

RIGHTS

# THE YOUNG OFFENDERS ACT



Department of Justice  
Canada

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Canada

Canada



# THE YOUNG OFFENDERS ACT



HIGHLIGHTS

# Table of Contents

When did the <i>Young Offenders Act</i> come into effect? .....	1
What approach to young offenders does the <i>Act</i> take? .....	2
To whom does the <i>Act</i> apply? .....	4
Will every young person who breaks a federal law appear in youth court? .....	5
Once the authorities have decided to take a young person to court, what is the procedure and what rights does the young person have? .....	7
What happens to a young person if he or she is detained in custody before the youth court has given its decision? .....	9
Will the youth court deal with every young person who comes before it? .....	10
What sentences can the youth court give? .....	12
What does a committal to custody involve? .....	14
Can a young person appeal against the youth court's decision? .....	16
Can a sentence be changed once it has been given? .....	17
What happens if a young person does not abide by the disposition? .....	18
Are youth court hearings open to the public? .....	19
Can young people be identified on television and in newspapers? .....	19
Can the police fingerprint and photograph young people? .....	21
What happens to the records of a young person who has come into conflict with the law? .....	22
How can the community play a part in the administration of the <i>Young Offenders Act</i> ? .....	24
Conclusion: The role of the federal, provincial and territorial governments .....	25

## When did the Young Offenders Act come into effect?

The *Young Offenders Act* was given Royal Assent on July 7, 1982. This signified that it had passed through all stages of the parliamentary process. However, it did not come into effect immediately: it was proclaimed on April 2, 1984. On proclamation, all the *Act's* provisions, except the one referring to maximum age, came into effect.

The clause dealing with maximum age states that the *Act* covers young people up to the age of 17 inclusive. Because some provinces and both territories had to change their existing arrangements to accommodate this provision, the application of this clause was not made mandatory until April 1, 1985.

In April 1986, in response to difficulties that had been encountered during the first two years of the *Act's* administration, amendments were proposed. All the proposals were in force by November 1, 1986. These amendments did not alter the fundamental principles of the *Act*, but did introduce important and necessary improvements.



## What approach to young offenders does the Act take?

The philosophy of the *Act* is expressed in a policy section entitled "Declaration of Principle". This section serves as a guide to the *Act's* spirit and intent for everyone concerned with its administration.

The *Act* is based on four key principles that strike a balance between the needs of youthful individuals and the interest of society. These principles are:

- Young people are responsible for their behaviour and should be held accountable in a manner appropriate to their age and maturity.
- Society has a right to protection from illegal behaviour and a responsibility to prevent criminal conduct by young people.
- Young people have special needs because they are dependents at varying levels of development and maturity. In view of society's right to protection and these special needs, young people may require not only supervision, discipline and control but also guidance and assistance. In recognition of this, the *Act* declares that
  - alternative measures to the formal court process, or no measures at all, should be considered for the young offender, as long as such a solution is consistent with the protection of society;
  - young offenders should be removed from their families only when continued parental supervision is inappropriate. The *Act* recognizes the responsibility of

parents for the care and supervision of their children. Parents will be encouraged and, if necessary, required to take an active part in proceedings that involve their children.

- Young people have the same rights as adults to due process of law and fair and equal treatment, including all the rights stated in the *Canadian Charter of Rights and Freedoms* and in the 1960 *Bill of Rights*. To protect their rights and freedoms, and in view of their particular needs and circumstances, young people should have special rights and guarantees. This booklet describes the special rights and guarantees that are outlined in the *Young Offenders Act*. The Declaration of Principle at the beginning of the *Act* mentions in particular that
  - young people have the right to participate in deliberations that affect them;
  - young people have a right to the least interference with their freedom that is compatible with the protection of society, their own needs and their families' interests; and
  - young people have a right to be informed of their rights and freedoms.



## To whom does the Act apply?

The *Act* covers only those young people charged with specific offences against the *Criminal Code* and other federal statutes and regulations. It does not apply to those charged with offences against provincial laws (which deal with offences such as traffic and liquor violations) or municipal bylaws. Provinces can, however, enact complementary legislation adopting the provisions of the *Young Offenders Act* to deal with such offences.

