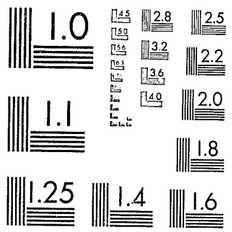

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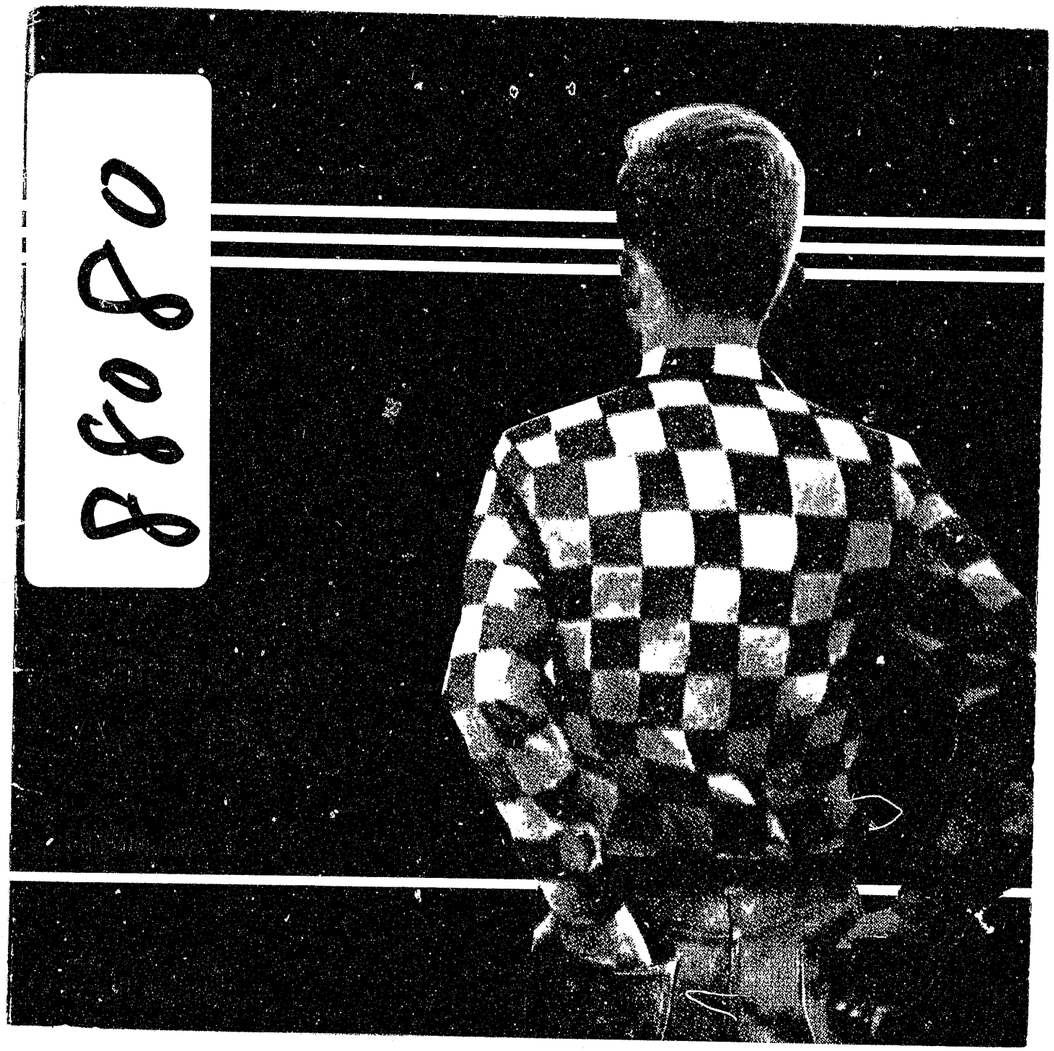

The Young Offenders Act, 1982

Highlights

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HIGHLIGHTS OF THE YOUNG OFFENDERS ACT

FOREWORD

The unanimous passage of the *Young Offenders Act* by Parliament was a moment of pride and progress for both the people of Canada and the Government that serves them; I am proud to be associated with it.

