

# **Community Youth Corrections Policy and Procedures Manual**



*Children, Seniors and Social Development*

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## **Section 1**

### **Glossary of Terms**



### **Glossary of Terms**

<b><i>Access Period:</i></b>	length of time during which contents of a youth's record can be shared with approved people under provisions of <i>Youth Criminal Justice Act</i> for authorized purposes.
<b><i>Adult:</i></b>	"adult" means a person who is neither a young person nor a child. For purposes of criminal law, a person who has reached their 18 <sup>th</sup> birthday at the time of commission of an offense.
<b><i>Adult Sentence:</i></b>	"adult sentence" in the case of a young person who is found guilty of an offence, means any sentence that could be imposed on an adult who has been convicted of the same offence.
<b><i>Child:</i></b>	"child" means a person who is or, in the absence of evidence to the contrary, appears to be less than twelve years old (for the purposes of criminal law).
<b><i>Community Social Worker:</i></b>	denotes specific role of social worker for the home community or family, who has a client residing in open custody or secure custody, or other temporary residential setting.
<b><i>Concurrent Order:</i></b>	"concurrent order" is a new sentence that runs at the same time as any other existing orders, it begins on the date ordered.
<b><i>Conference:</i></b>	"conference" means a group of persons who are convened to give advice to a court in accordance with section 19 of the <i>Youth Criminal Justice Act</i> .
<b><i>Confirmed Delivery Service:</i></b>	"confirmed delivery service" means certified or registered mail or any other method of service that provides proof of delivery.
<b><i>Consecutive Order:</i></b>	"consecutive order" is a new sentence that runs immediately after the sentence(s) that preceded it, it begins the day after the order(s) that preceded it ends.
<b><i>Custodial Portion:</i></b>	"custodial portion" with respect to a youth sentence imposed on a young person under paragraph 42(2)(n), (o),(q) or (r), means the period of time, or the portion of the young person's youth sentence, that must be served in custody before he or she begins to serve the remainder under supervision in the community subject to the conditions under paragraph 42(2)(n) or under conditional supervision under paragraph 42(2)(o),(q) or (r).

<b><i>Disclosure:</i></b>	“disclosure” means the communication of information other than by way of publication (information can be shared verbally or written whether in electronic or physical form).
<b><i>Extrajudicial Measures:</i></b>	“extrajudicial measures” means measures other than judicial proceedings under the <i>Youth Criminal Justice Act</i> used to deal with a young person alleged to have committed an offence and includes extrajudicial sanctions.
<b><i>Extrajudicial Sanctions:</i></b>	“extrajudicial sanctions” means a sanction that is part of a formal program referred to in section 10, <i>Youth Criminal Justice Act</i> . Formerly called “Alternative Measures” under the <i>Young Offender’s Act</i> .
<b><i>Federal Interpretation Act:</i></b>	the expression “shall” is to be construed as imperative; the expression “may” is to be construed as permissive.
<b><i>Individual Support Services Plan:</i></b>	means a service plan developed with a client according to the provincial model of co-ordination of services.
<b><i>Offence:</i></b>	“offence” means an offence created by an Act of Parliament or by any regulation, rule, order, by-law or ordinance made under an Act of parliament.
<b><i>Open Custody Service Provider:</i></b>	term used interchangeably with residential service provider; identifies individual(s) with specific care responsibilities for a young person placed in open custody ie. facility staff or community custody home provider.
<b><i>Open Custody Social Worker:</i></b>	employee of the Department of Children, Seniors and Social Development assigned responsibility for an open custody setting ie. group home, assessment centre or community custody home.
<b><i>Parent:</i></b>	“parent” includes, in respect of a young person, any person who is under legal duty to provide for the young person or any person who has, in law or in fact, the custody and control of the young person, but does not include a person who has the custody or control of the young person by reason only of proceedings under the <i>Youth Criminal Justice Act</i> .
<b><i>Pre-Sentence Report:</i></b>	“pre-sentence report” means a report on the personal and family history and present environment of a young person made in accordance with section 40 of the <i>Youth Criminal Justice Act</i> .

<b><i>Provincial Director:</i></b>	“provincial director” means a person, a group or class of persons or a body appointed or designated by or under an Act of the legislature of a province or by the lieutenant governor in council of a province or his or her delegate to perform in that province, either generally or in a specific case, any of the duties or functions of a provincial director under the <i>Youth Criminal Justice Act</i> .
<b><i>Publication:</i></b>	refers to the communication of information by making it known or accessible to the general public or any segment of the general public, through any means including print, radio, television broadcasts, telecommunications or electronic means.
<b><i>Serious Violent Offence:</i></b>	“serious violent offence” means an offence in the commission of which a young person causes or attempts to cause serious bodily harm. In court proceedings, the crown can pursue having an offence designated as serious violent offence for purposes of establishing a pattern of violent offences.
<b><i>Record:</i></b>	anything containing information regardless of its physical form or characteristics, including microform, sound recording, videotape, machine-readable record, any copy of any of those things, that is created or kept for the purpose of any proceeding under the <i>Youth Criminal Justice Act</i> or for the investigation of an offence that is or could be prosecuted under the <i>Youth Criminal Justice Act</i> .
<b><i>Residential Service Provider:</i></b>	term used interchangeably with open custody service provider; identified individual(s) with specific care responsibilities for a young person placed in open custody ie. facility staff, community custody home provider.
<b><i>Social Worker:</i></b>	social worker employed by CSSD who are delivering the youth corrections program. In Newfoundland and Labrador, the role “youth worker” as referenced in the <i>YCJA</i> is fulfilled by social workers.
<b><i>Violent Offence:</i></b>	a violent offence means an offence committed by a young person that: (i) includes an element of causing bodily harm; (ii) is an attempt to commit an offence that includes an element of causing bodily harm; or (iii) is an offence during which its commission the young person endangered the life or safety of another person by creating the substantial likelihood of causing bodily harm.



- Youth/Young Person:*** “young person” means a person who is or, in the absence of the contrary, appears to be twelve years old or older, but less than eighteen years old and, if the context requires, includes any person who is charged under this Act with having committed an offence while he or she was a young person or who is found guilty of an offence under the *Youth Criminal Justice Act*.
- Youth Justice Court:*** means a court referred to in section 13 of the *Youth Criminal Justice Act*.
- Youth Justice Court Judge:*** Means a judge referred to in section 13 of the *Youth Criminal Justice Act*.
- Youth Custody Facility:*** “youth custody facility” means a facility designated under subsection 85(2) for the placement of young persons and, if so designated, includes a facility for the secure restraint of young persons, a community residential centre, a group home, a child care institution and a forest or wilderness camp.

## **Section 2**

### **Program Parameters**



## LEGISLATIVE MANDATE

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**Policy no.: 2.1**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act; Young Persons Offences Act*

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**PURPOSE:** To provide a very general overview of the principles underlying the legislation that governs Youth Corrections practice.

### **POLICY:**

1. There are 2 key pieces of legislation that work together to govern youth corrections matters: the *Youth Criminal Justice Act* and the *Young Persons Offences Act*.
2. *Youth Criminal Justice Act (YCJA)* is criminal justice legislation enacted by the Federal government and was implemented as law on **April 1, 2003**. It generally deals only with those transgressions that would also be criminal acts for adults. The YCJA provides a legal procedural framework for dealing with young persons who commit offenses against federal law, such as the *Criminal Code of Canada*, *Controlled Drugs and Substances Act*, or *Firearms Act*.
3. *Young Persons Offences Act (YPOA)* is legislation that is made by the Provincial government, and is in place to deal with the commission of offences by young persons against provincial statutes, such as the *Liquor Control Act* or *Highway Traffic Act*. This legislation is consistent with the *Youth Criminal Justice Act* in its intent and principles.
4. Both the YCJA and YPOA establish the ages of young offenders as between the 12<sup>th</sup> and 18<sup>th</sup> birthday. Children under 12 years of age cannot be charged with a criminal act, and must be dealt with by other means, such as the *Children and Youth Care Protection Act*. Any person committing a criminal act who has reached his/her 18<sup>th</sup> birthday, must be dealt with as an adult under the relevant legislation, either federally: e.g. *Criminal Code of Canada*, *Controlled Drugs and Substances Act*, *Firearms Act*; or provincially: e.g. *Liquor Control Act* or *Highway Traffic Act*.

5. The *YPOA* is not as commonly used, so most of the Manual addresses the processes and sentencing principles of the *YCJA*, but if a young person is charged with a provincial offence, the *YPOA* will govern the sentencing considerations and procedures that will apply. In many instances, this will be similar to what is in the *YCJA* but social workers should ensure that they are following the requirements of the *YPOA*.
6. The *YCJA* reflects the values that youth who commit crimes should be treated differently than adults. The creation of separate Youth Criminal Justice Courts, and special programming available to youth at sentencing, and how youth records are handled, are all measures intended to ensure that young offenders are held to account for their actions, while increasing opportunities for rehabilitation and reintegration back into their communities, to become contributing adult members of society.
7. By way of general background, the *YCJA* contains an overall Declaration of Principles at s.3 which summarizes the goals of the legislation and apply to every part of the *YCJA*:
  - a) the youth criminal justice system is intended to protect the public by
    - i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person;
    - ii) promoting the rehabilitation and reintegration of young persons who have committed offences; and
    - iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behavior.
  - b) the criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize the following:
    - i) rehabilitation and reintegration;
    - ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity;
    - iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected;
    - iv) timely intervention that reinforces the link between the offending behaviour and its consequences; and
    - v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time.

- c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should
  - i) reinforce respect for societal values;
  - ii) encourage the repair of harm done to victims and the community;
  - iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration; and
  - iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements.
- d) special considerations apply in respect of proceedings against young persons and, in particular
  - i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms;
  - ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system;
  - iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard; and
  - iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

### **Extrajudicial Measures**

- 8. Part I of the *YCJA* creates Extrajudicial Measures which exist separately from the traditional judicial measures utilized in Youth Criminal Justice such as custodial sentences, probation, etc. Extrajudicial Measures is the term given to a range of options available as alternatives to formal processing of a case through the court system. In Newfoundland and Labrador the current range of options include:
  - a) a police officer can choose to take no further action;
  - b) a police officer can choose to give an informal warning;
  - c) with the young person's consent a police officer can refer him or her to a community program; or
  - d) a crown prosecutor can refer the case to an Extrajudicial Sanctions program authorized by the Attorney General.

## Judicial Measures

9. The other means of dealing with young offenders are considered Judicial Measures and involve matters coming forward in a charge, and in some instances, end in a sentencing process not unlike what occurs in the adult criminal system. However, the *YCJA* mandates the use of a number of different tools in resolving criminal complaints involving youth, including additional information that may come forward to the court during the course of a matter, requirements that have to be met prior to sentencing being undertaken by a judge, and prescribed rules on the types and duration of sentences that can be imposed. The social worker has a role in both the proceedings and information gathering that occurs prior to sentencing, as well as working with a young offender once a sentence has been imposed.

By way of general information, s.38 of the *YCJA* sets out the overall purpose of a youth sentence as well as the principles that a judge must use when imposing a sentence:

“The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.”

The *YCJA* imposes certain thresholds are met, and special consideration be given by Youth Court Judge before either an order of open custody or closed custody be given. These are set out in s.39 (1) of the *YCJA*:

A Youth Justice Court shall not commit a young person to custody under section 42 (youth sentences) unless

- a) the young person has committed a violent offence;
- b) the young person has failed to comply with non-custodial sentences;
- c) the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of either extrajudicial sanctions or of findings of guilt or of both under this Act or the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985; or
- d) in exceptional cases where the young person has committed an indictable offence, the aggravating circumstances of the offence are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38.

The *YCJA* establishes the position of “youth worker” and specific roles/responsibilities have been attached to this position. In Newfoundland and Labrador social workers, with assigned youth corrections caseload responsibilities, have been delegated the roles/responsibilities of youth worker under the Act. They will be referred to as Social workers in this Manual.

The role of “youth worker” under the *YCJA* includes:

- a) completion of Pre-Sentence Report;
- b) arranging court requested psychological and/or medical assessments to assist with sentencing;
- c) arranging a court requested conference;
- d) completing application for non-custodial reviews including required progress reports;
- e) completing application for custodial reviews including required progress reports;
- f) overseeing the preparation and implementation a reintegration plan for youth in custody; and
- g) ensuring the confidentiality of youth corrections information including tracking and monitoring non-disclosure dates.

This Policy Manual will outline the role of the Social worker through the youth criminal justice process at each of these steps and provide guidance as to the preparation, assessment and internal accountabilities for this work.

The *YCJA* references the role of the Provincial Director of Youth Corrections, but gives authority to each province to designate other persons to fulfill some or all of this role. In accordance with this provision, authorization has been given for the delegation of authority in Newfoundland and Labrador to various Regional management and staff of the CSSD and to the staff of the secure custody and remand facilities of JPS (refer to Policy 9.12)

10. The *YCJA* provides for a number of remedial options for young offenders, not all of which are available in this Province. Social workers will need to know what programming/sentencing options are available in this Province. Specifically:

- a) province has not introduced a formal police or crown cautions program;
- b) province has not introduced a formal police warning program;
- c) extrajudicial sanctions are delivered through the mechanism of volunteer youth justice committees;
- d) referrals to youth justice committees are primarily through crown prosecutors;
- e) youth remand services are the responsibility of the provincial JPS;
- f) as no formal program exists referral to an attendance program, under Section 42.2 (m) of the Act, is not available as a sentencing option;

- g) as no formal program exists, an intensive support and supervision order, as per section 42.2(1) of the Act, is not available as a sentencing option;
- h) youth secure custody services are the responsibility of the provincial JPS; and
- i) intermittent custody is not available as a sentencing option.

## **PROCEDURES:**

1. All social work staff are to be familiar with the provisions of section 38 of the *YCJA* on sentencing and section 39 of the *YCJA* regarding the criteria to be met for a Custody and Supervision Order to be imposed, the roles and responsibilities of a youth worker under the *YCJA*, the role of the Provincial Director of Youth Corrections and how that function is delegated, and what remedial options are available in this Province.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**



## ORGANIZATION OF YOUTH JUSTICE SYSTEM

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**Policy no.: 2.2**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:**

**Legislative References:**

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**PURPOSE:** To summarize key components of the Youth Justice System.

### **POLICY:**

1. The Youth Justice System is intended to:
  - a) prevent further crime by addressing the underlying causes of a young person's offending behavior;
  - b) provide opportunities to promote and support rehabilitation;
  - c) support the successful reintegration of young persons, who have been in custody, back into the community; and
  - d) ensure the consequences of a young person's behavior are meaningful so that they contribute to, and promote to, long term protection of the public.
2. The term Youth Justice System encompasses the spectrum of activities related to young offenders from their first contact with police to the completion of their sentences.
3. Responsibility for the administration of the Youth Justice System in the province is shared between the Department of Children, Seniors and Social Development (CSSD) and the Department of Justice and Public Safety (JPS). JPS has responsibility for policing, prosecutions, legal aid, the courts, secure custody and remand services. The CSSD has responsibility for Extrajudicial Sanctions Programs, community-based sentences, and court-ordered services including open custody.

### **Department of Justice and Public Safety**

1. The Royal Canadian Mounted Police (RCMP) and Royal Newfoundland Constabulary (RNC) share policing responsibilities in the province in separate, defined geographic locations. Although each police force operates in an

independent fashion, the ultimate responsibility for law enforcement rests with the Minister of Justice and Public Safety.

2. Crown Attorneys are employees of JPS, and are located throughout the province. Provincial Crown Attorneys are generally responsible for all Criminal Code and Provincial Statute prosecutions. This includes prosecutions under the *YCJA* and the *YPOA*. Offenses against laws other than the Criminal Code, under federal jurisdiction, such as the *Drugs and Controlled Substances Act* or *Fisheries Act*, are prosecuted by a Federal Prosecutor, employed by the federal JPS. Lawyers in private practice may be appointed as “Federal Standing Agents” for prosecutions, as required.
3. Youth Justice Court is created under the *YCJA*, and in the Province of Newfoundland and Labrador is a division of the Provincial Court. Each Provincial Court Judge has the designation of Youth Justice Court Judge pursuant to the *YCJA* and *YPOA* and can sit as a Judge in Youth Justice Court.
4. Legal Aid lawyers are employees of the Legal Aid Commission, which receives funding from JPS but acts separately from JPS. Youth charged with a crime may be eligible for legal representation at no charge by a lawyer assigned to them. Typically, Legal Aid has one lawyer assigned to Youth Justice Court who will represent most youth who are charged in that court, and address issues arising with sentences from that court (eg. breaches, reviews etc.).

#### **Department of Children, Seniors and Social Development**

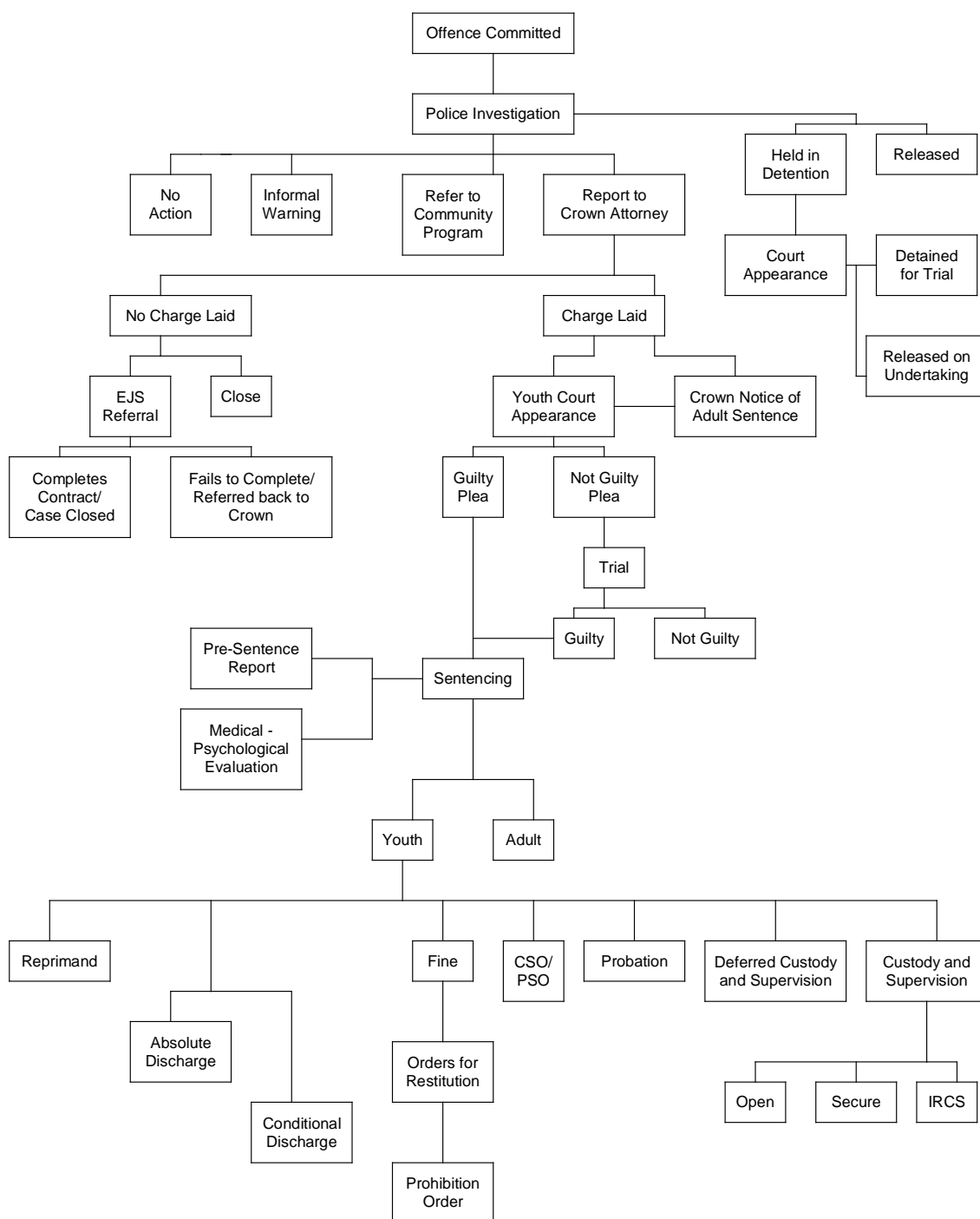
1. The CSSD, through its Regional structure, has responsibility for the following services to young offenders:
  - i) specific court services including preparation of pre-sentence and progress reports;
  - ii) supervision of judicial interim release where specified by the court order;
  - iii) monitoring of placements in designated police lock-ups;
  - iv) supervision of most court ordered sentences excluding monitoring of fine payments and separate prohibition orders; and,
  - v) support of alternatives to court specifically, the provincial Extrajudicial Sanctions program.
2. The CSSD – Community Youth Corrections Program, Provincial Office has overall responsibility for the development, planning, research and evaluation of provincial policies to ensure that programs are integrated and evidence based. This includes responsibility for interprovincial and intergovernmental consultation and management of the main federal-provincial cost sharing agreement.

#### **PROCEDURES:**

#### **EXCEPTIONS TO POLICY:**

#### **RELEVANT DOCUMENTS:**

### Youth Justice Process in Newfoundland and Labrador: At A Glance



#### Legend

EJS = Extrajudicial Sanction

PSO = Personal Service Order

CSO = Community Service Order

IRCS = Intensive Rehabilitative Custody and Supervision Order

## ORGANIZATION OF YOUTH CORRECTIONS SYSTEM

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**Policy no.: 2.3**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:**

**Legislative References:**

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**PURPOSE:** To summarize the broad elements of the provincial youth corrections system and key goals for service delivery.

### **POLICY:**

The Youth Corrections program includes a band of services and functions as follows:

- a) program administration;
- b) financial planning and budget management;
- c) establishment and maintenance of information and management systems;
- d) federal-provincial relations and inter-jurisdictional relations (Provincial-Territorial);
- e) negotiations and administration of federal-provincial cost-sharing arrangements;
- f) provision of extrajudicial sanctions programs;
- g) provision of “youth worker” services as defined under the *YCJA*, including preparation of court-ordered reports, coordination of case assessment and involvement of other agencies, overall case management and supervision of probation and other types of community-based sentences, and where required, providing testimony to the court;
- h) provision of delegated responsibilities and authorities of the “Provincial Director” (within the meaning of the *YCJA*);
- i) establishment and supervision of sentencing options programs;
- j) provision of counselling and support services to young persons and their families, including young persons at risk of offending;
- k) development and implementation of individual service plans aimed at helping young persons achieve an optimal level of social adjustment;
- l) establishment and maintenance of effective residential services for young persons, including pre-sentence detention, open custody, secure custody, and, where appropriate, non-custodial residential services;
- m) on-going needs assessment and program evaluation;
- n) establishment of program standards and policies;

- o) research and planning directed at meeting present and future service requirements within the Program;
- p) all other services and activities deemed necessary to the effective achievement of the mandate of the Program.

## **Program Components**

The Youth Corrections program has four main components:

1. Extrajudicial Sanctions (formerly Alternative Measures) encompasses the researching of need, evaluation, and development of programs, through the development and mobilization of Youth Justice Committees in certain communities.
2. Community Corrections Services refer to direct services to youth and their families delivered within the community by social workers with CSSD. These services include the supervision and support of (i) probation, (ii) the community supervision component of custody and supervision, (iii) deferred custody and supervision, (iv) intensive support and supervision, and (v) community and personal service orders. Also in this mandate of direct service delivery are included a variety of supportive services to the Youth Justice Court that ensure the court's ability to utilize a range of non-custodial/community based sentencing options.
3. Open Custody refers to a range of residential options, both custodial and non-custodial, delivered through a network of Group Home facilities and private home arrangements (community custody homes). These arrangements may be utilized for (i) young people with open custody and supervision order; (ii) as a form of community detention; and; (iii) as a short term placement for youth with an 'order to reside' as part of a court order or a condition of community/conditional supervision.
4. Secure Custody and Remand Services falls under the Division of Corrections and Community Services, JPS, and, includes the Newfoundland and Labrador Youth Centre in Whitbourne, the St. John's Youth Detention Centre, and specific police lock-ups duly designated for young persons pursuant to the *YCJA*.

## **Program Goals and Objectives**

1. The Youth Corrections program endeavours to provide a service delivery system which meets the requirements of the law, and maximizes opportunities for rehabilitation of the young person. Services must be provided in a manner which is least intrusive, and reduces the need to remove youth from their families and/or home communities.

2. The specific objectives of the Youth Corrections Program are stated as follows:

- a) ensure that young persons under court order are sufficiently supervised to protect the safety and security of the public;
- b) adhere to the principle of the least restrictive level of intervention in administering the sentence of the court, in preparing pre-sentence reports and in making application for review of sentences;
- c) involve the families of young persons at all stages of the judicial process;
- d) ensure that the original sentence of the youth court is properly fulfilled and that it is reviewed as the needs and circumstances of the young person change;
- e) provide sufficient open custody to meet the sentencing needs of the youth court as outlined in the *YCJA* and *YPOA*;
- f) cooperate and collaborate with other partners in the Youth Justice system;
- g) provide appropriate services, especially in the community, to young persons from distinct cultural groups or geographical areas, in response to their special service needs;
- h) involve community members, including non-government agencies, to enhance or supplement the programs and services by Government;
- i) involve other government departments in jointly providing programs and services to young persons or in carrying out the principles of the *YCJA* and the *YPOA*;
- j) complete thorough social histories and, where required, co-ordinate the completion of psychiatric and psychological assessments on young persons appropriate to their degree of involvement in the system, and/or their needs;
- k) provide a consistent standard of service in all aspects of program delivery;
- l) provide opportunities for young persons to learn more positive behaviour and the make amends for their actions;
- m) provide opportunities for young persons to learn personal accountability and the concept of individual responsibility;
- n) promote greater community awareness of the principles that underlie both the *YCJA* and the *YPOA* and program objectives of Community Youth Corrections; and
- o) provide all community-based and custodial programs in a humane, caring fashion, in which each young person is treated with respect, courtesy, and dignity.

## **PROCEDURES:**

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

## **Section 3**

### **Alternatives to Court**



## EXTRAJUDICIAL MEASURES

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**Policy no.: 3.1**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; **s.4** *Declaration of Principles*; **s.5** *Objectives*; **s.6** Warnings, Cautions, and Referrals; **s.7** Police Cautions; **s.8** Crown Cautions

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**PURPOSE:** To summarize the range of service options that constitute Extrajudicial Measures under the *YCJA*.

### **POLICY:**

1. The *YCJA* sets out a series of principles underlying Extrajudicial Measures (including Extrajudicial Sanctions):
  - a) the *YCJA* presumes that, in many cases, they are the most appropriate and effective way to hold a young person accountable for his/her actions;
  - b) they are an essential part of the overall response to youth crime; and,
  - c) they are most effective when delivered in a timely fashion.
2. The eligibility for Extrajudicial Measures is based on the offence not the offender. Extrajudicial Measures are not meant to be limited to first time offenders. The intent of the legislation is that the offence is what should be considered. For that reason under section 4(d) of the *YCJA*, an Extrajudicial Measure may be considered for an individual who a) “has previously been dealt with by use of an Extrajudicial Measure; or, b) who has previously been found guilty of an offence.
3. Extrajudicial Measures is the term given to a range of options available as alternatives to formal processing of a case through the court system. In Newfoundland and Labrador the current range of options include: a) a police officer can choose to take no further action; b) a police officer can choose to give an informal warning; c) with the young person’s consent a police officer can refer him or her to a community Extrajudicial Measures program if one is available (no EJM programs provided by CSSD), or, d) a crown prosecutor can refer the case to an Extrajudicial Sanctions program authorized by the Attorney General.



4. Under section 6(1) of the *YCJA*, police officers are required to consider the appropriateness of using an Extrajudicial Measure as a way to hold a youth accountable.

**PROCEDURES:**

**EXCEPTIONS TO POLICY:**

**RELEVANT DOCUMENTS:**

## EXTRAJUDICIAL SANCTIONS

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**Policy no.: 3.2**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:** Extrajudicial Sanctions Standards and Practices Manual

**Legislative References:** *Youth Criminal Justice Act* **section 10**

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**PURPOSE:** To summarize, for information purposes, key aspects of the provincial Extrajudicial Sanctions program.

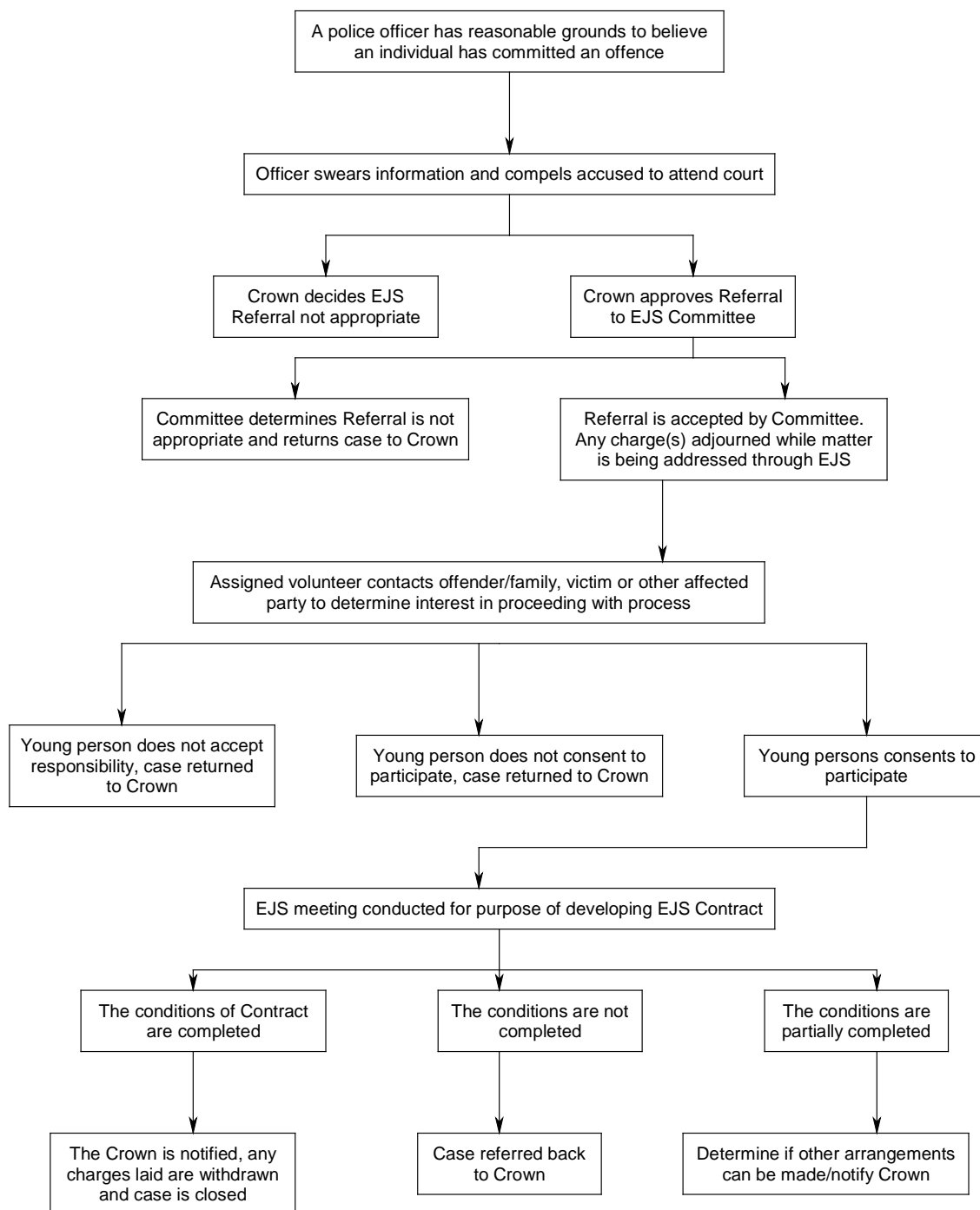
### **POLICY:**

1. For this province, alleged offences that cannot be adequately dealt with through other extrajudicial measures will either be referred by the Crown Attorney to a Youth Justice Committee, that has the responsibility for such sanctions, or will be filed as a charge in youth justice court.
2. An extrajudicial sanction is a province's regulated and formal extrajudicial measures strategy that can be permitted as a non court option to deal with an alleged criminal offence. It must be authorized by the provincial Attorney General. This province has an extrajudicial sanctions program in place which was formerly known as Alternative Measures. A separate Policy Manual exists for this program.
3. An extrajudicial sanction may be used to deal with a young person alleged to have committed an offence only if the young person cannot be adequately dealt with by a warning, caution or referral because of the seriousness of the offence, the nature and number of previous offences committed by the young person or any other aggravating circumstances.
4. An extrajudicial sanction may be used only if:
  - a) it is part of a program of sanctions that may be authorized by the Attorney General or authorized by a person, or a member of a class of persons, designated by the lieutenant governor in council of the province;
  - b) the person who is considering whether to use the extrajudicial sanction is satisfied that it would be appropriate, having regard to the needs of the young person and the interests of society;
  - c) the young person, having been informed of the extrajudicial sanction, fully and freely consents to be subjected to it;

- d) the young person has, before consenting to be subject to the extrajudicial sanction, been advised of his or her right to be represented by counsel and been given a reasonable opportunity to consult with counsel;
  - e) the young person accepts responsibility for the act or omission that forms the basis of the offence that he or she is alleged to have committed;
  - f) there is, in the opinion of the Attorney General, sufficient evidence to proceed with the prosecution of the offence; and
  - g) the prosecution of the offence is not in any way barred at law.
5. An extrajudicial sanction may not be used in respect of a young person who
- a) denies participation or involvement in the commission of the offence; or
  - b) expresses the wish to have the charge dealt with by a youth justice court.
6. The use of an extrajudicial sanction in respect of a young person alleged to have committed an offence is not a bar to judicial proceedings under this Act, but if a charge is laid against the young person in respect of an offence,
- a) the youth justice court shall dismiss the charge if it is satisfied on a balance of probabilities that the young person has partially complied with the terms and conditions of the extrajudicial sanction; and
  - b) the youth justice court may dismiss the charge if it is satisfied on a balance of probabilities that the young person has partially complied with the terms and conditions of the extrajudicial sanction and if, in the opinion of the court, prosecution of the charge would be unfair having regard to the circumstances and the young person's performance with respect to the extrajudicial sanction.
7. If a young person is dealt with by an extrajudicial sanction, the person who administers the program under which the sanction is used shall inform a parent/guardian or CSSD, if the young person is in the care or custody of a manager, of the sanction.
8. If a young person is dealt with by an extrajudicial sanction, a police officer, the Attorney General, the provincial director or any organization established by a province to provide assistance to victims shall, on request, inform the victim of the identity of the young person and how the offence has been dealt with.
9. Section 18 of the *YCJA* allows the province to establish volunteer Youth Justice Committees which are vehicles for the delivery of extrajudicial sanctions. This entails the acceptance and processing of crown authorized referrals on youth criminal matters. All current provincial Extrajudicial Sanctions programs that have met the eligibility criteria as prescribed in the Standards and Practices Manual for Extrajudicial Sanctions are deemed to be youth justice committees as per section 18 of the *YCJA*.

10. A Youth Justice Committee may be formed to as a result of either a community or departmental initiative. A Committee should include interested representatives from a broad spectrum of the community and include support and input in the form of liaison with the local CSSD office. Community representatives should be chosen to pursue the objectives of the program and assist in the program's operations.
11. The Youth Justice Committee assumes the role of representing the community at large in determining what extrajudicial sanctions are appropriate in response to illegal behaviour by young persons.
12. Within guidelines of eligibility established by legislative and provincial requirements, the Youth Justice Committee reserves the right to accept, or not to accept, referrals that are authorized by the Crown Attorney.
13. Within the parameters established by legislation and provincial policy, committees will review individual referrals and determine appropriate sanctions (e.g. community/personal service work, education, financial restitution, informal essay, apology). The range of potential options may include the establishment of community service placements within the voluntary sector.
14. The Youth Justice Committee will recruit and train community representatives either as program volunteers or program volunteer mediators depending upon the wishes of the volunteer recruit. This is done in partnership with the liaison social worker from the local office of CSSD.
15. The Youth Justice Committee is responsible for ensuring that its program adheres to established youth corrections policies and procedures as well as the provisions of the *YCJA* and the *YPOA* or any other legislation affecting young people.
16. While all youth justice committees that deliver Extrajudicial Sanctions programs must be authorized by the Provincial Attorney General, it is CSSD that determines and defines the eligibility standards that a committee of persons must adhere to before they can be authorized to deliver extrajudicial services.

### EJS Case Flow



**PROCEDURES:**

**EXCEPTIONS TO POLICY:**

**RELEVANT DOCUMENTS:**

## FUNCTIONS OF EJS LIAISON SOCIAL WORKER

**Policy no.: 3.3**

**Effective Date: October 2, 2004**

**Date Revised: December 7, 2016**

**Policy Cross References:** Extrajudicial Sanctions Standards and Practices Manual

**Legislative References:** *Youth Criminal Justice Act*, section 10

**PURPOSE:** To summarize key roles of the assigned liaison social worker.

### **POLICY:**

1. Each Youth Justice Committee shall be assigned a liaison social worker.
2. The following is a summary of the liaison worker's role in supporting the processing of Extrajudicial Sanctions referrals:
  - a) providing technical assistance in the development of new programs including reviewing final submissions to provincial office related to the authorization or new programs;
  - b) assisting with ongoing recruitment, screening and training of volunteers;
  - c) acting as an ex-officio member of the Youth Justice Committee and representing the Department at all scheduled meetings;
  - d) although it is the responsibility of individual committees to prepare and submit an Annual Report, the liaison social worker will provide required assistance and will ensure the report is submitted, with required Bank Statement and verification of the annual renewal of the program's Incorporation, no later than June 30<sup>th</sup> of each year;
  - e) ensuring that a committee completes and submits the monthly "Intake and Activity Data" form
  - f) completing, within timeframes established in policy, narrative incident reports relating to personal injury and/or property damage stemming from a young person's participation in community or personal service work;
  - g) ensuring that all volunteers have provided updated Police Records Check (RCMP) or Criminal Records Screening Certificates (RNC) every two (2) years;
  - h) monitoring the progress of all referrals to ensure a referral does not pass its statute of limitations period (as applicable) and, generally, to ensure referrals are processed within a timely fashion (as soon as possible within two (2) months of receipt); and,

- i) bringing concerns of the local committee to the attention of appropriate departmental management.

## **PROCEDURES:**

1. Normally the liaison social worker shall be invited to, and shall attend, all meetings of the committee. The social worker shall attend meetings where: (i) new volunteers are being introduced; (ii) where decisions are being made regarding a referral(s); or, (iii) when the committee is discussing/reviewing operating practices.
2. Upon receipt of a copy of the *Extrajudicial Sanctions Program Intake Data* form, the liaison social worker shall make an entry on the information system confirming referral has been accepted and young person has consented to participate.
3. Upon receipt of a copy of the *Extrajudicial Sanctions Program Activity Data* form, the liaison social worker shall make an entry on the information system confirming the status of the referral e.g. contract completed or referred back to Crown.
4. Any discussions with committee members, on a specific referral, shall be documented on the information system.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**



## **Section 4**

### **Court Process**



## BAIL SUPERVISION BY SOCIAL WORKER

**Policy no.: 4.1**

**Effective Date: December 4, 2007**

**Date Revised: November 23, 2016**

**Policy Cross References:** Supervision of a Young Person in a Designated Police Lock-up

**Legislative References:** *Youth Criminal Justice Act*; **s.28** Application of s.515 of the criminal code; **s.29(1)** Detention as social measure prohibited; **s.29(2)** Justification for detention in custody; **s.30(1)** Designated place of temporary detention; **s.30(2)** Exception; **s.30(3)** Detention separate from adults; **s.30(4)** Transfer to adult facility; **s.30(5)** When young person is twenty years or older; **s.30(6)** Transfer by provincial director; **s.30(7)** Exception relating to temporary detention; **s.30(8)** Authorization by provincial authorities of place of detention; **s.31(1)** Placement of young person in care of responsible person; **s.31(2)** Inquiry as to availability of responsible person; **s.31(3)** Condition of placement

**PURPOSE:** To detail role(s) of social worker in (i) assisting the court in making a decision on judicial interim release; and (ii) in supervising such orders.

### **POLICY:**

#### **Judicial Interim Release/Temporary Detention (Remand)**

1. A judicial interim release (bail) hearing will take place to hear evidence of just cause for the detention of the youth in custody pending trial and/or disposition of the case. Section 515 of the Criminal Code of Canada applies in such cases.
2. The outcome of a judicial interim release hearing will be one of the following:
  - a) release of the young person on an undertaking or personal recognizance;
  - b) placement of the young person in the custody of another responsible person as an alternative to a remand in custody; or
  - c) remand in custody.
3. It is not an expectation that a social worker will attend Judicial Interim Release hearings, unless the young person is currently subject to the supervision of a social worker, or if specifically requested by the Youth Justice Court. The Youth Justice Court may request an investigation, by the social worker, of the young person's general living situation and availability of supervision in the community, before making a decision on Judicial Interim Release.

4. If the social worker is asked to provide information to the court for purposes of decision making on judicial interim release as in s.31(2) of the *YCJA* (Inquiry as to availability of responsible person). The narrative report should include:
  - a) description of young person's current living situation;
  - b) availability of, and willingness of, an adult to provide supervision;
  - c) summary of community involvement including whether, and if so, where the young person attends school or other form(s) of educational or vocational programming; and
  - d) status of current/recent involvement within the youth corrections system and comment on young person's response to supervision to date.

#### **Release on Recognizance – Bail Supervision by Social Worker**

1. If the Youth Justice Court determines that the young person is likely to attend future Youth Justice Court proceedings, and not commit further offences, the young person may be released by signing a personal undertaking. This is a promise to keep the peace, and appear in Youth Justice Court when required. Other conditions may also be ordered on the undertaking, such as curfews, monetary sureties (in rare circumstances) or supervision by a social worker. If supervision by a social worker is ordered on an undertaking, the social worker shall immediately meet with the young person and his/her parents/guardians and CSSD if the young person is in the care or custody of a manager.

### **PROCEDURES:**

#### **Request by Court for Information for Decision Making**

1. The social worker should interview the young person, parents/guardians and CSSD if the young person is in the care or custody of a manager and any other person deemed relevant to determining the availability and nature of supervision for the young person.
2. The findings of these interviews should be reported to the Youth Justice Court in the form of a written report. The major elements and nature of this report will be dictated by the specific request of the Youth Justice Court and the circumstances of the case.
3. If the Youth Justice Court requests a verbal presentation of the Judicial Interim Release investigation, the information should be subsequently written as a narrative report and provided to the Youth Justice Court within five working days.

**When the Court Order Includes a Reporting Requirement/Supervision by the Director**

4. A youth corrections file number should be assigned and a file created if no such file currently exists.
5. The young person and parents/guardian and CSSD if the young person is in the care or custody of a manager, should be immediately contacted and provided with all relevant information regarding reporting, supervision, etc., as well as ensuring the Judicial Interim Release conditions are understood.
6. The young person must report to the social worker, either through home visits or office visits, in accordance with the frequency of reporting stated on the undertaking. If no reporting frequency is stated, then the standard of contact shall be determined based on the results of the YLS-CMI.
7. If there is a period of Judicial Interim Release, for which the social worker has been assigned supervision responsibilities, and there is also an Order for Examination (psychiatric/psychological assessment) during this period, the social worker is responsible for coordinating this assessment, and should consult with the appropriate medical practitioner or facility, as is necessary.
8. If the young person breaches any conditions of the recognizance, including failure to report as required (without legitimate cause), the social worker should report the failure to comply to the Youth Justice Court, which may then issue an arrest warrant. (section 519, Criminal Code of Canada applies).

**EXCEPTIONS TO POLICY:**

If the undertaking does not specify supervision by Provincial Director/delegate, then the social worker is not responsible for ensuring that the young person complies with the conditions of the undertaking.

**RELEVANT DOCUMENTS:**

## SUPERVISION OF A YOUNG PERSON IN A DESIGNATED POLICE LOCK-UP

**Policy no.: 4.2**

**Effective Date: December 4, 2007**

**Date Revised: November 23, 2016**

**Policy Cross References:** Bail Supervision by Social Worker

**Legislative References:** *Youth Criminal Justice Act*; **s.28** Application of Part XVI of criminal code; **s.29(1)** Detention as social measure prohibited; **s.29(2)** Justification for detention in custody; **s.30(1)** Designated place of temporary detention; **s.30(2)** Exception; **s.30(3)** Detention separate from adults; **s.30(4)** Transfer to adult facility; **s.30(5)** When young person is twenty years or older; **s.30(6)** Transfer by provincial director; **s.30(7)** Exception relating to temporary detention; **s.30(8)** Authorization by provincial authorities of place of detention; **s.31(1)** Placement of young person in care of responsible person; **s.31(2)** Condition of placement; **s.31(3)** Inquiry as to availability of responsible person

**PURPOSE:** Detailing of social worker's case supervision responsibilities when a young person is being detained in a designated police lock-up.

### POLICY:

#### Remand

1. Youth temporary detention (remand) services are the responsibility of the provincial JPS. Any youth remanded by the youth justice court must be transferred to one of the designated facilities forthwith. A delay in transfer to a designated young offender facility must only be for as long as is absolutely necessary to allow for transportation arrangements. Normally this period should not exceed 24 hours. Escorting the young person to the place of remand is the responsibility of the police.
2. Lockups at following locations have been designated as places of temporary detention for young offenders:

Nain	Happy Valley-Goose Bay
Port Saunders	Stephenville
Corner Brook	Deer Lake
Gander	Grand Falls-Windsor
Clarenville	Marystown
Labrador West	

The designation of these lockups is subject to the time limitations and conditions listed in the *Standards of Care for the Operation of Police Lockups as Designated Places of Temporary Detention and Secure Custody for Young Persons (2001)*. A copy of the Standards of Care is found in Appendix 2.

3. An Order may be made by a youth justice court judge or justice to detain a young person in a place other than a designated young offender facility under s.30(3) YCJA. Such an order may be made for remand in an adult facility only if the following conditions apply:
  - a) the young person cannot, having regard to his or her own safety or the safety of others, be detained in a place of detention for young persons; or
  - b) no place of detention for young persons is available within a reasonable distance.

## **PROCEDURES:**

1. If a social worker becomes aware of any order of temporary detention which is contrary to the statutory provisions, their immediate supervisor must be consulted. If the matter cannot be resolved, the supervisor or designate will consult with the Director of Youth Corrections.
2. When the social worker learns that an individual, who is currently being supervised through a court order like probation, has been remanded he/she shall immediately ensure that young person's parent/guardian or CSSD, if youth is in the care or custody of a manager, have been advised where the young person is being held and how to contact him/her.
3. If the place of temporary detention is a designated police lock-up, the social worker shall also ensure the young person's parent/guardian or CSSD, if youth is in the care or custody of a manager, are given information on the *Standards of Care for the Operation of Police Lock-Ups* (Appendix 2). A copy shall be provided if requested.
4. The above noted activities are also required if the young person, who has been remanded, is the subject of a pre-sentence report request from an applicable Youth Justice Court.
5. In the above noted circumstance the social worker must make telephone or in-person contact with the young person by the next working day after being notified of the admission to the Lockup. This contact shall include the provision of information on the *Standards of Care for the Operation of Police Lockups* (Appendix 2), unless the police have provided a copy to the young person.
6. Where the young person has been held in the Lockup in excess of 72 hours from initial admission, the social worker must have an in-person contact with the young

person which may occur at the facility, during a court appearance, or other place acceptable to the police. During this contact the Standards of Care shall be reviewed with the young person and the young person asked as to their perception of how they are being applied in his/her particular case. Beyond 72 hours, an in-person contact must take place each 24 hours until the youth is released from the Lockup.

**Process for Addressing Non-Compliance with Standards of Care** (only pertains to non-discretionary standards - those connected to, and subject to, the security and safety expectations for the facility in question).

1. When the social worker learns of a failure by the police to adhere to a Standard of Care for a young person in a designated lock-up, the social worker or his/her immediate supervisor shall immediately discuss this concern with the officer-in-charge or other police representative with designated authority. The purpose of this contact will be to identify the non-compliance issue and pursue a resolution.
2. If the identified concern is immediately resolved, the details of the incident notification and resolution should be documented on the form, *Record of Non-Compliance with Designated Lock-Up Standards*. A copy should be placed on the young person's file. A copy should be forwarded to the responsible Zone Manager and Provincial Director within five (5) working days. This report will then be forwarded to the Administrator for the Newfoundland and Labrador Youth Center.
3. If the noted concern is not immediately resolved, CSSD, Youth Corrections division, provincial office should be immediately contacted. The concern should be documented using the prescribed form, *Record of Non-Compliance with Designated Lock-Up Standards*. This information will, after receipt, be immediately forwarded to the Administrator for the Newfoundland and Labrador Youth Centre. This position has been designated, by the JPS, as the person to contact where non-compliance remains a concern. This person is then responsible to address the issue with the responsible officer in charge of the designated lock-up.

## **EXCEPTIONS TO POLICY:**

Contact requirements established in policy, when a young person is in a designated police lock-up, apply to young persons for whom the social worker has an existing case management responsibility. If a social worker, however, becomes aware that there has been a violation of the Standards of Care for a young person, not currently involved with the corrections program, the social worker shall address these concerns with the officer-in-charge on behalf of that individual and follow the above ***Process for Addressing Non-Compliance with Standards of Care***.

**RELEVANT DOCUMENTS:**

- *Standards of Care for the Operation of Police-ups as Designated Places of Temporary Detention and Secure Custody for Young Persons (Appendix 2)*
- *Record of Non-Compliance with Designated Lock-up Standards*



## **YOUTH JUSTICE COURT MEDICAL, PSYCHOLOGICAL, AND PSYCHIATRIC REPORTS**

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**Policy no.: 4.3**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:** Conferences

**Legislative References:** *Youth Criminal Justice Act*; **s.34(1)** Medical or psychological assessment; **s.34(2)** Purpose of assessment; **s.34(3)** Custody for assessment; **s.34(4)** Presumption against custodial remand; **s.34(5)** Report of qualified person in writing; **s.34(6)** Application to vary assessment order; **s.34(7)** Disclosure of report; **s.34(8)** Cross-examination; **s.34(9)** Non-disclosure in certain cases; **s.34(10)** Non-disclosure in certain cases; **s.34(11)** Exception – interests of justice; **s.34(12)** Report to be part of record; **s.34(13)** Disclosure by “qualified person”; **s.34(14)** Definition of “qualified person”

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**PURPOSE:** To clarify the role of the social worker to arrange the completion of medical, psychological, or psychiatric reports requested by a Youth Justice Court.

### **POLICY:**

- a) In accordance with s.34(2) of the *YCJA*, a Youth Justice Court judge may order a medical, psychological or psychiatric report on a young person in the following circumstances:
  - a) An application has been made for release from or detention in custody under s.33;
  - b) In making a decision on an application for an adult sentence under s.71;
  - c) In making or reviewing a youth sentence;
  - d) In making a decision on an application for a continuation of custody under s.104(1);
  - e) Setting conditions under subsection 105(1) (conditional supervision);
  - f) Making an order under subsection 109(2) (conditional supervision); and
  - g) Authorizing disclosure under subsection 127(1) (information about a young person).
- b) A Youth Court may make such an order on its own motion as an application of the young person or the prosecutor where:
  - a) the court has reasonable grounds to believe that the young person may be suffering from a physical or mental illness or disorder, a psychological

- disorder, an emotional disturbance, a learning disability or a mental disability;
  - b) the young person's history indicates a pattern of repeated findings of guilt; or
  - c) the young person is alleged to have committed a serious violent offence.
- c) The assessment must be conducted by a qualified person, and the results are to be provided to the Court in writing. A "qualified person" means a person defined as s34(14) of the *YCJA*:
- a) with respect to psychiatric assessments, a qualified psychiatrist, either in private practice or in a medical facility who is registered with the College of Physicians and Surgeons of Newfoundland and Labrador;
  - b) with respect to psychological assessment, a psychologist who is registered under the provisions of the Psychologists Act (Newfoundland);
  - c) with respect to medical assessments, a medical doctor who is registered with the College of Physicians and Surgeons of Newfoundland and Labrador.
- d) When a social worker has established formal involvement with a young person who is the subject of an Order for Examination, the social worker is responsible for coordinating the completion of the assessment report.
- e) The *YCJA* states in s.34(4) that a young person shall not be remanded in custody for medical, psychological or psychiatric report made under s.34(1) of *YCJA* unless:
- a) the youth justice court is satisfied that
    - i. on the evidence custody is necessary to conduct an assessment of the young person, or
    - ii. on the evidence of a qualified person detention of the young person in custody is desirable to conduct the assessment of the young person, and the young person consents to custody; or
  - b) the young person is required to be detained in custody in respect of any other matter or by virtue of any provision of the Criminal Code.

## **PROCEDURES:**

1. Recognizing that it is desirable for an Order of Examination to specifically name a qualified person who has agreed to complete the assessment, the social worker, where possible, should identify such suitable qualified person(s) in advance, for consideration to the Court.

2. Where the Order for Examination names a specific person or facility to perform the assessment, the social worker shall consult with the person or facility immediately, to ensure that the assessment can reasonably be completed within the time frame ordered.
3. Where an Order for Examination fails to name a person or facility to complete the assessment, the social worker should proceed to contact suitable qualified persons or facilities that may consent to complete the assessment.

