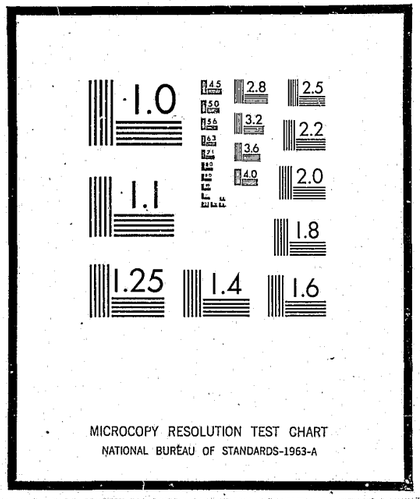

Young Persons in Conflict with the Law

A Report of the Solicitor General's Committee on Proposals for new legislation to replace the Juvenile Delinquents Act

Solicitor General Canada
Solliciteur général Canada

Preface by Committee

Ottawa, July 31 1975

The Honourable Warren Allmand,
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340 Laurier Avenue West,
Ottawa, Ontario

Sir:

The Ministry of the Solicitor General Committee on Legislation on Young Persons in Conflict with the Law, in accordance with your request, has reviewed the Juvenile Delinquents Act, Bill C-192 "The Young Offenders Act" and the representations made in relation thereto and the deliberations of the Federal/Provincial Joint Review on Young Persons in Conflict with the Law established at the December 1973 Federal-Provincial Conference of Corrections Ministers held in Ottawa. We have the honour to respectfully submit the attached report which contains our considerations and recommendations for proposed legislation to replace the Juvenile Delinquents Act. It should be noted that it was not intended that the members of the Committee reflect the official views and policies of their departments or governments. We would like to take the opportunity to express our appreciation to Mr. William Outerbridge who was a member of our Committee until his appointment as Chairman of the National Parole Board, and to Messrs. R. James Siberry and Thomas M. Sterritt of the Policy Planning and Program Evaluation Branch of the Ministry of the Solicitor General Secretariat for their invaluable assistance in the drafting of the report. Finally, a special word of thanks to Mr. George Koz also of the Ministry Secretariat for his handling of numerous administrative tasks.

Respectfully yours,

Roger Tassé, Q.C.,
Deputy Solicitor General of Canada
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Canadian Society Today

Canadian society today is characterized by rapid social and technological development and change. Swiftly moving events make us dramatically aware that yesterday's solutions are not always appropriate solutions to today's problems, let alone tomorrow's. The phenomenon of social change brings into question the nature and purpose of our traditional social institutions. Such basic institutions as the family, the school, the church, the government and the law are criticized as not being sufficiently responsive to the realities and needs of people's lives. There is evidence that the services and structure which these institutions have provided in the past reflect to a lesser degree the desires and needs of growing numbers of Canadians.

The urbanization and mobility of our society challenge the framework of the family structure. When coupled with a preoccupation for material goods, our consumer-oriented society presents demands that are difficult to reconcile, particularly for young people who are also trying to cope with problems associated with adolescence. Social problems such as poverty and disparities between socio-economic groups, mental illness, alcoholism, drug abuse and crime put stress on the stability and benefits that have traditionally derived from the family and erode the fabric of our society.

The Challenge of our Times — Law Reform as a Reflection of Changing Values and Needs

Within a modern democratic society, it is neither possible nor desirable to expect that the lifestyles and behaviour of individuals will conform to a single standard. A society that places a high premium on the protection of human rights and fundamental freedoms and prizes material success and rewards individual aspirations, must recognize that the pursuit of such ideals also fosters a diversity in forms of behaviour. Nevertheless, society must establish standards of conduct so

that its members are not denied access to the realization of these ideals. Social change requires the continuing redefinition of the parameters of acceptable and unacceptable conduct. In order to keep abreast of the changing needs and values of society and youth in that society, greater priority must be given to law reform in general and specifically to reviewing and adjusting the law, the way it is enforced, the persons against whom it is enforced and the manner in which persons are dealt with under it. It is therefore important that any new law be a true reflection of society's needs and values.

Young People in a Complex and Changing Society

Youth has often been heard to say that nature has propelled them into a world they did not make. The statement that "It's a tough time to be a kid" is still true in our times. Young people are growing up in a world that is more complex than that experienced by previous generations. Rapid technological advancements and the spread of urbanization have led to the development of large, impersonal organizations and bureaucracies which have created a milieu increasingly replete with stress. Such stress is evident in the growing disillusionment and frustration which young people experience with the educational system and traditional work pursuits. Citing many adult occupations as repetitive and meaningless and fearing that education can give no guarantee to a meaningful place in a labour market now characterized by increased unemployment, young people often view society with disillusionment.

Thus, a significant social change of the past decade, has been the continuing emergent role of youth as a critical social group. Critical of traditional social norms, critical of values and institutions, many young people can no longer accept lifestyles which they do not regard as valid. This is shown in the growing disregard for traditional sexual and drug morality. Today's young people experience more than growing pains: they are seeking social institutions which reflect their changing values and ideologies.

Their divergent value systems and lifestyles have, in many instances, led to conflict with their parents and groups committed to the maintenance of long-standing social norms. Many members of our society find these new lifestyles very disquieting and they are, to some, repugnant. Their attitudes, when they confront the emerging values of many young people, contribute to the creation of such catch phrases as "the youth rebellion", "the credibility gap" and "the generation gap", which engender even greater estrangement. A major challenge continues to be the development of alternatives to resolve the conflicts experienced by youth in ways that will continue to be responsive in a changing world.

Youth and the Law — Society's Response

Any discussion involving youth and the law must consider that young persons in trouble are often children in need: children in need of parents, homes, education, understanding, supervision and respect. In recognizing a responsibility to respond to people's needs, society has developed a variety of services aimed at assisting individuals and families. Society's concerns have been translated into social service systems, including education, health, family and child welfare and recreation. Founded in large measure upon a humanitarian philosophy, these supports are designed to assist and protect individuals and society as a whole and acknowledge the responsibility of the State to intervene in the lives of individual persons in a variety of ways in order to achieve these goals. Given this perspective, involvement is designed to provide a quality of life desirable for an individual's well-being, growth and development.

The Juvenile Court Process — Traditional Approach and Deficiencies

With respect to those young persons in conflict with the law, the approach has been to deal with them in a manner different than the approach to adults. This continues to be reflected in general by the juvenile court concept which is, to a large extent, the result of the efforts of a liberal reform movement arising at the turn of the century. Inherent in this approach was the idea that the State would deal with children in a way different than the traditional criminal law process and, in so doing, it would assume the role of a kindly parent. The social reform movement at that time influenced the creation and development of the juvenile court concept which sought to respond to the needs of the child rather than simply seeking to deal with these young persons within the parameters of the criminal law process.

While this was an enlightened approach for its time, it has, for a number of reasons, fallen short of its original goals. The juvenile court and related service systems have been limited by insufficient resources and have not always been able to carry out the role of a kindly parent in meeting the needs of children. This inadequacy has been aggravated by the fact that the Juvenile Delinquents Act and the juvenile court have been called upon to deal with a broad range of problem behaviour for which they are not designed or equipped to deal with adequately.

In attempting to fulfill its obligation as a kindly parent and to determine the best interests of the children who come before it, the court has sometimes abridged the rights of these children. In attempting to maintain a delicate balance of helping children and preserving their rights, while at the same time protecting society from harmful conduct, the juvenile court has been presented with an awesome challenge. This traditional dilemma remains as a deep concern and causes us to be

conscious of the limitations of the court and its related service systems to solve a variety of complex social problems that it continues to be faced with.

A growing awareness has developed that, in the absence of sufficient substantive and procedural safeguards, the juvenile court process may, in fact, be unjustly infringing upon a young person's liberty. Designed to offer informality of proceedings because this approach was seen to be acting in the best interest of children, the juvenile court did not institute procedural safeguards to the same extent or degree as the adult court system and other social legislation have provided. This shortcoming resulted from the application of the traditional concept of "parens patriae" whereby the State assumed the role of a protective parent, including young persons in conflict with the law. It is increasingly recognized that limitations should be placed on the nature and extent of such intervention. It is further recognized that adequate checks and balances are required in the exercise of discretion and authority over young persons by police, the court and those who administer court dispositions.

A conclusion has become fairly obvious to those persons dealing with young persons in conflict with the law: that while espousing help, and understanding of the problems experienced by young persons, this approach has not totally avoided the development of characteristics similar to the adult criminal process. In this respect, elements such as deterrence, punishment, detention and the resulting stigma have surfaced in the juvenile justice process despite initial intentions to the contrary.

To reduce the extent of the consequences of these elements, limitations could be placed on the scope of the legislation. This could be accomplished by eliminating specific types of conduct which presently constitute delinquent behaviour under the law. In addition, the juvenile court could be utilized only as a last resort after other alternative resources have been exhausted. Also, the jurisdiction of the juvenile court could exclude non-criminal behaviour. Further, the juvenile court process could be invoked where it is assessed to be the most appropriate approach to deal with these young persons having regard to their needs and the best interests of the community. The success of such a selective process of diversion is directly contingent upon a desire and commitment to find alternative appropriate means and resources to meet the needs of children in trouble. To this end, priority must be given to supporting the development of necessary services and resources.

The Juvenile Justice Process — Prevention Philosophy

Society may best be protected and levels of crime and delinquency reduced by positively promoting the development and well-being of children. This philosophy of prevention is contingent in part upon the early identification of children who are experiencing conflict in their homes, schools, and other areas and the application of appropriate services before the child is brought within the juvenile justice process.

The perspective of prevention must therefore relate to a broad spectrum of institutions, services and resources which affect society as well as children and their families.

The juvenile justice process has throughout its existence found itself dealing in many instances with children whom other service systems have failed or been unwilling to help. Although some children who commit offences have, in the past, been served well within the systems of health, child welfare and education, for example, their behaviour has nevertheless brought them to a point of possible entry into the juvenile justice process. In other instances, there are children whose problems have not been properly assessed or treated and who become subject to intervention for the first time, only when they come to the attention of the police. In those instances, we, too often, witness an escalation of problem behaviour resulting in a contravention of the law which becomes sufficiently serious to both children and society, bringing about entry into the juvenile justice process.

Prevention and Treatment

Integral then to offering preventive help to young persons experiencing conflict and problems in their lives is an adequate assessment of their needs. It is felt that, whenever possible and appropriate, a young person's parents should be involved in any assessment and treatment plan and every attempt should be made to maintain the child within his family situation. When this is deemed to be impossible, then efforts should be made to keep the child in a community setting. The achievement of this goal is directly related to the quality and availability of community resources and services and the ability of those responsible for making decisions on the young person's behalf to properly assess his needs. These considerations make it necessary that, subsequent to the process, a wide range of dispositions and services be available to the juvenile court in meeting the needs of the child and the community.

The utilization of community services and resources including open-care residential facilities will, in some instances, not be sufficient to deal with those serious behavioural problems which threaten the safety and security of the community. In those cases where it is necessary to detain the child, society must nonetheless shape its methods of intervention with consideration for safeguarding the rights of young persons, while attempting to provide necessary intensive services. Continuous assessment of the child's needs as well as the adequacy and effectiveness of the services and programs implemented to address these needs should be a paramount consideration.

The Juvenile Delinquents Act — Legislative Developments and Administration

In Canada, legislation to deal with children differently than with adults was first introduced by way of an amendment to the Criminal code in 1892. It provided that children be tried separately from adults and without publicity. Following the lead of the United States, the Juvenile Delinquents Act was enacted in 1908. Although it was subsequently revised in 1929, it has remained basically unchanged since its enactment.

The Act provides for the establishment of juvenile courts by the provinces with exclusive jurisdiction over all juveniles charged with any offence against the Criminal Code, any provincial statute or other municipal by-law or ordinance, as well as other conduct such as sexual immorality or any similar form of vice. A child found guilty of an offence of delinquency under the Act is adjudged to be a juvenile delinquent and to be in a state of delinquency. Certain provisions establish linkages with the adult court and the provincial laws and services related to child welfare, youth protection, and juvenile correctional services.

The administration of juvenile justice in Canada is characterized by the fact that the twelve provincial and territorial systems that have the responsibility for dealing with young persons in conflict with the law, function on different levels of sophistication and availability of resources. There is little coordination of activities between provincial juvenile justice processes and, except for the Act, which is federal legislation, there is no satisfactory mechanism that has the capacity to unify and help coordinate the future development of the field on a national basis.

It has been recognized for some time and especially since the publication of the Report of the Department of Justice Committee on Juvenile Delinquency in Canada, 1965, that there are problems associated with the present legislation. Following the above Report, The Young Offenders Act (Bill C-192) was introduced in the House of Commons on November 16th, 1970 and, after much criticism, died on the Order Paper at the end of the 1970-72 Session of the 28th Parliament.

The continuing concern of the Government of Canada for young persons in conflict with the law and the need for positive measures to deal with current and future problems involving these young persons prompted the Honourable Warren Allmand, the Solicitor General of Canada, to establish a Committee in the fall of 1973 to undertake a review of the developments that had taken place in the field since Bill C-192. In addition, this Committee was to consider the deliberations of a Federal/Provincial Joint Review Group, which was established at the Conference of Corrections Ministers held in Ottawa in December 1973, for the purpose of reviewing the programs, services and financial implications as well as the legislation involving young persons in conflict with the law in Canada.

Proposals for New Legislation

The following comments express the Committee's concerns with the Juvenile Delinquents Act and juvenile justice process. In this regard, the Committee attempts to demonstrate the need for change and briefly outlines the specific proposals that are put forward as recommended solutions in the form of new legislation. The Committee is conscious of the need to develop measures that will foster an appropriate balance between the rights and responsibilities of society and those of young persons in conflict with the law. In general terms, the Committee proposes that the new legislation be limited to provide solely for offences under the Criminal Code and other federal statutes and regulations.

The proposals also provide for the establishment of a screening agency to assist in diverting young persons from the juvenile court process. The Committee is also convinced that there should be an adequate response to the individual needs of young persons and towards this end recommends provision in some instances for mandatory assessments and for ongoing assessments at different stages in the process. Other proposals reflect the Committee's belief that young persons and their parents should be encouraged to participate at various stages in the process and specifically should be entitled to make representations during the course of proceedings. The Committee is also of the view that the legislation should provide for substantive and procedural safeguards to protect the rights of young persons throughout the process. In this regard, the proposals articulate the Committee's belief that the authorities throughout the juvenile process should be held accountable for their decisions and actions through the provision of appeals, as well as administrative and other judicial review processes. These major thrusts are outlined within specific proposals that are discussed in detail in Part II of this report.

Scope of New Legislation

Under the terms of the Juvenile Delinquents Act, a juvenile delinquent is defined as one who "violates any provision of the Criminal Code or of any federal or provincial statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provision of any federal or provincial statute".

The Committee proposes that the new legislation be limited to offences against the Criminal Code and other federal statutes and regulations. All offences under provincial statutes, territorial ordinances, and municipal by-laws, would be excluded. Other forms of misconduct, which are set out in the Juvenile Delinquents Act and have come to be known as "status offences" would also be excluded. The net effect of these proposals is to eliminate the offence of delinquency.

Within the context of what is defined as criminal behaviour, two principal questions arise regarding the nature and extent of society's intervention in the lives of young persons. The first question relates to the age at which a young person should be held responsible by society for his or her conduct when that conduct would constitute an offence if performed by an adult. Secondly, there is the question of determining the manner in which a young person should be held accountable for that behaviour. Both issues continue to attract much difference of opinion, discussion and research. Because children mature at an uneven rate, there is no definite age when it can be objectively determined that children have attained a sufficient level of maturity and development to understand fully the consequences of their behavior and to accept responsibility for it. As a practical matter, it is necessary for the legislation to prescribe the age at which most children are considered old enough to be held accountable on the basis of an offence for their behavior and to understand the procedures of the juvenile justice process. This age, then, is the minimum age of responsibility under the law.

Changes in Age and Impact

The minimum age of criminal responsibility under the Criminal Code is 7 years, and hence, children age 7 and over are subject to the jurisdiction of the Juvenile Delinquents Act. The Committee believes that any child of this age is much too young to come under such jurisdiction. The proposals would raise the present minimum age from age 7 to under age 14. This would not imply that anyone under the age of 14 could perform harmful acts with impunity. Rather, the Committee proposes that children below the age of 14 should not come under the jurisdiction of criminal legislation, but would be more appropriately looked after under the provisions of provincial child welfare, youth protection and juvenile correctional legislation.

Having proposed the age at which a child is to be held accountable by society on an offence basis, the question remains in what manner a young person should be held accountable and dealt with. It is still appropriate to express the basic philosophy of the Juvenile Delinquents Act, that young persons not be made to suffer the same consequences of that behaviour which constitutes an offence by adults. It is recognized, nevertheless, that the treatment approach expressed in the Juvenile Delinquents Act lends itself to an interpretation of paternalism which may militate against maintaining an appropriate balance between the rights and assessed needs of young persons.

A number of factors were considered in proposing what appears to be the most appropriate maximum age for the application of new legislation. As in the question of minimum age, the matter of the maximum age is also a difficult question to

resolve. By definition, the maximum age of application determines when a young person will be dealt with by the Youth Court or alternatively, by the adult court. Again, it is apparent that the individual development of young persons reflects differing levels of maturity at any given age and the assessment of individual factors does not lend itself to any easily discernable objective criteria.

It is necessary that, despite the need for a standard age for the new legislation's application, a measure of flexibility should be provided, on the basis of which, it may be determined, that having due regard for the nature of the alleged offence, the characteristics of the young person, and the services and legal procedures available, he or she may be dealt with in either the Youth Court or the adult court. In this regard, such matters as maturity, development and responsibility are generally considered as characteristics which constitute adulthood. The Committee feels that the most appropriate uniform maximum age for general application is 18 years. This position is supported by the fact that the age of civil responsibility within the various provincial jurisdictions has been set at ages 18 and 19.

Another failing of the present legislation is the lack of uniform application. A person is amenable to the Juvenile Delinquents Act if he or she is under the age of 16 years, or such other age or ages up to a maximum of 18 years as may be directed by the Governor General in Council. The maximum age varies across Canada from 16 to 17 to 18 and in the case of one province, it is different for boys than for girls.

It is proposed that new legislation apply uniformly across Canada to all persons who have reached their fourteenth birthday and are under 18 years of age. Uniform application is seen to be desirable and it should no longer be the case that, by stepping over a provincial boundary, a young person might automatically change his or her status from that of a young person to be dealt with by special legislation, to that of an adult.

Further, the present lack of service facilities should not in itself result in different maximum ages throughout Canada. In this regard, the Committee believes that differential access to services resulting from disparity of resources must be resolved. We further propose that where such situations exist, they should be corrected within a pre-determined period of time. Thus, the question of transitional time required for implementation of new legislation would require discussion with those responsible for the implementation and administration of the law relative to the provision of requisite services.

Screening and Diversion

The Juvenile Delinquents Act does not specifically provide for a formal process whereby other social or legal means may be employed as alternatives to the juvenile court process when deemed appropriate. Although the Juvenile Delinquents Act presents the juvenile court judge with a choice of dispositions

following an adjudication of delinquency, it does not specifically provide a process to enable the use of community and other resources prior to the adjudication stage. For this reason, the Committee believes that an alternative procedure is needed to ensure that juvenile court and consequent proceedings are not utilized whenever the needs of a young person and society can be realized by more appropriate means. In this respect, legislative provision is required enabling the screening of cases prior to court action over and above the presently available and informal exercise of discretion.

One of the main features of the proposals is to provide a mechanism to screen cases prior to court action over and above the present informal exercise of discretion. This mechanism would provide the opportunity to screen cases on a uniform basis to determine if a more appropriate alternative to formal court proceedings is available. This reflects an evergrowing body of opinion that holds that an appearance in court often may be unnecessary and perhaps even harmful to some young persons. Therefore, if intervention in the life of a young person is justified on the basis of the alleged commission of an offence, then the option should be available to deal with a young person without the necessity of resorting to the court process.

The screening mechanism created could vary in composition and form depending on the decision of each province. Its primary function would be to consider the feasibility and possibility of diverting the young person from the court process to other resources that are better able to deal with him having regard to all the circumstances at hand.

Participation of Young Persons in Proceedings

The Juvenile Delinquents Act does not have specific provisions regarding the active participation of the young person at any stage of proceedings under the Act. It is proposed that, when a young person is involved with the screening agency, agreements could be worked out between the screening agency and the young person. The young person would be directly involved in the process surrounding the formulation of an agreement. The young person would also be involved in other stages of the process including the right to be represented by legal counsel or in certain instances, by a responsible adult where detention, trial, hearing, adjudication, disposition, and post-dispositional reviews are concerned. The young person would ordinarily be entitled to receive a copy of the predisposition report and question its contents.

Safeguards

The Juvenile Delinquents Act emphasizes informality of proceedings, declaring that all proceedings in respect of a young person, "including the trial and

disposition of the case may be as informal as the circumstances will permit, consistent with a due regard for a proper administration of justice". Although informality of proceedings is sincerely believed by some to be in the best interests of young persons, it is not automatically consistent with the proper administration of justice. Since the State is not intent on punishing the child, but rather assuming as near as possible the role of a conscientious and wise parent, it is argued that there is little or no need for the same extent of procedural and substantive safeguards including access to formal legal advice, traditional to the criminal system to which adults are subject. A distinct feature of the proposals is the provision of appropriate safeguards for the protection of the rights of a young person who is alleged to have committed an offence. The Committee believes the State should not intervene in the life of a young person on the basis of an offence until it is proved, beyond a reasonable doubt and within proper legal safeguards, that the young person has, in fact, committed the offence.

The Committee also acknowledges the need for safeguards against inappropriate or improper judicial and administrative actions or decisions by personnel within the juvenile justice process. To this end, special provisions are proposed that would ensure to young persons the same degree of rights as is available to adults and, in some circumstances, additional safeguards.

Assessment and Disposition

Another limitation of the Juvenile Delinquents Act is the lack of provision for mandatory assessments of the young person in the disposition process. Although it is recognized that assessments are presently undertaken, including the preparation of predisposition reports, the Committee recognizes that more and, in some cases, mandatory assessments must be undertaken to define the needs of the young person and to identify the most appropriate services in order to assist the court in deciding the most beneficial disposition.

Assessments should be undertaken on a mandatory basis whenever a finding of the commission of an offence has been made and before it is determined that the young person would best be served by a probation order, or a placement in an open or secure setting. In other cases, the requirement of a predisposition report will be at the discretion of the Youth Court judge.

An important change related to the making of a disposition is the removal of the provision in the Juvenile Delinquents Act providing that, when an order is made which has the effect of committing a young person to the care of a child welfare authority or to an industrial school, the young person may, at the discretion of the provincial secretary, be dealt with thereafter under provisions of provincial law until such time as he is discharged from the care of the authority in question. In effect, the

change means that the young person would remain under the jurisdiction of the Youth Court until the expiration or termination of the disposition.

Accountability and Review

One significant deficiency of the Juvenile Delinquents Act is that it does not provide for an adequate mechanism to review and appraise the effects of dispositions under the Act whether it be a commitment to probation, to a foster home, to a training school or otherwise. The Committee recognizes that a young person's conduct may be so serious as to require formal intervention including some restraints on his liberty. However, when it becomes necessary to impose such a restraint, there must be a corresponding responsibility to make available decent and adequate living conditions, training and services to the young person who is being restrained. It must be ensured that the required facilities and services are made available and that restraints are removed or modified when they are no longer required. Such an objective can only be achieved if there is a continuing well-organized review process.