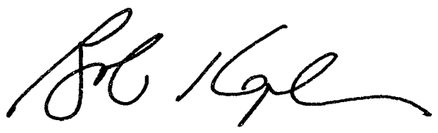
The Act balances the rights of society, the responsibility that young offenders must bear for their actions, and the special needs and rights of our young people. In doing so, it is in keeping with the philosophy and circumstances of our time. Young offenders are no longer regarded as merely misguided or "sick" and in need of treatment, as they were in the past. Instead, they are to be held more accountable for their illegal behaviour. However, the new Act recognizes that they should not generally be held as accountable in law as adult offenders because they are less mature and more dependent on others. The independent system of juvenile justice is continued, separate from the adult system, with its own procedures, safeguards and dispositions. Some of the innovative practices that provinces have developed to deal with young people which were not formally sanctioned in law are embodied in the new Act.

I am confident that the *Young Offenders Act* has achieved the desired equilibrium between the prime objective of criminal law to protect the public from criminal behaviour and the desirability of ministering to the needs of young people who come into conflict with the law. This balance has been achieved through a lengthy process of consultation among the Government of Canada, the provincial governments and groups involved in the administration of the juvenile justice system. This process, which began over twenty years ago, has now come to fruition. The Federal Government recognizes that the Act's objectives can only be achieved with the support and encouragement of the provinces, who are responsible for its administration.

The legislative proposals underwent many changes and modifications before they even reached Parliament. Since I introduced the Act into the House of Commons in February 1981, over 60 amendments were made. Some of these were technical; others were substantive changes that have made the Act both stronger and more workable. Thanks to this input, more weight has been given to victims' rights, and communities have been given the opportunity to become involved in the juvenile justice system through the youth justice committees.

The most fundamental change made during the Bill's passage and the one I consider the most important, has been the establishment of a uniform maximum age. This Act applies to offenders from the age of 12 up to the age of 17 years inclusive; at 18 they move into the adult justice system. Currently, the maximum age at which a young person can be dealt with under the Junvenile Delinquents Act varies from province to province. With the new law, young people will be treated the same way throughout Canada. This is an important step towards ensuring that, consistent with the Canadian Charter of Rights and Freedoms, Canadians from all parts of our country are equal before the law.

The juvenile justice system cannot solve all the social problems which young people must cope with today. Factors other than the court—a young person's family, friends, school, as well as his or her own community—influence behaviour. A reformed juvenile justice system cannot alone wipe out juvenile crime, but it can provide a consistent, coherent and balanced process to deal with it, that encourages respect for the law and promotes the well-being of both the young offender and society. The new *Young Offenders Act* gives Canada such a system.



Bob Kaplan, P.C., M.P.,
Solicitor General of Canada

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INTRODUCTION: The need for reform

The new *Young Offenders Act* is one of the most significant pieces of social policy legislation to have been passed in recent years. This new Act represents a fundamental shift in philosophy in comparison to the 1908 Juvenile Delinquents Act and reflects more accurately than did its predecessor the needs and aspirations of Canadian of all ages.

At the turn of the century laws provided little or no protection for children; they were victims of exploitation in the workplace; no laws assured even the most minimal education; and welfare services were inadequate or non-existent. A child who broke a law, regardless of his or her age and vulnerability, appeared in ordinary court and was dealt with at trial and sentencing much as an adult would be. The 1908 Juvenile Delinquents Act, revised in 1929, introduced what were then innovative concepts in the treatment of young offenders.

The Juvenile Delinquents Act was based upon the doctrine of *parens patriae* which established the state as a kindly parent who would deal with the young wrongdoer "not as a criminal but as a misdirected child" requiring "help and guidance and proper supervision." It further introduced the idea of delinquency as an all-encompassing offence and, in theory, no distinction was to be made between young people who violated criminal law or any other law, or who were involved in "sexual immorality or any similar form of vice." The juvenile authorities were to be concerned primarily with treating the needs of the "delinquent" and accordingly the Juvenile Delinquents Act provided for wide discretionary powers and great flexibility. The informality and flexibility permitted authorities, as kindly parents, to "treat" the child for as long as was necessary in order to "cure" the condition of delinquency regardless of the sort of crime or misbehaviour that had originally brought the child before the juvenile court.