The catch-all offence of "delinquency", which covered all juvenile offences including the status offences of "sexual immorality" and "any similar form of vice", has been abolished. This means that young people do not face the possibility of receiving a criminal conviction for behaviour that is not illegal for an adult and that can be dealt with more appropriately by child welfare, youth protection legislation and other forms of provincial legislation.

Under the *Act*, the minimum age of criminal responsibility has been set at 12 years. If a younger child performs a harmful or criminal act, he or she can be dealt with under provincial laws, such as child welfare legislation. Those laws allow provincial authorities to intervene and, as necessary, have the issue of the proper care and custody of the child dealt with in a family court.

The *Act* stipulates that "'young person' means a person who is or . . . appears to be twelve years of age or more, but under eighteen years of age". This means that the *Act* covers individuals from their 12th birthday until their 18th birthday. Once they have reached the age of 18, they become adults from the point of view of the criminal law and are subject to the ordinary court system.



## ALTERNATIVE MEASURES

### Will every young person who breaks a federal law appear in youth court?

Not necessarily. One of the innovative provisions of the *Act* is the recognition that alternative measures to the formal court process might be used. It has been recognized for some time that many young people are brought to court unnecessarily, when other effective ways exist or can be devised to deal with them.

In some cases, the police or other authorities may consider that the best way to deal with a young person is to take no formal measures at all. Police discretion has been a fundamental cornerstone in the administration of justice in this country for years.

In other cases, the authorities may choose alternative measures to the formal court proceedings. These alternative measures, commonly known as diversion programs, may entail community service, involvement in special education programs, counselling or restitution agreements. The *Act* sanctions such practices in law, but does not prescribe a particular model or mechanism. Individual provinces and territories can develop the programs to suit their particular circumstances.

Alternative measures are not a substitute for the judicial process but additional options for dealing with young people who break the law. They are intended not only to avoid unnecessary referral to the court but also to offer a young person the opportunity to accept responsibility for his or her behaviour and to become involved in the reparation of the wrongdoing, frequently for the benefit of and with the participation of the victim.

It is the intent of the legislation that the informality of alternative measures will not prejudice the basic legal rights of young peo-



ple, or their equitable treatment. Therefore, the *Act* contains built-in safeguards to protect young people who enter these programs. In particular:

- The young person must have accepted responsibility for the offence that has been committed.
- He or she must be fully informed about the alternative measures program. The young person has the choice of participating in alternative measures or may prefer to have the charge dealt with by the court.
- He or she has the right to consult legal counsel before agreeing to enter an alternative measures program.
- Alternative measures cannot be used in any case unless there exists sufficient evidence to justify the prosecution of the case.
- Any admission of guilt that the young person has made in order to participate in an alternative measures program cannot be used as evidence in subsequent court proceedings.
- Young people should not be punished twice for the same offence. Once an offender has completed an alternative measures program, the offence cannot subsequently be dealt with in the youth court, and any charge will be dismissed. Where there has been compliance in part, the youth court judge is given the power to dismiss any charge if it is felt that a subsequent prosecution would be unfair. And where a subsequent prosecution is allowed, the young person's participation in an alternative measures program may be taken into account by the youth court judge in making a disposition.



## Once the authorities have decided to take a young person to court, what is the procedure and what rights does the young person have?

The *Act* establishes strict procedures. The young person's rights from the moment he or she has been arrested or summoned, the safeguards on these rights, and the special procedures that have been developed to answer young people's special needs, are made explicit. Here are some of the rights, safeguards and special procedures enumerated in the *Act*:

- The young person's parents must be notified of all proceedings and encouraged or, if necessary, ordered to attend. Where their child has been found guilty, they will be allowed to make known their views prior to the court's sentence.
- The young person has a right to legal representation if proceedings are taken against him or her.
- Access to legal counsel is guaranteed at crucial stages of proceedings — including during a trial, a review of a disposition or a transfer to adult court — if the young person is unable to find a lawyer. The law is also clear that young persons themselves, not their parents or other adults, give instructions to the lawyer.
- Young people must be informed of their rights at particular stages of proceedings. For instance, police officers must tell them their rights on arrest when they apprehend them, and youth court judges must tell them their rights in court when they appear before them.