### **Remand for Examination**

4. For the purpose of conducting a psychological or psychiatric assessment, a youth may be remanded to such custody as the court directs for a period not exceeding thirty days.
5. When remand for examination is ordered, the social worker is responsible for coordinating the assessment, in consultation with the place of remand.
6. Parent/guardian or CSSD, if the young person is in the care or custody of a manager, have the right to be informed of all decisions that affect the young persons, and are to be encouraged to maintain contact with the youth and to be involved in the assessment process, to the greatest extent possible.
7. All relevant medical and social history information must be provided to the place of remand in a timely fashion.
8. Escort of the young person to the place of remand is the responsibility of the police.
9. It should be clarified with the court, and/or police, where the young person will be initially held for the period of remand. This information, including telephone number and mailing address of the place of remand, should be immediately provided to the parent/guardian or CSSD, if the young person is in the care or custody of a manager, along with any other information that would facilitate communication and involvement during the remand and examination period.
10. If any previous social history information concerning the young person is available, the social worker should offer a verbal overview of this information to a person in authority at the place of remand, as soon as is practically possible. The appropriate person in authority would normally be a facility social worker in the case of the Newfoundland and Labrador Youth Centre, and the senior staff on duty at either of the open custody group homes designated as places of temporary detention. If it appears necessary or beneficial, the verbal overview may be followed up with the transmittal of any appropriate written reports to the place of remand.

11. For the purpose of arranging the psychiatric/psychological examination, the social worker should first consult with the appropriate person in authority (i.e. secure custody social worker) at the place of remand, for advice and direction regarding contact persons, appropriate medical facilities, etc.
12. The social worker must then contact the person or facility selected to complete the assessment, to initiate the necessary arrangements, unless internal arrangements are made by staff of the Newfoundland and Labrador Youth Center. These arrangements must be made without an unnecessary delay, and should in all cases be finalized within at least two working days of the issuance of the Order for Examination.
13. Transportation, follow-up appointments, and other details facilitating the completion of the assessment will normally be the responsibility of the staff of the remand facility.
14. A Youth Justice Court Judge, upon application of the Provincial Director under section 34(7)(b)(ii) of the *YCJA*, may release a copy of the psychological and/or medical assessment. This report then becomes part of the youth record and is governed by the access and disclosure provisions of the Act.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

## CONFERENCES

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**Policy no.: 4.4**

**Effective Date: February 28, 2003**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; **s.19(1)** Conferences may be convened; **s.19(2)** Mandate of a conference; **s.19(3)** Rules for conferences; **s.19(4)** Rules to apply

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**PURPOSE:** To clarify the roles-responsibilities of a social worker if a youth justice judge (i) requires the social worker to arrange a judicial conference; or, (ii) requests that social worker attend a conference being arranged by the court.

### **POLICY:**

1. A conference, as defined under section 19(2), the *YCJA* is a group of people convened to give advice to a decision maker under the Act. Decision makers include judges, prosecutors, police officers, the Provincial Director/delegate(s), youth workers, and justices of the peace.
2. A Youth Justice Court may “convene or cause to convene” a conference, at various decision making points in the youth justice process to provide advice on decisions related to: (i) judicial interim release; (ii) sentencing; and (iii) the review of a custody and supervision order or non-custodial sentence.
3. The Youth Justice Court Judge may request that a social worker, or other representative of CSSD, attend a conference that the Youth Justice Court judge arranges himself/herself or engages a third party to arrange. In such circumstances the court is not bound by the rules established by the Attorney General for non-judicial conferences. If invited, the social worker or other representative(s) are required to attend.
4. The Youth Justice Court Judge may request that the social worker facilitate a conference on the court’s behalf. The social worker is responsible for organizing the conference within the timeframe established by the court.
5. Only those persons identified in Clause 19(1) of the *YCJA* and who have been authorized by their agency to do so, may convene a Conference.

6. A Conference is not to accord any participant a mandate or responsibility that she/he does not already have.
7. In consideration of offence criteria, no offence is precluded from the convention of a Conference. Caution is to be exercised in convening a Conference for an offence of a minor nature since to do so could be an inappropriate application of resources.
8. A Conference may only be called to seek advice at a decision making point in the legislation, including: s.4-12, Extrajudicial Measures; s.28-31, Detention before Sentencing; s.33, Release from or Detention in Custody; s.41, Advising the Youth Justice Court at Sentencing; s.59 Review of Non-Custodial Sentence; s.91, Reintegration Leave; s.94, Review of Custody.
9. Participation in, or attendance at, a conference is generally considered to be voluntary.
10. In the matter of a conference convened to consider the application of Extrajudicial Measures, the youth must voluntarily agree to participation.
11. In all other matters wherein a conference could be convened, participation by the youth and his/her family guardian is expected, but not obligatory. A conference may still proceed with those others willing to attend.
12. Participation by the victim is voluntary. In the case of a child victim, the child may be accompanied and/or represented by his/her parent or guardian. Should a victim choose not to participate, a conference may still proceed. Should a victim choose to participate, she/he is to be afforded such supports as might be necessary to attend and participate fully in the conference.
13. The person convening the Conference is expected to conduct the conference in a non-adversarial environment that recognizes the rights of all parties present.
14. It is expected that a conference will be convened at no cost. Where the reason for the conference is of such importance to the decision maker, the youth/family, or victim and costs must be incurred, the person organizing the conference must seek prior approval for the expenditures from a designated authorizing agent. In the JPS, these shall be the Regional Senior Crown Attorney, Administrator NLYC, RCMP District Commander, or appropriate RNC Inspector. In CSSD, approval shall be in accordance with the internal expenditure authorization.
15. Where conferencing (s.19) expenditures, other than judicial conferences, are approved, they will be assumed by the agency of the person convening the conference.

16. If a conference is convened to provide advice on Sentencing in accordance with s.41, the participating persons must be given consideration to s.38, the Purpose and Principles of Sentencing, and s.39, Restrictions on the Use of Custody.
17. The convenor of the conference (or if there is an alternate conference chairperson) is responsible to ensure that notes are taken of the Conference discussions.
18. Any recommendations resulting from a conference convened pursuant to s.41 shall be included by the author to the Pre-Sentence Report, s.30(2)(c) of the *YCJA*.
19. Where the victim or the offender/family choose not to participate, the person in charge of the conference shall provide a written account of the conclusions of the conference to the victim or offender/family within five working days.
20. These rules shall be liberally construed as over-arching statements for use as the need dictates. Each agency of JPS or CSSD, may develop specific operational policies and procedures for the application of these Rules of Conferencing within their own agency, ensuring there is consistency of approach between the two departments.

## **PROCEDURES:**

### **Organizing a Conference on behalf of the Court**

1. Upon receipt of the conference request the social worker will contact the identified participants and advise that the particular Youth Justice Court has requested their attendance at a conference and the reason the conference is being organized.
2. The request for a conference may specify attendees. Where specific individuals are not identified conference participants may include: young person, family members, “significant” adult support selected by a young person, lawyer for the young person, crown, school representative, addictions worker, mental health counsellor, child welfare representative, police officer, and other “relevant” parties identified by the social worker or other participants.
3. Where a conference is directed by the Youth Justice Court Judge, or Justice of the Peace to assist with sentencing or a decision regarding judicial interim release, the social worker organizing the conference will be: (i) mindful that the conference will be cost neutral; (ii) where specific expenditures are required the social worker will advise the court and seek approval to proceed; and; (iii) associated expenditures are to be directed to the Provincial Director of Court Services for payment.

4. When a conference is being organized to assist with sentencing, the social worker will review with participants sections 38 and 39, of the *YCJA*, in relation to sentencing.
5. The conference included as part of the sentencing process has the authority to recommend any of the sentences under section 42 of the *YCJA* and specify terms and conditions as required. The following are examples of some considerations that will affect the form/nature of any recommendations to the court:
  - a) a recommendation for inclusion of a fine would have to reflect section 54 of the Act including, “having regard to the present and future means of the young person to pay;”
  - b) a recommendation for a community service order cannot exceed maximum of 240 hours and the availability of appropriate placement sites should be considered;
  - c) a recommendation for a probation order may include conditions as outlined in section 55 of the Act;
  - d) any recommendation for an intensive support and supervision order will have to consider the availability of the program;
  - e) a recommendation for a deferred custody and supervision order may include any of the optional conditions available to court under section 105 of the Act.
6. Notes of the conference proceeding will be prepared by the social worker and distributed to participants.
7. When arranged to provide advice on sentencing, the results of the conference will be reported in the summary/recommendation section of the Pre-Sentence Report. When arranged to provide advice in terms of non-custodial or custodial review, the results would be included within the required progress report.
8. Reporting back to the court on the results of the conference should include the following information:
  - a) listing of participants and nature of relationship to young person;
  - b) the date, time, and location of the conference meeting;
  - c) a summary of key points – issues raised by participants;
  - d) the specific recommendation(s) arising from the conference.
9. Lack of consensus, including an inability to reach an agreement, would have to be reported back to the Youth Justice Court. The youth justice court judge may decline to accept the sentencing proposal or refer back to the conference for further consideration.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**



## PRE-SENTENCE REPORT

**Policy no.: 4.5**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:** Adult Sentences

**Legislative References:** *Youth Criminal Justice Act*; s.3(1)(c)(iv) Declaration of principle; s.39(6) Pre-sentence report; s.39(7) Report dispensed with; s.40(1) Reasons; and s.40(2) Contents of report

**PURPOSE:** To provide direction on the preparation of, and sharing of, a Pre-Sentence Report prepared for a Youth Justice Court.

### **POLICY:**

1. Social Workers are responsible for the completion of any Pre-Sentence Reports requested by a Youth Justice Court. These reports must follow a prescribed format set out in s.40(2) of the *YCJA* and must be submitted within the timeframe stipulated on the request form received from the court. The information contained must be presented in a factual, objective manner.
2. A Pre-Sentence Report forms part of the youth record. Distribution of a Pre-Sentence Report and/or sharing of report contents shall be consistent with the access and records management provisions of the *YCJA*.
3. Normally a Pre-Sentence Report is in writing unless the court of adjudication agrees to an oral report as in s.40(3) of the *YCJA*.

### **PROCEDURES:**

#### **Information Gathering**

1. For the purpose of meeting the information requirements under section s.40(2) of the *YCJA*, the following represents the minimum standard for client contact:
  - a) the young person to whom the report relates shall be interviewed;

- b) as is possible and appropriate, the young person's parent/guardian shall be interviewed; and,
  - c) the young person and his/her parent/guardians shall be interviewed together to assist with assessing their relationship, specifically, the degree of control and influence of the parent/guardian over the young person.
- 2. The young person, and where reasonably possible, the parent/guardian of the young person should be interviewed in their own home on at least one occasion (unless the home environment is well known to the social worker).
- 3. Depending upon the information provided in the initial interview with the young person and his/her parent/guardian, the social worker may identify other relevant people who should be interviewed. This group, depending upon the circumstance, could include extended family members, teachers, guidance counsellors, psychiatrist or employer. The young person and his/her parent/guardian or CSSD, if youth is in the care or custody of a manager shall be advised as to who else will be interviewed for the reports and the purpose of this contact.
- 4. In some instances a relevant agency with information about the young person may require written consent. In such circumstances the young person shall be asked to complete a *Consent to Release or Obtain Client Information* form. If the young person refuses the social worker shall, immediately, seek further direction from the applicable Youth Justice Court.
- 5. Interviews with sources of information should be in person, wherever possible or practical. All persons interviewed should be advised that any information given may, if relevant, be included in the report.
- 6. Where it becomes known that the family is currently, or has in the past received services under the *Child and Youth Care and Protection Act*, relevant information should be reviewed. Only information that is relevant to family dynamics, the youth's background and development or service planning should be used in the preparation of the Pre-Sentence Report.
- 7. Detailed direction on information to be included in a Pre-Sentence Report is found in Appendix 1 on *Pre-Sentence Report Format*.

### **Additional Considerations for Aboriginal Young Persons**

- 1. Section 3(1)(c)(iv) of the *YCJA* states, "within the limits of fair and proportionate accountability the measures taken against young persons should respect gender, ethnic, cultural, linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements."

2. In terms of the preparation of a Pre-Sentence report for aboriginal youth, the following additional factors should be addressed:
  - a) understanding of or loss of identity, culture, or ancestral knowledge;
  - b) language(s) spoken or understood;
  - c) description of main social issues affecting the young person's home community;
  - d) how has the young person's family/community addressed these issues;
  - e) if the young person is not currently residing in his/her community of origin, does he/she maintain contact in some form;
  - f) what culturally relevant resources are available; and,
  - g) what culturally relevant alternatives to custody can be explored.

### **Report Completion/Distribution**

1. Where a pre-sentence report is requested by the Youth Justice Court, a social worker is responsible for completion of the report in a timely fashion. The report should be submitted on or before the date identified on the request/requisition form forwarded by the court. Where no date has been identified, the Pre-Sentence Report should be submitted to the Youth Justice Court at least two (2) working days prior to the sentencing hearing.
2. The content of the pre-sentence report is identified in section 40(2) of the *YCJA*. The report shall follow the prescribed format set out in Appendix 1 *Pre-Sentence Report Format*.
3. The social worker may make a recommendation regarding sentence of the young person after considering the contents of the report and the resources and facilities that may be available within the context of meeting the assessed needs of the young person. When an Order-to-Reside is being recommended under s.55(2)(g) or s.105(3)(e) of the *YCJA* the inclusion of such a recommendation must be discussed with, and sanctioned by, the social worker's immediate supervisor.
4. If in the preparation of a Pre-Sentence Report, it is clear that it is not in the young person's best interest to continue residing in his/her present living arrangement, (having regard for the principal that young persons should live outside of parental care only when measures that provide for continuing parental care are inappropriate), a plan for alternate residential arrangements may be identified. The recommendation for inclusion of an order to reside condition may be included as part of the Pre-Sentence Report's recommendation section only with the approval of the social worker's immediate supervisor.
5. When a judicial conference has been conducted, to provide advice on sentencing, the results of this conference will be reported back in the *Summary-Recommendation* section of the Pre-Sentence Report.

6. The original and three copies of the pre-sentence report are to be submitted to the Clerk of the Youth Justice Court for distribution by the Court. One of these copies should be specifically identified as the parental copy and all pages stamped as “parental copy”. A copy of the report should always be retained in the young person’s file.
7. During preparation of the Pre-Sentence Report if the social worker believes that the possibility exists for an Open Custody and Supervision order to be imposed, the social worker shall determine the availability of an appropriate placement. A completed *Alert Sheet: Potential Placement to Open Custody* and copy of the *Pre-Sentence Report* should be forwarded to the offices in St. John’s and Corner Brook, where the two (2) provincial open custody facilities are located. Contact with these offices should be made regarding current and potential availability of a group home opening. This advance notice assists with pre-placement planning and decision making.
8. Where possible the social worker who authors a pre-sentence report should, where at all possible, be present at the sentencing hearing, as cross-examination of the contents of the report may occur. If it is not possible for the author of the report to be present, another social worker should be designated to attend, and that worker should be briefed on the main facts of the case.
9. A pre-sentence report must normally be submitted in writing. In extenuating circumstances, and with permission of the Youth Justice Court, a report may be presented orally. Should a pre-sentence report be presented orally, the information must be documented, in writing, in a normal pre-sentence report format as per s.40(3) of the *YCJA* within five working days of the sentencing hearing. Only information shared in the formal court process can be included in the report. The *Pre-Sentence Report Format* outlined in Appendix 1 shall be used to the extent that is possible and appropriate. The written report is to be submitted to the Youth Justice Court with copies to the young person’s file, and if applicable, the place of custody of the young person.
10. Any request from any person for a copy of the written pre-sentence report prior to the sentencing hearing must be directed to the Youth Justice Court for a decision on disclosure of the report pursuant to s.40(8) of the *YCJA*. This is not, however, intended to prevent discussion of the contents of the report with the young person and/or parent/guardian or CSSD, if youth is in the care or custody of a manager. It will be necessary to advise the young person and parent/guardian or CSSD, if youth is in the care or custody of a manager, of the contents and nature of the Pre-Sentence Report prior to the sentencing hearing.
11. Any request for a copy of the pre-sentence report after sentencing has been made may only be considered in terms of the provisions of s.118 and s.119, *YCJA*. It must be demonstrated, to the complete satisfaction of the social worker, that disclosure of the pre-sentence report or relevant portions thereof is necessary and beneficial to the care and/or treatment of the young person. Consideration may

- often be given to disclosure of a portion of the report. The social worker is encouraged to consult with his/her supervisor before consenting to such a request.
12. If the youth is in the care or custody of a manager under the *CYCP Act*, a copy of the Pre-Sentence Report will be given to the other program social worker, stamped with the non-disclosure date.
  13. Where the final sentence is one of custody, a copy of the pre-sentence report must be forwarded immediately to the place of custody by the social worker, as the immediate availability of the report will be necessary in the development of an appropriate plan of care for the young person.
  14. Where a pre-sentence report has been ordered, a file must be created regardless of the type of sentence given by the Youth Justice Court e.g. a sentence that does not include supervision by the provincial director/delegate.

#### **Direction on Inclusion of YLS-CMI Results as part of Pre-Sentence Report**

1. Results of the application of the *Youth Level of Service – Case Management Inventory* shall not to be included in a pre-sentence report. This tool is used to identify who is more likely to reoffend but does not identify, with certainty, who will reoffend. It does not differentiate between type of recidivism, that is, it cannot differentiate on the basis of severity.
2. If a Youth Justice Court specifically requests information on the current risk-need classification assessment of a youth, it is to be provided. A description of the tool must be included to ensure the court is provided as much context as possible.

#### **Placement Planning**

1. During preparation of the Pre-Sentence report if the social worker believes that the possibility exists for an open custody and supervision order to be imposed, the social worker shall determine the availability of an appropriate placement. A completed *Alert Sheet: Potential Placement to Open Custody* and copy of the *Pre-Sentence Report* should be forwarded to the offices in St. John's and Corner Brook, where the two (2) provincial open custody facilities are located. Contact with these offices should be made regarding current and potential availability of a group home opening. This advance notice assists with pre-placement planning and decision making.
2. If placement does not proceed, the open custody social worker shall ensure any documents provided to the open custody service provider are returned. The originals of these documents are already on the young person's file, therefore these copies should be shredded.

**EXCEPTIONS TO POLICY:**

**RELEVANT DOCUMENTS:**

- *Pre-Sentence Report Format (Appendix 1)*
- *Pre-Sentence Report Checklist*
- *Youth Level of Service – Case Management Inventory*
- *Alert Sheet: Potential Placement to Open Custody*
- *Consent to Release or Obtain Client Information*

## SENTENCING HEARINGS

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**Policy no.: 4.6**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:** Pre-Sentence Report

**Legislative References:** *Youth Criminal Justice Act* s.38(1) Purpose; s.42(1) Considerations as to a Youth Sentence; s.42(12) Coming into force of a youth sentence; *Young Persons Offences Act* s.11(1)

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**PURPOSE:** To outline general requirements for attendance at sentencing hearings.

### **POLICY:**

1. A social worker shall attend sentencing hearings when required by the court, or when a young person who is on an active caseload appears for sentencing. If the sentence given is one for which CSSD has a responsibility, the social worker must ensure that the young person and their parents understand the proceedings and the effect of the final sentence, proper sentence calculation, and effective case management.

### **PROCEDURES:**

1. Normally the author of the Pre-Sentence Report shall attend the sentencing hearing. There may be circumstances, however, where it is not possible for the social worker responsible to attend the sentencing hearing, another social worker must be designated to attend and should be briefed on the contents of the youth's Pre-Sentence Report.
2. Where a young person who is currently subject to a sentence under the supervision of a social worker appears for a new sentencing hearing, the social worker should attend the hearing, and be prepared to offer information concerning the young person upon any request from the court.
3. It is not an expectation that social workers will attend sentencing hearings for young persons who do not have current formal involvement with the Youth Corrections system, except upon the request of the Youth Justice Court.

4. The social worker must enter the sentencing hearing and all associated sentences into the Client Referral and Management System – Youth Corrections Module within two working days of receipt of the court documents.
5. If the young person's family is currently receiving services under Protective Intervention and In-Care program, the other program social worker must be advised of the sentence: a) within five (5) working days if probation is ordered; b) within two (2) working days if deferred custody and supervision; c) within one (1) working day if a custody sentence.

**EXCEPTIONS TO POLICY:**

**RELEVANT DOCUMENTS:**



## ADULT SENTENCES

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**Policy no.: 4.7**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:** Age Related Transfers from a Youth Facility to an Adult Facility, Youth Serving an Adult Sentence in a Youth Facility

**Legislative References:** *Youth Criminal Justice Act* s.64 Application by Attorney General; s.69 Included offences; s.71 Hearing-adult sentences; s.72 Order of adult sentence; s.76 Placement when subject to adult sentence

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**PURPOSE:** To describe the social worker's role if asked to prepare a report to assist a Youth Justice Court in determining whether an adult sentence should be imposed and, if the young person is 18 years old at time of sentencing, where he/she should be placed.

### **POLICY:**

1. A crown prosecutor may give notice of an intent to seek an adult sentence if a minimum threshold has been met which includes: the young person is at least fourteen (14) years old and has been charged with any of the following offences: a) murder, b) manslaughter, c) attempted murder, d) aggravated sexual assault, or e) has established a pattern of serious violent offences. If this application is opposed a hearing will be scheduled.
2. The Youth Justice Court's initial determination is whether a youth or adult sentence should be imposed. If the decision is to impose an adult custodial sentence and the young person is eighteen (18) years or older at time of sentencing, the court also makes a decision as to where the sentence is to be served ie. youth or adult facility.
3. If an adult sentence is imposed and the young person has not yet turned eighteen (18) years of age, the young person is automatically placed in a youth facility. Section 76(2) of the *YCJA* ensures no person under eighteen (18) years of age will be placed in a facility for adults. A young person who receives an adult sentence of imprisonment in this circumstance will be placed in secure custody.
4. When a young person having committed the offence(s) prior to his/her 18<sup>th</sup> birthday, is 18 years or older, at the time of sentencing, a placement report shall be required by the court in its determination as to whether to place the person in an adult or youth facility. For the purposes of assisting with this placement

decision, the content of a Pre-sentence Report is expanded to include an examination of placement options in relation to:

- a) the safety of the young person;
  - b) the safety of the public;
  - c) the young person's access to his or her family or family like supports;
  - d) the safety of other young persons in a youth facility;
  - e) any detrimental effect that the young person would have on other young persons in the youth facility;
  - f) the young person's level of maturity;
  - g) the availability and suitability of treatment, educational and other resources that would be provided to the young person in a place of custody for adults;
  - h) the young person's prior experiences and behavior while in detention or custody;
  - i) the recommendations of the provincial director, and representatives of the provincial and federal correctional facilities; and
  - j) any other relevant factors.
5. When the court determines that an adult sentence should be served in a youth facility that youth placement shall be secure custody.

## **PROCEDURES:**

### **When an Adult Sentence is Imposed**

1. When considering an adult sentence, a pre-sentence report is required under s.72(3) of the *YCJA* to assist the court with the determination as to whether or not to impose an adult sentence. This report is to be completed by the social worker.
2. Following imposition of an adult sentence, when the court requests a placement report to determine whether that sentence should be served in an adult facility or youth facility, this report is completed by the social worker responsible for secure custody in consultation with the social worker and representatives of the adult system.
3. A young person serving an adult sentence is subject to the terms and conditions as outlined in the *Corrections and Conditional Release Act*, but may also be subject to review provisions associated with the *YCJA*, depending on which is more advantageous.
4. If a young person is ordered to serve his or her adult sentence in a provincial correctional facility or a penitentiary, the social worker's role will be minimal, as the young person's needs will be addressed by the staff of the facility.

5. If the young person is ordered to serve his or her adult sentence in a youth facility the social worker shall contact the appropriate parole office immediately with a follow up letter to inform the parole officer of the young person's need for service. All other services to the youth will be provided by the social worker responsible for secure custody or open custody in the same manner as all other residents for the duration of the young persons' stay in the youth facility. This of course excludes the services around reintegration planning, etc. as mentioned in procedure #3 as these issues are covered under the *Corrections and Conditional Release Act* and will be appropriately addressed by the parole officer.

### **Combined Youth Custody and Supervision Sentence and Adult Sentence of Imprisonment**

1. Where a person receives an adult sentence of imprisonment while they are subject to a youth sentence of custody and supervision, the remainder of the youth sentence is then dealt with for all purposes as if it was a sentence of imprisonment. (section 743(5)(1), Criminal Code of Canada).
2. Where a person is under an adult sentence of imprisonment and receives a youth sentence of custody and supervision, the youth sentence is dealt with for all purposes as if it was a sentence of imprisonment (section 743(5)(2), Criminal Code of Canada).
3. In both previous scenarios, the youth sentence (or remainder) is considered to be converted to an adult sentence of imprisonment, and is merged with the adult sentence to calculate a release date.
4. Since the whole sentence is converted, there is no community supervision upon release, and no obligation for involvement by the youth corrections system, unless another non-custody youth sentence is in place.
5. An Order of "time served" with no Warrant of Committal issued is not considered a sentence of imprisonment for the purposes of section 743(5), Criminal Code of Canada. Therefore, the youth sentence is not converted to an adult sentence in this situation.

### **Adult Serving a Youth Custody Sentence in an Adult Facility**

#### **POLICY**

1. Occasionally adults are convicted for offences they committed, prior to their 18<sup>th</sup> birthday, and receive a youth custody sentence:
  - a) under section 89(1) of the *YCJA* these individuals, if 20 years old or older, are automatically committed to a provincial correctional facility for adults to serve their youth sentences; and,

- b) the sentence, under section 89(3) of the Act is governed, in terms of release date by the provisions of the *Prisons Reformatories Act* and *Corrections and Conditional Release Act*.
2. In this specific circumstance the youth custody sentenced is managed as an adult custodial sentence but is not converted to an adult sentence of imprisonment.

## **PROCEDURES**

1. Upon admission to the adult facility the social worker shall contact the appropriate officials to determine the revised release date based on the application of the *Prisons Reformatories Act* and *Conditional Release Act* to their youth custody order.
2. In all likelihood there will be community supervision to be served following the individual's release from the adult facility. The social worker shall ensure additional conditions, governing community supervision, are added in a similar fashion as if the individual were being released from a youth facility.
3. If a youth probation order was issued, at the time of custody sentencing, this remains in effect. Upon release from the adult facility the person, to whom this order applies, shall be supervised in accordance with the results of the *Youth Level of Service – Case Management Inventory*.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Pre-Sentence Report – Appendix 1*
- *Youth Level of Service – Case Management Inventory*

## APPEALS

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**Policy no.: 4.8**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; s.37

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**PURPOSE:** To provide direction to social workers when a court order is received that is being appealed.

### **POLICY:**

1. A young person or the Attorney General may appeal either the verdict of conviction or acquittal, or the sentence made, to the Supreme Court, Trial Division (General). Normally, an appeal must be filed within 30 days from the date of sentence.
2. Where an appeal of either conviction or sentence has been filed, the Court hearing the appeal may, upon application, release the young person from any sentence made as the result of the matter being appealed. Such a release may be ordered on any conditions or undertakings that the court deems appropriate.
3. Where a young person has appealed his/her conviction or sentence, the original sentence remains in effect, unless the Court hearing the appeal orders otherwise. Where the court hearing the appeal orders that the sentence shall cease to have effect, pending the outcome of the appeal, the young person must be released by CSSD from whatever custody or obligations of a community sentence that were ordered as the result of the matter being appealed, upon receipt of the Order.

### **PROCEDURES:**

1. Where the Court of Appeal orders the release of the young person pending the outcome of the appeal, the young person must be released immediately upon receipt of the Court Order by the place of custody, or upon receipt of the Court Order by a social worker, who advises the place of custody that the Order has been received.

2. A young person who is released from custody pursuant to an Order from a court of appeal, is to be provided with transportation to his/her home, in accordance with Policy sections 7.6 or 8.3.
3. Where a young person is subject to a community sentence which is under appeal, (including conviction), and the court of appeal orders that the sentence will cease to have effect pending the outcome of the appeal, the young person must be discharged from any further obligation of the sentence, upon receipt of the Court Order.
4. If the Court hearing the appeal upholds the original conviction and/or sentence, the young person must immediately commence serving the sentence, and the expiry date must be recalculated to exclude any time of suspension of the sentence which was ordered by the Court.
5. If a social worker is subpoenaed or requested to attend a hearing of appeal of the sentence, the social worker must attend and be prepared to be cross-examined concerning the contents of any Pre-Sentence Report previously completed concerning the young person.

**EXCEPTIONS TO POLICY:**

**RELEVANT DOCUMENTS:**

## QUESTIONABLE SENTENCE ORDERS

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**Policy no.: 4.9**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:**

**Legislative References:**

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**PURPOSE:** To provide direction to social workers when court orders are received that appear to conflict with legislative provisions.

### **POLICY:**

1. Any sentence order that may appear to be questionable due to technical errors, interpretation problems or possible conflict with legislative provisions, shall be referred to the proper authority for clarification or consideration of further action, but will be treated and enforced as valid until such time as a change is made by the Youth Justice Court.

### **PROCEDURES:**

1. All sentence orders shall be reviewed when received from the Youth Justice Court for any suspected errors or ambiguities, or aspects that may be contrary to the provisions of the *YCJA*, *YPOA*, or other applicable legislation.
2. If the Court Order appears to be in conflict with any legislative provisions, the applicable Crown Attorney should be immediately notified in writing, with a request to review the suspected anomaly, and take whatever action he or she deems appropriate.
3. If the concern is based upon suspected clerical errors shall be referred, in writing, to the Clerk of the Youth Justice Court for clarification or corrections in accordance with local practice.

4. If a Court Order is ambiguous or unclear with respect to intent, the Clerk of the Court should be contacted with a request to seek clarification of the intent of the Order, and if appropriate, issue a revised Order.
5. If no clarification is received from the Youth Justice Court, the Youth Justice Court shall be advised in writing of how the social worker intends to interpret the Order to resolve the ambiguity, with copies to the Crown and Defence Counsel.
6. If an Order is made that appears to be more onerous than legislative provisions allow, the young person and parent/guardian or CSSD, if a youth is in the care or custody of a manager, should also be alerted to the potential conflict in writing, and advised of their right to consult with a lawyer.
7. If deemed necessary, the supervisor may consult with the Provincial Director for interpretation and advice on the matter.
8. All sentence orders shall be treated as valid and enforceable until such time as a new or revised Order is received from the Youth Justice Court.
9. A copy of all correspondence related to the above, should be retained on the young person's case file.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**



## **Section 5**

### **Non-Custodial Sentences**



## ABSOLUTE AND CONDITIONAL DISCHARGES

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**Policy no.: 5.1**

**Effective Date: November 1, 2012**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; **s.42(2)(b)** and **s.42(2)(c)** Youth sentence; **s.119(2)(f)** Period of access; *Young Persons Offences Act*; **s.11(1)(a)** and **s.11(1)(h)**

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**PURPOSE:** To clarify the limits of the social worker's responsibility for the support and supervision of these types of orders.

### **POLICY:**

1. As specified in s.42(2)(b) of the *YCJA*, there is no formal intervention with a young person who has been granted an Absolute Discharge. A file should not be created unless a Pre-sentence Report was ordered or another sentence is in force for which the creation of a file would normally result.
2. As specified in s.42(2)(c) of the *YCJA* A young person with a Conditional Discharge Order must be supervised by a social worker only if such a condition is stipulated on the Order. Orders with no stipulation for supervision do not require formal intervention unless the young person is already being supervised on another type of order.

### **PROCEDURES:**

1. If an order of conditional supervision includes the requirement that the young person report to and be under the supervision of the provincial director, this order will be dealt with as if it were a supervised probation case (Refer to Policy 5.5).
2. When a young person has been found guilty and receives a conditional discharge, with a reporting requirement, the records access provisions of the *YCJA* become effective three (3) years after finding of guilt under s.119(2)(f) of the *YCJA*.

### **EXCEPTIONS TO POLICY:**

### **RELEVANT DOCUMENTS:**

## FINES, COMPENSATION, AND RESTITUTION

**Policy no.: 5.2**

**Effective Date: January 22, 2013**

**Date Revised: November 23, 2016**

**Policy Cross References:** Supervised Probation, Failure to Comply (Breach)

**Legislative References:** *Youth Criminal Justice Act*; s.42(2)(d), (e) and (f) Youth sentence; s.54(1) Where a fine or other payment is ordered; *Young Persons Offences Act* s.11(1) Dispositions; s.12(1) Fine: ability to pay

**PURPOSE:** To clarify the social worker's responsibility when any of these sentences are included as a condition of probation.

### **POLICY:**

1. When either a fine, order of compensation, or restitution order is ordered separately from probation, the social worker has no formal responsibility for monitoring these orders as per s.42(2)(d) and (e) of the *YCJA*. If any of these orders are issued while the young person has an active probation order, the social worker shall remind the young person of his/her obligation to comply with these active orders.
2. When either a fine, order of compensation, or restitution order is ordered as a condition of probation, regardless of whether it is a supervised or unsupervised order, the monitoring and enforcement of this condition will be part of the social worker's responsibility in supervising the order under s.42(2)(k) of the *YCJA*. The condition will be treated like any other condition on that order and is subject to (i) provisions related to a non-custodial review, and (ii) provisions related to a failure to comply (breach) charge.
3. Payment of a fine must be made directly to a court. Under no circumstances shall a social worker accept, transmit, or otherwise handle money related to the payment of a fine.
4. Any financial compensation must be made directly to the person to be compensated, or through the court, as directed in the Court Order. Under no circumstances shall a social worker accept, transmit, or otherwise handle money related to the payment of compensation.

## **PROCEDURES:**

### **Inclusion as a Condition of Probation**

1. At least one month prior to the expiry of the probation order the social worker shall contact the appropriate Youth Justice Court to determine if the fine has been paid. If the fine has not been paid the social worker shall advise the young person, in writing, that a failure to pay the fine before the expiry of the sentence may result in a Failure to Comply charge. The worker shall also advise the young person of his/her option to initiate a Review of Sentence proceeding.
2. If the young person fails to comply with the condition of compensation, the social worker should, at least one month prior to the expiry of the time limit, advise the young person that a Failure to Comply charge could result. In addition, the young person should be made aware of the option to initiate Review of Sentence proceedings.
3. If the young person fails to comply with the condition of restitution, the social worker should, at least one month prior to the expiry of the time limit, advise the young person that a Failure to Comply charge could result. In addition, the young person should be made aware of the option to initiate a Review of Sentence application.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

## PROHIBITION AND FORFEITURE

**Policy no.: 5.3**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; s.42(2); s.51(1) Mandatory prohibition; s.51(2) Duration of prohibition; s.51(3) Discretionary prohibition order; s.51(4) Duration of prohibition order; s.51(5) Reasons for prohibition order; s.51(6) Reasons; s.52(1) Review of order made under section 51; *Young Persons Offences Act*; s.11(1) Dispositions

**PURPOSE:** To identify the social worker's responsibilities when a Mandatory Prohibition Order is imposed.

### POLICY:

1. Monitoring and enforcing compliance with a Prohibition Order under s. 42(2)(j) of the *YCJA* which has been given as a sentence, is not the responsibility of the CSSD. A file would not be created, unless a Mandatory Prohibition Order under section 51(1) of the *YCJA*, is given in addition to a sentence. Property ordered to be forfeited will not be handled by the social worker.
2. Where property has been seized by police or is determined by the court to be related to the offence, that property may be ordered to be forfeited to the Crown, provided there is no lawful owner, other than the accused. The police will deal with all situations of seizure and forfeiture and CSSD takes no role in these proceedings.
3. Two types of Prohibition Orders may be made:
  - a) A Prohibition, Seizure, or Forfeiture Order may be given as a sentence under section 42, of the *YCJA*, or in combination with another sentence. Such a sentence prohibits the young person from possessing a particular item (e.g. firearms), or engaging in a particular activity. An Order may be made where provided for by any Federal Legislation or Regulation, with the exception of section 161, *Criminal Code of Canada*.

- b) A Mandatory Prohibition Order under section 51, of the *YCJA*, must be given or considered by the court where a young person is convicted of certain specified offences. Such an Order is not considered to be a sentence, but is given in addition to a sentence under section 42 of the *YCJA*. A Mandatory Prohibition Order does not follow the normal rules established for youth sentences, such as sentence length caps, or Review provisions. Other special provisions govern the administration of such Orders. In all cases of a Mandatory Prohibition Order, the Provincial Director (social worker) must be given a copy of the Order by the Court.
- 4. A Mandatory Prohibition Order against possessing firearms or other weapons must be given where a young person is convicted of the offences listed in section 109(1), *Criminal Code of Canada*, (serious violence offence, specific weapons offences, or trafficking, importation or production of drugs). This Order is given for a minimum of two years from the conviction, or if custody is ordered, two years from the end of the custodial period. There is no maximum period stipulated.
- 5. A Mandatory Prohibition Order against possessing firearms or other weapons must be considered by the court where the young person is convicted of the offences listed in section 110(1), *Criminal Code of Canada* (violent offence, other than the ones referred to in section 109(1), or an offence involving weapons). If such an Order is made, it is for a maximum of two years from the conviction, or if custody is ordered, two years from the end of the custodial period.
- 6. A Mandatory Prohibition Order made under section 51 of the *YCJA*, may be lifted under the provisions of section 113, *Criminal Code of Canada*. This provision applies where the young person establishes a need, based on essential employment or sustenance reasons. In considering such an application, the court may require a report on the young person from the Provincial Director (social worker). There are separate Review provisions for a mandatory Prohibition Order under section 52 of the *YCJA*, but a Review may only be conducted after the end of the records disclosure period that applies to the offence that resulted in the Prohibition Order.
- 7. Potentially, because there are no caps on duration, a prohibition order issued under section 51 of the Act may remain in force after all other youth sentences have expired and/or achieved their records non-access date. In such circumstances all information on the file shall be treated as non-accessible with the exception of the Prohibition Order itself.

## **PROCEDURES:**

### **Prohibition Order as a Sentence (section 42, YCJA)**

1. Unless another sentence is in force for which the supervision of a social worker is required, a file should not be created.
2. Where a young person has a Prohibition Order and is subject to supervision through another sentence, the social worker should routinely question the young person concerning compliance with the Prohibition Order, and remind him/her of their obligation.
3. If it appears that the young person may fail to comply with the terms of the Prohibition Order, the social worker should advise the young person of the option to apply to the court for a Review of Sentence and also caution him/her that a Failure to Comply charge could be laid and the duty to report information to the police.
4. If the social worker becomes aware that the young person has failed to comply with the Prohibition Order, the social worker should advise the police of this failure, and provide all relevant information.
5. Prohibition Orders under s.42(2) of the *YCJA* are not to be taken into account in determining any period of non-access under s.119(2) of the *YCJA*.

### **Mandatory Prohibition Order (section 51, YCJA)**

1. Where a young person is given a mandatory Prohibition Order under section 51(1) or 51(3) of the *YCJA*, the court is required to provide a copy of the Order to the Provincial Director (social worker). When such an Order is received, a file should be established, even in the absence of a sentence that would otherwise require the establishment of a file.
2. In the unlikely event that a Mandatory Prohibition Order is received, and no sentence is in force that would require supervision by a social worker, no further action is required (unless a report is requested by the court), and no reporting by the young person is necessary.
3. Where a young person who is subject to a Mandatory Prohibition Order, expresses a need for a weapon for the purposes of subsistence hunting or employment reasons, the young person should be advised to apply to the court under section 113, *Criminal Code of Canada*, for an Order lifting the Firearms Order. In any other circumstance, a Review of the Prohibition Order under section 52 of the *YCJA*, may take place, but only after the end of the non-disclosure period that applies to the record of the offence that resulted in the Prohibition Order.

4. In the case of either an application for lifting a firearms prohibition (section 113, *Criminal Code of Canada*) or a Review of a Mandatory Prohibition Order (section 52 of the *YCJA*, the social worker may be required to prepare a report on the young person for the court. Such a report shall be in the format of a non-custodial sentence review report as outlined in Policy section 9.10, unless otherwise directed by the court.
5. Mandatory Prohibition Orders under s.51 of the *YCJA* are not to be taken into account in determining any period of non-access under s.119(2) of the *YCJA*.

### **EXCEPTIONS TO POLICY:**

A condition of a Probation Order which prohibits possession of items or engagement in activities, is treated like other probation conditions in accordance with Policy section 5.5 and 5.7 and therefore is not considered a Prohibition Order.

### **RELEVANT DOCUMENTS:**



## COMMUNITY AND PERSONAL SERVICE ORDERS

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**Policy no.: 5.4**

**Effective Date: March 14, 2007**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act* s.42(2)(h) and (i) Youth sentence; s.54(7) Orders under paragraphs 42(h) or (i); s.54(8) Duration of order for service; s.54(9) Community service order; *Young Persons Offences Act*; s.11(1) Dispositions

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**PURPOSE:** To outline social worker's responsibilities in relation to securing placements, supervising the work being completed, and ensuring the safety of young persons placed.

### **POLICY:**

#### **Community Service Orders**

1. Social workers are responsible for the organization, coordination, and supervision of Community Service Orders under s.42(2)(i) of the *YCJA*. Appropriate community service opportunities for young persons must be recruited and supported by each region such that when necessary, the young person will have ready access to a positive work opportunity that is adequately supervised and beneficial to the community.
2. Routine monitoring of community service work placement is necessary to a) ensure placement is being well supervised; and b) to ensure that the hours required are being completed. Monitoring is done in cooperation with the sponsoring agency or group that is agreed upon by both parties.
3. A Community Service placement must be unpaid and beneficial to the community at large. It may be work organized for the purpose of a Community Service placement (municipal park clean-up, odd jobs for senior citizens or persons with disabilities, etc.) or work for an established non-profit community service agency (Y.M.C.A. Lions Club, churches, etc.). **Such placements should not benefit individuals or business for profit** unless they are the victims of the particular crime, in which case the work is ordered as a Personal Service Order.

4. Opportunities for Community Service work need not be limited to established organizations and agencies. A situation may exist which may foster the development of a special service project, utilizing an individual or group of citizens to provide direction and supervision. Such opportunities are supported and encouraged.
5. Tasks to be performed by the young person must be valuable and positive in nature. Jobs regularly performed by employees of the placement agency should not be assigned to the young person as this may cause problems with unions or groups of employees. This does not limit the agencies' discretion in assigning a variety of tasks as this promotes the acquisition of new skills. If the organization for whom the work is performed has an established volunteer component, it is desirable to have the young person perform regular volunteer duties.
6. Any young person performing Community Service Work must receive adequate supervision to assure proper assignment of tasks, assessment of performance, verification of completion, and minimization of risk. The community service supervisor is normally someone in a position of authority within the organization receiving the service, but may be the social worker or any other person felt to be suitable (e.g. a trained volunteer supervisor). The supervisor must make a commitment to respect the confidential nature of the young person's role, and report any problems or missed time to the social worker. When recruiting Community Service placements; the issues of supervision, adequate and appropriate tasks, and confidentiality must be satisfactorily dealt with before a placement is made.

#### **Liability Coverage for Community Service Order Placements (only)**

1. The Government of Newfoundland and Labrador self insures for any claims against specified parties in the event of civil legal action resulting from accidental injury or property damage during a young person's performance of community service work as ordered under sections 42(2)(i) or, as a condition of probation under, 42(2)(k) of the YCJA.
2. The specified parties under self insurance are: CSSD, all volunteers and/or agency representative supervising young persons performing community service work, and the young person. If any of these parties are subject to civil legal action as a result of accidental injury or accidental property damage in the course of the performance of community service work, government provides legal liability coverage.
3. Property damage or loss resulting from criminal or malicious intention is not covered.

## **Personal Service Order**

1. Section 42(2)(h) of the *YCJA* provides for an Order of Personal Service, or work in kind for the victim of an offence, or innocent purchaser of stolen property, where there has been any loss, injury, or damage to property suffered by the victim. Such an Order may be made as an option to financial compensation, but may be given in combination with any other sentence that is not inconsistent with it.
2. The Youth Justice Court may request an assessment of a young person's suitability for a Personal Service Order, and may request an investigation to determine if the victim will consent to such an Order. Where appropriate, these matters may also be routinely addressed in a Pre-sentence report.
3. An assessment of the young person's suitability may be completed using criteria such as the following:
  - a) offence history, including anything indicating risk to the person who would receive the service;
  - b) employment and academic history;
  - c) the young person's maturity, character and attitude;
  - d) any other relevant considerations;
  - e) the young person's willingness to perform the work;
  - f) the young person's attitude and feeling toward the victim; and
  - g) the nature of any prior relationship between victim and young person.
4. The suitability of a young person for a Personal Service Order should be considered when preparing a Pre-sentence Report, and where appropriate, the consent of the victim should be explored. If appropriate, and with the victim's consent, an assessment of suitability may be presented in a Pre-sentence Report as part of a recommendation as per section 40(2)(f) of the *YCJA*.
5. If the Youth Justice Court specifically requests an assessment of a young person's suitability for Personal Service Work, an assessment utilizing the above criteria must be completed as per the court's direction. This may be within the structure of a completed Pre-sentence report, or as a narrative type report.
6. Liability coverage provisions do not apply to Personal Service Orders.

## **PROCEDURES:**

### **Community Service Orders**

1. As soon as possible, and no later than two weeks from receipt of the referral, an intake interview should be held with the young person, and if possible, with his/her parents/guardian or CSSD, if in the care or custody of a manager. This

interview serves to explain the Order and all the related expectations to the young person, including the review provisions and the consequences of failure to comply.

2. In consideration of suitability, safety and liability issues, it is necessary to assess the youth for appropriateness of specific job tasks and supervision levels, based on the youth's age, sex, maturity, development level, reliability, physical and mental capabilities, skills, interests and attitude towards community service work. Upon identification of a potential work placement, a review of the supervision needs and suitability of tasks must be completed with the person who will be responsible for supervision of the Community Service work. This review will be conducted in view of the above noted factors. This discussion will also consider the need for, and young person's access to, appropriate safety equipment e.g. gloves, foot wear. Disclosure of offence history, family information, or other social history information should not occur, unless it is essential to establish supervision needs in which case only details that are absolutely necessary should be provided.
3. Any job tasks involving obvious or foreseeable inherent safety risks must be avoided. An exception may be considered if, after careful evaluation, the particular youth is deemed to have the maturity, skills and abilities to safely perform the task, and all normally accepted safety standards and reasonable supervision are in place. If tasks involving an inherent safety risk are being considered, consultation with the immediate Supervisor is required, and both social worker and supervisor must be in agreement that the young person is clearly able to safely perform the tasks, with any agreed precautions and conditions. Tasks involving inherent risks include, but are not limited: the use of power tools, sharp tools, motorized machines, work on building sites or other environments where power tools and machinery or dangerous debris exists, and work involving heights. Work on any type of commercial construction site where trades persons are employed, is forbidden.
4. Information about the work placement and expectations for the young person will be contained in the "*Community Service Order/Personal Service Order Work Contract*". The young person, a representative of sponsoring agency and social worker shall sign this contract prior to the beginning of placement.
5. The social worker must provide the young person with a *Community Service Order/Personal Service Order Work Record* card, and instruct the young person to ensure completion of the appropriate section after each period of work.
6. Prior to commencement of the Community Service work, the social worker must ensure that the young person and his/her parent/guardian or CSSD, if the youth is in the care or custody of a manager, fully understand and agree to the nature and conditions of the work. A refusal of any particular task by the young person or parent/guardian or CSSD, if the youth is in the care or custody of a manager, based on safety concerns must be accepted. If the person supervising the

- Community Service work requests an initial interview with the young person, this must be arranged. The hours of work must be established with the agreement of the young person and his/her parent/guardian or CSSD, if the youth is in the care or custody of a manager, the placement supervisor, and the social worker. There must be no conflict with regular hours of school or employment. The social worker must also ensure that the Order can reasonably be completed within the time limit established in the order (or within twelve months, in the absence of a specific stated limit).
7. Situations involving adult offenders and young persons working in direct contact with each other are strongly discouraged. However, such situations may be permitted if, in the opinion of the social worker, there is adequate on-site supervision to minimize any negative influences, and the work is suitable for the young person.
  8. Contact should be made with the young person and/or parent/guardian or CSSD, if the youth is in the care or custody of a manager, at least once per month during the period of the young person completing Community Service work, to address any problems arising out of the work placement, including any safety concerns. If the young person is also subject to supervision through a Probation Order, a more intensive degree of supervision and intervention is implied, and contact will be in accordance with Risk/Need Classification and service plans.
  9. Where a young person is unable to comply with the Community Service Order within the time period specified, and there has been no refusal or willful failure to comply, an application may be made to the Youth Justice Court by the young person or social worker for an extension of the time frame. A time extension of not more than 12 months may be granted if there is just cause, in accordance with section 59(9) *YCJA*.
  10. Where a young person is unable to comply at any time with the Community Service Order due to a change in circumstances, a Review of Non-Custodial Sentence under section 59 of the *YCJA* may be initiated by the young person or social worker. In the case of a sentence made under the *YPOA*, a review is initiated in accordance with section 11(10). The court may require a narrative progress report.
  11. If it appears that a young person willfully fails or refuses to complete the required hours of Community Service, the social worker shall as soon as possible, but not later than one month prior to the expiry date of the Order, advise the young person that a Failure to Comply charge could result. In addition, the young person shall be made aware of the option to apply to the Youth Justice Court for an extension of time.

12. If a young person willfully fails or refuses to complete the required hours of Community Service by the expiry date of the Court Order, and no application has been made to the court for an extension of time (or one has been denied), the social worker shall:
  - a) initiate steps to have a charge laid under section 137, *YCJA* for failure to comply with a disposition. Refer to Policy section 5.7 or
  - b) notify the youth court in writing of the details of the failure to comply, if the Community Service Order was made under the *YPOA*. The court will then take any necessary steps, as per section 11(10), *YPOA*.
13. The *Community Service Order/Personal Service Order Work Record* card, duly completed and signed, should be retrieved from the young person and placed in his/her case file.
14. Documentation must be made in the case file, summarizing the major aspects of the Community Service, and the young person's performance and response.
15. If no other sentences are in effect which require the supervision of a social worker, the young person's case file should be closed, and the records maintained in accordance with Departmental policy and the records disclosure provisions of the *YCJA* and *YPOA*.

#### **Addressing Issues Connected to Fulfilling Required Hours**

1. When a young person is unable to comply with fulfilling the hours assigned under a separate Community Service Order (an order under section 42(2)(i) of the *YCJA*) and there is no refusal or wilful failure to comply, the social worker can apply for an extension of the timeframe. This request is made by the social worker under section 59(9) of the *YCJA*. This should be submitted at least thirty (30) days before the Order is to expire. **This is used when the outstanding concern is insufficient time and what is being sought from the court is additional time.**
2. The above noted application process is as follows:
  - i) the social worker shall send a letter to the court identifying that under section 59(9) of the Act, an extension of the order is being sought;
  - ii) the letter should identify the difficulties encountered in fulfilling the required hours; and,
  - iii) attached to the letter shall be a copy of the applicable court order.
3. The above noted is submitted to the court clerk. A Youth Justice Court Judge can grant an extension for up to a twelve (12) month period.

4. Where a young person is unable to comply at any time with the Community Service Order due to a change in circumstances, a Review of Non-Custodial Sentence under section 59 of the *YCJA* may be initiated by the young person or social worker. In the case of a sentence made under the *YPOA*, a review is initiated in accordance with section 11(10). The court may require a narrative progress report (Refer to Policy 9.10).
5. If it appears that a young person willfully fails or refuses to complete the required hours of Community Service, the social worker shall as soon as possible, but not later than one month prior to the expiry date of the Order, advise the young person that a Failure to Comply charge could result. In addition, the young person shall be made aware of the option to apply to the Youth Justice Court for an extension of time.

## **PROCEDURES:**

### **Personal Service Order**

1. Upon receiving a referral for a Personal Service Order, a file should be established.
2. As soon as possible, and no later than 2 weeks from receipt of the Court Order, an intake interview should be held with the young person, and with his/her parent/guardian or CSSD, if the youth is in the care or custody of a manager. The Order and related expectations should be explained, including the Review provisions and the consequences of failure to comply.
3. An interview must be held with the person who will receive the service, to review the suitability of tasks and supervision needs of the young person. This review will be conducted in view of the young person's age, sex, skills, limitations, attitude towards the Personal Service work, and offence for which the Order was made. Disclosure of offence history, family information, or other social history information should not occur, except where it is essential to establishing supervision needs.
4. Supervision guidelines are critical where personal service is being performed for an individual victim. The victim should be encouraged to arrange for full-time or regular supervision, as is felt necessary in the particular case.
5. The victim shall be advised that in the case of Personal Service Orders, the liability provisions do not apply and CSSD does not assume any associated risk or liability.

6. The social worker must provide the young person with a *Community Service Order/Personal Service Order Work Record* card, and instruct the young person to ensure completion of the appropriate section after each period of work.
7. The young person shall be accompanied by the social worker to the first period of work, or to an initial interview with the person who will receive the service, to ensure that work tasks and supervision levels are agreed upon and properly understood by all parties. The young person's parent/guardian or CSSD, if the youth is in the care or custody of a manager, shall also be made aware of, and agree to the nature and conditions of the work. There must be no conflict with regular hours of employment or education, and the Order must be able to reasonably be completed within the time limit established in the Order (or within 12 months, in the absence of a specific stated limit).
8. All the above procedures, with the exception of file creation and documentation procedures, may be performed in cooperation with a community group to the extent that is appropriate and agreed upon between the social worker and the community group. If a community group is involved in performing any of the above procedures, in part or in full, it is the responsibility of the social worker to monitor these activities and ensure procedures are in compliance with policy.
9. The policy and procedures governing the completion of Community Service Orders, and in particular safety and supervision precautions, also apply to the completion of Personal Service Orders, with such modifications as are necessary.
10. The policy and procedures governing case closure of Community Service Orders, also apply to the closure of Personal Service Orders, with such modifications as are necessary.