The primary concern for the welfare of children upon which the Juvenile Delinquents Act was based represented a major advance in social policy. Years of experience and dramatic changes in Canadian society have shown the 1908 Act to be inadequate, even inappropriate, to contemporary needs and circumstances. The informality and flexibility that are the hallmarks of the Juvenile Delinquents Act are now recognized to be arbitrary and lacking sufficient safeguards against the infringement of the basic rights which must be accorded to all citizens, regardless of age.

The Act has had the regrettable effect of criminalizing children for conduct that does not constitute a crime for adults. Important questions, such as a young person's rights to due process, including his or her entitlement to legal representation, the authority of police to

fingerprint juveniles and the use of juvenile court records, had been left unanswered by the Juvenile Delinquents Act. Further, the system of open-ended sentences has meant that a young offender could be given a more severe sentence than an adult would receive for the same offence.

The new *Young Offenders Act* is based on completely different principles. The Act embodies a rights and responsibilities approach to young people in trouble with the law. On the one hand it emphasizes that young people must bear responsibility for their illegal behaviour, and that society has a right to necessary protection from such behaviour. On the other hand, it recognizes that young people have special needs and should not always be held accountable in the same manner or suffer the same consequences as adults because they are dependants at varying degrees of development and maturity. In view of society's right to protection, and the special needs of young people, they not only require supervision, discipline and control, but must also be given guidance, assistance and special protection for their basic rights.

The Act establishes a system of youth courts, procedures and dispositions which is separate from that established for adults, but which provides for the same basic rights as are afforded adults, with special safeguards and guarantees to protect young persons. In addition to its recognition of the special needs and rights of young persons, the new legislation incorporates into its provisions a concern for the victims of offences, the parents of young offenders and the safety and rights of the community as a whole.

Some of the procedures and provisions of the *Young Offenders Act* are already in practice, in varying degrees, in different areas of the country. Juvenile court judges have been informing young people of their rights; legal aid clinics have been providing the opportunity for them to obtain legal representation; effective diversion programs have been developed thereby avoiding unnecessary court appearances; and greater parental involvement has been encouraged. The passage of the Act acknowledges these advanced practices and recognizes that the time has come for their implementation throughout Canada.

Built upon twenty years of public debate, consultations and discussions with the provinces, professional and other interested groups and individuals, the *Young Offenders Act*, represents an important consensus for a greatly strengthened system of justice for young people. The legislators have extended uniform standards throughout Canada and eliminated many inequities and anomalies that have existed for some time. In all, the Act constitutes an important achievement: from consultation, experimentation and consensus it has developed a system of juvenile justice that is consistent and coherent, giving protection to both individuals and the communities throughout Canada.

PROCLAMATION DATE

1. When does the new Young Offenders Act come into effect?

The *Young Offenders Act* was given Royal Assent on 7 July 1982. This signified that it had completed all stages of the parliamentary process. However, it does not come into effect immediately. An Act only becomes law when it has been proclaimed.

Proclamation of the *Young Offenders Act* will not occur before 1 October 1983. On proclamation, all the Act's provisions, except the one referring to maximum age, must be applied immediately.

The clause that deals with the maximum age for people dealt with under this Act states that the Act covers young people up to the age of 17 inclusive. Since some provinces and both territories will have to change their existing arrangements to accommodate this provision, the application of this clause will not become mandatory until 1 April 1985. Some provinces may choose to implement it earlier.

A NATIONAL POLICY FOR YOUNG OFFENDERS

2. What approach to young offenders does the new Act take?

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

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

- Young people should be held more responsible for their behaviour but not always as accountable as adults since they are not yet fully mature.
- Society has a right to protection from illegal behaviour and a responsibility to prevent criminal conduct by young people.
- Young people have special needs because they are dependents at varying levels of development and maturity. In view of society's right to protection and these special needs, young people may not only require supervision, discipline and control but must also be given guidance and assistance:
  - — alternative measures to the formal court process, or no measures at all, should be considered for the young offender, as long as such a solution is consistent with the protection of society;
  - — young offenders should be removed from their families only when continued parental supervision is inappropriate. The Act recognizes the responsibility of parents for the care and supervision of their children. Parents will be encouraged and if necessary required to take an active part in proceedings that involve their children.
- Young people have the same rights as adults to due process of law and fair and equal treatment, including all the rights stated in our new Canadian Charter of Rights and Freedoms and in the 1960 Bill of Rights. In order to protect their rights and freedoms, and, in view of their particular needs and circumstances, young people should have special rights and guarantees. On the following pages of this booklet the special rights and guarantees outlined in the *Young Offenders Act* are described. The Declaration of Principle at the beginning of the Act mentions in particular:
  - — young people have the right to participate in deliberations that affect them;

  - — young people have a right to the least interference with their freedom that is compatible with the protection of society, their own needs and their families' interests;
  - — they have a right to be informed of their rights and freedoms.