- Before making a decision, the judge may ask for a pre-disposition report. This is an assessment of the young person's circumstances — including age, behaviour, previous brushes with the law, any experience in alternative measures programs, school records and relationship with parents — and an appraisal of the programs and facilities available to the court to meet the young person's needs. The young person, his or her parents, and the victim in the case will all be interviewed for the report. The judge must ask for a pre-disposition report if he or she is considering the transfer of the young person to an adult court. A report is also necessary when a sentence involving custody is being considered, although this requirement can be waived if all parties, including the judge, agree that a report would not be useful.
- If the judge considers that the young person is suffering from a physical or mental illness or disorder, a psychological disorder, an emotional disturbance, a learning disability or mental retardation, he or she can ask for a medical, psychological, psychiatric or similar assessment.



### What happens to a young person if he or she is detained in custody before the youth court has given its decision?

The *Act* defines a precise procedure that police and court authorities must follow when they are considering the detention of a young person. In particular:

- Young offenders have the same entitlement to bail as adult offenders. The youth court will deal with bail applications for young people using the rules and criteria that are set out in the *Criminal Code*.
- The young person's parents must be notified.
- Young people must, as a general rule, be detained separately from adult offenders.
- The youth court will have the power to release a young person into the care of a responsible adult when it appears that the adult can exercise control and guarantee the young person's subsequent attendance in court.
- Young persons released on bail or in the custody of a responsible adult can be returned to detention if the conditions of release are not followed.

## Will the youth court deal with every young person who comes before it?

Not necessarily. The *Act* is expected to be effective in nearly all cases. However, there will be occasions when the protection of society requires that an offender be dealt with more severely than a youth court is empowered to act. Nevertheless, the young person's special needs will always be taken into account.

Such an occasion can only arise when the young person is alleged to have committed a serious indictable offence (e.g., manslaughter, armed robbery or sexual assault) and was at least 14 years old at the time of the alleged offence.

The *Act* provides criteria to guide youth court judges in deciding whether to transfer cases to adult court. In each case the judge must consider such factors as the degree of seriousness of the alleged offence, the young person's maturity and character, whether he or she had committed previous offences, and what treatment or correctional resources are available. The judge must take into account a pre-disposition report and any representation the parents make before authorizing a transfer. The decision to transfer a young person from the youth court to the adult court must be made before any decision is made on the guilt or innocence of the young person.

Transfer to the adult court has serious consequences. When a trial is held in an adult court, the young person is subject to the range of sentences available to the adult court, which may be more severe: maximum sentences in the adult court range from six months to life imprisonment. He or she will not have the benefit of the special safeguards developed for young offenders.



In view of its serious consequences, a transfer to adult court is considered to be a measure of last resort, for cases where it is the only way to protect society. The transfer order is subject to review by a higher court.

In the majority of cases, application for transfer to the adult court will be made by the Crown. But the young person also has the right to apply for a transfer. In such cases, the youth court judge will still decide on the same criteria: whether such a transfer is consistent with the interests of society and the young person's special needs.



## DISPOSITIONS

### What sentences can the youth court give?

Youth court sentences are called dispositions and are always made for a fixed period of time. The wide range of dispositions available to the youth court is intended to permit the judge to take into account the special circumstances and needs of young people, the rights and needs of victims and the need to protect society.

The dispositions available are:

- An absolute discharge.
- A fine of up to \$1,000.
- A payment to the victim of the offence in compensation for loss or damage to property, loss of income, or special damages that arose because of personal injury to the victim. A judge who is considering such an order will take into account the present and future potential of the offender to pay and also the views of the victim.
- An order of compensation in kind or by way of personal service to the victim of the offence. A judge who is considering such an order must, once again, consider the views of the victim.
- A community service order, which would require the young offender to perform a specified amount of work for the community.
- If treatment is recommended in a medical or psychological report or an order directing that the young person be detained for treatment, detention for treatment in a hospital or other appropriate facility, as long as the young person, the young person's parents and the facility consent to this.