Therefore, it is proposed that there be, in the new legislation, provision for the review of dispositions made by the court. This provision would ensure that an in-depth judicial review be made to determine the progress of a young person and to ascertain that the restraint imposed on the young person is no greater or more severe or lengthy than the circumstances require. Such a review would take place annually as a matter of course until the disposition has terminated. Further, a judicial review should be available to the young person, his parent or the provincial director, or at the instance of a judge if circumstances indicate that such a review is desirable.

In addition to a review by the court, it is proposed that an administrative review agency be established to consider the case of every young person within its jurisdiction who is on probation or who has been committed to care in a residential or institutional setting. This review agency would be charged with reviewing the implementation of the disposition particularly the quality of services and care provided. It would report to the responsible provincial authority or to the court, if appropriate measures were not being taken with respect to these matters.

Summary

In summary, the main thrusts of the proposals are to restrict the scope of the legislation, provide for a formal process to divert young persons from the juvenile justice process through the establishment of a screening agency, place emphasis on responding as precisely as possible to the individual needs of young persons by providing for mandatory assessments in those cases where probation, open or secure custody is being contemplated, promote more active participation of the

young persons and their parents in the process, stipulate specific substantive and procedural safeguards and outline the accountability of those persons involved in the administration of the process through judicial and administrative reviews.

It is the belief of the Committee that new legislation by itself will not be sufficient to bring about needed changes and improvements. We recognize that many of our proposals reflect present practice and procedures. Some will require changes in provincial legislation and the delivery of services. A broad spectrum of resources and services, adequate and appropriate in scope, is essential if the legislation is to achieve the objective of more just, equitable and effective treatment of young persons in conflict with the law. The proposals for new legislation would, if adopted, have significant service and resource implications for the provinces. In this respect, the following areas are identified as requiring the development of new resources and extensions of existing resources: age changes, pre-court screening and referral, service resources, assessment resources, judges, training of personnel throughout the system, pre-dispositional reviews, residential and non-residential post-dispositional care and services.

Further, the development of these resources raises financial implications which will require careful examination.

Part II

Part II — Issues, Alternatives and Recommendations

This section of the Report presents a discussion of the issues and problems which the Committee on Legislation dealt with in its examination of young persons in conflict with the law. In addition, the philosophy and principles that the Committee believed should be reflected in choosing specific legislative proposals from among possible alternatives are outlined. In each instance, the Committee examined the implications of the alternatives that were identified and the Report outlines the reasons for the preferred options, as set forth in the recommendations for new legislation. The headings for each section are the same as the headings used in legislative draft form in Part III.

Preamble

The Committee believes that new legislation should incorporate a preamble as a declaration of the philosophy, spirit and intent of the legislation and as a guide to its administration. Although the Juvenile Delinquents Act reflects its philosophy throughout its provisions, particularly in Sections 3 and 38, there is no single declaration containing the principles and the objectives of the Act that may be referred to as a guide for those who administer it or who are otherwise affected by it.

We believe the preamble should state that young people who are in conflict with the law should, because they are in a state of immaturity and development, be dealt with separate from and in a manner different than adults. Thus, the Committee recognizes the need for special legislation that would be distinct from the Criminal Code. The Committee believes further, that young persons who come under the application of new legislation should be deemed to be responsible for their conduct when they contravene the law, but that they should not be held accountable for such behaviour in the same manner as adults.

It is proposed that the application of the law should only be invoked when other alternatives, whether social or legal, are inappropriate to deal with young persons. In addition, new legislation should be limited to apply solely to offences against federal statutes and regulations, excluding territorial ordinances.

We further believe that the preamble should recognize that young persons have rights and freedoms which are no less than those of adults and that special safeguards and assistance must be created to protect these rights. This implies that young persons who are in conflict with the law have a right to be informed of their rights and freedoms and to participate at any stage in the process when decisions are taken which affect their welfare. Consistent with this, we believe the preamble should articulate that, whenever authorities intervene in the life of a young person, such intervention should be directed towards responding to the young person's needs, while constituting the least invasion of privacy and interference possible.

We believe the preamble should state that young persons in conflict with the law should only be removed from the care of their parents when all other measures are inappropriate. If the State assumes the responsibility of providing care, it must be held accountable for the decisions made by the authorities in exercising this responsibility.

We are guided in this matter by the application of two principles: first, that society has a responsibility to provide services to safeguard family life and to assist parents to rear their children. It has particular responsibility to assist parents when their problems or circumstances impair their ability to perform their parental roles or when the child has a handicap or problem with which the parent cannot be expected to cope.

A second principle would seem to apply when parents are unwilling or unable to cope with the young person through their own efforts or through the use of available resources. The State is obliged to assume their responsibilities, in whole or in part, in order that its own interests and those of the young person are met. In doing so, every effort should be made to encourage the participation of parents and to keep them informed when this is appropriate.

The Committee recognizes that the State cannot replace a parent. However, it believes that when the State intervenes in the life of a young person or assumes parental responsibilities it should conduct itself in the same manner and arrange for the same provision of services as would a wise and conscientious parent. The Committee believes that the State must be held accountable for its decisions and performance by this standard.

In conclusion, it is apparent that certain provisions of federal enactments relating to offences, including the Criminal Code, are unsuitable and inadequate for achieving the above-mentioned objectives and that special provisions are necessary for dealing with young persons in conflict with the law.

WE RECOMMEND

1. **that the legislation for young persons in conflict with the law incorporate a preamble, containing a declaration of the philosophy, spirit and intent of the legislation, as a guide for its administration.**

1 Title

Some titles considered by the Committee were the existing title "The Juvenile Delinquents Act", "The Young Offenders Act", and "The Young Persons Act". It was felt by the majority of the Committee, after much discussion, that the title, "The Young Persons in Conflict with the Law Act", identifies as accurately as possible the nature of the Act.

The term "Juvenile Delinquents Act" with its almost limitless application to a wide variety of misconduct, and to very young children, is not appropriate for the proposed new legislation. The term "juvenile delinquent", well meaning in its origin, has been clouded by misuse and misinterpretation until it has in some cases become a label with serious negative effects. The Committee is in strong agreement that the use of the terms "juvenile delinquent" and "Juvenile Delinquents Act" should not be continued.

The title "The Young Offenders Act" was considered to be undesirable in light of the criticisms directed against Bill C-192. This title suffers the same shortcomings as the title of the present legislation in that it lends itself to the establishment of a specific classification of offender and creates the same degree of stigmatization for the offender. In addition, it does not provide a clear definition of the persons and the kinds of offences to which it applies.

The third option considered and rejected was "The Children and Young Persons Act". This title does not clearly reflect the category of young persons to which the legislation applies.

A fourth option, "The Young Persons Act", was not accepted because it could encompass all young persons, and would not specifically denote young persons in conflict with the law.

The Committee proposes the title "The Young Persons in Conflict with the Law Act". As an alternative, the Committee felt that "The Young Persons Act" could be used as a short title, if accompanied by the longer title "An Act Respecting Young Persons in Conflict with Federal Statutes and Regulations".

WE RECOMMEND

2. **that the title "Young Persons in Conflict with the Law Act" be the title of the proposed legislation.**

2 Interpretation

In making its proposals, the Committee is conscious that it is employing new concepts and terminology which will and should differ from the terminology of the Juvenile Delinquents Act. It is also recognized that the provinces employ various terminology which in part derives from the various organizational models for the

delivery of services that are established within the provinces. Because of these factors, we believe that generic terms should be used whenever possible to designate commonly understood functions. Further, we propose that the definitions to be used in the legislation be clear and unequivocal.

WE RECOMMEND

3. **that new legislation contain an interpretation section to clearly define the meaning of the terms employed.**

3 How Young Persons are Dealt With

In addition to the declaration of the philosophy and intent set out in the Preamble, the Committee believes that it should be emphasized that the Act is to be construed in that light. This is justified in view of the scope of its application and the importance of interpreting it in a liberal manner.

WE RECOMMEND

4. **that there be a provision that the legislation be liberally construed and interpreted in accordance with the principles enunciated in the preamble.**

4 (a) Jurisdiction of Youth Court (Offences)

The Juvenile Delinquents Act proyides that a child is adjudged to have committed a delinquency and to be a "juvenile delinquent" if the child "violates any provision of the Criminal Code or of any federal or provincial statute, or of any by-law or ordinance of any municipality, or is guilty of sexual immorality or any similar form of vice, or is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under any federal or provincial statute".

Thus, the Juvenile Delinquents Act makes certain kinds of non-criminal behaviour offences for young persons which, if they were adults, would not be considered offences. Also, the Juvenile Delinquents Act provides that "where a child is adjudged to have committed a delinquency, he shall be dealt with not as an offender, but as one in a condition of delinquency and therefore requiring help and guidance and proper supervision".

We are concerned that provisions of the Juvenile Delinquents Act make non-criminal behaviour including truancy, and sexual immorality, offences which have come to be referred to as "status offences". Thus, young persons are being unnecessarily criminalized for behaviour which would not be an offence in the case of an adult. We believe that the only reasonable solution to this discrimination is the

elimination of the "status offences". In that regard, the Committee supports the principles enunciated in the 1969 Ouimet Report (THE REPORT OF THE CANADIAN COMMITTEE ON CORRECTIONS). The Report recommended that the goals of decriminalization and destigmatization should be pursued by excluding from the application of the law conduct which is not sufficiently serious that it could not be dealt with satisfactorily by other social or legal means.

We further believe that the legislation should confine itself to offences against federal statutes and regulations and should leave it to the provinces to deal with offences against provincial statutes and municipal by-laws. Thus, we propose that the Youth Court have exclusive and original jurisdiction over federal offences only. Territorial ordinances will deal with the same or like matters as provincial or municipal regulations and we would put these in the same class as provincial legislation.

Although the Committee considered the desirability of excluding federal regulatory laws, such as "The Migratory Birds Act", from the jurisdiction of the new legislation, it concluded that such a provision would raise more problems of administration than it would resolve. In effect, the Committee proposes that the offence of delinquency be abolished and that a young person be dealt with solely on the basis of a specific offence, as found in the Criminal Code and related federal statutes and regulations. As a result, it would become necessary for the provinces to take measures to provide for provincial and municipal offences. Various options would be open to the provinces, such as dealing with the young person in adult court or under their youth protection legislation, child welfare legislation or other special legislation that might adopt the procedures of the proposed legislation to deal with provincial and municipal offences.

WE RECOMMEND

5. **that the jurisdiction of the new legislation extend solely to offences against federal statutes and regulations, excluding territorial ordinances.**

4 (b) Jurisdiction of Youth Court (Ages of Applicability)

The Juvenile Delinquents Act applies to any boy or girl apparently or actually under the age of 16 years, or such other age under 18 as may be designated in any province by the Governor in Council. At the present time there is no uniformity of ages, so that in Saskatchewan, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, the Yukon and the Northwest Territories, the age is 16 years; in British Columbia, the age is 17 years; in Manitoba and Quebec, the age is 18 years

and in Alberta, it is 16 years for boys and 18 years for girls. In Newfoundland, where the Juvenile Delinquents Act does not apply, the age under provincial legislation is 17 years.

With regard to the minimum age, the Criminal Code provides that no person shall be convicted of an offence committed while the person was under the age of 7 years. Further, no person shall be convicted of an offence committed between the ages of 7 and 14, unless that person had the capacity to know the nature and consequences of the conduct and to appreciate that it was wrong. This limitation applies to the Criminal Code and other federal laws.

In determining the most appropriate minimum age at which a young person should be held responsible before the law for conduct that constitutes an offence under the Criminal Code and other federal laws, the Committee considered factors relating to the physiological, emotional and intellectual development of children and the most effective legislative means of dealing with the behaviour of children that constitutes a criminal offence for adults. This is a very difficult matter to resolve and does not lend itself to a purely objective analysis of an empirical nature. Children develop at varying rates, and there is no single point in a child's life when that child automatically becomes capable of shaping his conduct in terms of what society determines to be acceptable behaviour. Nevertheless, as a practical matter, it is necessary to set a specific age in the legislation in order to provide a means by which the law can be applied in a uniform manner. This is the age when it can be assumed that most children have matured sufficiently to be responsible for their conduct and to be held accountable for that conduct which contravenes provisions of the Criminal Code and other federal laws. The law would stipulate the age at which a young person can be adjudged to be accountable for behaviour of a criminal nature in a formal criminal law process. In this context, we are agreed that the minimum age of 7 years now contained in the Criminal Code is much too young an age at which to attribute responsibility, particularly criminal responsibility.

The Committee considered several options. These included raising the minimum age to 12 or to 13 or to 14. Another option considered was to raise the minimum age to 12 years, with the provision that only serious cases involving 12 and 13 year-olds be dealt with under the new legislation. Criteria would have to be developed to determine the capacity of the child to appreciate his behaviour, as well as the circumstances of the conduct itself. One of the problems with this option is that it is discriminatory and decreases the prospect of having the law applied in a consistent and uniform manner.

After having carefully considered these various options, the Committee proposes that the age of criminal responsibility be set at age 14 and that an amendment to the Criminal Code be made accordingly. We recognize that this would require the provinces to examine their legislation, as amendments might be necessary to enable that legislation to deal with persons under age 14 who would

previously have been dealt with under the Juvenile Delinquents Act. Nevertheless, we believe that children under age 14 should not be subject to the criminal law and would be better looked after under the provisions of provincial child welfare, youth protection or juvenile correctional legislation.

WE RECOMMEND

6. **that the minimum age of criminal responsibility under the new legislation and in the Criminal Code be set at 14 years of age.**

The maximum age of the young persons to be covered by the legislation is also a difficult question and as with the problem of the minimum age, it does not lend itself to a completely objective assessment. We are again concerned with factors involving levels of maturity and development of individuals in their formative years, as well as the perceptions of society about characteristics of adulthood and ages regarding the attribution of civil responsibility. The maximum age under the new legislation will provide the demarcation line which will determine whether a young person will be dealt with by the Youth Court or, alternatively, dealt with as an adult in the Criminal Justice System. The Committee recommends that a uniform maximum age be stipulated for the application of the new legislation in order that the legislation will be applied in a consistent and uniform manner.

The Committee considered the options of ages 16, 17 and 18 for the maximum age of the new legislation. Upon analysis of the factors indicated above, the experience of other countries, as well as the desire to extend the benefits of the legislation to as high an age level as possible, it is our belief that age 18 is the most suitable alternative. We also took cognizance of the recommendation of the CELDIC Report, "One Million Children, A National Study of Canadian Children with Emotional and Learning Disorders", published in 1970, which recommends that the jurisdiction of the juvenile courts extend to the 14 to 18 year age group.

WE RECOMMEND

7. **that the Youth Court have exclusive jurisdiction to deal with young persons who have committed an offence between the ages of 14 and 18 years.**

Young persons, who are between 18 and 21 years and who committed an offence while they were under 18 years of age, should also be dealt with in the Youth Court. As in other cases, if the criteria are met, they could be transferred to the adult

court. In the event that they are not transferred, they would be dealt with in the Youth Court and would be subject to a disposition in the Youth Court.

WE RECOMMEND

8. that a person who has committed an offence while under the age of 18, be subject to being dealt with in the Youth Court until he reaches the age of 21, and thereafter, he is to be dealt with in the adult court.

Although the new legislation should provide for a uniform maximum age of 18 years, we are also mindful that there will be exceptional cases involving young persons who would not be dealt with appropriately or adequately in the Youth Court. This suggests to us that there should be flexibility in the legislation and that within well defined circumstances, there should be provision for the transfer of young persons from the Youth Court to the adult court. This matter will be discussed later in the section of the Report on "Transfer to Adult Court".

The Committee is concerned that young persons who are appearing before the Youth Court at a time when they are approaching their 18th birthday, should have full and adequate access to services within the juvenile justice system. The time period during which access to services should be available should be consistent with the maximum term of disposition provided for by the legislation, which will be discussed later in this Report. Consistent with the proposed maximum age of 18 years, we believe that young persons should have access to services for a maximum period of three years, and, therefore, we propose that in such instances as are appropriate, services be extended to a maximum age of 21 years or until the disposition is terminated, whichever occurs first.

WE RECOMMEND

9. that where a person commits an offence while under the age of 18 years, the jurisdiction of the Youth Court be extended 3 years beyond the maximum intake age of 18 and that services be provided to age 21.

The Committee believes that these recommendations will satisfy the need for uniformity of ages throughout Canada. This belief is based on the view that there is no compelling justification for young persons to be subject to the jurisdiction of the Youth Court in one province, while in another province to be dealt with as an adult. While this form of discrimination must be eliminated, we are also cognizant of the problems that will exist in dealing with 16 and 17 year olds in terms of the need for

more and different services and resources in those provinces where the maximum age is not now 18 years.

5 Detention not Pursuant to Disposition

The detention of young persons upon apprehension, pending and during Youth Court proceedings, as well as prior to the implementation of a disposition, merits close examination. Detention is sometimes regarded as a short-term consideration that does not have significant or long-term effects on a young person. Although interim custody may be regarded by some as little more than a temporary inconvenience, detention can often be a traumatic experience which may color a young person's perceptions of the Youth Court process and himself.

The detention of young persons and adults in the same facilities deserves the closest consideration. This stems from the fact that adult and juvenile correctional facilities are characterized not only by different philosophies, but also deal with different age groups and categories of offenders. In the interest of prevention and diversion it is important that the young person not be detained in what the community or the young person regard as an adult criminal facility.

The Juvenile Delinquents Act provides that pending a hearing, there shall be no detention of young persons in a place where adults are detained. This does not apply to someone over 14 years of age, if it is found that he cannot be held safely in a place other than in a jail. Further, where a child has been arrested and no detention home is available for children, he or she can be held in such places as may be necessary to ensure his attendance in court.

The Committee discussed a number of alternatives regarding detention. The first would provide for the complete and absolute separation of young persons and adults, requiring, in effect, that two separate buildings, staff and services, be utilized. Another option would permit facilities for both groups to be in the same building, but physically separate and with different staff. These options posed practical difficulties due to geographical and administrative realities. As a matter of principle, the Committee believes that the legislation should provide that young persons be detained separately from adults. To achieve this end, the legislation should enable the provincial authority, the Lieutenant Governor in Council to designate places of detention for young persons to include young persons under the age of 18 years, or between the ages of 18 and 21 if they are being dealt with under the provisions of the new legislation.

WE RECOMMEND

10. that young persons not be detained in any place where adults are detained and that a place of detention be designated by the Lieutenant Governor in Council as a place for young persons to be detained.

In order to justify detaining a young person, it would be necessary to comply in effect with the bail and remand in custody provisions of the Criminal Code. The Committee believes that the proposed legislation should require that in addition to these provisions, a young person should not be detained in secure custody unless such restraint is necessary to prevent his escape or injury to himself or another. We further believe that open facilities should be available to care for young persons when it is assessed that they cannot be returned to their home and are not dangerous to themselves or others and are not likely to try to escape. The final provisions will have to be developed in the light of whatever changes may be made in the Criminal Code relating to interim custody.

WE RECOMMEND

11. that, in addition to the requirements set out in the Criminal Code regarding bail, a young person only be detained to prevent escape or injury to himself or to another and if he could not be placed safely with a responsible person to achieve the same end.

Additionally, the Committee believes that the decision to detain a young person prior to his appearance in court should be made by a Youth Court judge or a provincial director.* Provision is made for the provincial director, to facilitate the availability of screening and service resources on a 24-hour basis, and when the judge would not be available. This would ensure the return of the young person to his home or if deemed appropriate his placement in either an open or secure facility. Subsequent to his appearance in court, the decision should be made only by a judge. The police, except in the case of temporary restraint, would not be permitted to hold a young person in detention.

WE RECOMMEND

12. that the decision to detain a young person prior to his appearance in court should be made by a Youth Court judge or responsible provincial authority, and subsequent to his appearance only by the judge.

The term "the provincial director" is used throughout the proposals to imply the provincial authority who will perform the functions stipulated in the legislation — e.g., the child welfare, corrections, probation, mental health authority, as determined by the province.

The need to keep the matter of the young person's detention under constant review requires that a designated person be available for that purpose. The Committee believes that the Youth Court judge is the most appropriate person to perform this function.

WE RECOMMEND

13. that the detention of the young person be kept under constant review by the Youth Court judge.

It is intended that the least constraining form of detention that is necessary, be used in all instances. This is consistent with the overall intent of our proposals and it is the belief of the Committee that, whenever possible, a young person should be allowed to stay in his home or, alternatively, be placed in an open residential facility, or in the care of a responsible person rather than a secure detention facility. When such detention resources are regarded as necessary, however, they should be used exclusively for young persons and should provide a positive atmosphere which will minimize any damaging effects which could be the result of confinement.

6 Notices to Parents, Relatives or Friends

We recognize the importance of keeping parents and guardians informed of the measures that are being taken in respect of their children. Parents have a right to be informed of the State's intervention in the life of their child, as does a child have a right to have his parents so informed. Also, parents are only able to exercise their responsibilities to their child upon being advised of the child's involvement with the law.

The obligation to provide notice to a parent or guardian arises whenever a young person is detained or is to appear in Youth Court. The notice should be in simple language and should disclose all relevant information, as well as inform the parent of the right to retain counsel. One notable exception is suggested: this would occur where a young person of at least 16 years requests that a notice not be sent. These circumstances would arise, for example, when the young person is living independently of his parents or believes that their knowledge of his involvement with the law would be prejudicial to his interest or to that of his parents. The circumstance would also arise when a young person has been apprehended on a drug charge and has voluntarily undertaken a program of recovery. It would remain within the discretion of the Youth Court judge to determine whether the notification of the parents should be undertaken.

WE RECOMMEND

14. that a parent, relative or friend be kept aware by means of notices, of the arrest and/or temporary detention, and of the appearance in Youth Court of the young person, except on the direction of the Youth Court judge when a young person is at least 16 years of age and requests that no such notice be given.

7 Attendance of Parent

The Committee is of the opinion that a parent should attend the proceedings of the Youth Court as an expression of parental concern and interest in the well-being of the young person. We believe that it is not sufficient for the process to concentrate solely on the young person, but we accept that there will be instances when parents would be reluctant to appear at court because of feelings of failure, anger or shame, or the financial loss of being absent from their jobs. Nevertheless, we believe the Youth Court judge should ensure, where possible, the attendance of parents at court.

WE RECOMMEND

15. that the Youth Court judge be given the discretion, if he deems it advantageous to the young person or parent, to require the attendance of the parent at court.

8 Authority for Laying Information

The act of bringing a young person before the Youth Court is most important. To ensure that such intervention in the life of a young person is well founded, the responsibility for ascertaining whether an information should be laid against a young person should be placed with the Attorney General or his designate, who is responsible for the administration of justice in the province. This would include not only the provincial Attorney General, but the Attorney General of Canada. We believe no information charging an offence should be laid against a young person except on the direction of the Attorney General or his agent. It should also be his responsibility, having ascertained that there are sufficient grounds to justify the laying of a charge, to determine whether the young person should be referred to a screening agency for the purpose of determining whether the young person should be diverted from the formal court process.

Our position is based on the belief that only those complaints which are founded on proper evidence and are sufficiently serious, should be brought to a formal stage of intervention. In order to protect the rights of young persons, we suggest it is necessary to adopt rules for proceeding with complaints so that there will be no abuse. We recognize this means that a private complainant would not be permitted to lay a charge except through the Attorney General or his designate.

In proposing such regulatory procedures, it is hoped that only those agents who are best equipped to deal with the problem will be involved, and that no unnecessary proceedings will be initiated against young persons.

WE RECOMMEND

16. that no information be laid against a young person except on the direction of the Attorney General or his designate.

9 Screening Agency

The concept of diversion has become increasingly recognized as advanced in the recommendations of the Ouimet Report and, more recently, in the proposals of the Law Reform Commission of Canada. In a recent working paper, the Law Reform Commission stated that: "diversion represents an approach which... seeks solutions which minimize the involvement of the traditional adversarial process and maximize conciliation and the problem settlement. The full force of the criminal law can thus be restricted to offences which raise serious public concerns".