JURISDICTION—BY OFFENCE AND AGE

3. To whom does the new Act apply?

The new Act will cover only those young people charged with specific offences against the Criminal Code and other federal statutes and regulations. It will not apply to those charged with offences against provincial laws (which deal with offences such as traffic and liquor violations), or municipal bylaws. Provinces could, however, enact complementary legislation adopting the provisions of the *Young Offenders Act* to deal with such offences. The catch-all offence of "delinquency", created by the 1908 Juvenile Delinquents Act to cover all juvenile offences including the status offences of "sexual immorality" and "any similar form of vice," will be abolished. This means that young people will no longer face the possibility of being criminalized for behaviour that is not illegal for an adult, and which could be dealt with more appropriately by child welfare, youth protection legislation and other forms of provincial legislation.

Under the new Act the age of criminal responsibility will be raised from seven to 12 years.

Children below the age of 12 are not considered criminally responsible, which means accountable under criminal law, for any offence they might commit. If a younger child did perform a harmful act, he or she could be dealt with in non-criminal proceedings under provincial law. The Juvenile Delinquents Act, in conjunction with the Criminal Code, specifies seven as the minimum age for juvenile delinquency proceedings, but it is generally agreed today that a child of seven is too young to be considered criminally responsible.

The new Act stipulates that " 'young person' means a person who is or... appears to be twelve years of age or more, but under eighteen years of age." This means that the new Act covers individuals from their twelfth birthday until they are seventeen years inclusive; once they have attained their eighteenth birthday, they become adults from the point of view of the criminal law and move into the ordinary court system.

The establishment of a uniform maximum age right across the country has been a contentious issue during the development of this Act. At present, the maximum age for juvenile delinquency varies from province to province: Quebec and Manitoba have under 18 years as their maximum; British Columbia (and Newfoundland which has its own statute to deal with young people) have under 17; the remaining six provinces and two territories have a maximum age of under 16.

While there was almost universal support for the need to establish a uniform maximum age, it was much more difficult to agree at what level that age should be set. The choice of different maximum ages reflects not only different opinions on when an individual is considered sufficiently mature to be held fully responsible and dealt with as an adult, but also the valuable variety of programs and resources that the provinces have developed to meet the needs of young offenders.

Nevertheless, after much discussion and debate, the House of Commons Standing Committee on Justice and Legal Affairs recommended the adoption of a uniform maximum age of 17 years inclusive. The arguments for this include:

- The desirability of protecting young offenders for as long as possible from entry into adult correctional institutions where they would meet older, more experienced offenders.
- The full benefit of the resources of the juvenile justice system, with its strong emphasis on individual needs and rehabilitation of young offenders, should be extended to young people up to the age of 17 inclusive because, generally speaking, they are until then still in their formative years and at an age level where they can be favourably influenced by positive action and guidance.
- It is reasonable to set the age limit at a higher rather than a lower level, since the new Act also contains a safety valve. It allows for transfer to an adult court for the difficult cases that involve the more "mature" criminal who is under 18, or the young offender who has committed an extremely serious offence.
- No province in Canada has its age of civil majority below the level of 18 years, which suggests a general recognition that young people who are 17 and under are not yet fully mature. The new Act's cut-off point at the eighteenth birthday is therefore consistent with the way young people are treated under civil law. It is also consistent with the way young people are treated in most Western democracies.

Another consideration which the law-makers took into account in their discussion of a uniform maximum age was the effect of Canada's new Charter of Rights and Freedoms. Under the Charter, any juvenile justice legislation that allows different age levels to be set in different provinces could be ruled unconstitutional. The Juvenile Delinquents Act would probably be found to breach the equality provisions of the Charter.