## **PROCEDURES:**

### **If Young Person is Injured during Course of a Community Service Order Placement**

1. An agency or organization that provides community service placement must ensure the young person is appropriately supervised during the course of these activities.
2. If a young person is injured during the performance of community service work, the social worker shall complete a narrative incident report. Provincial office staff will confer with the Insurance Division of Treasury Board Secretariat if, or when, civil action results from this event.



3. The above noted narrative report shall include:
  - a. description of placement;
  - b. description of the supervision provided by sponsoring agency;
  - c. description of events related to injury (including day, time, people present);
  - d. description of any required emergency medical services and status of young person's health;
  - e. any information pertaining to proposed civil legal action, and
  - f. copy of applicable court order(s) establishing the community service work requirement.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Community Service Order/Personal Service Order Work Record*
- *Community Service Order/Personal Service Order Work Contract*
- *Pre-sentence Report*

## PROBATION

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**Policy no.: 5.5**

**Effective Date: September 13, 2004**

**Date Revised: December 7, 2016**

**Policy Cross References:** Failure to Comply (Breach); Risk-Need Classification; Non-Custodial Sentence Review; Order to Reside

**Legislative References:** *Youth Criminal Justice Act*; **s.42(2)(k)** Youth sentences; **s.55(1)** Conditions that must appear in orders; **s.55(2)** Conditions that may appear in orders; **s.56(5)** Commencement of an order; *Young Persons Offences Act*; **s.11(1)** Dispositions

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**PURPOSE:** To outline sentence and case management practices for the supervision of young persons with a Probation Order made under s.42(2)(k).

### **POLICY:**

Social workers have direct responsibility for supervision of every case where the probation order stipulates that the young person “report to and be supervised by the Provincial Director, or a person designated by the youth justice court.” The young person is supervised in accordance with the specific conditions of his/her probation order and the provincial risk-need classification system.

### **PROCEDURES:**

1. The young person and parents must be contacted in person or by telephone as soon as reasonably possible, and no later than five (5) working days from receipt of the Probation Order, and provided with the social worker’s name, location, telephone number, and what the initial reporting schedule will be.
2. Unless prohibited by geographic constraints, a face-to-face or in person contact should be held within ten (10) working days after receipt of the probation order. As part of this interview the social worker shall review the specific conditions of the order with the young person. The young person shall be advised of the sentence expiry date. As possible, and appropriate, the young person’s parent or guardian shall be invited to attend this initial in person contact.

3. In terms of file administration:
  - a) unless one exists, a case file shall be established;
  - b) the commencement and expiry dates for the order shall be documented;  
and
  - c) data must be entered into CRMS within 2 working days.
4. Unless the Probation Order contains a specific reporting schedule, the schedule for reporting will be determined by the results of the *Youth Level of Service – Case Management Inventory (YLS-CMI)*.
5. In terms of administration of the court order:
  - a) if a condition of probation becomes inappropriate or difficult to comply with, a Review of Non-Custodial Sentence may be considered (as per policy section 9.10; or
  - b) if the young person willfully fails or refuses to comply with the condition(s) of probation, consideration may be given to pursuing a breach of probation (as per policy 5.7).
6. In terms of sentence administration:
  - a) if the young person receives a Custody and Supervision Order after a probation order has commenced, this probation order continues to be in effect; and
  - b) if a probation order is issued at the same time as a custody and supervision order it will begin only after community supervision has concluded.
7. If a Probation Order includes an Order-to-Reside where the Provincial Director specifies, the social worker shall make a decision as to how to apply this condition and document any requirements on the prescribed form *Assessment Re: Application of an Order-to-Reside*. Refer to policy 5.6 on Order to Reside.
8. As of the sentence expiry date, unless any new orders are in affect, the case is to be closed and terminated on CRMS. Records are to be maintained in accordance with the records management-disclosure provisions of the *YCJA*.

### **Unsupervised Probation Order**

1. Unsupervised orders have no condition that requires supervision by the provincial director/delegate, therefore, beyond an initial contact there is no mandate for the ongoing supervision of that specific order.
2. The young person and parents must be contacted in person or by telephone as soon as reasonably possible, and no later than five (5) working days from receipt of the Probation Order, and provided with the social worker's name, location, and telephone number.

3. Unless prohibited by geographic constraints, a face-to-face or in person contact should be held within ten (10) working days after receipt of the probation order. As part of this meeting the social worker shall review the specific conditions of the order with the young person. The young person shall be advised of the sentence expiry date and the non-custodial review provisions of the Act.
4. In terms of file administration:
  - a) unless one exists, a case file shall be established;
  - b) the commencement and expiry dates for the order shall be documented;  
and
  - c) data must be entered into CRMS within 2 working days.

### **EXCEPTIONS TO POLICY:**

If a condition on an unsupervised order is a requirement to complete community service hours, the worker shall arrange and monitor a placement to ensure that this requirement is fulfilled.

### **RELEVANT DOCUMENTS:**

- *Assessment Re: Application of an Order-to-Reside*
- *Youth Level of Service – Case Management Inventory (YLS-CMI).*

## ORDER TO RESIDE

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**Policy no.: 5.6a**

**Effective Date: January 1, 2003**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; **s.55(2)(g)** Conditions that may appear in orders; **s.105(3)(e)** Other conditions

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**PURPOSE:** To describe processes associated with the application of an Order to Reside Condition which is part of a community based order.

### **POLICY:**

1. Upon receipt of a court order that includes an order to reside condition which provides authority for the Provincial Director to specify place of residence, the responsible social worker shall review the necessity for, or appropriateness of, requiring the young person to reside in a specific living arrangement and shall document this initial determination as to the application of the condition.
2. An order to reside as specified by the Provincial Director/delegate can only be included as a condition of community supervision if it has been examined, and documented, as part of the formal discharge plan prepared for a young person nearing release from secure or open custody.
3. If a Youth Justice Court specifies a particular place of residence and/or identifies a specific care provider, this is not considered an Order to Reside in the context of sections 52(2)(g) or 105(3)(e) or the *YCJA*.
4. If the Director of Child Protection and In Care has been identified as being responsible for an order to reside under 55(2)(g) of the Act, the social worker shall immediately submit a request for a Non-Custodial Review. The worker, on behalf of the program, is to request the Youth Justice Court to alter the order so that it references the Director of Youth Corrections as the entity defined under the *YCJA* e.g. the Provincial Director.
5. Authority to enforce this order exists only for the duration of the order in which it is included. The Provincial Director, or delegate, may specify place of residence for all, or part of, the applicable order.

6. The decision to require a young person to live in a place outside the parental, or normal place of residence, is a last resort measure undertaken to stabilize the young person's situation and avert the potential use of custody. When the Provincial Director/delegate specifies residence outside of parental or normal place of residence, and assists-supports the young person with this, all placements undertaken will comply with the approval process as articulated in provincial policy.
7. Open Custody facilities may be utilized as short term placement sites for youth with an order that includes an order to reside Condition. (Refer to policy 5.6b). Use of a facility placement will be reserved for those case circumstances where it can be demonstrated that a more community based living arrangement cannot sufficiently address the behaviours that are placing the young person at risk of escalated involvement in the youth justice system. In such circumstances specific limits on placement duration will be adhered to in accordance with formal initial placement and extension approval processes.
8. Normally, approval would not be given to placing a young person in an open custody group home, using the order to reside, immediately upon their release from secure custody. The Zone Manager, as delegate of the Provincial Director, however, may authorize an exemption to this practice as part of the application review process (policy 5.6b).
9. Normally, approval would not be given to extending an open custody group home placement, using the order to reside, when the young person's initial open custody sentence expires. As delegate of the Provincial Director, the Zone Manager, however, may authorize an exception to this practice as part of the application review process (5.6b on Order).

## **PROCEDURES:**

### **Social Worker Assessment: Application of an Order to Reside**

1. Whenever the Youth Justice Court issues an order with an Order to Reside condition, the social worker responsible for supervision of that order shall make a determination as to whether to employ this condition to require a young person to change residence and will document this decision using the form *Assessment Re: Application of an Order-to-Reside*. This form specifies the proposed course of action at the time the order is issued.
2. Three interrelated criteria have to be met when using an order to reside to require a young person to reside somewhere other than where they currently reside:
  - a) young person's behaviour is likely to result in further charges;
  - b) his/her current living situation is perceived as contributing to this risk of recidivism; and,

- c) activities/efforts to support current living situations are not or have not substantially reduced this risk.
- 3. When young person is living with a family member the social worker shall assess information on family history and current functioning on caregiver's ability to provide supervision-support.
- 4. Family history includes assessing such features as:
  - a) parent(s)/guardian(s) past or current involvement with the law;
  - b) stability of marital relationship;
  - c) history, within family, of drug or alcohol abuse;
  - d) existence of mental health issues;
  - e) financial or housing issues; and
  - f) significant events that have impacted on the family e.g. death of a family member.
- 5. Current family functioning includes assessing such features as:
  - a) relationship between individual family members;
  - b) communication patterns within household;
  - c) existence of /communication of/ enforcement of "house rules"; and
  - d) nature of any discipline employed.
- 6. If child protection concerns are identified for a young person who meets the definition of a child (up to age 16 years of age), the social worker, in consultation with his/her supervisor, shall determine if there is a need to make a referral to CSSD intake.
- 7. In the case above, if a referral is made by the social worker and the referral was actioned but unverified after a child protection assessment, the social worker may discontinue consideration of an alternate placement. Exceptions to this course of action may be made if circumstances exist which support the assertion that parental/guardian behaviour and/or attitude are directly contributing to the risk of the young person's continued involvement in the youth justice system.
- 8. When a young person is not residing with relatives and is independent of family of origin, the social worker shall consider:
  - a) young person's maturity and ability to address own physical/emotional needs;
  - b) young person's willingness to accept supports;
  - c) the influence/attitudes of other person's living in the home;
  - d) the availability of at least one mentoring adult; and
  - e) factors about the physical setting including if or how it:

- i) limits the young person's access to appropriate educational-vocational programing; or,
- ii) limits the young person's access to specialized counselling; or,
- iii) limits the young person's access to recreational and/or life skills training.

### **Placement Approval Process**

1. A written assessment should be prepared by the social worker and submitted to his/her supervisor for placement approval. This assessment shall:
  - a) provide a summary of all home visits and all interviews completed;
  - b) note views and wishes of young person regarding the proposed placement;
  - c) describe relationship between young person and proposed residential service providers; and
  - d) make a recommendation.
2. Placement can be approved by the Program Supervisor. Until all documentation is received it can only be considered a Preliminary Placement Approval.

### **Summary of Placement Approval Process Activity / Requirement**

<b>Activity/Requirement</b>	<b>Timeframe</b>
A home visit shall be completed during which time a physical inspection of the premises is conducted. To ensure basic safety standards are met, the inspection shall be conducted in accordance with the checklist on form <i>Safety Checklist for Group Home and Order-to-Reside Living Arrangements</i> . A copy of this checklist is to be reviewed with the care providers, signed by them and the social worker and a copy placed on the young person's file.	Prior to Placement Approval
During the home visit all persons living in the home shall be interviewed. These interview(s) should gauge the ability of, and willingness of, the proposed caregivers to adequately supervise the young person.	Prior to Placement Approval



Activity/Requirement	Timeframe
<p>Police checks must be completed on all adults 18 and over. This shall be completed verbally prior to placement but Certificate of Conduct and Vulnerable Sector Check should be provided within thirty (30) days of placement. The presence of a criminal record will not automatically disqualify an individual applicant from the process, however, the matter must be carefully assessed and a full explanation provided. The social worker must obtain a description of the offence and the details of the event; this information is to be reviewed by the immediate Supervisor. In assessing the criminal record of an individual, the following criteria must be considered:</p> <ul style="list-style-type: none"> <li>a) number and type of charges/convictions</li> <li>b) time elapsed since past criminal activity</li> <li>c) age and circumstances of the individual at the time of the offence</li> <li>d) conduct of the individual since the offence</li> <li>e) likelihood of the individual re-offending</li> <li>f) relevance of the criminal activity to the provision of care to potentially vulnerable individuals.</li> </ul> <p>Police checks shall be updated every five (5) years.</p> <p><b>In situations where the criminal history reveals a previous conviction of a child-related crime, sexual offences or violent offences, placement cannot proceed. The prospective caregivers are to be advised of this decision in writing.</b></p>	<ul style="list-style-type: none"> <li>i) Verbal Checks Prior to Placement Approval</li> <li>ii) Certificate of Conduct within thirty (30) days of Placement</li> </ul>
<p>For all young persons &lt;18 in the home, determination should be made regarding current or previous involvement with Youth Corrections including offence history.</p>	<p>Prior to Placement Approval</p>
<p>Children, Seniors and Social Development Records Check on all adults 18 and over must be completed to determine if there is currently, or has been, past involvement with child protection system. Placements cannot proceed where clearance has not been provided for all adult residents of the home.</p>	<p>Prior to Placement Approval</p>
<p>Two Verbal Reference Checks shall be completed. At least one shall be a Non-Relative. Referees should know the caregiver for at least three (3) years. The results of these checks shall be documented on the form <i>Reference Check – Order-to-Reside Placements</i>.</p>	<p>Prior to Placement</p>

1. A *Declaration of Confidentiality* shall be completed prior to placement and updated on an annual basis.

2. If the identified placement is any of the following the above noted approval process need not be applied:
  - a) an approved foster home;
  - b) a CSSD individualized living arrangement e.g. staffed apartment;
  - c) a treatment centre (either within or outside the province); and
  - d) a private home arrangement that had been approved for a previous order to reside placement within the last twelve (12) months.

### Financial Support

1. When supervisor approval is given to proceed with the financial support of a placement, a base rate of \$1215.00 is provided.
2. The support and supervision demands of individual young persons will vary. In recognition of this, an Additional Monthly Service Recognition allocation may be provided in addition to the base rate. A recommendation on the rate of additional allowance shall be submitted to the social worker's immediate supervisor for approval using form *Additional Service Recognition Funding Assessment: Order-to-Reside Placements*. **Additional funding may only be considered for non-relative placements.**
3. If additional service recognition funding has been approved it shall be reviewed on an ongoing basis. This review schedule shall be consistent with that required in relation to the current Youth Level of Service / Case Management Inventory classification e.g. every 3 months for high or very high, every 6 months for those assessed as medium.
4. If the Provincial Director/delegate is providing any financial support to maintain the placement and the young person is being placed for more than 30 days, the social worker shall immediately make application for the Canada Child Tax Benefit on behalf of the Director using Form 14-636 entitled "Canada Child Tax Benefit Notice of Change". This form shall be completed within three (3) working days of the young person entering placement.

### Summary of Financial Support

Type of Financial Support	Amount – Frequency	Details
Base Rate (for both relative and non-relative placements)	\$1215.00	Base amount equal to that paid under foster care for child 12 plus years older; in addition to base amount of \$915.00, "block funding" of \$300 monthly is provided to cover social recreational costs, local travel, and the equivalent of one weekend per month of respite.

Type of Financial Support	Amount – Frequency	Details
Additional Service Recognition Allocation (for non-relative placements only)	\$200.00 to \$600.00	Determination of additional service recognition component based upon completion of assessment tool using form <i>Additional Service Recognition Funding Assessment: Order-to-Reside Placements</i> .
Clothing Allowance	\$300.00 annually	
School Supplies	\$300.00 annually	Issued to young person enrolled in high school, a GED/ABE program, or post-secondary program
Christmas Allowance	\$400.00	To be provided in December
Graduation Related	Maximum of \$500 annually	Includes costs of: i) graduation tickets ii) purchase of rental of formal attire; iii) hair and make-up appointments; iv) school pictures; and v) graduation book
Fees connected with formal social-recreational programs	Maximum of \$500 annually	Activity should be connected to individualized service plan. Prior to approval available community subsidies shall be explored such as the Jump Start program or YMCA.

### Basic Medical Services

1. Young people are eligible to receive coverage for prescription drugs through the Newfoundland and Labrador Prescription Drug Program (NLPDP). The youth social worker is responsible for submitting the application. Additional information regarding the NLPDP may be obtained online at: <http://www.health.gov.nl.ca/health/index.html>.
2. A supervisor may approve funds to cover all or part of the cost of medications not covered by the NLPDP.
3. The costs of medical equipment shall be covered if it is prescribed by a physician and is not covered by the Provincial Health Plan (MCP).
4. Youth may be eligible for medical equipment and/or supplies provided through the Special Assistance Program of the Department of Health and Community Services and administered by the Regional Health Authority. The social worker shall explore funding under this program before recommending funding approval by CSSD.

5. First Nations and Inuit youth, who are eligible for Health Canada's Non-Insured Health Benefits (NIHB), may be able to receive partial or full coverage for a specified range of health benefits, including drug benefits (prescription and over-the-counter); dental care; vision and eye care; medical supplies and equipment; short-term crisis intervention; mental health counselling; and medical transportation when these services are not provided by MCP, NLPDP or a third party insurance.

### **Dental Services**

1. The costs of basic dental services shall be covered including:
  - a) an examination and cleaning **every 12 months**;
  - b) routine fillings and extractions;
  - c) emergency examinations.
2. The costs of other services may be covered, with supervisory approval, if the services are deemed medically necessary by a qualified health practitioner (for example, a youth who received specialized orthodontic treatment).

### **Vision Care**

1. Young persons are eligible to have the costs of an **annual** eye examination covered and the costs of eye glasses or contact lenses up to a maximum of \$200 per year.

### **Other Financial Supports**

1. Other financial supports may be provided, with supervisor approval, on a case-by-case basis. These financial supports may include, transportation; mental health services; social/recreational activities; burial expenses; child care for youth with children; moving expenses; and driving school costs.

### **Transportation**

1. The costs of a bus pass or other transportation shall be covered for a young person to attend high school or an educational/rehabilitation program when it is not provided by the particular program. Transportation costs for other health-related appointments may be provided, with supervisory approval.

### **Young Person with Income**

1. If a young person, who is being provided financial support for a residential placement, becomes employed they are to be advised that their income will be assessed. A basic exemption of \$200 will be applied to the young person's net income. An amount equal to the remaining monthly net earnings will be reduced dollar for dollar from any allowance paid on the young person's behalf.

2. If a young person will turn 18 years of age, while in receipt financial support for a residential placement, they shall be advised that they are required, sixty (60) days prior to their birthday, to apply for income support through the Department of Advanced Education, Skills and Labour. The social worker shall provide information necessary to ensure the young person receives the maximum eligible benefits. All the allowance provided through Advanced Education, Skills and Labour will be assessed. An amount equal to any income support provided will be reduced dollar for dollar from the monthly allowance paid on behalf of the young person.

### **Mental Health Services**

1. Youth shall be referred to community-based mental health and addictions services where available. Funding for private mental health or addictions services may be approved by a supervisor when community resources are not available. Refer to policy 9.8 on Service Funding.

### **Social/Recreational**

1. Social/recreational activities may be covered, to a maximum of \$500 annually, if the activity addresses a need arising from the risk-need assessment or other formal service planning process. Community subsidies shall first be explored.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Assessment Re: Application of an Order to Resides*
- *Safety Checklist for Group Home and Order-to-Reside Living Arrangements*
- *Additional Service Recognition Funding Assessment: Order-to-Reside Placements*
- *Declaration of Confidentiality*

## ORDER TO RESIDE – GROUP HOME PLACEMENT

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**Policy no.: 5.6b**

**Effective Date: January 1, 2003**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; s.55(2)(g) Conditions that may appear in orders; s.105(3)(e) Other conditions

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**PURPOSE:** To outline conditions for the approval of a group home placement using the authority of an order-to-reside condition of a community based order.

### **POLICY:**

1. Upon receipt of a court order that includes an order to reside condition which provides authority for the Provincial Director to specify place of residence, the responsible social worker shall review the necessity for, or appropriateness of, requiring the young person to reside in a specific living arrangement and shall document this initial determination as to the application of the condition.
2. If a Youth Justice Court specifies a particular place of residence and/or identifies a specific care provider, this is not considered an Order to Reside in the context of sections 55(2)(g) or 105(3)(e) of the *YCJA*.
3. Authority to enforce this order exists only for the duration of the order in which it is included. The Director, or delegate, may specify place of residence for all, or part of, the applicable order.
4. Open Custody facilities may be utilized as short term placement sites for youth with an order that includes an Order to Reside condition. Use of a facility placement will be reserved for those case circumstances where it can be demonstrated that a more community based living arrangement cannot sufficiently address the behaviours that are placing the young person at risk of escalated involvement in the youth justice system. In such circumstances specific limits on placement duration will be adhered to in accordance with formal initial placement and extension approval processes. The rules and procedures governing a facility placement will apply with the necessary amendments required to address the different legal status of a young person placed under an Order to Reside.

5. A group home placement may be considered:
  - a) when the order to reside is the condition of a court issued undertaking;
  - b) when the order to reside is a condition of probation or a deferred custody and supervision order;
  - c) when the order to reside is set by the court as a condition of conditional supervision as a result of custodial review;
  - d) when the order to reside is approved by a social worker's supervisor as an additional condition of community supervision component of a custody and supervision order.
6. Although an order to reside provides a legal authority for use of a group home placement, the appropriateness of this action should also be a strong consideration. In this context a group home placement may be considered when:
  - a) a more appropriate community alternative is not readily available and time is required to develop or arrange a placement site;
  - b) it is felt that the youth could benefit from the enhanced structure offered by a group home setting to prepare for a more appropriate community alternative;
  - c) when a placement terminates or a breakdown occurs in a more community based arrangement and an alternative site is not immediately available; or
  - d) when a placement terminates or a breakdown occurs in a more community based arrangement and it is believed that the young person could benefit from the enhanced structure offered in the group home setting before proceeding with making further alternate arrangements.

## **PROCEDURES:**

### **Applying the Order to Reside Condition**

1. Normally placements shall not exceed sixty (60) days, however, an extension of up to thirty (30) days may be authorized by the applicable Zone Manager.
2. Zone Managers approve all group home placements using an Order to Reside.

### **Placement Approval Process**

1. In seeking placement approval the referring social worker must prepare and submit a written residential plan that: (i) articulates the reason for placement; (ii) provides an estimate of placement duration relative to both client need for service and efforts to explore-arrange an alternative residential option; and (iii) relates the placement to the needs of the young person and the service planning issues. Required documentation to accompany the request will include: (i) the most recent *YLS-CMI* assessment; (ii) any other assessments completed on the youth; and, (iii) as available, the *Individual Support Services Plan (ISSP)*, the Youth

- Corrections service plan or other current service plan in place. The social worker's immediate supervisor will review this request and if he/she concurs with the recommendation for placement, this report is then submitted to the Zone Manager for approval. A written response will be provided and, where approved, it shall specify the duration of placement.
2. If an extension to the 60 day ceiling on placement duration is sought the social worker will prepare and submit a narrative extension request using form *Extension Request Group Home Placement Under an Order-to-Reside*. The extension request must be supported by the worker's immediate supervisor.
  3. The above noted extension request will be submitted no later than five working days prior to the expiry of the initial placement approval. This report will be submitted to the Zone Manager for review. A written response will be provided and, where an extension is approved, the approval will specify the amount additional time. The extension period cannot exceed 30 days.

### **Placement Support**

1. If the duration of placement is expected to be more than 30 days, the social worker must complete an *Application for Canada Child Tax Benefit* within five working days of placement.
2. The social worker would normally escort the young person to the placement. At the time of placement the social worker will provide the following information to facility staff:
  - a) name of social worker, location, telephone number, and name/number of the social worker's supervisor;
  - b) addresses and/or contact numbers for both parents, siblings, and any other family or friends;
  - c) copy of Probation Order or Intensive Support and Supervision Order, Conditional Supervisor Order, Deferred Custody and Supervision Order, or conditions of Community Supervision including copy of original custody and supervision order(s);
  - d) Pre-Sentence Report;
  - e) copies of pertinent case file information (e.g. YC Service Plan, *YLS/CMI*, Progress Report, Discharge Plan, any other pertinent assessment information);
  - f) MCP, hospital cards;
  - g) information that will assist group home staff with ensuring the health and safety of any other person in the home; including any health and/or safety risks posed by the young person toward any caregiver or other young person in the home;
  - h) medical history information including contact information for family doctor and any other health professional involved with the young person's



- medical status; any medication currently in young person's possession or prescription information;
  - i) medical, psychiatric and emotional history and special needs of the young person;
  - j) dental information and outstanding dental needs;
  - k) list of upcoming appointments and name of family physician, dentist, specialist, counsellors;
  - l) information that will assist group home personnel in ensuring the young person's safety, including the need to protect the young person from contact with another person;
  - m) information about the day to day care of the young person, including sleeping habits and bed time routine, food preference and time routine; and
  - n) school attendance and performance information including assessments, course list, and current transcripts.
3. If the open custody worker has not been present during the admission process, an interview will be arranged with the young person within two (2) working days of admission.
  4. Upon admission, the young person shall be provided information about the operational practices and expectations of the specific group home in which they have been placed. The young person will be provided a copy of the facility rules, which must include a specific list of contraband items (refer to policy 5.2 and 5.7 of the *CSSD Residential Services Policy and Procedures Manual*), and any other information that has been prepared to assist with a young person's orientation to a placement.
  5. Upon admission, a clothing search of all other personal belongings shall be carried out in the presence of the young person, by admitting staff for contraband purposes.
  6. Upon admission to the group home, the young person shall be assigned a primary/key worker from among the available residential care staff.
  7. Policies and procedures governing the young person's stay at a group home are detailed in the *CSSD Residential Services Policy and Procedures Manual*.

### **Discharge Plan**

1. The social worker will maintain ongoing contact with the social worker responsible for open custody throughout the course of a young person's placement. The social worker is responsible for finalizing placement upon release.
2. No later than five (5) days before a young person's scheduled or anticipated release from custody date, a discharge plan shall be documented using the form

*Discharge Plan Summary.* Ensuring completion of this form is the responsibility of the social worker. This document shall be reviewed with the young person prior to his/her release by either the or social worker responsible for open custody.

3. The social worker shall meet the young person within two (2) working days of his/her release from custody.

## **EXCEPTIONS TO POLICY:**

1. Normally, approval would not be given to placing a young person in an open custody group home, using the Order to Reside, immediately upon their release from secure custody. The Zone Manager, however, may consider an exemption from this practice as part of the application review process.
2. Normally, approval would not be given to extending an open custody group home placement, using the order to reside, when the young person's initial open custody sentence expires. The Zone Manager, however, may consider exception from this placement as part of the application review process.

## **RELEVANT DOCUMENTS:**

- *Residential Services Policy and Procedures Manual*
- *Discharge Plan Summary*
- *Extension Request – Group Home Placement Under an Order-to-Reside*
- *Order-to-Reside: Placement Approval Checklist*
- *Application for Canada Child Tax Benefit*

## FAILURE TO COMPLY (BREACH)

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**Policy no.: 5.7**

**Effective Date: December 8, 2004**

**Date Revised: December 7, 2016**

**Policy Cross References:** Supervised Probation; Intensive Support and Supervision

**Legislative References:** *Youth Criminal Justice Act*; s.137; *Young Persons Offences Act*; s.11(10) Dispositions

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**PURPOSE:** To outline the general directions for providing information to the police for the purpose of initiating a failure to comply charge.

### **POLICY:**

1. A young person serving a sentence under the *YCJA*, excluding Deferred Custody and Supervision, Custody and Supervision, Reprimand or Absolute Discharge, who willfully fails or refuses to comply with specific conditions of that order, may be charged with an offence, under section 137 of the *YCJA* that is punishable by summary conviction.
2. The social worker shall retain a record, in the youth corrections case file, of any failure to carry out the terms and conditions of an order. The required entry must be made within 5 working days after observation of, or notification of, a breach of conditions. A breach may be initiated up to 6 months after the applicable sentence has expired.
3. All reasonable efforts shall be made to address the young person's non-compliance with conditions of an order before action is taken to initiate a formal breach. Such efforts could include:
  - a) sending a registered letter to the young person's last known place of residence that advises of the possibility of a charge;
  - b) completing a home visit; or
  - c) discussing the non-compliance with the young person's parent(s) or other responsible adult who may be able to assist the young person.

4. The Supreme Court of Appeal (Newfoundland and Labrador) has determined the meaning, and application, of the condition to keep the peace and be of good behaviour “as being limited to, and defined by, compliance with the law, whether the offence is criminal, quasi-criminal, or regulatory in nature.” For this reason this specific condition cannot be the basis for a social worker initiating a breach process. When a young person, on an existing probation order, commits a new offence this condition automatically results in an additional failure to comply change to accompany any new charge(s).
5. Factors to consider in the decision to provide information to the police in support of the laying of a failure to comply charge include:
  - a) the seriousness of the alleged violation;
  - b) the young person’s response to, and attitude toward, supervision, and
  - c) the young person’s history of compliance with court orders.
6. The social worker shall only contact the police regarding a breach if he/she has conferred with their immediate supervisor and this supervisor is in agreement with the action.

## **PROCEDURES:**

### **Laying a Charge**

1. For the purposes of providing information to the police in support of laying a failure to comply charge, the social worker shall document all known evidence in the following format:
  - a) a narrative report documenting the social worker’s first hand knowledge of any violation(s) and include details relating to dates, times, potential witnesses, etc.;
  - b) the above noted narrative must be signed by the social worker;
  - c) attach any written document(s) pertaining to the alleged violation(s) e.g. letters to young person, correspondence from school, etc.;
  - d) a list of other potential witnesses to the alleged violation(s) and contact information; and
  - e) attach a copy of the applicable court order.
2. When a failure to comply application involves a breach of a condition related to school attendance or behavior in school, the social worker shall request written signed documentation (not emails) from the school, detailing the nature of the non-compliance e.g. number of days absent and dates.

3. When a failure to comply application involves a breach of condition that requires a young person to attend counselling, the social worker shall require written signed documentation (not emails) from the service provider detailing the non-compliance e.g. number of appointments missed and dates.
4. The above described package of information, and additional verification as required, should be sent to the appropriate police office with a request that consideration be given to laying a failure to comply charge under section 137 of the *YCJA*. The police will have final say as to whether, or how, this matter is pursued.
5. If, during the course of the investigation, the officer conducting the investigation requests additional information, available to the social worker by virtue of his/her case management responsibility, the worker should provide same or direct the officer to the appropriate primary source of the required information.
6. Where the police have primary knowledge of the alleged violation, the police will carry out all aspects of the investigation and court process. The social worker may be asked to provide information and evidence.
7. The social worker is not responsible to prepare documentation for charges for any sentence that the department has no direct responsibility to supervise ie. separate fines, orders of compensation and restitution. If the worker, for example, has first hand knowledge a fine has not been paid, he/she can advise the police or court for any action they deem necessary.
8. A conviction under section 137 of the *YCJA* is a summary conviction. For that reason a charge may be initiated at any time prior to the order's expiration and up to six months thereafter (in accordance with section 786(2) of the *Criminal Code of Canada* on limitation period).

### **Court Process**

1. The social worker, if called as a witness, must be prepared with the following information, in writing, taken directly from applicable entries in the youth corrections file:
  - a) an exact and factual incident or occurrence considered to be a violation;
  - b) the day/time/place of the events in question;
  - c) the details of any efforts to encourage or cause compliance with the applicable court order; and
  - d) a copy of the applicable court order, noting the conditions violated.

2. The social worker shall, normally, provide only first hand knowledge when testifying in court. If information was obtained from another source, like parents, the social worker must note that this evidence is hearsay and identify the source.

### **Impact of Breach that Occurs After the Young Person's 18<sup>th</sup> Birthday**

1. The *YCJA* establishes the Youth Justice Court (s.13). Section 14(1) of the *YCJA* states that "...a Youth Justice Court has exclusive jurisdiction in respect of any offence alleged to have been committed by a person while he or she was a young person, and that person shall be dealt with as provided in this Act." An exception to this jurisdiction is created for persons who are over eighteen but are alleged to have committed an offence while under eighteen (s.14(5)).
2. A person over the age of eighteen, who is charged with a breach of s.137 of the *YCJA* is not a person alleged to have committed an offence while he or she was a young person. Therefore, the youth criminal justice court has no jurisdiction to deal with that person under the *YCJA*. Although the Probation Order was made before the person was eighteen, the act or omission which constitutes the alleged breach would have occurred after the person was eighteen. In this situation the exclusive jurisdiction of the youth criminal justice court does not apply. Furthermore, the exception under s.14(5) is not applicable. In the absence of specific language in the *YCJA* making it applicable to persons over eighteen charged with a breach of s.137, then the provisions of the Criminal Code apply.

### **EXCEPTIONS TO POLICY:**

### **RELEVANT DOCUMENTS:**

## INTENSIVE SUPPORT AND SUPERVISION ORDER

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**Policy no.: 5.8**

**Effective Date: September 13, 2004**

**Date Revised: November 23, 2016**

**Policy Cross References:** Failure to Comply (Breach); Non-Custodial Sentence Review

**Legislative References:** *Youth Criminal Justice Act*; s.42(2)(l) Youth sentences; s.42(3)

Agreement of provincial director

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**PURPOSE:** To ensure the social worker, if requested by a Youth Justice Court Judge, can accurately advise the Court as to the status of this sentencing option.

### **POLICY:**

1. An Intensive Support and Supervision Order under section 42(2)(l) of the *YCJA* may only be given if the Provincial Director, or delegate, confirms that such a program is available. Currently there is no provincial program that has been approved as a distinct intensive supervision and support program.

### **PROCEDURES:**

1. Should a Youth Justice Court inquire as required under the *YCJA*, as to the availability of an intensive support and supervision program, as defined under section 42(3) the social worker shall advise the court that no program is available.
2. Should the court issue an intensive support and supervision order, without first consulting with the representative of the Provincial Director, the social worker shall consult with provincial office to determine an appropriate course of action.

### **EXCEPTIONS TO POLICY:**

### **RELEVANT DOCUMENTS:**

## ATTENDANCE PROGRAM

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**Policy no.: 5.9**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; s.42(2)(m) Youth sentences; s.42(3) Agreement of provincial director

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**PURPOSE:** To ensure the social worker, if requested by a youth justice court judge, can accurately advise the Court as to the status of this sentencing option.

### **POLICY:**

1. An order that a young person attend a non-residential program, under section 42(2)(m) of the *YCJA* can only be given, if the Provincial Director agrees that such a program is available. Currently there is no provincial program that has been approved as an attendance program.

### **PROCEDURES:**

1. Should a Youth Justice Court Judge inquire, as required under the Act, as to the availability of an attendance program, as defined under section 42(2)(m), the social worker shall advise the court that no program is available.
2. Should such an order be given, without consulting the representative of the Provincial Director, the program supervisor shall consult with provincial office to determine an appropriate course of action.

### **EXCEPTIONS TO POLICY:**

### **RELEVANT DOCUMENTS:**



## DEFERRED CUSTODY AND SUPERVISION ORDER

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**Policy no.: 5.10**

**Effective Date: June 22, 2004**

**Date Revised: December 7, 2016**

**Policy Cross References:** Suspension of Deferred Custody and Supervision Order

**Legislative References:** *Youth Criminal Justice Act*; **s.42(2)(p)** Youth sentences

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**PURPOSE:** To outline sentence administration and case management practices for the supervision of a young person with a deferred custody and supervision order.

### **POLICY:**

1. An individual deferred custody and supervision order cannot exceed six (6) months. All conditions attached to this sentence are established by a Youth Justice Court at time of sentencing. The case management of this sentence type includes elements of both non-custodial and custodial sentences.
2. For the first thirty (30) days of this order, at the minimum, the social worker is required to have weekly in person contact with the young person. Subsequent to this period, supervision will be determined by the results of the provincial risk-need classification system and activities arising from the service planning process.

### **PROCEDURES:**

Intervention shall commence as soon as possible with the young person and the family following the deferred custody and supervision order.

1. A Youth Corrections case file must be established, unless one already exists. This includes CRMS data entry which must be completed within two days.
2. The young person and parent/guardian or CSSD, if the youth is in the care or custody of a manager, shall be contacted in person or by telephone no later than **three (3) working days** from receipt of the Deferred Custody and Supervision Order. The social worker shall provide his/her name, location, and telephone number. During this initial interview, the specific conditions included on the order shall be reviewed with the youth and his or her family to ensure all the conditions, the implications of failure to comply, and the Review provisions are fully understood.

3. A face to face interview shall be held with the young person and parents/guardian or CSSD, if youth is in the care or custody of a manager, as soon as is practically possible, and no later than **five (5) working days** from the initial contact to begin the process of the risk-need classification assessment (See policy 9.6).
4. If the youth and/or the youth's family is currently receiving services under the *Children and Youth Care and Protection Act*, the CSSD social worker must be notified of the deferred custody and supervision sentence **within two (2) working days** from receipt of the order. If the youth is in the care or custody of a manager under the *CYCP Act*, a copy of the Deferred Custody and Supervision Order (stamped with a non-disclosure date), shall be given to the CSSD social worker.
5. For the first 30 days of this order type, at the minimum, the social worker is required to have weekly contact with the young person. Subsequent to this period of mandatory weekly contact and upon completion of an *YLS-CMI* initial assessment or reassessment, as applicable, ongoing contact with the young person can be directed by the risk-need classification assessment and activities from the service planning process.
6. Funding for educational, recreational, treatment, counselling and other resources may be available for the period by the order, subject to regional budget priorities and the ability of the young person's family to pay. Guidelines re: approval processes are found in Policy 9.8.
7. If any condition of the deferred custody and supervision order becomes inappropriate or difficult to comply with, i.e., negatively impacting on the youth's progress, a review of non-custodial sentence may be considered in accordance with policy section 9.10.
8. If the young person willfully fails or refuses to comply with any condition of the Deferred Custody and Supervision Order, consideration shall be given to initiating a suspension of the order in accordance with Policy 5.10.

### **Sentence Calculation Considerations**

1. When a Youth Justice Court judge issues, at the same hearing, both a probation and deferred custody and supervision order, the social worker shall, if not already explicitly stated on the orders, seek direction from the Court as to whether the orders should be treated as consecutive to each other or concurrent to each other.
2. When a Youth Justice Court has not specified the relationship of the two orders to each other and will not provide clarification of the relationship, the orders are to be treated as concurrent.

**EXCEPTIONS TO POLICY:**

**RELEVANT DOCUMENTS:**

## SUSPENSION OF DEFERRED CUSTODY AND SUPERVISION ORDER

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**Policy no.: 5.11**

**Effective Date: May 26, 2005**

**Date Revised: December 7, 2016**

**Policy Cross References:** Deferred Custody and Supervision Order

**Legislative References:** *Youth Criminal Justice Act*; **s.42(5)** Deferred custody and supervision order; **s.42(6)** Application of **s.106** to **109**; **s.106** Suspension of conditional supervision; **s.107(1)** Apprehension; **s.107(2)** Warrants; **s.107(3)** Peace officer may arrest; **s.107(4)** Requirement to bring before provincial director; **s.107(5)** Release or remand in custody; **s.108** Review by provincial director; **s.109(1)** Review by youth justice court; **s.109(2)** Order; **s.109(3)** Custody and supervision order; **s.109(4)** Factors to be considered; **s.109(5)** Reasons; **s.109(6)** Report; **s.109(7)** Provisions apply; **s.109(8)** Provisions apply

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**PURPOSE:** To outline the decision points and processes connected with the suspension of a deferred custody and supervision order.

### **POLICY:**

1. Where the social worker believes the young person has breached, or is about to breach a condition of a Deferred Custody and Supervision Order, consideration must first be given to addressing the breach through informal means including a) discussing the issue of non-compliance with the young person and parent/guardian or CSSD, if the youth is in the care or custody of a manager; and/or b) making changes to the frequency of required supervisory visits. Unlike community supervision, however, the social worker does not have a range of options for formally dealing with a breach of a Deferred Custody and Supervision Order e.g. altering the conditions of the order.
2. The following factors are to be considered in determining the most appropriate course of action:
  - a) the seriousness of the breach;
  - b) the degree of risk posed to public safety;
  - c) the young person's response to, and attitude toward, supervision; and
  - d) the young person's history of complying with court orders.

3. In all cases where suspension is being considered, the social worker shall consult with his/her immediate supervisor. The supervisor must concur with, and support, initiating the suspension process.

## **PROCEDURES:**

1. Upon determination that a suspension is required, the social worker shall complete the form *Warrant of Apprehension and Order of Remand* and forward it to the local police for execution. A copy shall be maintained on the young person's file and a copy provided to the young person and his/her parent/guardian or CSSD, if the youth is in the care or custody of a manager, where possible.
2. Part I, the Warrant of Apprehension, provides the police legal authority to apprehend the young person and must only be completed if the young person is at large. If the police are not in the possession of this Warrant, at the time of apprehension, the police must have the social worker, or representative of the Provincial Director, confirm the young person's identity. Normally this should occur within 24 hours of apprehension.
3. Upon apprehension by the police the young person will be taken to a designated place of temporary detention. Part II of the Warrant, issued by the social worker is the primary legal authority which allows the custody facility to hold the young person pending the internal review of the suspension decision and any subsequent court appearances.
4. If a young person is arrested by the police without a warrant in their possession having been issued, the police are required to bring the young person before the Provincial Director-Delegate, for confirmation of identity, within 24 hours or as soon as possible afterward. The Provincial Director-Delegate should be satisfied that it is the young person for whom the warrant was issued or young person should be immediately released. There is no requirement for the Provincial Director-Delegate to be available to the police on a 24 hour basis.
5. The decision to suspend a Deferred Custody and Supervision Order is made conjointly by the social worker and his/her supervisor. Under section 108 of the *YCJA*, a secondary internal review of this decision must happen within 48 hours of the young person being apprehended/detained. This review must be completed by a Zone Manager who was not involved in the original decision.
6. The social worker shall provide the Zone Manager with a narrative suspension report that: a) outlines the specific condition(s) being breached and b) efforts-to-date to ensure compliance with the order. The template for this narrative suspension report is included in the form *Format for Suspension Report*. Attached to this narrative must be a copy of the original Deferred Custody and Supervision Order, the most recent Pre-Sentence Report (as applicable) and a copy of the most recent risk-need classification.

7. Within 48 hours of being informed of that young person was remanded, the Zone Manager, having reviewed the materials provided must either:
  - a) cancel the suspension and have the young person released back into the community; or
  - b) require the matter to be immediately referred to the applicable Youth Justice Court for review under section 109 of the *YCJA*.
8. If the suspension is cancelled as a result of the internal review, the social worker shall, immediately, send written notification of the decision to the police either by fax or personal delivery. This letter will authorize the young person's immediate release from custody. The letter will include the following statement:

“Under section 108 of the *YCJA* an internal review of this individual's suspension of deferred custody and supervision has been completed. As a result of this mandatory review the suspension has been cancelled and you are authorized to immediately release said individual.”
9. If the suspension is upheld, the social worker shall immediately forward the suspension report to the responsible Youth Justice Court with a request that a suspension hearing be scheduled. Concurrently the social worker should notify the Department's solicitor for the purposes of arranging representation at the hearing.
10. Once a day/time for the suspension hearing has been scheduled, the social worker shall complete a formal *Notice of Hearing to Review Suspension* form. This notice is provided to the young person, his/her parent/guardian or CSSD, if the youth is in the care or custody of a manager, and the adjudicating Youth Justice Court. This notice is confirmation that all parties have been notified. As a general rule of law for young people, the young person and parent/guardian or CSSD, if the youth is in the care or custody of a manager, would normally receive five (5) days clear notice of a hearing (this minimum notice is applied to non-custodial reviews, custodial reviews, and application for continuation of custody). Section 99(7)(b) of the *YCJA* states that the “court may dispense with giving notice if, in the opinion of the Youth Justice Court, having regard to the circumstances, the giving of notice may be dispensed with.” The general notice period requirement is not intended to delay the proceeding as any delay would not be in the best interests of the young person.
11. If a hearing has been scheduled with less than 5 days notice, the presiding Youth Justice Court judge has the option of: (a) adjourning the hearing so that notice can be provided; or (b) decide to dispense with giving of notice and proceed with the hearing. Normally, in the case of a suspension hearing, a Youth Justice Court would proceed without the minimum notice period having been given. The exception to this would be in a circumstance where a young person required additional time to secure legal counsel or at the request of the young person's counsel.

12. The social worker must ensure the contents of the suspension report have been reviewed with the young person and a parent/guardian or CSSD, if the youth is in the care or custody of a manager/guardian prior to the hearing.
13. At the hearing the Youth Justice Court judge has the option of: (a) releasing the young person; or (b) converting the balance of time into a custody and supervision order. In this latter case, the court decides the level of custody to be imposed.

### **Suspensions Associated with New Charges**

14. A new criminal charge does not constitute grounds for an automatic suspension but it does constitute grounds for an automatic consideration of suspension. The level of risk that the young person presents to the community shall be a key factor in deciding whether or not to suspend a deferred custody and supervision order. The seriousness of the offence, and the young person's attitude towards the situation, as well as other factors as outlined above shall be considered. Often, more than one condition may have been violated on an order during the alleged commission of an offence. In such cases a suspension can be initiated based on the other conditions that have been violated, and not merely on the alleged offence. If a social worker in consultation with his/her supervisor believes that grounds exist for a suspension this should be done regardless of any other court proceedings that may be pending.
15. Depending on the offence the social worker may decide to suspend the young person's deferred custody and supervision order. In such cases the police and crown shall be made aware of this decision so that the court may be informed. The Youth Justice Court then has the option to review the suspension of the order and the bail application simultaneously.

### **EXCEPTIONS TO POLICY:**

### **RELEVANT DOCUMENTS:**

- *Warrant of Apprehension and Order of Remand*
- *Format for Suspension Report*
- *Notice of Hearing to Review Suspension*

## ADULT AND YOUTH ORDERS RUNNING FOR ALL OR PART OF THE SAME PERIOD

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**Policy no.: 5.12**

**Effective Date: April 4, 2014**

**Date Revised: December 7, 2016**

**Policy Cross References:** *Youth Criminal Justice Act* s.42(2)(k) Youth sentences;  
s.55(2) Conditions that may appear in orders

**Legislative References:**

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**PURPOSE:** To clarify what the role of the social worker is if he/she has a shared client with Adult Corrections under JPS.

### **POLICY:**

1. All youth orders are considered active until the orders expire.
2. The fact that a young person receives an adult probation order for part or all of the time period for existing youth orders does not automatically mean that supervision of any active youth orders is discontinued.
3. When the above scenario arises the social worker will contact his/her adult counterpart to determine what level of reporting is to be required under the adult order. If this level of reporting is consistent with that required under the most recent *YLS-CMI*, the social worker may consider the contact of the Adult Corrections probation officer as an eligible contact meeting the supervision requirements connected to the youth order. Active supervision can only be deferred to Adult Corrections with the agreement of the social worker's immediate supervisor and arrangements made with Adult Corrections to follow-up and confirm the young person's attendance.
4. If a young person has specific conditions on a youth probation order that are not part of the adult order, youth corrections supervision shall be continued if the enforcement of these conditions is believed necessary to ensure protection of the public and/or required to support elements of a service plan.



5. When a Youth Corrections social worker is not providing direct supervision of a case, he/she must continue monthly, at the minimum, contact with his/her adult corrections counterpart while any youth orders are in affect. If youth orders continue in affect after any adult probation ends, active supervision of the case shall resume.
6. A person over the age of eighteen, who is charged with a breach of s.137 of the *YCJA* is not a person alleged to have committed an offence while he or she was a young person. Therefore, the youth criminal justice court has no jurisdiction to deal with that person under the *YCJA*. Although the probation order was made before the person was eighteen, the act or omission which constitutes the alleged breach would have occurred after the person was eighteen. In this situation the exclusive jurisdiction of the youth criminal justice court does not apply. Furthermore, the exception under s.14(5) of the *YCJA* is not applicable. In the absence of specific language in the *YCJA* making it applicable to persons over eighteen charged with a breach of s.137, then the provisions of the *Criminal Code of Canada* apply.

## **PROCEDURES:**

1. All discussions and subsequent contacts with the adult probation officer shall be documented in the young person's case file.
2. No decision to discontinue active supervision, while an adult probation order is in effect, shall be made without first consulting with, and getting the concurrence of, the program supervisor.

## **EXCEPTIONS TO POLICY:**

The above noted policy only applies if there are youth and adult probation orders involved. If the young person is on community supervision, deferred custody and supervision, or conditional supervision as a result of custodial review, the Youth Corrections worker shall continue direct supervision of the case (as per policy requirements).

## **RELEVANT DOCUMENTS:**

- *Youth Level of Service - Case Management Inventory*

## **Section 6**

### **Custodial Sentences**



## CUSTODY AND SUPERVISION ORDERS

**Policy no.: 6.1**

**Effective Date: February 28, 2013**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; **s.39(1)** Committal to custody; **s.39(5)** Custody as social measure prohibited; **s.39(8)** Length of custody; **s.39(9)** Reasons; **s.85(1)** Levels of custody; **s.85(2)** Designation of youth custody facilities;

**PURPOSE:** To outline the general parameters of a custody and supervision order.

### **POLICY:**

1. Under section 88 of the *YCJA* each provincial or territorial jurisdiction has the right to opt out of having administrative control of level of custody. Newfoundland and Labrador, through an order of the Lieutenant-Governor-in-Council, has exercised its right to retain judicial determination of custody level.
2. In exercising the option for judicial determination under section 88 of the Act, the province is required to have several sections of the *YOA* remain in effect in order to accommodate retention of judicial authority. These are:
  - a) Section 24(2) of the *YOA Act* gives authority to a Youth Justice Court to specify level of custody (open and secure). Section 24(1) provides general definitions of “open” and “secure” custody. Section 24(2)(i) of the *YOA* provides authority to the Provincial Director to specify “place” of custody once level has been determined by the Court.
  - b) Sections 28 through 31 of the Act define various aspects of the judicial custodial sentence review process.
  - c) Section 24(2)(9) of the *YOA* provides authority for short term administrative transfers from open to secure custody and establishes a general rationale for its application. Provincial policy on the use of administrative transfers establishes very specific guidelines on application to ensure consistency with the intent of the Act and as a reflection of the province’s direction that determinations of level of custody remain a judicial process.

3. A committal to custody under the *YCJA* must be for a specific period, and must not exceed 2 years, except for an offence for which an adult is subject to life imprisonment, in which case the maximum is 3 years.
4. Sentences to custody for new offences committed after the commencement, but before the end of an existing custody sentence, may be served concurrently or consecutively to the original sentence, and the combined duration of all the sentences may exceed 3 years.
5. A custody sentence made under the *YOA* must not exceed 30 days, and due to the relative lack of severity of offences proceeded with under this legislation, custody sentences will be rare. Although the *YPOA* makes no distinction between levels of custody, all proceedings under this Act are by way of summary prosecution and all custody sentences will be considered to be open custody.
6. In Newfoundland and Labrador the primary setting for open custody is a group home, however, in specific circumstances individualized arrangements may be deployed.
7. A youth receiving a Custody and Supervision order will be required to serve a period of custody equal to two thirds of the Order, and a period of community supervision equal to one third of the Order. During the period of community supervision the young person will be subject to both mandatory conditions, set by the court at the time of sentencing, and additional conditions set by the Provincial Director. Additional conditions are only imposed by the social worker following consultation with his or her supervisor. The social worker will ensure the young person and parent/guardian or CSSD, if the youth is in the care or custody of a manager, are aware of the nature of the conditions and the potential consequences of failure to comply.
8. A custody and supervision order provides for the gradual reintegration of the young person into the community. Under this order the young person is automatically entitled to be released into the community after serving two thirds of his/her sentence in custody. The final one third of the sentence is then served under supervision in the community and is subject to mandatory conditions set at the time of sentencing as well as additional conditions that can be set by the Provincial Director during the course of the order.
9. A custody and supervision sentence may involve combinations of open and secure custody. The secure custody portion of the sentence shall always be served first, followed by the open custody portion which will then be followed by the community supervision portion of the sentence.

10. Where a young person is committed to serve both open custody and secure custody, and the sentences or part of the sentences are to be served consecutively, the secure custody sentence must be served first. Where a young person is committed to serve both open custody and secure custody, and the sentences or part of the sentences are to be served concurrently, the concurrent portion must be served in secure custody.

### **Combined Youth Custody and Supervision Sentence and Adult Sentence of Imprisonment**

11. Where a person receives an adult sentence of imprisonment while they are subject to a youth sentence of custody and supervision, the remainder of the youth sentence is then dealt with for all purposes as if it was a sentence of imprisonment. (s.743(5)(1), *Criminal Code of Canada*).
12. Where a person is under an adult sentence of imprisonment and receives a youth sentence of custody and supervision, the youth sentence is dealt with for all purposes as if it was a sentence of imprisonment (section 743(5)(2), *Criminal Code of Canada*).
13. In both scenarios, the youth sentence (or remainder) is considered to be converted to an adult sentence of imprisonment, and is merged with the adult sentence to calculate a release date.
14. Since the whole sentence is converted, there is no community supervision upon release, and no obligation for involvement by the youth corrections system, unless another non-custody youth sentence is in place.
15. An Order of “time served” with no Warrant of Committal issued is not considered a sentence of imprisonment for the purposes of section 743(5), *Criminal Code of Canada*. Therefore, the youth sentence is not converted to an adult sentence in this situation.