Basic to the concept of diversion, is the utilization of a variety of resources within the community as alternatives to processing a person through the formal court process. Emphasis is placed on the opportunity to make acceptable restitution to both the victim, if one exists, or to the community. Related to such a process is the reduction of any stigmatizing effects that may come to bear on an individual within the judicial system.

As reflected in the discussion of the proposed preamble, an objective of the new legislation is that the application of the formal court process should be limited to those instances where the young person cannot be adequately dealt with by other legal or social means. One of our major proposals is to provide a mechanism for diverting from the Youth Court process as many young persons as possible after having ascertained that such process is unnecessary in the circumstances. The rationale for screening is based on the premise that where formal diversion is practised, the use of possible alternatives to the court process will be more beneficial to the young person, his family and society.

The usefulness of screening will depend in large measure upon the variety and quality of community services which are available to the screening body to assess

needs and to provide alternative sources of referral. This will most certainly mean that the manner in which a young person is dealt with will depend on the community in which he lives. Because of the disparity of resources, the Committee is convinced that it is necessary to encourage the development of suitable services and resources for young persons. The proposal for the establishment of a screening agency is made on the assumption that within a reasonable time, adequate community facilities will be developed where they do not presently exist.

The development of formal pre-court screening is not intended to restrict what is being done at the present time by the police and the community in relation to finding alternatives to the charging of young persons. Indeed, it is being assumed that these practices will continue and that the screening agency will perform a complementary process.

The Committee considered the question of whether or not the legislation should establish guidelines for the exercise of police discretion in these areas of activity. The Committee concluded that guidelines in the proposed legislation would be impractical and would better be developed by the authorities responsible for the police in the provinces. The Committee expressed the hope that, at least for statistical purposes, the provinces will set up systems of reporting complaints involving young persons where these do not already exist. Further discussion in this area will undoubtedly be required with the provinces, the police and other interested parties.

WE RECOMMEND

17. that a formal mechanism be established to provide pre-court screening to facilitate the diversion of young persons from the court process.

In proposing the establishment of a screening agency, the Committee considered a number of matters relating to the composition and administration of these agencies, but concluded that such matters should be left to the discretion of the provinces.

As referred to earlier, the decision to lay a charge would be made by the Attorney General or his agent after an examination of the facts of each case to ascertain if there are sufficient grounds on which a charge could be based. Once it has been established that there are sufficient grounds to justify the laying of a charge, a decision would be made either to refer the case of the young person to the screening agency, to proceed directly with the laying of a charge in court, or to cease the proceedings at that point.

If a decision is made to refer the case to the screening agency, the screening agency would consider a series of factors, including the following:

(a) the degree of seriousness of the alleged offence and the circumstances in which it was allegedly committed;

(b) the age, maturity and attitude of the young person, including his willingness and capacity to make amends, if appropriate;

(c) the conditions of the place in which a young person lives or is likely to live in the future and the likely influence upon him of other persons living in or having access to this place;

(d) the previous history of the young person with respect to offences and his pattern of behaviour, the nature of any service rendered to him under this or any other federal or provincial act, or of any community service otherwise rendered to him, and the response of the young person to such service;

(e) the community facilities and services that are available to help the young person and his willingness to avail himself of these services;

(f) any plans put forward by the young person that relate to changes in his conduct or participation in activities or measures that are available for his improvement; and

(g) views expressed in representations made by or on behalf of the young person in respect of any of the factors mentioned above, or any other aspects of the case.

WE RECOMMEND

18. that the screening agency consider the guidelines provided in the legislation in arriving at an agreement with the young person.

If the screening agency determined that the young person was an appropriate candidate for diversion, it could then propose to the young person such conditions that are reasonable. Should the young person accept these conditions, the matter would then be settled and the Attorney General would not be enabled to proceed with a charge, even if the young person subsequently violated the terms of the agreement. If the young person was not prepared to agree with the conditions put forth, however, he would have the alternative of declining to enter into an agreement, in which event the screening agency would have to make its decision as to its recommendation in the light of such referral.

The intention is to permit the screening agency and the young person to have an opportunity to agree on a mutually satisfactory basis what should be done to resolve the situation at hand.

WE RECOMMEND

19. that any agreement entered into between the screening agency and the young person be voluntary and contain reasonable conditions.

If the screening agency decides that the young person should be diverted, an agreement could be entered into with the young person on a voluntary basis. At this point, the screening agency would be deemed to have recommended to the Attorney General that the young person not be further proceeded against. Under our proposals, the Attorney General would not then be authorized to proceed to lay a charge against the young person.

In some circumstances, such as when the offence in question is relatively minor, or it is the young person's first involvement with the law, the screening agency will determine that an agreement is not necessary. Thus, the appearance of the young person before the screening agency may in itself be sufficient and no further action would be necessary. In some cases, the young person and his parent and/or the victim may resolve the problem through discussion with the screening agency or its staff and no agreement would be required. In other cases, simple referral to another community agency without agreement would be sufficient, or the screening agency may decide that it is better not to have an agreement, but to trust the parent and child.

WE RECOMMEND

20. if the screening agency recommends to the Attorney General that the young person not be further proceeded against, the Attorney General would then be barred from proceeding further with the laying of a charge.

WE RECOMMEND

21. that, if the screening agency decides that the young person should not be diverted, it would then refer the young person back to the Attorney General with the recommendation that the charge be laid. The Attorney General would not then be obliged to accept this recommendation.

The legislation should also provide that, from the time the Attorney General refers a case to the screening agency, there would remain a period of two months available to the agency to submit its recommendation to the Attorney General as to whether or not to proceed with the charge in question. If, after two months, the screening

agency has not made its recommendation to the Attorney General, the proceedings would then be deemed to be at an end and no charges could be proceeded with after that time.

WE RECOMMEND

22. that the screening agency render its decision within a period of two months after referral from the Attorney General and, that in the absence of a written recommendation to the contrary, the matter be deemed to be at an end.

The Committee further believes that in the event a young person subsequently finds that conditions of the agreement are too onerous to comply with or do not reflect changes in his situation, he should be entitled to apply to the screening agency to amend or cancel specific conditions of the agreement and that the screening agency should be enabled to do so.

WE RECOMMEND

23. that the young person be entitled to apply to the screening agency to amend or cancel conditions of an agreement and that the screening agency be enabled to do so.

The Committee has considered several options regarding the matter of dealing with the breach of an agreement. Under one option, the Attorney General could proceed with a charge if the breach occurred within a period of two months following the inception of the agreement. In the event of a default by the young person in carrying out the agreed-upon conditions, the screening agency could, after giving the young person an opportunity to be heard, and after attempting to amend the conditions of the agreement, make a recommendation to the Attorney General that he be proceeded against on the original charge. At this point, the Attorney General would then determine whether it was appropriate to proceed with charges. While it may be argued that the young person would only wait two months and then be in a position to terminate his commitment, it can also be argued that after the young person has honoured his or her commitment for a two-month period, it is probable he or she would continue to honour the commitment until its expiration.

Another option considered but rejected was to allow the Attorney General to proceed in the event of default on the part of the young person at any time during

the term of the agreement. This was perceived to be too weighted in favour of the rights of the prosecution and correspondingly, too onerous to the young person in question. The voluntary aspect of an agreement between the screening agency and the young person would be limited by the inherent threat of proceedings. The Committee believes that any diversionary process must be credible from the perspective of young persons. Also, the option that has been retained avoids the prospect of threats or various forms of duress that may be made if the issue of prosecution is deferred for too long a period of time.

We recognize that an implication of our proposals is that a young person could default on the terms of an agreement with the screening agency with the confidence that no sanction could be applied against him. This would create disadvantages for victims, would appear to defeat the objectives of law enforcement and may give a young person the sense that he or she "got away with it". On balance, however, we believe that the screening agency should be a forum for the development of voluntary agreements rather than become a pre-court tribunal that is characterized by elements of compulsion and duress. We also believe that, if the opportunity to apply sanctions were provided, the decisions of the screening agency should come under the review of a court which would, in effect, destroy the informal and voluntary nature of the screening process that we view to be both appropriate and necessary. We recognize that the absence of sanctions will cause the screening agency to carefully measure possible consequences and risks in performing its functions and believe this is necessary to achieve an effective and efficient process.

A further consideration with regard to diversion is the prospect that a victim may not be totally satisfied with the nature of a diversionary settlement agreed upon. It would be one of the functions of diversion to deal with the damages suffered by the victim. In the event of default on the part of the young person, civil recourse would be available to the victim. The criminal law has generally been silent in terms of restitution and payment for damages and such diversion practices represent an attempt to provide this reasonable alternative.

The concept of the screening agency is based on the premise that the proceedings of the screening agency are entered into voluntarily by a young person and are not intended to have any real element of formal judicial proceedings. Nevertheless, it is expected that the screening agency will act in a fair and just manner consistent with the intent and spirit of the legislation as reflected in the preamble. On the basis of our proposal, the screening agency could propose to the young person such conditions as to restitution or other amends which appear reasonable to the screening agency. Of course, if they do not appear reasonable to the young person, it is presumed that the conditions would not be consented to by him. The right to representation by a lawyer or a parent, guardian or friend during the young person's dealings with the screening agency should ensure that the conditions which are proposed are reasonable and acceptable to the young person.

In the event that the young person is not prepared to agree to any proposal, the screening agency, as mentioned earlier, may return the case of the young person to the Attorney General with the recommendation that the charge should be proceeded with. The Committee considered the option of having the court review the decisions of a screening agency. This option was rejected on the basis that the relationship between the screening agency and the young person is voluntary in nature.

WE RECOMMEND

24. **that the recommendation to the Attorney General of the screening agency not be reviewable by a court.**

In order to give the young person confidence to be candid in his or her dealings with the screening agency, it is proposed that his appearance be voluntary and the record of the proceedings to be made by the screening agency be confidential. Such a record could not be used for any purpose without the consent of the young person and for those young persons of at least 16 years of age, it would remain to the discretion of the young person as to whether his parents would receive a copy of the record of the proceedings.

WE RECOMMEND

25. **that the screening agency should not be able to compel any person, including a young person, to appear before it.**

WE RECOMMEND

26. **that a record of the proceedings before a screening agency be kept and a copy be given to the young person and his parent, except that the young person may request, if he is at least 16 years of age, that a copy not be given to his parent. Further, the proceedings of the screening agency cannot be used without the consent of the young person.**

WE RECOMMEND

27. **that the proceedings of the screening agency be confidential in nature and private, and that no one be entitled to attend without the consent of the young person.**

10 Right of Young Persons

A. *With respect to representation*

The Canadian Bill of Rights recognizes that an adult who is the subject of intervention has the right to be informed promptly of the reason for his or her arrest or detention and the right to retain and instruct legal counsel without delay. The Committee believes that it should be made absolutely clear that young persons have the same rights as are recognized for adults. We, therefore, propose that the relevant rights set out in the Bill of Rights be reflected in the new legislation so there will be no doubt as to their application. As is the case for an adult, a young person will have to make his or her own arrangements for legal assistance whenever he considers himself to be in need of assistance. In this regard, the Committee considered the desirability of a provision in the legislation requiring that legal services be made available to young persons unable to make their own arrangements for such assistance. This matter, however, concerns more the availability of legal services and funds and a provision in legislation would not alone be sufficient to ensure the development or availability of these resources.

We further believe that when a young person is apprehended by the police, he or she should be entitled to communicate immediately with parent, friend or lawyer. If he or she is detained in custody, the young person should be entitled to receive visits from the same persons at reasonable times. If the young person is being questioned, he should be entitled to refuse to answer or to refuse to answer until he or she has met with a lawyer. We also believe that a young person should be entitled to be represented by a lawyer, not only at the trial, but at any stage in the proceedings where decisions affecting his or her welfare will be made by authorities.

WE RECOMMEND

28. that a young person is entitled to be assisted by a lawyer retained by or for him during all proceedings.

In addition to the right to retain legal counsel, we believe a young person should be entitled to be assisted by any responsible person at any stage of proceedings, except at his trial. The question of whether or not the young person should have the right to be represented at his trial by someone other than a lawyer was considered by the Committee. We concluded that in view of the nature of the trial, a lay person should not ordinarily be permitted to represent a young person, because a lay person is presumably not familiar with the substantive and procedural elements of the law, as well as the manner in which the court functions. Nevertheless, it is our belief that a young person should be represented at trial by a person other than a lawyer, if the

judge considers such a person to be responsible and suitable, and a lawyer is not readily available.

WE RECOMMEND

29. that in addition to the right to legal representation, young persons be entitled to be assisted by a responsible person at any stage of the proceedings, except at the trial.

WE RECOMMEND

30. that the judge, at any stage of the trial, should have the discretion to authorize that a young person be represented by some other responsible person in the absence of legal counsel.

The implementation of these proposals would not be necessarily dependent upon the availability of a legal aid system. Therefore, if a provincial or regional legal aid plan provides for the free services of a lawyer when a young person does not have the means to retain a lawyer, this would be beneficial to young persons. Other forms of delivery of legal services such as permanent child advocates, law guardians, duty counsel or public defenders services, could also be resorted to.

B. *With Respect to Written Statements*

We are of the opinion that no written statement given by a young person to a police officer or a person in authority should be received in evidence against him or her, unless the young person was afforded an opportunity to be assisted by a lawyer, parent or friend at the time of the giving of the statement. Whether the young person would avail himself of such an opportunity would be his or her own decision to make.

However, because young persons may not be sufficiently mature to fully understand the importance of this stage of proceedings and are, therefore, vulnerable to the prospect of incriminating themselves, they should be afforded a form of protection that goes beyond the rules of practice, the provisions of the Criminal Code and the case law regarding the admissibility of statements. An alternative that was considered and rejected would have prohibited entirely the taking of a statement by the police. This was felt to constitute an unreasonable restraint on the role and duties of the police. The Committee believes that, by restricting the circumstances in which the taking of statements would be admissable in evidence, young persons would be protected while at the same time not interfering with good police practice.

WE RECOMMEND

31. that any written statement given by a young person without the young person having first been given the opportunity to consult with a lawyer, parent or adult friend, shall be inadmissible as evidence.

11 Appearance of Young Person in Youth Court

Apart from what is required to be communicated to adults in the ordinary court system, the present process does not require that any specific action be taken by the court regarding an explanation of the proceedings, the charge or specific implications and consequences that may ensue. In order to be consistent with the philosophy of the proposed legislation, the Committee concluded that it was necessary to ensure that when a young person appears before the judge, he or she should be required to explain in simple language the substance of the charge and the consequence of his admitting the alleged offence, and to inform the young person that he need not admit the offence. As indicated earlier, we believe the judge should also inform the young person of his or her entitlement to be represented by a lawyer, or if legal counsel is not available, by a responsible adult person of the young person's choice.

WE RECOMMEND

32. that when a young person against whom an information has been laid appears before the court, the judge shall inform him that he is entitled to be represented by a lawyer retained by him, explain the charge and explain the consequences that could result from an admission of the offence.

The Committee further believes that the judge should be prevented from accepting an admission by a young person unless the young person, before making an admission, had an opportunity to be assisted by a lawyer, parent or adult capable of advising him. Additionally, we believe that in the event an admission was made where the opportunity to seek legal assistance was not given, there should be deemed to be no admission.

WE RECOMMEND

33. that the judge shall not accept an admission of an offence unless, before making the admission, the young person had an opportunity to be

assisted by a lawyer, parent or other adult who, in the opinion of the judge, is capable of advising the young person.

The Committee is also concerned with those cases where the alleged offence is one for which the young person could, if tried in adult court, be sentenced to death or mandatory life imprisonment. We believe that these cases are so important that it is necessary to provide an additional protection to the young person by providing in the legislation that in these instances, no admission be accepted by the judge. We expect that the majority of these young persons will be transferred to adult court.

WE RECOMMEND

34. that, where the alleged offence is one for which the conviction of an adult could result in a sentence of death or mandatory life imprisonment, the judge shall not accept an admission of the offence by the young person.

12 Adjournments

The Committee is of the opinion that the trial process should be initiated swiftly after any screening process has been completed. Too often, young persons may be detained for long periods in detention or suffer the effects of having their cases prolonged because of administrative reasons over which they have no control. While adjourned proceedings may be of benefit to both the young person and the Attorney General and should be allowed in some instances, such as to permit adequate assessment or the preparation of pre-disposition reports, adjournments should be for just cause and not be allowed when they delay proceedings unnecessarily.

The Committee proposes that the judge be able to adjourn proceedings at any time and that each such adjournment should not exceed eight days. However, beyond eight days, consent of both the Attorney General and the young person concerned would be required.

We also believe that definite time periods are required to make certain that young persons will be dealt with in the court without delay. The exception is offered on the basis that the consent of both parties should provide a good check on unnecessary adjournments.

WE RECOMMEND

35. that legislation provide that the judge may adjourn proceedings at any

time and that each such adjournment should not exceed eight days, unless there is consent of both the Attorney General and the young person concerned.

13 Substitution of Judges

As will be seen throughout the proposals, there are a number of stages in the proceedings where a Youth Court judge is involved, ranging from the determination of pre-court detention through to the various judicial reviews which may occur during the course of a disposition order. The Committee is of the opinion that it is neither necessary nor feasible that a particular judge should be required to preside at all stages of the proceedings and towards this end, we propose the legislation clearly spell out that different judges be able to preside over different stages.

One instance in which it would not be desirable to substitute judges is where a trial has commenced, but a decision has not been rendered. In these cases where the original judge is not able to continue with the proceedings, the substituting judge should be required to recommence the trial in order that he or she may be fully cognizant of the proceedings that had transpired prior to his involvement.

WE RECOMMEND

36. **that different judges may preside over different stages of proceedings, but that where a trial has commenced before one judge and an adjudication has not been made, the substituting judge shall recommence the trial.**

14 Transfer to Adult Court

The Juvenile Delinquents Act provides that, where the accused person is apparently or actually over the age of 14 years and is charged with an indictable offence, the juvenile court judge may, in his discretion, order that person to be proceeded against in the adult court in accordance with the provisions of the Criminal Code. This action may only be followed if the court is of the opinion that the good of the child and the interest of the community demand it. There is further provision that the juvenile court judge may, in his or her discretion, at any time before any proceeding has been initiated, rescind such an order and have the case remain within the jurisdiction of the juvenile court.

The provision for transfer is based on the assumption that there are cases in which the general intent of the Juvenile Delinquents Act must be overriden because some aspect of the case demands an exception to the philosophy or practices of the juvenile court.

Flexibility must be provided in the legislation in order to permit the transfer of certain young persons to the adult court, but the Committee believes that young persons under the age of 16 are too young to be subjected to the full weight of the adult criminal justice process. Rather, the Committee believes that transfers to adult court should be limited to young persons of at least 16 years of age, on the basis that the maturity and development of young persons between ages 14 and 16 are not sufficient to warrant their being dealt with in adult court.

Transfers should be considered only with respect to serious offences. Our proposals provide for transfer to be ordered only for the most serious category of indictable offences and not for any summary conviction offences or for any offences mentioned in Section 483 of the Criminal Code, such as theft under $200.00.

The Committee is further of the view that transfers of young persons to adult court should be limited to those instances where the Youth Court judge determines that the characteristics of the young person, the circumstances of the alleged offence and the dispositions and services available in the adult system suggest the young person would be more appropriately and adequately dealt with in adult court than in the Youth Court.

WE RECOMMEND

37. **that the Youth Court judge should render his or her decision regarding transfer to adult court after considering a number of factors, including the following:**

(a) **the degree of seriousness of the alleged offence and the circumstances in which it was allegedly committed;**

(b) **the age, maturity, character and previous history of the young person;**

(c) **the comparative adequacy of the dispositions available under the Criminal Code, the new legislation and any other federal act, for dealing with the case;**

(d) **the nature of any community services rendered to the young person in the past, whether pursuant to this or any other federal or provincial act and his response to these services;**

(e) **the contents of a pre-disposition report; and**

(f) **any representations made by or on behalf of the young person or the Attorney General or his agent.**

Our general intent here is to restrict as much as possible the cases which can be considered for transfer to adult court. It is our belief that if there must be transfers, then they should only be permitted in exceptional circumstances and in accordance with strict limitations.

We also propose that discretionary powers of the juvenile court judge be broadened to permit him to order a transfer where one is requested by a young person of at least 16 years of age, in those cases where, if he or she were an adult, the young person would have the right to be tried by a judge and jury. It is our opinion that this fundamental provision of the criminal law should not be taken away from all young persons and that there should be access, albeit limited, to the opportunity for a trial by a judge and jury.

WE RECOMMEND

38. **that, where a young person, of at least 16 years, is charged with the commission of an offence in respect of which, but for this Act, he would be entitled to be tried by a court composed of a judge and jury and, the young person for that reason requests that he be tried in adult court, the judge may, in his discretion, order that the young person be proceeded against in adult court, whereupon the young person may be proceeded against accordingly.**

We also propose that the judge be required to file, as part of the record of Youth Court proceedings, written reasons for his decision to transfer a young person to adult court. The Committee believes this should ensure that appeals will be possible when the parties are aggrieved but cannot determine the basis on which the court decided to transfer. In effect, judges would have to be specific in their reasons, commit them to writing and file them as part of the record.

WE RECOMMEND

39. **that the judge file written reasons for his decision to transfer a young person to adult court.**

The making of a transfer order involves the transfer of jurisdiction of the court over the young person and the offence involved. The question of the effect of that transfer order regarding jurisdiction concerning other offences committed by the young person at any time requires clarification. For the purpose of permitting the

proceedings in the adult court to be completed and, to reduce the multiplicity of proceedings and potential inconsistencies that could arise in relation to the young person, the operation of the Act should be suspended upon the making of a transfer order in respect of all offences committed by the young person at any time. For those offences where an information has already been laid, the operation of the Act would not be suspended. We considered the option of extending the suspension to include such an offence where an information had already been laid but could not accept that any proceedings in regard to that offence should be suspended in favour of the adult court. In this respect, we recognize the possibility for potential duplication. Nevertheless, we are not convinced that an acquired jurisdiction should be disturbed or pre-empted. The effect of the order in relation to the offences where no charges have been laid would mean that such offences could be dealt with directly in the adult court. It would also be possible to wait until the suspension has terminated and then proceed with these offences in Youth Court.

WE RECOMMEND

40. **that upon the making of a transfer order, the operation of the Act be suspended in respect of all offences at any time committed by the young person, except any other offence for which an information has already been laid, until all proceedings commenced against the young person in adult court, for the offence in respect of which the order was made or any other offence, have been concluded and any period of imprisonment or probation or any fine imposed as a result of such proceedings has expired or been paid.**

Section 9(2) of the Juvenile Delinquents Act permits the court, in its discretion, at any time before any proceeding has been initiated against the child in the ordinary criminal courts, to rescind the transfer order that it made and to proceed accordingly in respect of the young person. The Committee is of the opinion that once the judge's decision has been made, the appropriate mechanism to follow is the appealing of this decision. In effect, he or she would not be able to change his decision as is presently the case under the Juvenile Delinquents Act. We therefore are not providing for the court to rescind its order in the proposed legislation on the basis that once the judge has made a transfer order, he or she has completed the task and has terminated jurisdiction in relation thereto. We are recommending that there be a right of appeal from a transfer order. This will be dealt with further in the part entitled "Appeals".

15 Adjudication

Section 17 of the Juvenile Delinquents Act provides that proceedings under the Act, "including the trial and disposition of the case, may be as informal as the circumstances will permit, consistent with a due regard for a proper administration of justice". Also, that "no adjudication or other action of the juvenile court with respect to a child shall be quashed or set aside because of any informality or irregularity where it appears that the disposition of the case was in the best interest of the child".

