its opinion, having regard to the circumstances, notice or the attendance, as the case may be, should be dispensed with.

(11) Where a parent does not attend proceedings before a youth justice court in respect of a young person, the court may, by order in writing, require a parent to attend at any stage of the proceedings and, where the parent fails to attend 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.

15 At any stage of a proceedings under this Act, the youth justice court may

- (a) refer the matter to an agency for an assessment regarding whether the young person is a child in need of protective services or could benefit from services under the *Children and Family Services Act*; or
- (b) adjourn the proceedings for up to six months and order referral of the young person for psychiatric, psychological or medical examination.

16 (1) A youth justice court judge, the provincial director, a police officer, a justice, 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.

- (2) The mandate of a conference may be, among other things, to give advice on appropriate extrajudicial measures, conditions for release or sentences, including a review of sentences.
- (3) The Minister may establish rules for the convening and conducting of conferences other than conferences convened by a youth justice court judge or a justice.
- (4) Where rules are established pursuant to subsection (3), a conference to which the rules apply shall be convened and conducted in accordance with those rules.

17 (1) Where 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.

(2) Where a young person pleads not guilty to an offence charged against the young person or where a young person 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.

18 (1) Where a youth justice court finds a young person guilty of an offence it may order a pre-sentence report.

(2) A pre-sentence report shall be in writing or may, with leave of the youth justice court, be submitted orally in court.

19 (1) Notwithstanding a minimum penalty in a Provincial enactment, including a municipal by-law, where a youth justice court finds a young person guilty of an offence, it shall consider any pre-sentence report required by the court, 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, and the court shall then make any one or more of the following sanctions:

- (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 interest 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;
- (d) subject to Section 20, impose on the young person a fine not exceeding five hundred dollars to be paid at such time and on such terms as the court may fix;
- (e) subject to Section 20, order the young person to pay to any other person at such time and on such terms as the court may fix an amount by way of compensation for loss of or damage to property, for loss of income or support or for 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 general damages;
- (f) subject to Section 20, order the young person to make restitution within such time and in such manner as the court may fix;

(g) subject to Section 20, order the young person to compensate any person in kind or by way of personal services at such time and on such terms as the court may fix for any loss, damage or injury suffered by that person in respect of which an order may be made under clause (e) or (f);

(h) subject to Section 20, order the young person to perform a community service at such time and on such terms as the court may fix;

(i) make any order of prohibition, seizure or forfeiture that may be imposed under a Provincial enactment, including a municipal by-law, if a person is found guilty or convicted of an offence;

(j) subject to Section 21, commit the young person to custody, to be served continuously for a specified period of time not exceeding six months from the date of the committal;

(k) impose on a young person such other reasonable and ancillary conditions as it deems advisable and in the best interest of the young person and the public,

and the penalty in the Provincial enactment, including a municipal by-law, does not apply.

(2) A sentence pursuant to this Section comes into force on the date on which it is made or on such later date as the youth justice court specifies.

(3) No sentence under this Section shall continue in force for more than two years and, where the youth justice court makes more than one sanction at the same time in respect of the same offence, the combined duration of the sanctions shall not exceed two years.

(4) Where more than one sanction is made under this Section in respect of a young person at the same time in respect of different offences, the continuous combined duration of the sentences shall not exceed two years.

(5) A sentence under this Section continues in effect, in accordance with its terms, notwithstanding that the person against whom it is made is or becomes eighteen years of age or older.

(6) Where a youth justice court makes a sentence under this Section, it shall state its reasons in the record of the case.

(7) A sentence shall 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.

(8) The sentence shall be the least restrictive sentence that will hold the young person accountable for the offence.

20 (1) A youth justice court shall, in imposing a fine on a young person or in making an order against a young person for the payment of money, including an order for compensation or restitution, have regard for the present and future means of the young person to pay.

(2) A young person upon whom a fine is imposed may discharge the fine in whole or in part by earning credits for work performed in a fine-option program established in accordance with the regulations if such a program has been established.

(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 and any other matters necessary for or incidental to carrying out the program.

(4) In considering whether to make an order for compensation or restitution, 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.

(5) Where the youth justice court makes an order for compensation or restitution, 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.

(6) No order may be made for performance of services by the young person 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;
- (b) the order does not interfere with the normal hours of work or education of the young person; and
- (c) the community service to be performed is part of a program that is approved by the provincial director.

(7) No order may be made for performance of personal services or community services unless such services can be completed in one hundred and twenty hours or less and within six months of the date of the order.

(8) No order may be made for personal services unless the youth justice court is satisfied that the person or organization for whom the personal services are to be performed has agreed to the services.

21 (1) A youth justice court shall not commit a young person to custody under clause 19(1)(j) unless the young person has failed to comply with the non-custodial sentences and has a history that indicates a pattern of findings of guilt or has committed an offence that has threatened the safety of or has caused bodily harm to another person.

(2) A youth justice court shall not impose a custodial sentence under clause 19(1)(j) unless the court has considered all alternatives to custody that are reasonable in the circumstances and determined that there is not a reasonable alternative or combination of alternatives.

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

- (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 the young person's 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.

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

(5) Before imposing a custodial sentence, a youth justice court shall consider a pre-sentence report unless, with the consent of the prosecutor and the young person or the young person's counsel, the court is satisfied that the report is not necessary.

(6) A sentence imposed by a youth justice court shall be proportionate to the seriousness of the offence.

(7) Where the youth justice court imposes a sentence that includes a custodial portion, the court shall state the reasons why it has determined that a non-custodial sentence is not adequate.

22 (1) Where a youth justice court imposes a sentence in respect of a young person, the court shall, on the application of the young person, the young person's parent, the Minister or the provincial director, made at any time after six months after the date of the sentence or, with leave of a youth justice court judge, at any earlier time, review the sentence if the court is satisfied that there are grounds for a review under subsection (2).

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

- (a) on the ground that the circumstances that lead to the 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 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 without reasonable excuse;

(d) on the ground that the terms of the 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.

(3) The youth justice court may, before reviewing under this Section a 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 sentence took effect.

(4) 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 purpose of the review.

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

(a) confirm the sentence;

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

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

(6) Subject to subsection (7), when a sentence imposed in respect of a young person is reviewed under this Section, no sentence imposed under subsection (5) shall, without the consent of the young person, be more onerous than the remainder of the sentence reviewed.

(7) A youth justice court may, under this Section, extend the time within which a sentence 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 sentence, but in no case shall the extension be for a period of time that expires more than twelve months after the date the sentence would otherwise have expired.

23 A young person subject to a sentence under clauses 19(1)(c) to (k) who wilfully fails or refuses to comply with that sentence is guilty of an offence punishable on summary conviction.

24 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 pursuant to a sentence;

(b) unlawfully removes a young person from a place referred to in clause (a);

(c) knowingly harbours or conceals a young person who has unlawfully left a place referred to in clause (a);

(d) attains the age of eighteen years while subject to a sentence made under Section 19 and wilfully breaches or disobeys a term or condition of the sentence after attaining that age;

(e) wilfully induces or assists a young person to breach or disobey a term of condition of a sentence; or

(f) wilfully prevents or interferes with the performance by a young person of a term or condition of a sentence,

is guilty of an offence punishable on summary conviction.

25 (1) A young person who is detained in custody or committed to custody under this Act shall be held in a facility designated for the detention of young persons except where a youth justice court judge or, where a judge is, having regard to the circumstances, not reasonably available, a justice authorizes other detention, being satisfied that

(a) the young person cannot, having regard to the young person's 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,

but in such case every effort shall be made to hold the young person separate and apart from any adult.

(2) Subject to subsection (1), the Governor in Council may designate facilities to which a young person may be committed to serve a period of custody and may make regulations respecting such facilities.

26 The provincial director, or the appointee of the provincial director, may transfer a young person in custody from one facility designated for the custody of young persons to another.

27 Where the provincial director, or the appointee of the provincial director, is satisfied from information contained in a progress report that early release is appropriate and in accordance with the regulations, the provincial director may release a young person from custody before the expiration of the period for which the young person was committed to custody.

28 (1) The provincial director, or the appointee of the provincial director, may, subject to any terms or conditions that the provincial director considers desirable, authorize a young person committed to custody pursuant to a sentence made under this Act to be

(a) temporarily released from custody if, in the opinion of the provincial director, or the appointee 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 re-integrating the young person into the community; or

(b) released from custody on such date and during such hours as the provincial director, or the appointee of the provincial director, specifies in order that the young person better carry out the young person's employment or improve the young person's education or training.

(2) The provincial director, or the appointee of the provincial director, may, at any time, revoke an authorization made under subsection (1).

(3) Where the provincial director, or the appointee of the provincial director, revokes an authorization for a young person to be released from custody or where a young person fails to comply with any term or condition of the release from custody under this Section, the young person may be arrested without warrant.

(4) A youth justice court judge or justice who is satisfied upon oath that there are reasonable or probable grounds to believe that a young person, who is named in a revocation or is otherwise unlawfully at large, is present in a building or place, the judge or justice may issue a warrant in the prescribed form authorizing a police officer or a person named in the warrant to search the building or place for the young person.

29 (1) Where agreement has been made between the Province and another jurisdiction in Canada, the provincial director, or the appointee of the provincial director, may arrange for appropriate authorities in the other jurisdiction to assume supervision of a young person who is subject to an order of the youth justice court, including an order committing the young person to custody.

(2) Where the transfer is made and the young person complies with the terms and conditions determined by the

provincial director, or the appointee of the provincial director, the young person is deemed to have complied with the sentence of the youth justice court.

30 (1) No person shall publish by any means a report of

(a) an offence committed or alleged to have been committed by a young person; or

(b) a hearing, adjudication, sentence or appeal concerning a young person who committed or who is alleged to have committed an offence,

in which the name of the young person, a person under eighteen years of age aggrieved by or the victim of the offence or a person who appeared as a witness in connection with the offence, or in which any information serving to identify such a person, is disclosed.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on summary conviction and liable to a fine of not more than one thousand dollars and, in default of payment, to imprisonment for a term of three months.

31 (1) Subject to subsection (2), where a youth justice court judge is of the opinion that

(a) any evidence or information presented to the youth justice court would be seriously injurious or seriously prejudicial to

(i) the young person who is being dealt with in the proceedings,

(ii) a person under eighteen years of age who is a witness in the proceedings, or

(iii) a person under eighteen years of age who is aggrieved by or the victim of the offence charged in the proceedings; or

(b) it would be in the best 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,

the youth justice court may exclude any person from all or part of the proceedings if the court deems that the presence of the person to be unnecessary to the conduct of the proceedings.

(2) A youth justice court may not, pursuant to subsection (1), exclude from proceedings under this Act

(a) the prosecutor;

(b) the young person who is being dealt with in the proceedings, the young person's parent or counsel or any adult assisting the young person;

(c) the provincial director or the appointee of the provincial director; or

(d) a youth worker or probation officer to whom the young person's case has been assigned.

32 (1) A record maintained by the police, a court or the provincial director of an investigation or charge concerning an offence by a young person shall not be disclosed unless the disclosure is desirable in the interest of the proper administration of justice or is made in accordance with the regulations.

(2) Notwithstanding subsection (1), no disclosure shall be made when two years have elapsed from the day the young person was found guilty of the offence, unless an application is made to a youth justice court with notice to the young person.

33 (1) Notwithstanding any enactment, including this Act, every finding of guilt of a young person of an offence lapses and ceases to have effect for any purpose when two years have elapsed from the day the young person was found guilty

of the offence, by a court having original or appellate jurisdiction over an offence prosecuted under this Act.

(2) Nothing in this Section affects the liability of the young person found guilty of an offence to any sentence imposed by or in respect of a finding of guilt for an offence at the date the young person is found guilty.

(3) Where a finding of guilt for an offence has lapsed by virtue of this Section, the person who was found guilty of the offence is not required to

(a) disclose the fact that the person was found guilty of the offence; or

(b) answer affirmatively or negatively any question tending to disclose the fact that the person was found guilty of the offence.

(4) Where this Section conflicts with any Provincial enactment, including a municipal by-law, with respect to the effect of a finding of guilt, this Section prevails.

34 A person attaining eighteen years while the person is in custody shall remain in the facility for young persons and shall serve whatever period of custody to which the person is or may become liable in respect of that matter in a facility where young persons may be detained.

35 (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.

(2) No oral or written statement made by a young person who is less than eighteen years of age, 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 the young person's 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 the young person,

(iii) the young person has the right to consult counsel and a parent or other person in accordance with clause (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 clause (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 or 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) where the young person consults a person in accordance with clause (c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.

(3) The requirements set out in clauses (2)(b) to (d) do not apply in respect of oral statement 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.

(4) A young person may waive the rights under clause (2)(c) or (d) but any such waiver

(a) must be recorded on videotape or audiotape; or

(b) must be in writing and contain a statement signed by the young person that the young person has been informed of the right being waived.

(5) Where a waiver of rights under clause (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 the young person's rights and voluntarily waived them.

(6) Where there has been a technical irregularity in complying with clauses (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.

(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.

(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 out to be eighteen years of age 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 of age or older; and

(c) in all other circumstances, the statement or waiver would otherwise be admissible.

(9) For the purpose of this Section, a person consulted under clause (2)(c) is, in the absence of evidence to the contrary, deemed not to be a person in authority.

36 (1) In any proceedings under this Act, the testimony of a parent as to the age of a person of whom the parent is a parent is admissible as evidence of the age of that person.

(2) In any proceedings under this Act,

(a) a birth or baptismal certificate or a copy thereof purporting to be certified under the hand of the person in whose custody such 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 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.

(3) In the absence, before the youth justice court, of any certificate, copy, entry or record referred to in subsection (2) or in corroboration of any such certificate, copy, entry or record, the youth justice court may receive and act upon any other information relating to age that it considers reliable.

(4) In any proceedings under this Act, the youth justice court may draw inferences as to the age of a person from the appearance of the person or from statements made by the person or from statements made by the person in direct examination or cross-examination.

37 (1) The Governor in Council may make regulations

- (a) establishing rules relating to the practice and procedure to be followed by a youth justice court;
 - (b) respecting forms;
 - (c) respecting extrajudicial measures;
 - (d) respecting conferencing;
 - (e) respecting the disposition of a fine, penalty or forfeiture under this Act;
 - (f) respecting a fine-option program;
 - (g) respecting facilities where young persons may be detained in custody;
 - (h) respecting contributions towards the costs of custody of a young person by the regional municipality, town or municipality of a county or district where the young person resides;
 - (i) defining any word or expression used but not defined in this Act;
 - (j) the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.
- (2)** The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

38 A person who is sixteen or seventeen years of age on the coming into force of this Act and who has been charged with an offence under this Act may be dealt with under this Act if no proceedings have been commenced against the young person before the coming into force of this Act.

39 (1) Any court established or designated as a youth court for the purposes of the *Young Persons Summary Proceedings Act* is deemed, as of the coming into force of this Section, to have been established or designated as a youth justice court for the purpose of this Act.

(2) Any person appointed to be a judge of the youth court for the purpose of the *Young Persons Proceedings Act* 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.

(3) Any program of alternative measures authorized for the purpose of the *Young Persons Summary Proceedings Act* 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.

40 Chapter 509 of the Revised Statutes, 1989, the *Young Persons' Summary Proceedings Act*, is repealed.

41 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