### **PROCEDURES:**

1. During preparation of the Pre-Sentence report if the social worker believes that the possibility exists for an open custody and supervision order to be imposed, the social worker shall determine the availability of an appropriate placement. A completed *Alert Sheet: Potential Placement to Open Custody* and copy of the Pre-Sentence report should be forwarded to the offices in St. John’s and Corner Brook, where the two (2) provincial open custody facilities are located. Contact with these offices should be made regarding current and potential availability of a group home opening. This advance notice assists with pre-placement planning and decision making. If placement is not required, any documents provided the open custody service provider are to be retrieved by the open custody social worker and as the originals remain on file, these copies should be shredded.

2. The social worker must attend a sentencing hearing where a pre-sentence report is being considered, in accordance with Policy 4.6. The social worker must also attend a sentencing hearing if a pre-sentence report has been dispensed with by the court, and the social worker is aware that a committal to custody is being considered.
3. Where a committal to open custody has been ordered, the young person must not leave the custody and presence of the social worker (or other person(s) authorized by the Department to provide continuous supervision) for any reason prior to admission to the open custody facility.
4. When a committal to open custody has been ordered, the social worker must immediately arrange for a placement in the most appropriate open custody facility that is available.
5. A copy of the pre-sentence report must be available at the sentencing hearing, for immediate transmittal to the open custody facility by the young person's escort. Other documents that must be transmitted to the open custody facility, either by the young person's escort, or by mail immediately following placement are identified in Policy section 7.2.
6. After the court hearing, all aspects of the open custody committal must be explained to the young person and his/her parent/guardian or CSSD, if the youth is in the care or custody of a manager. As well, the young person's parent/guardian or CSSD, if the youth is in the care or custody of a manager, must be informed of the location, mailing address, telephone number, and any other available information concerning the open custody facility where the young person is placed.
7. If the youth's family is currently receiving services under the PIP or In Care programs, the PIP/In Care social worker must be notified within one working day of the custodial sentence. If the youth's family is currently receiving Income Support, the client services officer must be notified as soon as possible that the youth has left the home. However, the youth cannot be identified as having a youth sentence (including the fact that he/she is in custody) in the Financial Assistance file.
8. The parent/guardian or CSSD, if the youth is in the care or custody of a manager, shall be requested to provide at least one change of clothing for the young person, appropriate to the season. If such clothing is not available at the sentence hearing, and there is no opportunity to obtain the clothing prior to the young person's departure, family members are to be encouraged to provide this and whatever additional clothing they are able to provide to the young person after admission. If this is not possible, or if the clothing provided is not adequate, all necessary clothing will be purchased after admission to the open custody facility.

9. If the young person is subject to any drug prescription at the time of committal to custody, the social worker must ensure that he/she has an adequate supply of medication to last until he/she is admitted to the open custody facility and has an opportunity to seek further medical assistance.
10. If the young person has any medical condition of a significant, contagious, or chronic nature the social worker must obtain as many details as possible concerning the condition. If another person provides the escort, the social worker must ensure that the escort is fully aware of the details and will provide the information to the open custody facility upon admission.
11. The social worker must obtain all Warrants of Committal before leaving the court. The open custody facility will not admit the young person without the relevant Warrants of Committal.
12. The young person's admission to the open custody facility must be entered into the Youth Corrections Module of CRMS within two working days.
13. The reasons given by the judge why a sentence other than custody is not adequate in the present case must be documented in the case file. The social worker must ensure that this information is obtained from the court.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Alert Sheet: Potential Placement to Open Custody*

## SETTING ADDITIONAL CONDITIONS FOR CUSTODY AND SUPERVISION ORDERS

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**Policy no.: 6.2**

**Effective Date: June 22, 2004**

**Date Revised: December 7, 2016**

**Policy Cross References:** Suspension of Community Supervision

**Legislative References:** *Youth Criminal Justice Act*; **s.42(2)(n)** Youth sentences; **s.97(1)** Conditions to be included in custody and supervision order; **s.97(2)** Other conditions; **s.97(3)** Communication of conditions; **s.97(4)** Provisions to apply

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**PURPOSE:** To provide direction on the inclusion of optional conditions for community supervision imposed by the Provincial Director/delegate to support successful community reintegration.

### **POLICY:**

1. A young person who receives a Custody and Supervision Order under s.42(2)(n) of the *YCJA* is subject to a period of community supervision equal to one third of the total duration of the order. During this period the young person shall be subject to a set of mandatory conditions set by a Youth Justice Court Judge at the time of sentencing. Under s.97(2) of the *YCJA* the Provincial Director may impose additional conditions. The purpose of additional conditions is to:
  - a) support and address the needs of the young person;
  - b) support the young person's reintegration into the community; and
  - c) protect the public from the risk of reoffending by the young person.
2. The *YCJA* requires that the following factors be considered during the process of setting additional conditions:
  - a) assessment of the needs of the young person and how these needs relate to the risk of reoffending;
  - b) determination of the availability of appropriate programming or services to address identified needs and client access to these resources;
  - c) the young person's willingness to participate in identified services, understanding of, and ability to abide by, the conditions being imposed; and
  - d) the nature of the offence, the young person's offence history and response to previous interventions.



3. All conditions imposed must be approved by the social worker's immediate supervisor.
4. No conditions shall be included if the social worker is not prepared to proceed with a suspension of a breach, or suspected, breach of that condition.
5. All active probation orders, or other community based orders, shall be reviewed to determine if there are any specific conditions included in these order(s) that are also applicable to community supervision.
6. All conditions terminate when the custody and supervision order expires.

## **PROCEDURES:**

1. No later than five (5) working days prior to scheduled or anticipated release from custody, the community social worker and his/her immediate supervisor, in consultation with the open or secure social worker, shall establish additional conditions.
2. Additional conditions shall be recorded on the form entitled "*Setting of Additional Conditions for Custody and Supervision Orders*" as an addition to the original court order. A copy of this form, which now constitutes part of the order, shall be forwarded to the court location where the original custody and supervision order(s) was made for official entry in the record.
3. To ensure compliance with Section 97(3) of the *YCJA*:
  - a) the conditions shall be read by or to the young person;
  - b) the young person shall be asked to sign the order, confirming that he/she understands the order as per s.56(3) of the *YCJA*;
  - c) if the young person refuses to sign the order, this should be noted on the order and dated as per s.56(4) of the *YCJA*; and
  - d) the original copy of the order shall be provided to the young person with a copy forwarded to parent/guardian or CSSD, if the youth is in the care or custody of a manager, and a copy retained for the case file.
4. Conditions should be written in a similar manner to the optional conditions available to the court under deferred custody and supervision or other forms of conditional supervision. The following are additional conditions available to the court under s.105(3) of the *YCJA*:
  - a) attend school or other place of learning, training, or recreation, that is appropriate based upon the availability of a suitable program;
  - b) make reasonable efforts to obtain-maintain employment;
  - c) reside with parent(s) or other adult(s) willing to provide for the maintenance of the young person;

- d) reside at a place where the Provincial Director/delegate specifies; and
  - e) comply with any conditions set out to address the needs of the young person, promote successful reintegration into the community, promote good conduct and/or prevent the repeat or commission of an offence.
5. Condition (e) above allows the court to establish conditions that are very specific or individualized to the case circumstance. This condition can include but is not limited to:
- a) the imposition of a curfew;
  - b) a requirement not to associate with specific individuals; or
  - c) a requirement to attend specified counseling.
6. Conditions related to mandatory drug testing shall not be imposed as additional conditions on community supervision orders. This includes urinalysis screening and hair follicle testing. This practice is consistent with the position of the provincial JPS. The reason for this limitation is that the province's Attorney General has not designated specific individuals to complete, or specific practices governing, sample collection, testing, and storage as required under section 732(1)(7) of the *Criminal Code of Canada*.
7. In terms of case management:
- a) for the first 30 days of community supervision, at the minimum, the social worker is required to have weekly contact with the young person;
  - b) supervision requirements after 30 days shall be consistent with the findings of a *YLS-CMI* reassessment; and
  - c) if the young person willfully fails or refuses to abide by the conditions, consideration may be given to the suspension of community supervision.

## **EXCEPTIONS TO POLICY:**

### **Conviction under section 42(o) or 42(q) or 42(r) not applicable**

1. When a young person receives a youth sentence for convictions related to 1<sup>st</sup> degree or 2<sup>nd</sup> degree murder, attempted murder, manslaughter, or aggravated sexual assault, **only** the Youth Justice Court can set conditions governing release. The secure custody social worker shall bring the young person before the appropriate Youth Justice Court one month prior to release from custody to ensure that this occurs.
2. Upon release from custody the young person is on conditional supervision for the remainder of the order.

**RELEVANT DOCUMENTS:**

- *Setting of Additional Conditions for Custody and Supervision Orders*
- *Youth Level of Service - Case Management Inventory*

## SUSPENSION OF COMMUNITY SUPERVISION

**Policy no.: 6.3**

**Effective Date: December 4, 2006**

**Date Revised: December 7, 2016**

**Policy Cross References:** Setting Additional Conditions for Custody and Supervision Orders

**Legislative References:** *Youth Criminal Justice Act*; **s.102(1)** Breach of conditions; **s.102(2)** Provisions apply; **s.103(1)** Review of youth justice court; **s.103(2)** Order; **s.107(1)** Apprehension; **s.108** Review by Provincial Director; **s.109(1)** Review by youth justice court; **s.109(2)** Order; **s.109(3)** Custody and supervision order; **s.109(4)** Factors to be considered; **s.109(5)** Reasons; **s.109(6)** Report

**PURPOSE:** To outline the decision points and processes connected with the suspension of a custody and supervision order.

### **POLICY:**

1. The following factors are to be considered in determining the most appropriate course of action where the social worker believes a young person has breached (s.102 of the *YCJA*), or is about to breach, a condition of community supervision whether imposed by the Court or Provincial Director ( s.97 of the *YCJA*).
  - a) the seriousness of the breach;
  - b) the degree of risk posed to public safety;
  - c) the young person's response to, and attitude toward, supervision; and
  - d) the young person's history of complying with court orders.
2. Consideration must first be given to addressing the breach through informal means including a) discussing the issue of non-compliance with the young person and parents; and/or b) making changes to the frequency of required supervisory visits.
3. If the above noted measures are not sufficient to address the non-compliance the social worker may issue a formal warning letter that (i) outlines what, and how, condition(s) are being breached; and (ii) potential consequences. The contents of the letter should be discussed with the young person.

4. Depending upon the circumstances, consideration may be given, in response to non-compliance, to adding additional or changing existing conditions. Such changes and/or additions must be documented in accordance with policy section 6.2 on *Setting of Additional Conditions for Custody and Supervision Orders*.
5. When other measures have been found to be ineffective or when the breach of conditions is considered serious enough, consideration may be given to a suspension. In all cases where suspension is being considered, the social worker shall consult with his/her immediate supervisor. The supervisor must concur with, and support, initiating the suspension process.
6. Where a young person who is on community or conditional supervision, appears in court for sentencing, the social worker must be aware of the effect of merging of a new custody and supervision order, and be prepared to act on the scenarios that may be presented by the new sentence.

## **PROCEDURES:**

1. Upon determination that a suspension is required, the social worker shall complete the *Warrant of Apprehension and Order of Remand* form and forward it to the local police for execution. A copy shall be maintained on the young person's file and a copy provided to the young person and his/her parent/guardian or CSSD, if youth is in the care or custody of a manager where possible.
2. Part I, the Warrant of Apprehension, provides the police legal authority to apprehend the young person and must only be completed if the young person is at large. If the police are not in the possession of this Warrant, at the time of apprehension, the police must have the social worker, or representative of the Provincial Director, confirm the young person's identity. This should occur within 24 hours of apprehension where possible.
3. Upon apprehension by the police the young person will be taken to a designated place of temporary detention. Part II of the Warrant, issued by the social worker is the primary legal authority which allows the custody facility to hold the young person pending the internal review of the suspension decision and any subsequent court appearances.
4. If a young person is arrested by the police without a warrant in their possession having been issued, the police are required to bring the young person before the Provincial Director/Delegate, for confirmation of identity, within 24 hours or as soon as possible afterward. The Provincial Director/Delegate should be satisfied that it is the young person for whom the warrant was issued or young person should be immediately released. There is no requirement for the Provincial Director/Delegate to be available to the police on a 24 hour basis.

5. The decision to suspend a custody and supervision order is made conjointly by the social worker and his/her supervisor. Under s.108 of the *YCJA*, a secondary internal review of this decision must happen within 48 hours of the young person being apprehended/detained. This review must be completed by a Zone Manager. It must be reviewed within 48 hours of the Provincial Director being informed that young person has been apprehended.
6. The social worker shall provide the Zone Manager with a narrative suspension report that: a) outlines the specific condition(s) being breached and b) efforts-to-date to ensure compliance with the order. The template for this narrative suspension report is included in the *Format for Suspension Report* form. Attached to this narrative must be a copy of the original Custody and Supervision Order, the most recent Pre-Sentence Report (as applicable) and a copy of the most recent risk-need classification.
7. Within 48 hours of it being verified that the young person has been remanded, the Zone Manager, having reviewed the materials provided must either:
  - a) cancel the suspension and have the young person released back into the community; or
  - b) require the matter to be immediately referred to the applicable Youth Justice Court for review under section 109 of the *YCJA*
8. If the suspension is cancelled as a result of the internal review, the social worker shall, immediately, send written notification of the decision to the police either by fax or personal delivery. This letter will authorize the young person's immediate release from custody.
9. If the suspension is upheld, the social worker shall immediately forward the suspension report to the responsible Youth Justice Court with a request that a suspension hearing be scheduled. Concurrently the social worker should notify the Department's solicitor for the purposes of arranging representation at the hearing.
10. Once a day/time for the suspension hearing has been scheduled, the social worker shall complete a formal *Notice of Hearing to Review Suspension* form. This notice is provided to the young person, his/her parent/guardian or CSSD, if the youth is in the care or custody of a manager, and the adjudicating Youth Justice Court. This notice is confirmation that all parties have been notified. As a general rule of law for young people, the young person and parent/guardian or CSSD, if the youth is in the care or custody of a manager, would normally receive five (5) days clear notice of a hearing (this minimum notice is applied to non-custodial reviews, custodial reviews, and application for continuation of custody). Section 99(7)(b) of the *YCJA* states that the "court may dispense with giving notice if, in the opinion of the Youth Justice Court, having regard to the circumstances, the giving of notice may be dispensed with." The general notice

period requirement is not intended to delay the proceeding as any delay would not be in the best interests of the young person.

11. If a hearing has been scheduled with less than 5 days notice, the presiding Youth Justice Court Judge has the option of: (a) adjourning the hearing so that notice can be provided; or (b) decide to dispense with giving of notice and proceed with the hearing. Normally, in the case of a suspension hearing, a Youth Justice Court would proceed without the minimum notice period having been given. The exception to this would be in a circumstance where a young person required additional time to secure legal counsel or at the request of the young person's counsel.
12. The social worker must ensure the contents of the suspension report have been reviewed with the young person and a parent/guardian or CSSD, if youth is in the care or custody of a manager prior to the hearing.
13. Upon review, a Youth Justice Court may: (a) release the young person; (b) release the young person with new or revised conditions; or (c) order that the young person be retained to custody for all, or part of, the remaining period in the original sentence. The Youth Justice Court has the authority to specify level of custody and is not required to return the young person to the custody level specified in the original order. If level of custody is not specified on the court order, the level imposed will be that imposed at the time the original custody and supervision order was issued.

### **Suspensions Associated with New Charges**

14. A new criminal charge does not constitute grounds for an automatic suspension but it does constitute grounds for an automatic consideration of suspension. The level of risk that the young person presents to the community shall be a key factor in deciding whether or not to suspend a Deferred Custody and Supervision Order. The seriousness of the offense, and the young person's attitude towards the situation, as well as other factors as outlined above shall be considered. Often, more than one condition may have been violated during the alleged commission of an offence itself. In such cases a suspension can be initiated based on the other conditions that have been violated, and not merely on the alleged offence. If a social worker in consultation with his/her supervisor believes that grounds exist for a suspension this should be done regardless of any other court proceedings that may be pending. For example - a theft that occurred beyond curfew.
15. Depending on the offence the social worker may decide to suspend the young person's Community Supervision Order on the basis of the young person's best interest. In such cases the police and crown shall be made aware of this decision so that the court may be informed. The Youth Justice Court then has the option to review the suspension of the order and the bail application simultaneously.

## **Sentence Calculation Considerations**

16. If the youth is not apprehended on the same day the warrant to apprehend is authorized, the custody and supervision order stops running and commences again after apprehension. The young person is, however, considered to have served the sentence on the day the warrant is issued and the day the warrant is executed i.e. the day the young person is apprehended. Any days between sentence authorization and police apprehension have to be served and will extend the expiry date of the custody portion. The CRMS data should be adjusted to reflect the suspension of the order and the recommendation of the order upon apprehension.

## **Remand Resulting from a Merged Sentence**

17. If a youth on community or conditional supervision component of a custody and supervision order or on conditional supervision as a result of custody review, appears in court as the result of new charges and receives an additional custody and supervision order(s), the sentences are merged into one. Immediately following the hearing the social worker must complete manual calculation of the new sentence created by the merging process, to determine whether a return to custody is required. This shall occur prior to the youth being released from court or admitted to a custody setting.
18. If a young person is on community or conditional supervision and receives a new custody and supervision order, and the merging of the new sentence extends the custody portion of the sentence beyond the date of the new sentence, the supervision portion of the first sentence is then considered inoperative and the youth immediately returns to custody.
19. If, upon the merging of the existing and new sentences, there is no change to the custody release date, and therefore the young person would not be required to return to custody, an immediate decision on remanding the youth must be made. The social worker, in consultation with his or her supervisor may remand the young person pending a review which must be completed within forty eight hours. Upon review, the young person can either be referred to the Youth Justice Court for further review, or released to the community to continue with the supervision portion of the sentence.
20. If a young person is on conditional supervision in the community as the result of a review of a custody and supervision order, and upon merging of the existing and new sentences, there is no change to the custody release date (return to custody is not required), the young person must be automatically remanded by the social worker. The case must then follow the same internal review process established for the suspension of conditional supervision and/or deferred custody (Policy 5.11).



21. In making a decision to remand a young person for a review under Procedure #19, or to refer the case to court rather than release under Procedure #20, consideration must first be given to whether or not the sentencing judge recognized that the imposition of the new custody and supervision order would not result in the young person returning to custody after merging of the sentences. Generally speaking, if the judge was aware of the result of merging when giving the sentence, it would not be appropriate to remand the young person or refer for a court review, unless other considerations exist that would warrant a review.

If it is felt that the judge may have intended for the young person to return to custody upon imposition of the new sentence, remanding and referring the case for a court review is the appropriate course of action.

22. In order to be prepared to act on the scenario that is presented by the merging of a new custody and supervision order, the social worker must be aware of the impact of the merging (return to custody or not), at the time of the court hearing. Generally speaking, a new consecutive sentence will result in return to custody, but a new concurrent sentence may or may not, depending on the length of the new sentence in relation to the remaining length of the existing sentence. Prior preparation on the impact of any new custody and supervision sentence is therefore essential.

**EXCEPTIONS TO POLICY:** None

**RELEVANT DOCUMENTS:**

- *Format for Suspension Report*
- *Notice of Hearing to Review Suspension*
- *Warrant of Apprehension and Order of Remand*

## CONDITIONAL SUPERVISION AS A RESULT OF CUSTODIAL REVIEW

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**Policy no.: 6.4**

**Effective Date: December 6, 2004**

**Date Revised: November 23, 2016**

**Policy Cross References:** Suspension of Deferred Custody and Supervision

**Legislative References:** *Youth Criminal Justice Act* s.94(1)(9) Progress report; *Young Offenders Act* s.28 and s.29

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**PURPOSE:** To emphasize the heightened requirements for “in person” contacts connected to the supervision of a young person on Conditional Supervision as a result of custodial review.

### POLICY:

1. As a result of a custody review application a Youth Justice Court judge may order that the balance of custody remaining be changed to Conditional Supervision and the young person be allowed to return to the community. For the first 30 days of Conditional Supervision as a result of a custody review, the social worker is required to have face-to-face weekly contact with the young person. Subsequent to this period of mandatory weekly contact and upon completion of a *YLS-CMI* reassessment, ongoing contact with the young person can be directed by the risk-need assessment and activities arising from the discharge planning process.
2. Only the remaining custody is converted to conditional supervision. The final third of the total sentence remains community supervision and for this period alone, the social worker must consider additional conditions to those set by the court at sentencing. The social worker must be aware of the status change that is effective the day the original custody order would have ended. Community and conditional supervision are differentiated on the basis of the options available to the social worker to address non-compliance.

### PROCEDURES:

1. A young person case file must be updated. This includes entry on the information management system which must be completed within two working days.

2. The community social worker shall meet with the young person within two (2) working days of the young person's release from custody.
3. For the first 30 days of conditional supervision as a result of a custody review, the social worker is required to have weekly contact with the young person. Subsequent to this period of mandatory weekly contact and upon completion of a *YLS-CMI* reassessment, ongoing contact with the young person can be directed by the risk-need assessment and activities arising from the discharge planning process.
4. Funding for educational, recreational, treatment, counselling and other resources may be available for the period specified by the order, subject to regional budget priorities and the ability of the young person's family to pay. (Policy 9.8).
5. If the young person willfully fails or refuses to comply with any condition of the conditional supervision order, consideration shall be given to suspending the supervision in accordance with all procedures for Suspension of Conditional Supervision (Policy 6.5).

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Youth Level of Service Case Management Inventory*

## SUSPENSION OF CONDITIONAL SUPERVISION

**Policy no.: 6.5**

**Effective Date: January 31, 2013**

**Date Revised: December 7, 2016**

**Policy Cross References:** Suspension of Deferred Custody and Supervision Order

**Legislative References:** *Youth Criminal Justice Act*; **s.42(5)** Deferred custody and supervision order; **s.42(6)** Application of **s.106** to **109**; **s.106** Suspension of conditional supervision; **s.107(1)** Apprehension; **s.107(2)** Warrants; **s.107(3)** Peace officer may arrest; **s.107(4)** Requirement to bring before Provincial Director; **s.107(5)** Release or remand in custody; **s.108** Review by Provincial Director; **s.109(1)** Review by youth justice court; **s.109(2)** Order; **s.109(3)** Custody and supervision order; **s.109(4)** Factors to be considered; **s.109(5)** Reasons; **s.109(6)** Report; **s.109(7)** Provisions apply; **s.109(8)** Provisions apply

**PURPOSE:** To outline the decision points and processes connected with the suspension of a Conditional Supervision Order as per s.105(1) of the *YCJA*.

### **POLICY:**

1. Where the social worker believes the young person has breached, or is about to breach a condition of a Conditional Supervision Order, consideration must first be given to addressing the breach through informal means including a) discussing the issue of non-compliance with the young person and parents; and/or b) making changes to the frequency of required supervisory visits. Unlike Community Supervision, however, the social worker does not have a range of options for formally dealing with a breach of a Deferred Custody and Supervision Order e.g. altering the conditions of the order.
2. The following factors are to be considered in determining the most appropriate course of action:
  - a) the seriousness of the breach;
  - b) the degree of risk posed to public safety;
  - c) the young person's response to, and attitude toward, supervision; and
  - d) the young person's history of complying with court orders.

3. In all cases where suspension is being considered, the social worker shall consult with his/her immediate supervisor. The supervisor must concur with, and support, initiating the suspension process.
4. Where a young person who is on community or conditional supervision, appears in court for sentencing on a new charge, the social worker must be aware of the effect of merging of a new custody and supervision order, and be prepared to act on the scenarios that may be presented by the new sentence.

## **PROCEDURES:**

1. Upon determination that a suspension is required, the social worker shall complete the *Warrant of Apprehension and Order of Remand* form and forward it to the local police for execution. A copy shall be maintained on the young person's file and a copy provided to the young person and his/her parent/guardian or CSSD, if youth is in the care or custody of a manager, where possible.
2. Part I, the Warrant of Apprehension, provides the police legal authority to apprehend the young person and must only be completed if the young person is at large.
3. Upon apprehension by the police the young person will be taken to a designated place of temporary detention. Part II of the Warrant, issued by the social worker is the primary legal authority which allows the custody facility to hold the young person pending the internal review of the suspension decision and any subsequent court appearances.
4. The decision to suspend a Conditional Supervision Order is made conjointly by the social worker and his/her supervisor. Under section 108 of the YCJA, a secondary internal review of this decision must happen within 48 hours of the zone manager being aware that the young person has been apprehended/detained.
5. The social worker shall provide the Zone Manager with a narrative suspension report that: a) outlines the specific condition(s) being breached and b) efforts-to-date to ensure compliance with the order. The template for this narrative suspension report is included in the *Format for Suspension Report* form. Attached to this narrative must be a copy of the original Conditional Supervision Order, the most recent Pre-Sentence Report (as applicable) and a copy of the most recent risk-need classification.
6. Within 48 hours of the zone manager being notified of that the young person has been remanded, the Zone Manager, having reviewed the materials provided must either:
  - a) cancel the suspension and have the young person released back into the community; or

- b) require the matter to be immediately referred to the applicable Youth Justice Court for review under section 109 of the *YCJA*.
7. If the suspension is cancelled as a result of the internal review, the social worker shall, immediately, send written notification of the decision to the police and the location where the young person has been remanded either by fax or personal delivery. This letter authorizes the young person's immediate release from custody. The letter will include the following statement:

“Under section 108 of the *YCJA* an internal review of this individual's Conditional Supervision has been completed. As a result of this mandatory review the suspension has been cancelled and you are authorized to immediately release said individual.”
  8. If the suspension is upheld, the social worker shall immediately forward the suspension report to the responsible Youth Justice Court with a request that a suspension hearing be scheduled. Concurrently the social worker should notify the Department's solicitor for the purposes of arranging representation at the hearing.
  9. Once a day/time for the suspension hearing has been scheduled, the social worker shall complete a formal *Notice of Hearing to Review Suspension* form. This notice is provided to the young person, his/her parent/guardian or CSSD, if the youth is in the care or custody of a manager, and the adjudicating Youth Justice Court. This notice is confirmation that all parties have been notified. As a general rule of law for young people, the young person and parent/guardian or CSSD, if the youth is in the care or custody of a manager, would normally receive five (5) days clear notice of a hearing (this minimum notice is applied to non-custodial reviews, custodial reviews, and application for continuation of custody). Section 99(7)(b) of the *YCJA* states that the “court may dispense with giving notice if, in the opinion of the Youth Justice Court, having regard to the circumstances, the giving of notice may be dispensed with.” The general notice period requirement is not intended to delay the proceeding as any delay would not be in the best interests of the young person.
  10. If a hearing has been scheduled with less than 5 days notice, the presiding Youth Justice Court judge has the option of: (a) adjourning the hearing so that notice can be provided; or (b) decide to dispense with giving of notice and proceed with the hearing. Normally, in the case of a suspension hearing, a Youth Justice Court would proceed without the minimum notice period having been given. The exception to this would be in a circumstance where a young person required additional time to secure legal counsel or at the request of the young person's counsel.
  11. The social worker must ensure the contents of the suspension report have been reviewed with the young person and a parent/guardian or CSSD, if youth is in the care or custody of a manager prior to the hearing.

12. At the hearing the Youth Justice Court judge has the option of: (a) releasing the young person; or (b) converting the balance of time into a custody and supervision order. In this latter case, the court decides the level of custody to be imposed.

### **Suspensions Associated with New Charges**

13. A new criminal charge does not constitute grounds for an automatic suspension but it does constitute grounds for an automatic consideration of suspension. The level of risk that the young person presents to the community shall be a key factor in deciding whether or not to suspend a Conditional Supervision Order. The seriousness of the offence and the young person's attitude towards the situation, as well as other factors as outlined above shall be considered. Often, more than one condition may have been violated on an order during the alleged commission of an offence. In such cases a suspension can be initiated based on the other conditions that have been violated, and not merely on the alleged offence. If a social worker in consultation with his/her supervisor believes that grounds exist for a suspension this should be done regardless of any other court proceedings that may be pending.
14. Depending on the offence the social worker may decide to suspend the young person's Conditional Supervision Order. In such cases the police and crown shall be made aware of this decision so that the court may be informed. The Youth Justice Court then has the option to review the suspension of the order and the bail application simultaneously.

### **Sentence Calculation Considerations**

15. If the youth is not apprehended on the same day the warrant to apprehend is authorized, the Conditional Supervision Order stops running and commences again after apprehension. The young person is, however, considered to have served the sentence on the day the warrant is issued and the day the warrant is executed i.e. when the young person is apprehended. The CRMS data should be adjusted to reflect the suspension of the order and the recommendation of the order upon apprehension.

### **Remand Resulting from a Merged Sentence**

16. If a youth on community or conditional supervision component of a custody and supervision order or on conditional supervision as a result of custody review, appears in court as the result of new charges and receives an additional custody and supervision order(s), the sentences are merged into one. Immediately following the hearing the social worker must complete manual calculation of the new sentence created by the merging process, to determine whether a return to custody is required. This shall occur prior to the youth being released from court or admitted to a custody setting.

17. If a young person is on community or conditional supervision and receives a new custody and supervision order, and the merging of the new sentence extends the custody portion of the sentence beyond the date of the new sentence, the supervision portion of the first sentence is then considered inoperative and the youth immediately returns to custody.
18. If, upon the merging of the existing and new sentences, there is no change to the custody release date, and therefore the young person would not be required to return to custody, an immediate decision on remanding the youth must be made. The social worker, in consultation with his or her supervisor may remand the young person pending a review which must be completed within forty eight hours. Upon review, the young person can either be referred to the Youth Justice Court for further review, or released to the community to continue with the supervision portion of the sentence.
19. If a young person is on conditional supervision in the community as the result of a review of a custody and supervision order, and upon merging of the existing and new sentences, there is no change to the custody release date (return to custody is not required), the young person must be automatically remanded by the social worker. The case must then follow the same internal review process established for the suspension of conditional supervision and/or deferred custody (Policy 5.11).
20. In making a decision to remand a young person for a review under Procedure #18, or to refer the case to court rather than release under Procedure #19, consideration must first be given to whether or not the sentencing judge recognized that the imposition of the new custody and supervision order would not result in the young person returning to custody after merging of the sentences. Generally speaking, if the judge was aware of the result of merging when giving the sentence, it would not be appropriate to remand the young person or refer for a court review, unless other considerations exist that would warrant a review.

If it is felt that the judge may have intended for the young person to return to custody upon imposition of the new sentence, remanding and referring the case for a court review is the appropriate course of action.
21. In order to be prepared to act on the scenario that is presented by the merging of a new custody and supervision order, the social worker must be aware of the impact of the merging (return to custody or not), at the time of the court hearing. Generally speaking, a new consecutive sentence will result in return to custody, but a new concurrent sentence may or may not, depending on the length of the new sentence in relation to the remaining length of the existing sentence. Prior preparation on the impact of any new custody and supervision sentence is therefore essential.



**EXCEPTIONS TO POLICY:** None

**RELEVANT DOCUMENTS:**

- *Warrant of Apprehension and Order of Remand*
- *Format for Suspension Report*
- *Notice of Hearing to Review Suspension*

## INTENSIVE REHABILITATIVE CUSTODY AND SUPERVISION ORDER

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**Policy no.: 6.6**

**Effective Date:**

**Date Revised: December 7, 2016**

**Policy Cross References:** Suspension of Conditional Supervision

**Legislative References:** *Youth Criminal Justice Act*; **s.42(2)(7)** Intensive rehabilitative custody and supervision order; **s.105(1)** Conditional supervision; **s.105(2)** Conditions that can appear on orders; **s.105(3)** Other conditions; **s.105(4)** Temporary conditions; **s.105(5)** Conditions to be set a first opportunity; **s.105(6)** Report; **s.105(7)** Provisions apply; **s.106** Suspension of conditional supervision

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**PURPOSE:** To summarize the social worker's role in the supervision and support of the community portion of an IRCS sentence.

### **POLICY:**

1. An “**intensive rehabilitative custody and supervision order**” (IRCS) can only be utilized if a young person is suffering from a mental illness or disorder, a psychological disorder or an emotional disturbance and has been convicted of murder, attempted murder, manslaughter, aggravated sexual assault, as well as the third order that has been declared as a serious violent offence by the court.
2. A plan for intensive treatment that is available for the young person has to be outlined that the Youth Justice Court believes will prevent re-offending. The assessment and development of a proposed plan of intensive treatment will be directed by the Psychological Services of the Newfoundland and Labrador Youth Centre. This support shall be maintained during both custody and community portions of the sentence.
3. An IRCS order (s.42(2)(r) of the *YCJA*) shall not exceed two years from the date of committal, and if the young person is found guilty of an offence for which the punishment provided by the *Criminal Code of Canada* is life imprisonment, three years from the date of committal; the order shall not exceed three years unless the offence is first or second degree murder. The time frames for an intensive rehabilitative custody and supervision order that applies to first degree murder and second degree murder are the same as those for a Custody and Supervision Order under section 42(2)(q).

4. The mandatory and optional conditions for conditional supervision in the community are set by the Youth Justice Court judge. The social worker shall bring the young person before the Youth Justice Court one month prior to release from custody to ensure that this occurs.
5. Upon release from custody, the young person will be on Conditional Supervision for the remainder of the Order. The plan for intensive treatment will carry over during the period of Conditional Supervision.

## **PROCEDURES:**

1. The social worker shall review the case in consultation with his or her immediate supervisor at least two months prior to the young person's release from custody. This review shall also include consultation with all other relevant service providers including the facility social worker, which can be accomplished through the ongoing review of the plan of treatment and Intensive Supervision required under section 42(2)(7)(c) of the *YCJA*. The social worker shall use this opportunity to become familiar with the young person's circumstances in preparation for writing a report to the court that will assist with the setting of conditions.
2. During this review, if there is concern about the young person's release in terms of a serious threat to public safety, consideration may be given to a possible application for Continuation of Custody (Policy 6.9).
3. The post-custody treatment plan for the young person will be established in consultation with Psychological Services at the Newfoundland and Labrador Youth Centre. Psychological Services will continue to play a role in directing and assessing the treatment plan. In addition the social worker shall consult with the provincial Youth Corrections-Mental Health Coordinator (a position attached to Eastern Health) regarding provision of / access to appropriate community based mental health services.
4. The assigned community social worker shall contact the court clerk at this time to ensure that a court date for the setting of conditional supervision conditions is scheduled for at least one month prior to the young person's release date. Once a date has been confirmed the social worker shall then forward written notification of same to the young person and his or her parent/guardian or CSSD if the youth is in the care or custody of a manager, the custodial facility, the crown attorney and defence attorney.
5. If the young person (for reasons beyond his or her control) cannot be brought before the court within the time frames specified above, the social worker shall notify the Youth Justice Court of same and the court will order temporary conditions for conditional supervision until the young person can be brought before the court.

6. The social worker shall prepare a report to assist the court and forward it to the court at least five working days prior to the court hearing. Copies shall also be given to the young person and his or her counsel, and the young person's parent/guardian or CSSD if the youth is in the care or custody of a manager, and the crown attorney within the same time frame. The report shall follow the same format as the custody progress report outlined in Policy 9.11.
7. Upon release from custody, the young person will be on Conditional Supervision for the remainder of the Custody and Supervision Order. Given the nature of this sentence and the seriousness of the offence, the social worker is required to have weekly in person contact with the young person for the duration of Conditional Supervision. This minimum contact level overrides the contact level suggested by completion of the Youth Level of Service – Case Management Inventory.
8. Enforcement practices in dealing with any breach of Conditional Supervision will be in accordance with the policies set for Suspension of Conditional Supervision (Policy 6.5).
9. As a youth custodial sentence, IRCS cases are eligible for mandatory reviews and can apply for optional reviews in accordance with the provision of the *YCJA*.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

## AGE RELATED TRANSFERS FROM A YOUTH FACILITY TO AN ADULT FACILITY

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**Policy no.: 6.7**

**Effective Date: November 5, 2003**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; **s.89(1)**; **s.89(2)**; **s.89(3)** Exception if young person is 20 or older; **s.92(1)** Transfer to Adult Facility; **s.92(2)** If serving a sentence in a provincial correctional facility; **s.92(3)** Provisions to apply; **s.93(1)** When young person reaches twenty years of age; **s.93(2)** If serving a sentence in a provincial correctional facility

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**PURPOSE:** To detail criteria for decision making related for age related transfers from youth custodial facilities to adult resources.

### **POLICY:**

#### **Transfer after 18<sup>th</sup> Birthday**

1. Where a young person who has been committed to secure or open custody reaches their 18<sup>th</sup> birthday, the Provincial Director (delegate) may make an application under s.92(1) to the Youth Justice Court to have the young person serve the remaining portion of his/her young person custody and supervision order in a provincial adult correctional facility. An application will only be made where such a transfer is considered necessary in the best interests of the young person or the public interest, as determined by the criteria in policy.
2. A recommendation for transfer to an adult correctional facility should only be made in exceptional circumstances, where it is deemed that the individual will not benefit from continuance in a young person open or secure custody facility and/or where his/her continued presence in a young person facility is deemed to pose a significant threat to the safety and well-being of him/herself, other residents, and/or staff.
3. If a young person 18 years or over requests a transfer to an adult facility, the request will be assessed in terms of the criteria for seeking court authorization for such a transfer. An application to the court will only be made where the normal criteria is deemed to apply, and where the transfer can be recommended.

4. Once an individual has been transferred to a provincial correctional facility and has served a portion of the sentence, the Provincial Director can, if there are two years or more remaining in the sentence, make further application to the Youth Justice Court to have the individual transferred to a federal penitentiary.
5. If a young person is serving a Custody and Supervision Order in an adult facility, the release from custody date will be determined by the legislation governing the administration of adult sentences. In addition, the young person remains eligible to apply for a youth custody review. Upon release from the adult facility, the young person is subject to Community/Conditional Supervision until the end of the sentence, and must be supervised by the social worker in accordance with regular policy.

### **Transfer at 20<sup>th</sup> Birthday**

6. When an individual who is serving a youth sentence under s.42(2)(n)(o)(q)(r) of the *YCJA* in a youth facility reaches his/her 20<sup>th</sup> birthday, he/she will be transferred to a provincial adult correctional facility unless the Provincial Director/Delegate orders that the individual remain in the youth custody facility. Therefore, a young person reaching his/her 20<sup>th</sup> birthday is subject to an automatic administrative decision-making process to determine whether the person will be retained in the youth facility or transferred to an adult facility. No court hearing is necessary.

## **PROCEDURES:**

### **Transfer after 18<sup>th</sup> Birthday**

#### **1. a) Open Custody**

If an open custody social worker, in consultation with the young person, his/her family, residential care staff, the community social worker, and the open custody social worker's immediate supervisor believes that it is in the best interests of a person who is over 18, or is in the public interest to serve the open custody sentence in an adult facility, an assessment (addressing the factors identified in procedure #2) including the reasons for such a transfer, should be submitted to their immediate supervisor, who, before the filling of the application, will consult with the responsible Zone Manager.

#### **1. b) Secure Custody**

Any recommendation for transfer of a young person who is in secure custody will be made by the management of the secure custody facility, following an equivalent case preparation/consultation process.

2. In determining whether an application should be made to transfer the young person to an adult facility, the social worker must consider the following factors:
  - a) the safety of the individual;
  - b) the safety of the public;
  - c) the individual's access to family and other community supports;
  - d) the safety and well being of other young people and staff if the individual were to continue to be held in a place of custody for young persons;
  - e) other types of serious detrimental influences on other young people if the individual were to continue to be held in a place of custody for young persons;
  - f) the individual's level of maturity;
  - g) the availability and suitability of treatment, educational and other resources that would be provided to the individual in a place of custody for young person and in a place of custody for adults; and
  - h) the individual's prior experiences and behavior while in detention or custody.
3. A narrative report is prepared based upon the above noted criteria. This narrative report would conclude with a recommendation, by the social worker, to his or her immediate supervisor that an application be submitted to court to have the young person transferred to an adult facility.
4. The social worker supervisor shall review the narrative. If he/she concurs with this recommendation, the report shall be submitted to the applicable Zone Manager. Upon approval of the Zone Manager the social worker can proceed with submitting the transfer application.
5. There is no application form. The social worker would submit a brief narrative report to the court that would:
  - a) identify young person and current place of custody;
  - b) note that an application is being made under section 92.(1) of the *YCJA* to allow the Provincial Director to, "direct the young person serve the remainder of the youth sentence in a provincial correctional facility for adults";
  - c) the reasons why the transfer application are being made;
  - d) attach a copy of current Warrant of Committal to Custody.
6. The young person involved in such a transfer application must be advised of his/her rights to legal counsel.
7. If the young person opposes such a transfer application, social worker shall consult with the immediate supervisor regarding the need to seek legal counsel.

8. If an order is made by the Court authorizing transfer, the escorting of the person to an adult facility will normally be done by the police with the necessary arrangements being made by the social worker through the local police detachment.
9. Where a person is transferred to an adult facility from open custody, the social worker who is responsible for youth corrections in the area where the adult facility is located, will be considered the custody facility worker. Where such a person is transferred to an adult facility from secure custody, the social work staff in the secure custody facility will be available to adult corrections officials, as necessary, regarding aspects of the individual's placement.
10. The escorting of the person to an adult facility, will normally be done by police, and necessary arrangements should be made by the social worker through the local police detachment. Depending on circumstances, the social worker or direct care staff may also choose to provide the escort.
11. When a transfer to an adult facility is made, the parents or if applicable, the individual's spouse must be informed of the location, mailing address, and telephone number of the facility. As well, incidents or events concerning the subject person while in the adult facility should also be immediately conveyed to the parents.
12. Once a youth has been transferred, the release date for the custody and supervision order is determined by the earlier of the provisions of the *Prisons and Reformatories Act* and the *Corrections and Conditional Release Act* or the *YCJA*. Upon release, Community/Conditional Supervision will be in force until the expiry of the sentence.

### **Transfer at 20<sup>th</sup> Birthday**

13. If a young person will turn twenty (20) while in secure custody the young person shall be transferred to an adult correctional facility unless a decision is made, by the management of the secure custody facility to continue the placement in the youth secure facility.
14. Normally if a young person will turn twenty (20), while in open custody, arrangements will be automatically made to transfer him/her to an adult correctional facility. In exceptional circumstances the Zone Manager upon recommendation of the open custody social worker and his/her supervisor can extend the placement for all, or part, of the remaining custody period.
15. In determining whether there is reason to allow the young person to continue his/her sentence in a youth facility, the social worker must consider the following factors:
  - a) the safety of the individual;
  - b) the safety of the public;



- c) the individual's access to family and other community supports;
- d) the safety and well being of other young people and staff if the individual were to continue to be held in a place of custody for young persons;
- e) whether the individual would have a detrimental influence on the other young people if the individual were to continue to be held in a place of custody for young persons;
- f) the individual's level of maturity;
- g) the availability and suitability of treatment, educational and other resources that would be provided to the individual in a place of custody for young person and in a place of custody for adults;
- h) the individual's prior experiences and behaviour while in detention or custody.

16. A narrative extension request shall be prepared by the social worker and submitted to his/her immediate supervisor no later than thirty (30) days prior to the young person's 20<sup>th</sup> birthday.

17. If a supervisor is in support of the extension request, a copy of the report along with their recommendation shall be submitted to the applicable Zone Manager for final review and decision making. Upon approval of the Zone Manager the young person, and custody facility, shall be notified of the extension.

18. If the extension request is not approved arrangements shall proceed regarding the transfer to an adult facility.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

## INTERMITTENT CUSTODY

**Policy no.: 6.8**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; s.47(2) Intermittent custody; s.47(3) Availability of place of intermittent custody

**PURPOSE:** To detail social worker's response to an inquiry from a Youth Justice Court, re: availability of an intermittent custody sentence.

### **POLICY:**

1. The Youth Justice Court may commit a young person to intermittent custody (e.g. served on weekends), only if the Provincial Director advises the Crown Attorney that a place of custody is available to enforce such an order. When a youth court justice asks as to the availability of intermittent custody, the social worker shall advise that this alternative is not available.
2. In this province, programming and geographical considerations in both the secure and open custody facilities would tend to make intermittent sentencing impractical and generally unenforceable. In addition, intermittent custody sentencing is, in the vast majority of cases, not consistent with the principle that committals to custody should only be made where absolutely necessary for the protection of society. For these reasons the position of CSSD is that intermittent custody cannot be provided within our custody system.
3. Should such an order be given, without consulting the representative of the Provincial Director, the program supervisor shall consult with provincial office to determine an appropriate course of action.

### **PROCEDURES:**

1. If a report on the availability of a facility to enforce an intermittent sentence is requested by the Crown Attorney, a brief, narrative report may be provided, which states that a place of intermittent custody is not available for reasons of

programming, travel, or other reasons, as the case may be. Provincial office should be consulted to assist with preparation of this report.

2. In the above noted circumstance where an intermittent sentence has been given the social worker and, his/her immediate supervisor, shall contact provincial office immediately regarding an appeal of this sentence.
3. If the level of custody is open immediate escort of the young person as per policy section 7.1 must be followed. The young person must continue to report to the appropriate place of custody arranged by the social worker and in accordance with the schedule outlined on the order until the order is reviewed and revised or it expires.
4. Custodial review-provisions apply to intermittent custody sentence. If a young person requests an optional review of his or her intermittent sentence, provincial office to be contacted re: assessment of eligibility.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

## CONTINUATION OF CUSTODY

**Policy no.: 6.9**

**Effective Date: October 12, 2005**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; **s.98(1)** Application for continuation of custody; **s.98(2)** Continuation of custody; **s.98(3)** Decisions; **s.98(4)** Factors; **s.99(1)** Report; **s.99(2)** Written or oral report; **s.99(3)** Provisions apply; **s.100** Reasons; **s.101(1)** Review of youth justice court decision; **s.101(2)** Extension of time to make application; **s.104(1)** Continuation of custody; **s.104(3)** Factors; **s.104(6)** Denial

**PURPOSE:** To describe the processes associated with applying for a continuation of custody order.

### **POLICY:**

1. In rare cases there may be compelling reasons why a young person should not be permitted to serve the final one third of his or her sentence in the community. Under these circumstances an application can be made to the Youth Justice Court for a continuation of custody. If granted this would extend the young person's stay in custody beyond the normal release date, and convert some or all of the community supervision portion of the sentence to custody. There are two different application processes depending on the type of custody sentence that the young person is serving.

### **Custody and Supervision Orders under section 42(2)(n) YCJA**

2. For custody and supervision orders under section 42(2)(n) there are two specific conditions that must be met for a continuation of custody application to be approved by Youth Justice Court Judge:
  - a) the Youth Justice Court must be convinced that the young person is likely to commit a serious violent offence if released. This is defined by the YCJA as:  
“an offence in the commission of which a young person causes or attempts to cause serious bodily harm”; and,

- b) the mandatory conditions that would be set by the Youth Justice Court or the additional conditions that would be set by the Provincial Director would not be adequate in preventing the youth from committing a “serious violent offence.”
3. Section 98(4) of the *YCJA* sets out a list of factors that the Youth Justice Court must take into consideration when considering a continuation of custody application. These factors can be categorized as follows:

Factors related to offence history:

- i) evidence of a persistent pattern of violent behavior whether in custody or under community supervision
- ii) the young person has multiple offences that, “caused physical or psychological harm” to another person(s);
- iii) any history of offences involving the use of weapons;
- iv) any history of having made “explicit threats of violence” against an individual or individual(s).

Factors that may limit the potential effectiveness of community based supervision:

- i) psychiatric or psychological evidence that the young person displays a mental illness or disorder or behavioural pattern that makes it likely he/she may commit a serious violent offence;
  - ii) “reliable information” that the young person is planning to harm a specific individual or individuals before expiry of current youth sentence e.g. statements by the young person, correspondence
4. Not all the above noted factors have to be present for a court to consider an application. The final decision on whether to proceed with a continuation of custody application is made by the Provincial Director of Youth Corrections based upon legal advice.

#### **Custody and Supervision Orders under sections 42(2)(o)(q) or (r) of *YCJA***

5. If a young person has been convicted of 1<sup>st</sup> degree murder, 2<sup>nd</sup> degree murder, manslaughter, attempted murder, or aggravated sexual assault, the application for continuation of custody must be submitted to the court by, a Crown Attorney as a representative of the Attorney General.
6. If a young person has received an Intensive Rehabilitative Custody and Supervision Order (IRCS), the application for continuation must be supported by, and submitted to the court, by a Crown Attorney.

7. In the above noted circumstances the final decision on whether an application shall proceed rests with the Crown Attorney. Section 104(2) of the Act identifies the factors that may be considered by the court in assessing an application.

## **PROCEDURES**

### **Custody and Supervision Orders under section(s) 42(2)(n) of the YCJA**

1. Following consultation with his or her immediate supervisor, the custody social worker shall contact the community social worker to discuss the potential for an application to be pursued. If agreement exists, the Zone Manager (for the custody social worker) shall be contacted. The Zone Manager must agree with making the application for the process to continue. This consultation process can be completed through provision of a brief narrative report.
2. Where there is agreement to seek the Provincial Director's authorization to proceed with an application for continuation of custody, the following shall be submitted to provincial office no later than thirty (30) days before the sentence is set to expire:
  - a) cover letter stating that a request for continuation of custody is being sought under section 98(2) of the YCJA;
  - b) a narrative report that outlines young person's offence history, response to supervision, and the "reliable information" which leads the social worker to believe that the young person is planning to commit an offence;
  - c) a copy of the most recent Pre-sentence report;
  - d) copies of any relevant psychological or psychiatric reports;
  - e) copy of applicable custody and supervision order(s).
3. Provincial office will arrange for this report / attached documents to be reviewed by legal counsel. This review will determine the feasibility of filing an application with the court based on legislative criteria. Legal counsel will be requested for court purposes if the application proceeds.
4. If the legal review, initiated by the Provincial Director, supports the proposed action, the Provincial Director/Delegate shall provide to the Social Worker, Supervisor, and Zone Manager:
  - a) written notification to proceed;
  - b) a "*Notice of Application*" form modified for this specific purpose that can be submitted, by the social worker, to the appropriate court; and,
  - c) provide a "*Supporting Affidavit*" form modified for this specific purpose that can be submitted, by the social worker, to the appropriate Youth Justice Court.

5. Two copies of the “*Notice of Application*”, “*Supporting Affidavit*” and the package of information detailed in procedure #2 must be submitted to the appropriate Youth Justice Court. The court clerk will fill in the applicable information number, time, date, and location of the review on the “*Notice of Application*” form and return one of the copies to the social worker.
6. Copies of the completed “*Notice of Application*” and “*Supporting Affidavit*” must then be provided to the young person and to his/her parents or guardians within the required notice period stipulated by the rules of court. This is at least 15 clear days prior to the hearing date. This notice must be served in person or by registered mail. The “*Notice of Application*” must also be provided to the Crown Attorney. The Crown Attorney is notified by faxing the Notice to the Special Prosecutions Office, JPS, at 729-1135. If the young person is in the care of a Director of CSSD, a copy of the Notice must also be given to the social worker responsible for the youth’s care.
7. An “*Affidavit of Service*” must be completed as confirmation that the “*Notice of Application*” was served on the young person. The Affidavit should be completed and modified as necessary to indicate the details of delivery. The person who actually served the young person with the Notice must sign the Affidavit. It must be sworn to and signed/stamped by a Commissioner of Oaths. The “*Affidavit of Service*” must be submitted to the court at least 10 days prior to the Review hearing.
8. The young person shall be informed on their right to be represented by legal counsel at this hearing.

#### **Custody and Supervision Orders under section 42(2)(o)(q) or (r) of the YCJA**

1. Following consultation with his or her immediate supervisor, the custody social worker shall contact the community social worker to discuss the potential for an application to be pursued. If agreement exists, the Zone Manager (for the custody social worker) shall be contacted. The Zone Manager must agree with making the application for the process to continue. This consultation process can be completed through provision of a brief narrative report.
2. Where there is agreement to seek the Provincial Director’s authorization to proceed with an application for continuation of custody, the following shall be submitted to provincial office no later than thirty (60) days before the sentence is set to expire:
  - a) cover letter outlining a request that the Department of Justice Special Prosecutions division be asked to consider the appropriateness of seeking a continuation of custody approval under section 104(1) of the YCJA;
  - b) a narrative report that outlines young person’s offence history, response to supervision, and the “reliable information” which leads the social worker to believe that the young person is planning to commit an offence;

- c) a copy of the most recent Pre-sentence report;
  - d) copies of any relevant psychological or psychiatric reports;
  - e) copy of applicable custody and supervision order(s).
3. Provincial office shall forward the provided documentation to the Department of Justice's Special Prosecutions division. It shall be this office that will oversee required decision making on the application process. This refers to a decision on whether to proceed, and, if so, who shall represent the Attorney General in this matter.
  4. If the representative(s) of the province's Attorney General make a determination to file an application with the court, Provincial office shall immediately notify the social worker and his/her supervisor.
  5. All required notices and/or notifications will be the responsibility of the Crown Attorney filing the application. A copy of the package of information detailed in procedure #2 shall be provided to the applicable Crown Attorney by provincial office.
  6. The social worker shall ensure that the young person has been advised of his/her right to be represented by legal counsel at this hearing.
  7. The social worker shall attend the court hearing and provide any additional information requested by the Crown (pertaining to the social worker's involvement).