One criticism of the Juvenile Delinquents Act is that the rights of children have been abridged in some instances, because juvenile court judges have employed varying interpretations of the most appropriate way to conduct hearings and trials. While informality has had beneficial effects, it has not always been conducive to achieving the objectives of the legislation.

It is our belief that the most appropriate manner in which to determine the facts and the responsibility of a young person, when the young person does not admit the commission of the alleged offence, is to conduct a hearing in the nature of a trial. Further, trials should be governed by the rules of evidence applicable in the courts of criminal jurisdiction. This would provide the same safeguards that are available to adults, with the additional benefits mentioned earlier that the judge would carefully explain the nature of the charge and the consequences of an admission and he would be governed by rules affecting the acceptance of admissions.

The Juvenile Delinquents Act also provides that a judge will make an adjudication of delinquency, then act on the basis that the child is to be dealt with as one who is in a state of delinquency.

It is our belief that the Youth Court judge should proceed to make a disposition only if the evidence proves beyond a reasonable doubt that the young person committed the specific offence with which he was charged. In those cases where the young person admits the offence alleged against him and the judge is satisfied that the evidence supports the truth of the admission, he or she should then make a finding that the offence has been committed by the young person unless he decides without making a finding to discharge the young person. We have chosen not to use the words "guilty" and "not guilty" because of the elements of criminal connotation and moral condemnation associated with these terms. Nevertheless, it will still be necessary for the judge in making a finding of whether or not an offence has been committed to do so in accordance with the concepts involved in the determination of guilt or innocence.

One option that the Committee considered was to enable the Youth Court judge to participate directly in a judicial form of diversion before making a finding. This option was rejected because of the elements of bias and prejudice which could arise as a result of the information at the disposal of the judge. Further, the prospect of duress arises, since the young person might feel constrained to agree to any

informal arrangement because it is proposed by the judge. Another problem with this option is the amount of the judge's time which would be consumed.

Under another option, the judge would adjourn the proceedings and leave it to the parties to try to reconcile their differences in favour of an agreement that would constitute a solution of the problem. The Committee rejected this option on the basis that the judge should not become involved in the diversion process. However, our proposals do not preclude the judge from exercising his or her discretion to terminate proceedings by permitting the withdrawal of the charge.

We believe that a screening agency is the most appropriate mechanism to perform the diversion function prior to a court appearance. Nevertheless, to deal with cases which should have been diverted prior to an appearance in court, but for some reason were not, we believe that there is merit in having in the new legislation a provision to enable the Youth Court judge to discharge a young person. This could occur where, although there is sufficient evidence to support the finding of the commission of an offence, the judge is satisfied that the appearance of the young person in court is sufficient in itself to achieve the objectives of the new legislation.

We believe that the Youth Court judge should be enabled to stop short of a finding of the commission of an offence and at that point dismiss the charge against the young person in question. In order to accomplish this, a distinction is made between the function of deciding that the evidence is sufficient for a finding and the actual registering of a finding.

WE RECOMMEND

41. that the function of deciding that the evidence is sufficient for a finding be separate from the actual registering of a finding.

WE RECOMMEND

42. that where the Youth Court judge is satisfied there is sufficient evidence to support the finding of the commission of an offence, he may, in lieu of making such a finding, dismiss the charge against the young person where he is satisfied that the court appearance by the young person will serve the purpose of the Act.

16 Finding and Disposition

The Juvenile Delinquents Act provides that when a child is adjudged to have committed a delinquency, the child is to be dealt with as one who is in a state of delinquency. In order to achieve this end, the Act provides for a variety of dispositions and allows for informal arrangements to be made. Section 20(1) states that the court may take one or more of the following courses of action as it deems

proper in the circumstances of the case: "(a) suspend final disposition; (b) adjourn the hearing or disposition of the case from time to time for any definite or indefinite period; (c) impose a fine not exceeding twenty-five dollars, which may be paid in periodical amounts or otherwise; (d) commit the child to the care or custody of a probation officer or of any other suitable person; (e) allow the child to remain in his home, subject to the visitation of a probation officer, such child to report to the court or to the probation officer as often as may be required; (f) cause the child to be placed in a suitable family home as a foster home, subject to the friendly supervision of a probation officer and the further order of the court; (g) impose upon the delinquent such further or other conditions as may be deemed advisable; (h) commit the child to the charge of any children's aid society, duly organized under an Act of the legislature of the province and approved by the lieutenant governor in council, or, in any municipality in which there is no children's aid society, to the charge of the superintendent, if there is one; or (i) commit the child to an industrial school duly approved by the lieutenant governor in council."

Section 20(3) of the Act gives jurisdiction to the court to deal with anyone who has been adjudicated delinquent, at any time thereafter until that person reaches the age of 21 years. A judge of the juvenile court may cause such a child to be brought back before the court and make any of the dispositions provided in the Act, as stated above. Alternatively, the judge may, if the circumstances warrant, transfer the child to adult court, discharge him on parole or release him from detention. In those provinces where a transfer to provincial law is not in effect, the judge may only release a child from an industrial school if the authority responsible for child welfare recommends such release.

Section 21 of the Act stipulates that, when orders are made which have the effect of "committing a child to a children's aid society, or to a superintendent, or to an industrial school, if so ordered by the provincial secretary, the child may thereafter be dealt with under the laws of the province in the same manner in all respects as if an order had been lawfully made in respect of a proceeding instituted under authority of a statute of the province; and from and after the date of the issuing of such order except for new offences, the child shall not be further dealt with by the court under this Act."

The dispositions described above have not given sufficient guidance to the court. The Committee is of the opinion that the new legislation should provide dispositions that will constitute a more appropriate range of guidelines to the court. In this respect, some of the dispositions under the Juvenile Delinquents Act need to be modified, limited or better structured.

It is our belief that the power of a juvenile court judge to suspend final disposition indefinitely or to adjourn proceedings for an indefinite period should not be continued. While we recognize that this adjournment procedure has been useful in terms of allowing for flexibility and diversion of the young person to more

appropriate service jurisdictions, a young person should nonetheless be protected from long periods of uncertainty. To maintain the benefits flowing from such practice, but also to check the negative aspects of it, we recommend that a screening mechanism be established and that the judge may discharge the young person without making a finding that the offence has been committed.

The Committee anticipates that there will be specific cases when, after hearing the facts and receiving a pre-disposition report, the judge may determine that a young person would be better dealt with under provincial child welfare or youth protection legislation. One option would be to make provision for transferring a young person to the jurisdiction of provincial law. However, it is presumed that most such young persons would have been diverted earlier to the provincial director and that the decisions made by a screening agency and the Attorney General would have had the intent of bringing the young person before the Youth Court. Also, we believe that, when a judge makes a finding, he should proceed with a disposition that will retain the young person under his jurisdiction. For these reasons, we reject the option of referring the case to the provincial director at this stage of the proceedings. In some instances, the judge may, after considering the pre-disposition report, decide that a young person would be better dealt with on a non-offence basis, or he may want to discharge the young person. This would not be possible under the provisions we propose.

We believe that a fine remains a valid disposition in appropriate circumstances where it is determined that a young person has the capacity to pay the fine, either forthwith or on an installment basis. In order to better reflect monetary values and the earning power of many young persons, we suggest that a maximum fine of $200.00 is an appropriate and realistic sum.

WE RECOMMEND

43. that the judge be enabled to impose a fine up to a maximum of $200.00 to be paid in such manner as the judge directs.

We also believe that the dispositions available in the Juvenile Delinquents Act do not adequately provide for a young person in appropriate instances to compensate the victim, or perform a community service. Because of this, we favour legislative provisions which would permit a judge to require a young person to perform an appropriate community service on the basis of an agreement with a community agency, to make a contribution to a charity of the young person's choice, or to make compensation or restitution for such things as loss of real goods, damage to property, personal injury or loss of income. In these instances, we believe that the

maximum amount that could be assessed against the young person should be left to the discretion of the judge but, in any event, should not exceed $200.00

WE RECOMMEND

44. that the Youth Court judge may order a young person to perform an appropriate community service, which may include a contribution to an appropriate charity of the young person's choice, the value in total not to exceed $200.00.

WE RECOMMEND

45. that the Youth Court judge may order a young person to pay to another person an amount not exceeding $200.00 by way of compensation, or to make restitution in kind of a value not exceeding $200.00, for loss of or damage to property, loss of income or support or personal injury suffered by that person as a result of the commission of an offence by the young person.

We propose that a specific maximum limit be placed on the possible length of a disposition and to have each disposition in force for a specified length of time as stipulated by the Youth Court judge. In this respect, a maximum of three years should be sufficient for the carrying through of an appropriate program of services to the young person. The question of the length of disposition is closely related to the processes we suggest for reviews of dispositions which will be discussed later in this report under the heading "Review of Dispositions".

We recognize that, in some instances, the needs of young persons and the need to protect society will require the extension of further care and services following the expiration of the disposition, including the maximum three-year disposition. However, we believe there should be maximum time limits on dispositions, after which compulsion should not be applied. Where appropriate, referrals for services subsequent to the expiration of a disposition would be made following a pre-discharge review and in most instances, would be done on a voluntary basis.

WE RECOMMEND

46. that dispositions of probation and custody be for a fixed period of time not to exceed three years from the date imposed by the Youth Court judge.

It is the general philosophy of the proposed legislation that constraints on freedom be limited to those instances assessed to be essential to protect society and respond to the needs of the young person. We are, therefore, concerned that dispositions imposing restrictions on a young person's liberties by means of probation or custody in either an open or secure facility should be made only when other dispositions of a less restrictive nature have been considered and rejected as inappropriate.

We also believe that dispositions involving the use of probation and open and secure custodial facilities should only be made following a careful study and assessment of the young person, his life situation and his views. The proposals provide guidelines for these studies which are discussed in the section on "Pre-disposition Reports".

The use of probation has been demonstrated as a valid and useful form of disposition as it has the effect of keeping a young person both in his home and the community.

WE RECOMMEND

47. that the Youth Court judge may impose upon a young person a term of probation not exceeding three years.

We are concerned that any disposition that would have the effect of removing a young person from his home should only be employed when no other dispositions would be appropriate. Both open and secure facilities can confer specific benefits to young people and while the secure setting provides an additional protection to society, in both instances, the primary goal of residential programs should be to meet the individually assessed needs of the young person in question. A young person should be placed in secure custodial facilities if the judge is satisfied that secure custody is necessary, either to prevent the young person from doing harm to himself or herself or another, or because he is likely to evade if placed in open custody.

Provinces identify their service facilities on the basis of differing terminology and definitions. We have, therefore, chosen the generic terms of "open custody" and "secure custody" to designate the general types of residential resources envisaged in the proposals. In keeping with the definitions of open and secure facilities used in the legislation, provincial authorities would designate such facilities for the exclusive use of young persons under the age of 18 years or those young persons between the ages of 18 and 21 years who are dealt with under the provisions of this legislation.

In any event, the dispositions available in the legislation should provide for the opportunity to maintain a young person in either an open or secure setting on an intermittent short-term basis with the concurrence of the provincial authority. This would enable a young person to remain in his usual place of residence and continue either educational or occupational pursuits during the week, while allowing him to benefit from involvement on a day or weekend basis in residential or attendance programs.

WE RECOMMEND

48. that the Youth Court judge may commit the young person to continuous or, with the concurrence of the provincial authority, intermittent care in either open or secure custody for a period not exceeding three years from the day of the committal.

The question arises whether the Youth Court judge should have unlimited power, in imposing open and secure custody, to require the young person to comply with such ancillary conditions to the disposition as the judge may deem necessary. This could raise some difficulty as the conditions imposed by the judge could very well be contrary to administrative procedures of the relevant place of custody. One possible option would be to prevent the judge from applying any ancillary conditions, while another option would permit the judge to apply any such conditions with the prior consent of the provincial authority.

It is our belief that the judge should be able to impose such reasonable conditions which would be ancillary to the disposition as would be helpful to the young person. By making these conditions subject to the concurrence of the provincial authority, we are confident that our proposals constitute a reasonable and balanced distribution of authority between the Youth Court judges and the administrators of services to provide the necessary help and controls to young persons.

WE RECOMMEND

49. that subject to the concurrence of the provincial authority, the judge be enabled to impose upon a young person reasonable conditions ancillary to his commitment to either open or secure custody.

The Juvenile Delinquents Act does not require that written reasons be filed by the judge making a disposition. We believe that the judge should be required to file in

writing his reasons for arriving at dispositions involving probation, open or secure custody. This will not only serve to acquaint the young person and the provincial authority with the judge's rationale in deciding upon the disposition, but would provide the young person and provincial service authorities with a record for post-dispositional applications and reviews and for appeal purposes. This would serve to make the process more visible and more credible and coupled with mandatory pre-dispositional studies and reports should ensure well-considered and appropriate dispositions.

WE RECOMMEND

50. that the judge shall file written reasons for any dispositions involving probation, open or secure custody.

Another problem which came to the Committee's attention, related to the involvement of a young person in an offence involving a weapon, motor vehicle or vessel. The Committee believes that the provisions of the Criminal Code related to these offences contain suitable prohibitions or restrictions and should be available to the Youth Court judge.

WE RECOMMEND

51. that the Youth Court judge may impose upon a young person who has committed an offence involving or related to the operation of a motor vehicle or vessel, or the possession or use of an offensive weapon, a prohibition or restriction on the possession or use of such an item for a period not to exceed two years.

Before leaving these matters, it is appropriate to develop further our view of the role of the Youth Court judge in relation to the service system. The Committee gave considerable attention to this matter.

One view suggests that the judge should be principally the decider of the law and the facts in respect of the alleged offence. After he or she has made a finding of an offence and a pre-disposition study has been completed, the service authorities should decide the most appropriate treatment for the young person and follow it through to completion.

An opposing view suggests that the Youth Court judge should, in addition to deciding the facts, be responsible for determining the individual treatment to be

provided to the young person, including the particular service facility or personnel and the supervision, evaluation and adjustment of the treatment plan.

In our view, the function of the Youth Court judge should be between these two extremes. Unquestionably, he or she should determine the facts and the law. Further, the judge should specify the general area of service to be provided and the relative degree of restraint to be imposed on the young person: probation supervision in the community; open care and custody or secure care and custody. However, he or she should not stipulate the particular youth worker or residential facility that will serve the young person. The determination of the service plan or the particular facility within the general areas of service that are defined in the proposed legislation should be the responsibility of the provincial authorities who develop, administer and are accountable for the service system. There should be provision for the judicial review of each case at the request of the young person, the provincial service authority, and at specified intervals, to ensure that the intent of the disposition, including the services required, is in fact being carried out. The judge should review the case to determine whether the disposition is appropriate, should be changed, or whether the young person should be discharged. The service authorities would not be able to effect the transfer of a young person from one general area of service to another without judicial review and an order of the court.

The Youth Court judge would be responsible in the first instance for ensuring that a young person was not unnecessarily detained before or during his trial, that his rights were respected throughout and that the dispositions were appropriate, were being conformed with and were not unnecessarily prolonged.

Our proposals do not include the provisions that are contained in the Juvenile Delinquents Act for the transfer of young persons to the jurisdiction of provincial law. We believe that young persons should remain under the jurisdiction of the new legislation following their disposition under that legislation. We believe that this will make the process and the law more credible to young persons and the community, while leaving it to the provincial authorities to provide services within the guidelines contained in the proposed legislation.

17 Pre-disposition Reports

For the purpose of making a disposition, the judge should have a thorough knowledge of the individual's assessed needs, the life situation and the views of the young person. Further, these must be related to the nature and extent of services and resources available to the court. In all serious cases, the judge's determination of the disposition should be preceded by a case evaluation in the form of a pre-dispositional study and a report that will provide an individualized assessment of

the young person's circumstances and a realistic appraisal of the capabilities of the service resource available to the young person.

The Juvenile Delinquents Act leaves it to the judge to request a pre-disposition report. In light of this provision, one option which the Committee considered was to require that reports be prepared in all cases, reasoning that the less serious cases would have been diverted and thus only the most serious cases would be brought before the court. This option was rejected in light of the minimal benefits in many cases to be gained in requiring a report as well as the administrative problems and demands in implementing this option. The benefits that could possibly result from such a mandatory requirement would not justify the costs involved.

The Committee believes that the preparation of a pre-disposition report should be mandatory in those cases where a young person's liberty is likely to be restricted, including the placing of a young person on probation or committing him to care and to open or secure custody. In all other cases, the preparation of a pre-disposition report would be in the discretion of the Youth Court judge.

WE RECOMMEND

52. that a judge shall require a pre-disposition report before making a disposition, if that disposition is to be an order for probation, open or secure custody; in all other cases, a pre-disposition report would be discretionary.

The pre-disposition report should be as extensive as necessary, be in writing and contain the results of interviews with the young person and, where appropriate, with his parent. The report should contain relevant information relating to the young person's personal and family history, environment and living situation, as well as any psychological or psychiatric assessments that have been made. In addition, the report should give an appraisal of the facilities and services that are available to meet the needs of the young person. The report should also contain any further information prescribed by regulation. The Committee is aware that the pre-disposition report could well point to the non-existence or inappropriateness of facilities and perhaps lead the Youth Court judge to make a disposition which may not respond sufficiently to the needs of the young person. However, it is hoped that where this is the case, the pre-disposition reports will help to identify the gaps in community services and pave the way to the development of more adequate services.

WE RECOMMEND

53. that the pre-disposition report shall be in writing and shall contain as

much information as is reasonably obtainable and relevant to an order or disposition that may be made in respect of the young person.

The Committee is of the opinion that the preparation of a pre-disposition report should be under the direction and responsibility of the designated provincial authority. This is in keeping with the recognition that provincial authorities are best suited to assess the adequacy of the existing services which they administer.

WE RECOMMEND

54. that a pre-disposition report should be prepared by or under the direction of the responsible provincial authority designated for that purpose.

The Committee recognizes that in many cases, there is insufficient time to commit a pre-disposition report to writing. In order to avoid undue delay in the court process, it may be necessary that the report be made orally.

WE RECOMMEND

55. that where lack of time prevents a pre-disposition report from being committed to writing prior to the disposition, the report may be made orally in the first instance, but it shall immediately thereafter be committed to writing and placed in the Youth Court record of the case.

In considering the matter of who should have access to a pre-disposition report, the Committee was guided by a concern to ensure that the information provided in the pre-disposition report and other assessment material should be private and protected against undue access. The pre-disposition report should be made available on a selective basis only to those persons who have a direct involvement in dealing with the young person's case in the Youth Court or providing services following the disposition.

WE RECOMMEND

56. that upon request, a copy of the pre-disposition report should be supplied to the young person, his parent, his lawyer, any judge, any youth worker who acts in respect of the case, the Attorney General and his agent, the

provincial director and any person or class of persons whom he designates, and any other person, to the extent to which a judge directs, for the purposes of the proceedings for which the report was prepared.

In some instances, information in the pre-disposition report might be harmful to the young person. In order to protect the young person from information which may not be in his best interest if disclosed, the judge should have the authority to withhold such information from the young person or his parent.

WE RECOMMEND

57. that a judge may direct that any part of a pre-disposition report be withheld from the young person, if in his opinion the contents of the report would prove to be harmful to him if disclosed.

Another concern of the Committee is the question of the admissibility of statements made by a young person in the course of interviews for the purpose of preparing a pre-disposition report. It is felt that a young person should be protected by objective guidelines which would eliminate the possibility of introducing incriminating evidence arising out of the making of any such statements during the course of the preparation of the pre-disposition report.

WE RECOMMEND

58. that no statement, made in the course of an investigation for the purpose of preparing a pre-disposition report, by a young person who is the subject of such report, be admissible in evidence against him in any proceeding, whether civil or criminal, except for the purpose of considering an order to proceed against the young person in adult court or in the determination of a disposition.

It should also be mentioned that the young person has the right at the time the pre-disposition report is presented to the court to examine its contents. There is no need for a separate recommendation in this regard since the right to examine and cross-examine those persons involved in the preparation of reports exists as a

matter of law. Neither the provincial authority nor, for that matter, the court or the young person or his family would be precluded from calling upon experts in the community to assist the judge in determining the most appropriate disposition.

18 Medical Examinations

There are instances where a young person who comes before a court appears to be suffering from a physical or mental illness and should be examined and treated. In some cases, it is either extremely difficult or impossible to obtain the consent of parents or legal guardians to deal with these situations. We are of the opinion that the new legislation should provide specific authority to the judge that, relevant to making a decision under the legislation, he should be authorized to order a medical, psychological or psychiatric examination and report when he has reason to believe the young person is ill and the parents are either unable or unwilling to provide their consent. One option that was considered and rejected in this regard would have permitted the judge to order treatment as required. It was decided that such prerogative should remain with provincial authority instead of the judge because this is more appropriately within the scope of the provincial director's functions and duties. Accordingly, if the report reveals that the young person is ill, the judge could then refer the young person to the care of the provincial director.

WE RECOMMEND

59. **that the judge may, at any stage of proceedings, order a young person that the judge has reason to believe may be suffering from any physical or mental illness, to be examined by a qualified person who will provide a written report of the results of the examination to the judge.**

We recognize that a time limit is necessary in order to clearly define the time within which a medical examination should be conducted. In this respect, we propose a maximum of thirty days.

WE RECOMMEND

60. **that the judge may, for the purposes of obtaining a medical report, order that a young person be held for a maximum of thirty days.**

19 Disqualification of a Judge

The Committee recognizes that there will be opportunities for a Youth Court judge to receive background information about a young person, as contained, for example, in an assessment, prior to the stage of hearing evidence and arriving at a decision as to whether the young person committed the alleged offence. This could arise when a judge decides against a transfer to adult court or when a judge receives a pre-disposition report prior to determining whether the young person committed the alleged offence.

In either instance, the information available to the judge could prejudice the young person's interests and be damaging to his right to receive a fair trial. We, therefore, propose that in these instances, the judge who receives such background information be disqualified from conducting the trial of the young person in question.

WE RECOMMEND

61. **that a judge who has been involved in proceedings regarding transfer of a young person to adult court, or who has examined a pre-disposition report prior to deciding on the involvement of a young person in an offence, has no jurisdiction in any capacity to try that young person for the offence in question.**

20 Issue of Insanity

We do not propose to examine the broader issues of insanity on the basis that they are outside the scope of our present considerations. The Committee notes the work of the Law Reform Commission of Canada in examining this matter and we believe the problems to be resolved should not be approached within the scope of our present proposals for new legislation. Nevertheless, as we indicate below, there are particular matters which need to be dealt with in relation to young persons.

The provisions of the Criminal Code apply when doubt arises concerning the mental capacity of a person at the time of the commission of an indictable offence and the fitness of the person to instruct counsel and to stand trial. We believe that the system of referral that is provided in the Criminal Code is not suitable given the particular status of young persons, in that young persons should not be referred to the Lieutenant Governor in Council to be detained at his pleasure on an indeterminate basis. On the contrary, we believe the most appropriate means of dealing with the young person in such circumstances would be under the terms of the relevant provincial legislation. Thus, we suggest it should be mandatory for the judge to refer a young person who has been found to be insane at the time of the

offence was committed or is unfit on account of insanity to stand trial, to the provincial authority for treatment under the appropriate provincial law. The judge would also order that the young person be kept in a suitable place of custody until a provincial authority assumes responsibility for him.

WE RECOMMEND

62. that the Youth Court judge shall refer a young person to the provincial authority, for consideration under appropriate provincial legislation, when he finds that a young person was insane at the time an indictable offence was committed, or that a young person is unfit on account of insanity to stand trial. Further, the judge shall order that until the appropriate authority assumes responsibility for the young person, he shall be kept in a suitable place of custody.