The new Charter's guarantee that there should be no discrimination based on age does not come into force until April 1985. Therefore the new Act specifies that provinces that have other age limits will have until April 1, 1985, to make the necessary changes to their programs and services in order to cope with the shift in caseloads and populations.

ALTERNATIVE MEASURES

4. Will every young person who breaks a federal law appear in the youth court?

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

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

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

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

It is the intent of the new legislation that the informality of alternative measures will not prejudice the basic legal rights of young people, or their equitable treatment. Therefore the new Act contains built-in safeguards for the protection of young people who enter these programs. In particular:

- The young person must have accepted responsibility for the offence that has been committed.
- He or she must be fully informed about the alternative measures program and have voluntarily agreed to participate in it.
- He or she has the right to consult legal counsel before agreeing to enter an alternative measures program.
- The young person may prefer to have any charge dealt with by the court.

- Alternative measures cannot be used in any case unless there exists sufficient evidence to justify the prosecution of the case.
- Any admission of guilt that the young person has made cannot be used in evidence in subsequent court proceedings.
- Young people should not be punished twice for the same offence. Once an offender has fully completed an alternative measures program, the charge cannot subsequently be dealt with in the youth court and it will be dismissed. Where there has been partial compliance the youth court judge is given the power to dismiss the charge if it is felt that a subsequent prosecution would be unfair. And where a subsequent prosecution is allowed, the young person's participation in an alternative measures program may be taken into account by the youth court judge in making a disposition.

PROCEEDINGS IN THE YOUTH COURT

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

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

- The young person's parents must be notified of all proceedings, encouraged and, if necessary, ordered to attend. Where their child has been found guilty, they will be allowed to make known their views prior to the court's sentence.
- The young person has a right to legal representation if proceedings are taken against him or her.
- Access to legal counsel is guaranteed at crucial stages of proceedings, including during a trial, a review of a disposition, or a transfer to adult court, if the young person is unable to find a lawyer for him or herself.
- Young people must be informed of their particular rights at particular stages of proceedings. For instance, police officers must tell them their rights on arrest when they apprehend them, and youth court judges must tell them their rights in court when they appear before them.
- Before making a decision, the judge may ask for a pre-disposition report. This is an assessment of the young person's circumstances, including age, behaviour, previous brushes with the law, any experience in alternative measures programs, school records and relationship with parents, and an appraisal of the programs and facilities available to the court to meet the young person's needs. The young person, his or her parents, and the victim in the case will all be interviewed for the report. The judge must ask for a pre-disposition report if he or she is considering the transfer of the young person to an adult court, or a sentence involving custody.
- If the judge considers that the young person is suffering from a physical or mental illness or disorder, a psychological disorder, an emotional disturbance, a learning disability or mental retardation, he can ask for a medical, psychological or psychiatric assessment.

DETENTION AND BAIL

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

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

- Young offenders have the same entitlement to bail as adult offenders. The youth court will deal with bail applications for young people, using the rules and criteria that are set out in the Criminal Code.
- The young person's parents must be notified.
- Young people must as a general rule be detained separately from adult offenders.
- The youth court will have the power to release a young person into the care of a responsible adult when it appears that the adult can exercise control and guarantee the young person's subsequent attendance in court.

TRANSFER TO ADULT COURT

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

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

Such an occasion can only arise when the young person has passed his or her fourteenth birthday and is alleged to have committed a serious indictable offence (for example, breaking and entering, manslaughter, armed robbery, or sexual assault).

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

Transfer to the adult court has serious repercussions. Not only is the trial held in adult court, but the young person is then subject to the range of sentences available to the adult court, which may be more severe: maximum sentences in the adult court range from six months to life imprisonment. He or she will not have the benefit of the special safeguards developed for young offenders, such as the review procedures. In view of its serious consequences, a transfer to adult court is considered to be a measure of last resort, for cases where it is the only way to protect society. The transfer order is subject to appeal.

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

DISPOSITIONS

8. What sentences can the youth court give?

The range of dispositions (as youth court sentences are called) provided under the new Act is wide, flexible and precisely defined. None of the dispositions are open-ended, in contrast to those in the 1908 Act which allow young people to be put in custody for indeterminate periods. The sentencing options in the new Act are intended to allow the youth court judge to take into account the special circumstances and needs of young people, the rights and needs of victims of crime and the need to protect society.