- Probation for up to two years.
- Committal to intermittent or continuous custody for a specified period. Under the *Young Offenders Act*, committal to custody is to be exercised with the utmost restraint, because it is a radical restriction of a young person's freedom. Custodial dispositions may not, for most offences, exceed two years for any given offence. A young offender may, however, receive up to three years in custody if he or she is being sentenced for an offence for which an adult offender would be liable to life imprisonment, or if he or she is being sentenced for a combination of two or more offences.
- Any additional conditions that the judge considers are in the best interest of society or the young offender, such as the surrender of illegal goods or a prohibition against the possession of firearms.
- Any combination of these dispositions, as long as the combination does not exceed the stated maximum of two years for one offence (or the ~~three~~ <sup>five</sup> year maximum for more serious offences), or three years for two or more offences.
- Consequent sentences totalling more than three years when a young person commits a subsequent offence while still subject to an earlier sentence.

In no case would a young person be subject to a greater penalty than the maximum penalty that an adult could receive for committing the same offence.

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*Note: In the youth court, the term "disposition" is used in place of "sentence", which applies in adult courts only.*

## What does a committal to custody involve?

A committal to custody means that the young offender will be admitted to a specially designated residential facility from which his or her access to the community is restricted.

When the youth court commits a young person to custody, it must specify whether it intends the offender to enter "open" or "secure" custody. Open custody means admission to places like community residential centres, group homes, child-care institutions or forest and wilderness camps. Secure custody means admission to facilities specially designated for the secure containment or restraint of young offenders. This containment and restraint may take the form of either physical barriers or 24-hour supervision.

The youth court judge must, in the great majority of cases, consider a pre-disposition report before committing an offender to either level of custody. Custodial dispositions will only be given after very careful consideration and, because they represent a radical restriction of a young person's freedom, are only to be ordered when it is necessary for the protection of society. Open custody will be ordered whenever possible; secure custody is a measure of last resort. The *Act* outlines specific conditions for committals to secure custody. The offence must be very serious and in most cases the offender must be 14 years of age or more. Even more restrictive criteria must be met before a young person under 14 is committed to secure custody.

Once the youth court has made a custody order and specified the level of custody, the provincial director will decide which facility within that level the young offender will enter. The provincial director is also empowered to move offenders between institutions and programs within a given level, to order a temporary release to the community and to revoke such an order, to

initiate the process that can lead to the offender's early release from custody, and to transfer an offender from open to secure custody for up to 15 days if the young person tries to escape or if the safety of the young person or others is threatened.

The *Act* allows for two types of temporary release:

- A temporary leave of absence, up to a maximum of 15 days, for medical or humanitarian reasons, or to assist in the reintegration of the young offender into the community.
- A day release so the young person may attend school or training, continue employment or take part in a self-improvement program.

However, the young offender is subject to the jurisdiction of the youth court throughout his or her disposition.

Therefore, if a provincial director wants to change the young offender's level of custody from secure to open, he or she can only do so with written authorization from the youth court. If the director wants to transfer an offender to an adult facility because the offender has passed his or her 18th birthday, the director must apply to the court for a hearing: only the youth court can authorize such a transfer. Although either the director or a review board may recommend that a young offender be allowed to serve the balance of a custodial disposition in the community, only the youth court itself can effect an early release or set the conditions of release — that is, the terms of probation.



The provisions of the *Act* that deal with custody and the relative responsibilities of the youth court and of the provincial directors have one important underlying principle: the judiciary should ultimately decide on issues that affect the liberty of a young person and the protection of society. However, the *Act* is intended to give provincial directors enough flexibility to address the special needs of young people within the context of the provinces' programs and facilities.



## Can a young person appeal against the youth court's decision?

Yes. Under the *Act*, young people have rights of appeal similar to those that adults have under the *Criminal Code*.

A young person can appeal a finding of guilty or the disposition that a youth court judge orders. However, he or she cannot appeal a subsequent adjustment to the disposition made during the review process.

A decision to transfer a young person to adult court may also be reviewed by a higher court.

It should be noted that the Crown has corresponding rights.

## Can a sentence be changed once it has been given?

Yes. The *Act* outlines an innovative and thorough review procedure to ensure that each disposition is monitored at regular intervals. The procedure has three main objectives:

- To keep the disposition relevant and geared to the circumstances and progress of the young offender.
- To give everyone involved — the offender, the parents, the provincial director and the Attorney General — the opportunity not only to initiate a review, but also to attend and be heard.
- To protect both the rights of the young person and the interest of society while retaining jurisdiction within the court.

The review system in the *Young Offenders Act* has a positive purpose: it allows the courts to modify a disposition to reflect progress made by the young person, new program opportunities that become available after a disposition is made, or other changes in circumstances.

The *Act* very thoroughly describes the review system and the rights and responsibilities of all those involved.

Where there are sufficient grounds, custodial dispositions may be reviewed on application from any of those involved in the case. A young offender who has been committed to custody for more than a year will have a mandatory review at least every year. The review will be conducted either by the youth court or, at the option of the province, by a provincially appointed review board. The judge or review board will take into account a report on the young offender's progress, any new facilities and

programs that were not available when the original disposition was made, and any other relevant facts. The young person has the right to legal representation at this hearing. The youth court judge or review board may decide at the review to confirm the original disposition or move the offender from secure to open custody. Although a review board can recommend the release on probation of an offender, only the youth court can confirm the decision to release a young offender and place him or her on probation.

All noncustodial dispositions will be reviewed by the youth court judge. These reviews may be arranged at the request of the provincial director, the young offender, his or her parents or the Crown prosecutor. During the review the court may confirm the original disposition or amend the terms of the disposition; the judge may not make it more severe unless the young person agrees.

## What happens if a young person does not abide by the disposition?



If a young offender has either willfully failed or refused to comply with a disposition, or escaped or tried to escape from custody, he or she can be charged and tried with a specific criminal offence, and new and consecutive dispositions may then be imposed.

## Are youth court hearings open to the public?

Yes. The *Act* opens up youth court hearings so that justice will not only be done but will also be seen to be done.

Open hearings ensure public scrutiny and monitoring of the youth court system, and are in keeping with the spirit of the *Canadian Charter of Rights and Freedoms*. The public scrutiny should in turn provide an added guarantee for the protection of young people's rights. However, the judge will have the authority to exclude anyone when:

- The exclusion is in the interest of public morals, the maintenance of order or the proper administration of justice.
- Information being presented to the court would be "seriously injurious" or "seriously prejudicial" to any young person or child present, whether he or she is the accused, the victim or a witness.

## Can young people be identified on television and in newspapers?

Although details of an offence or a trial can be reported, the news media must respect the anonymity of any young person involved, whether he or she is the accused, the victim or the witness. However, there are two exceptions to this limitation on the publication of identities:

- When a peace officer requests it, a youth court must make an order permitting publication of the identity of a young



person who poses a danger to the public, if publication is necessary to aid in the apprehension of the young person.

- A youth court may make an order permitting publication of the identity of an accused young person, or of a young person or child who is a victim or witness, if requested to do so by the person to be identified.



## Can the police fingerprint and photograph young people?

Yes, but only with certain safeguards and when serious cases are being investigated. A young person may be fingerprinted or photographed only in those circumstances in which an adult can legally be subjected to such procedures.

The *Young Offenders Act* permits police to fingerprint and photograph young people because it recognizes the need for this information in the detection and investigation of crime, but it specifies that use of this information must be primarily limited to criminal justice purposes.

Photographs or fingerprint records cannot subsequently be used for any purpose if a young person is acquitted, if the charge is dismissed, or if no proceedings are taken against him or her. This applies to cases where the young people have entered alternative measures programs. The fingerprints and photographs of young offenders who are convicted in court may be kept with the youth court records and at the central repository administered by the RCMP. The police force responsible for the investigation may also keep a copy.