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Notice of Application*
- *Supporting Affidavit*
- *Affidavit of Service*



## **Section 7**

### **Open Custody**



## ESCORTING TO OPEN CUSTODY

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**Policy no.: 7.1**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act* s.88 Functions to be exercised by youth justice court; s.49(2) Custody during transfer

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**PURPOSE:** To clarify social worker's responsibility for escorting sentenced young persons and options if inclement weather prevents same day escorting.

### **POLICY:**

1. Departmental staff are responsible for escorting young persons who have been committed to open custody or are being placed under an order-to-reside condition of a community order. An alternate person designated by the immediate supervisor or youth care staff of a group home may be authorized to assist with and/or complete the required escort.
2. The young person must be escorted to the open custody facility as soon as possible following the sentencing hearing and, while under escort, be continuously supervised.
3. Where possible, escorts should be completed by two staff. Where this cannot be accommodated, female young people shall be escorted by a female worker.
4. A young person cannot be admitted to an open custody facility without the applicable Warrant(s) of Committal to Custody.
5. No escort should be pursued when weather and/or road conditions pose potential hazards to client and worker safety.
6. Circumstances where night time vehicle travel is needed to complete the required same day placement should be limited.
7. When an escort cannot be safely completed on the day of sentencing i.e. extreme weather conditions where transporting raises safety issues, consideration may be given to a range of alternatives. The least intrusive means that addresses the

supervision and safety issues, specific to an individual young person, should be pursued.

8. If temporary detention is being considered the following criteria apply:
  - a) Where a youth is being transferred from the court to custody, the youth should normally not be held in temporary detention, unless weather and travel conditions make immediate transfer to custody impossible or unduly hazardous. In such a case, all other less restrictive placement options must first be explored. Temporary detention cannot be used as a response when an appropriate place of open custody is not immediately available.
  - b) Before temporary detention is used, under section 49(2), all other appropriate measures should be considered. These include being under the fulltime supervision of a social worker or other designated staff person or approval of reintegration leave. The option chosen should reflect the most appropriate response based on (i) the potential of the young person going unlawfully-at-large; and/or (ii) issues of safety for the young person or potential caregivers.
  - c) Where the court and the youth's normal place of custody are in the same general area, or within practical commuting distance, the youth must not be held in a place of temporary detention under section 49(2).

## **PROCEDURES:**

1. The responsible supervisor or manager will determine individual escort requirements, including number of staff required, based upon:
  - a) requirement to ensure a same sex escort for female clients;
  - b) perceived risk of young person's attempting to escape custody during the course of placement;
  - c) availability and appropriateness of different transport options, in particular air travel to place of custody;
  - d) the appropriateness and/or suitability of a non-departmental representative assisting with and/or completing the required placement; and,
  - e) information on weather and/or highway conditions.
2. Where a young person has been given a sentence of open custody, he/she is considered to be in the full time custody of the social worker and/or other authorized staff or facility personnel, until admission to the open custody facility. The young person must therefore leave the sentencing hearing, except under the escort of the social worker or alternate person designated by a supervisor.

3. If it is felt to be impossible or imprudent for the social worker to escort the young person to an open custody facility, the immediate supervisor (or delegate) shall be consulted and may designate another person(s) to assist the social worker, or to provide the escort. If someone other than the social worker provides the escort, that person must be qualified to deal appropriately with young persons in emotional crisis, and have an adequate understanding of the open custody facility into which the young person will be placed. In circumstances where it is impossible for staff to escort, youth care staff of an open custody facility may be designated to escort a young person; any additional staffing costs incurred by the facility shall have prior approval of the immediate supervisor (or delegate).
4. The social worker or other escort must be in possession of the Warrants of Committal and Pre-Sentence Report (if available as completion is occasionally waived) when escorting the young person, and must provide these documents to the open custody facility upon admission. Clothing and other documents referred below should also be transported with the young person, if at all possible. If this is not possible, arrangements must be made to have these items delivered to the place of custody without delay.
5. The following documentation should accompany each resident upon: (i) initial admission to custody; (ii) upon transfer between open custody settings; and; (iii) upon transfer between open and secure custody:
  - a) Warrant(s) of Committal to Custody;
  - b) Pre-Sentence Reports;
  - c) copies of pertinent case file information (e.g. YC Service Plan, YLS/CMI, Progress Report);
  - d) Discharge Plan, any other pertinent assessment information;
  - e) clothing list (only applicable when a youth is being transferred from one place of custody to another);
  - f) MCP, hospital card(s), and social insurance number;
  - g) educational reports (including assessments, course list, current transcripts, etc. as available);
  - h) legal guardian name, address, and telephone number;
  - i) legal status;
  - j) name of referring social worker, location number, and contact information for the worker's immediate supervisor;
  - k) medical history information including contact information for family doctor, specialist(s), or any other health professional involved with the young person; and,
  - l) any medication or prescription information.
6. If the young person is taking prescribed medication, at the time of the committal to custody, the home social worker shall ensure a sufficient supply accompanies the young person to the placement to last until medical assessment is arranged by the placement service providers or open-secure custody social worker.

### **When an Escort cannot be Safely Completed on Day of Sentencing**

7. The young person must be escorted to an open custody facility within the same day and as soon as possible after the sentencing hearing. In exceptional circumstances (e.g. extremely adverse weather conditions), where transporting is impossible, the immediate supervisor (or delegate) must approve alternate arrangements which will comply with the law and Departmental policy. Such arrangements might include the following:
  - a) using an emergency bed at an available open custody setting until travel plans can be safely undertaken;
  - b) authorizing an available short term placement site, e.g. staffed apartment arrangement, as a place of open custody until travel plans can be safely undertaken;
  - c) if a young person is in the care or custody of a manager under the Children and Youth Care and Protection Act, allow the young person to remain in his/her current place temporarily, under a reintegration leave approval, until travel plans can be safely undertaken;
  - d) if the young person does not represent a risk to flee and his/her parent/guardian allow the young person to remain at his/her normal place of residence temporarily, under a reintegration leave approval, until travel plans can be safely undertaken; or,
  - e) in accordance with section 49(2) of the *YCJA*, the young person may be temporarily held at a place of temporary detention as the Provincial Director may specify until travel plans can be safely undertaken.

### **Applying Authority for Use of Temporary Detention**

8. The authority of the Provincial Director to temporarily hold a young person in a designated place of temporary detention until an appropriate open custody can be safely completed, is delegated to the Zone Manager.
9. The period of holding in temporary detention must not exceed the time necessary to affect the transfer to custody. Any individual approval authorizing temporary detention for this purpose cannot exceed twenty four (24) hours.
10. The Zone Manager shall complete a document authorizing the temporary detention. This document would be in the form letter that:
  - a) identifies name, date of birth, and file number (if available) of the young person being placed;
  - b) cites the specific section of the *YCJA/YOA* evoked to provide the necessary authority for placement;
  - c) identifies specific time frame for the approval; and,
  - d) identifies the designated individual providing the required authority for placement.

Under the authority of section 49(2), *Youth Criminal Justice Act* \_\_\_\_\_, d.o.b. \_\_\_\_\_

Name of Young Person

shall be held at \_\_\_\_\_ for a period not

Name of Place of Temporary Detention

exceeding twenty-four (24) hours.

\_\_\_\_\_  
Signature and Position of Designated Official

11. Placements can only be made at designated places of temporary detention which are:

- a) Newfoundland and Labrador Youth Centre (Whitbourne); and,
- b) Lock-ups in St. John's, Nain, Port Saunders, Corner Brook, Clarenville, Happy Valley-Goose Bay, Stephenville, Deer Lake, Grand Falls-Windsor, Labrador West, and Marystown.

12. The Standards of Care for the Operation of Police Lock-ups as Designated Places of Temporary Detention and Secure Custody for Young Persons (2001) apply, with any modifications specific to the young person's legal status (Appendix 2)

13. Provincial office shall be notified within one (1) working day of any situation where temporary detention was required in this circumstance.

## **EXCEPTIONS TO POLICY:**

The provisions of section 49(2) of the *YCJA* are not applicable if the issue of concern is the lack of an available open custody placement.

## **RELEVANT DOCUMENTS:**

## ADMISSION TO OPEN CUSTODY

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**Policy no.: 7.2**

**Effective Date: July 7, 2003**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:**

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**PURPOSE:** To clarify the responsibilities of the social worker and social worker responsible for open custody in relation to the admission of a young person into open custody. **The “social worker” is the term to denote, “the social worker for the home community or family, who has a client residing in open custody, secure custody, or other temporary residential setting.”**

### **POLICY:**

Specific documentation should accompany each resident upon (i) initial admission to a custody setting; (ii) transfers between open and secure custody settings; and (iii) transfers between open custody settings. The documentation package shall include:

- a) Warrant of Committal to Custody;
- b) Pre-Sentence Report;
- c) copies of Pertinent Case File Information (ex. YC Service Plan, YLS/CMI, Progress Report, Discharge Plan, any other pertinent assessment information);
- d) clothing list (only applicable when a youth is being transferred from one place of custody to another);
- e) MCP, hospital card(s), and social insurance number;
- f) educational reports (including assessments, course list, current transcripts, etc. as available);
- g) legal guardian’s name, address and telephone number;
- h) legal status;
- i) name of referring social worker, location number, and contact information for the worker’s immediate supervisor;
- j) medical history information including contact information for family doctor, specialist(s), or any other health professional involved with the young person; and,
- k) any medication or prescription information.

## **PROCEDURES:**

### **Admission**

1. At admission, the young person should be provided information about the purpose and nature of the open custody system in general and of the specific open custody setting in which they have been placed. The young person will be provided a copy of the facility rules, which must include a specific list of contraband items, and any other information that has been prepared to assist with a young person's orientation to a placement. The young person will also be provided, separately, information on his/her rights while in the facility.
2. At admission, a clothing search and a search of all other personal belongings should be carried out in the presence of the young person, by admitting staff provider for contraband purposes.
3. As soon as possible following admission each young person shall be assigned a primary/key worker from among the available residential care staff.
4. Within two (2) working days of admission, the social worker responsible for open custody will ensure that all necessary reintegration leave approvals have been obtained to allow the young person to access community services as necessary (including educational services).
5. If the social worker responsible for open custody has not been present during the admission process an interview shall be held with the young person within two working days of admission. At this time, a tentative service plan may be discussed with the young person.
6. The social worker responsible for open custody shall manually calculate the young person's sentence and ensure there is no discrepancy with the calculation completed by the social worker. The manual calculations by both social workers should also be consistent with the aggregate sentence calculated by the Youth Corrections Module of CRMS. Refer to Policy 9.2 for requirements regarding sentence calculation.

### **Responsibilities of Community Social Worker**

1. A youth corrections case file must be established, if one does not already exist and appropriate data must be entered into the Youth Corrections Module of CRMS. In most circumstances, a case file would have been created upon the request for a Pre-Sentence Report. The social worker should establish a sub-file or travel file, using the same file number as the original file; this travel file will go to the community where the young person resides while in custody. Upon completion of custody, the travel file will be returned to the community social worker who will dispose of duplication in the files.



2. The social worker initiating placement will immediately make application for Canada Child Tax Benefit on behalf of the Director (Form 14-636 Canada Child Tax Benefit Notice of Change). The form must be submitted within 3 days of the young person coming into custody. A copy should be maintained in the child/youth file. Caregivers must not apply for the allowance.
3. If the social worker has not met with or contacted the social worker responsible for open custody during the process of the young person's admission, telephone contact shall be made within two working days, and an overview provided of any previous social history, service planning, and/or medical information available concerning the young person.
4. For all young person's entering open custody, the sentences and admission to custody must be added by the social worker to the Youth Corrections Module of CRMS within two (2) working days.
5. The social worker shall complete a manual calculation of the custody and supervision order within two (2) working days of placement.
6. The social worker shall ensure a young person's parents/guardians or CSSD, if a youth is in the care or custody of a manager, are given contact information for the open custody group home to which the young person has been placed.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Open Custody Admission Checklist*

## SERVICE PLANNING IN OPEN CUSTODY

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**Policy no.: 7.3**

**Effective Date:**

**Date Revised: December 7, 2016**

**Policy Cross References:** Service Planning; Setting Additional Conditions for Custody and Supervision Orders; Reintegration Leave;

**Legislative References:** *Youth Criminal Justice Act* s.90(1) Role of youth worker; s.91 Reintegration leave

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**PURPOSE:** To define the roles of departmental staff in terms of case management responsibilities while a client is a resident in open custody. **The social worker is the term to denote, “the social worker for the home community or family, who has a client residing in open custody, secure custody, or other temporary residential setting.”** In Newfoundland and Labrador, the role “youth worker” as referenced in the *YCJA* is fulfilled by social workers.

### **POLICY:**

1. To the degree possible and appropriate, young people serving an open custody sentence should participate in decision making that (i) affects what happens during the period of custody; and, (ii) relates to planning that supports his/her reintegration back into the community.
2. Section 90 of the *YCJA* compels corrections authorities to develop and document a reintegration plan for every youth in custody. Specifically the Act requires, “... the preparation and implementation of a reintegration plan that sets out the most effective programs for the young person in order to maximize his or her chances for reintegration into the community.”
3. Service planning that occurs when a young person is admitted to open custody has two interrelated purposes. First, planning must focus on the needs of the young person while in custody. Secondly, and in concert with the first, planning must occur to develop or re-engage the supports or services necessary to support the young person’s reintegration into the community.
4. The social worker continues to have a significant role both in terms of the support of the group home placement and for discharge planning in advance of the young person’s release from custody. The responsibility for ensuring completion of discharge planning rests with the social worker given the necessity of engaging

supports from the community-of-origin or the community where the young person will be released to if this is different.

5. There are a number of factors that will impact on the process for service planning while a young person is in an open custody group home. These factors include duration of placement and physical distance between community-of-origin and the group home. The open custody social worker shall take the lead to ensure that custody service planning is completed.
6. Although discharge planning activities begin at the time of initial placement, the social worker is required to ensure a written discharge plan has been prepared, at the minimum, five days before the young person's scheduled or anticipated release from custody date. This plan shall address all arrangements in place, or being actively pursued, in relation to young person's return to the community. The discharge plan will be documented using the *Discharge Plan Summary* form.
7. The *Discharge Plan Summary* documents a process that may include the following areas:
  - a) required decision making and arrangements regarding placement at time of release (including discussions with parents/guardians and/or proposed caregivers);
  - b) as required, coordination with staff of the PIP/In Care or Youth Services programs regarding placement and/or support services to an individual and/or his/her family;
  - c) activities related to securing a new, or confirming the continued availability of a previous school placement (this includes pre-vocational, vocational, and post secondary services);
  - d) activities related to arranging specialized assessments (examples include FASD, adolescent sexual offender, educational and/or psychological testing);
  - e) activities related to continuing or initiating, depending upon circumstances, specialized counselling and/or treatment services (examples include psychiatric, psychological, or medical services);
  - f) arrangements to provide alcohol and/or drug dependency counselling;
  - g) arrangements to continue and/or offer access to recreational programs; and
  - h) relationship of discharge planning activities to additional conditions set by the Provincial Director, regarding the community supervision component of the Custody and Supervision Order (including the requirement to reside as required by the Provincial Director).

## PROCEDURES:

### Planning During Custody Placement

1. The community social worker will ensure that a copy of the most recent *Youth Level of Service – Case Management Inventory* is included among the documentation provided at placement. If there is a current *Youth Corrections Service Plan* it shall also be provided as well at time of placement.
2. Within two (2) working days of placement, if the young persons has been placed in or near his/her community-of-origin, the social worker responsible for open custody shall ensure a required day release has been provided:
  - a) to allow the young person to continue to attend an existing school placement;
  - b) to allow the young person to continue to attend an existing vocational or training program;
  - c) to allow the young person to continue to participate in public or private counselling or treatment services; and,
  - d) to allow the young person to continue in approved social and/or recreational programming.
3. If the custody portion of the sentence is thirty (30) days or less, within five (5) days of placement the social worker responsible for open custody shall have:
  - a) conferred with the social worker regarding any issues potentially affecting the placement;
  - b) met with group home staff and the young person to discuss activities or objectives for the young person for the duration of his/her placement; and,
  - c) documented these discussions as specific goals on the Summary of Key Activities section of the YLS-CMI.
4. If the custody portion of the sentence is greater than thirty (30) days, within ten (10) days of admission the social worker responsible for open custody shall have:
  - a) conferred with the social worker regarding any issues potentially affecting the placement;
  - b) met with group home staff and the young person to discuss activities or objectives for the young person for the duration of his/her placement; and,
  - c) documented these discussions as specific goals on the Summary of Key Activities section of the YLS-CMI.
5. If a *Youth Corrections Service Plan* has been completed and it is scheduled to be reviewed during the period of custody, responsibility for completion rests with the social worker.

### **Role of Social Worker During Custody Placement**

1. The social worker will be consulted regarding requests by a young person for reintegration leave for the purposes of an extended temporary release from custody. The ability for the youth to be appropriately supervised and supported while on reintegration leave will be the primary factor in consideration of approval.
2. If deemed appropriate or necessary, the community social worker may be required to supervise the young person while on reintegration leave.
3. Where the young person has been committed to a term of more than twelve continuous months in custody, the secure or open social worker is responsible for initiating the mandatory review process by following the procedures outlined in Policy 9.11.
4. Where a custodial review is held, the Community Progress Report will be completed by the community social worker (Policy 9.11).
5. If a young person's family is receiving services through PIP/In Care/Youth Services the social worker shall ensure that the other program social worker is kept informed of all relevant events that occur during the course of a placement.
6. The social worker shall maintain ongoing contact with the young person's family throughout the custody placement. This may include the continuation of formal intervention activities with the family.
7. Immediately following the young person's release from custody the social worker shall advise the parents/guardians in writing that they have to re-apply for the Tax Benefit allowance and will assist the parents/guardians with this, if requested to do so.

### **Completion of Discharge Plan Summary**

1. The social worker will maintain ongoing contact with the social worker responsible for open custody throughout the course of a young person's placement. If required, and as part of the discharge planning process, the social worker assumes primary responsibility for arranging the residential placement upon release.
2. The social worker is responsible for ensuring completion of the required discharge plan using the prescribed format *Discharge Plan Summary* form. This process will also involve the setting of conditions for the community supervision component of the Custody and Supervision Order.

3. No later than five (5) days before a young person's scheduled or anticipated release from custody date, the discharge plan shall be documented using the *Discharge Plan Summary*. This document shall be reviewed with the young person prior to his/her release by either of the two social workers involved.
4. The social worker shall meet the young person within two (2) working days of his/her release from a group home.
5. For young persons with Custody and Supervision Orders, the social worker shall comply with the procedures outlined in Policy 6.2 on Setting Additional Conditions for the community supervision component of the order.
6. Funding for educational, recreational, treatment, counselling and other resources necessary to support the discharge plan may be considered in accordance with Policy 9.8.

### **EXCEPTIONS TO POLICY:**

### **RELEVANT DOCUMENTS:**

- *Discharge Plan Summary*
- *YLS-CMI Reassessment Form*
- *Youth Corrections Service Plan*

## TRANSFERS BETWEEN OPEN CUSTODY SETTINGS

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**Policy no.: 7.4**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:** Escorting to Open Custody; Admissions to Open Custody

**Legislative References:**

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**PURPOSE:** To identify social worker's responsibilities when a young person is transferred from one open custody setting to another.

### **POLICY:**

A young person, in open custody, may be transferred from one place of open custody to another. This is a joint decision making process involving the social workers, and their immediate supervisors, for the two open custody settings involved.

### **PROCEDURES:**

1. If a young person is transferred from one place of open custody to another, the young person must be escorted. This will usually be done by the social worker responsible for open custody the young person is leaving, but may be the social worker, youth care staff of the group home, or alternate person designated, as per Policy 7.1.
2. The Warrants of Committal, Pre-Sentence Report, case planning documents, MCP card, and all other relevant documents must be forwarded with the young person's escort, for presentation to the new open custody facility and open custody social worker.
3. All procedures for admissions (Policy 7.2) apply when the young person enters the new open custody facility.
4. Entering custodial releases and admissions into the Youth Corrections Module of CRMS is the responsibility of the social worker responsible for open custody and must be completed within two working days of each release or admission date.

### **EXCEPTIONS TO POLICY:**

### **RELEVANT DOCUMENTS:**

## ADMINISTRATIVE TRANSFERS TO SECURE CUSTODY

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**Policy no.: 7.5**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; **s.88** Functions to be exercised by a youth justice court; *Young Offenders Act*; **s.24(2)(9)**

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**PURPOSE:** To detail criteria governing a decision to authorize a short term transfer of a young person from open to secure custody.

### **POLICY:**

#### **Administrative Transfer – section 24(2)(9)**

1. The *YCJA* gives the province the authority to determine how the level of custody will be determined. In Newfoundland and Labrador the Lieutenant Governor of Canada has issued an Order that the ability to determine custody level has been retained by the Youth Justice Court as permitted by section 24(2)(9) of the *YOA* in relation to administrative transfers to secure custody.
2. This means that certain provisions of the *YOA* continue to apply to custodial sentences, including s.24(2)(9) of the *YOA* which provides authority for the Provincial Director/Delegate to temporarily transfer a youth from open custody to secure custody. That authority has been delegated to the Zone Managers who are responsible for the open custody facility.
3. In using this authority the Provincial Director/Delegate is temporarily altering the sentence of the Youth Justice Court by moving a youth to a more restrictive level of custody without the young person having access to the same due process protections as he/she would have if the matter were being dealt with in court. For this reason the application of this authority is limited to exceptional circumstances.



## Criteria for Exercise of 24(2)(9) Transfer:

1. **The Provincial Director deems a transfer as necessary in order to ensure the safety of either the young person, or others in the facility:**

The term safety as used here, refers to a real and direct likelihood of harm or injury. An administrative transfer shall not be used as a substitute for less intrusive measures such as extra staffing and/or other in-house measures or formal legal proceedings. Normally, if a substantive criminal offence has occurred or is suspected, then the police should be contacted to deal with the situation in the appropriate manner. This would include the possibility of arrest, formal charging and temporary detention.

2. If in-house measures and/or formal legal processes are not possible or are deemed inappropriate, or have failed, an administrative transfer can be considered within the following criteria which define safety in terms of a young person who:

- a) **attempts, severely threatens, conspires, or actually causes serious harm to others, or incites others to do so;**
- b) **attempts, conspires, or creates a serious disturbance or riot;**
- c) **possesses or conspires to possess a weapon and displays an attempt or real intent to use the weapon;**
- d) **the youth is the subject of serious threats or actual harm from others, and/or self harm, and no other measures can adequately ensure his or her safety.**

3. These criteria clearly establish that safety is viewed in terms of the following:

- a) **The harm is considered serious.** Isolated incidents of fighting, common assaults, horseplay, etc. are not considered serious harm in this respect, unless such incidents escalate and become part of an ongoing pattern of behaviour over a period of time, and all reasonable direct intervention measures have been taken and/or fully considered and are not effective in de-escalating the aggressive behaviour.
- b) **Attempts or threats at harm must be considered real and imminent or likely to occur within a relatively short time frame.** While much judgement must be used to determine the likelihood of harm occurring, experience in residential settings has clearly shown that many incidents of verbal or attempted physical aggression can be de-escalated, or can be seen not to contain a serious and immediate intent to injure.
- c) **The aggressive behaviour leading to a perceived serious threat to safety must be seen to be persisting, or likely to reoccur.** If an incident has de-escalated or has been defused and the youth is not seen to be at immediate risk of causing harm or injury, then an administrative transfer could not be justified. Other consequences would presumably be invoked at that point by the custody provider, in consultation with Regional staff. This would obviously include close monitoring and on-going evaluation of

the re-emergence of the threats to safety and preparedness to invoke a transfer request in a timely manner if necessary.

- d) **While a young person's behaviour may be disruptive to the facility and other youths, the term "serious disturbance" must be viewed in terms of whether the disturbance is intended to, or is likely to cause serious harm or injury.** Therefore, an administrative transfer can only be used as a management tool in terms of managing behaviour that is a threat to safety. Section 24(2)(9) could not be used as a time out mechanism or disciplinary method, where the youth is non-compliant or disruptive, unless the disruption is a threat to safety as defined above.
- e) **The use of a section 24(2)(9) transfer of a youth who is in danger due to the actions of others or from self harm should be considered only as an absolute last resort.** In view of the fact that a section 24(2)(9) transfer disrupts the youth from his/her community residential setting and exposes him/her to a more intrusive level of custody in an institutional setting, it inevitably has the tendency to be viewed as punitive. Therefore, all possible steps should be taken to avoid the use of this sanction in cases where the youth is not a threat to others but is, in fact, in danger from the actions of others or him/herself. Such measures as extra supervision, counselling treatment, placement in another community setting, etc., must be fully considered. As well if the threat is one involving harm from others, all remedial measures, up to and including formal charging and/or consideration of invoking a section 24(2)(9) transfer on the youth should be considered before consideration is given to invoking a section 24(2)(9) transfer on the youth who is at risk of harm.
- f) **The youth must be residing and physically present in a designated place of open custody at the time that a 24(2)(9) transfer decision is made.** Such a transfer cannot be made where the youth is under an open custody sentence, but in transit, being held in any other setting, on reintegration leave, or otherwise residing away from a designated place of Open Custody.

### Responsibilities of Zone Manager

- 4. The authority of the Provincial Director to administratively transfer a young person from open to secure custody under section 24(2)(9) of the YOA, is delegated to the Zone Manager responsible for the open custody setting/placement.
- 5. The length of a transfer under section 24(2)(9) is limited to a maximum of fifteen (15) days, but is to be kept to the shortest time possible. The time served in secure custody includes the day or any part of the day on which the young person is removed from the place of open custody to be taken to the secure custody facility, and the day or any part of the day that the young person is re-admitted to an open custody facility. Upon completion of the fifteen day period, or any lesser period stipulated by the Zone Manager, the young person must be returned to an open custody facility.

6. The Zone Manager shall not consider transferring a young person from a place of open custody to a place of secure custody unless:
  - a) the Zone Manager authorizing the transfer is satisfied that all possible measures have been taken to attempt to stabilize the young person in the open custody system (ie. attempts have been made to stabilize the young person through approved one-on-one staff supervision, placement in a more highly structured designated facility, individual behavioural contracting and/or more intensive programming and counselling); where the safety of the resident is in jeopardy; and where all appropriate action has been taken with respect to referral for professional assistance (ie. transfer to a psychiatric hospital setting).
  - b) written documentation of the reasons for the transfer has been submitted, with a recommendation from the immediate supervisor. This documentation should include plans for continued intervention directed toward stabilization of the young person while he/she is temporarily in secure custody, and the reintegration of the young person back into the open custody system, preferably within the young person's home community or region. This plan must be recommended by the social worker and supervisor and is subject to the approval of the responsible Zone Manager.

## **PROCEDURES:**

1. Where a transfer of a young person from open custody to secure custody or temporary detention is considered advisable and other alternatives have been explored, the social worker responsible for open custody, following consultation with residential care staff and the social worker, shall make a written recommendation to his/her immediate supervisor that includes relevant background information.
2. If the supervisor supports the recommendation, he/she shall consult with the responsible Zone Manager. The supervisor shall provide information as required upon which the Zone Manager will base her or his decision concerning the request.
3. If the request for an administrative transfer is approved, the young person must be verbally notified of the decision and specific reasons for the transfer. The young person's parent/guardian or CSSD, if a youth is in the care or custody of a manager, and social worker must also be notified by the social worker responsible for open custody within 24 hours of the transfer, and informed of the reasons for the transfer, the expected length of stay, and the location, mailing address, and telephone number of the secure custody facility.

4. The police should be requested to escort the young person to the secure custody facility. The social worker responsible for open custody, or residential care staff, if requested to assist in the escort shall provide the support necessary to affect the transfer.
5. An authorization letter for the transfer will be provided to the secure custody facility by the Zone Manager who approved the transfer. This letter should state the youth's name, DOB, release date from open custody, and commencement and expiry dates of the administrative transfer. The authorization letter shall include the following statement, "Under section 24(2)(9) of the *YOA* and section 88 of the *YCJA*, I hereby have authorized that (name of young person) be transferred to secure custody for a period not to exceed (number) of days."
6. The person escorting the young person must ensure that all Warrants of Committal to open custody accompany the young person to the secure custody facility. The Warrants of Committal to open custody, along with the authorization letter, are both necessary for the admission of the young person to the secure custody facility. Any documentation regarding rationale for transfer should also be provided to the secure custody facility by the young person's escort.
7. The Zone Manager authorizing the transfer shall notify the Manager in Charge or Administrator of the Newfoundland and Labrador Youth Centre if it is the intention that the police will escort the young person to this facility and related details.
8. The Zone Manager shall arrange for copies of his/her letter of authorization, and accompanying documentation provided in the decision making process, to be forwarded to the office of the Director of Youth Corrections within five (5) working days.
9. The social worker responsible for open custody must, within the time frame authorized for the transfer, put into place a release plan incorporating one of the following courses of action:
  - a) Return the young person to the originating open custody facility.
  - b) Place the young person in another open custody facility in accordance with the plan to stabilize the young person's behaviour.
10. The social worker responsible for open custody will ensure the release from the open custody facility is entered into the Youth Corrections Module of CRMS, within two working days.

## **EXCEPTIONS TO POLICY:**

**The youth must be residing and physically present in a designated place of open custody at the time that a 24(2)(9) transfer decision is made.** Such a transfer cannot be made where the youth is under an open custody sentence, but in transit, being held in any other setting, on Reintegration Leave, or otherwise residing away from a designated place of open custody.

## **RELEVANT DOCUMENTS:**

## RELEASE FROM OPEN CUSTODY

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**Policy no.: 7.6**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:** Reintegration Leave

**Legislative References:**

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**PURPOSE:** To detail practices that must be adhered to when a young person is being released from open custody.

### **POLICY:**

1. At the time a youth is being released from custody as a result of the expiry of the custody component of his/her custody and supervision order, specific criteria must be followed in the planning and actioning of this release, including decisions on release time, mode of travel, and reintegration leave conditions.
2. A custody facility, by law, has authority to hold a young person until midnight of the last day of the sentence. Since there is no authority to hold the young person beyond this point (ie. until the next morning), the established tradition in correctional systems is to release the young person at an appropriate time during the last day of sentence. The exact time of release is determined in accordance with both standard policy and the specific circumstances of the young person. In such instances a signed "*Reintegration Leave Form*" must be in place before the young person is released to cover the period of time between the actual release time and midnight of the last day of custody.
3. An open custody facility may release a young person at noon on the final day of the custody sentence, or at any earlier time, for the purpose of facilitating travel or other release arrangements.
4. Travel upon release may be unescorted, depending on the young person's needs and circumstances, but the social worker/immediate supervisor must ensure the young person's safety and well-being in planning and arranging travel.

## PROCEDURES:

1. The young person must be informed prior to his or her release of the conditions of their community or conditional supervision. The young person must be advised to report to the social worker within two days of arriving home, or in accordance with the instructions of the home social worker.
2. If the young person is being released from custody earlier than the time indicated by calculation of the sentence, a signed "*Reintegration Leave Form*" shall be completed to account for this time. This provision applies if the young person is released any time before midnight on the last day of custody. The young person must be instructed to abide by the conditions set out in the "*Reintegration Leave Form*" until the expiry of the custody portion of the order, and the commencement of the community supervision portion.
3. The social worker responsible for open custody shall notify the parent/guardian or CSSD, if youth is in the care or custody of a manager, of the young person's release date at least 10 days prior to the scheduled release. Wherever possible, a parent/guardian or CSSD, if youth is in the care or custody of a manager, should be encouraged to pick up the young person at the time of release. Where this is not possible, the parent/guardian or CSSD, if youth is in the care or custody of a manager, must be notified of the young person's time of release, mode of travel, and expected time of arrival, as soon as arrangements are finalized.
4. If the young person has a non-custodial sentence following the open custody and supervision sentence, the young person must be informed, prior to release, of his/her obligations under the terms of the sentence.
5. If the parent/guardian or CSSD, if youth is in the care or custody of a manager, are unable to pick up the young person, or make other travel arrangements, the social worker responsible for open custody must arrange transportation for the young person by the most appropriate and economical means. Payment on the youth's file should be used for payment of transportation costs. The young person must be provided with all necessary tickets and/or funds to cover the cost of meals, hotels or subsequent commuter costs, before leaving the open custody facility.
6. When making release arrangements, consideration must be given to all the implications of the arrangements, as follows:
  - a) If the young person is likely to pose any risk to himself or others while travelling, proper safety measures must be put in place, such as arranging an escort and/or notifying the carrier, the police, and the home social worker of the risk.
  - b) Whenever possible, release arrangements should avoid having the youth travel or arrive home late at night (e.g. after 10:00 p.m.). A reintegration

leave approval is required if the young person is released any time before midnight on the last day of custody.

- c) If the young person is under 16 years of age, the social worker must give special consideration to a repatriation plan, in consultation with the parent/guardian or CSSD, if youth is in the care or custody of a manager, and social worker responsible for open custody. Such a plan will determine the young person's living arrangement upon release, the appropriate mode of travel, the need for an escort, and whether the escort should be a social worker, residential care staff, or a parent, and if unescorted, whether a parent or someone else will meet the young person upon arrival.
7. Where the young person is being picked up by a parent/guardian or CSSD, if youth is in the care or custody of a manager,, the young person may be permitted to leave before noon if the distance to travel is in excess of 300 kilometers, adverse weather conditions prevail, or if it is demonstrated to the satisfaction of the person authorizing the time of release that due to extenuating circumstances, the travel must commence earlier than noon.
8. Where the young person is travelling by public transportation, the young person may be released as early as necessary on the final day of sentence, to make the necessary travel connections.
9. When there is no other suitable option, a young person may be considered for release a day or two early, through the approval of reintegration leave, where the release date is on a day when it is impossible to make the necessary travel connections (ie. the available models of public transportation do not operate).
10. The open custody facility social worker must ensure that the release from custody is entered into the Provincial Information Management System within two working days of the release.
11. A Children's Special Allowance Application and Cancellation form must be completed and forwarded to Revenue Canada within two working days of the release. The social worker must advise the parent/guardian or CSSD, if youth is in the care or custody of a manager, to apply to Revenue Canada, for reinstatement of Children's Special Allowance on behalf of the young person (if eligible).

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**



## INCIDENT NOTIFICATION AND REPORT COMPLETION

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**Policy no.: 7.7**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:**

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**PURPOSE:** To provide guidelines for notification process related to serious incidents that occur in open custody settings and for the completion of the open custody incident report itself.

### **POLICY:**

1. Each group home is expected to have a recording procedure in place for all day to day events in the facility. However, for more serious or unusual events, the Departmental *Incident Report* must be completed. Depending upon the type of event there are different timelines for review of these reports.
2. Open custody residential care staff shall prepare an *Incident Report* when a young person has been involved in a serious or unusual event, or in the event of all major incidents including: absence without leave, serious injury or death to a resident or other, suicide attempts, drug overdoses, alleged abuse, assaults, serious acts of vandalism, events requiring the police or fire personnel, allegations made by residents towards agency/board staff, disasters, major breach of trust i.e. breach of confidentiality, or any other incidents of a serious nature.
3. The primary purpose of a formal reporting requirement for incidents is to ensure that all procedures for responding to emergency situations are followed, analyzed and revised, as the need dictates, in order to minimize the possibility of similar occurrences in the future. In addition, timely reporting of incidents, both verbally and on the proper form, facilitates any necessary action from the provincial office, and provides documentation that could be critical to any future action that may take place concerning the incident.
4. Depending upon the nature of the incident, timeframes for required initial notification vary, however, notification of required parties, within required timeframes, should not be contingent upon the completion of the *Incident Report* form itself.

## PROCEDURES:

### Initial Notification Process

1. The initial incident notification process occurs when a serious incident has occurred in the group home. A serious event, in this context, is one in which there is required emergency response whether that be by the police, fire personnel, and/or medical professionals. This initial notification ensures all appropriate parties are notified, in a timely fashion, independent of the completion-submission of the *Incident Report* form.
2. **Notification can occur by phone, email, or facsimile machine.**
3. The following table identifies serious incidents, that may occur within a group home setting, and details the timeframes for the initial incident notification:

Incident Type	Required Notification Process
1. Possession of Contraband 2. Refusal of Instruction 3. Damage to Property	Group home staff shall notify the social worker responsible for open custody, <u>at the minimum</u> , by the next working day. This notification may be achieved by faxing a copy of the <i>Incident Report</i> form.
1. Escape from Lawful Custody 2. Assault of a Staff Person by a Resident 3. Resident Assault of Another Resident 4. Allegations of Improper Conduct by a Resident Against a Staff Member 5. A Resident Injury Resulting in Hospitalization 6. A Resident Suicide Attempt that does <u>not</u> require Hospitalization 7. Allegations of Resident Maltreatment made Against a Staff Member	<p><b><u>Regular Work Hours</u></b></p> <ul style="list-style-type: none"> <li>i) group home staff are required to contact the police;</li> <li>ii) group home staff shall, within one (1) hour of police notification and/or after ensuring appropriate emergency health services have been provided, contact the social worker responsible for open custody;</li> <li>iii) the social worker responsible for open custody shall immediately advise his/her program supervisor and also ensure that the resident's parent/guardian has been notified;</li> <li>iv) the program supervisor shall notify the responsible Zone Manager and provincial office before the end of regular working hours.</li> </ul> <p><b><u>Outside Normal Work Hours</u></b></p> <ul style="list-style-type: none"> <li>i) group home staff are required to contact the police;</li> <li>ii) group home staff shall, within one (1) hour of police notification and/or after emergency health care services have been provided, contact the on call social worker;</li> <li>iii) the on call social worker shall ensure the parent(s) / guardian(s) of the individual(s) involved have been notified;</li> <li>iv) the on call social shall ensure his/her immediate supervisor is contacted by the end of his/her shift;</li> </ul>

Incident Type	Required Notification Process
	<p><b><u>Outside Normal Work Hours (cont'd)</u></b></p> <p>v) the applicable Zone and Manager and provincial office to be notified by 9:00 a.m. on next working day.</p>
<p>1. Escape from Lawful Custody but concern exists that the young person-at-large may:</p> <p>i) injure or harm themselves; and/or</p> <p>ii) injure or harm another person.</p> <p>2. A Resident Suicide Attempt that requires Hospitalization</p>	<p><b><u>Regular Work Hours</u></b></p> <p>i) group home staff are required to contact the police;</p> <p>ii) group home staff shall, within one (1) hour of police notification, contact the social worker responsible for open custody;</p> <p>iii) the social worker responsible for open custody shall immediately advise his/her program supervisor and also ensure that the resident's parent/guardian has been notified;</p> <p>iv) the program supervisor shall notify the responsible Zone Manager and provincial office before the end of regular working hours.</p> <p><b><u>Outside of Normal Work Hours</u></b></p> <p>i) group home staff are required to immediately contact the police;</p> <p>ii) group home staff shall, immediately after police notification, contact the on call social worker;</p> <p>iii) the on call social worker shall immediately advise the appropriate program supervisor and also ensure that the resident's parent/guardian has been notified;</p> <p>iv) the program supervisor shall notify the responsible Zone Manager and provincial office within two (2) hours</p>
<p>1. Death of a Resident</p> <p>2. An event like an on-site fire or flooding that results in the group home having to temporarily suspend operations or limits operations to the degree alternate placement arrangements are required.</p>	<p><b><u>Regular Work Hours</u></b></p> <p>i) group home staff shall immediately contact the social worker responsible for open custody/delegate;</p> <p>ii) the social worker responsible for open custody shall immediately notify his/her immediate supervisor and also ensure that the resident's parent/guardian has been notified;</p> <p>iii) the program supervisor shall immediately notify the responsible Zone Manager and provincial office.</p> <p><b><u>Outside of Normal Work Hours</u></b></p> <p>i) group home staff shall immediately contact the on call social worker;</p> <p>ii) the on call social worker shall immediately notify his/her immediate supervisor and also ensure that the resident's parent/guardian has been notified;</p> <p>iii) the program supervisor shall immediately notify the responsible Zone Manager and provincial office</p>

4. For the purpose of emergency notification, a listing of the designated managers and delegates, with home telephone numbers or other contact numbers, will be regularly distributed.

### **Timeframes for Completion of the Incident Report Form**

1. Unless otherwise noted a completed *Incident Report* form (sections A through E) should be submitted by group home staff to the social worker responsible for open custody within twenty four (24) hours or the next working day.
2. Following receipt of the *Incident Report* form, the social worker responsible for open custody shall complete section G and immediately submit the completed report form to his/her immediate supervisor. If the young person(s) to whom the report relates has status within the Protective Intervention program, a copy of the *Incident Report* form shall be sent to the responsible social worker within one working day of receipt.
3. In relation to section F, of the *Incident Report* form, which is completed by an agency representative:
  - i) in the case of critical injury or the death of a resident it shall be completed and submitted within five (5) days of the event;
  - ii) in the case of a UAL or unlawfully at large resident, it shall be completed and submitted within fifteen (15) days of the event; and,
  - iii) for all other incident types it shall be completed and submitted within thirty (30) days of the incident.
4. The social worker responsible for open custody is responsible for entering the incident into the department's Information Management System within two working days of the event.
5. All Incident Reports completed by group home residential staff will be reviewed by the facility's Program Committee. If, following, review, there is a required or recommended change to in house practice and procedure, the necessary recommendation will be submitted to the Board of Management or Executive Director for the sponsoring agency for approval to implement. Any resulting change in policy or practice will, in turn, be formally communicated to staff and, as applicable, to residents through written memo and/or amendment to in house policy manual. Any policy or practice change implemented must be consistent with: the principles/provisions of the *YCJA*, the principles and procedures of the community youth corrections program, and the *Canadian Charter of Rights and Freedoms*.
6. Generally the review of incident reports will be included as part of the agenda for a scheduled meeting of the Program Committee. Depending upon the nature of the event, however, a separate meeting may be convened to review a specific incident at the request of any member of the Program Committee. In the case of

resident serious injury or death, the Program Committee must review the policy/procedure implications of the event within seven days of the event's occurrence.

**EXCEPTIONS TO POLICY:**

**RELEVANT DOCUMENTS:**

- *Incident Report*

## REINTEGRATION LEAVE: DAY RELEASES

**Policy no.: 7.8a**

**Effective Date: December 12, 2006**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; **s.91(1)** Reintegration leave; **s.91(3)** Revocation of authorization; **s.91(4)** Arrest and return to custody; *Young Persons Offences Act*; **s.18(1)** Temporary release, **s.18(2)**, and **s.18(3)**

**PURPOSE:** To outline practices underlying and decision making consideration, for the use of reintegration leave approvals.

### **POLICY:**

1. Anytime a young person leaves the grounds of a custody setting without an authorized escort there is a reintegration leave approval required. There are two types of Reintegration Leave approvals:
  - a) a day release (e.g. daypass) that allows a young person to attend-participate in activities outside the facility including: school, vocational, recreational/leisure programs; and
  - b) a temporary release (e.g. full) that allows the young person to be away from the facility for an extended period for a specific purpose.
2. An authorized escort is one of the following categories: residential care staff, social work staff, police officer, or other persons charged with the custodial supervision of the young person.
3. Day releases are required for the young person to attend school or other form of educational or vocational programming, for employment purposes, for the purposes of attending structured recreational programming, and for other purposes identified in an individual's service plan. An approval of a Day Release, for the above noted purposes, considers both: 1. the safety and support of the young person; and, 2. the need to ensure public safety. The required arrangements for travel will be made by group home staff or the social worker responsible for open custody and will also consider these two tenets. When it is deemed appropriate for the young person to travel unescorted, depending upon specific circumstances, the young person should be encouraged to use public transportation for the purposes of the required travel.

## **PROCEDURES:**

### **Notification and Release**

1. Normally the social worker responsible for open custody shall meet with a young person within two (2) working days of placement. If not already addressed by group home staff the social worker shall review, with the young person, policies and procedures governing Reintegration Leave.
2. During this initial contact the social worker responsible for open custody shall meet with group home staff to determine if any day release approvals are immediately required to facilitate existing day programs or services e.g. ongoing school placement, existing counselling services. The young person shall be assisted, as necessary, with completing section A of the *Reintegration Leave Form*.
3. The social worker responsible for open custody shall approve required Day Releases throughout the placement.
4. Prior to release under the authority of a day release reintegration leave, the social worker and/or residential caregiver must fully advise the young person of the conditions of the reintegration leave, noting that failure to comply with any term or condition set out in the reintegration leave may result in revocation. If revocation occurs, the young person may be arrested without a warrant and returned to custody, or charged in court if he/she has committed an offence.
5. Part II, authorization of the *Reintegration Leave Form* must be provided to, and signed by the young person. A copy of the form must be carried by the young person at all times while on reintegration leave status.

### **Denial/Deferment**

1. A request for an ongoing day release may be initiated by the young person so, for example, he or she could attend some form of recreational or leisure programming. Should the application for a reintegration leave be denied or deferred, the young person must be advised of the reasons for this decision in writing, by way of section C of the *Reintegration Leave Form*. These reasons must be discussed and wherever possible, the young person should be given some indication of areas in which he/she needs to make further progress in order to gain future approval of a reintegration leave.

### **Revocation of Reintegration Leave:**

1. If the circumstances warrant it, the social worker may revoke any reintegration leave. Upon having his/her leave revoked, the young person may be arrested without Warrant, and returned to a custody facility. The social worker may revoke a reintegration leave for the following reasons:

a) **Withdrawal of authorization:**

Prior to the release, while the young person is still in custody, a revocation could occur because of a breakdown of release plans (education / employment / training) or because of misconduct by the young person.

b) **Violation of terms of reintegration leave:**

During the period of a Reintegration Leave, should the young person fail to comply with any conditions set out in the terms of release, a revocation could occur.

### **Revocation Procedures**

1. Upon revocation of the reintegration leave by the social worker, the young person must be notified of the revocation immediately.
2. Upon revocation the young person will be returned to the custody facility immediately by either the social worker, residential caregiver, or, if necessary, the police.
3. If the young person cannot be returned to custody immediately by the social worker, or residential caregiver, and police assistance is considered necessary, the police should be notified that the young person's reintegration leave has been revoked, and that he/she should be considered absent without leave. This provides authority for the police to apprehend the young person without Warrant. Any information concerning the young person's whereabouts and breach of conditions should be shared with the police.
4. Notification to the young person must be followed up in writing by the social worker who revoked the reintegration leave. This will be accomplished by the completion of section D of the *Reintegration Leave Form*. An Incident Report explaining the circumstances and reasons for the revocation must also be filed in accordance with the policies on incident reporting (Policy 7.7).

### **EXCEPTIONS TO POLICY:**

The only occasion when a reintegration approval is necessary when the young person is being supervised by an authorized person is when the period away from the group home exceeds sixteen (16) hours.

### **RELEVANT DOCUMENTS:**

- *Reintegration Leave Form*



## REINTEGRATION LEAVE: TEMPORARY RELEASE

**Policy no.: 7.8b**

**Effective Date: December 12, 2006**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; **s.91(1)** Reintegration leave; **s.91(3)** Revocation of authorization; **s.91(4)** Arrest and return to custody; *Young Persons Offences Act*; **s.18(1)** Temporary release, **s.18(2), and s.18(3)**

**PURPOSE:** To outline practices underlying and decision making consideration, for the use of reintegration leave approvals for the purpose of authorizing a young person's extended temporary release.

### **POLICY:**

1. Anytime a young person leaves the grounds of a custody setting without an authorized escort there is a reintegration leave approval required. There are two types of Reintegration Leave approvals:
  - a) a day release (e.g. daypass) that allows a young person to attend-participate in activities outside the facility including school, vocational, recreational-leisure programs; and
  - b) a temporary release (e.g. full) that allows the young person to be away from the facility for an extended period for a specific purpose.
2. An authorized escort is one of the following categories: residential care staff, social worker, police officer, or other persons charged with the custodial supervision of the young person.
3. A temporary release from custody can be approved for one or more of the following reasons:
  - a) when a young person needs to be hospitalized;
  - b) when the young person has been accepted into a residential treatment program;
  - c) when the young person is participating in a school based activity that requires him/her to be away from the group home overnight;
  - d) when there are compassionate grounds e.g. serious illness or death of a family member; and

- e) for purposes related to discharge planning including:
  - i) family visits; or,
  - ii) to assist with efforts to secure housing; or,
  - iii) to assist with efforts to find employment, e.g. job searches; or,
  - iv) when necessary for purposes of beginning an educational or vocational program.
- 4. Reintegration leave, in the form of a temporary release from custody, can be approved by the program supervisor for a specified period up to thirty (30) days. There is, however, an ability to extend this approval for a further thirty (30) days without having the young person return to custody. An extension beyond the first 30 days must be approved by the responsible Zone Manager.
- 5. Each request must be assessed on an individual basis, however, the young person will have normally served a **minimum of one third of their sentence** prior to approval of reintegration leave. The timeframe establishes eligibility for consideration. Approval is based on individual circumstances and is not automatic. Approval of reintegration leave prior to this can be approved by the social worker supervisor, when it is documented as a necessary part of a service planning for the young person.
- 6. In determining the appropriateness of approving a reintegration leave for the purposes of a temporary release from a group home, the following issues must be considered:
  - a) compatibility with service planning;
  - b) the young person's response to being in custody;
  - c) willingness, and ability, of parent(s)/guardian(s)/or persons identified in a supervision role to address any failure(s) by the young person to abide by the conditions of his/her leave; and
  - d) the young person's recent history of complying with the conditions of previous releases (e.g. no history of revocations or reoffending while on leave).
- 7. Beyond considering the young person's willingness, and ability, to comply with the conditions of his/her leave as well as his/her caregivers, willingness, and ability, to address any failure to abide by these conditions while on leave, consideration shall also be given to any public safety concerns that could arise during the period of temporary release.
- 8. A reintegration leave approval for a temporary release from custody would, normally, have to be supported by the young person's social worker.

9. Normally, Reintegration Leave for the purposes of a temporary release from custody would not be authorized for a young person with outstanding charges; however, if consideration is being given to such a reintegration leave, full consideration must be given to the seriousness of the charge(s), and to whether they were committed prior to coming into custody, during custody, or during a previous reintegration leave. If the charges are “old” charges relating to events prior to custody and they are minor, non-violent offences, they would not necessarily be a bar to approval of a reintegration leave.
10. If a young person has had reintegration leave revoked within the last thirty (30) days no new leave should be approved except on compassionate or humanitarian grounds.
11. Except in emergency circumstances, the completed *Reintegration Leave Form* is to be submitted to the social worker’s immediate supervisor at least 3 working days prior to the commencement of the requested release.

## **PROCEDURES:**

### **Application**

1. Within 2 working days of admission to custody, each young person must be informed of policies and procedures governing reintegration leave, including the application and approval process and the forms and procedures to be followed. The parent/guardian of the young person should also be informed by the social worker as soon as possible, but in all cases within seven days of the young person’s admission to custody.
2. The young person, with any assistance necessary based upon intellectual or physical functioning, will apply for a reintegration leave by completing section A of the *Reintegration Leave Form*. Upon completion of the application, the social worker responsible for the custody placement, in conjunction with residential care staff, must complete section B of the *Reintegration Leave Form*; including an assessment and recommendations for the consideration of approval by the social worker supervisor.
3. The assessment and recommendation must be completed in consultation with the social worker and any other relevant collateral contacts.
4. The social worker responsible for open custody shall submit the Reintegration Leave request to his or her immediate supervisor. A supervisor can approve a temporary release for up to a maximum of thirty (30) days.

5. The granting of an extension beyond the thirty (30) day limited requires the approval of a Zone Manager. A new application shall be submitted for the review and consideration of the Zone Manager.

### **Stipulation of Terms and Conditions**

1. If the request has been approved, the supervisor may authorize the reintegration leave subject to any terms or conditions he/she considers desirable having due regard to the recommendations of the social workers. The terms and conditions shall include the following:
  - a) that the young person keep the peace and be of good behaviour;
  - b) that the young person refrain from the use of alcohol, drugs, or prescription medication not specifically prescribed for the young person;
  - c) not to associate with individuals known to have a criminal record with exceptions as necessary; and
  - d) abide by the conditions of any existing concurrent court order e.g. probation or intensive support and supervision (where applicable).
2. The terms and conditions of the reintegration leave should also include any further conditions deemed appropriate, including but not limited to:
  - a) personal disassociations;
  - b) a requirement to report to, take direction from, or be under the supervision of a social worker, residential care worker or other person in authority;
  - c) curfew restrictions;
  - d) any other conditions deemed desirable or necessary in the interest of public safety or in order to benefit the young person; and
  - e) the young person shall be informed that random telephone curfew checks may be completed by residential care staff during the period of reintegration leave.

### **Release Procedures**

1. Prior to release under the authority of a temporary release, the social worker and/or residential caregiver must fully advise the young person of the conditions of the reintegration leave, noting that failure to comply with any term or condition set out in the reintegration leave may result in revocation. If revocation occurs, the youth may be apprehended by the police and returned to custody, or charged in court if he/she has committed a new offence.
2. Part II, Authorization of the *Reintegration Leave Form* must be provided to, and signed by the young person. A copy of the form must be carried by the young person at all times while on Reintegration Leave status.