In those situations where the young person has been found unfit on account of insanity to stand his trial, a provision is required to make it clear that where a Youth Court judge has not proceeded with a case because of the mental state of the young person at the time of trial, the case may be taken up if the young person later recovers. This has the effect of making certain that the jurisdiction of the court is preserved. In effect, this provision would indicate that the young person could be tried subsequently upon recovery, unless the issue of insanity at the time of the original trial had been postponed and the young person was found not to have committed the offence at the close of the case against him. This would be consistent with the provisions of the Criminal Code.

WE RECOMMEND

63. that a judge may subsequently try a young person for the alleged offence, unless the trial of the issue of insanity was postponed in keeping with provisions of the Criminal Code and the young person was found not to have committed the offence at the close of the case against the young person.

21 Transfer of Disposition

The increased mobility of Canadian citizens creates in some circumstances jurisdictional difficulties involving young persons who have been dealt with by the Youth Court and the disposition that has been made in respect of those young

persons. It should be possible for an application to be made to the Youth Court judge in the province in which the disposition was made, for an order that the case and all the subsequent proceedings in that case be transferred to a Youth Court in another part of that province or to another province. In addition, the Youth Court judge in the part of the province or other province to which the young person has moved should be able to alter specific conditions of the disposition in accordance with the intent of the original disposition. This would permit the disposition to be adapted to the existing situation in the new jurisdiction. Thus, such provisions should facilitate operational procedures and overcome jurisdictional problems within a province or between different provinces.

WE RECOMMEND

64. that provisions allow for the disposition to be transferred from one province to another or from one territorial division to another, and that in so allowing, the disposition will be implemented and carried out as if the disposition had been made by a judge in the province or division to which the case has been transferred.

22 Transfer of Jurisdiction

At the present time, the provisions of the Criminal Code with respect to adults and with respect to most offences, permit the conferring of jurisdiction on a court, over an accused who is before that court, regarding an offence committed outside the province or district in which the court is located. This applies only in those cases where the accused intends to admit the offence and both the Attorney General of the province in which the offence was committed and the accused consent.

The Committee considered the option of making the transfer of charges provisions of the Criminal Code applicable or alternatively, clearly delineating in the proposed legislation self-contained provisions. It is desirable that it be clear to young persons and their parents that there are provisions for transfer of charges from one jurisdiction to another and that they be clearly spelled out in this legislation. A further consideration in support of self-contained provisions is to resolve the difficulties involving the use of terminology found in the Criminal Code but which is not applicable to young persons.

Thus, where a young person is charged with an offence that is alleged to have been committed anywhere in Canada, he may, if the offence is not an offence mentioned in Section 427 of the Criminal Code, (for example, treason, piracy, sedition, or murder), and the Attorney General of the province where the offence is alleged to have occured consents, appear before any Youth Court in Canada. Where the young person signifies his consent to admit the offence and does admit it,

any Youth Court has jurisdiction to deal with the case and all subsequent proceedings and dispositions shall be the same and be made and implemented in the same manner as if the offence had been committed within the territorial jurisdiction of that Youth Court.

WE RECOMMEND

65. that there be a self-contained provision permitting a transfer of charges from one Youth Court to another if both the young person and the Attorney General of the province in which the offence was alleged to have been committed, consent.

23 Probation Orders

A number of options were discussed as possible conditions for probation orders that would assist a young person to avoid further illegal behaviour and would provide a means to meet his individual needs. In this regard, it is the view of the Committee that the conditions should be flexible and individually determined. Toward this end, we propose that there be mandatory conditions that would apply in all cases and additionally, that the judge be given the opportunity to select individual conditions from a list that would be provided for this purpose. Such conditions are proposed on the basis that they are relevant to the circumstances of young persons and reflect the basic philosophy and purposes of the proposed legislation.

In particular, we propose that mandatory conditions for probation orders should stipulate that the young person must be of good behaviour during the term of the disposition, must appear before the court as stipulated in the probation order or subsequently during the term of the disposition, as communicated by the judge, must notify a youth worker (who would be designated by the provincial authority), of any change in his address, employment, occupation or place of education, and must report to and be under the supervision as deemed appropriate of a parent, adult relative, adult friend or youth worker during the term of the probation order.

We propose that the judge also have the option to select from the following conditions:

(a) that the young person remain within the jurisdiction of a Youth Court or Youth Courts named in the order;

(b) that the young person take up such employment as may be available to him;

(c) that the young person attend school or another place of study, instruction or recreation;

(d) that the young person comply with such other reasonable conditions, including conditions for securing the good conduct of the young person and preventing a repetition by him of the same offence or the commission of other offences, as may be prescribed in the probation order.

We also propose that when a young person is placed on probation, the judge should read and explain to him the contents of the probation order and provide him with a copy of the order.

WE RECOMMEND

66. that all probation orders contain mandatory conditions for the term of the probation order, requiring that the young person be of good behaviour, appear as directed before the court, notify the designated youth worker of changes in his life circumstances as directed, and report to and be under the supervision of the person designated in the probation order.

WE RECOMMEND

67. that the judge may stipulate the addition of any or all of the following conditions to the probation order, as he deems relevant to the circumstances of the young person, including that the young person remain within a specific geographic area, assume employment, attend school or another facility for instructional or recreational purposes, and comply with any other reasonable ancillary conditions that may be stipulated in the probation order.

WE RECOMMEND

68. that the judge shall read and explain to a young person the contents of the probation order and shall provide him with a copy of that order.

24 & 25 Assignment and Duties of Youth Workers

The Juvenile Delinquents Act does not provide for a person to be made available for the purposes of assisting a young person who has been taken into custody or has been served with an appearance notice, a summons or a warrant of arrest. The Committee believes that it is important for a young person to understand the nature of the charge against him and the operation of proceedings with regards to the charge, as well as to ensure that his rights are protected at every stage of the proceedings.

In this regard, we propose that a youth worker be assigned to the case of a young person by the provincial authority. The duties of the youth worker would include informing himself of the facts of the case and meeting with the young person

for the purpose of explaining to him the procedure of the screening agency and the Youth Court and his rights, including the right to retain a lawyer. The youth worker would also prepare or ensure the preparation of a pre-disposition report as required by the provincial authority. The youth worker would be required to attend the Youth Court proceedings, to assist the young person in complying with the conditions and terms of any disposition and to give other appropriate assistance to the young person until the young person has been discharged or the disposition has expired. In recognizing the need for flexibility to accommodate the varieties of provincial administration, we recognize that all of these functions may not be necessary in every instance and we propose that the judge be authorized to modify or dispense with the requirement to attend court.

The title "youth worker" is generic in its nature and includes by whatever designation, personnel who perform any one or more of the duties of the youth worker. Therefore, the designation of youth worker would not interfere with the role and functions performed by persons who are designated as probation officers under the terms of provincial law.

WE RECOMMEND

69. that provisions be made for the provincial authority to assign a youth worker to the case of a young person in order that he perform such duties as are prescribed in the legislation.

26 Privacy of Youth Court Proceedings

The Juvenile Delinquents Act provides that the trials of children shall take place without publicity, separate and apart from the trials of adults and that suitable places shall be designated for that purpose. Further, the Act specifies that no report shall be made in a newspaper or other publication without the permission of the judge, concerning a delinquency or alleged delinquency, the trial or other disposition of the charge against the child, or of the charge against an adult brought in a juvenile court in which the name of the child is mentioned.

The question of making public the proceedings of the Youth Court must be weighed in terms of an adequate balance between meeting the needs of the young person and keeping the public informed of youth court proceedings in the interest of society. In this regard, the Committee is guided by the philosophy that the young person and his or her family should be protected from undue interference in their lives. At the same time, we are aware of the need to keep the public informed in order to protect against any potential abuse that could result from in-camera proceedings.

We believe that, while all proceedings in Youth Court should take place without publicity or the presence of the general public, the Youth Court judge should be prepared to admit to the court any person who has a valid interest in the case or in the work of the court. We further propose that upon the agreement of interested media representatives, one or two representatives of the mass media shall be allowed to be present at youth court proceedings and in the discretion of the judge, more such representatives in those instances where the judge feels that such attendance would not constitute a genuine hardship for the young person involved, or his family.

We further propose that, without the permission of the Youth Court judge, no person should be permitted to publish any report of Youth Court proceedings which would have the effect of identifying young persons who are involved as either the accused, the victim or as a witness.

WE RECOMMEND

70. that proceedings in a Youth Court shall take place without publicity or the presence of the general public, except for those persons the judge may admit to the proceedings on the basis that they have a valid interest in the case at hand or in the work of the court.

WE RECOMMEND

71. that one or two representatives of the mass media, as agreed upon by all such representatives who present themselves, be allowed to be present at proceedings in a Youth Court and additional such representatives in the discretion of the judge.

WE RECOMMEND

72. that no person may, without the permission of the Youth Court judge, publish any proceedings of the Youth Court which would have the effect of identifying a young person who is charged in the proceedings, or appears as a victim or as a witness.

27 Exclusion from Hearing

The rationale that was expressed in the section "Privacy of Youth Court Proceedings" has further relevance in the consideration of who may or may not, upon occasion, be expressly excluded from the proceedings of the Youth Court. In this regard, the Committee is of the opinion that the judge should have authority to exclude from the proceedings, for the express reason that such exclusion is in the best interest of the Young Person, any person except the Attorney General and his

agent, the Young Person and his lawyer, parent or other person assisting him, the Provincial Director and a youth worker.

In some instances, following the judge's finding of an offence, verbal information might be presented to the court which could have a psychologically damaging effect on the young person. In these instances, we believe the judge should exclude the young person from court prior to hearing such information, but that he should ensure that the young person's lawyer remain in the court. On these occasions, the judge should explain to the young person the need for his exclusion.

WE RECOMMEND

73. that the judge may exclude from the court any person whose presence the judge deems to be unnecessary to the conduct of the proceedings, except the Attorney General and his agent, the young person, his lawyer, parent or other person assisting him, the provincial director and any youth worker, when the judge considers such exclusion to be necessary in the interest of the young person.

WE RECOMMEND

74. that the judge may, after making a finding of an offence, exclude from the court the young person and any other person, except the young person's lawyer, when information is being presented which might, in the opinion of the judge, be seriously injurious to the young person if presented in the presence of the person so excluded.

WE RECOMMEND

75. that where a judge excludes a young person in order to protect him from damaging information, he shall explain the reason to the young person.

28 Effect of Finding or Discharge

In discussing the making of a finding by a judge, it was recommended that unless he or she discharges the young person, the judge will make a finding that the young person has committed the offence with which he is charged. Such a finding, unless otherwise specified or provided for, would under the present law, be tantamount to a conviction for a criminal offence and give the individual a criminal record.

In keeping with the intent of our proposals, that young persons not be made to suffer the same consequences as adults, it is necessary to make a special provision to ensure that a finding does not constitute a conviction for a criminal offence.

WE RECOMMEND

76. that where a judge makes a finding that a young person committed an offence, that person shall not, for any purpose, be deemed thereby to have been convicted of a criminal offence.

We further believe that the legislation should establish that a young person should not suffer any civil or other disqualification relating to employment or other opportunities resulting from a finding of the commission of an offence in youth court.

WE RECOMMEND

77. that the finding upon which the disposition was based be deemed never to have been made when the disposition has ceased to have effect and the young person is at least eighteen years of age, and that any disqualification to which the young person is subject under any act or regulation of Parliament by reason of such finding be deemed to be removed.

29 Interprovincial Arrangements for Young Persons

Jurisdictional difficulties could arise due to the fact that the facilities or services are not in the province in which the disposition by the court has been made. The Committee accepts the desirability of facilitating reciprocal arrangements between provinces involving young persons who are on probation supervision or committed to open or secure custody, whereby such persons could be placed in facilities or have the advantage of services which are not in their own province.

WE RECOMMEND

78. that where arrangements have been made between provinces, a young person who has been placed on probation, committed to open or secure custody in one province, may be held on probation, or in any place of open or secure custody in the province to which the agreement applies.

30-34 Review of Dispositions

The Juvenile Delinquents Act provides for the return of the young person to the court at any time before he reaches the age of 21 years without specific reason. Under this provision, there is no requirement for a mandatory periodic post-

dispositional review. There are few limitations on the judge substituting any order he or she wishes when the young person is brought back before the court.

An important innovative feature of the proposed legislation is the provision for mandatory post-dispositional judicial review. Such review is proposed to ensure that the welfare and progress of a young person will be subject to continuing attention from the inception of the disposition through to a young person's final discharge from authority.

We believe that it is appropriate when a young person is placed on probation or committed to either an open custody or a secure custody facility, that a process be established to review the young person's progress and provide a means of determining if the young person is being unjustly treated during the term of the disposition. We also recognize that the needs of a young person or other circumstances relevant to him or her may become altered subsequent to the making of a disposition and in these instances, it would be appropriate and necessary to have a mechanism which could accomplish a change in the nature of the disposition. Judicial review would afford a young person the opportunity to present to the court his reasons for requesting that the conditions of his disposition be modified. Having considered the matter, the Youth Court judge would then be able to either discharge the young person, reduce the nature or length of the restraint that is placed upon him or her, or confirm the terms of the original disposition.

Another option that was considered would authorize the service authorities to move a young person from secure custody to open custody, to supervision in the community, or from open custody to supervision in the community. This option was rejected because we believe the authority to determine the degree and nature of deprivation of liberty should be vested in the Youth Court judge. Also, under the terms of the proposed post-dispositional review process, a judge could place a young person in a lesser form of custody.

In general terms, we propose that the opportunity for judicial review be made available at any time before a disposition has expired, at the instance of the judge, the provincial authority, the young person or his or her parents, or the review agency (an administrative body that will be discussed subsequently in this report). We suggest that reviews be undertaken within six months from the date of the disposition, only with leave of the Youth Court judge. We considered the option of three months to six months but concluded that this could result in a frequency of reviews that would place an unnecessary burden on the work load of the courts. We further suggest that if a young person is committed to probation or open or secure custody, a review should be undertaken by the judge one year after the date of the inception of the disposition if no earlier review has been carried out, or one year from the date of an earlier review. Such a review would not necessarily involve the appearance of the young person before the Youth Court judge, but would be undertaken on the basis of a report submitted by a youth worker.

Upon receiving such a report, the judge would determine whether it would be appropriate to bring the young person before him to review the disposition. We propose that young persons should receive a copy of such a report, subject to the judge's prerogative to withhold sections of the report that could be damaging to the young person.

We also suggest that if the period of the disposition to probation or open or secure custody is for a term exceeding two years, a review should be undertaken two years from the date of the inception of the disposition, or two years from the date of an earlier review. In such instances, the youth worker or person employed at the open or secure custody facility would cause the young person to be brought before the court for review of disposition.

We propose that a review might be ordered by the judge at the request of a young person or his parents if:

(a) the young person is being detained in a category of custody that was not directed in the disposition;

(b) the young person is being subjected to unreasonable restrictions in respect of probation or custody;

(c) it is contended that the young person has made sufficient progress to justify a change in the disposition;

(d) the young person is not making satisfactory progress in respect of education, training or otherwise;

(e) the circumstances that allow the young person to be committed to probation or care and custody have changed materially;

(f) services are available which were not available at the time when the disposition was made or last reviewed; and

(g) there are other grounds that the judge considers to be substantial and relevant.

We propose that at the time of the review, the judge should be enabled to confirm the disposition, terminate it or alter it in such a manner that the effect of restraint or other conditions of the disposition be diminished.

In addition, we would suggest as additional grounds for a review at the instance of the judge, provincial authority or a review agency, the following factors:

(a) that the young person has failed to comply with a material condition of a disposition or an order of probation;

(b) that the young person has repeatedly refused to comply with a reasonable direction as to deportment from a youth worker or the young person's custodian;

(c) that the young person has escaped or attempted to escape custody; and

provision would not prevent or limit the judge from requesting that the young person return, upon the completion of the terms of the disposition, to discuss with him his future plans.

WE RECOMMEND

79. that a young person may be brought back to the Youth Court for review of the disposition during the first six months of the term of the disposition with leave of the judge, or at any time thereafter until the disposition has expired, at the instance of the judge, the provincial authority, the review agency, the young person or his parent.

WE RECOMMEND

80. that the judge shall conduct a review of a young person placed on probation or committed to care and custody one year after the inception of the disposition, if no earlier review has taken place, or one year after the date of an earlier review.

WE RECOMMEND

81. that when a judge conducts a review of the disposition he shall consider a report of the progress of the young person prepared by a youth worker and if the content of this report suggests the merit of having the young person appear before the court, the judge will so order the young person's appearance. The young person will be given a copy of this report, except, as in the case of a pre-disposition report, contents that would be injurious to him would be withheld.

WE RECOMMEND

82. that when a judge has placed a young person on probation or committed him to care and custody for a period exceeding two years, the youth worker assigned to the young person will cause the young person to be brought back to the Youth Court for a review of the disposition on a date two years after the inception of the disposition or two years from the date of an earlier review.

WE RECOMMEND

83. that the grounds for a review of the disposition at the instance of the young person or his parent relate to the fact that the young person is being detained in a category of custody that was not directed in the disposition, that he has been subjected to unreasonable restrictions in respect of probation or custody, that he has made progress that justifies a change in the disposition, that he is not making satisfactory progress in respect of education, training or otherwise, that the circumstances that led the young person to being committed to probation or care and custody have changed materially, that services are available which were not available

(d) other grounds that the Youth Court judge considers to be substantial and relevant.

We further suggest that where the judge finds during the course of the judicial review that the young person has wilfully failed to comply with a disposition involving a fine, the performance of community service or the making of compensation or restitution, the judge should be authorized to make any other disposition of a similar nature, or be authorized to place the young person on a term of probation for a period not exceeding three years.

If, as a result of the review, the judge finds that the young person has wilfully failed to comply with a disposition involving probation, he should be authorized to make a disposition committing the young person to either open care and custody or secure custody. Similarly, if the judge finds that the young person has wilfully failed to comply with the disposition of open care and custody, he could make a disposition involving secure care and custody. As a constraint on the authority of the judge in these matters, we propose that no committal or placement on probation under this provision should be for a period that expires more than three calendar years after the date of the original disposition.

In considering the process of review, the Committee considered a number of options. One option was to limit the initial disposition to a maximum of two years with a possible extension for an additional year, following an application by the service authority to the court, based on the proof of need for such an extension. Under a further option, dispositions made following a judicial reveiw of the initial disposition, would provide for the transfer of the young person to any other form of disposition provided in the legislation, including by increasing the length or severity of the disposition to a specified maximum extent.

These two options were rejected on the basis that at the time of disposition the young person should know both the nature and extent of the disposition. Also, it is our belief that the process of review should remove the prospect for indeterminate committals and the escalation of dispositions and deprivation of liberty.

In the proposals, the judge's authority to extend or increase a disposition would be limited in those circumstances where he finds the young person has wilfully failed to adhere to a disposition, to apply the next most restraining form of disposition. The exception would be in cases of a breach of probation, where a judge could make a committal to secure custody. The option to treat a wilful failure as a new offence and proceed with a charge was rejected as not being consistent with the intent of the review process. As a further option, we rejected the Juvenile Delinquents Act provision that permits the judge to increase the level of custody where a child fails to comply with a condition, without regard to whether the failure is w[illegible]

It should be noted that the proposals do not specifically provide for the young person to be returned to the court for a formal discharge. The absence of such a

at the time when the disposition was made or at the time of the last review, or there are other grounds that the judge considers to be substantial and relevant.

WE RECOMMEND

84. that the grounds for review of the disposition at the instance of the judge, provincial authority or review agency are the grounds provided for review of the disposition at the instance of the young person or his parent, as well as that the young person has failed to comply with a material condition of a disposition or an order of probation, that the young person has repeatedly refused to comply with a reasonable direction as to deportment from a youth worker or the young person's custodian, that the young person has evaded or attempted to evade custody and any other grounds the Youth Court judge considers to be substantial and relevant.

WE RECOMMEND

85. that on the occasion of a review of disposition, the judge shall consider the best interest of the young person and the community, and confirm the disposition, or discharge the young person from any further obligation under the disposition, or amend the disposition in a manner which will diminish the effect of its restraint.

WE RECOMMEND

86. that where a judge finds during a review of disposition that the young person has wilfully failed to comply with the disposition he shall either amend the conditions of that disposition to make it more constraining, or alter the form of the disposition to one which would have the effect of providing the next most restraining form of constraint, or in the case of probation to either open or secure custody, but in no event can the total time exceed three years.

We recognize that the implementation of the process of judicial review would constitute an additional workload for the Youth Court judges and for those service personnel who would be called upon to prepare the periodic progress reports and take part in the review proceedings. While we anticipate that these additional workloads would be substantial, we cannot but conclude that the investment of time and resources in the judicial review process is necessary in terms of the serious effects that can accrue to young persons resulting from deprivations of their liberty and a failure to make progress in their development.

35 Failure to Comply with Disposition

As has been discussed in the preceding section, it is our belief that a wilful failure to comply with the conditions or the terms of a disposition may be adequately dealt with by the judicial review process. Because of this, the Committee rejected the option of proceeding with a charge to deal with a wilful failure, on the basis that this would be inconsistent with the intent and philosophy of the review process.

WE RECOMMEND

87. that the failure to comply with the disposition or condition of the disposition not be a separate offence and only be dealt with under the provisions for judicial review.

36 Review Agency

In addition to the judicial review process which is discussed earlier in this report, we propose that there be provision for an administrative review process. We believe that such a process is warranted to ensure that the services and programs which are made available to a young person who has been placed on probation or committed to either open or secure care and custody, are sufficient to meet his needs. We further believe that there are matters relating to the well-being of young persons which should be examined by an administrative review agency.

We propose that the provincial authorities designate one or more persons as a review agency to consider the case of each young person placed on probation or in open or secure care and custody facilities, on at least a semi-annual basis following the inception of such a disposition. In addition to such routine reviews, provision should be made for the undertaking of reviews on the application of the young person or his parent if they allege serious deficiencies in services or programs relating to the education or training that the young person is being offered, his physical or mental health, or the diet or recreational and residential facilities that are made available to him. We do not necessarily foresee the creation of a new agency to perform these functions, in view of the existence of provincial bodies that deal with related matters such as child welfare and youth protection.

WE RECOMMEND

88. that the Lieutenant Governor in Council of a province may designate one or more persons to be a review agency to consider, at intervals not exceeding six months, the case of every young person within its jurisdiction who is subject to a disposition involving probation or commitment to either open or secure care and custody.

WE RECOMMEND

89. that the young person or his parent may apply to a review agency for a review of disposition on the grounds of serious deficiencies in the manner of implementation of the disposition, relating to the education or training that the young person is offered, his physical or mental health, or the diet or recreational and residential facilities that are available to him.

A report of the findings of the review agency would be made available to the provincial authority and, if as a result of such a review, deficiency is discovered, the review agency could recommend to the provincial authority the implementation of an appropriate remedy to correct the situation. If the review agency recognizes a continuing deficiency, it could refer the matter to the Youth Court judge who could either report the matter to the provincial authority, or alternatively, conduct a review by the Youth Court judge of the young person's circumstances in accordance with recommendation no. 91. We further propose that in any jurisdiction wherein a review agency has not been established, a young person or his parent should have the right to apply to a Youth Court judge for review of any alleged serious deficiency in services or programs.

WE RECOMMEND

90. that upon making a review, a review agency shall report its findings to the provincial authority and if in its opinion there is any ground for complaint, it may recommend the means of correcting such deficiency.

WE RECOMMEND

91. that in lieu of the report to the provincial authority, or where the review agency recognizes a continuing serious deficiency, the review agency may refer the matter to the Youth Court.

WE RECOMMEND

92. that where no review agency has been established, a young person or his parent may make application for review to a Youth Court judge.

WE RECOMMEND

93. that upon discovering a deficiency in services or programs, a Youth Court judge may refer the matter to the provincial authority for correction or alternatively, conduct a review of the young person's circumstances.