The dispositions available are:

— an absolute discharge

— a fine of up to $1,000

— a payment to the victim of the offence, in compensation for loss or damage to property, loss of income, or special damages that arose because of personal injury to the victim. A judge who is considering such an order will take into account the present and future potential of the offender to pay, and also the views of the victim.

— an order of compensation in kind or by way of personal service to the victim of the offence. A judge who is considering such an order must, once again, consider the views of the victim.

— a community service order, which would require the young offender to perform a specified amount of work for the community.

— if a medical or psychological report recommends that the young person undergo treatment, the young person may be detained for treatment in a hospital or other appropriate facility as long as he or she agrees to this.

— probation for up to two years.

— committal to intermittent or continuous custody for a specified period. Under the new Act, committal to custody is to be exercised with the utmost restraint, since it is a radical restriction of a young person's freedom. Custodial dispositions may not, for most offences, exceed two years in duration for any given offence. A young offender may, however, receive up to three years in custody if he or she is being sentenced for an offence for which an adult offender would be liable to life imprisonment, or if he or she is being sentenced for a combination of two or more offences.

— any additional conditions that the judge considers are in the best interests of society or the young offender, such as the surrender of illegal goods, or a prohibition against the possession of firearms.

— any combination of these dispositions, so long as the combination does not exceed the stated maximum of two years for one offence (or the three year maximum for more serious offences), or three years for two or more offences.

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

COMMITTAL TO CUSTODY

9. What does a "committal to custody" involve?

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

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

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

Once the youth court has made a custody order, and specified the level of custody, the provincial administrator will decide which facility within that level the young offender will enter. The provincial administrator is also empowered to move offenders between institutions and programs within a given level, to order a temporary release to the community and to revoke such an order, to initiate the process that can lead to the offender's early release from custody, and to transfer an offender from open to secure custody for up to fifteen days, if he or she tries to escape or misbehaves seriously.

The new Act allows for two types of temporary release:

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

The young offender is however subject to the jurisdiction of the youth court throughout his or her disposition. Under the new Act, provincial authorities cannot unilaterally alter the youth court's decision concerning the young offender's disposition, as they can under the Juvenile Delinquents Act.

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

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

APPEALS

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

Yes. Under the new Act, young people will have similar rights of appeal from decisions that affect them, as adults do under the Criminal Code. This is in contrast to the Juvenile Delinquents Act, which specifically denies to young people the automatic right to appeal.

A young person can appeal a finding of guilty or the disposition that a youth court judge orders. However, he or she cannot appeal a subsequent adjustment to the disposition, made during the review process, unless the review was occasioned by a wilful failure or refusal to comply with the disposition on the young offender's part. (These are the only circumstances in which a disposition may be made more severe.)

A decision to transfer to adult court may also be appealed.

It should be noted that the Crown has corresponding rights of appeal.

REVIEW OF DISPOSITIONS

11. Can a sentence be changed once it has been given?

Yes, but only by the youth court. The new Act outlines an innovative and thorough review procedure to ensure that each disposition is monitored at regular intervals. The procedure has three main objectives:

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

The Juvenile Delinquents Act contains provisions for a review system that in practice has largely been used only when the offender has failed to comply with the court's disposition. The review system in the new Act, in contrast, is meant to have a much more positive purpose: it will deal not only with default on dispositions but also with the revision of dispositions, the need for which has been prompted by newly available programs, progress on the young offender's part, and other changes in circumstances.

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

Where there are sufficient grounds, custodial dispositions may be reviewed on application of any of those involved in the case. A young offender who has been committed to custody for more than a year will have a mandatory review at least every year. The review will be conducted either by the youth court or, at the option of the province, by a provincially appointed review board. The judge or review board will take into account a report on the young offender's progress, any new facilities and programs that were not available when the original disposition was made, and any other relevant facts. The young person has the right to legal representation at this hearing. The youth court judge or review board may decide at the review to confirm the original disposition, move the offender from secure to open custody, or to release the offender from custody and put him or her on probation.