3. The approval of Reintegration Leave for a temporary release considers both: 1. the safety and support of the young person; and, 2. the need to ensure public safety. Decisions around travel arrangements should also reflect these two tenants. If a young person is deemed eligible for Reintegration Leave they would, normally, travel to and from unescorted. An escort is not mandatory, however, there may be individual case circumstances or travel arrangements where an escort is considered necessary. Travel arrangements should reflect the most economical and appropriate means possible.

### **Denial/Deferment**

1. Should the application for a reintegration leave be denied or deferred, the young person must be advised of the reasons for this decision in writing, by way of section C of the *Reintegration Leave Form*. These reasons must be discussed and wherever possible, the young person should be given some indication of areas in which he/she needs to make further progress in order to gain future approval of a reintegration leave.

### **Revocation of Reintegration Leave**

1. If the circumstances warrant it, the supervisor may revoke any reintegration leave. Upon having his/her leave revoked, the young person may be arrested without Warrant, and returned to a custody facility.
2. If a residential care staff member becomes aware of a breach of reintegration leave conditions, he/she shall immediately report the incident to the facility social worker.
3. Generally, the supervisor may revoke a reintegration leave for the following reasons:
  - a) **Withdrawal of authorization:**  
Prior to the release, while the young person is still in custody, a revocation could occur because of a breakdown of release plans (education / employment / training) or because of misconduct by the young person.
  - b) **Violation of terms of reintegration leave:**  
During the period of a reintegration leave, should the young person fail to comply with any of the conditions set out in the terms of release a revocation could occur.

### **Revocation Procedures**

1. Upon revocation of the reintegration leave by the supervisor, the young person and parent/guardian or CSSD if the youth is in care or custody of manager, must be notified of the revocation immediately, if possible. The person revoking the reintegration leave will give instructions as to who actually notifies the youth. Normally, it will be a social worker or the police.

2. Upon revocation the young person will be returned to the custody facility immediately by either the social worker, parent, residential caregiver, or the police.
3. If the young person cannot be returned to custody immediately by the social worker, parents or residential caregiver, the police should be notified that the young person's reintegration leave has been revoked, and that they should be considered absent without leave. This provides authority for the police to apprehend the young person without Warrant. Any information concerning the young person's whereabouts and breach of conditions should be shared with the police.
4. Notification to the young person must be followed up in writing by the Supervisor who revoked the reintegration leave. This will be accomplished by the completion of section D of the *Reintegration Leave Form*. An Incident Report explaining the circumstances and reasons for the revocation must also be filed in accordance with the policies on incident reporting (Policy 7.7).

#### **EXCEPTIONS TO POLICY:**

#### **RELEVANT DOCUMENTS:**

- *Reintegration Leave Form*

## UNAUTHORIZED ABSENCE FROM CUSTODY

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**Policy no.: 7.9**

**Effective Date: April 9, 2013**

**Date Revised: December 7, 2016**

**Policy Cross References:** Order to Reside

**Legislative References:**

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**PURPOSE:** To provide a general overview of notification practices when a young person is absent without authorization.

### **POLICY:**

1. All unauthorized absences, by a youth, from the open custody setting are to be dealt with in a prescribed fashion and will be thoroughly documented.

### **PROCEDURES:**

#### **Open Custody Placements**

1. When a resident has not returned to the facility at the time stated on his/her *Reintegration Leave form*, but has reported to explain the reason for the delay, the coordinator and/or senior staff person on shift may extend the Reintegration Leave for a reasonable period of time to enable the resident to return directly to the facility. The coordinator or senior staff member should be satisfied that the reasons for the request are valid and that an extension will not present any undue risks to the resident or community.
2. When a resident has not returned at the time set out in the *Reintegration Leave form* and has not advised by telephone, or other appropriate means, the reason for the delay, the coordinator or senior staff person on shift will, within a period of time not to exceed two hours, declare the resident “unlawfully-at-large”.
3. In the case of a resident being declared “unlawfully-at-large”, the police must be advised by the coordinator or senior staff immediately. At the time of police notification the staff on shift should be prepared to give a description of the young person including physical characteristics, clothing, last known address of parents/guardian and the possible location or direction in which the young person may be heading.

4. Residential care staff on duty at the time of the incident will notify the following parties without delay: coordinator/on-call manager, facility social worker/on-call worker, parent/ guardian or CSSD if the youth is in care/custody of a manager (if social worker is unable to notify immediately). Other notifications should occur in accordance with Policy 7.7.
5. If a resident returns to the facility on a voluntary basis after being declared “unlawfully-at-large” the police should be immediately contacted. The Coordinator may, in consultation with the facility social worker, make a recommendation to the police concerning the possible charges. The young person’s family must also be notified of his/her return.
6. The young person’s parent/guardian, known friends and acquaintances should be contacted by facility staff to obtain any information which may assist in locating the young person but no information shall be given about the need for such information.
7. Should a young person deliberately attempt to leave the facility’s premises without permission, the consequences of his/her action should be explained and all appropriate non-physical measures (e.g. counselling) should be invoked to endeavour to stop the young person from leaving. No attempt shall be made by staff to physically restrain the resident solely for the purpose of preventing him/her from leaving; however, should physical restraint become necessary due to the resident’s aggressive behaviour in the course of the situation, such restraint measures can and should be invoked in accordance with policy for the purpose of protecting the resident, other residents and/or staff. Normally the young person would be considered “unlawfully-at-large” upon leaving the premises, although some latitude may be applied before contacting the police.
8. In cases where a young person deliberately leaves an open custody facility without permission but is not considered to be an immediate risk to himself/herself and/or the community, the facility coordinator can use some discretion around the decision to contact the police immediately. However, if the young person stays away from the facility for a period in excess of one-half hour, the coordinator must contact the facility social worker and a local search by facility staff will commence. Where extra assistance for additional staff is required to facilitate the search for the young person, prior approval from the applicable Program Supervisor/Manager should be sought. If it is not possible to do this, the facility staff will make the decision and will attempt to obtain concurrence from district office staff as soon as possible afterward. Where the young person is not located within a period of two hours from the time he/she left the facility, the police must be contacted and all available information is to be provided (i.e. description of the young person, etc.). The young person’s parent/guardian or CSSD if the youth is in the care or custody of a manager, must also be contacted at this time, if they have not already been consulted as to the possible whereabouts of the young person.



9. When the young person is located and apprehended, all appropriate individuals are to be notified and an incident report must be completed in accordance with policy.

### **Initial Notification Process**

1. The initial incident notification process occurs when a serious incident has occurred in the group home. A serious event, in this context, is one in which there is required emergency response whether that be by the police, fire personnel, and/or medical professionals. This initial notification ensures all appropriate parties are notified, in a timely fashion, independent of the completion-submission of the incident report form.
2. **Notification can occur by phone, email, or facsimile machine.**
3. The following table identifies serious incidents, that may occur within a group home setting, and details the timeframes for the initial incident notification:

<b>Incident Type</b>	<b>Required Notification Process</b>
Escape from Lawful Custody	<p><b><u>Regular Work Hours</u></b></p> <ul style="list-style-type: none"> <li>i) group home staff are required to contact the police;</li> <li>ii) group home staff shall, within one (1) hour of police notification, contact the social worker responsible for open custody;</li> <li>iii) the social worker responsible for open custody shall immediately advise his/her program supervisor and also ensure that the resident's parent/guardian has been notified;</li> <li>iv) the program supervisor shall notify the responsible zone manager and provincial office before the end of regular working hours.</li> </ul> <p><b><u>Outside Normal Work Hours</u></b></p> <ul style="list-style-type: none"> <li>i) group home staff are required to contact the police;</li> <li>ii) group home staff shall, within one (1) hour of police notification, contact the on call social worker;</li> <li>iii) all other notifications must be completed before 7:00 a.m. on the next day</li> </ul>

Incident Type	Required Notification Process
<p>Escape from Lawful Custody but concern exists that the young person-at-large may:</p> <ul style="list-style-type: none"> <li>i) injure or harm themselves; and/or</li> <li>ii) injure or harm another person.</li> </ul>	<p><b><u>Regular Work Hours</u></b></p> <ul style="list-style-type: none"> <li>i) group home staff are required to contact the police;</li> <li>ii) group home staff shall, within one (1) hour of police notification, contact the social worker responsible for open custody;</li> <li>iii) the social worker responsible for open custody shall immediately advise his/her program supervisor and also ensure that the resident's parent/guardian has been notified;</li> <li>iv) the program supervisor shall notify the responsible zone manager and provincial office before the end of regular working hours.</li> </ul> <p><b><u>Outside of Normal Work Hours</u></b></p> <ul style="list-style-type: none"> <li>i) group home staff are required to immediately contact the police;</li> <li>ii) group home staff shall, immediately after police notification, contact the on call social worker;</li> <li>iii) the on call social worker shall immediately advise the appropriate program supervisor and also ensure that the resident's parent/guardian has been notified;</li> <li>iv) the program supervisor shall notify the responsible zone manager and provincial office within two (2) hours</li> </ul>

4. For the purpose of emergency notification, a listing of the designated managers and delegates, with home telephone numbers or other contact numbers, will be regularly distributed.

### Order to Reside

1. In the case of a resident being declared absent without authorization, the police must be advised by the coordinator or senior staff immediately. At the time of police notification the staff on shift should be prepared to give a description of the young person including physical characteristics, clothing, last known address of parents/guardian and the possible location or direction in which the young person may be heading.
2. Residential care staff on duty at the time of the incident will notify the following parties without delay: coordinator/on-call manager, facility social worker/on-call worker, parent/guardian or CSSD if the youth is in the care of a manager (if social worker is unable to notify immediately). Other notifications should occur in accordance with Policy 7.7.

3. If the young person returns to the facility of their own volition, depending upon individual case circumstances and the language of the court order, consideration may be given to (i) initiating a failure to comply charge or (ii) suspending community / conditional supervision. The nature of the possible action depends upon the young person's legal status at the time of the incident.
4. The young person's parent/guardian, known friends and acquaintances should be contacted by facility staff to obtain any information which may assist in locating the young person.
5. Should a young person deliberately attempt to leave the facility's premises without permission, the consequences of his/her action should be explained and all appropriate non-physical measures (eg. counselling) should be invoked to endeavour to stop the young person from leaving. No attempt shall be made by staff to physically restrain the resident solely for the purpose of preventing him/her from leaving; however, should physical restraint become necessary due to the resident's aggressive behaviour in the course of the situation, such restraint measures can and should be invoked in accordance with policy for the purpose of protecting the resident, other residents and/or staff.
6. In cases where a young person deliberately leaves an open custody facility without permission but is not considered to be an immediate risk to himself/herself and/or the community, the facility coordinator can use some discretion around the decision to contact the police immediately. However, if the young person stays away from the facility for a period in excess of one-half hour, the coordinator must contact the facility social worker and a local search by facility staff will commence. Where extra assistance for additional staff is required to facilitate the search for the young person, prior approval from the applicable program supervisor/manager should be sought. If it is not possible to do this, the facility staff will make the decision and will attempt to obtain concurrence from the district office staff as soon as possible afterward. Where the young person is not located within a period of two hours from the time he/she left the facility, the police must be contacted and all available information is to be provided (ie. description of the young person, direction heading, efforts already made to locate the young person, etc.). The young person's parent/ guardian must also be contacted at this time, if they have not already been consulted as to the possible whereabouts of the young person.
7. A young person with an "order to reside" may be in violation of their order if he/she wilfully fails or refuses to comply with that order by, for example, being absent without authorization from a facility. In such circumstances consideration may be given to charging the young person with failure to comply (provided there is no alternative action that may be taken to reasonably ensure the young person to comply).

8. If the young person, with the “order to reside”, is on the community supervision component of his/her custody and supervision order, and the conditions of that order reference residing where required by the Provincial Director, and he/she wilfully fails or refuses to comply with this condition, consideration may be given to suspending the community supervision. As with consideration of any suspension, the issue of compliance with facility rules has to be considered within the context of threat to public safety and the risk of the young person reoffending.
9. If the young person with the “order to reside” is on conditional supervision as a result of custodial review, and the young person refuses to reside as directed, consideration may be given, by the facility social worker in consultation with the young person’s social worker to initiating a suspension of the conditional supervision order.

### **Release of Information to Media to Assist with Apprehension**

1. If concern exists about the physical safety of an individual resident, who is unlawfully-at-large, or concern exists regarding the potential of an individual reoffending while at large, identifying information may be provided to media outlets as long as the young person’s status as a youth corrections client is not referenced. The young person must simply be identified as missing from his/her place of residence.
2. Section 110(1) of the *YCJA* forbids publication of the name of a young person or any other information that would identify the young person as having been dealt with under the *YCJA*. This would include information such as:
  - a) an individual is unlawfully at large from a group home;
  - b) an individual failed to return from reintegration leave; or
  - c) an individual is missing from a specific group home.
3. The police can make application under section 110(4) of the *YCJA* to publish information identifying a young person as a young person, if there is reason to believe that the young person is a danger to others and the publication is necessary to assist with apprehension. Such a publication order would be in effect for five (5) days.

### **EXCEPTIONS TO POLICY:**

### **RELEVANT DOCUMENTS:**

## MEDICAL CONSENT

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**Policy no.: 7.10**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:** Incident Reporting

**Legislative References:**

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**PURPOSE:** To clarify the required consents for medical examinations, treatments, or procedures required by young persons during their staff in open custody.

### **POLICY:**

1. Consent for any type of medical or dental treatment must be informed consent. Informed consent means the voluntary agreement for examination, treatment, or procedure after the young person and his/her parents/guardians of CSSD if the youth is in the care or custody of a manager, have been informed of the nature, consequences, risk, and alternatively to a proposed examination, treatment, or procedure.
2. Medical examination and routine treatment may be provided to a young person, regardless of age, on the basis of the young person's own informed consent at the discretion of the medical practitioner.
3. When the medical practitioner deems that the young person is incapable of giving informed consent, or if the proposed medical procedure is invasive or carries an element of risk, the young person's legal guardians shall be contacted to obtain the required consent.
4. Under no circumstances are residential care staff to give permission for, or consent to, the medical treatment of a young person under their care. Residential care staff, who possess a valid first aid certificate, may provide emergency remedial measures while awaiting professional medical treatment.
5. Regardless of the required consent(s), facility staff are required to immediately notify the social worker responsible for open custody, and where possible the young person's parents/guardians or CSSD if the youth is in the care of custody of a manager, of any significant illness and/or medical or psychiatric treatment. Where the treatment or the condition is of an emergency nature or requires

hospitalization, this notification shall occur before the end of the period of work of the residential staff on duty.

**PROCEDURES:**

**EXCEPTIONS TO POLICY:**

**RELEVANT DOCUMENTS:**

## **FUNCTIONS OF SOCIAL WORKER RESPONSIBLE FOR OPEN CUSTODY**

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**Policy no.: 7.11**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:**

**Legislative References:**

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**PURPOSE:** To summarize key roles of the social worker responsible for open custody.

### **POLICY:**

1. The social worker responsible for open custody is responsible for maintaining a supportive relationship with the young person placed in the facility's care. The social worker responsible for open custody will meet privately with each resident on a weekly basis and shall coordinate planning as it relates to various aspects of the young person's stay in custody.
2. The social worker responsible for open custody will lead the processing of both Optional and Mandatory Custody Review requests and will oversee the completion of any Custodial Progress Reports requested. This may include facilitation of a Conference, if required, by the Youth Justice Court.
3. The social worker responsible for open custody will assist with required Reintegration Leave approvals requests which are approved by their immediate supervisor.
4. While the social worker has ultimate responsibility to ensure the required discharge planning occurs and is documented, the social worker responsible for open custody shall fully participate in the plan's development. The social worker responsible for open custody may be asked to review the discharge planning document with the applicable resident.
5. The social worker responsible for open custody shall assess requests from group home staff regarding requests for an administrative transfer to secure custody. All such requests shall be discussed with the social worker responsible for open custody's immediate supervisor.

6. The social worker responsible for open custody shall oversee release from custody arrangements including completing, within three working days of a young person's release from custody, the Child Tax Benefit Notice of Change Form (Form 14-636).
7. As a check of information generated through the YCM component of CRMS, the social worker responsible for open custody will complete a manual calculation of the custody release date and will update that calculation as events occur that will alter this calculation i.e. the young person receives a new custody and supervisor sentence, the young person is absent without authorization.

### **Support of Program Delivery/General Operations**

1. For group homes the social worker responsible for open custody may be designated as the departmental representative on the facility's board of management or advisory committee.
2. For group homes the social worker responsible for open custody shall sit on the facility's program committee. Within this role the social worker responsible for open custody shall ensure policies/practices, within the group home, are consistent with Policy sections 5 and 6 of the *Residential Services Standards and Practices Manual*.
3. For group homes the social worker responsible for open custody shall assist with the review and processing of requests for additional staffing and/or capital requests as per Policy 2.6 and 2.7 of the *Residential Services Standards and Practices Manual*.
4. The social worker responsible for open custody shall ensure compliance with provincial policy regarding incident reporting including timeframes for completion and submission.

### **PROCEDURES:**

### **EXCEPTIONS TO POLICY:**

### **RELEVANT DOCUMENTS:**



## SERVICE FUNDING FOR YOUNG PERSONS IN OPEN CUSTODY

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**Policy no.: 7.12**

**Effective Date: January 16, 2014**

**Date Revised: December 7, 2016**

**Policy Cross References:** Service Funding, Service Planning During Open Custody

**Legislative References:**

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**PURPOSE:** To detail: (i) the availability and purpose of service funding for open custody residents; and (ii) processes connected to approval and ongoing review.

### **POLICY:**

1. Within the approved budget for an open custody group home there are allocations provided to offset routine costs related to the day-to-day care and needs of individual residents. The type of routine costs addressed in the group home's operating budget include allocations for local transportation, participation in social/recreational programs or activities, provision of personal hygiene items, and provision of non-prescription medications.
2. Non-routine costs that may be considered for direct payment include medical, dental, vision care, and prescription medication and/or equipment (not covered by the Newfoundland and Labrador Prescription Drug Program or the provincial Health Plan). In addition, funding may be authorized for specialized educational assessments, tutoring being recommended as part of an educational plan, counselling, and specific treatment programs.
3. Supervisor approval or recommendation is required for all service funding requests.

### **PROCEDURES:**

1. For the purposes of consideration of funding approval the social worker shall submit to his/her immediate supervisor the *CSSD Financial Request* form.
2. An individual approval shall not exceed six (6) months. An updated approval form shall be required for an extension request. This report shall summarize the activities-to-date and a rationale for continuation.

## 3. Funding approvals would also observe a number of maximum contributions:

<b>Service</b>	<b>Amount</b>	<b>Description</b>
Private Counselling	Approved by Zone Manager	Social workers shall explore availability of internal or publically funded community based resources before requesting approval to engage private services
Specialized clinical or educational assessments	Approved by Zone Manager	Social workers shall explore availability of internal or publically funded community based resources including psychological services through the Newfoundland and Labrador Youth Centre and Behavioral Management Services within the YCJA
Tutoring	Maximum of \$25/hour and 5 hours per month. Approved by Supervisor	Group home personnel will work with the school to identify available supports within the school setting. The need for formal tutoring, through a qualified practioner, would normally be identified through some form of school based assessment or service planning process eg. IEP
Clothing at Placement	Maximum of \$300.00 Approved by Supervisor	At the time of admission, or as soon as possible after placement, the social worker, shall contact the young person's parent/guardian to arrange to get his/her clothes and other personal items. Group home personnel shall advise the worker, in writing, of the resident's immediate clothing needs (based on the season of the year).
Medical Transportation	Approved by Supervisor	
Transportation for Temporary Absence – Reintegration Leave	Approved by Supervisor	Most economical means available.
Day Release – Reintegration Leave	Maximum of \$300 month Approved by Supervisor	Amounts over \$300.00 may be approved by Zone Manager
Christmas Allowance	\$400.00 annually	

4. In situations where a young person requires specialized counselling services to address emotional and/or behavioural difficulties, the social worker must assess the availability of mental health or publicly funded services within the community. If counselling services are not available, except through a private practitioner, the social worker must ensure the following:
  - a) the private practitioner is trained and qualified to offer the services;
  - b) goals and objectives for the counselling are established with the private practitioner and the young person, as part of the overall service plan;
  - c) the private practitioner agrees to provide progress reports to the social worker regarding the counselling of young person, as required;
  - d) costs for private counselling are to be established before the sessions commence, with an appropriate billing schedule in place.
5. Where specialized counselling services are being arranged on behalf of a young person, the social worker, before making the referral, will ensure that the professional is qualified in training and experience for that particular speciality. Individuals providing private counselling services are to be knowledgeable about relevant legal-policy mandates (i.e. access/disclosure provision of the *YCJA*) as well as information pertinent to their area of specialized practice or service. Any documents provided must be stamped with the appropriate records non-disclosure date as per policy.
6. Where private counselling and/or treatment services have been engaged, an *Agreement to Provide Assessment and Treatment* form shall be completed.
7. A required assessment may be able to be completed through the auspices of the psychologist position attached to the Newfoundland and Labrador Youth Centre (NLYC). To access this service the program supervisor should arrange to submit, to the Youth Corrections Consultant at Provincial Office, a narrative report outlining the details of the case and reason for referral *Newfoundland and Labrador Youth Centre IRCS Psychological Services Referral Form*. Attached should be copies of the most recent PSR, YLS-CMI, and applicable court orders. Provincial office shall immediately, upon receipt, initiate discussions with the Manager of Programs at NLYC to determine availability of, and timeframe for this service.

### **Basic Medical Services**

1. Youth are eligible to receive coverage for prescription drugs through the Newfoundland and Labrador Prescription Drug Program (NLPDP). The youth's social worker is responsible for submitting the application. Additional information regarding the NLPDP may be obtained online at: <http://www.health.gov.nl.ca/health/index.html>.
2. A supervisor may approve funds to cover all or part of the cost of medications not covered by the NLPDP.

3. The costs of medical equipment shall be covered if it is prescribed by a physician and is not covered by the Provincial Health Plan (MCP).
4. Youth may be eligible for medical equipment and/or supplies provided through the Special Assistance Program of the Department of Health and Community Services and administered by the Regional Health Authority. The social worker shall explore funding under this program before recommending funding approval by CSSD.
5. First Nations and Inuit youth, who are eligible for Health Canada's Non-Insured Health Benefits (NIHB), may be able to receive partial or full coverage for a specified range of health benefits, including drug benefits (prescription and over-the-counter); dental care; vision and eye care; medical supplies and equipment; short-term crisis intervention; mental health counselling; and medical transportation when these services are not provided by MCP, NLPDP or a third party insurance.

### **Dental Services**

1. The costs of basic dental services shall be covered including:
  - a) an examination and cleaning **every 12 months**;
  - b) routine fillings and extractions;
  - c) emergency examinations.
2. The costs of other services may be covered, with supervisory approval, if the services are deemed medically necessary by a qualified health practitioner (for example, a youth who received specialized orthodontic treatment).

### **Vision Care**

1. Young persons are eligible to have the costs of an **annual** eye examination covered and the costs of eye glasses or contact lenses up to a maximum of \$200 per year.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Children, Seniors and Social Development Financial Request*
- *Agreement to Provide Assessment and Treatment*
- *Newfoundland and Labrador Youth Centre IRCS Psychological Services Referral Form*

## INVESTIGATION OF ALLEGATIONS OF RESIDENT MALTREATMENT

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**Policy no.: 7.13**

**Effective Date: June 1, 2014**

**Date Revised: December 7, 2016**

**Policy Cross References:** Allegations of Assault; Incident Reporting

**Legislative References:**

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**PURPOSE:** To delineate the CSSD role in investigating allegations of the maltreatment (including allegations that a staff member assaulted a resident) of a group home resident.

### **Definitions:**

**Maltreatment** in a staffed residential placement resource includes physical, sexual or emotional harm of a child or youth that is non-accidental and is as a result of an action, inaction or lack of appropriate action by a Service Provider or one of its employees. Examples include, but are not limited to, the following:

- a) deliberately using force against a child or youth in such a way that the child/youth is injured or at risk of being injured;
- b) hitting, shaking, pushing, kicking and dangerous or harmful use of restraint;
- c) verbal threats, social isolation, intimidation, exploitation, and unreasonable demands; and,
- d) sexual assault including kissing, touching, intercourse, exposure to or involvement in pornography, etc.

**Quality of Care** is a staffed residential placement resource refers to the provision of a level of daily care which ensures that a child or youth's basic and developmental needs are addressed by competent staff in a safe and supportive environment. Examples of quality of care concerns include, but are not limited to, the following:

- a) lack of age and developmentally appropriate supervision;
- b) absence of an adequate and healthy diet (including nutritious meals, snacks and school lunches, etc.);
- c) lack of adequate and seasonally appropriate clothing;
- d) insufficient or unexplained delays in access to education, health and medical services; and,
- e) absence or lack of support for young person to maintain family, community, social and cultural connections.

## **POLICY:**

1. The contracted Service Provider is responsible for developing a written protocol for responding to allegations of maltreatment of young persons placed in their residence. The protocol shall be approved by CSSD.
2. Where the contracted Service Provider receives a report from a young person alleging that they have been maltreated, this information shall immediately be referred to CSSD.
3. The social worker responsible for open custody, in consultation with a Manager, shall assess allegations of maltreatment (including quality of care concerns) in a staffed residential placement to determine if an investigation is required.
4. The social worker conducting an investigation, in consultation with the Supervisor, shall assess what action is necessary to ensure the safety and well being of all children or youth residing in the staffed residential placement.
5. If this action has not already been taken by a representative of the contracted Service Provider the social worker responsible for open custody, in consultation with his/her immediate supervisor, shall immediately refer all allegations of physical and sexual maltreatment to the police.
6. The Zone Manager responsible for the residential placement shall notify the Service Provider in writing immediately of the investigation unless notification will compromise the investigation.
7. The Regional Director (RD), the Assistant Deputy Minister of Service Delivery and Regional Operations (ADM-SDRO) and the Provincial Program Consultant for Youth Corrections shall be notified that an investigation has commenced.
8. The investigation shall be completed **within 60 days**.
9. The contracted Service Provider shall be notified by the Manager of the outcome of the investigation as soon as possible after the completion of the investigation.

## **PROCEDURES:**

### **Roles and Responsibilities**

1. The social worker assigned to complete the investigation shall:
  - a) plan and carry out the investigation in consultation with the supervisor for the investigation;
  - b) consult and collaborate with police on physical and sexual maltreatment referrals prior to starting the investigation;

- c) notify all relevant CSSD staff of the investigation and advise if there are restrictions on notifying either the contracted Service Provider, or the child/youth's parents of the investigation;
- d) in conjunction with the Supervisor meet with the contracted Service Provider at the commencement, throughout the course of, and at the conclusion of the investigation;
- e) document investigation notes in the residential file;
- f) prepare the investigation report and submit it to the supervisor responsible for the investigation for his/or her review and approval;
- g) provide copies of the final report to the social worker(s) responsible for the child or youth and the contracted Service Provider so it can be placed on the respective files;
- h) notify the social worker for the parents/guardian(s) of the young person of the outcome of the investigation.

2. The supervisor for the investigation shall:

- a) make the necessary arrangements within the office or zone to ensure the investigating social worker who is assigned is not the social worker responsible for the staffed residential placement or the youth residing there;
- b) assign a social worker who is trained in risk management and preferably in PRIDE;
- c) provide consultation and direction to the investigating social worker;
- d) monitor the investigation timelines;
- e) review and approve the investigation report;
- f) make a recommendation to the manager regarding any necessary action to ensure the safety of youth residing in the staffed residential placement;
- g) review the investigation report and make a recommendation to the manager responsible for the Staffed Residential Placement Resource regarding any necessary action to ensure the safety of young persons residing in the placement resource.

3. The social worker responsible for open custody shall be responsible for the following:

- a) to meet with the contracted Service Provider at the commencement of the investigation unless the integrity of the investigation will be jeopardized;
- b) to provide the investigating social worker with relevant information about the residential placement;
- c) in conjunction with the Supervisor, update the contracted Service Provider on the progress of the investigation as long as it does not compromise or interfere with the investigation;
- d) to place a copy of the investigation report on the residential file;
- e) to support the child or youth throughout the investigation;
- f) to provide the investigating social worker with relevant information about the child or youth; and,

- g) to consult and inform the child or youth where age and developmentally appropriate about the investigation (providing it does not interfere with the investigation) and decisions affecting their care.
4. The supervisor for the social worker responsible for open custody shall:
    - a) review the investigation report;
    - b) make a recommendation to the Manager regarding any necessary actions that will ensure the safety of children and youth placed in the home.
  5. The Manager for the Zone in which the staffed residential placement resource is located shall:
    - a) review the Investigation Report; and,
    - b) make a final determination regarding any necessary actions that will ensure the safety of young persons placed in the home including the continued approval of residential placements.
  6. The Social worker who has overall responsibility for case management shall:
    - a) arrange an alternative placement, if necessary, while investigation is ongoing; and,
    - b) ensure young person's parent/guardian are notified as soon as possible about investigation and ensure information, as it becomes available, is shared throughout the process.

#### **Allegations of Maltreatment by a Staff Person(s)**

1. When a report is received that a young person has been maltreated by a staff person in a staffed residential placement, a supervisor responsible for taking the report shall immediately notify the Manager(s) who is responsible for the residential placement resource and the young person(if in the care of CSSD).
2. The social worker responsible for open custody, in consultation with a supervisor and the Zone Manager responsible for the staffed residential placement resource, shall assess all allegations of maltreatment (including quality of care concerns) to determine if an investigation is required.
3. Where it is determined that an investigation is required, the supervisor responsible for the investigation shall:
  - a) make the necessary arrangements to ensure the investigating social worker who is assigned is not the social worker responsible for the staffed residential placement or the young person residing there;
  - b) assign a social worker who is trained in risk management; and,
  - c) provide consultation and direction to the investigating social worker.



4. The Zone Manager shall notify the RD that an investigation is commencing. The RD will notify the ADM-SDRO and the Provincial Program Consultant for Community Youth Corrections.
5. The Zone Manager shall notify the Service Provider **immediately** about the investigation unless the safety of the child/youth or the integrity of the investigation will be jeopardized. The notification to the Service Provider shall include:
  - a) the names of the social worker, supervisor and manager responsible for the investigation;
  - b) the purpose of the investigation; and,
  - c) that the investigation by CSSD does not replace an investigation by the Service Provider as the employer.
6. The investigating social worker will plan and carry out the investigation in consultation with the supervisor and Zone Manager.
7. The social worker, in consultation with the supervisor and manager for the staffed residential placement resource, will develop an immediate response plan which shall include:
  - a) ensuring that the identified staff person is not providing direct care to any child or youth in care in the staffed residential placement; and
  - b) determining the immediate safety of all young persons residing in the staffed residential placement and whether they should remain with the placement provider.
8. The social worker responsible for open custody, in consultation with his/her supervisor, shall immediately refer an allegation of physical or sexual maltreatment to the police and in consultation with the police officer assigned, make a joint decision regarding how to proceed with the investigation. The social worker responsible for open custody, in consultation with his/her supervisor, shall determine the need for a child or youth to be medically examined immediately when there is an allegation of physical or sexual abuse.
9. The investigating social worker, in consultation with the supervisor and the police (if involved in the investigation), shall identify who should be interviewed. This shall include the child or youth (where age and developmentally appropriate), residential staff, relevant social workers and other persons who may have information which will assist in the completion of the investigation. This may include but is not limited to other children/youth living in the home, children or youth in care who previously resided in the home, social workers who have been involved with the home in the past, the parents of the child or youth, and other professionals working with the child/youth.

10. The Zone Manager shall advise the contracted Service Provider of the plan to interview their staff.
11. The completed investigation report shall be approved by the investigation supervisor and shall include but may not be limited to:
  - a) description of the referral and/or information precipitating an investigation; background information on the residential placement, and any previous investigations or other concerns;
  - b) summary of interviews completed and findings;
  - c) summary of any files reviewed to inform the investigation process;
  - d) summary of any consultations with other professionals;
  - e) outcome of the investigation including whether the allegations were confirmed and if charges were laid; and,
  - f) recommendations on any conditions to be placed on the contracted Service Provider as a result of the investigation to ensure the safety of children and youth placed there.
12. The social worker, in consultation with the supervisor, shall ensure that the investigation summary section of the *Investigation on a Placement Resource* form includes, but may not be limited to, the following:
  - a) summary of background information on the Service Provider relevant to the investigation and any previous referrals/investigations or other concerns noted;
  - b) concise summary of interviews completed and findings related to the referral information/identified concerns;
  - c) summary of any additional concerns identified as part of the interview process and recommended follow up;
  - d) summary of consultations with other professionals;
  - e) summary of any files reviewed to inform the investigation process;
  - f) outcome of the investigation including if charges were laid; and,
  - g) recommendations to ensure the safety and wellbeing of children and youth placed with the Service Provider.
13. The supervisor for the investigating social worker shall:
  - a) review the Investigation Report;
  - b) participate in a case conference to discuss the report with relevant supervisors and social workers involved with the investigation/Service Provider; and,
  - c) forward the investigation report with his or her recommendations to the manager responsible for the staffed residential placement resource.
14. The Zone Manager shall:
  - a) review the Investigation Report;

- b) where deemed necessary to further inform the investigation, consult with relevant social workers, supervisors, and/or other managers who had or who are currently working with the Service Provider;
  - c) make a final determination of any necessary actions that will ensure the safety of young persons;
  - d) consult with ADM-SDRO and the Provincial Program Consultant for Youth Corrections regarding any necessary action that may impact the Service Agreement with the Service Provider;
  - e) meet with the Service Provider at the conclusion of the investigation to discuss the outcome of the investigation; and,
  - f) provide written notification to the Service Provider of the outcome of the investigation within 7 days of the meeting with the Service Provider.
15. A copy of the Investigation Report shall be placed on the Service Provider's residential file and the young person's file.
16. The young person where age and developmentally appropriate and his/her parent(s)/guardian(s) based on the case/custody status and level of involvement with the child or youth, shall be informed of the outcome of the investigation.
17. The manager shall notify the RD of the outcome of the investigation and the RD will then notify the ADM-SDRO and the Provincial Consultant, Community Youth Corrections.
18. If there are specific conditions associated with the continued approval of a staffed residential placement resource, the contracted Service Provider shall comply with the stated conditions as part of their ongoing approval. The conditions shall be documented in the residential file and monitored as part of the ongoing work with the residential placement. Human resource decisions resulting from the investigation and any subsequent conditions place on the continued approval of the staffed residential placement are the responsibility of the contracted Service Provider as they are the employer.
19. The young person's parent(s)/guardian(s) shall be informed in person of the outcome of the investigation.

### **Referral of Quality of Care Issues**

Quality of care issues refer to concerns that a child or youth is not receiving a level of care that adequately meets his or her basic needs in an age and developmentally appropriate manner as a result of the action or inaction of the owner/operator or residential staff.

1. If a referral is received concerning the quality of care a determination shall be made whether this shall be referred for investigation or if it can be addressed by the social worker for the child/youth.

2. If it is determined that it will be referred for investigation the same procedures will be followed as outlined in allegations against a staff person.
3. If concerns about the overall management and oversight of the staffed residential placement resource result in an investigation, the supervisor for the investigating social worker in consultation with the Zone Manager responsible for the placement resource shall decide when the contracted Service Provider will be notified of the investigation.

## **EXCEPTIONS TO POLICY:**

If there are extenuating circumstances that interfere with the completion of an investigation within the 60 day timeframe an extension may be granted with the approval of a manager. This extension must outline the reason for the extension and the anticipated timeframe for completion. The contracted Service Provider shall be notified in writing of the extension, the rationale and the new timeframes for completion of the investigation. Exceptions may include, but are not limited to, delays as a result of a police investigation or locating a person(s) who formerly resided in the home who has critical information in relation to the investigation).

## **RELEVANT DOCUMENTS:**

- *Referral on a Placement Resource*
- *Investigation on a Placement Resource*

## **Section 8**

### **Secure Custody**



## ADMISSION TO SECURE CUSTODY

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**Policy no.: 8.1**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:**

**Legislative References:**

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**PURPOSE:** To emphasize the requirement for ongoing involvement of the social worker after his/her client has received a secure custody and supervision order.

### **POLICY:**

1. The social worker will normally attend the sentencing hearing where committal to custody is being considered, due to the usual requirement for a pre-sentence report to be completed. If a young person receives a secure custody sentence all necessary documents should be immediately provided to the Newfoundland and Labrador Youth Centre (NLYC) to support the facility's intake management practices.
2. The social worker remains the case manager for any young person sentenced to secure custody, and will collaborate with secure custody staff in all case planning activities.

### **PROCEDURES:**

1. When a young person receives a period of secure custody, the social worker shall ensure his/her parents/guardians are provided general contact information for the NLYC as follows: P.O. Box 40, Whitbourne, NL A0B 3K0 – Telephone #: 759-2471. Upon confirmation, the social worker shall ensure parents/guardian or CSSD, if the youth is in the care or custody of a manager, are provided the name/contact information for the young person's assigned secure custody social worker.
2. If the young person is (i) subject to any drug prescription at the time of committal; and/or (ii) has a medical condition of a serious, chronic, or contagious nature, the social worker shall ensure the "escorting agency" e.g. police or sheriff's office, completing the escort, have all relevant information related to this. In addition the

social worker shall immediately contact NLYC to ensure they are made aware of this medical information at time of placement.

3. At the time of placement to NLYC, each young person is assigned a social worker. This assigned social worker shall: a) provide orientation and support to the young person; and, b) guides an intake team in developing an initial case plan specific to the facility and its available internal programs and services. The social worker will make telephone contact with his/her secure custody counterpart within two (2) working days of the young person's admission.
4. A sealed copy of the pre-sentence report must be provided to the young person's escort along with the applicable Warrant of Committal, for immediate transmittal to the secure custody facility. If not available at the time of admission, the social worker shall ensure staff at NLYC have the following documents within two (2) working days of admission:
  - a) MCP Card;
  - b) Applicable Medical Records;
  - c) Applicable School Records; and,
  - d) Copies of any relevant social histories, assessments, or case file information.
5. A young person case file must be established by the social worker, if one does not already exist.
6. If eligibility exists, the Application for Child Tax Benefit shall be completed by the secure custody social worker.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

## SERVICE PLANNING DURING SECURE CUSTODY

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**Policy no.: 8.2**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; **s.90** Youth Worker

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**PURPOSE:** To define the social worker's case management responsibilities while his/her client is a resident in secure custody.

### **POLICY:**

1. Active service planning is required to: a) support the custody placement on an ongoing basis; and b) to prepare for, and support, the young person's return to the community. Whether a young person is admitted to secure or open custody, the social worker remains the case manager. The social worker is defined as, "the social worker for the home community of family, who has a client residing in open or secure custody, or other temporary residential setting." It is, therefore, the responsibility of the social worker to ensure routine and regular contact with staff at the secure custody facility.
2. The social worker is required to ensure (i) discharge planning discussions, decisions, or activities are documented on the prescribed form; and that (ii) additional conditions to be applied to community supervision have been established prior to the young person's discharge.

### **PROCEDURES:**

1. Service planning that occurs when a young person is admitted to secure custody has two interrelated purposes. First, planning must focus on the needs of the young person while in custody. Secondly, and in concert with the first, planning must occur to develop or re-engage the supports or services necessary to support the young person's reintegration into the community.
2. A major aspect of the ongoing consultation between secure custody and community will be an assessment of the appropriateness of pursuing a custodial review. An assessment of the grounds for custodial review shall be made six (6) months after the most recent custody sentence, and every three (3) months



- afterward. Consideration can be given to a custodial review any time the young person's situation changes significantly. While the secure custody social worker shall take the lead in the application process, the social worker is responsible for completion of a community progress report as per Policy 9.11.
3. When the young person is being released from secure custody to the community, the social worker is required to ensure a written discharge plan has been prepared, at the minimum, five (5) days before the young person's scheduled, or anticipated, release from secure custody date. This document shall be reviewed with the young person prior to his/her release by the secure custody social worker. The discharge plan shall be documented using the "*Discharge Plan Summary*" form.
  4. The discharge planning process shall address these essential elements:
    - a) required decision making and arrangements regarding placement at time of release (including discussions with parents/guardians and/or proposed caregivers);
    - b) as required, coordination with staff of the Children and Youth Care and Protection Program regarding placement and/or support services to an individual and/or his/her family;
    - c) activities related to securing a new, or confirming the continued availability of a previous school placement (this includes pre-vocational, vocational, and post secondary services);
    - d) activities related to arranging specialized assessments (examples include FASD, adolescent sexual offender, educational and/or psychological testing);
    - e) activities related to continuing or initiating, depending upon circumstances, specialized counselling and/or treatment services (examples include psychiatric, psychological, or medical services);
    - f) arrangements to provide alcohol and/or drug dependency counselling;
    - g) arrangements to continue and/or offer access to recreational programs; and
    - h) relationship of discharge planning activities to additional conditions set by the Provincial Director, regarding the community supervision component of the custody and supervision order (including the requirement to reside as required by the Provincial Director).
  5. The social worker shall comply with policies/procedures outlined in policy section 6.2, regarding the setting of additional conditions for the community supervision component of custody and supervision orders.
  6. Funding for educational, vocational, recreational, treatment, counseling or other resources, necessary to support the discharge plan, may be considered in accordance with the policies/procedures outlined in Policy 9.8.

## **EXCEPTIONS TO POLICY:**

Completion of the “*Discharge Plan Summary*” form is not required when young person is being released from secure into open custody.

## **RELEVANT DOCUMENTS:**

- *Discharge Plan Summary*

## RELEASE FROM SECURE CUSTODY

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**Policy no.: 8.3**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:** Reintegration Leave

**Legislative References:**

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**PURPOSE:** Defines responsibilities of social worker in relation to a young person's physical release from secure custody.

### **POLICY:**

1. A custody facility, by law, has authority to hold a young person until midnight of the last day of the sentence. Since there is no authority to hold a young person beyond this point (ie. until the next morning), the established tradition in correctional systems is to release the young person at an appropriate time during the last day of sentence. The exact time of release is determined in accordance with both standard policy and the specific circumstances of the young person. In such instances, a signed reintegration leave form must be in place before the young person is released to cover the period of time between the actual release and the expiry of the custody portion of the sentence.
2. It will be the responsibility of the social worker to arrange the escort and placement when a young person is being released from secure into open custody.
3. The young person, normally, will travel home without escort unless a compelling concern exists that the young person is likely to place himself/herself, or others, at risk while travelling.

### **PROCEDURES:**

#### **Release to Home**

1. If the young person is being released from custody earlier than the time indicated by the proper calculation of the sentence, a signed reintegration leave form shall be completed to account for this time. This provision applies if the young person is released any time before midnight on the last day of his/her custody order. The young person must be instructed to abide by the conditions set out in the

- reintegration leave form until the expiry of the secure custody portion of the order, and the commencement of the community portion. It is the secure custody social worker's responsibility to arrange completion of the reintegration form.
2. When making release arrangements, full consideration must be given to all the implications of the arrangements, as follows:
    - a) If the young person is likely to pose risk to himself or others while travelling, proper safety measures must be put in place, such as providing an escort or notifying the police.
    - b) Whenever possible, release arrangements should avoid having the youth travel or arrive home late at night (e.g. after 10:00 p.m.). **A Reintegration Leave approval is required if the young person is released any time before 12 a.m. on the last day of his/her custody order.**
    - c) If the young person is under 16 years of age, the social worker should confer with the young person's parents and secure custody social worker as to any special arrangements required. This may include discussions regarding the young person's living arrangements upon release, the appropriate mode of travel, the need for an escort, and whether the escort should be a social worker or a parent, and if unescorted, whether a parent or someone else will meet the young person upon arrival.
  3. Where the young person is being escorted by a social worker or parent/guardian, the young person may be permitted to leave before noon if the distance to travel is excessive, adverse weather conditions prevail, or if it is demonstrated to the satisfaction of the person authorizing the time of release that due to extenuating circumstances, the travel must begin earlier than noon.
  4. Where the young person is traveling by public transportation, the young person may be released as early as necessary on the final day of sentence, to make the necessary travel connections.
  5. When a young person is released from Secure Custody to return home, the social worker should advise the parents (or guardians) to apply to Revenue Canada for reinstatement of Child Tax Benefit on behalf of the young person (if eligible).

### **Release to Open Custody**

6. At the minimum of five (5) days prior to a young person's scheduled release from secure custody, the social worker shall determine the availability of an appropriate placement. A completed *Alert Sheet: Potential Placement to Open Custody* form and copy of the Pre-Sentence report should be forwarded to the offices in St. John's and Corner Brook, where the two (2) provincial open custody facilities are located. Contact with these offices should be made regarding current and potential availability of a group home opening. This advance notice assists with pre-placement planning and decision making.

7. The young person must be under the escort of either a social worker, or a residential care staff person, or other authorized Departmental representative, upon release from the secure custody facility, as per Policy 7.1. This authorized person is responsible for escorting the young person to open custody. The social worker should advise the secure custody facility of the desired release time on the final day of the secure custody sentence to accommodate the placement arrangement.
8. The secure custody social worker is required to complete a “discharge summary” on a young person serving a secure custody and supervision order of one month or greater. The summary is a separate document from the discharge plan. The discharge summary includes: (i) assessment of overall behaviour including any major incidents; (ii) summary of participation in any social development programs; (iii) level and nature of family contact; (iv) health report; (v) academic report; (vi) future plans of youth and recommendations. The social worker will ensure that a copy of the discharge summary is provided to the open custody service provider at the time of placement or at latest within two working days after admission. If a young person is being released as a result of custodial review, the secure custody worker’s progress report can serve as the discharge summary.
9. The social worker must complete a Child Tax Benefit Application and Cancellation Form and submit it to Revenue Canada.
10. Within one working day of the release, the parents/guardian must be notified of the location, mailing address, telephone number, and any other available information concerning the new open custody placement. If the youth is in the care or custody of a manager under the *CYCP Act*, such notice must also be given to the PIP/In Care social worker.
11. A release from the secure custody facility and an admission to the open custody facility must be entered on the Youth Corrections Module of CRMS within two working days following admission.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Alert Sheet: Potential Placement to Open Custody*

## YOUTH SERVING AN ADULT SENTENCE IN A YOUTH FACILITY

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**Policy no.: 8.4**

**Effective Date: November 1, 2002**

**Date Revised: November 23, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; **s.77(1)** Obligation to inform-parole; **s.77(2)** Applicability of corrections and conditional release act; **s.77(3)** Appropriate parole board; **s.78(1)** Release entitlement; **s.78(2)** Release entitlement; **s.79(1)** If person convicted under another act

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**PURPOSE:** To outline decision making required when a young person, serving an adult sentence in secure custody, receives a new youth custodial sentence.

### **POLICY:**

#### **Placement of a Youth Who Receives an Adult Sentence in a Youth Facility**

1. If a young person has received an adult sentence under the *YCJA*, the youth justice court decides whether the young person should be placed in a youth or adult custody facility. The *YCJA* directs that a young person under the age of eighteen will serve their adult sentence in a youth custody facility, unless it would not be in the best interests of the young person or would jeopardize the safety of others. In such cases the *Corrections and Conditional Release Act* and the *Prisons and Reformatories Act* apply to the administration of the sentence. The secure custody social worker is responsible for notifying the appropriate parole board of the placement.

#### **Youth Serving Adult Sentence in a Youth Facility, and Receives Subsequent Youth Custody Sentence**

1. If a young person is serving an adult sentence under the *YCJA* in a youth facility as a result of the placement process outlined above, and receives a new youth sentence, the Provincial Director can decide whether the sentence will be served in the youth custody facility or an adult facility. Generally, the young person will remain in the youth facility unless there are mitigating circumstances that would require transfer.

2. The new youth sentence will be converted to an adult sentence, and merged with the existing adult sentence.

### **Combined Youth Sentence and Adult Sentence Served in an Adult Facility**

1. If a young person is subject to both a youth sentence and an adult sentence under the *YCJA*, for which placement in an adult facility has been ordered, or an adult sentence under the *Criminal Code of Canada*, the sentence shall be served in an adult facility. Adult sentences of imprisonment and youth custody and supervision orders are merged, and the new merged sentence is considered as either an adult federal or provincial sentence. In such cases the *Corrections and Conditional Release Act* and the *Prisons and Reformatories Act* apply to the administration of the sentence. The community youth corrections worker would only become involved again if there was a non-custody order, or a deferred custody and supervision order still in effect upon release. While in the provincial correctional facility the young person is entitled to receive remission under the *Prisons and Reformatories Act* and will be released according to these rules.

### **PROCEDURES:**

1. A young person who receives an adult sentence and the court specifies must be served in a youth facility, will serve the sentence in a secure custody facility.
2. The secure custody social worker must notify the appropriate Parole Office upon commencement of the adult sentence. This contact can initially be by telephone; however, written notification should be forwarded, by registered mail, within three working days to the National Parole Office:

**National Parole Board  
Atlantic Regional Office  
1045 Main Street, Unit 101  
Moncton, New Brunswick  
E1C 1H1  
(506) 851-6345  
Fax (506) 851-6926**

3. A copy of the Warrant of Committal as well as the placement order must be forwarded to the Parole Office along with the notification mentioned in procedure #2.
4. The young person must be made aware that the parole office has been notified and that any inquiries regarding absences or releases must be directed to the assigned parole officer.

5. When a young person who is serving an adult sentence under the *YCJA* in a youth facility receives a new youth sentence, the designated manager at the Newfoundland and Labrador Youth Centre will be responsible for any decision making regarding transfer. This decision making process will ensure ongoing consultation with the young person's social worker.
6. The secure custody social worker shall ensure that the social worker is informed in writing of any decision to transfer the young person, along with the location, telephone number and address of the facility. The social worker, in turn, shall inform the young person's parents.
7. The social worker is responsible for ensuring that the details of any youth sentence are communicated to the appropriate adult facility personnel.
8. The adult facility personnel are responsible to provide timely notification of early release if a youth community sentence is in effect upon release.
9. The social worker must immediately inform the young person's parents of the location, telephone number and mailing address of the facility.

#### **EXCEPTIONS TO POLICY:**

#### **RELEVANT DOCUMENTS:**



## **Section 9**

### **Case Administration and Management**



## INTAKE PRACTICES

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**Policy no.: 9.1**

**Effective Date: November 18, 2008**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:**

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**PURPOSE:** To outline information to be provided to young persons during their initial and first face-to-face contact with the social worker.

### **POLICY:**

1. The *YCJA*, in its Declaration of Principles (s. 3), speaks to both the special needs of youth and the responsibility of the youth justice system, including all facets of the structures that support it, to address these needs in a manner that recognizes their physical, emotional, and social development. The following principles have particular resonance as it relates to the rights of youth:
  - a) Young persons are entitled to “enhanced procedural protection” to ensure they are treated fairly and that their rights, including their right to privacy, are protected (s. 3(1)(b)(iii)).
  - b) Young persons have the right to be heard and to participate in processes that lead to decisions that affect them (s. 3(1)(d)(i)).
2. The social worker is required to ensure that a young person is provided accurate information regarding (i) applicable procedures under the *YCJA* that may/will impact on the administration of his/her sentence; and, (ii) applicable policy and practices that may/will impact on the supervision/support of his/her sentence. This information shall be provided in a timely fashion within prescribed timeframes.

## **PROCEDURES:**

### **Initial Contact**

1. Provincial policy and procedure establishes very specific expectations around timelines for initial contact and the scheduling of a face-to-face meeting held by the social worker responsible for supervision of an applicable order:
  - a) for Probation Orders the young person and his/her parent/guardian or CSSD, if the youth is in the care or custody of a manager, shall be contacted in person or by telephone no later than five (5) working days after receipt of the court order and a face-to-face meeting shall normally occur within ten (10) working days of receipt of the order;
  - b) for Deferred Custody and Supervision Orders the young person and his/her parent/guardian or CSSD, if you is in the care or custody of a manager, shall be contacted in person or by telephone no later than three (3) working days of receipt of the court order and a face-to-face meeting shall normally occur within five (5) working days of that initial contact.
2. The social worker is responsible for reviewing a court order upon receipt for any potential errors or ambiguities that place the order in conflict with the provisions of the *YCJA*. If a condition of the order is more onerous than the provisions of the legislation allow, the social worker is to alert the young person and his/her parent-guardian, in writing, identifying the conflict and advising of their right to consult with a lawyer regarding an appeal.

### **Initial Face-to-Face Interview**

1. If a Pre-sentence Report has not been completed, during the initial interview the community social worker shall obtain the information required to complete the *Youth Corrections Case Information Form*.
2. During the initial interview with a young person and his/her parent/guardian or CSSD, if you is in the care or custody of a manager, the social worker shall: a) review the specific conditions of the order with the young person; and, b) explain, in general terms, potential consequences for willfully refusing on failing to adhere to these conditions.
3. During the initial interview the young person should be advised of the kinds of documentation that composes their youth record (Policy 9.4 on Information Sharing). They are to be advised about the guidelines that determine how long their youth record remains “accessible” or available for disclosure (Policy 9.3 on Records Management and Access Provisions).

4. During the sentencing phase the young person would have had the content of his/her pre-sentence report explained to them. The young person shall be advised that this practice shall continue for any report completed by the social worker as part of the administration of the young person's sentence.
5. During the first face-to-face interview with the young person and his/her parents-relatives-guardians (as applicable), the community social worker shall review section 59(1) of the *YCJA* regarding reviews of non-custodial sentences.
6. During the first face-to-face interview where the young person's order includes a reporting requirement, the use of *YLS-CMI* shall be reviewed including its relationship to reporting requirements and service planning.
7. During the first face-to-face interview if a young person has a court order that includes an "order to reside as directed by the Provincial Director" (or other applicable wording) that order will be explained to the young person with reference to the implications for decision making regarding place of residence.
8. When a young person receives a custodial sentence there are a variety of related policies/practices for which the young person shall be provided information on both at the time of initial placement and as part of the discharge planning process. These requirements are found in the applicable sections of the *Residential Services Policy and Procedures Manual*.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Youth Corrections Case Information Form*

## SENTENCE CALCULATION

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**Policy no.: 9.2**

**Effective Date: January 15, 2009**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:**

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**PURPOSE:** To provide an overview of sentence calculation requirements.