As in the case of reviews by the Youth Court judge, we recognize that there will be need for increased resources to implement the administrative review process. We believe that such a commitment of resources is justified to ensure that adequate services and programs are made available to those young persons who are placed on probation or removed from their homes by the effect of a disposition.

37 Limitations on Fingerprinting and Photographing

The provisions of the Identification of Criminals Act apply equally to young persons and adults but fail to provide conditions which would adequately distinguish practices that would be specifically appropriate to young persons as opposed to adults.

The Committee believes that it is necessary to define the circumstances in which it would be appropriate to take the fingerprints and photographs of young persons. In this regard, we recognize the need of the police to take fingerprints and photographs during the course of their investigations. However, we believe that such circumstances should be limited to those instances where it is absolutely necessary, in order to protect the young person from undue intervention.

With respect to the question of when the judge should give his consent, it is felt that the judge should give consent when he or she is satisfied that such practices are reasonable and necessary for the investigation of an alleged offence by the young person and will be used only for the purposes of investigation. After their use is no longer required, the fingerprints and photographs should be delivered by the authorities to the clerk of the Youth Court.

WE RECOMMEND

94. that the taking of fingerprints or photographs of the young person be allowed with the consent of the judge and only in those cases where it would be allowable for adults.

38-39 Youth Court Records

The issue of the creation and maintenance of records and their confidentiality involves three basic issues. These include, the circumstances wherein it is appropriate to create a record, the persons to whom access to such records should be accorded, and the uses to which these records may be put. The Committee believes that such records should be controlled by one individual in each Youth Court. In our estimation, the most appropriate individual would be the clerk of the Youth Court.

WE RECOMMEND

95. that the clerk of the Youth Court shall keep a complete record of each case separately from all records relating to cases in adult court.

The Juvenile Delinquents Act does not contain any specific provisions regarding the creation, maintenance, confidentiality and accessibility of juvenile court records. We believe that guidelines are essential to ensure that a uniform policy pertaining to these issues is established for the guidance of court administrators and of persons seeking access to records and especially, for safeguarding the confidentiality of the young person's background which may be found in the Youth Court record.

We are influenced by the fact that just as there is a legitimate need for confidentiality, there are also persons who, due to their involvement in the proceedings, should be permitted access to these records. Access to the records should be made available on a selective basis only, to those persons who have a legitimate involvement in dealing with the young person's case in the Youth Court and any subsequent proceedings under the Act involving the young person, or in adult court after the young person has become an adult.

In dealing first with the case of young persons under the age of 18 years, the Youth Court records should be made available on request to the young person or his parent, with the exception that the Youth Court judge shall not permit the young person or his parent access to any portion of a pre-disposition report that would be seriously injurious to the young person. Also, the same records should be made available on request to others who have a direct interest in the proceedings involving the young person, as would be stipulated in the new legislation. Access to the record of any screening agency is more limited and has been dealt with in Section 9 of this Report.

WE RECOMMEND

96. that the Youth Court record of a young person, while under the age of 18 years, during any proceedings against him or during the term of any disposition made in respect of him, should be made available, subject to qualification regarding injurious information and omitting the report of any screening agency, to the young person, his parent, his lawyer, any Youth Court judge or other judge or any officer of a Youth Court or other court, the provincial authority, the attorney general or his agent, a peace officer who satisfies the judge that the information in the record is reasonably necessary to the investigation of an indictable offence, and to

the extent directed by the judge, to any person or class of persons whom the judge considers to have a valid interest in the proceedings against the young person or the work of the Youth Court.

After a young person has become an adult, situations will arise when a number of persons, due to varying circumstances, would want to have access to that person's Youth Court record. For example, a police officer may want to examine fingerprints contained in the record in conducting an investigation, or an adult court judge might want to consider a pre-disposition report that was previously prepared concerning the young person. In addition, the person himself might want access to his Youth Court record.

We believe that access to a Youth Court record of a person who is at least 18 years and no longer under the jurisdiction of the Youth Court, should be restricted to those persons who have a legitimate interest in the Youth Court record. We further believe that access to the record should only be permitted on the authorization of a Youth Court judge and that, in granting such access, the Youth Court judge should be satisffied that disclosure of the Youth Court record is desirable in the interest of the subject of the report, the administration of justice, or for purposes of research and would not be unfairly prejudicial to the subject.

WE RECOMMEND

97. that the Youth Court record of a young person, except the record of any proceedings of the screening agency, shall, when the person is at least 18 years and no disposition made in respect of him is in effect, be available to the following persons, subject to the consent of a Youth Court judge; the young person, a judge, for the purpose of proceedings before him to which the record may be relevant, a judge of any adult court before whom the young person may appear to be dealt with, a peace officer for the purposes of investigation of an indictable offence, a parole board and as directed by the judge, a person or a class of persons whom the judge considers to have a valid interest in any record of the Youth Court.

We further believe that the matter of confidentiality of Youth Court records is sufficiently serious to provide that if any authorized person discloses information in the Youth Court record to any unauthorized person, it shall constitute an offence punishable on summary conviction.

WE RECOMMEND

98. that any person authorized to have access to a Youth Court record who wilfully discloses any part of the record or any information contained in it to an unauthorized person be guilty of an offence punishable on summary conviction.

40 Application of Criminal Code Provisions

There are several alternatives to be considered in drafting new legislation for young persons in conflict with the law. One alternative is that it contain all substantive and procedural provisions without reference to any other statutes, applicable to young persons. It is recognized, however, that this alternative would be a substantial duplication of the provisions of the Criminal Code.

WE RECOMMEND

99. that except to the extent that they are inconsistent with or irrelevant to this legislation, all the provisions of the Criminal Code apply with such changes as may be required in respect to offences charged and proceedings taken under this legislation.

41 Functions of Clerks of Court

The Juvenile Delinquents Act provides that a clerk of a juvenile court has the power to administer oaths and in the absence of a judge has the power to adjourn any hearing, for any period not to exceed ten days. It is also his duty to notify the probation officer in advance of any child being brought before the court for his trial.

The Committee feels that it should be made explicit that any clerk of the Youth Court has such powers as are ordinarily exercised by a clerk of a court. It should also be made clear, as in the case of the Juvenile Delinquents Act, that he has specific powers to administer oaths and in the absence of a judge of the Youth Court to exercise powers of adjournment of the Youth Court judge.

WE RECOMMEND

100. that a Youth Court clerk should have such powers as are ordinarily exercised by a clerk of the court, and more specifically the power to administer oaths and in the absence of a judge exercise the powers of adjournment.

42 Appeals

The Juvenile Delinquents Act provides for appeals from decisions of the juvenile court only with the special leave of a Supreme Court judge and only if special grounds exist. Where such leave is granted, the procedure upon appeal is as provided for in the case of a conviction on indictment and the provisions of the Criminal Code relating to such appeals apply with the qualification that the appeal is to a Supreme Court judge instead of the Court of Appeal. A further right of appeal is granted from the decision of the Supreme Court judge to the Court of Appeal by special leave of that Court.

A further restriction provided for in the Juvenile Delinquents Act stipulates that no leave to appeal is to be granted unless the Court considers that in the particular circumstances of the case, it is essential in the public interest or for the due administration of justice that such leave is granted.

For whatever reasons this provision was once thought to be desirable, we can no longer suscribe to it and we believe that, in this respect, young persons should have the same right of appeal as adults. Thus, leave to appeal should not be required but should be as of right, from a decision involving an application for transfer of the young person to adult court, from a finding of the judge, from the making of a disposition, from a decision of a post-dispositional review involving a fresh disposition and from a finding involving the issue of insanity.

We have difficulties with respect to the questions of the appropriate court to which the appeal should lie and the procedure that is to be used. The provisions of the Criminal Code regarding summary conviction matters and appeals by way of trial *de novo* and stated case appear to us to be unsuitable procedures. We do not believe that adopting these procedures would be a step forward and have rejected them for appeals from decisions of the Youth Court. On the other hand, we are not satisfied with the present provisions of the Juvenile Delinquents Act, which require special leave to appeal, which is not required in the cases of adults convicted of indictable offences.

We believe that appeals involving indictable offences or the offences which, in the alternative, can be indictable or summary conviction, should proceed to the Court of Appeal in the same way as provided for in the Criminal Code.

With respect to appeals involving summary conviction offences only, we believe that they should proceed to a Supreme Court judge and thence to the Court of Appeal on the same grounds as apply to adults convicted of indictable offences. In effect, we are retaining the concept of the Juvenile Delinquents Act insofar as summary conviction offences are concerned, but omitting the requirement of special leave, on the basis that to adopt the provisions of the Criminal Code in respect to appeals from summary conviction offences would be a step backward for the reason mentioned above. A further appeal would lie to the Court of Appeal as provided for in the Criminal Code.

In the cases both of indictable offences and summary conviction offences, there would be further appeal to the Supreme Court of Canada in accordance with the Criminal Code provisions relating to appeals to that Court in the case of indictable offences.

WE RECOMMEND

101. that a young person need not obtain any special leave to appeal and that he have the same right of appeal as an adult.

WE RECOMMEND

102. that in matters involving an indictable offence or where the offence is one that, in the alternative, is an indictable or summary conviction offence, the procedure be the same as provided for in the Criminal Code in relation to indictable offences; the appeal going first to the Provincial Court of Appeal and thence to the Supreme Court of Canada.

WE RECOMMEND

103. that in matters involving summary conviction only, an appeal lie in the same manner as if it were an indictable offence except that the appeal is first to a Supreme Court judge and thence to the Court of Appeal.

43 Regulations

The Committee recognizes the need for regulations to facilitate the administration of the legislation, particularly with regard to matters of practice and procedure.

The Governor in Council should make such regulations as would be applicable to all the provinces, whereas the Lieutenant Governor in Council would make regulations which would particularly apply to a province consistent to its administrative structure or procedures.

WE RECOMMEND

104. that the Governor in Council as well as the Lieutenant Governor in Council of each province should have the power to make regulations governing procedural matters.

44 Amendment of Criminal Code

Consequential to the changes proposed by the Committee, the most important amendment that will have to be made to the Criminal Code is the repeal

of Sections 12 and 13 which respectively provide that no person under the age of 7 can be convicted of an offence, and that no person between the ages of 7 and 14 can be convicted of an offence unless he was competent to know the nature and consequences of his conduct. To replace these sections, a new section would provide that no person can be convicted of an offence committed while he was under the age of 14 years, as this is the age recommended as being the most appropriate age at which a person should be held responsible and accountable for his acts.

At the present time, Section 441 of the Criminal Code provides that a person under 16 years of age will have his trial take place without publicity. In view of our recommendation it will not be possible for any person under 16 years of age to be tried in adult court, this section would no longer be applicable and therefore, should be repealed. The Committee believes that there is no need to provide for trials without publicity of those young persons over the age of 16 who have been transferred to the adult court.

Another amendment would be the addition of a section under the Criminal Code to follow Section 660 to allow a judge with the consent of the provincial authority involved to sentence a young person of at least 16 and under 18, who has been transferred to the adult court and, subsequently, tried and convicted by such court, to an institutional facility for young persons for a period of time which will not go beyond the date the young person reaches his 21st birthday.

Another amendment would be the insertion of provisions in the Criminal Code to parallel Sections 33 and 34 of the Juvenile Delinquents Act, which relate to such behaviour as contributing to juvenile delinquency, and inducing a child to leave a detention home, foster home or other institution where the child has been placed.

Another section, Section 35, deals with prosecutions against adults for offences against any provisions of the Criminal Code in respect of a child, by providing that such prosecution may be brought and disposed of in the juvenile court.

The Committee believes that neither the proposed new legislation nor the Youth Court are appropriate vehicles to deal with adults who commit offences in relation to young persons, or who contribute to young persons committing offences. The Committee is of the opinion that the appropriate vehicle for determining the offences for which adults are liable, and the courts in which they are to be tried is the Criminal Code.

We realize Sections 33-34 of the Juvenile Delinquents Act are important provisions to deal with difficult situations which the Criminal Code does not adequately cover. The Criminal Code should incorporate the substance of these sections and the new provisions could probably follow the present provisions of the Criminal Code relating to the defilement and corruption of children. Where special provisions are required for the protection of young persons, in connection with the trial of adults for Criminal Code offences, these should, in our opinion, be contained

in the Criminal Code by way of special provision relating to the trial of cases in the adult courts.

The Committee is aware that this position must be carefully considered if appropriate protections are to be afforded to children and young persons who are involved as victims and witnesses. In this respect, examination of the provisions of the Criminal Code and the Canada Evidence Act is required.

WE RECOMMEND

105. that no adult shall be subject to trial under the new legislation.

45 Amendment of Parole Act

A minor amendment is required to the Parole Act with respect to the definition of "inmate". In this respect, inmate should mean a person who is under a sentence of imprisonment imposed pursuant to an Act of the Parliament of Canada or imposed for criminal contempt of court, but should not include a child who is being committed to an industrial school pursuant to the Juvenile Delinquents Act or a young person who has been committed to a place of care and secure custody pursuant to the proposed legislation. The Parole Act of course does not refer to the latter.

WE RECOMMEND

106. that the definition of "inmate" in the Parole Act be amended.

46 Amendment of Prisons and Reformatories Act

A minor amendment is required to the Prisons and Reformatories Act with respect to the definition of "child". If the legislation we are recommending is enacted, the definition of "child" in the Prisons and Reformatories Act should be as follows: "child, where used with reference to a person who has, pursuant to Section 9 of the Juvenile Delinquents Act, been ordered to be proceeded against by indictment in the ordinary courts, means a child as defined in Section 2 of that Act and when used with reference to a person who has, pursuant to Section 14 of the Young Persons in Conflict with the Law Act, been ordered to be proceeded against in adult court, means a young person as defined in Section 2 of that Act."

WE RECOMMEND

107. that the definition of "child" in the Prisons and Reformatories Act be amended.

47-49 Repeal of Juvenile Delinquents Act — Transitional and Commencement

The Committee realizes that a transitional period would be necessary, recognizing that several provinces would require time to develop the facilities and services to implement the provisions of the proposed legislation. This period of time should not exceed three years from the date of the enactment of the Act.

The Committee assumes that the proposal which would have a major impact on facilities and services is its recommendation to establish a uniform maximum age of 18 across Canada. The provinces which have already adopted the maximum age of 18 are likely to be in a position to implement the provisions of the new legislation more quickly than those provinces which are at 16.

However, the general coming into force should be subject to modification in respect of the maximum age. The Committee is proposing that during the three years following the general coming into force those provinces not ready to deal with young persons between 16 and 18 could be enabled, by means of a further proclamation, to have the maximum age set at less than 18 but not less than 16. It should be noted that further discussions with the provinces may be necessary to determine whether the three-year interim period is sufficiently long.

The Committee further recognizes that, with respect to secure custody, a province or provinces may not have a place or places of secure custody immediately available. In this event, the Committee proposes that during the three-year period above mentioned, if the judge is satisfied that another place exists where a young person may be detained without serious consequences to the young person, then the judge may use this other place as representing a place of care and secure custody for the purposes of the Act.

WE RECOMMEND

108. that a transitional period of time with respect to the coming into force of certain sections of the Act be provided for accordingly, not to exceed three years.

Part III

Proposals in Legislative Draft Form for an Act to deal with Young Persons in Conflict with the Law

Index to Draft Act

Part III

An Act respecting young persons in conflict with the law and to repeal the Juvenile Delinquents Act

Preamble

Whereas

Young persons in conflict with the law should bear responsibility for their contraventions but should not be held accountable therefor in the same manner, or suffer the same consequences thereof, as adults, but, rather, should be considered as persons who, because of their state of dependency and level of development and maturity, have special needs and require aid, encouragement and guidance and, where appropriate, supervision, discipline and control;

Young persons should only be brought to court for offences under federal enactments when their acts or omissions can not be adequately dealt with otherwise;

Young persons have basic rights and fundamental freedoms no less than those of adults; a right to special safeguards and assistance in the preservation of those rights and freedoms and in the application of the principles stated in the *Canadian Bill of Rights* and elsewhere; and a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them;

The basic rights and fundamental freedoms of young persons include a right to the least invasion of privacy and interference with freedom that is compatible with their own interests and those of their families and of society;

Young persons are entitled, in every instance where they have rights or freedoms which may be affected by this Act, to be informed as to what those rights and freedoms are;

Young persons should only be removed from parental supervision either partly or entirely when all other measures are inappropriate, and when it is necessary so to remove them, they should be dealt with, in all respects, as nearly as may be, as they would be dealt with if they were under the care and protection of wise and conscientious parents;

Certain provisions of federal enactments relating to offences, including the *Criminal Code*, are unsuitable and inadequate for achieving the above mentioned objectives in the case of young persons who are affected thereby and special provisions are necessary for dealing with young persons in conflict with the law;

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

SHORT TITLE

1. This Act may be cited as the **Young Persons in Conflict with the Law Act.**

INTERPRETATION

2. In this Act,

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

"adult court" means the court in which, but for this Act, a person would be triable for an alleged offence;

"child" means a person apparently or actually under the age of fourteen years;

"court" means a youth court as defined in this section;

"court of appeal" has the same meaning as in the *Criminal Code;*

"custody" means open custody or secure custody as defined in this section;

"detention" means any physical restraint of the liberty of a young person, except temporary restraint in the hands of a peace officer or other person who makes an arrest;

"disposition" means a disposition made under section 16 or 34;

"judge" means, in respect of the Yukon Territory and the Northwest Territories, a person appointed by the Governor in Council and, in respect of the other provinces, a person appointed by the Lieutenant Governor in Council, to be a judge of a youth court;

"offence" means an offence created by an Act of the Parliament of Canada or by an ordinance, rule, order, regulation or by-law made thereunder, except an ordinance of the Yukon Territory or the Northwest Territories, and includes a criminal contempt of court other than in the face of the court;

"open custody" means custody in a foster home, group home, child care institution or other like place, designated by the Lieutenant Governor in Council of a province or his designate, as a place of open custody for the purposes of this Act;

"parent" includes a guardian and any other person who is under a legal duty to provide for a young person or who has in law or in fact the custody or control of a young person;

"place of detention" means a place, not being a place in which persons who have been charged or convicted in respect of offences alleged to have been committed while they were over the age of eighteen years are thereby liable to be detained or imprisoned, designated by the Lieutenant Governor in Council of a province or his designate, as a place of temporary detention for the purposes of this Act;

"proceedings" includes any proceedings pursuant to this Act, from the time when a case is referred to a screening agency or an appearance notice is issued or an information is laid or an arrest is made, until a disposition has expired or the case is sooner terminated;

"provincial director" means a person appointed or designated, under or by an Act of the legislature of a province, or by the Lieutenant Governor in Council of a province or his designate, for the purposes of any section of this Act in which the expression "provincial director" is used, and any such appointment or designation may be general or particular;

"secure custody" means custody in a place, not being a place in which persons who have been charged or convicted in respect of offences alleged to have been committed while they were over the age of eighteen years are thereby liable to be detained or imprisoned, designated by the Lieutenant Governor in Council of a province as a place of secure custody for the purposes of this Act;

"young person" means a person apparently or actually over the age of fourteen years and under the age of eighteen years and, where the context requires, includes any person who, while under the age of twenty-one years, is charged with having committed an offence while under the age of eighteen years, or who is found under section 16 to have committed an offence, until he reaches the age of twenty-one years;

"youth court" means a court established or designated by or under an Act of the legislature of a province, or designated by the Governor in Council or by the Lieutenant Governor in Council of a province, as a youth court for the purposes of this Act;

"youth worker" means a person appointed or designated, whether by the title of youth worker or probation officer or any other title, under or by an Act of the legislature of a province, or by the Lieutenant Governor in Council of a province or his designate, to perform, either generally or in a specific case, any of the duties ascribed to a youth worker by this Act.

HOW YOUNG PERSONS DEALT WITH

3. This Act shall be liberally construed to the end that young persons will be dealt with in accordance with the principles set out in the preamble.

JURISDICTION OF YOUTH COURT

4. (1) Notwithstanding any other Act, every person who, while under the age of twenty-one years, is charged in an information with having committed an offence while over the age of fourteen years but under the age of eighteen years, shall be dealt with only as hereinafter provided, and, except as hereinafter otherwise provided, a youth court has exclusive jurisdiction in respect of every such offence.

(2) Subject to subsection (3), proceedings commenced against a person while under the age of twenty-one years, in respect of an act or omission on his part when he was a young person, may be continued after he becomes an adult in all respects as if he remained a young person.

(3) Subject to subsection (4), a disposition is effective until the person in respect of whom it was made becomes twenty-one years of age or until the disposition sooner expires.

(4) A disposition made under any of subparagraphs 16(1)(b)(i) to (iii) is effective until the requirements thereof are fulfilled.

(5) Where, in respect of an act or omission on the part of a young person, no information has been laid before he reaches the age of twenty-one years, the young person may only be proceeded against in adult court.

(6) No proceedings in respect of an offence shall be commenced pursuant to this Act after the expiration of the time limited by any other Act for the institution of proceedings in respect of that offence.

(7) A youth court is a court of record.

DETENTION NOT PURSUANT TO DISPOSITION

5. (1) Notwithstanding the provisions of any other Act, no young person may be held in detention, except pursuant to a disposition,
(a) in any place that is not a place of detention as defined in this Act, nor
(b) without the approval of
(i) a judge or a provincial director, in the case of detention prior to appearance in court, or
(ii) a judge, in the case of detention subsequent to appearance in court.

(2) Where a judge or a provincial director approves detention pursuant to subsection (1) he may indicate the place of detention and he may from time to time withdraw, modify or reinstate such approval.

(3) Where a judge or a provincial director declines or withdraws approval pursuant to subsection (1) or (2) he may direct that the young person be placed in the care of anyone who, in his opinion, is a responsible person and who is willing to care for the young person and in whose care the young person is willing to be placed.

(4) Where a young person is held in a place of detention, or has been placed in the care of another person, prior to the implementation of any disposition that may be made in respect of him, a judge may, from time to time, at his own instance or at the instance of the young person or his parent or of any other person, review the necessity for such detention or care and, unless he is satisfied that detention or care is then necessary, having regard to the factors mentioned in subsection (5), he shall direct the release of the young person upon the young person's own responsibility to appear in youth court, or direct that he be placed in the care of anyone who, in the opinion of the judge, is a responsible person and who is willing to care for the young person and in whose care the young person is willing to be placed.

(5) The factors to be considered in determining whether it is necessary for a young person to be in a place of detention or in the care of another person pursuant to this section are
(a) whether or not any restraint is necessary to prevent escape by the young person or injury to himself or another; and
(b) whether a necessity mentioned in paragraph (a) can be served by placing the young person in the care of a responsible person who is willing to care for the young person and in whose care the young person is willing to be placed, rather than in a place of detention.

NOTICES TO PARENTS, RELATIVES OR FRIENDS

6. (1) Where a peace officer or other person, upon arresting a young person, restrains his liberty temporarily, not in a place of detention, he shall, as soon as possible, notify a parent, adult relative or adult friend of the young person, either orally or in writing, as to the whereabouts of the young person and the reason for such restraint, unless the young person is, or appears to be, over the age of sixteen years and requests that such notice not be given.

(2) Subject to subsection (7),
(a) where a young person has been arrested and placed in a place of detention, or in the care of another person, prior to his appearance in court, the person in whose charge or care he is shall, as soon as possible, cause a notice to be given to a parent, adult relative or adult friend of the young person and to the provincial director if the latter is not already aware of such detention or care;
(b) where an appearance notice has been issued to a young person the person who issued the notice shall, as soon as possible, cause a notice to be given to a parent, adult relative or adult friend of the young person and to the provincial director; and
(c) where a summons or warrant has been issued for the appearance or arrest of a young person, the person who issued it or the clerk of the court out of which it was issued shall, as soon as possible, cause a notice to be given to a parent, adult relative or adult friend of the young person and to the provincial director.