## What happens to the records of a young person who has come into conflict with the law?

Although young offenders are intended to take responsibility for their illegal behaviour, the consequences for them are not intended to be as severe as those for adults in the ordinary court. Therefore, the *Act* contains very specific provisions dealing with the creation, maintenance, confidentiality and use of young people's records.

As a general rule, disclosure of records is prohibited except for specified purposes. Unauthorized disclosure by anyone is an offence. The *Act* specifies the purposes for which the records may be used. These purposes include bail or parole applications, subsequent sentencing in either the youth or the ordinary courts, and research or statistical projects if the judge is satisfied that disclosure is desirable in the public interest.

The *Act* specifies the procedure for the storage, control of and access to young offenders' records. The persons who may be allowed access to records are specified in the *Act* and may also be specified in lists that are approved by the Lieutenant-Governor.

Where a young person is charged with an offence and is either acquitted or the charge is dismissed, withdrawn or stayed and no proceedings are taken, all records, including fingerprints and photographs, are treated as if they do not exist. However, there is an exception: under certain circumstances, a youth court judge may allow a person with a valid and substantial interest in a record to see it.

The same rule applies to the records of young people who are found guilty by the youth court when a qualifying period of time has elapsed. The qualifying crime-free period specified in the *Act* is five years from the date of conviction for summary conviction offences (offences that ordinarily carry a maximum of six months' imprisonment under the *Criminal Code*) and five years from the end of the sentence for those who have committed the more serious offences known as indictable offences. Records of indictable offences will continue to be used if the individual is convicted of further indictable offences.

Under these provisions, young offenders will be given a fresh start when they have shown it is deserved. The provisions are intended to minimize the risk of young people being stigmatized as "offenders" well beyond their youth, if not for life. The effect of these provisions is that there will be "in law" no conviction against the young person after the crime-free period: he or she will not face all the disabilities that flow from having a criminal record.

## How can the community play a part in the administration of the Young Offenders Act?

The *Act* provides for the establishment of youth justice committees through which interested parties can participate in the juvenile system.

The *Act* specifies that in each province the Attorney General or other Cabinet minister designated by the province, or anyone named as delegate — for example, the provincial director — may establish such committees. The minister, or delegate, may decide how the committee members are selected and what the committees will do. The method of selection could include election by members of the community. Committee members serve without pay. They can assist in any aspect of the administration of the *Young Offenders Act*, such as suggesting and monitoring alternative measures programs or community-based dispositions and participating in their actual administration.

The community therefore has an opportunity for involvement in the juvenile justice system. Youth committees can play a role in preventing crime, protecting society and safeguarding the rights of young people.

# The role of the federal, provincial and territorial governments

The federal, provincial and territorial governments share an important responsibility towards young people who come into conflict with the law. They are equally responsible for efforts to discourage young people from crime and to direct them towards useful and productive lives. In addition, both levels of government are responsible for the protection of society.

The juvenile justice system, of which the *Young Offenders Act* is the foundation, is the mechanism by which the two levels of government fulfill their dual responsibilities. Within the system, each level of government has its own role.

The Government of Canada is responsible for enacting criminal law. It is also responsible for assuring the same opportunities for justice and legal rights to young people wherever they live, and for promoting national standards for programs developed to meet the needs of young offenders. The setting of a uniform maximum age for all young people dealt with under the *Act* is an example of the way in which the federal government fulfills its obligations.

Within the framework provided by the *Young Offenders Act*, the provincial and territorial governments have an equally important role: they are responsible for administering the law that Parliament enacts. The various professionals, such as family and youth court judges, lawyers, police officers, juvenile correctional officers and social workers, make the system work. The fact that the provinces and territories administer juvenile justice allows the system to reflect regional and cultural differences — for instance,



in the range of services and programs offered, both for alternative measures and for youth court dispositions.

Young people are Canada's future. Under the *Young Offenders Act*, they are guaranteed the same rights to justice under the criminal law as other Canadians, and given a fair opportunity to take their place as responsible members of society.