### **POLICY:**

#### **General Rules**

1. A manual calculation of every young person's sentence, based on all Court Orders in force, must be completed every time a new Court Order is issued, or other event occurs which has the potential to affect the sentence. All sentences and events must also be entered in CRMS.
2. Where the youth is subject to a Custody and Supervision Order, each new calculation of sentence must be checked and verified by the custody social worker. Any discrepancy in sentence calculation must be resolved without delay.
3. Every youth corrections file must contain a distinct separate section for Court Orders, and the social worker must ensure that all Court Orders that have been issued, are present in the file. This file section must contain a running sentence summary sheet, in which every sentence and event which has the potential to affect sentence, is recorded in proper sequence, and followed by the updated sentence dates (commencement, expiry, and if applicable, release from custody date).

### **PROCEDURES:**

#### **All Sentences**

1. Each time a new formal case is opened, and each subsequent time a new sentence is imposed, a manual sentence calculation must be completed. This shall be completed either by the social worker or other person designated to complete

sentence calculations. The sentence(s) must be entered into CRMS within two working days of receipt of the sentence(s) and sentence verification completed.

2. Each time an event occurs that could affect the expiry or release date of a sentence, a new calculation of total cumulative sentence length and release date (if applicable) must be done by designated staff and if the young person is in custody by the social worker responsible for the custody placement.
3. The social worker shall ensure that any changes to the sentence expiry or release date, resulting from the above-noted, must be reflected in the file and on CRMS-YCM.
4. Each time a new sentence calculation is completed, the youth's parent/guardian or CSSD, if the youth is in the care or custody of a manager, must be immediately notified, in writing, of the expiry date and release date (if applicable).
5. If the total sentence length of a single sentence exceeds the time limits provided for in the relevant legislation, the error should be brought to the attention of the young person and his/her attorney, as well as the Crown Attorney or agent. If no resolution is achieved, the supervisor (or designate) is to be consulted, who may contact the Director of Youth Corrections for further direction.
6. If the combined sentence length resulting from multiple sentences exceeds the caps provided for in *YCJA*, the social worker, as sentence administrator, is responsible for respecting the cap and enforcing it. This could mean that a young person would be released early from custody. When such a situation arises the social worker shall consult with the supervisor, who shall consult with the Director of Youth Corrections for further direction before actually enforcing the sentence cap.
7. Refer to *Highlights: Sentence Calculation* form for a summary of sentence calculation rules regarding: (i) maximum length(s) of sentences for single offences; (ii) administratively determined caps on combined/multiple sentences and (iii) calculation of custody and supervision sentences including merging processes.
8. Each time a Youth Corrections file is created, a clearly identifiable section for Court Orders must be established.
9. All Court Orders, for which the Department has responsibility to administer, must be present in the Court Orders section of the file. If a social worker is aware of the existence of any such Order that has not been received within 15 days of the court hearing, a copy of the Order must be requested from the Court.

10. The Court Orders section of the file must contain a sentence summary sheet as a covering sheet. Separate summary sheets will be used for community sentences and custody and supervision sentences. Every time a new sentence is given, or an event occurs which has the potential to affect the sentence, the sentence or event must be recorded, followed by the updated (recalculated) key sentence dates – sentence commencement date, expiry date, and if applicable, release from custody date. These entries must be made within 2 working days of the new sentence or the conclusion of the applicable event (e.g. return to custody, Warrant execution, Review decision, etc.)
11. The sentence summary sheet will be a complete history of all sentences and sentence-related events. For custody and supervision orders, the single current sentence in effect will be the last entry. All community sentences listed are in effect until each expiry date; however, the commencement and expiry dates of probation orders not yet in effect can be changed by the imposition of new custody and supervision orders. Where the commencement and expiry dates of a probation order change, the original dates should be struck out, and the new dates entered.

### **Custody and Supervision Sentences**

1. Every time a new custody and supervision order is issued, or an event occurs that may affect the key sentence dates, the sentence calculation must be reviewed and the expiry date and custody release date verified by the custody social worker. The verification by the social worker (responsible for open or secure custody) and the other designated person must be completed within 10 working days of the new sentence or the conclusion of the applicable event.
2. All applicable “Orders for a Youth Sentence” should be reviewed by the social worker (responsible for open or secure custody) and the other designated person in the course of verifying the sentence dates, to ensure that no errors are made in either the calculations or the interpretation of the sentence orders.
3. For all youths entering open custody, the sentence(s) and the admission to custody must be added to the Youth Corrections Module of CRMS within 2 working days. For youths entering secure custody, the sentence(s) and the admission to custody will be added to CRMS by secure custody staff. In both cases, the social worker must compare their manual sentence calculation dates with those generated by the sentence calculation function of CRMS to detect any discrepancies.
4. If any discrepancy is found between the sentence expiry and custody release dates calculated by the social worker (responsible for open or secure custody), secure custody staff, the other designated person in the region, or on CRMS, the discrepancy must be resolved without delay, and in no case longer than 5 working days.

- A discrepancy may be resolved through comparison of calculations, methodology, and interpretation of court orders and policy by all concerned parties. If such efforts do not result in a consensus, other advice must be sought, which may include consultation with other staff within the Region or the Youth Corrections Program staff of the CSSD.
5. Each time a Youth Corrections file is created, a clearly identifiable section for Court Orders must be established.
  6. All Court Orders, for which CSSD has responsibility to administer, must be present in the Court Orders section of the file. If a social worker is aware of the existence of any such Order that has not been received within 15 days of the court hearing, a copy of the Order must be requested from the Court.
  7. The Court Orders section of the file must contain a sentence summary sheet as a covering sheet. Separate summary sheets will be used for community sentences and custody and supervision sentences (*Sentence Summary Sheet – Community Sentences* form and *Sentence Summary Sheet – Custody and Supervision Sentences* form). Every time a new sentence is given, or an event occurs which has the potential to affect the sentence, the sentence or event must be recorded, followed by the updated (recalculated) key sentence dates – sentence commencement date, expiry date, and if applicable, release from custody date. These entries must be made within two (2) working days of the new sentence or the conclusion of the applicable event (e.g. return to custody, Warrant execution, Review decision, etc.).
  8. The *Sentence Summary Sheet* will be a complete history of all sentences and sentence-related events. For Custody and Supervision Orders, the single current sentence in effect will be the last entry. All community sentences listed are in effect until each expiry date; however, the commencement and expiry dates of Probation Orders not yet in effect can be changed by the imposition of new Custody and Supervision Orders. Where the commencement and expiry dates of a Probation Order change, the original dates should be struck out, and the new dates entered.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Highlights of Sentence Calculation (Appendix 10)*
- *Sentence Summary Sheet – Community Sentences*
- *Sentence Summary Sheet – Custody and Supervision Sentences*



## RECORDS MANAGEMENT AND ACCESS PROVISIONS

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**Policy no.: 9.3**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:** Information Sharing

**Legislative References:** *Youth Criminal Justice Act*; **s.110(1)** Identity of offender not to be published; **s.110(2)** Exception; **s.116.(1)** Government records; **s.116(2)** Other records; **s.119(1)** Persons having access to records; **s.119(2)** Period of access; **s.125(5)** Preparation of reports; **s.125(6)** Schools and others; **s.125(7)** Information to be kept separate; **s.127(1)** Disclosure with youth order; **s.128(1)** Effect of end of access period; *Young Persons Offences Act*; **s.22(1)** Disclosure of records; **s.22(2)** Disclosure of records; **s.23(1)** Lapse of conviction; **s.23(2)** Lapse of conviction

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**PURPOSE:** To outline the requirements for the physical management of a case file including ensuring compliance with the records non-access provisions of the *YCJA*.

### **POLICY:**

1. Any document included on the case file forms part of the youth record. Therefore it is governed by the applicable sections of the *YCJA* regarding access and disclosure.
2. The youth record, under s. 116(1) and 116(2) of the *YCJA*, is composed of the following:
  - i) reports expressly prepared for the Youth Justice Court;
  - ii) court orders generated by a Youth Justice Court in relation to sentencing or other action under the court's mandate;
  - iii) departmental reports including those:
    - a) prepared in relation to the investigation of an offence;
    - b) prepared and/or used in proceedings against a young person;
    - c) prepared in relation to determining appropriateness of EJS;
    - d) prepared in relation to administration of a sentence (including those related to service planning); and
  - iv) reports and/or assessments provided by other agencies and professionals originally intended for one service area but have been accessed by the corrections program during the course of the supervision of a young person.

3. In recognition of the special right of a young person not to have his/her criminal record interfere with future activities later in life, provision is made for the non-disclosure of any part of the record after specific periods of time.
4. All documents contained in young person's case file are subject to the records non-disclosure provisions of the *YCJA* and *YPOA*, and no file material that has passed the non-disclosure date may be disclosed or used for any purpose, except to the young person or his/her counsel, or when ordered by a Youth Justice Court judge (s.123 of the *YCJA*). The guidelines for disclosure, after which time a record cannot be accessed are summarized in the following tables as per s. 119(2) of the *YCJA*.

**Table I**  
**Records Access Periods under *YCJA***

<b>Record Type</b>	<b>Time Limit of Disclosure Period</b>
When a young person is referred to an Extra-judicial Sanctions program as an alternative to court a record of that EJS referral exists.	Two (2) years after the young person consents to participate in the program.
When the young person is acquitted for any reason other than mental disorder.	Two (2) months after the expiry of the appeal period or three months after any appeal proceedings have been completed.
When a charge is dismissed or withdrawn for any reason other than an acquittal OR when a young person is found guilty and a reprimand is given.	Two (2) months after the dismissal, withdrawal or finding of guilt.
When a charge against a young person is stayed and no proceedings have been undertaken within one year.	One (1) year after the date the charge is stayed.
When a young person is found guilty and the sentence is an absolute discharge.	One (1) year after the finding of guilt.
When a young person is found guilty and the sentence is a conditional discharge.	Three (3) years after the finding of guilt.
When a young person has been found guilty of a summary offence, and a sentence other than absolute or conditional discharge is given.	Three (3) years after any youth sentence imposed has been completed (the 3 year period, where the record remains accessible, begins only after any/all sentences related to the offence(s) have concluded).
When a young person has been found guilty of an indictable offence, and a sentence other than an absolute or conditional discharge is given.	Five (5) years after any youth sentence imposed has been completed (the 5 year period, where the record remains accessible, begins only after all/any sentences related to the offence(s) have concluded).

**Table II**  
**Impact of New Convictions on Access of Existing Records**

<b>Record Type</b>	<b>Time Limit of Disclosure Period</b>
When the young person is convicted of a new summary offence (meaning a conviction(s) subsequent to an existing record).	A new conviction for a summary offence has the affect of advancing the non-disclosure date for records related to any previous convictions that have not yet reached their non-disclosure date; those existing records will then have the same non-disclosure date as those related to the most recent sentence meaning three (3) years after any youth sentence imposed has been completed.
When the young person is convicted of a new indictable offence (meaning a conviction(s) subsequent to an existing record).	A new conviction for an indictable offence, has the affect of advancing the non-disclosure date for records related to any previous convictions that have not yet reached their non-disclosure date; those existing records will then have the same non-disclosure date as those related to the most recent sentence meaning five (5) years after any youth sentence imposed has been completed.

**Table III**  
**Special Circumstances**

<b>Record Type</b>	<b>Time Limit of Disclosure Period</b>
When a young person has reached the age of 18 and is found guilty of a subsequent offence committed when he/she is an adult <u>and</u> an existing youth record has not reached its records non-disclosure date).	The part of the existing youth record that has not reached the non-disclosure date at the time of adult conviction, will then be dealt with as an adult record and rules applicable to adult records under the <i>Prison's Reformation Act</i> and/or <i>Corrections and Conditional Release Act</i> will apply.
A conviction under the <i>YPOA</i> , which covers offences against provincial and municipal legislation.	The <i>YPOA</i> (Newfoundland) states that the youth record, "shall not be disclosed unless the disclosure is desirable in the interest of the proper administration of justice." Records related to convictions under the <i>YPOA</i> are considered non-disclosable immediately upon sentencing; however that information may be accessed, at any future point, in relation to any other legal or criminal related matter. No specific end date for record accessibility is identified in the legislation.

## **Protection of a Young Person's Privacy**

1. The *YCJA* (Canada) statement of principles includes the requirements that the youth justice system adopt measures to ensure, “enhanced procedural protection” regarding the young person’s right to privacy.
2. In order to maintain the privacy of young persons, “no person shall publish the name of a young person or any other information related to the young person, if it would identify that person as someone dealt under the *YCJA* (Canada) (section 110(1)).”
3. Publication refers to the communication of information by making it known to, or accessible to, the general public through any means including print, radio, television broadcast, telecommunications, or electronic means.
4. Section 110(2) of the Act identifies a number of exceptions to the general ban on publication. All exceptions require the authorization of, or are directed by, the Youth Justice Court. These exceptions include:
  - i) in the case of a young person who receives an adult sentence;
  - ii) where a young person having turned eighteen years of age wishes to have published information that would identify himself-herself as a young person.
5. Another of the exceptions referenced under section 110(2) allows authorities to seek public assistance in apprehending a suspect or a young person who is unlawfully-at-large, if considered a danger to himself/herself or others. Application for permission to publish the young person’s name would be made by the police to the Youth Justice Court and, if granted, the order is operative for a five day period only.
6. Under section 75 of the *YCJA*, a Youth Justice Court judge may lift the publication ban if the young person is given a sentence for a violent offence. Judges are required to determine whether the young person poses a serious risk of committing another violent offence and whether the lifting of the publication ban is necessary for the protection of the public. Violent offences, under the Act, include offences in which the young person attempts or threatens or causes bodily harm, or endangers, the life or safety of another person by creating the substantial likelihood of causing bodily harm.

## **Information Sharing after Records Non-Access Date has been Reached**

1. Section 128(1) of the *YCJA* states that once a record has achieved the end of its access period, meaning that from the standpoint of the legislation the content(s) are no longer disclosable, no record, “may be used for any purpose that would identify the young person to whom the record relates as a young person dealt with under this Act or the *YOA*.”

2. This general prohibition does not include any riders or qualifiers that would allow Community Youth Corrections to share a record after it has reached its records non disclosure or non access date.
3. An application can be made to a Youth Justice Court requesting access to a youth record after the time periods in section 119(2) have expired. A Youth Justice Court judge may, under section 123(1) of the Act, order that the applicant be given access to all, or part, of a record, if the court is satisfied that:
  - i) the person has a valid and substantial interest in the record or part; and/or
  - ii) it is necessary for access to be given to the record or part in interest of the proper administration of justice.
4. Section 124 of the *YCJA* states, “A young person to whom a record relates and his or her counsel may have access to the record at any time.” The person, to whom the record relates, has a right to access his/her record at any time. A young person’s legal counsel acting on his/her behalf on any criminal or civil matter has the right to access the youth record after the record’s non-access date has been achieved.
5. Youth records related to sentences given under either the *Juvenile Delinquents Act* of the *YPOA* (1984) are also governed by the records access provisions of the *YCJA*.
6. The *YCJA* gives no authority to share information with a third party, after the records access period has expired, even with client consent.

## **PROCEDURES:**

### **General Procedures Re: Records Maintenance**

1. Files shall be assigned a file number which shall be hyphenated between the first three digits and the last three digits (e.g., 001-000). Youth Corrections file numbers displayed on the file folder shall be followed by a Y to distinguish these files from other program areas (e.g., 001-000Y). Office support staff within regional offices will provide these numbers. When new block of numbers are required please contact 729-1920 or e-mail [IM-CSSD@gov.nl.ca](mailto:IM-CSSD@gov.nl.ca).
2. Files shall be created using the Blue Press Board Legal Size file folders. These folders can be obtained by calling 729-1920 or e-mailing [IM-CSSD@gov.nl.ca](mailto:IM-CSSD@gov.nl.ca).
3. These files shall be segregated into **9 sections labeled A – H**. The contents of each section will be identified by a coloured coded letter and a label that will be attached to the front portion of each section. The alphabetical key provides

direction on what information shall be contained in each section on the *Segmented File Folder Guide* (Appendix 6).

4. All documentation shall be double hole punched (centre page) and placed in the attached fasteners within the appropriate section of the folder.
5. All documentation shall be filed chronologically with the most recent date on top.
6. File labels shall be placed on the folder on the outside cover in the top right hand corner.
7. File numbers shall be placed on the side tabbing on the right hand side of the folder.
8. All documentation shall be placed in the file in accordance with the *Community Youth Corrections Documentation Guide* (Appendix 5).
9. The assigned social worker shall be responsible for ensuring the case file is kept up-to-date and that printouts from the electronic content management system (i.e. YCM component of CRMS) are printed and filed on at least a monthly basis.
10. Any document included on the case file forms part of the record and, therefore, is governed by the access and disclosure provisions of the *YCJA*. For this reason, each document placed in the young person case file must have a “Record Non Disclosure Date” entered in a prominent place on the front page.
11. Case files must be maintained in a locked-secure place that cannot be accessed by unauthorized individuals.
12. When a young person is subject to Extra-judicial Sanctions, his/her record must be maintained separately. Such records are the responsibility of the specific Youth Justice Committee administering the referral, however, the responsible liaison social worker must ensure that these records are being managed in a way consistent with the provisions of the Act.
13. Excluding direction in terms of the *Segmented File Folder Guide* (Appendix 6), all file set up practices shall be consistent with policy IMP-2012-001 of the Child Protection and In-Care program.

#### **Procedures Re: Administering Non-Disclosure Provisions**

1. Whether an offence has been proceeded by way of summary or indictable conviction may be determined by reference to the *Criminal Code of Canada* or relevant legislation. If there is doubt, advice should be sought from the court or crown attorney. Some offences, called “hybrid” offences, may be proceeded by way of either summary or indictable conviction. The *Criminal Code of Canada* subsection of the offence, as listed on the Court Order or “Information” should,

however, indicate the method of proceedings, since each method is normally prosecuted under a different sub-section (e.g. “a” or “b”).

2. The social worker must determine with certainty, after complete examination of the file, that any document that is disclosed, transmitted, referred to, or used in any way, is not subject to non-disclosure, as per the above policy and procedures. Non-disclosure dates for both summary conviction and indictable offences will be impacted by subsequent offences committed during the access period. In such circumstances the record of the preceeding offence remains accessible as long as the record for any succeeding offence(s) is accessible.
3. If a document relates to multiple offences with different non-disclosure dates, the non-disclosure date of that document is the latest date that applies to any of the offences.
4. Documents that have achieved their non-disclosure date can continue to be maintained in the case file, provided they are not disclosed, transmitted, or referred to, or used in any way.

## **EXCEPTIONS TO POLICY:**

### **Conviction as an Adult While Youth Record is Active**

Under section 119(9) of the *YCJA* if the young person has an active youth record (meaning it has not yet reached its records non access date) and the young person is convicted as an adult, the youth record, “will be kept active and treated as an adult record.” Under section 119(9)(b), in this circumstance, the period of access provisions are no longer applied to the youth record.

## **RELEVANT DOCUMENTS:**

- *Community Youth Corrections Documentation Guide (Appendix 5)*
- *Segmented File Folder Guide (Appendix 6)*

## INFORMATION SHARING

**Policy no.: 9.4**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:** Records Management and Access Provisions

**Legislative References:** *Youth Criminal Justice Act*; **s.110(1)** Identity of offender not to be published; **s.110(2)** Exception; **s.116(1)** Government records; **s.116(2)** Other records; **s.119(1)** Persons having access to records; **s.119(2)** Period of access; **s.125(5)** Preparation of reports; **s.125(6)** Schools and others; **s.125(7)** Information to be kept separate; **s.127(1)** Disclosure with youth order; **s.128(1)** Effect of end of access period; *Young Persons Offences Act*; **s.22(1)** Disclosure of records; **s.22(2)** Disclosure of records; **s.23(1)** Lapse of conviction; **s.23(2)** Lapse of conviction

**PURPOSE:** To assist social workers with decision making regarding sharing information about a young person's youth record and additional requirements when physical records are shared.

### **POLICY:**

1. Access to a record, and other forms of information sharing, are limited in all cases to the timelines established under the record access provisions of the *YCJA*. When physical documents are shared each page of any document shall be stamped with a record's non-disclosure date. All recipients of information shall be advised, in writing, of the records access provisions of the *YCJA*.

### **The "Life" of a Youth Record**

The youth record has three stages of "life":

- i) **Stage 1:** while all Youth Corrections sentences are active (meaning they have not achieved their sentence expiry date (SED)) contents of the youth record are disclosed or shared to support the supervision and support of the young person to whom the record relates;
- ii) **Stage 2:** after all applicable sentences expire and the young person is not being actively supervised by Youth Corrections, but contents of the youth record have not yet reached the non-disclosure date; and,



- iii) **Stage 3:** all sentences have expired that the file has reached its non-disclosure date, meaning the contents cannot be used in any way without authorization of a Youth Justice Court.

In stages (1) and (2) noted above the *YCJA* establishes rules governing disclosing or sharing information in a youth record.

### **Legislative Authority for Access**

Section 119(1) of the *YCJA* identifies the categories of individuals who upon request shall be given access to (the part of the record prepared for or by a Youth Justice Court) and may be given access to that part of the youth record that constitutes (i) “government records” or more specifically information prepared by or collected by CSSD staff during the course of the supervision of the Order and (ii) other records composed of documents prepared by other agencies or services during the course of supervision of the orders.

Under section 119(1) of the *YCJA* the categories of persons allowed access to the youth record are identified. Included are:

- a) the young person to whom the record relates;
- b) the young person’s counsel;
- c) the Attorney General (delegate);
- d) the victim of an offence;
- e) the parents (guardians) of the young person to whom the record relates;
- f) any peace officer;
- g) a judge (related to proceedings against the young person whether as a youth or adult);
- h) a program social worker involved in a protective intervention referral;
- i) participants at a service planning meeting (conference);
- j) Child and Youth Advocate;
- k) residential care service providers;
- l) the applicable manager when young person is in custody under the *Children and Youth Care and Protection Act*

### **What Constitutes the Youth Record?**

- a) reports expressly prepared for the youth court (this would include Pre-Sentence Reports, reports prepared in relation to custodial and non-custodial reviews, court prepared in relation to suspensions of community supervision or deferred custody and supervision, medical and/or psychological reports requested by the court as part of an “Order of examination”);
- b) court orders generated by a Youth Justice Court in relation to sentencing or other action under the court’s mandate (this would include copies of the Order for a Youth Sentence, Young Person’s Acknowledgement (of sentence) and Warrant of Committal (to custody);

- c) “government records” prepared in relation to the investigation of the offence, prepared in relation to determining the appropriateness of Extrajudicial Sanctions, prepared in relation to administration of a sentence;
- d) reports and/or assessments provided by another agency and professional originally intended for one service area but have been accessed by the youth corrections program during the course of the supervision of the young person.

### **Court Documents**

Court documents include:

- a) Pre-Sentence Reports;
- b) non-custodial and custodial progress reports;
- c) suspension reports;
- d) conditions set by Provincial Director regarding community supervision;
- e) medical, psychological, and/or psychiatric reports prepared in response to an order for examination;
- f) forms that accompany various above noted reports;
- g) court orders (prepared by Court Clerk); and,
- h) documentation related to a request for waiver of jurisdiction.

**All categories of persons, who have the right to access the youth record, as listed under section 119 of the YCJA, SHALL be allowed to review these documents upon request.**

### **Government Records/Other Records**

What information is prepared by or collected by CSSD during the course of supervision of an order that is not translated into some form used by a Youth Justice Court? The following is a listing of administrative records not normally provided to the court but arise during the support-supervision of a court order:

- a) case notes;
- b) Youth Level of Service – Case Management Inventory;
- c) (in more limited circumstances) a Youth Corrections Service Plan;
- d) copy of an ISSP or school based service plan (IEP);
- e) for young persons in custody:
  - i) Incident Reports;
  - ii) Reintegration Leave Approval forms;
  - iii) Discharge Plan Summary.
- f) information collected in relation to an order to reside placement.

**All categories of persons who have the right to access the youth record, as listed under section 119 of the YCJA, MAY be allowed to review to these documents upon request.**

## **Disclosure of Information in a Youth Record**

1. Section 125 of the *YCJA* provides authority for both mandatory and discretionary disclosure of records that have specifically been used in any Youth Justice Court proceedings. Such disclosure, which is time-limited, is generally intended to facilitate the proper administration of justice and to accommodate freedom of information to the young person to whom the record relates, as well as his/her parents, and in some cases, the victim of the offence(s).
2. Information may be disclosed by a social worker in the following instances:
  - a) when necessary to obtain information for the preparation of a report on behalf of the Youth Justice Court;
  - b) when other persons or professionals are engaged in the care and supervision of a young person, and disclosure is necessary for any of the following reasons:
    - i) to ensure that the young person is complying with a court order or the conditions of reintegration leave;
    - ii) to ensure the safety of staff, students, or others;
    - iii) to facilitate the rehabilitation of the young person (this includes activities associated with conferencing and service planning).
3. In situations where information is disclosed for any of the purposes outlined above; the *YCJA* requires that the person, to whom the information is disclosed, keep the information separate from any other records pertaining to the young person. He/she must ensure that no other person has access to the information, unless the disclosure is necessary to fulfill one of the above noted purposes, and must ensure the information is destroyed or returned to the appropriate Departmental office when it is no longer required for the purpose for which it was disclosed. The social worker must ensure that the person, to whom the information is being disclosed, is made aware of these requirements.
4. Copies of all documents provided to other individuals, offices, or agencies must have a Record Non-Disclosure Date entered on each page. In addition, the person receiving the document must be made aware that he/she must not disclose any identifying information to any other person, and that the record non-disclosure provisions of the *YCJA* apply to the document. The agency/representative receiving the document is then responsible for returning the document to the Children, Seniors and Social Development office, or destroying the document by the non-disclosure date.

## **Access to Youth Record**

1. The young person who is subject of the record has:
  - a) the right to see the contents of his/her youth record including after the expiry of the record's access period;
  - b) the right to review a copy of any report being submitted to a Youth Justice Court that relates to him or her and the right to have the contents explained;
  - c) the right to receive a copy of the *Youth Level of Service – Case Management Inventory* and have the contents of this report explained to him or her;
  - d) the right to a copy of any service planning documents prepared on their behalf; and,
  - e) the right to be provided information related to the disclosure, access, and records management provisions of the Act.
2. When a young person wishes to access his/her youth record and/or requests copies of information contained in their youth record, he/she must complete-submit the *Application for Client Information form*.
3. Normally, the only information contained in the youth record that cannot be made available to the young person to whom the record relates is:
  - a) details of consultations with JPS solicitors or with solicitors contacted to represent CSSD. This would include letters, emails, memos, faxes, or contact notes that relate to legal judgements, legal strategy, and/or litigation; and,
  - b) correspondence that identifies other young person(s) including Incident Reports completed while in open or secure custody, daily logs or other reports and correspondence completed by group home staff.
4. If a concern exists about allowing the young person, to whom the record relates, access to a specific document (some compelling professional, ethical, or legal reason for wishing to limit access to "government records"), provincial office shall be consulted.
5. When a physical copy of a record is being released all pages of the copy shall be stamped with the applicable record's non-disclosure date.

## **Parental (Guardian) Access to Youth Record**

1. The provisions of the *YCJA* provide authority for a social worker to allow a parent to review his/her child's youth record but only within the record's access period. A young person's parents and/or guardians:

- a) upon request shall be provided copies of any reports prepared for submission to the applicable Youth Justice Court;
  - b) upon request may be given access to internal program documents (referred to under section 116 of the *YCJA* as “records maintained by a department or agency of any government in Canada”) prepared during the course of the young person’s sentence as long as such disclosure would not, potentially, impact on the young person’s well being or safety or as long as the records in question do not contain identifying information about other individual(s).
2. Decision making regarding granting parental or guardian access to government and/or other records shall be based on the social worker’s assessment of the degree to which the parent/guardian is involved in the care and supervision of the young person to whom the record relates.
3. When the young person is in the custody of a manager under the *Children and Youth Care and Protection Act*, and a non-custodial parent requests file access, the social worker will confer with the responsible program worker. The purpose of this contact is to determine the status of the parent-child relationship and assist the social worker with decision making regarding parental/guardian access to government and/or other records.
4. When a parent/guardian wishes to access the youth record and/or requests copies of information contained in a young person’s youth record, he/she must complete/submit the *Application for Client Information form*.

### **Including References to a Young Person’s Youth Record in a PIP File**

1. The federal *YCJA* provides specific direction on who has the right to access a youth record. Section 119(1)(n)(ii) opens the door to sharing information with child welfare officials, “in an investigation related to the young person under the *YCJA* of the legislature of a province respecting child welfare.” This section of the *YCJA* assumes that the child welfare investigation directly concerns the young person to whom the record relates.
2. When the PIP/In Care worker and the youth corrections worker have a shared client, section 119(1)(n)(ii) allows the corrections worker to share information about this shared client’s corrections involvement.
3. Section 125(6) of the *YCJA* states that information may be disclosed to “any professional or other person engaged in the care and supervision of a young person...” by a youth worker if necessary to:
  - a) ensure compliance with a court order;
  - b) ensure safety of staff, students, or other persons, or
  - c) to facilitate the rehabilitation of the young person.

4. Occasionally a social worker may feel it necessary to contact Protective Intervention Program regarding a concern posed by his/her client toward other children in a home. Section 125(6)(b) can be used as authority for this action, however:
  - a) a social worker has to be satisfied that his/her client's activities-behavior-issues could impact on the safety of other persons in the home; and,
  - b) only that information relevant to the perceived safety risk should be shared.
5. Anytime a young person's involvement with Corrections is identified in a record, written or electronic, it becomes part of the youth record and is governed by the records management provisions of the *YCJA*. At some point a youth record reaches its non-disclosure date meaning, functionally, it is not supposed to be available for any purpose. Reports and notation in a PIP record have to include a reference to these provisions to ensure illegal disclosure does not occur. The social worker will have the date of records non-access as it is required in the management of the youth corrections file. To minimize potential breaches of the records access provisions of the *YCJA*, entries specific to a young person's youth corrections involvement should be kept to a minimum.

#### **Referrals to Non-Custody Provincial or Interprovincial Residential Facilities / Treatment Centres**

1. Section 119(1) of the *YCJA* defines the classes of persons having access, upon request, to a young person's record. Section 119(1)(n) includes:
  - a) a member of a department or agency, of a government in Canada, or an organization that is an agent of, or under contract with, the department or agency, who is (i) engaged in the supervision or care of the young person...
2. Section 125 of the *YCJA* provides authority for both mandatory and discretionary disclosure of records related to Youth Justice Court proceedings. Section 125(6) states,

"The Provincial Director or youth worker... may disclose to any professional or any other person engaged in the supervision or care of a young person... any information contained in a record kept under sections 114 to 116 if the disclosure is necessary to:

  - a) ensure compliance by the young person with an authorization under section 91 (Reintegration Leave) or any other order of the Youth Justice Court;
  - b) to ensure safety of staff, students, or other persons; or
  - c) to facilitate the rehabilitation of the young person.

3. Copies of applicable court orders, and pre-sentence reports, would be allowed to be included in the referral package for placement in a treatment centre or placement in a non-custody residential setting, whether within or outside the province, because:
  - i) residential care providers are engaged in the care and supervision of the young person as per section 119(1)(n) and their work constitutes efforts, “to facilitate the rehabilitation of the young person” as per section 125(6)(c) of the *YCJA*; and,
  - ii) residential care providers and other residents would be included in the class of “other persons” under section 125(6)(b) of the *YCJA* for whom disclosure may be necessary to ensure safety.
4. This ability to share documents is applicable as long as the records in question have not reached their record’s non-disclosure date when the access provisions of the *YCJA* come into force.
5. As it relates to the management of any physical records provided:
  - i) the social worker shall ensure all pages of any document shared will be stamped with the most current records access date;
  - ii) the receiving agency must, “keep the record separate from any other record of the young person to whom the information relates” as per section 125(7)(b), *YCJA*; and,
  - iii) the receiving agency must ensure that the only people who have access to the record are involved in the supervision and care of that young person to whom the record relates.

### **Requesting from and Disclosing Information to Schools**

1. Section 125(5) of the *YCJA* permits the Provincial Director/Delegate to disclose information to a school official (on the identity of a young person, nature of offences and/or sentence) where this information is being provided to that official for the purpose of obtaining information needed for the preparation of any report authorized under the *YCJA*.
2. In general, it is also recognized that information sharing to schools or other academic settings may be necessary to support academic and/or vocational programming for a young person. Behavioural information about a young person may be shared when it impacts upon his/her academic performance or conduct in school.
3. The level of detail to be provided is dependent upon: (i) individual case circumstances; and (ii) the nature of, or wording of, conditions included in a court order (e.g. conditions that specifically relate to a young person’s behaviour while in school or other educational setting).

4. Information may be shared when there is concern over the threat posed by an individual toward the physical well being or safety of staff, students or others in the school or educational setting. The degree of perceived threat and the necessity of disclosure to ensure “safety” will be circumstance specific, however, the nature of the offence itself may give rise to consideration of disclosure such as:
  - a) assault or other circumstances where there is violence against a person;
  - b) illegal possession of fire arms or offensive weapons;
  - c) drug trafficking (under *Controlled Drugs and Substances Act*);
  - d) possession of illegal explosives;
  - e) extortion;
  - f) intimidation;
  - g) procuring for the purposes of prostitution;
  - h) arson.

## **PROCEDURES:**

### **General Procedures for Information Sharing**

1. While the *YCJA* affords authority, in specific circumstances for information sharing, the social worker must be satisfied that the information being sought is necessary to the care, treatment, and/or supervision of the young person for whom information has been requested.
2. The level of detail provided, in response to a request for information, is dependent upon (i) individual case circumstances; and/or (ii) the specific wording on a court order. The social worker is required to assess the necessity of releasing information regardless of whether the young person has given his/her consent to do so.
3. When a physical copy of a record is being released:
  - a) all pages of the copy shall be stamped with the applicable record’s non-disclosure date;
  - b) the recipient shall be notified in writing that they are responsible, under section 119 of the *YCJA*, to ensure separate storage of the document and ensure access to the document is controlled; and,
  - c) the recipient shall also be notified in writing of their responsibility to either return the document or have it destroyed once the records non-disclosure date has been reached.
4. When a person or organization requests disclosure of records for research and/or statistical purposes, the applicant must make a request directly to the responsible Youth Justice Court in accordance with section 123 of the *YCJA*.



5. All information relating to a young person, including the documents relating to judicial proceedings and any relevant service planning information should be disclosed to any facility, group home, or community custody home providing custodial care to a young person pursuant to a custodial sentence. The social worker shall ensure recipients of this information are aware of the records access provisions of the *YCJA* consistent with procedure #3 above.
6. When a young person is in the custody of a Zone Manager under the *Children and Youth Care and Protection Act*, all access to information privileges under the *YCJA* for parents are extended. This includes access to “court based” reports e.g. *PSR*; medical or psychological assessment report; copy of sentence; and; notice of custody review hearings.
7. Under the *Guidelines for Information Sharing: Model for the Coordination of Services to Children and Youth*, physical records are not normally shared, however, a synopsis of relevant information can be. As a general principle within the ISSP process, information can only be shared with the voluntary and informed consent of the young person and his/her family, however, provisions of section 125 of the *YCJA* allow information to be shared without consent, if required.
8. When a victim of an offence requests disclosure of any part of the record relating to that offence, he/she should be advised to make a request to the court of adjudication. The social worker should cooperate to the greatest extent possible, however, with the victim of an offence in offering information concerning the court proceedings and final disposition of the case.

#### **Procedures Re: Disclosing Information to Schools**

1. When the Provincial Director/Delegate discloses information to a school or school board for the purpose of obtaining information relating to the preparation of a report, the disclosure should include:
  - a) name of young person;
  - b) age of young person;
  - c) the nature of the report to be completed and the section of the *YCJA* under which the report is authorized.
  - d) any timelines or deadlines in respect of providing the information;
  - e) a specific description of the type of information being requested e.g. school attendance, current program of courses, academic performance, and nature of any incidents giving rise to discipline and the type of discipline imposed.
2. The *YCJA* specifically identifies, “a representative of any school board or school or any other educational or training institution” as a group to whom information can be disclosed, as long as that disclosure is necessary for one of the three purposes identified under section 125(6):

- a) to ensure compliance by the young person with the conditions of a court order or reintegration leave;
  - b) to ensure safety of staff, students, or other persons; or;
  - c) to facilitate the young person's rehabilitation.
3. When information is being disclosed to ensure compliance with a court order, the following information should be provided school officials:
  - a) type of order;
  - b) anticipated expiry date of the order;
  - c) the offence in relation to which the order has been made; and,
  - d) the specific terms of the order which relate to school attendance and/or any other education matter.
4. When the reason for disclosure is associated with the issue of "safety" referenced under section 125(b)(iii), the above noted information should be provided along with the following:
  - a) any history of prior offences that might affect safety;
  - b) details or particular aspects of the circumstances of the offence which make the notification under 125(6)(b) necessary;
  - c) as available, information regarding any pattern of behavior which may signal the onset of the activity which could affect the safety of staff/students / others;
  - d) any identifiable individual or group of persons who could be at risk from a student; and,
  - e) if more than one person was convicted in the circumstances of the offence, and some or all of the young persons involved pose a safety risk, the school should be made aware of the interrelationship among the youths who pose a threat to safety.
5. In some circumstances it may be considered that a copy of part of the case record be provided to the school e.g. copy of a non-custodial sentence that references specific conditions related to a school/educational setting or psychological report originally ordered under section 34 of the *YCJA*. If a physical document is shared, all pages must have a records non-disclosure date entered in a prominent place. The recipient must be advised, in writing, that they are accountable for: (i) separate storage; (ii) controlling access so that no person has access to the information if not involved directly in the care and supervision of the young person; and (iii) when the records non-disclosure date is reached, the recipient must either return the document or ensure that it is destroyed to comply with the non-disclosure provisions of the *YCJA*.

### **Procedures Re: Release of Information to Adult Corrections**

1. Until a youth record achieves its records non-access date, information shall be shared with adult corrections to assist with the preparation of a pre-sentence report. Authority for this comes from section 119(1)(h) of the *YCJA*. Among the class of person who can access a youth record includes, “a judge, a court, or review board, for any purpose related to proceedings against a young person or against a young person after he or she becomes an adult, in respect of offences committed...”
2. Until a youth record achieves its records non-access date, information shall be shared with adult corrections for case management purposes. Authority for this comes under section 119(1)(n) of the *YCJA*. A class of persons who can access a youth record includes, “a member of a department or agency of a government in Canada... engaged in the supervision or care of a young person, whether as a young person or adult.”
3. When physical copies of records are being provided:
  - a) all pages of the copy shall be stamped with the applicable record’s non-disclosure date;
  - b) the recipient shall be notified in writing that they are responsible, under section 119 of the *YCJA*, to ensure separate storage of the document and ensure access to the document is controlled; and,
  - c) the recipient shall also be notified in writing of their responsibility to either return the document or have it destroyed once the records non-disclosure date has been reached.
4. Once a youth record achieves its records non-access date it cannot be shared with adult corrections without a court order. Under section 123(1)(a) a Youth Justice Court judge can, upon application, order that a person be given access to all or part of a youth record if the court accepts, “it is necessary for access to be given to the record or part in the interest of the proper administration of justice.”
5. Under section 119(9) of the *YCJA* if the young person has an active youth record (meaning it has not yet reached its records non access date) and the young person is convicted as an adult, the youth record, “will be kept active and treated as an adult record.” Under section 119(9)(b), in this circumstance, the period of access provisions are no longer applied to the youth record.

### **Procedures Re: Release of Information to a Third Party at Young Person’s Request**

1. The *YCJA* makes no provision for sharing information to a third party unless this disclosure is necessary for one of the three purposes identified under section 125(6):
  - a) to ensure compliance by the young person with the conditions of a court order or reintegration leave;

- b) to ensure safety of staff, students, or other persons; or,
  - c) to facilitate the young person's rehabilitation.
2. Client consent is not sufficient to proceed with information sharing to a third party where that disclosure does not meet the criteria outlined in section 125(6) of the *YCJA*.
  3. If the request for information is from the young person's legal counsel it shall be provided directly to the source. Section 124 of the *YCJA* states, "the young person to whom the record relates and his or her counsel may have access to a record at any time." This means this access provision also applies once a record achieves its records non access date.
  4. The *YCJA* gives no authority to share information with a third party, after the records access period has expired, even with client consent.

## **EXCEPTIONS TO POLICY:**

### **Conviction as an Adult While Youth Record is Active**

Under section 119(9) of the *YCJA* if the young person has an active youth record (meaning it has not yet reached its records non access date) and the young person is convicted as an adult, the youth record, "will be kept active and treated as an adult record." Under section 119(9)(b), in this circumstance, the period of access provisions are no longer applied to the youth record.

### **Impact of Records Access (Non-Disclosable Date) Provisions**

Practices regarding information sharing do not apply to a situation where all active youth sentences have reached their sentence expiry date, the young person is no longer being supervised by the Youth Corrections program and the record has achieved its records access or non-disclosable date as determined by section 119(2) of the *YCJA*.

### **Records Disclosure (after records non-access date has been reached)**

Only the person to whom the record relates and his/her legal counsel shall have access to the youth record after the records non-access date has been reached. Information requests, either from the person to whom the record relates or his/her legal counsel shall be forwarded to provincial office which shall address the information request.

### **Records Disclosure (after records non-access date has been reached) with a Court Order**

Section 123(1) of the *YCJA* states that an application can be made to the court to access all or part of a youth record after the record's non-access date has been reached. A Youth Justice Court Judge may allow access if he/she is satisfied that:

- a) the person making the application has a valid or substantial interest in the record;  
and,
- b) access is in the interest of the proper administration of justice; and,
- c) there is no other federal or provincial legislation that prohibits the access request.

**RELEVANT DOCUMENTS:**

- *Application for Client Information form*
- *Youth Level of Service – Case Management Inventory*

## VICTIM NOTIFICATION

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**Policy no.: 9.5**

**Effective Date: November 15, 2006**

**Date Revised: November 23, 2016**

**Policy Cross References: Continuation of Custody**

**Legislative References:**

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**PURPOSE:** To outline those circumstances where a social worker is required to notify a victim that a young person is being supervised in some form within the community.

### **POLICY:**

1. A victim seeking access to any part of the youth record shall be advised to make a request to the court of adjudication.
2. If there is a condition of a court order, community supervision, or reintegration leave which relates directly to a victim, there is an obligation to notify the victim to advise of the condition and the duration of the applicable order or approval period.

### **PROCEDURES:**

#### **Notifying Victims as Part of Management of Court Orders**

1. Occasionally a court order, like probation, will include a condition that specifically relates to a victim(s) of the young person's offence(s). The community social worker shall contact the victim and advise of the exact wording of the condition and the duration of the order(s) in which it is contained. A copy of the applicable court order(s) is not to be provided but the victim should be advised of their right to seek release of this document from the court of adjudication.

2. When a young person is in custody and a proposed condition of Reintegration Leave references a specific victim(s), this person is to be contacted, at least, three (3) working days in advance of the leave period by the open or secure custody social worker (as applicable). The victim is to be provided information on the specifics of the leave approval including duration and place of residence during leave period. Should the victim request not be notified in future their wishes are to be respected unless new information arises regarding the level of perceived risk to that individual or his/her property. The perceived potential of harm to a victim and/or his property, shall be a consideration when Reintegration Leave is being considered for approval.
3. Where a young person has escaped custody or is considered absent without leave, and a victim has been specifically identified in a condition of a court order or reintegration leave (subject to the victim's wishes) the victim should be notified without delay of the young person's escape, and again notified when the young person has been apprehended or returned to custody.
4. If a condition, governing community supervision references a specific victim(s), the above noted notification process shall be followed. The victim is to be provided the specific wording of the condition and the duration of the community supervision component of the order. The victim shall be contacted by the community social worker, at least, five (5) working days in advance of the young person's release from custody.
5. If such a condition is applied by the court in relation to conditional supervision connected to a custodial review, the community social worker shall contact the victim within one (1) working day of the custodial review hearing.

### **Notifying Victim(s) of a Specific Threat Made**

When a court order is in affect that specifically references a victim (a condition on a probation order, for example, that requires the young person not to have contact with a former victim):

1. If, during the course of the supervision of a community based order, the social worker receives reliable information of a threat to a specific former victim whether physical or toward property owned by that person: a) the police are to be contacted; and, b) the community social worker shall confer with the police regarding the appropriateness of him/her contacting the victim directly to advise that a specific threat has been made. If no impediment is identified the social worker shall contact the victim by phone or in person to notify them of the threat. This contact shall be followed up in writing.

2. During the course of an open or secure custody placement, residential staff may receive reliable information that a specific threat has been made against a resident's former victim(s). Normally if such threats are made the police shall be contacted. If no impediment is identified, by the police, in relation to subsequent victim notification, the open or secure custody social worker shall contact the community social worker. It is the community social worker that shall notify the victim(s). As part of this notification process the victim(s) are to be provided information on the residents release from custody date (RFC) and community of residence upon release. This contact may be by phone or in person and should be followed up in writing.

**EXCEPTIONS TO POLICY:**

**RELEVANT DOCUMENTS:**



## RISK-NEED CLASSIFICATION

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**Policy no.: 9.6**

**Effective Date: June 22, 2004**

**Date Revised: November 23, 2016**

**Policy Cross References:** Individual Service Planning, Service Funding

**Legislative References:**

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**PURPOSE:** To outline required practices connected to the use of the provincial model for risk-need classification.

### **POLICY:**

1. The *Youth Level of Service/Case Management Inventory (YLS/CMI)* is designed to provide a detailed survey of risk and need factors exhibited by youth and provide a linkage between those factors and a planned approach to supervision and support.

The purpose of this type of assessment instrument is as follows:

- a) to provide a standard assessment for both community and young person facilities to ensure continuity of case management;
  - b) to assess the risk that the young person will reoffend;
  - c) to establish a general standard of contact for a case; and
  - d) to identify strengths, needs, and goals that will assist with the development of a coordinated service plan.
2. A well-established principle of case management is that the intensity of supervision should be matched to the risk-need levels of the offender. The higher the overall risk/need level presented, the more program services required. The concept of diminishing supervision over time should be practiced and adjustments made in accordance with young person's changing circumstances. Intervention or supervision should not exceed the level that is required.

### **PROCEDURES:**

1. An initial assessment will be completed within thirty days of sentencing utilizing the *YLS-CMI Initial Assessment Form*.

2. A *YLS-CMI* should not be completed unless there have been multiple contacts with the young person, parent/guardians, school officials and other collateral contacts as required. If a Pre-Sentence Report has been completed the social worker would normally have obtained the background information needed to proceed with completion of the *YLS-CMI*.
3. The *YLS-CMI* shall be completed with input from the youth, parent, or guardian, school staff and/or other collateral contacts as necessary. During an initial meeting with the young person, and his/her parents or guardians, whether as part of a pre-sentence report or specifically for completion of the *YLS-CMI*, the social worker will provide information on the assessment process and its relationship to a standard for ongoing contact.
4. In cases where pre-sentence reports have not been completed, the social worker, as part of required information gathering to inform report completion, will complete a home visit with the young person, parents and/or caregiver. Where applicable, contact will be made with school officials and/or other collateral agencies and service providers involved with the youth and his/her family.
5. Based upon the results of the *YLS-CMI*, the case will be assessed at either low, moderate, high or very high risk-need. The following represents the minimum contact standards based on assessed risk-need:

<b>Risk-Need Level</b>	<b>Minimum Contact Level</b>
Low	Every two months
Moderate	Monthly
High	Every two weeks
Very High	Weekly

6. An eligible contact includes:
  - a) a face-to-face meeting between the social worker and young persons either through office visit, home visit, or at another location e.g. school; or
  - b) a meeting, attended by the social worker, where the young person is, primarily, meeting with another service provider e.g. teacher, school official, psychologist, Protective Intervention social worker; or
  - c) a contact that occurs during, or related to, an appearance in court; or
  - d) a contact that occurs as a result of a formal service planning meeting e.g. in conjunction with a Youth Corrections Service Plan; or,
  - e) an in depth telephone conversation between the social worker and the young person that is related to issues connected with the *Case Management Inventory* component of the *YLS-CMI* or some other form of formal service planning i.e. *Individual Support Services Plan*; or
  - f) a meeting between the young person and his/her adult probation officer.

7. If the young person receives a court order that includes a specific schedule for reporting, and this schedule exceeds the contact standards established through application of the *YLS-CMI*, the reporting schedule established by the Court will take precedent.
8. The section of the *YLS-CMI* entitled *Summary of Key Work Activities* is a documentation of the youth in terms of programming and sentence management. This section will guide the case intervention strategy.
9. Upon completion of the *YLS-CMI*, the social worker will arrange to meet with the young person and his/her parents or guardians to discuss the results of the assessment. This is an opportunity to examine the identified issues, their relationship to a contact standard, and their relationship to the goals identified by the worker. The young person will be asked to formally acknowledge that the assessment has been reviewed with him/her by signing the assessment / reassessment form, as applicable. There may or may not be agreement by the young person and/or his/her parents-guardians regarding the contents of the assessment and related goals. For this reason, the young person should be advised that their signature is an acknowledgement of having reviewed the assessment and not necessarily that he or she concurs with all, or part, of the contents. If the young person refuses to provide their signature, the social worker will simply note this on the form.
10. Reopened cases will be assessed using the *YLS-CMI Initial Assessment Form*.
11. Every case must be reassessed on an ongoing basis. For cases assessed as very high or high, a reassessment shall be completed at three (3) month intervals. All other cases are to be reassessed at six (6) month intervals. At the discretion of the social worker, reassessment may be conducted at any more frequent interval throughout the supervision of the young person.
12. Reviews and reassessments are completed using the *YLS-CMI Reassessment Form*. As part of any reassessment, the social worker will complete a home visit with the young person, parent and/or caregiver.
13. When a young person is sentenced to open custody, an initial assessment or reassessment (depending upon the circumstances) will be completed by the custody social worker within 30 days of initial admission.
14. Upon release from custody, either as a result of completion of custody or as a result of a custodial review, the community social worker is required to have weekly contact with the young person for the first 30 days following release. Subsequent to this period of mandatory weekly contact, and upon completion of an *YLS-CMI* reassessment, ongoing contact with the young person can be directed by the risk-need assessment and activities arising from the discharge planning process.

15. All *YLS-CMI* assessments and reassessments are to be cosigned by the social worker's immediate supervisor.

### **Adolescent Sexual Offenders**

1. A police report or crown brief that provide details on the specific nature of the offence should be obtained from the local crown or arresting officer.
2. Standard risk assessment tools do not typically accurately reflect the risk of recidivism for sexually related offences, therefore, a supplemental assessment **along with the continued use of the *YLS-CMI*** may be required. Normally some form of actuarial assessment is used like the Estimate of Risk of Adolescent Sexual Offence Recidivism (ERASOR) or the Juvenile Sex Offender Assessment Protocol (JSOAP-II, 2003). Actuarial assessments utilize a fixed set of established risk factors, structured coding rules for risk factors, and is linked to a probabilistic estimate of the potential of reoffending.
3. The required assessment may be able to be completed through the auspices of the psychologist position attached to the Newfoundland and Labrador Youth Centre (NLYC). To access this service the program supervisor should arrange to submit, to the Youth Corrections Consultant at Provincial Office, a narrative report outlining the details of the case and reason(s) for the referral using the *Newfoundland and Labrador Youth Centre IRCS Psychological Services Referral Form*. Attached should be copies of the most recent PSR, *YLS-CMI*, and applicable court orders. Provincial office shall immediately, upon receipt, initiate discussions with the Manager of Programs at NLYC to determine availability and timeframe for service.
4. If an assessment cannot be arranged through the above noted process in a timely fashion, consideration may be given to hiring a private consultant to complete an assessment. Refer to Policy 9.8 on Service Funding for connected processes.
5. When a supplemental assessment is considered necessary to determine the likelihood of recidivism, until this assessment is completed bi-weekly in person contact is the required reporting schedule. While the *YLS-CMI* should be completed this mandatory reporting requirement will override the contact standard connected with the current classification. Upon receipt of the supplemental assessment the required contact standard shall be determined in relation to the information provided.

### **National Sex Offender Registry**

The legislation that established the National Sex Offender Registry does not specifically identify young people as being excluded from registration however section 490 of the *Criminal Code of Canada* does establish this exclusion except when an adult sentence is given.

**EXCEPTIONS TO POLICY:** This policy does not apply to young persons who receive either a conditional discharge with no reporting condition or an unsupervised probation order. This also does not apply to young persons whose only sentence is a separate community service order.