(3) A notice required by subsection (2) shall be given to a parent of the young person if a parent is available and, if no parent is available, to an adult relative of the young person, if an adult relative is available and, if no parent or adult relative is available, to an adult friend of the young person, if an adult friend is available.

(4) Where doubt exists as to whom a notice referred to in subsection (2) should be given, a judge may give directions as to the person or persons to whom the notice should be given, and a notice that is given in accordance with such directions is sufficient notice for the purposes of this section.

(5) A notice referred to in subsection (2) shall be in writing and shall state, as applicable, the place where the young person is in detention, the name and address of the person in whose care he is, the substance of the charge against him, the next step in the proceedings in so far as known, and the right of the young person or his parent to retain a lawyer.

(6) Where a notice referred to in subsection (2) cannot be given immediately in writing, oral notice shall be given but shall be followed by written notice as soon as possible.

(7) Where a young person over the age of sixteen years requests that a notice referred to in subsection (2) not be given and a judge consents, such notice shall not be given.

(8) Any person who receives a notice given pursuant to this section is, subject to section 27, entitled to attend any proceedings relating to the offence in respect of which the notice was given.

(9) Failure alone to give a notice pursuant to this section does not take away the jurisdiction of a judge to deal with the case, nor is such failure alone a ground upon which a court may set aside a decision, finding or disposition or order the release of a young person from custody.

ATTENDANCE OF PARENT

7. Where a judge is of the opinion that the attendance in youth court of a parent of a young person against whom an information has been laid will be to the advantage of the young person or parent, he may by an order in writing require the parent to appear in youth court at any time.

AUTHORITY FOR LAYING INFORMATION

8. An information charging an offence by a person under the age of twenty-one years, in respect of an act or omission on his part while a young person, may be laid only by direction of the Attorney General or his agent.

SCREENING AGENCY

9. (1) The Lieutenant Governor in Council of a province or his designate shall appoint, in respect of each court in the province, one or more persons to be the screening agency or agencies of such court.

(2) The Attorney General or his agent may, before deciding that an information should be laid against a person under the age of twenty-one years, in respect of an act or omission on his part while a young person, refer the case to the appropriate screening agency.

(3) The screening agency shall consider, in the light of the preamble, the facts of each case that is referred to it pursuant to this section, and, having regard to the principle that no information should be laid against a young person unless there are clear indications that the needs and interests of the young person and of the public cannot be adequately served without the use of procedures and facilities that are available to the court, shall recommend to the Attorney General or his agent whether or not an information should be laid against the young person in respect of any offence apparently disclosed by such facts.

(4) Without restricting the generality of subsection (3), a screening agency shall consider the following factors:
(a) the degree of seriousness of the alleged offence and the circumstances in which it was allegedly committed;
(b) the age, maturity, character, and attitude of the young person, including his willingness to make amends, if possible;
(c) the conditions of the place in which the young person lives or is likely to live and the likely influence upon him of other persons living or likely to live in, or having access or likely to have access to, such place;
(d) the previous history of the young person in respect of offences and delinquencies, the nature of any service rendered to him under this or any other federal or provincial enactment, or of any community service otherwise rendered to him, and the response of the young person to any such service;
(e) the community facilities and services that are available for the help of the young person without disposition and the willingness of the young person to avail himself of such facilities and services;
(f) any plans that are put forward by the young person for changes in his conduct or participation in activities or measures that are available for his improvement; and
(g) any views expressed or representations made by or on behalf of the young person in respect of any of the factors mentioned in paragraphs (a) to (f) or any other aspect of the case.

(5) Where the screening agency recommends that an information be laid, the Attorney General or his agent may, in his discretion, cause an information to be laid.

(6) Where the screening agency recommends that no information be laid, no information may be laid at any time in respect of any offence that is apparently disclosed by the facts that were referred to the screening agency.

(7) Before deciding upon its recommendation, a screening agency may propose to the young person such conditions as to deportment and as to compensation, restitution, community service or other amends as to the screening agency appear reasonable, and, if the young person agrees with such conditions, a statement thereof shall be dated and signed by the screening agency and by the young person and a copy shall be given to the young person and to the Attorney General or his agent, and the screening agency shall be deemed to have recommended to the Attorney General that no information be laid against the young person.

(8) Where the screening agency fails to make a recommendation to the Attorney General or his agent within two months from the date upon which a case is referred to it, the screening agency shall be deemed to have recommended that no information be laid against the young person.

(9) A summary record of the proceedings before a screening agency shall be made and, if regulations have been made under section 43 for the recording of such records, shall be recorded in accordance therewith; a copy of such record shall be given to the young person and, subject to subsection (11), to a parent, if reasonably possible; and no such record may be used for any purpose, except the purposes of this section, without the consent of the young person.

(10) A recommendation by a screening agency is not reviewable by any court in any proceedings whatever.

(11) The screening agency shall explain to the young person, if over the age of sixteen years, that, if he so requests, a copy of the record referred to in subsection (9) will not be given to his parent and, if the young person so requests, a copy shall not be given to his parent.

(12) A young person or his parent may at any time apply to a screening agency to cancel or vary a condition agreed to by the young person under subsection (7), whereupon the screening

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(4) Without restricting the generality of subsection (3), a screening agency shall consider the following factors:
(a) the degree of seriousness of the alleged offence and the circumstances in which it was allegedly committed;
(b) the age, maturity, character, and attitude of the young person, including his willingness to make amends, if possible;
(c) the conditions of the place in which the young person lives or is likely to live and the likely influence upon him of other persons living or likely to live in, or having access or likely to have access to, such place;
(d) the previous history of the young person in respect of offences and delinquencies, the nature of any service rendered to him under this or any other federal or provincial enactment, or of any community service otherwise rendered to him, and the response of the young person to any such service;
(e) the community facilities and services that are available for the help of the young person without disposition and the willingness of the young person to avail himself of such facilities and services;
(f) any plans that are put forward by the young person for changes in his conduct or participation in activities or measures that are available for his improvement; and
(g) any views expressed or representations made by or on behalf of the young person in respect of any of the factors mentioned in paragraphs (a) to (f) or any other aspect of the case.

(5) Where the screening agency recommends that an information be laid, the Attorney General or his agent may, in his discretion, cause an information to be laid.

(6) Where the screening agency recommends that no information be laid, no information may be laid at any time in respect of any offence that is apparently disclosed by the facts that were referred to the screening agency.

(7) Before deciding upon its recommendation, a screening agency may propose to the young person such conditions as to deportment and as to compensation, restitution, community service or other amends as to the screening agency appear reasonable, and, if the young person agrees with such conditions, a statement thereof shall be dated and signed by the screening agency and by the young person and a copy shall be given to the young person and to the Attorney General or his agent, and the screening agency shall be deemed to have recommended to the Attorney General that no information be laid against the young person.

(8) Where the screening agency fails to make a recommendation to the Attorney General or his agent within two months from the date upon which a case is referred to it, the screening agency shall be deemed to have recommended that no information be laid against the young person.

(9) A summary record of the proceedings before a screening agency shall be made and, if regulations have been made under section 43 for the recording of such records, shall be recorded in accordance therewith; a copy of such record shall be given to the young person and, subject to subsection (11), to a parent, if reasonably possible; and no such record may be used for any purpose, except the purposes of this section, without the consent of the young person.

(10) A recommendation by a screening agency is not reviewable by any court in any proceedings whatever.

(11) The screening agency shall explain to the young person, if over the age of sixteen years, that, if he so requests, a copy of the record referred to in subsection (9) will not be given to his parent and, if the young person so requests, a copy shall not be given to his parent.

(12) A young person or his parent may at any time apply to a screening agency to cancel or vary a condition agreed to by the young person under subsection (7), whereupon the screening

agency shall review such condition and cancel it, decline to change it, or propose a varied or new condition to the young person.

(13) A screening agency may not compel any person to appear before it.

(14) All proceedings before a screening agency shall be private and no person, other than a necessary party thereto, shall be allowed to attend such proceedings without the consent of the young person, and of a parent of the young person if one be present.

RIGHTS OF YOUNG PERSONS TO ASSISTANCE AND REPRESENTATION

10. (1) A young person is entitled to be assisted by a lawyer retained by or for him during all proceedings.

(2) A young person is entitled to be assisted by any responsible person from the time when any proceedings are commenced in respect of him until the time when any disposition made in respect of him has expired or the case is sooner terminated, except that he is not entitled to be represented at his trial by a person who is not a lawyer unless the judge is satisfied that no lawyer is reasonably available, in which case the judge, upon the request of the young person, may permit the young person to be assisted by anyone, except a youth worker, whom the judge considers to be a responsible person.

(3) No written statement given by a young person to a peace officer or person in authority over him shall be given in evidence against him, except upon a trial for perjury or an offence under section 124 of the *Criminal Code*, unless the young person was afforded an opportunity to consult with, and give his statement in the presence of, a lawyer, parent, adult relative or adult friend.

APPEARANCE OF YOUNG PERSON IN YOUTH COURT

11. (1) Where a young person against whom an information has been laid appears before the court, the judge shall
(a) inform him that he is entitled to be represented by a lawyer retained by him, if he is not already so represented;
(b) cause the information to be read to him and explain to him the substance thereof in simple language suitable to his age and understanding; and
(c) unless the offence is of the nature described in subsection (3), explain to him the consequences of admitting the offence and inform him that, if he so desires he may, but he need not, admit such offence.

(2) The judge shall not accept an admission of an offence unless, before making the admission, the young person had an opportunity to be assisted by a lawyer, parent or some adult who in the opinion of the judge was capable of advising the young person; and a young person who makes such an admission when he did not have such an opportunity shall be deemed, for the purposes of subsection 15(2), not to have admitted the offence.

(3) Where the offence is one upon conviction for which an adult might be sentenced to death or would be required to be sentenced to imprisonment for life, the judge shall not accept an admission of the offence and the young person shall be deemed, for the purposes of subsection 15(2), not to have admitted the offence.

ADJOURNMENTS

12. A judge may from time to time adjourn the proceedings but, subject to section 18, no such adjournment shall be for more than eight days, except with the consent of the Attorney General or his agent and the young person.

SUBSTITUTION OF JUDGES

13. (1) Subject to subsection (2), different judges may preside over different stages of proceedings.

(2) Where a trial has commenced before one judge, but an adjudication has not been made, any other judge before whom the proceedings are continued shall recommence the trial.

TRANSFER TO ADULT COURT

14. (1) Where at any stage, prior to adjudication, of proceedings against a young person who is then over the age of sixteen years, in respect of an indictable offence that is not an offence mentioned in section 483 of the *Criminal Code* or an offence that is also punishable on summary conviction, the judge, acting upon his own motion or upon application of the Attorney General or his agent and after affording the young person and the Attorney General or his agent an opportunity to be heard, is of the opinion that, having regard to the needs and interests of the young person and of the public, the young person should be proceeded against in adult court, he may order that the young person may be so proceeded against whereupon the young person may be proceeded against accordingly.

(2) In arriving at an opinion under subsection (1) the judge shall have regard to the following factors and to any other factor that he deems relevant:
(a) the degree of seriousness of the alleged offence and the circumstances in which it was allegedly committed;
(b) the age, maturity, character, attitude and previous history of the young person;
(c) the comparative adequacy of the dispositions available under the *Criminal Code*, under this Act and under any other federal Act, for dealing with the case;
(d) the nature of any community services rendered to the young person in the past, whether pursuant to this or any other federal or provincial Act or otherwise, and his reactions thereto;
(e) the contents of a pre-disposition report; and
(f) any representations made by or on behalf of the young person or the Attorney General or his agent.

(3) Where a young person, over the age of sixteen years, is charged with the commission of an offence in respect of which, but for this Act, he would be entitled to be tried by a court composed of a judge and jury and the young person for that reason requests that he be tried in adult court, the judge may, in his discretion, order that the young person may be proceeded against in adult court, whereupon the young person may be proceeded against accordingly.

(4) A judge who makes an order under subsection (1) or (3) shall file written reasons for his decision to make the order in the record of the case in the youth court.

(5) Upon the making of an order under subsection (1) or (3), the operation of this Act is suspended in respect of all offences at any time committed by the young person, except any other offence for which an information has already been laid, until all proceedings commenced against the young person in adult court, for the offence in respect of which the order was made or any other offence, have been concluded and any period of imprisonment or probation or any fine imposed as a result of such proceedings has expired or been paid.

ADJUDICATION

15. (1) Where the young person admits the offence and the judge is satisfied that the admission is true, he shall proceed to make a disposition under section 16.

(2) Where the young person does not admit the offence, or the judge is not satisfied that the admission of the offence is true, the judge shall proceed to hold a trial and shall

(a) if he decides that the evidence is not sufficient to prove beyond a reasonable doubt that the young person committed the offence, discharge the young person; or
(b) if he decides that the evidence is sufficient to prove beyond a reasonable doubt that the young person committed the offence, proceed, without then making a finding, to make a disposition under section 16.

FINDING AND DISPOSITION

16. (1) Where the judge proceeds in accordance with subsection 15(1) or paragraph 15(2)(b), he shall consider the pre-disposition report, if any, made under section 17, and any other relevant and material information before the court, and he may then make any one of the following dispositions, or any number thereof that are consistent with each other:
(a) he may, where he is of the opinion that there is a reasonable likelihood that the appearance of the young person before the court will itself serve the purposes of this Act, without making a finding that the young person committed the offence, discharge the young person;
(b) he may make a finding that the young person committed the offence and
(i) impose upon him a fine not exceeding two hundred dollars to be paid in such manner as the judge, subject to subsection (5), directs;
(ii) order the young person to perform an appropriate community service, which may include a monetary contribution to an appropriate charity of the young person's choice, any such contribution to be paid in such manner as the judge, subject to subsection (5), directs, the total value of such service, including any such contribution, not to exceed, in the estimation of the judge, two hundred dollars;
(iii) order the young person to pay to another person an amount not exceeding two hundred dollars by way of compensation, or to make restitution to that other person in kind of a value not exceeding two hundred dollars, for loss of or damage to property, loss of income or support or personal injury suffered by that other person as a result of the commission of the offence by the young person, any such amount to be paid in such manner as the judge, subject to subsection (5), directs;
(iv) place the young person on probation for a period not exceeding three years;
(v) commit the young person to continuous or, with the concurrence of the provincial director, intermittent care and open custody for a period not exceeding three unbroken years from the date of the committal;
(vi) commit the young person to continuous or, with the concurrence of the provincial director, intermittent care and secure custody for a period not exceeding three unbroken years from the date of the committal; and
(vii) subject to the concurrence of the provincial director, impose upon the young person such reasonable conditions ancillary to subparagraphs (v) and (vi) as the judge deems advisable and in the best interest of the young person.

(2) A disposition under paragraph (1)(b)(vi) is not consistent with a disposition under either of paragraphs (1)(b)(iv) and (v).

(3) A combination of a disposition under subparagraph (1)(b)(iv) with a disposition under subparagraph (1)(b)(v) shall not exceed a period of three unbroken years from the date of either disposition.

(4) Where the judge makes two, or three, dispositions under subparagraphs (1)(b)(i) to (iii), he shall not impose or order a combination of fine, contribution to charity or payment by way of compensation or restitution that exceeds in total four hundred dollars.

(5) Subsections 646(4) to (6) and (11) of the *Criminal Code* apply, *mutatis mutandis*, in respect of fines, contributions and payments imposed or ordered to be paid pursuant to subparagraphs (1)(b)(i) to (iii).

(6) Where a young person has been committed pursuant to subparagraph (1)(b)(v), he shall be placed in such place of care and open custody as is directed by the provincial director, there to be held and cared for in accordance with the rules of such place.

(7) Where a young person has been committed pursuant to subparagraph (1)(b)(vi), he shall be placed in such place of care and secure custody as is directed by the provincial director, there to be held and cared for in accordance with the rules of such place.

(8) The judge shall file written reasons for any disposition under subparagraphs (1)(b)(iv) to (vi), in the record of the case in the youth court.

(9) No committal may be made under subparagraph (1)(b)(v) unless the judge is satisfied that such committal is necessary, having regard to the factors mentioned in subsection 9(4).

(10) No committal may be made under subparagraph (1)(b)(vi) unless the judge is satisfied that such committal is necessary, having regard to the factors mentioned in subsection 9(4), or is necessary to prevent the young person from doing harm to himself or another or because he would be likely to escape if placed in a place of care and open custody.

(11) Where a judge has made a finding that a young person has committed an offence involving or related to the operation of a motor vehicle or the navigation or operation of any vessel, water skis, surfboard, water sled or other towed object, or an offensive weapon, the judge may, by order, impose upon the young person a prohibition or restriction in respect of the operation of a motor vehicle or the navigation or operation of any vessel, water skis, surfboard, water sled or other towed object or the possession or use of an offensive weapon, as the case may be, for any period not exceeding two years.

PRE-DISPOSITION REPORTS

17. (1) A judge may require a pre-disposition report before he makes any disposition and he may not make an order under section 14 nor a disposition under any of subparagraphs 16(1)(b)(iv) to (vi) unless he has first considered such a report.

(2) A pre-disposition report shall be in writing and shall contain as much information as is reasonably obtainable and relevant to an order or disposition that may be made in respect of the young person including
(a) the result of an interview with the young person,
(b) if reasonably possible the result of an interview with a parent of the young person, and
(c) such information relating to the factors mentioned in subsection 9(4) as is relevant to the case.

(3) A pre-disposition report shall be made by or under the direction of the provincial director and copies shall be available only to persons mentioned in subsection (5).

(4) Where for any reason a pre-disposition report cannot be committed to writing prior to the disposition, the report may be made orally in the first instance, but it shall immediately thereafter be committed to writing.

(5) Subject to any qualification mentioned in the following paragraphs, the clerk of the court shall, upon request, supply a copy of the pre-disposition report to the following persons and none other:
(a) the young person and his parent, except that a judge may direct that a copy of the report, or any part thereof, be not given to the young person or his parent if, in the opinion of the judge, disclosure would be seriously injurious to the young person;
(b) a lawyer, on the record, for the young person;
(c) any judge;
(d) the Attorney General and his agent;
(e) the provincial director, who may make it available in whole or in part to any person in

whose care and custody the young person is placed, or who is assisting in any way in the care or treatment of the young person;
(f) any youth worker who acts in respect of the case; and
(g) any other person, for the purposes of the case, to the extent directed by the judge.

(6) The pre-disposition report shall form part of the record of the case in the youth court.

(7) No statement, made in the course of an investigation for the purpose of preparing a pre-disposition report, by a young person who is the subject of such report, is admissible in evidence against him in any proceedings, whether civil or criminal, except for the purposes of considering an order under section 14 or a disposition.

MEDICAL EXAMINATIONS

18. (1) Where a judge, at any stage of proceedings in respect of a young person, has reason to believe that the young person may be suffering from any physical or mental illness and that a medical or psychological report concerning the young person may be relevant to the making of any decision pursuant to this Act, he may order that the young person he examined by a qualified person and that such person report the results of the examination in writing to the judge.

(2) For the purposes of examination pursuant to this section, a judge may from time to time order that a young person be kept in such place and for such period or periods of time as the judge directs, but no one such period or periods shall exceed, in total, thirty days.

(3) The report referred to in subsection (1) shall form part of the record of the case in the youth court.

DISQUALIFICATION OF JUDGE

19. A judge who has made an order under section 14, or who has examined a pre-disposition report prior to the time of the making of a decision under paragraph 15(2)(b), has no jurisdiction in any capacity to conduct or continue the trial of a young person for an offence in respect of which the order was made or the pre-disposition report was prepared.

ISSUE OF INSANITY

20. (1) Where a judge, in the course of proceedings before him relating to an indictable offence,
(a) finds that a young person was insane at the time the offence was committed, or
(b) finds that a young person is unfit on account of insanity to stand his trial,
the judge shall refer the young person to the provincial director, for consideration under appropriate provincial legislation, and order that he be kept in such place as the judge deems suitable, until the provincial director assumes responsibility for the young person.

(2) No proceedings pursuant to section 543 of the *Criminal Code* and paragraph (1)(b) shall prevent a young person from being tried subsequently by a judge upon the information unless the trial of the issue of insanity was postponed pursuant to paragraph 543(4)(a) of the *Criminal Code* and the young person was found not to have committed the offence at the close of the case against the young person.

TRANSFER OF DISPOSITION

21. (1) Where a disposition has been made in respect of a young person and the young person or his parent moves or intends to move to another territorial division, whether in the same or another province, a judge in the territorial division in which the disposition was made may, upon application by the young person, a parent of the young person or the Attorney General or his agent, make an order that the case and the record therein, and all subsequent proceedings therein, be transferred to a youth court in the other territorial division.

(2) Upon an order pursuant to subsection (1) being brought before a youth court in the other territorial division, the judge may by order direct the manner in which the disposition shall be implemented, in accordance with the intent thereof, in the other territorial division and may, if necessary, amend the disposition by substituting for the name of any person mentioned in the disposition the name of a corresponding person in the other territorial division.

(3) Where an order is made pursuant to subsection (2), the disposition shall be implemented, and all subsequent proceedings related thereto shall be carried out, in the same manner as if the disposition had been made by the judge who made the order.

(4) No transfer pursuant to this section may be made until the time for an appeal in respect of the disposition or the finding upon which it is based has expired and all proceedings in respect of any such an appeal have been concluded.

(5) This section applies only in respect of a person who, at the time the disposition was made, was within the definition of a young person in the territorial division to which the transfer is sought.

TRANSFER OF JURISDICTION

22. (1) Where a young person is charged with an offence that is alleged to have been committed anywhere in Canada, he may, if the offence is not an offence mentioned in section 427 of the *Criminal Code* and the Attorney General of the province where the offence is alleged to have been committed consents, appear before any youth court in Canada which but for this section would not have jurisdiction to try him, and where he signifies his consent to admit the offence and does admit it, a judge of such court has, subject to subsection (2), jurisdiction to deal with the case, and all subsequent proceedings shall be carried out in the same manner as if the offence had been committed within the territorial jurisdiction of such court.

(2) Where the judge is not satisfied, under subsection 15(2), that an admission of an offence pursuant to subsection (1) is true, the young person shall be dealt with, in respect of such offence, in the manner in which he would be dealt with if this section had not been enacted.

PROBATION ORDERS

23. (1) The following conditions are mandatory in a probation order:

(a) that the young person be of good behaviour during the duration thereof;

(b) that the young person appear before a youth court on a date or dates specified in the order or upon such date or dates as the judge may later communicate to him during the duration thereof;

(c) that the young person notify a youth worker of any change in his address, employment, occupation or place of education during the duration thereof; and

(d) that the young person report to and be under the supervision of a parent, adult relative, adult friend or youth worker, during the duration thereof.

(2) A probation order may also contain such of the following conditions as, in the opinion of the judge, are relevant to the case of the young person and to the purposes of this Act:

(a) that the young person remain within the jurisdiction of a youth court or youth courts named in the order, during the duration thereof;

(b) that the young person take up such employment as may be available to him during the duration thereof;

(c) that the young person attend school or some other place of study, instruction or recreation during the duration thereof; and

(d) that the young person comply with such other reasonable conditions, including conditions for securing the good conduct of the young person and preventing a repetition by him of the same offence or the commission of other offences, as may be prescribed in the probation order, during the duration thereof.

(3) Upon placing a young person on probation a judge shall read and explain to him the contents of the probation order and give him a copy thereof.

ASSIGNMENT AND DUTIES OF YOUTH WORKERS

24. (1) As soon as possible after a summons or warrant of arrest has been issued in respect of a young person, the clerk of the court shall notify the provincial director.

(2) As soon as possible after an appearance notice has been issued to a young person, the person who issued the notice shall notify the provincial director.

(3) As soon as possible after a judge or provincial director has approved detention pursuant to subparagraph 5(1)(b)(i) or the provincial director has been notified pursuant to subsection (1) or (2) the provincial director shall assign one or more youth workers to the case and ensure that such of the duties mentioned in section 25 as are relevant to the case are carried out.

25. (1) The following are the duties of youth workers:

(a) to attend upon the young person and explain to him the procedure of the screening agency and the youth court and the rights of the young person including the right to retain a lawyer, and to assist him in asserting such rights;

(b) to attend the youth court during the proceedings therein relating to the young person;

(c) to assist the young person in complying with the conditions of any disposition made in respect of the young person including the conditions of any probation;

(d) to give other appropriate assistance to the young person until the young person has been discharged or any disposition made in respect of him has expired;

(e) to prepare or cause to be prepared a pre-disposition report when so required by the provincial director; and

(f) to perform such other duties in respect of the young person as are required by the provincial director.

(2) The judge may, in a particular case, modify or dispense with the performance of the duty prescribed in paragraph (1)(b).

PRIVACY OF YOUTH COURT PROCEEDINGS

26. (1) All proceedings in a youth court shall take place without publicity and the general public shall be excluded, but the judge may admit to the proceedings any person who, in his opinion, has a valid interest in the case or in the work of the court.

(2) Subject to subsection 27(1), representatives of the mass media, not exceeding two in number, agreed upon by all such representatives who present themselves, shall be allowed to be present at proceedings in a youth court and, in addition, in the discretion of the judge, one or more other such representatives so agreed upon may be allowed to be present.

(3) No person may, without leave of the judge, publish in respect of any proceedings in the youth court any report which may have the effect of identifying:

(a) a person charged in the proceedings,

(b) a child or young person who is aggrieved by an offence charged in the proceedings, or

(c) a child or young person who is called as a witness in the proceedings.

(4) Everyone who contravenes subsection (3) is guilty of an offence punishable on summary conviction.

(5) In this section "mass media" means newspapers, magazines, radio, television and any other means of disseminating news to the general public or to a portion thereof.

EXCLUSION FROM HEARING

27. (1) Where it appears to a judge to be in the best interest of a young person who is being dealt with in a youth court, or a child or young person who is there as a witness, the judge may exclude from the court any person whose presence the judge deems to be unnecessary to the conduct of the proceedings except
(a) the Attorney General and his agent,
(b) the young person and his lawyer, parent or other person assisting him as provided in this Act,
(c) the provincial director and,
(d) any youth worker.

(2) A judge may, in his discretion, after he has made a finding that a young person has committed an offence, exclude from the court the young person and any other person, except a lawyer for the young person, when information is being presented which might, in the opinion of the judge, if presented in the presence of a person excluded, be seriously injurious to the young person.

(3) Where a judge excludes a young person pursuant to subsection (2) he shall explain the reason to the young person as well as the circumstances permit, without occasioning the injury referred to in subsection (2).

EFFECT OF FINDING OR DISCHARGE

28. (1) Subject to subsections (3) to (5), where a judge, pursuant to section 16, makes a finding that a young person committed an offence, that person shall not, for any purpose, be deemed thereby to have been convicted of a criminal offence.

(2) Without restricting the generality of subsection (1), a finding referred to in subsection (1) is not a previous conviction for the purposes of any provision of any Act which prescribes a more severe penalty for a subsequent offence than for a previous such offence.

(3) Subject to subsection (2) and to paragraph 39(2)(c), a finding referred to in subsection (1) may be considered by a judge for the purpose of disposition or by a judge of an adult court for the purpose of sentencing.

(4) When a disposition has ceased to have effect and the young person in respect of whom it was made is over the age of eighteen years, the finding pursuant to paragraph 16(1)(b) upon which the disposition was based is deemed, subject to subsection (5), never to have been made and, without restricting the generality of the foregoing, any disqualification to which the young person is subject under any Act of Parliament or regulation made thereunder by reason of such finding is deemed to be removed.

(5) A finding pursuant to section 16 may be pleaded, in any subsequent proceedings to which the finding is relevant, as the special plea of *autrefois convict.*

(6) A discharge pursuant to paragraph 15(2)(a) or paragraph 16(1)(a) may be pleaded, in any subsequent proceedings to which the discharge is relevant, as the special plea of *autrefois acquit.*

(7) No application form relating to employment that is within the legislative jurisdiction of Parliament or to enrolment in the Canadian Forces shall contain any question that, directly or indirectly, requires the applicant to disclose a finding made pursuant to paragraph 16(1)(b) which, under subsection (4), is deemed never to have been made.

INTER-PROVINCIAL ARRANGEMENTS

29. Where an appropriate arrangement has been made by one province with another province
(a) a young person who has been placed, pursuant to subparagraph 16(1)(b)(iv), on probation in one such province may be held on probation in the other such province,

(b) a young person who has been committed, pursuant to subparagraph 16(1)(b)(v), to a place of care and open custody in one such province may be held in any place of care and open custody in the other such province, and
(c) a young person who has been committed, pursuant to subparagraph 16(1)(b)(vi), to a place of care and secure custody in one such province may be held in any place of care and secure custody in the other such province,
in accordance with such agreement and in accordance with any regulations that are made under section 43 to govern the implementation of this section.

REVIEW OF DISPOSITIONS

30. (1) Subject to subsection (2), where a judge has made a disposition in respect of a young person, the young person may be brought back to the youth court for review of the disposition at any time before the disposition has expired, at the instance of the judge, the provincial director, the review agency, the young person or a parent of the young person.

(2) A young person may not be brought back to youth court pursuant to subsection (1) within six months from the date on which the disposition was made, or from the date of the latest review by a judge pursuant to section 34, except by leave of a judge.

31. (1) Where a judge has made a disposition placing a young person on probation or committing him to care and custody, for a period exceeding one year, the judge shall, whenever there has elapsed one year from
(a) the date of the disposition if no review has been made pursuant to section 34, or
(b) otherwise the last date of any review that has already been made pursuant to section 34,
if the disposition has not then expired, direct a youth worker to prepare and submit to him a report on the progress of the young person.

(2) Where, upon receiving a report referred to in subsection (1), the judge considers it desirable to do so, he shall cause the young person to whom the report relates to be brought back to youth court for the purpose of a review of the disposition pursuant to section 34.

(3) A young person in respect of whom a report referred to in subsection (1) has been prepared shall be given a copy thereof, except that the judge may withhold communication of the report or any part thereof if, in his opinion, disclosure would be seriously injurious to the young person.

32. Where a judge has made a disposition placing a young person on probation or committing him to care and custody for a period exceeding two years, the youth worker assigned to the case, if the young person is on probation, and otherwise the person in whose care and custody the young person is, shall, whenever there has elapsed two years from
(a) the date of the disposition if no review has been made pursuant to section 34, or
(b) otherwise the last date of any review that has already been made pursuant to section 34,
if the disposition has not then expired, cause the young person to be brought back to youth court for a review of the disposition pursuant to section 34.

33. (1) The grounds for review of a disposition at the instance of the young person or his parent are:
(a) that he is being detained in a category of custody that was not directed in the disposition,
(b) that he has been subjected to unreasonable restrictions in respect of probation or custody,
(c) that he has made progress that justifies a change in the disposition,
(d) that he is not making satisfactory progress in respect of education, training or otherwise,
(e) that the circumstances that led to him being committed to probation or care and custody have changed materially,

(f) that services are available which were not available at the time when the disposition was made or last reviewed, and
(g) such other grounds as the judge considers to be substantial and relevant.

(2) The grounds for review of a disposition at the instance of the judge, provincial director or review agency are the grounds mentioned in subsection (1) and the following:
(a) that the young person has failed to comply with a material condition of a disposition or an order of probation,
(b) that the young person has repeatedly refused to comply with a reasonable direction as to deportment from a youth worker or the young person's custodian,
(c) that the young person has evaded or attempted to evade custody, and
(d) such other grounds as the youth court judge considers to be substantial and relevant.

34. (1) Upon the appearance of a young person in youth court, pursuant to section 30, 31, or 32, the judge shall consider whether it is desirable, having regard to the interests of the young person and the public, to make a change in or terminate the disposition, and he shall then, subject to subsection (2),
(a) discharge the young person from any further obligation under the disposition,
(b) decrease the sum of money to be paid by way of, or cancel, any fine, contribution, compensation or restitution, or waive a requirement for the performance of a community service,
(c) shorten the term of probation or care and custody,
(d) vary or cancel a condition of probation or a condition imposed pursuant to subparagraph 16(1)(b)(vii),
(e) change the committal, if to care and secure custody, to care and open custody or probation,
(f) change the committal, if to care and open custody, to probation, or
(g) confirm the disposition.

(2) Where the judge finds, upon the appearance of a young person in youth court pursuant to section 30, 31 or 32, that the young person has wilfully failed to comply with a disposition made under any of subparagraphs 16(1)b)(i) to (iii), he may make any other disposition under those subparagraphs or under subparagraph 16(1)(b)(iv); where he finds that the young person has wilfully failed to comply with a disposition made under subparagraph 16(1)(b)(iv), he may make a disposition under either of subparagraphs 16(1)(b)(v) or (vi); and where he finds that the young person has wilfully failed to comply with a disposition made under subparagraph 16(1)(b)(v), he may make a disposition under subparagraph 16(1)(b)(vi); but no committal or placement on probation under this section shall be for a period that expires more than three unbroken years after the date of the original dispositions.

FAILURE TO COMPLY WITH DISPOSITION

35. Notwithstanding the provisions of any other Act, the failure to comply with a disposition or a condition thereof is not an offence under any other Act and any such failure may only be dealt with pursuant to sections 30 to 34.

REVIEW AGENCY

36. (1) The Lieutenant Governor in Council of a province or his designate may appoint, in respect of each court in the province, one or more persons to be a review agency or agencies of such court.

(2) A review agency shall at intervals not exceeding six months, consider the case of every young person within its jurisdiction who is subject to a disposition under subparagraphs 16(1)(b)(iv) to (vi), and review the implementation of the disposition.

(3) A young person or a parent of a young person may apply to a review agency for a review of a disposition under subparagraphs 16(1)(b)(iv) to (vi) on the ground of serious deficiency, in the manner of implementation of the disposition, relating to
(a) the education or training that the young person is being offered,
(b) the physical or mental health of the young person, or
(c) the diet or the recreational or residential facilities that are available to the young person.

(4) Upon making a review, pursuant to subsection (2) or (3), the review agency shall report its finding to the provincial director, indicating whether in its opinion there is any ground for complaint as to the implementation of the disposition and including any recommendation it deems desirable for the correction of any ground for complaint.

(5) In lieu of a report pursuant to subsection (4), or where it believes that no action has been taken to implement a recommendation made pursuant to subsection (4), the review agency may refer the matter to the youth court.

(6) Where no review agency has been established, a young person or his parent may make the application referred to in subsection (3) to a judge.

(7) Upon a reference under subsection (5) or an application under subsection (6) a judge may take any of the measures indicated in subsection (4) or subsection 34(1).

LIMITATIONS UPON FINGER PRINTING & PHOTOGRAPHING

37. (1) Notwithstanding any provision of the *Identification of Criminals Act* or any other Act relating to the identification of persons suspected, charged or convicted of offences, no person shall in respect of an appearance notice or summons issued to a young person or the arrest of a young person, or in the course of or by reason of any proceedings,
(a) take the finger prints of a young person, or
(b) photograph a young person,
unless an adult, in the same circumstances, would be subject to finger printing or photographing and a judge gives his consent.

(2) A judge shall not give his consent under subsection (1) unless he is satisfied
(a) that the finger printing or photographing is reasonably necessary for the investigation of an offence in respect of which the young person has been arrested or charged, and
(b) that it is reasonably likely that the finger prints or photographs will be used only for the purpose mentioned in paragraph (a).

(3) Finger prints and photographs taken pursuant to this section, when they have served the purpose mentioned in paragraph (2)(a), shall be delivered to the clerk of the court and placed by him in the youth court record of the young person.

YOUTH COURT RECORDS

38. (1) The clerk of the court shall keep, separate from all records relating to cases in adult court, a complete record of each case in the youth court.

(2) The youth court record of a young person shall not be made available to any person except in accordance with section 39.

39. (1) Subject to subsection 9(9) and to any qualification mentioned in the following paragraphs, the youth court record of a young person shall, while he is under the age of eighteen years, during any proceedings in respect of him, or while any disposition made in respect of him remains in effect, be available to the following persons:
(a) the young person and his parent, except that a judge may direct that a pre-disposition report or a report referred to in section 18, or any part thereof, be not available to the young person or his parent if, in the opinion of the judge, disclosure would be seriously injurious to the young person;

(b) a lawyer, on the record, for the young person;
(c) any youth court judge or other judge or any officer of a youth court or other court;
(d) the Attorney General or his agent;
(e) the provincial director, who may disclose such record in whole or in part to any person in whose care and custody the young person is placed or who is assisting in any way in the care or treatment of the young person;
(f) any peace officer who satisfies the judge that information in the record is reasonably necessary in the investigation of an indictable offence, and such officer may in turn disclose such record or any part of it to any other person similarly engaged in, or engaged in activities related to, the investigation of such offence; and
(g) any other person or class of persons whom a judge considers to have a valid interest in the proceedings against the young person or the work of the youth court, to the extent directed by the judge.

(2) Subject to subsection 9(9), to any qualification mentioned in the following paragraphs, and to the consent of a judge in the case of paragraphs (c) to (e), the youth court record of a young person shall, when he is over the age of eighteen years and no disposition made in respect of him is in effect, be available to the following persons:
(a) the young person, except that a judge may direct that a pre-disposition report or a report referred to in section 18, or any part thereof, be not available to the young person if, in the opinion of the judge, disclosure would be seriously injurious to the young person;
(b) a judge, for the purpose of any proceedings before him to which the record is or may be relevant;
(c) a judge or an adult court before whom the young person appears or may appear to be dealt with following a plea or finding of guilty;
(d) a peace officer in the circumstances, and for purposes of the further disclosure, described in paragraph (1)(f);
(e) any parole board that has authority at any time to grant or recommend a pardon for the young person after he has become an adult; and
(f) any other person or class of persons whom the judge considers to have a valid interest in the work of the youth court, to the extent directed by the judge.

(3) A judge shall not give consent, pursuant to subsection (2), unless he is satisfied that disclosure of the record or part thereof is desirable in the interests of the young person, of the administration of justice or of research, and that disclosure will not be unfairly prejudicial to the young person.

(4) In the case of any material on a youth court record that has not been reduced to writing, the only obligation to a person to whom the record is available is to let him have access to such material but he is not entitled to have any such material transcribed except with the consent of a judge and subject to any conditions that the judge prescribes.

(5) No person may make or retain a copy of any material in a youth court record or of any transcription thereof without leave of a judge.

(6) The clerk of the court is responsible for verifying the identity of any person to whom a youth court record is made available and his rights in respect thereof and he shall, if in doubt, apply to and be guided by a judge.

(7) Any person who has the charge or possession of a youth court record, or who has obtained any information therefrom, or who has information as to any such record by reason of his duties under this Act, who wilfully discloses any such record or part thereof or information to an unauthorized person is guilty of an offence punishable on summary conviction.

APPLICATION OF CRIMINAL CODE PROVISIONS

40. (1) Except to the extent that they are inconsistent with or irrelevant to this Act, all the provisions of the *Criminal Code* apply, *mutatis mutandis,* in respect of offences charged and proceedings taken pursuant to this Act.

(2) Without restricting the generality of subsection (1),
(a) Part XXIV and all other provisions of the *Criminal Code* that have application to summary conviction proceedings apply, *mutatis mutandis,* in respect of offences charged and proceedings taken pursuant to this Act,
(i) in respect of a summary conviction offence, and
(ii) in respect of an indictable offence as if it were defined in the enactment creating it as a summary conviction offence,
except that the provisions of Part XXIV relating to appeals and costs do not so apply and except that subsection 721(2) of Part XXIV does not apply to an offence for which an offender might, but for this Act, be prosecuted by indictment;
(b) The definitions and rules of interpretation contained in section 2 and any other section of the *Criminal Code* apply, *mutatis mutandis,* in respect of offences charged and proceedings taken pursuant to this Act, and without restricting the generality of the foregoing, as if the expression "magistrate" in said section 2 were stated to include "judge of a youth court" and as if the expression "peace officer" in said section 2 were stated to include "youth worker"; and
(c) Part XVIII of the *Criminal Code* applies, *mutatis mutandis,* in respect of offences charged and proceedings taken pursuant to this Act, in accordance with section 42 of this Act and as if, for the words in paragraph 613(1)(d), "to await the pleasure of the Lieutenant Governor" there were substituted the words "until the provincial director assumes responsibility for him".

FUNCTIONS OF CLERKS OF COURTS

41. A clerk of the court may exercise such powers as ordinarily are exercised by a clerk of a court, and, in particular, may
(a) administer oaths in all matters relating to the business of the court; and
(b) in the absence of a judge, exercise all the powers of adjournment of a judge.

APPEALS

42. (1) An appeal lies in respect of a decision under subsection 15(2), a finding under section 20, and a disposition under section 16 or 34 in accordance with the following provisions:
(a) if the offence charged is an indictable offence only, an appeal lies in the same manner as if the decision or finding were a verdict, and as if the disposition were a sentence, in a prosecution by indictment in adult court;
(b) if the offence charged is, in the alternative, an indictable or a summary conviction offence, an appeal lies in accordance with paragraph (a); and
(c) if the offence charged is a summary conviction offence only, an appeal lies in the same manner as if the decision were a verdict and the disposition were a sentence in a prosecution by indictment in adult court, except that the appeal lies initially to a single judge of a superior court of criminal jurisdiction and thence from that judge to the Court of Appeal, on the same grounds as are prescribed by Part XVIII for appeals from a trial court to the Court of Appeal, and thence from the Court of Appeal to the Supreme Court of Canada on the same grounds as are prescribed by Part XVIII for appeals from a Court of Appeal to the Supreme Court of Canada.

(2) An order made pursuant to subsection 14(1), or the refusal to make such an order where the Attorney General or his agent applies for such an order, is appealable in accordance with subsection (1), as if it were a conviction or an acquittal in respect of an indictable offence.

(3) A finding mentioned in paragraph 20(1)(a) and a finding mentioned in paragraph 20(1)(b) are appealable in accordance with subsection (1) as if they were, respectively, a finding or verdict mentioned in subsection 603(2) of the *Criminal Code*.

REGULATIONS

43. (1) The Governor in Council may make regulations for the better carrying out of the purposes of this Act and, without restricting the generality of the foregoing, may make regulations
(a) prescribing forms to be used in the administration of this Act, and any form so prescribed is sufficient for the purpose thereof,
(b) governing the practice and procedure to be followed by a court, and by a screening agency, and
(c) prescribing the conditions of secure custody.

(2) The Lieutenant Governor in Council of each province may make regulations, not inconsistent with this Act or any regulations made under subsection (1), for any purpose mentioned in subsection (1).

(3) No regulation made under this section has effect until it is published in the *Canada Gazette*.

AMENDMENT OF CRIMINAL CODE

44. The *Criminal Code* is amended
(a) by repealing sections 12 and 13 thereof and substituting therefor the following:
"12. No person shall be convicted of an offence in respect of an act or omission on his part while he was under the age of fourteen years.";
(b) by repealing section 441 thereof; and
(c) by inserting after section 660 thereof the following section:
"660.1.(1) Where a court sentences a person under the age of eighteen years to a term of imprisonment, such person, subject to the consent of the provincial director, may be imprisoned in a place of care and secure custody, as defined in the *Young Persons in Conflict with the Law Act,* during such part of his term of imprisonment as expires before he reaches the age of twenty-one years, unless the person in charge of such place sooner certifies that, having regard to the misbehaviour of the young person, he cannot longer be imprisoned in such place without significant danger of escape or of detrimentally affecting the rehabilitation of other persons detained in such place, whereupon in either such event, he may be imprisoned during the remainder of his term of imprisonment in any place in which he might ordinarily have been imprisoned.
(2) For the purposes of this section, the expression "provincial director" has the meaning assigned to it in the *Young Persons in Conflict with the Law Act*".

AMENDMENT OF PAROLE ACT

45. Section 2 of the *Parole Act* is amended by repealing the definition of "inmate" therein and substituting therefor the following:
"'inmate' means a person who is under a sentence of imprisonment imposed pursuant to an *Act* of the Parliament of Canada or imposed for criminal contempt of court, but does not include a child who has been committed to an industrial school pursuant to the *Juvenile Delinquents Act or a young person who has been committed to a place of care and close custody pursuant to the Young Persons In Conflict with the Law Act;*"

AMENDMENT OF PRISONS AND REFORMATORIES ACT

46. (1) Subsection 90 (1) of the *Prisons and Reformatories Act* is amended by repealing the definition of "child" therein and substituting therefor the following:
"'child', where used with reference to a person who has, pursuant to section 9 of the *Juvenile*

Delinquents Act, been ordered to be proceeded against by indictment in the ordinary courts, means a child as defined in section 2 of that *Act and when used with reference to a person who has, pursuant to section 14 of the Young Persons in Conflict with the Law Act, been proceeded against in adult court, means a young person as defined in section 2 of that Act;*"

(2) Subsection 129(2) of the said *Act* is repealed and the following substituted therefor:
"(2) Until an industrial school or reformatory is established in the province, the Lieutenant Governor of the province may arrange for the use of industrial schools or reformatories in other provinces, and thereupon, so far as relates to delinquents and offenders in the province of Prince Edward Island, the industrial school referred to in the *Juvenile Delinquents Act and a place of care and secure custody referred to in the Young Persons in Conflict with the Law Act* shall mean and include such industrial school or reformatory so arranged without the province."

(3) Section 153 of the said *Act* is repealed and the following substituted therefor:
"153. Sections 150 to 152 do not apply
(a) to a child as defined in the *Juvenile Delinquents Act* unless the child has under section 9 of that *Act* been ordered to be proceeded against by indictment in the ordinary courts; and
(b) *to a young person as defined in the Young Persons in Conflict with the Law Act unless a judge has ordered under section 14 of that Act that the young person may be proceeded against in adult court.*"

REPEAL OF JUVENILE DELINQUENTS ACT

47. (1) The *Juvenile Delinquents Act* is repealed.

(2) All proceedings under the *Juvenile Delinquents Act* in which a child is charged with a delinquency, that were commenced by the laying of an information before the coming into force of this *Act* shall be continued as if that *Act* were not repealed, except that if no adjudication and disposition have been made under that *Act* the proceedings shall be so continued only up to and including the adjudication and thereafter under this *Act* as if the adjudication were a finding under this *Act*.

(3) Any offence committed by a young person before the coming into force of this *Act* in respect of which an information has not been laid before such coming into force shall be dealt with as if the offence had occurred after the coming into force of this *Act*.

TRANSITIONAL

48. During the time that extends three years after the coming into force of this *Act*, if
(a) no place of secure custody is available, and
(b) a judge is satisfied that there exists another place in which a young person may be detained without serious consequences to the young person, the judge, in lieu of a committal under subparagraph 16(1)(b)(vi), may commit a young person to that other place, and that place, in respect of any young person so committed thereto, shall be deemed to be a place of secure custody as defined in this *Act*.

COMMENCEMENT

49. (1) Subject to subsection (2), this *Act* shall come into force on a day to be proclaimed by the Governor in Council.

(2) The Governor in Council may, from time to time by proclamation, direct that in any province "young person", for the purposes of this *Act*, for any period specified in the proclamation that expires not later than three years after the coming into force of this *Act*, means a boy or girl apparently or actually over the age of fourteen years and not over an age specified in the proclamation that is less than eighteen years but not less than sixteen years.

END