All non-custodial dispositions will be reviewed by the youth court judge. These reviews may be arranged at the request of the provincial director, the young offender, his or her

parents, or the Crown prosecutor. During the review the court may confirm the original disposition or amend the terms of the disposition; the judge may not make it more severe unless the young person agrees.

If a young offender has either wilfully failed or refused to comply with a disposition, escaped or tried to escape from custody, the youth court judge can order any new disposition, including one that is more severe than the original disposition, up to a maximum of six months in custody.

PUBLIC HEARINGS

12. Are youth court hearings open to the public?

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

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

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

Reporting by the press would have to respect the anonymity of any young person involved, whether he or she is the accused, the victim or the witness.

FINGERPRINTS AND PHOTOGRAPHS

13. Can the police fingerprint and photograph young people?

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

The question of whether police may fingerprint and photograph young people has never been clearly answered in law up to now. The Juvenile Delinquents Act is silent on the issue, and the courts have delivered conflicting decisions. The new Act permits the practice because it recognizes the need for this information in the detection and investigation of crime, but it specifies that use of this information must be primarily limited to criminal justice purposes.

Any photographs or fingerprint records must be destroyed if a young person is acquitted, the charge is dismissed, or no proceedings are taken against him or her. This applies to cases where the young people have entered alternative measures programs. The fingerprints and photographs of young offenders who are convicted in court may be kept with the youth court records and at the central repository administered by the RCMP. The police force responsible for the investigation may also keep a copy. Fingerprints and photographs in the court records, the central repository, the police files and any government department files must be destroyed when the youth court records themselves are required to be destroyed.

YOUTH COURT RECORDS

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

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

First, where a young person is charged with an offence and is either acquitted, or the charge is dismissed, withdrawn or stayed and no proceedings are taken, all records, including fingerprints and photographs, must be destroyed.

The records of young people who are found guilty by the youth court will be destroyed when the offenders have completed their sentences and committed no further offence for a qualifying period. The qualifying crime-free period specified in the Act will be two years for those who have committed only summary conviction offences (offences that ordinarily carry a maximum of six months imprisonment under the Criminal Code) and five years for those who have committed the more serious offences known as indictable.

If there is a further conviction during the qualifying period, the offender would of course not qualify for the destruction of records of the original offence until he or she has completed an uninterrupted crime-free period.

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

The new Act specifies the procedure for the storage, control of and access to young offenders' records. It lists those people who may be allowed access to records before they are required to be destroyed.

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

The provisions in the new Act that deal with the destruction of record of young offenders also apply to records that originated under the Juvenile Delinquents Act.

YOUTH JUSTICE COMMITTEES

15. How can the community play a part in the administration of the new Young Offenders Act?

The new Act provides for the establishment of Youth Justice Committees through which interested parties can participate in the juvenile system.

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

The community will now have much wider opportunities for involvement in the juvenile justice system than it has through the Juvenile Court Committees provided by the Juvenile Delinquents Act. In the past, the Juvenile Court Committees tended to be confined to watchdog functions. The new Youth Justice Committee, in contrast, can play a role in crime prevention, the protection of society and in the safeguarding of the newly-guaranteed rights of young people.

CONCLUSION: The role of the federal and provincial governments

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

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

The Government of Canada is responsible for enacting criminal law. It is also responsible for assuring the same opportunities for justice and legal rights to young people wherever they live, and for promoting national standards for the measure and programs developed to meet the needs of young offenders. The sanction of alternative measures and the provision of proper safeguards for their application, and the prescription of a uniform maximum age for all young people dealt with under the new Act, are two examples of the way that the Federal Government fulfills its obligation.

Parliament has, with this new legislation, created the framework of the juvenile justice system. Within this framework the provincial governments have an equally important role. They are responsible for administering the law that Parliament enacts. It is the various professionals, such as family and youth court judges, lawyers, police officers, juvenile correctional officers, and social workers, who make the system work. The fact that it is the provinces which administer juvenile justice allows the system to reflect regional and cultural differences, for instance in the range of services and programs offered, both for alternative measures and for youth court dispositions.

Young people are our future. With the proclamation of the new *Young Offenders Act*, they will be guaranteed the same rights to justice under the criminal law as other Canadians, and provided with a greater opportunity to feel that they are members of their communities.

END