**RELEVANT DOCUMENTS:**

- *YLS-CMI Initial Assessment Form*
- *YLS-CMI Reassessment Form*
- *YLS-CMI Scoring Key (Appendix 3)*
- *Newfoundland and Labrador Youth Centre IRCS Psychological Services Referral Form*

## SERVICE PLANNING

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**Policy no.: 9.7**

**Effective Date:**

**Date Revised: December 7, 2016**

**Policy Cross References:** Risk-Need Classification, Service Funding, Information Sharing

**Legislative References:**

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**PURPOSE:** To identify the commitment to an individualized service planning approach, when social worker will facilitate development of a multi- disciplinary plan, and the documentation for same.

### **POLICY:**

1. The purpose of a Youth Corrections initiated Service Plan is twofold:
  - a) to support addressing the goals identified in the Case Management Inventory (YLS-CMI); and,
  - b) to promote appropriate communication and collaboration among service providers.
2. A *Youth Corrections Service Plan* is developed by the social worker if the young person is in the community or by the social worker responsible for open custody when young person is in custody if:
  - a) there are one(1) or more additional service providers involved with the young person and/or his/her family; and,
  - b) there is no other active formal planning process in place that has resulted in the development of a planning document that addresses various aspects of a young person's life.
3. If there is not, currently, another service provider involved as defined in 2(a), the Case Management Inventory (YLS-CMI) will be sole planning tool for non-custody cases. An additional Discharge Plan Summary form shall be completed for all young persons in Open or Secure Custody.
4. If a Youth Corrections client is, concurrently, a Youth Services client then a separate *Youth Corrections Service Plan* does not need to be pursued. The Youth Services Plan shall be accepted as an active formal plan.

5. If a Youth Corrections client is, concurrently, involved with PIP/In Care programs a separate *Youth Corrections Service Plan* does not need to be pursued. The In Care Progress Report (IPR) shall be accepted as an active formal plan.
6. An F-CAP or Family Centred Action Plan is not considered, in this context, as an active formal plan for a specific young person.
7. Where there is an existing planning process in place the social worker will identify and raise those issues arising from the completion of the YLS-CMI. Part of the social worker's role may also be to explain, to participants, how the type of order, and conditions contained therein, may impact on facets of the overall plan.
8. The results of any meeting held in relation to the development or review of a *Youth Corrections Service Plan* shall be documented on prescribed forms.

## **PROCEDURES:**

1. If assessment is about a social worker determining who she/he needs to talk with to understand the young person's circumstances, then service planning is about a social worker determining who she/he needs to work with to address concerns arising from the young person's circumstances. These other service providers may be identified through the sentencing process e.g. completion of a Pre-Sentence Report, medical, psychological, or psychiatric assessments specifically arranged by the Court. These resources may be identified during interviews leading to the completion of the YLS-CMI.
2. The young person shall be encouraged to be an active participant in the planning process. Before the first meeting is held the social worker shall: a) explain the process with the young person; and b) explain how the process fits with achieving the goals identified in the most recent Case Management Inventory (YLS-CMI).
3. If the young person chooses not to participate, or is unable to attend, the social worker may proceed with conducting the meeting. The social worker shall, as soon as possible, after the meeting, arrange to meet with the young person individually to review the discussions that occurred.
4. The following criteria provide a general framework for conducting meetings:
  - a) the young person and his/her parent/guardian(s) (as appropriate) shall be invited to participate;
  - b) attendance at, or participation, in a service planning meeting is generally considered voluntary;
  - c) the person convening the meeting is expected to conduct it in a non-adversarial environment that recognizes the rights of all parties present;

- d) the meeting shall not accord any participant a mandate or responsibility she/he does not already have;
  - e) it is expected that the meeting will be convened at no cost; and,
  - f) the convenor of the meeting shall ensure notes are taken on the discussions and distributed to all participants.
5. The results of the service planning meeting shall be documented in the *Youth Corrections Service Plan*. All participants to the planning meeting (as well as the young person even if he/she did not attend) are to be provided a copy of Part C of the form (Summary of Planning Activities) and are to be informed of the provisions of the *YCJA* related to information sharing and records management.
6. The corrections initiated service plan shall be updated in accordance with the schedule for the review of the YLS-CMI or, if circumstances dictate, when there is a significant change in the young person's situation.
7. Funding for educational, recreational, treatment, counseling and other resources necessary for the fulfillment of a service plan can be provided in accordance with provincial policy.

### **Completion of Youth Corrections Case Plan**

1. The planning document is composed of four (4) sections:
  - a) Profile
  - b) Goals from Most Recent Case Management Inventory
  - c) Summary of Planning Activities
  - d) Acknowledgment(s)/Summary
2. In section "B" the *Goals of the Most Recent Case Management Inventory* are listed. The purpose of the planning process is to work with the young person, and other service providers, to address issues arising from the Youth Level of Service-Case Management Inventory. The Youth Corrections worker takes the CMI designated goals and fits them into the appropriate category in section "C". Section "C" provides a structure that may be helpful when joint planning with other service providers.
3. Only section "C" titled *Summary of Planning Activities* is distributed to other members of the planning team. It purposefully does not make any reference to the young person's status as a young person involved with youth corrections.

### **General Procedures for Information Sharing**

1. Under section 125(6)(c) of the *YCJA*, the social worker has authority to share information, in the context of multidisciplinary service planning, in order to facilitate the young person's rehabilitation:



“The Provincial Director, a youth worker, the Attorney General, a peace officer or any other person engaged in the provision of services to a young person may disclose to any professional or other person engaged in the supervision of care of a young person-including a representative of a school board or school or other educational or training institution-any information contained in the record... if the disclosure is necessary to facilitate the rehabilitation of the young person.”

2. Normally copies of documents from the youth record are not provided to service meeting participants, however, a synopsis of relevant information can be.
3. The purpose of the service planning process is to engage other service providers involved with a young person and his/her family. Often times these agencies and/or individuals have information sharing protocols that involve the written consent of the young person. When a *Youth Corrections Service Plan* is being undertaken the young person shall be asked to sign a *Consent to Release or Obtain Client Information* form.
4. If a young person refuses to participate in the planning process, the service planning meeting may still proceed. Although the *YCJA* references the importance of young person’s participating in decision making that affects them, the information sharing provisions of the *YCJA* are not based on client consent. Section 125(6)(c) of the *YCJA* provides authority for information sharing to “facilitate the young person’s rehabilitation” which is the underlying purpose of a service planning meeting. The onus is on the social worker to ensure that the reasons for sharing information are in keeping with the *YCJA* intent that it be purposeful to the support and supervision of the Court’s orders.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Youth Corrections Service Plan*
- *Consent to Release or Obtain Client Information*

## SERVICE FUNDING

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**Policy no.: 9.8**

**Effective Date: July 7, 2003**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:**

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**PURPOSE:** To detail: (i) the availability and purpose of service funding for community based cases; and (ii) processes connected to approval and ongoing review.

### **POLICY:**

1. Funding may be approved on behalf of individual clients, whether serving a community based or custodial sentence, to address specific service needs identified in the Youth Level of Service – Case Management Inventory or other service planning document. Funding may be approved for specialized assessments, tutoring, treatments, counselling, and/or recreational programming. In addition, financial support may also be provided for transportation costs to assist a young person with accessing identified services.
2. While no formal means test will be employed, a social worker shall consider, and approach parents or guardians regarding their ability to pay for, or contribute to, identified services.
3. Supervisor approval or recommendation is required for all service funding requests.

### **PROCEDURES:**

1. For the purposes of consideration of funding approval the social worker shall submit to his/her immediate supervisor the *Children, Seniors and Social Development Financial Request* form.
2. An individual approval shall not exceed six (6) months. An updated approval form shall be required for an extension request. This report shall summarize the activities-to-date and a rationale for continuation.

3. Funding approvals would also observe a number of maximum contributions:

<b>Service</b>	<b>Amount</b>	<b>Description</b>
Private Counselling	Approved by Zone Manager	Social workers shall explore availability of internal or publically funded community based resources before requesting approval to engage private services..
Specialized clinical assessments and/or specialized counselling (i.e. young person with sexually based offences)	Approved by Zone Manager	Social workers shall explore availability of internal or publically funded community based resources including psychological services through the Newfoundland and Labrador Youth Centre and Behavioral Management Services within CSSD
Tutoring	Maximum of \$25/hour and 5 hours per month Approved by Supervisor	Social workers shall explore the availability of school based or volunteer based resources before requesting approval to engage private services.
Fees Connected with Social-Recreational programming	Approved by Zone Manager	Activity should be connected to the Case Management Inventory component of the YLS-CMI and/or some form of service plan. Prior to approval applicable community resources shall be explored.

4. Prior to approval or re-approval of funding, the young person and his/her family or care providers must be approached regarding their ability to pay for, or contribute toward the cost of, required services.
5. If a parent/guardian is considered to have the necessary resources to pay for, or contribute to, required services but refuses to do so, the required services may be paid for where provision of service is considered essential in avoiding or coping with crisis in the young person's life (including the potential of receiving a future custodial sentence if denied a particular service).

6. In the above noted circumstances, written requests for the provision of service should include: (i) reasons for refusal to contribute; (ii) the importance of provision of service relative to ongoing service planning; (iii) potential outcomes if service is not purchased; and (iv) consideration of other options for provision of an acceptable level of service.
7. In situations where a young person requires specialized counselling services to address emotional and/or behavioural difficulties, the social worker must assess the availability of mental health or publicly funded services within the community. If counselling services are not available, except through a private practitioner, the social worker must ensure the following:
  - a) the private practitioner is trained and qualified to offer the services;
  - b) goals and objectives for the counselling are established with the private practitioner and the young person, as part of the overall service plan;
  - c) the private practitioner agrees to provide progress reports to the social worker regarding the counselling of young person, as required;
  - d) costs for private counselling are to be established before the sessions commence, with an appropriate billing schedule in place.
8. Where specialized counselling services are being arranged on behalf of a young person, the social worker, before making the referral, will ensure that the professional is qualified in training and experience for that particular speciality. Individuals providing private counselling services are to be knowledgeable about relevant legal-policy mandates (i.e. access-disclosure provision of the *JCJA*) as well as information pertinent to their area of specialized practice or service. Any documents provided must be stamped with the appropriate records non-disclosure date as per policy.
9. Where private counselling and/or treatment services have been engaged, an *Agreement to Provide Assessment and Treatment* shall be completed.
10. A required assessment may be able to be completed through the auspices of the psychologist position attached to the Newfoundland and Labrador Youth Centre (NLYC). To access this service the program supervisor should arrange to submit, to the Youth Corrections Consultant at Provincial Office, a narrative report outlining the details of the case and reason for referral using the "*Newfoundland and Labrador Youth Centre IRCS Psychological Services Referral Form*". Attached should be copies of the most recent PSR, YLS-CMI, and applicable court orders. Provincial office shall immediately, upon receipt, initiate discussions with the Manager of Programs at NLYC to determine availability of, and timeframe for this service.

**EXCEPTIONS TO POLICY:**

**RELEVANT DOCUMENTS:**

- *Children, Seniors and Social Development Financial Request*
- *Agreement to Provide Assessment and Treatment*
- *Newfoundland and Labrador Youth Centre IRCS Psychological Services Referral Form*

## CASE TRANSFERS WITHIN AND OUTSIDE PROVINCE

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**Policy no.: 9.9**

**Effective Date:**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *YCJA*; s.57(1) Transfer of a youth sentence; s.57(2) No transfer outside province before appeal completed; s.58(3) Waiver of Jurisdiction

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**PURPOSE:** To outline required tasks when transferring a case, within the province, and detail required documentation needed to affect an interprovincial transfer.

### **POLICY:**

#### **Case Transfers Within Province**

1. A young person's main case file would normally be held in their home community. When a young person is serving a custody and supervision sentence, the main case file continues to be held in the home office, with a sub-file of relevant documents forwarded to the area of custody. The home office maintains overall case management responsibilities.
2. Only if the permanent residency of a young person changes, should a formal case transfer be processed. This would occur when the family has moved, or when the young person has moved to seek or accept employment, attend an educational facility, treatment centre, or otherwise changes residency on a long-term basis.
3. Case transfers within the Province involves transferring the file to the appropriate Children, Seniors and Social Development office. When a youth moves to another jurisdiction in Canada, immediate action must be taken to either request the acceptance of case management responsibility by authorities in the other jurisdiction (courtesy supervision), or to seek a formal Waiver of Jurisdiction to the youth court in the new province of the young person.

#### **Case Transfer Outside of Province/Courtesy Supervision**

1. When a young person is moving or has moved to another province or territory a transfer of case management responsibility of the sentence (courtesy supervision) may be sufficient in most cases involving non-custody sentences. The social worker will confirm the young person's new address and make contact directly

- with the office responsible for youth corrections in the new province. This should occur prior to the young person leaving. The worker will request that courtesy supervision be provided. That office shall be provided copies of all the current contents of the young person's youth record.
2. Taking any judicial action (e.g. suspension of community supervision, Review, etc.) would be difficult and impractical in another jurisdiction unless a formal transfer of jurisdiction to the appropriate youth court has taken place. For that reason, custody-related sentences (community supervision, deferred custody) should be presumed to require a Waiver of Jurisdiction under section 58, *YCJA*, prior to the youth moving to another other province/territory.
  3. If the move is considered permanent a waiver of jurisdiction of a community sentence shall be initiated. This shall be discussed with the receiving province or territory. Occasionally, because of the perceived supervision demands of a case, the receiving province or territory may require a formal Waiver of Jurisdiction under section 58 of the *YCJA* in circumstances where the move is not permanent or there is uncertainty about permanency.
  4. Requests for courtesy supervision may be made by the social worker directly to the appropriate youth corrections office in the other jurisdiction. All transfers of custody-related sentences must be facilitated centrally by the Provincial Director of Youth Corrections.

## **PROCEDURES:**

### **Transfer within Province**

1. In keeping with routine administrative practices, when a young person moves permanently or on a long-term basis to another area, the case file should be transferred to the new office of residence in the normal fashion without delay. Contact with, and transmittal of documents to the receiving office must be done in a way that ensures there is no break in the supervision of the young person. Upon receipt of the file, the receiving office assumes case management responsibility. The sending office would enter the appropriate data, reflecting the date of transfer and acceptance of responsibility, into the Youth Corrections Module of CRMS.
2. When a young person has been committed to open or secure custody, which is outside the normal area of permanent residency, the case file should not be transferred to the institution or area responsible for the custody placement. Rather, the main case file will be held at the home office, which maintains overall case management responsibilities, and copies of all relevant case documents will be forwarded, as a sub-file, to the institution or District Office responsible for the custody placement within five (5) working days.

3. In a case where permanent residency of the young person changes while he/she is in custody (e.g. the family moves to a new community within the province), the main file should be transferred to the families' new home office as per the foregoing.

## **Transfer to Another Province/Territory Non-Custody Sentences**

### **Courtesy Supervision**

1. When a young person who is serving a non-custodial sentence intends to change his/her place of normal or permanent residency to another Province or Territory in Canada, a request for transfer of case management responsibility (courtesy supervision) must be made to the appropriate agency in the other Province, unless there is less than one month remaining in the sentence. However, if there is less than one month remaining, but the young person is deemed to be in a high risk or need category, consideration should be given to seeking a supervision arrangement for the short period remaining.
2. Prior to the young person's move, telephone or written contact must be made with the appropriate youth corrections office in the other jurisdiction. In support of this request for courtesy supervision, the other jurisdiction must be advised of the young person's planned living arrangements, reasons for move, length of stay (if temporary and known), any notable risks or needs, and provided with any background documents deemed necessary by the other jurisdiction. As a matter of common practice, a receiving jurisdiction would only decline courtesy supervision if the transfer was clearly contrary to the best interests of the young person, and the young person has no substantive family connections or supports in the area. Contact may be made with the Director of Youth Corrections at CSSD for assistance in determining contact information in other jurisdictions or for other assistance with the process.
3. Upon acceptance of courtesy supervision by the other jurisdiction, the receiving office should be asked to provide reporting instructions for the young person upon his/her move. This may be through a specific appointment, or by instructions for making an appointment when he/she moves.

Comprehensive file information shall be forwarded to the receiving office by registered mail or courier, immediately after the young person has moved. The original file will be maintained, and copies of all documents relevant to the young person's social and legal history, supervision, risks and needs, will be sent to the receiving office. This may include copies of all documents in the file, including case notes, but at a minimum, must include:

- a) copies of all court orders currently in effect;
- b) history of all known convictions and sentences;



- c) copy of most recent PSR, YLS-CMI, YC service plan, and any other relevant report; and
  - d) covering letter acknowledging the other jurisdiction's agreement to accept courtesy supervision, and confirmation of the young person's new mailing address, street address and phone number.
- 4. If the young person has moved to another jurisdiction without prior notice to the social worker, the appropriate office in the other province or territory should be contacted without delay, and information provided as per the above. A decision can then be made on arrangements for providing the youth with reporting instructions.
- 5. When a young person moves to another province or territory and the case management responsibilities are transferred, the young person file is maintained in the home office, but may be considered to be inactive. If the young person's move is considered to be long-term or permanent, the case may be terminated on the Youth Corrections Module of CRMS. If it is known that the young person's move is temporary and time-limited, and any on-going contact is being maintained, the case should be left active on CRMS, with case notes indicating the current status.

### **Waiver of Jurisdiction**

- 1. Sometimes after courtesy supervision has been arranged the receiving province or territory may contact the worker and request that the order(s) be formally transferred or waived to that province. Upon receipt of that request the social worker shall contact Provincial Office which shall assist with arranging the necessary consents that will allow this waiver process to happen. Under section 58(3) of the *YCJA* the following consents are required:
  - a) consent of the Attorney General of NL;
  - b) consent of the young person; and,
  - c) consent of the provincial court of adjudication.
- 2. A Waiver of Jurisdiction is **mandatory** when the young person wishing to move to another province or territory is serving:
  - a) community supervision component of a custody and supervision order; or,
  - b) a deferred custody and supervision order; or,
  - c) conditional supervision as a result of custodial review.
- 3. In situations where courtesy supervision is not in place, the receiving province or territory shall be contacted and their agreement requested to proceed with the process.

4. Provincial and territorial jurisdictions have varying practices regarding this approval process. Anytime a waiver process is undertaken, however, representatives of the receiving province or territory must be contacted and their agreement sought. The waiver process will not proceed unless this contact/agreement has occurred. Provincial office shall assist the social worker with this aspect of the process. Each province or territory may have different information requirements. The social worker may be directed to deal directly with the receiving province to ensure appropriate information flow.
5. As noted, the young person's consent is required for the waiver process to occur (it cannot proceed without the young person's written consent). The following is an example of a Consent from a young person:

### **Young Person's Consent for Waiver of Jurisdiction**

To Whom It May Concern:

I \_\_\_\_\_ of \_\_\_\_\_ hereby consent for the *insert order type* issued on \_\_\_\_\_ at the Youth Justice Court in \_\_\_\_\_, to be waived to \_\_\_\_\_ where I am now residing. I am providing this consent of my own free will and it has been thoroughly explained to me that this order will be legally binding while I reside in \_\_\_\_\_.

\_\_\_\_\_  
**Signature of Youth**

\_\_\_\_\_  
**Signature of Witness**

\_\_\_\_\_  
**Date**

6. The following documents are required by provincial office to seek/obtain the required permission of the province's Attorney General:
  - a) a copy of any other non-custody order(s) in effect, or to commence in the future;
  - b) a copy of Pre-Sentence Report and any other relevant recent reports, such as Risk-Need Classification Report, YC service plan, etc.;
  - c) new mailing address, street address, and phone number of the young person;

- d) summary of the reason for the move, any substantive connections with family or others in the new area, any special risks or needs, and the young person's offence history; and
  - e) the signed consent of the young person for a Waiver of Jurisdiction.
- 7. Provincial office shall contact the Department of Justice and Public Safety's Special Prosecutions Office which has been designated as the representative of the Attorney General for the purpose of the waiver process. Upon receipt of the written consent of the Attorney General, Provincial Office shall provide the social worker with:
  - a) copies of the Attorney General's Consent; and,
  - b) a form that has to be signed by a Youth Justice Court judge for the court of adjudication (meaning the court where the orders to be waived were originally issued).
- 8. The social worker shall submit the above noted forms, along with the young person's written consent and certified copies of the court orders to be waived, to the applicable Court Clerk. A request shall be made that the judge provide his/her consent to have the order(s) waived.
- 9. The form signed by the Court as well as the package of information that includes the Attorney General's consent and that of the young person shall (depending upon the direction given by the receiving province or territory) send these documents by registered mail to:
  - a) the new court responsible for the order; or
  - b) the office from which the young person shall be supervised.
- 10. Where a Waiver of Jurisdiction has been completed (meaning the order has been transferred to a court outside the province), the young person file is maintained in the home office, but may be considered to be inactive. If the young person's move is considered to be long-term or permanent, the case may be terminated on the Youth Corrections module of CRMS. If it is known that the young person's move is temporary and time-limited, and ongoing contact is being maintained, the case should be left active on CRMS, with case notes indicating the current status.

### **Impact of Young Person Returning After Waiver Process**

- 1. When a Youth Justice Court waives jurisdiction to another province or territory it does not waive all its jurisdiction over the sentence. When sentence(s) have been waived to another provincial or territorial jurisdiction, and the young person returns to this province, a return waiver is not required as this province has retained its exclusive jurisdiction over the sentence(s) as determined under section 58.(2) of the YCJA. The court of original adjudication always retains its jurisdiction. The waiver process, essentially, allows the original court of adjudication to share it with another court.

## **Transfer of Custody and Custody-related Sentences**

1. Where a young person has been committed to Open Custody in this Province, and it is felt appropriate, based on substantive family connections or the availability of special services, to consider transferring him/her to serve the custody portion of the sentence in another Province, a proposal may be made to the Director of Youth Corrections at CSSD. Such a proposal must contain a detailed assessment of the reasons of the request, and how such a transfer facilitates a long-term reintegration plan. The Provincial Office will seek an agreement with the other jurisdiction for placement, financial, escorting and logistic arrangements, and then commence arrangements for a Waiver of a Jurisdiction of the custody sentence. Given the complexity of the necessary arrangements, a youth with less than two months left in the custody portion will normally not be considered for a transfer of custody.

### **Transfer from Another Province Non-Custody Sentence**

1. When a young person who is serving a sentence that has been given in another Province, intends to move to the Province of Newfoundland and Labrador, a request for transfer of case management responsibility (courtesy supervision) will be made either to the provincial office of CSSD or to the appropriate Regional/District office by the agency in the sending Province.
2. Where a request is received by a social worker from an agency in another Province for transfer of case management responsibilities, basic information should be requested concerning the young person's living arrangements, any family supports, reason for move, and any notable risks or needs. As a matter of protocol it is presumed that courtesy supervision will be accepted, but may be questioned if the transfer was clearly contrary to the best interests of the young person or if exceptional circumstances exist that make supervision impossible or inappropriate. In such cases, the provincial office should be consulted.
3. When case management responsibility has been accepted from another Province, a formal file must be established in one of the following ways:
  - a) Any case file for the young person that may have previously existed in the Province should be reactivated. If a file is held at another office within the province, a transfer of the file from the Office should be requested. Relevant information must also be entered into the Youth Corrections Module (CRMS).
  - b) If it is determined that no file for the young person has previously been established in the province, a new file should be created, as per Policy section 9.3. Relevant information must be entered into the Youth Corrections Module (CRMS).

4. Where a transfer of case management responsibility has occurred (e.g. courtesy supervision is being provided) all procedures applicable to the supervision and enforcement of the particular sentence(s) apply, with the exception of judicial action (e.g. Review of Sentence).
5. Where judicial action is deemed necessary or anticipated in a case where case management responsibility has been transferred, a request for either a Waiver of Jurisdiction or Transfer of Sentence should be made in writing to the originating corrections office in the other jurisdiction. The request should include the sentences to be transferred, the address of the local court and the reasons for the request.

### **Transfer from Another Province and Custody-related Sentences**

1. Where a young person has been committed to Secure or Open Custody in another Province, and is transferred to serve the remaining portion of the sentence in the Province of Newfoundland and Labrador, a district office must be designated as the young person's home district based on the following criteria:
  - a) If the young person's immediate family lives in, or has moved to the Province, the office serving the area of residency of the family will be the home office.
  - b) If the above does not apply, and if a permanent address in the Province can be identified for the young person (i.e. anticipated living arrangement after release from custody), that District Office area will become the home district.
  - c) If no permanent address in the Province can be identified for the young person, the District Office which serves the area where the custody facility is located, will be considered the home district.
2. When a request is received from another province to accept supervision of a youth who is subject to a custody-related sentence (community / conditional supervision or deferred custody and supervision), the inquiry should be directed to the Director of Youth Corrections at CSSD. Initially, a summary report will be requested, detailing the reason for the move, any substantive connections with family or others in the area, any special risks or needs, and the young person's offence history. After consultation with the social worker, a decision will be made on the transfer request. Generally, supervision will be accepted unless there are exceptional circumstances that demonstrate the move to be clearly contrary to the best interests of the young person. After confirmation that supervision will be accepted, the province holding jurisdiction will normally be requested to complete a Waiver of Jurisdiction.
3. The regional CSSD office must establish a Youth Corrections file, in accordance with the foregoing section (Non-Custody Sentence, Procedure #2), and the general case management responsibility will be assumed by the regional CSSD office.

**EXCEPTIONS TO POLICY:**

**RELEVANT DOCUMENTS:**

## NON-CUSTODIAL SENTENCE REVIEW

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**Policy no.: 9.10**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:** *Youth Criminal Justice Act*; **s.59(1)** Review of youth sentence not involving custody; **s.59(2)** Grounds for review; **s.59(3)** Progress report; **s.59(4)** Subsections 94(10) to (12) apply; **s.59(5)** Subsections 94(7) and 94(14) to (18) apply; **s.59(6)** Compelling appearance of young person; **s.59(7)** Decision of youth justice court after review; **s.59(8)** New youth sentence not be more onerous; **s.59(9)** Exception; **s.60** Provisions applicable to youth sentences on review; **s.94(7)** No review if appeal pending; **s.94(8)** Youth justice court may order appearance of young person; **s.94(9)** Progress report; **s.94(10)** Additional information in progress report; **s.94(11)** Written or oral response

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**PURPOSE:** To provide direction on the application process for a review of a non-custodial order.

### **POLICY:**

1. Section 59 of the *YCJA* makes provision for any non-custodial sentence to be reviewed by the Youth Justice Court, and for any changes to be made in the sentence that the court deems necessary and appropriate.
2. The court must hear any review application that is made at any time after six months from the date of the sentence. However, the judge may grant leave to hear such an application at an earlier time, if there are sufficient grounds. This means that cause must be shown that there are reasons why a review should be heard at such an early date.
3. It is intended that a sentence may be altered if it is found to be imposing hardship on the young person, is interfering with rehabilitative, educational, or employment opportunities.
4. Any change in the sentence may not make it more onerous, except with the consent of the young person. As per s. 54(10) of the *YCJA* Additional time may be granted to permit compliance with any conditions ordered under 42(2)(d) to (i) of the *YCJA*.

5. An application for a non-custodial review may be made to the Youth Justice Court by either the young person, his/her parent, the Attorney General or agent, or the Provincial Director, as represented by a social worker.
6. In circumstances where the social worker is not in support of the review, he/she will assist the young person and/or his/her parents with an application. The client and his/her family should be advised that the social worker's opposition, and reasons for it, will be included in any required progress report.
7. An application for a review may be made on the following grounds (section 59 (2) *YCJA*):
  - a) on the ground that the circumstances that led to the sentence have changed materially;
  - b) on the ground that the young person in respect of whom the review is to be made is unable to comply with or is experiencing serious difficulty in complying with the terms of the sentence;
  - c) on the ground that the young person in respect of whom the review is to be made has contravened a condition of an order made under paragraph 42(2)(k) or (l) without reasonable excuse;
  - d) on the ground that the terms of the youth sentence are adversely affecting the opportunities available to the young person to obtain services, education or employment; or
  - e) on any other ground that the Youth Justice Court considers appropriate.
8. Under section 94(14) of the *YCJA* a minimum requirement of five (5) days written notice of the review must be given, however, the *YCJA* also acknowledges that the notice period should, "be directed by rules of court applicable to the Youth Justice Court." In this province, the rules of court stipulate a 15 day notice period. Therefore, all statutory notices must be given 15 days prior to the review hearing.
9. When a review application is considered, the Youth Justice Court may:
  - a) confirm the sentence
  - b) terminate the sentence earlier than originally ordered
  - c) vary the sentence, or make any new sentence, other than custody, provided the new sentence is not more onerous than the original sentence without the consent of the young person, except that additional time may be granted within which to comply with the sentence.
10. The *YPOA*, section 11(10) makes provision for the Youth Justice Court to cancel a sentence and make any new one it considers appropriate. This section may be used for the review of sentences made under the *YPOA*, in similar circumstances as a non-custodial review under the *YCJA*.
11. No request for a review can be pursued if a sentence is under appeal.



## **PROCEDURES:**

### **Preparation for Non-Custodial Reviews**

1. The social worker should discuss the opportunity for a review of sentence with the young person and parents. Consent of the young person and parents is desirable, but not required.
2. A social worker should not request a review of any sentence, other than those for which CSSD has a direct responsibility to supervise (i.e. Probation, Community Service Order, and Personal Service Order). A review of other sentences may be requested by the young person, parents, or Attorney General.
3. A brief narrative progress report should accompany all requests.
4. A narrative progress report shall focus on the young person's current family and home situation, and may include the following points, where applicable:
  - i) list of offences for which the current order has been given;
  - ii) the conditions which have created difficulty for the young person;
  - iii) response to supervision in the community in terms of community corrections services;
  - iv) any significant recent change in the home or family circumstances as well as families' attitude toward the young person;
  - v) educational and/or employment status;
  - vi) description of involvement of collateral resources/agencies; and;
  - vii) summary including any recommendations.
5. Should the review process result in a change in the sentence, the required review change must be entered into the Youth Corrections Module of CRMS by the Social Worker within two (2) working days.

### **Application Process for Non-Custodial Review**

1. The *Notice of Application - Non-Custodial Youth Sentence* must be completed. If the leave of the court is necessary, the *Application for Leave to Review a Non-Custodial Order* must be submitted at the same time.
2. On the *Notice of Application - Non-Custodial Youth Sentence*, the applicable grounds for the application must be identified.
3. Along with a *Notice of Application - Non-Custodial Youth Sentence*, a *Supporting Affidavit* must be completed. It sets out the basic facts of the review request in several concise statements.

4. Each *Supporting Affidavit* will have statements that vary according to case and individual facts. They should highlight any key points of any progress report attached and identify, in concise terms, the reason(s) for the application and the specific changes being sought to conditions of an order.
5. Two copies of the *Notice of Application - Non-Custodial Youth Sentence*, the *Supporting Affidavit* and progress report must be submitted to the appropriate Youth Justice Court. The court clerk will fill in the applicable information number, time, date, and location of the review on the *Notice of Application* form and return one of the copies to the social worker.
6. Copies of the completed *Notice of Application - Non-Custodial Youth Sentence* and *Supporting Affidavit* must then be provided to the young person and to his/her parents or guardians within the required notice period stipulated by the rules of court. This is at least 15 clear days prior to the hearing date. This notice must be served in person or by registered mail. The *Notice of Application* must also be provided to the Crown Attorney. The Crown Attorney is notified by faxing the Notice to the Special Prosecutions Office, JPS, at 729-1135. If the young person is in the care of a Manager of Children, Seniors and Social Development, a copy of the Notice must also be given to the social worker responsible for the youth's care.
7. An *Affidavit of Service* must be completed as confirmation that the *Notice of Application - Non-Custodial Youth Sentence* was served on the young person. The Affidavit should be completed and modified as necessary to indicate the details of delivery. The person who actually served the young person with the Notice must sign the Affidavit. It must be sworn to and signed/stamped by a Commissioner of Oaths. The *Affidavit of Service* must be submitted to the court at least 10 days prior to the Review hearing.
8. The young person shall be informed on their right to be represented by legal counsel at this hearing.
9. Normally, there will be no necessity for legal representation for the social worker during the Review Hearing. However, if the social worker feels there is reason to require legal representation, he/she may make a request to the Solicitor for the Region, and a determination can be made on a case by case basis.

## **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Application for Leave to Review a Non-Custodial Order*
- *Notice of Application - Non-Custodial Youth Sentence*
- *Supporting Affidavit*
- *Affidavit of Service*

## CUSTODIAL SENTENCE REVIEW

**Policy no.: 9.11**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:** Setting Additional Conditions for Custody and Supervision Orders; Conditional Supervision as a Result of Custodial Review

**Legislative References:** *Youth Criminal Justice Act*; **s.94(1)** Annual review; **s.94(2)** Annual review; **s.94(3)** Optional review; **s.94(4)** Time for optional review; **s.94(5)** Review; **s.94(6)** Grounds for review; **s.94(7)** No review of appeal pending; **s.94(9)** Progress report; **s.94(10)** Additional information in progress report; **s.94(11)** Written or oral report; **s.94(19)** Decision of youth justice court after review

**PURPOSE:** To provide direction on the application process for mandatory and optional custodial reviews.

### **POLICY:**

1. In all cases where the young person is in open or secure custody it is the responsibility of the social worker responsible for secure or open custody to initiate a mandatory review process when a young person will be in continuous custody for more than 12 months. A sentence review is required at the end of one year in custody. The request for a mandatory review shall be submitted no later than thirty (30) days prior to the mandatory review date.
2. It is also the responsibility of the social worker responsible for secure or open custody to lead the application process for an optional review. Where a committal to custody is for a period not exceeding one year a review may be held at any time after the expiration of the greater of:
  - a) thirty days after the sentence was given; or,
  - b) one third of the period of the custody portion of the sentence, or
  - c) any time with leave of the court.
3. When the total duration of the custody portion of a Custody and Supervision Order exceeds one (1) year, a young person must have served at least six (6) months of custody before an optional review can be pursued. The social worker, on behalf of the young person, may seek the leave of the court to have the review prior to this six (6) month periods completion.

4. No review can be held if a sentence is under appeal.
5. The grounds for an optional review are as follows:
  - a) the young person has made sufficient progress to justify a changing sentence; and/or,
  - b) the circumstances leading to the committal to custody have changed significantly; and/or,
  - c) the opportunities for rehabilitation are now greater in the community; and/or
  - d) on any other grounds a Youth Justice Court may consider.
6. When either a mandatory or optional custody review is heard, the result can be one of the following:
  - a) if the young person is secure custody, the custody portion can be changed to open; or,
  - b) confirm the existing sentence; or,
  - c) order that the young person be released from custody (the balance of custody to be served would then be converted to conditional supervision).
7. For young persons in secure custody if, after consultation with the Newfoundland and Labrador Youth Centre staff, the social worker anticipates that the existing custody period may be converted to open, the social worker shall determine the availability of an appropriate placement. A completed *Alert Sheet: Potential Placement to Open Custody* and copy of the Pre-Sentence report should be forwarded to the offices in St. John's and Corner Brook, where the two (2) provincial open custody facilities are located. Contact with these offices should be made regarding current and potential availability of a group home opening. This advance notice assists with pre-placement planning and decision making.

## **PROCEDURES:**

### **Application Process**

1. An application for a custodial review can be initiated by a social worker, the young person, or his/her parent/guardian. Regardless of who initiates the process, the social worker will assist with the application process. When a person, other than the social worker, is initiating the request, this shall be included as the first of the statements that compose the *Supporting Affidavit*.
2. For a young person in secure custody the application is submitted to the Youth Justice Court which issued the most recent Secure Custody and Supervision Order. For a young person in open custody the application is submitted to the Youth Justice Court responsible for the area in which the open custody facility is located.

3. If the request for an optional review occurs before the greater of 30 days after the sentence is ordered or one third of the sentence, the Youth Justice Court must first agree to hear the review. An *Application for Leave to Review Custody and Supervision Order* must be completed and submitted to the court. If the court grants its leave to hear the review, the application can move forward. This step is not required for mandatory reviews or when the time periods established in legislation, for eligibility have been met.
4. The application for a custodial review includes the following documents:
  - a) a *Notice of Application - Mandatory Review of a Custodial Youth Sentence* or *Notice of Application - Optional Review of a Custodial Youth Sentence*;
  - b) a *Supporting Affidavit*;
  - c) copies of any court created documents related to the sentence under review including order for Youth Sentence, Custody and Supervision form, and all Warrants of Committal;
  - d) a Custodial Progress Report;
  - e) a Community Progress Report;
  - f) a letter from the client requesting the review (original); and
  - g) some court jurisdictions require a complete offence history and if required a certified copy should be obtained from the Court Clerk.
5. The above noted package of documents is submitted to the appropriate Youth Justice Court. The Court clerk will fill in the time, date, and location of the review hearing on the *Notice of Application* form. This form will be returned to the social worker. A copy of it, along with the *Supporting Affidavit* must be provided to the young person and his/her parent/guardian at least fifteen (15) days prior to the hearing date (to comply with the rules of court). These documents must be served in person or by registered mail.
6. The *Notice of Application-Mandatory Review of Custodial Youth Sentence* or *Notice of Application - Optional Review of a Custodial Youth Sentence* and *Supporting Affidavit* must also be provided to Crown Attorney by faxing the documents to the special prosecutions office of JPS (Fax 729-1135).
7. When the *Notice of Application* and *Supporting Affidavit* are served on the young person, a third form must be completed. This form, the *Affidavit of Service*, confirms the details of delivery to the young person. It must be signed by the person who served the young person. It has to be sworn to and signed/stamped by a Commissioner of Oaths.
8. The original *Affidavit of Service* shall be submitted to the applicable Youth Justice Court no later than ten (10) days prior to the hearing.
9. The social worker shall inform the young person of his/her right to apply for legal representation and provide assistance as necessary.

10. Normally, there will be no necessity for legal representation for the social worker during the review hearing. However, if the social worker feels there is reason to require legal representation, he/she may make a request to the Solicitor for the Region, and a determination can be made on a case by case basis.

### **Form Completion: Notice of Application**

1. The *Notice of Application - Mandatory Review of Custodial Youth Sentence* or *Notice of Application - Optional Review of a Custodial Youth Sentence* must be completed by filling in all applicable information and deleting the non-applicable items. The court will subsequently complete the Information No. and time/date of hearing.
2. Tick off box identifying type of review.
3. The “Relief Sought”, #1, should reference Section 94, and #2 should be a concise summary of any recommendation(s) in the progress reports.

### **Form Completion: Supporting Affidavit**

1. The *Supporting Affidavit* sets out the facts of the review request through a series of brief statements that include:
  - a) who has initiated the review request;
  - b) the duration of the custody and supervision order being reviewed including start date and end date;
  - c) the current release-from-custody date;
  - d) a statement as follows,  
“custody progress and community progress reports are attached, in compliance with section 94(a) of the *YCJA*. These reports out (client name) progress and circumstances and contain a recommendation that (client name)....”
2. Each *Supporting Affidavit* will have statements that vary according to the circumstances of individual cases and, normally, will include highlights of the progress reports.
3. The *Supporting Affidavit* must be sworn to, and stamped by, a Commissioner of Oaths.

### **Format for Community Progress Report**

1. A community progress report that is completed by the community social worker should focus on the young person’s current family and home situation, and should include the following points, where applicable:

- a) a brief summary of the young person's progress while in custody (from consultation with social worker responsible for custody facility);
- b) any significant changes in the home or family circumstances since the Pre-Sentence Report was written;
- c) any rehabilitative opportunities available to the young person in the home area including educational/employment opportunities;
- d) the degree of contact with the young person and his/her family; and the family's attitude toward the young person returning home;
- e) the outcome and family's response to any reintegration leave;
- f) the community's response to the young person returning home (this response must also include contact with the police agency for their opinion on the possible release or community placement of the young person);
- g) a list and description of the offences for which the current custody sentence(s) has been given. If the victim impact statement or other document describing the victim impact is available on file, it should be attached; and
- h) a summary, including the current status of the YC Service Plan and release plan for the young person. The report may follow a narrative format, with appropriate headings.

### **Format for Custodial Progress Report**

1. The custody progress report, using a narrative format, is completed by either the secure or open custody social worker, depending upon level of custody. The report should focus on the young person's behavioural and attitudinal change while in custody, and should include the following points, as they are applicable:
  - a) a list of the young person's convictions with the associated sentences currently in force;
  - b) brief summary of the home and community situation (from consultation with home district social worker);
  - c) any major incidents while in custody; and
  - d) where the youth is on the level/point system e.g. high, medium, low (if applicable);
  - e) relationship with staff and other residents;
  - f) participation in any rehabilitative or treatment programs;
  - g) educational status progress;
  - h) general assessment of current attitude and behaviour;
  - i) general results of any psychological/psychiatric assessments while in custody;
  - j) contact and response to parents and family;
  - k) outcome and response to any reintegration leaves;
  - l) release plans of the young person;
  - m) summary, including current status of *YLS/CMJ* and other planning documents including the Youth Corrections Service Plan.

**EXCEPTIONS TO POLICY:**

**RELEVANT DOCUMENTS:**

- *Application for Leave to Review a Custody and Supervision Order*
- *Notice of Application-Mandatory Review of a Custodial Youth Sentence*
- *Notice of Application-Optional Review of a Custodial Youth Sentence*
- *Supporting Affidavit*
- *Affidavit of Service*
- *Alert Sheet: Potential Placement to Open Custody*



## DELEGATION OF AUTHORITY

**Policy no.: 9.12**

**Effective Date: November 1, 2002**

**Date Revised: December 7, 2016**

**Policy Cross References:**

**Legislative References:**

**PURPOSE:** To provide a summary of all delegated authorities under the *YCJA*.

**POLICY:**

1. The *YCJA* and the *YPOA* provide for the delegation of certain authorities of the Provincial Director. In accordance with the provision of the laws, authorization has been given for the delegation of authority to CSSD Regional staff and to the staff of the secure custody and remand facilities of JPS.

Activity/Function	Social Worker	Supervisor	Zone Manager
Completion of Pre-Sentence Report	Complete with timeframe specified by Youth Justice Court		
Completion of <u>Youth Level of Service-Case Management Inventory</u>	Complete with specified timeframes	Co-signature on document (to track completion)	
Progress Report for Review of Non-Custody Sentence	Complete and submit with required documentation		
Failure to comply with community based order eg. probation; initiation of breach process	Collection of required information to be submitted to police	Approve Referral to police	
Suspension of a Deferred Custody and Supervision Order	Recommend and complete suspension report	Approve	“2 <sup>nd</sup> ” level review of original decision within 48 hours

<b>Activity/Function</b>	<b>Social Worker</b>	<b>Supervisor</b>	<b>Zone Manager</b>
Setting of “additional” conditions for community supervision component of custody and supervision order	Complete prior to young person’s release from custody	Review- Approve by co-signing document submitted to Youth Justice Court	
Suspension of Community Supervision component of custody and supervisions order	Recommend and complete suspension report	Approve	“2 <sup>nd</sup> ” level review of original decision within 48 hours
Suspension of conditional supervision (as a result of custodial review)	Recommend and complete suspension report	Approve	“2 <sup>nd</sup> level review of original decision within 48 yours
Progress Report for Reviews of a Custody and Supervision Order	Complete and submit with required documentation		
Non-relative placement under “Order to Reside”	Recommend and complete narrative report	Approve	
Placement in group home of young person with “Order to Reside”	Recommend	Review and Recommend	Approve
A young person cannot be escorted safely to custody placement because of weather-unsafe road conditions; order that young persons be held in lock-up or NLYC, temporarily, until escort can be completely safely under section 49(2) of the YCJA		Recommend	Approve / Send Authorization to designated place of remand
Completion of Discharge Plan for young person in open custody	Preparation	Co-signature required on Discharge Plan Summary Form	

<b>Activity/Function</b>	<b>Social Worker</b>	<b>Supervisor</b>	<b>Zone Manager</b>
Temporary transfer of young person, for safety-security reasons, to secure custody under section 24(2)(9) of the <i>YOA</i>	Report Preparation / Recommend	Review and Recommend	Approve / Send authorization to NLYC
Transfer between open custody settings	Recommend	Approve	
Processing of temporary release (full) reintegration leave request for young person in custody	Recommend and complete required forms	Approve	
Processing of day release from custody to facilitate day programming	Approve and complete required forms		
Age Related Transfer to an Adult Facility after 18 <sup>th</sup> birthday	Recommend	Recommend	Approve filing of transfer request to applicable Youth Justice Court
Decision to allow individual 20 years old to remain in youth custody for all or part of remaining custody portion of a Youth Custody and Supervision Order	Recommend	Recommend	Approve

**PROCEDURES:****EXCEPTIONS TO POLICY:****RELEVANT DOCUMENTS:**

## GUIDELINES FOR DOCUMENTATION – CASE NOTES

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**Policy no.: 9.13**

**Effective Date: April 3, 2013**

**Date Revised: November 23, 2016**

**Policy Cross References:**

**Legislative References:**

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**PURPOSE:** To identify requirement for documentation and case notes to follow established practices.

### **POLICY:**

1. The “*Community Youth Corrections (CYC) Documentation Guide*” (Appendix 5) provides direction as to the content and structure of case notes. The assessment and recording of client information requires periodic review by program supervisors. A social worker shall use the documentation guide to assist in determining the content and structure of entries made in the record as case notes.
2. The “*Community Youth Corrections (CYC) Documentation Guide*” (Appendix 5) provides guidance for social workers, supervisors and managers in determining what information shall be recorded in the client file.

### **PROCEDURES:**

1. Social work staff are responsible for the content of any case note entered. To accurately reflect documentation of case notes related to ongoing client involvement, direct supervision activities, court appearances, and service plan connected activities, case notes should be recorded as soon as possible, but no later than five (5) days after the contact has occurred.

### **EXCEPTIONS TO POLICY:**

## **RELEVANT DOCUMENTS:**

- *Community Youth Corrections Documentation Guide (Appendix 5)*
- *Newfoundland and Labrador Association of Social Workers: Standards for Social Work Recordings (2014)* [www.nlasw.ca](http://www.nlasw.ca)
- *Canadian Association of Social Workers: Guidelines for Ethical Practice* [http://www.casw-acts.ca/practice/guidelines\\_e.pdf](http://www.casw-acts.ca/practice/guidelines_e.pdf)

## CASE CLOSURE

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**Policy no.: 9.14**

**Effective Date: September 16, 2014**

**Date Revised: December 7, 2016**

**Policy Cross References:** Records Management and Access Provisions

**Legislative References:**

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**PURPOSE:** To provide a definition for a closed case and reference required documentation standards and records management provisions connected to a closed status.

### **POLICY:**

1. A Youth Corrections case is considered closed when all applicable youth sentences have reached their sentence expiry date.
2. A Youth Corrections case is considered closed when, if sentences are active, the young person, to whom the record relates, is deceased and all facets of the department's Critical Incident/Death Protocol have been met.
3. When a formal waiver of jurisdiction to another province or territory has been completed, the case is to be considered closed. Case management responsibility may be reactivated, meaning the case can be reopened, immediately upon confirmation that the young person has returned to the province. A waiver of jurisdiction back to Newfoundland and Labrador is not needed for supervision to resume.
4. For a closed case, the assigned worker, and his/her immediate supervisor shall ensure that all required documentation has been completed and related records management practices have been adhered to.

### **PROCEDURES:**

#### **General**

1. All records management practices shall be adhered to. The file shall be stamped with the appropriate non-disclosure (records access) date.

2. The applicable Program Supervisor shall complete the *Community Youth Corrections File Transfer/File Closure Checklist*.
3. In the event that a young person dies while an active client of the Youth Corrections program all steps identified in the Critical Incident/Death Protocol, are to be followed.

## **EXCEPTIONS TO POLICY:**

1. The following are examples of cases where there are active youth sentences but no formal supervision of the case is occurring. These circumstances remain active not closed case until applicable youth sentences have expired:
  - i) a young person has an active youth sentence like probation order, issued by the Youth Justice Court in Newfoundland and Labrador, but has moved temporarily to another province or territory (in this situation the social worker arranges courtesy supervision, or informal case management responsibility, with the receiving jurisdiction but there is no formal transfer of the court order to the receiving jurisdiction);
  - ii) a young person has an active youth sentence like probation and while that sentence is active he/she receives an adult sentence of probation (traditionally the adult probation officer will assume supervision of the case but there is a detailed policy that establishes parameters for this), “our” file cannot be closed because the youth sentence remains active but the social worker maintains minimal or no case management responsibilities;
  - iii) a young person has an active youth sentence like probation and while the youth order is active he/she receives an adult sentence of imprisonment; the youth order remains in effect but there is no active supervision of the case, if the youth order expires while the person is incarcerated the case is closed but if the youth order extends beyond the period of incarceration, supervision will resume upon release from prison or penitentiary;
  - iv) in rare circumstances a young person may receive a youth sentence but launch an appeal (in this case the sentence is placed “on hold”, meaning is not enforced, until the appeal is heard).

## **RELEVANT DOCUMENTS:**

- *Community Youth Corrections File Transfer/File Closure Checklist*

# **Section 10**

## **Appendices**





## **Pre-Sentence Report Guidelines**

### **1. Sources of Information**

This section should include the names, dates and location of the persons interviewed as well as the relationship of those interviewed to the young person. Case files may also be used as sources of information, and should be noted as such. During the initial interview with the young person and his/her parents, each should be advised that where appropriate and reasonably possible, other relevant people in the young person's life (i.e. extended family, teachers, guidance counsellors, psychiatrist, employer, etc.) will be interviewed as deemed relevant and necessary. A notation to this effect, i.e. date, time, place, persons present, etc. should be made to the case record. In some instances, the relevant agency with information about the young person may require that the consent be in written form. Where such consent (verbal/written) is not given, and the interview is deemed critical to the completion of the Pre-Sentence Report, the social worker should immediately seek further direction from the youth justice court.

### **2. Previous Offence History**

This should include a chronological account of offence history in accordance with court records. A review of Case files should also be completed to include any other convictions, and a police C.P.I.C. review could be requested to verify same. If any convictions recorded in Case files cannot be verified by the court of adjudication, they should not be included in the report.

### **3. History of Extrajudicial Sanctions**

This section should include any completion by the young person of an authorized Extrajudicial Sanctions Program in the past two years. Included, should be the offence, date, and sanctions completed as a result of the program.

Any referrals to an Extrajudicial Sanctions Program that were not subsequently completed through the Program must not be included.

Any record of Extrajudicial Sanctions completed prior to the past two years is subject to non-disclosure, and must not be included.

### **4. Current Offence(s)**

Provide the Statute and Code Number, and date of offense. All opinions pertaining to the offence, including the young person's version, should not be included, as these are a matter of record of the court proceedings.

5. **Interview with Victim**

An interview with the victim should be conducted if required by the Youth Justice Court. Unlike a Victim Impact Statement, that focuses on the effects of the crime on the victim, this interview should focus on the victim's willingness to participate in measures that would allow the young person to make some form of direct reparation to the victim, ie. order of restitution, personal service order. The possibility of such sentences should be discussed with the victim. The Pre-Sentence Report should indicate whether or not the victim was receptive to such measures. The reporting of a victim interview does not take the place of a Victim Impact Statement under section 722, CCC, nor is the social worker expected to play any role in the facilitation of Victim Impact Statements.

6. **Family and Home Situation**

This section should include particulars of other immediate family members (i.e. age, employment, residence, relationships, etc.) and significant others residing in the home, as well as extended family composition and interactions. Any significant or dysfunctional family discord (i.e. marital, sibling, parental, etc.) should also be noted. Such assessments may be made through observation and interviews with family members either alone or as a group, keeping in mind the necessity of objective and substantiated assessment. Statements by family members concerning their own inter-relationships are valid indicators to support such assessments, provided the sources of statements are identified.

7. **Parental/Extended Familial Control and Influence**

Interviews should be conducted with the young person and his/her parents/family with respect to parental/familial control and influence. It is often preferable to conduct such interviews both individually and as a group. The social worker should then make an assessment of the parent's/family's ability to exert control and influence over the young person, based on direct observation and the information provided by the young person and parents/family.

Points that may be covered in such an assessment may include the parent's/family's ability or willingness to intervene; the parent's/family's ability to set limits and controls, as well as enforce limits; the nature of discipline employed, and by whom; the nature of positive reinforcement given; supports received by the parents from outside sources; and young person's willingness to abide by parental/familial direction and control.

8. **Characteristics of Young Person**

Through interviews with the young person, other collateral sources, and the results of past interventions, (where applicable), the social worker should present an assessment of the characteristics of the young person. This information should include maturity, behaviour, and attitude of the young person and could also reflect community involvement, hobbies and specific interests. Self-reported drug/alcohol use may be included.

Information with respect to the young person's interaction and response to the social worker, parents, siblings, peers and significant others may be included to the extent that is applicable.

Any reported comments from others regarding the characteristics of the young person may be used with discretion, providing the source of such information is identified. It is essential to provide substantiating evidence when assessing the character and attributes of the young person.

9. **Medical/Health History**

This section should report such information as early development, significant medical assessments, hospital admissions, any major injury sustained by the young person and chronic health conditions of the young person. Included, may be an assessment of how any health problems have impacted the young person's social or emotional development.

10. **Academic/Employment History**

**Academic**

This section should address the young person's current academic status and general comments regarding academic abilities and performance. If the young person is no longer in school, the last grade completed should be noted. Information regarding learning disabilities, (where applicable) relationships with teachers and other students, and conformity with school routines and regulations (absenteeism, behaviour, etc.) should be noted.

**Employment**

A record of current and/or past employment should be presented. The young person's job performance, relationship with employer and fellow employees, job interest and punctuality are some of the points which may be included in this section.

11. **Past Interventions**

This section should report all past and present interventions from social agencies. Such interventions may include psychiatric and psychological counselling including specific intervention by school counsellors, