



IC60

**YOUNG PERSONS**

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**POLICY**

1. The Delta Police Department (Department) will address and treat young persons in a manner that complies fully with legal requirements.

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## **REASON FOR POLICY**

2. To ensure that Departmental practice with respect to young persons is in keeping with the objectives, principles and provisions of the federal *Youth Criminal Justice Act (YCJA)* and the B.C. *Youth Justice Act*.

## **RELATED POLICIES**

CS32 – Protection of Children  
IC30 – Detention, Arrest & Post-Arrest Processing  
IP20 – Statements

## **PROCEDURES**

### **Applicability**

3. This policy applies to young persons who are defined in law as those persons who have attained the age of 12 years, but who are less than the age of 18 years.

### **Principles**

4. The principles of the YCJA are:
  - 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 the YCJA 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. The objectives of the YCJA are:

- a) Extrajudicial measures should be designed to:
  - i) provide an effective and timely response to offending behaviour outside of judicial proceedings,
  - ii) encourage young persons to acknowledge and repair the harm caused to the victim and the community,
  - iii) encourage the involvement of families, including extended families and members of the community, in designing and implementing the measures,
  - iv) provide victims with an opportunity to participate in decisions that relate to the measures that are selected, and to receive reparation, and
  - v) respect the rights and freedoms of young persons, and be proportionate to the seriousness of the offence.

### **Statutory Provisions**

#### ***Extrajudicial Measures***

6. Before initiating judicial proceedings a member must consider whether it would be sufficient to administer one of the measures listed in YCJA:
- a) take no further action against the youth;
  - b) give the youth a warning;
  - c) issue a caution to the youth; or
  - d) refer the young person, with his or her consent, to a program or agency in the community that may assist him or her not to commit offences.
7. If a young person commits a non-violent first offence, it is presumed that an extrajudicial measure is sufficient to address the youth's actions.



8. The decision as to which extrajudicial measure is appropriate must be applied fairly and be proportionate to the offence. The member should use the least restrictive measure that will hold the youth accountable, ensuring the minimum intervention warranted to respond to the conduct. The measure should always be less than one a court would impose for this conduct, should the youth have been tried and found guilty of the offence.
9. Within the limits of fair and proportionate accountability, the measure should be designed and applied with the following principles and objectives in mind:
  - a) emphasize timeliness (ensuring the measure is applied with as close a link to the conduct as possible, to help the youth understand the relationship between action and consequences);
  - b) be an effective intervention;
  - c) promote the rehabilitation of the youth;
  - d) offer meaningful consequences to the youth;
  - e) encourage the youth to acknowledge harm they may have caused;
  - f) encourage the youth to repair harm he or she may have caused;
  - g) involve the family of the youth; and
  - h) respect the youth's rights, and especially any special protections or guarantees of rights applying to youth.

### ***Taking No Further Action***

10. For many minor offences, a decision by the member to take no further action may be the most sensible thing to do. For example, the parents of the young person, the victim or others may have already taken sufficient steps to hold the young person accountable. There would be no need to expend limited police resources and other youth justice system resources on such a case.

### ***Warning Young Person***

11. Warnings by members under Section 6 are intended to be informal warnings. They are an example of a traditional exercise of police discretion. Experience under the old *Young Offenders Act* (YOA) has caused concern that police have decreased their use of this type of informal police discretion



and replaced it with charges or referrals to an alternative measures program.

12. In many minor cases, a warning by a member is a sufficient response from the justice system, just as it was for the parents and grandparents of today's youth. It lets a youth know the limits of acceptable behaviour. There is also evidence that, in terms of recidivism, a warning or taking no further action is as effective as charging the youth or referring him or her to an alternative measures program.

### ***Police Caution***

13. Police cautions are more formal warnings by the police. Based on the experience in some jurisdictions, it is expected that a police caution will be in the form of a letter from the police to the young person and the parents, or it may involve a process in which the young person and the parents are requested to appear at a police station to talk to a senior police officer about the alleged offence.
14. A police caution is intended to make clear to the young person the seriousness of the alleged offence and to provide a police response that is between an informal warning and a charge. As with all extrajudicial measures, a police caution may only be used if the member has reasonable grounds to charge the young person with an offence. Also, the caution should not be used in cases in which taking no further action or an informal warning would be sufficient.

### ***Referrals to Community Programs***

15. Members may, instead of charging a young person, refer the young person to a community program or agency that may help him or her not to commit offences. The consent of the young person is required. The referral may be to a wide range of community resources, including recreation programs, counseling agencies, child welfare agencies and mental health programs.
16. The purpose of the referral is to connect the young person to a program or agency that may address factors that seem to be related to the young person's involvement in crime.
17. This type of extrajudicial measure is a form of pre-charge, police-based diversion that has operated to a limited extent in some parts of Canada under the YOA. It is consistent with the concept of community policing and



its use depends greatly on the extent to which police-community partnerships have been developed.

### **Extrajudicial Sanctions**

18. Extrajudicial sanctions, known as alternative measures under the YOA, are a type of extrajudicial measure that is intended for more serious offences and offenders than would be dealt with by warnings, cautions and referrals. In comparison to other types of extrajudicial measures, a more formal set of rules applies to extrajudicial sanctions.
19. Extrajudicial sanctions may be used only if other extrajudicial measures would not be adequate. The YCJA provides that an extrajudicial sanction may be used only if the young person cannot be adequately dealt with by another type of extrajudicial measure.
20. There is evidence that under the YOA alternative measures programs have been used primarily for first-time offenders who have committed very minor offences. Some of the less serious cases that are currently being dealt with by alternative measures can be dealt with by warnings, cautions and referrals, thus enabling extrajudicial sanctions to be used with cases that would otherwise be sent to the youth court. This approach encourages an increased use of extrajudicial measures that will allow the youth court to be focused on more serious cases.
21. Extrajudicial sanctions may only be used if:
  - a) it is part of a program authorized by the government of the jurisdiction;
  - b) The person considering using the sanction must believe that it would be appropriate, given the needs of the young person and the interests of society;
  - c) The young person must have been informed about the sanction, have been advised of his or her right to counsel, have been given an opportunity to consult counsel and then have consented to its use;
  - d) The young person must have accepted responsibility for the act or omission that forms the basis of the offence. An extrajudicial sanction cannot be used if the young person denies the offence or wishes to have the charge dealt with by the youth court; and



- e) the Crown must believe there is sufficient evidence to proceed with a charge and the prosecution must not be barred.

### **Prosecution Not Barred**

- 22. The fact that an extrajudicial sanction has been used with respect to a young person who is alleged to have committed an offence does not take away the power to lay a charge or to proceed with a prosecution. The court has the power, however, to dismiss the charge in such cases. Where a charge is laid against the young person in respect of an offence, the court must dismiss the charge if it believes that the young person has totally complied with the terms of the extrajudicial sanction. If the court finds only partial compliance has occurred, it may still dismiss the charge if it believes a prosecution would be unfair in the circumstances in light of the young person's performance.

### **Notice to Parent of Extrajudicial Sanction**

- 23. The parent of the young person must be notified if the young person is dealt with by an extrajudicial sanction. The person administering the program is responsible for notifying the parent. The requirement to notify a parent reflects the principle that parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

### **Informing Victims**

- 24. The victim of an offence is entitled, on request, to be informed of the identity of the young person who has been dealt with by an extrajudicial sanction as well as how the offence has been dealt with. This entitlement of victims is consistent with the provisions in the Declaration of Principle (Section 3) that victims should be treated with courtesy and respect and that they should be provided with information about proceedings against young persons.

### **Statements of Young Persons**

- 25. A statement made by a young person to a person in authority is inadmissible unless it is voluntary and unless the person in authority has explained that:
  - a) the young person is under no obligation to make a statement;
  - b) the statement may be used as evidence against the young person;



- c) the young person has the right to consult counsel and a parent or other person (an adult relative or appropriate adult chosen by the youth); and
  - d) the statement must be made in the presence of counsel or anyone else consulted by the young person.
26. Before the statement, the young person must be provided with a reasonable opportunity to consult with counsel and a parent or other person (an adult relative or appropriate adult chosen by the youth). When the youth consults any of these people, the young person must be given a reasonable opportunity to make their statement in their presence.
27. These requirements (other than that the statement must have been voluntary) do not apply to spontaneous statements made to a person in authority where that person has not yet had the opportunity to comply with the YCJA.
28. A young person may waive his or her rights to consult when making a statement.
29. The court may admit into evidence a statement even where there has been a technical irregularity in complying with the requirements prior to or while it was being taken.

**Admissibility of Statements**

30. No oral or written statement made by a young person to a person in authority, upon arrest or detention, or upon the person in authority having reasonable grounds to believe that the young person has committed an offence is admissible against the young person unless the statement is voluntary and meets the following conditions:
- a) before the statement, the person in authority explained that:
    - i) the young person is under no obligation to make a statement,
    - ii) the statement may be used as evidence against the young person,
    - iii) the young person has the right to consult counsel and a parent, and



- iv) the statement must be made in the presence of counsel or anyone else consulted by the young person.
31. Before the statement, the young person was provided with a reasonable opportunity to consult counsel with a parent or any other appropriate adult was not a co-accused or under investigation for the same offence.
  32. If the young person consulted counsel, a parent or another person, the young person was given an opportunity to make the statement in that person's presence.
  33. The above conditions do not apply to oral statements made spontaneously to a person in authority before that person has had the opportunity to comply with the requirements of the YCJA. If the young person is cautioned as required, the young person may waive their rights, but the waiver must be recorded or written in a signed statement. The young person's waiver may be accepted without recording or a signed statement if the youth justice court is satisfied that the young person was informed of his or her rights and voluntarily waived them.
  34. The youth justice court may admit into evidence a statement taken despite a technical irregularity in complying with the YCJA, if the court is satisfied that admitting 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.
  35. If a young person satisfies the judge that a statement was made under duress imposed by any person who is not a person in authority, then the youth justice court judge may rule that the statement is not admissible.
  36. The youth justice court judge may admit a statement or waiver if, at the time of making the statement:
    - a) the young person represented himself or herself as being 18 years old or older;
    - b) the person to whom the young person made the statement or waiver made reasonable inquiries as to the young person's age and had reasonable grounds to believe he or she was 18 years old or older; and
    - c) in all other circumstances the statement or waiver would otherwise be admissible.



37. A statement made by a young person during a medical or psychological assessment is inadmissible as evidence in a youth justice court unless the young person consents. Such a statement is admissible for the purposes of:
- a) making a decision as to whether an adult or youth sentence is to be applied;
  - b) determining a young person's fitness to stand trial;
  - c) determining the young person's state of mind during the commission of an alleged offence;
  - d) challenging the credibility of the young person or establishing the young person's perjury;
  - e) deciding whether to continue custody;
  - f) setting conditions for conditional supervision; and
  - g) reviewing possible breach of conditional supervision or deciding an application for disclosure.

### **Right to Counsel Upon Arrest or Detention**

38. Once arrested or detained, a young person is to be advised without delay by the arresting member or the members in charge the young person's right to counsel. The young person is also to be given a reasonable opportunity to obtain counsel. If the young person does not have a lawyer at the first appearance before the court, the youth justice court judge or justice must inform the young person of the right to retain and instruct counsel.
39. The investigating member will inform, as soon as practicable, the parents as to the nature of the arrest and the status of the young person.
40. If the young person is not represented, before accepting a plea the court must:
- a) ensure that the young person understands the charge;
  - b) if applicable, explain the consequences of being liable to an adult sentence, and explain the process for applying for a youth sentence; and



- c) explain the plea options, and, if applicable, the election options.
41. If the court is not satisfied that the young person understands these matters, then the court must direct that the young person be represented by counsel.

### **Intoxicated Young Persons**

#### ***Response***

- 42. When a young person is found to be consuming or in possession of liquor, the liquor must be seized and processed in accordance with procedures outlined for handling such property.
- 43. Section 43 of the *Liquor Act* allows for the arrest and charge of any person intoxicated by alcohol or a drug in a public place.
- 44. Only those young persons unable to care for themselves will be arrested.
- 45. Normally, young persons will be released to their parent/guardian.

#### ***Notifying Parents***

- 46. Immediately after a young person is arrested or detained in custody, the parents will be notified, by the investigating member, either orally or in writing, of the place of detention and the reason for the arrest.
- 47. If no parent is available, a notice may be given to an adult relative or other adult known to the young person who is likely to provide assistance.
- 48. If no responsible parent/guardian can be located, the young person must be turned over to the Ministry of Children and Families Emergency Services Section, or may be held temporarily in Surrey RCMP Detention Centre.
- 49. A member must not hesitate to hospitalize a young person found to be intoxicated by liquor or under the influence of inhaled solvent or drugs to the extent that the well being of the young person is in doubt.
- 50. If the member decides the hospitalization of the young person is necessary, immediate steps must be taken to notify the parent/guardian of the young person or the duty worker at the Ministry of Children and Families as to the location and condition of the young person.
- 51. Parents will be immediately notified, by the investigating member, after a young person has been:



- a) issued a summons or appearance notice; or
  - b) released on giving a PTA or entered into Recognizance.
52. The investigating member will provide a copy of all release documents to the young person's parents.
53. The young person shall be released to the care of a parent/guardian or an appropriate designate. If no parent or guardian can be located the young person shall be released to the care of the Ministry of Children and Families or their designate.

### Pre-Trial Release & Detention

54. In general, both the YCJA and related provisions of the *Criminal Code* that are incorporated in this phase of youth justice system set up by the YCJA are based on a presumption of release. Only in exceptional circumstances should the young person be arrested and detained. Unless the member determines that a *Criminal Code* provision either requires or justifies the young person's pre trial detention, the young person must be released.
55. In exercising their discretion to release or detain, members should be mindful of the following objectives that are central to the system set up by the YCJA:
- a) policy of restraint in using the criminal law power;
  - b) direction to choose the least restrictive alternative; and
  - c) objective of reducing youth incarceration.
56. The member's initial decision to detain a young person is significant, since it:
- a) has an immediate impact on his/her liberty;
  - b) sets in motion further justice system processing; and
  - c) involves other decision-makers such as crown prosecutors, justices of the peace, and youth court judges.
57. The powers of arrest, detention and release granted by the *Criminal Code* are the same for young persons and adults. However, if a member arrests a young person, the general rule is that the young person must be released



unless the member determines that there is a reason provided in the *Criminal Code* that justifies or requires the pre-trial detention of the young person.

58. Rather than detaining the young person, the arresting member or officer in charge at the police lock-up can often use other options to achieve the objectives of detention/restraint in the use of the criminal law, the need to choose the least restrictive alternative and the YCJA objective of reducing the incarceration of youth.

### **Conferences**

59. A conference can be convened by a youth justice court judge, the provincial director, a police officer, a justice of the peace, a prosecutor or a youth worker for the purpose of making a decision under the YCJA.

### **Purpose of Conferences**

60. Section 19 of the YCJA stipulates the purpose and rules for Conferences. Conferences may be convened, among other things, to give advice on appropriate extrajudicial measures, conditions for judicial interim release, sentences, including the review of sentences, and reintegration plans.

### **Publication**

61. A central principle of the youth justice system is to protect the identity of a young person who is dealt with under the YCJA.
62. As a general rule, the YCJA prohibits the publication of a young person's name and of any information that could lead to the young person's identification. There are, however, some exceptions to the general rule.
63. Members should note publication is not banned where:
- a) information is published in the course of the administration of justice, if the publication's purpose is not to make the information known to the community; or
  - b) a judge is satisfied there is reason to believe the young person is a danger to others and publication is necessary to assist in the apprehension of the young person.



64. Section 111 of the YCJA provides for publication bans on information identifying a child or young person as either a victim or witness, exceptions to these bans, as well as applications for leave to publish.

### Keeping of Records

65. Part 6 of the YCJA provides the framework for the keeping of records on young persons including the disclosure of records. Generally, Youth Courts, police, governments, and professional and community-based organizations may keep records on young persons for the purpose of investigations and judicial and extrajudicial proceedings.

66. A peace officer may disclose information contained in a record to:
- a) the youth and or the youth's counsel may have access to the record at anytime;
  - b) any person, where it is necessary to disclose the information during the offence's investigation;
  - c) the Minister of Justice of Canada, where disclosure 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*;
  - d) an insurance company for the purpose of investigating a claim arising out of the young person's offence or alleged offence; or
  - e) any professional or other person engaged in the young person's supervision or care (including administrators of schools, school boards, etc), where necessary to ensure the young person's compliance, facilitate rehabilitation, or protect staff and students.

### Breaches of Condition

67. Under the YCJA, where the young person breaches a condition of a probation order or an intensive support and supervision order, the preferred approach is to consider non-judicial responses or to apply to the court for a review of the order, rather than to charge the young person with a new offence. This is consistent with principles and objectives in the YCJA to:
- a) reduce use of court;
  - b) reduce youth incarceration, particularly for non-violent offences;



- c) ensure measures taken against young persons are fair and proportionate to the seriousness of the offence; and
  - d) reserve the system's most serious interventions for the most serious offences.
68. Police should consider referring such situations to a probation officer or youth worker to determine what, if any, action should be taken in the matter. One option would be to seek a review of the sentence by applying to a youth justice court when the:
- a) young person's circumstances change materially;
  - b) young person is unable or struggling to comply with the terms of a sentence; or
  - c) terms of the sentence have negative effects on the young person's education, employment, or access to services (Section 59 of the YCJA.)

\*Revised Dates:  
15 October 2012  
27 May 2014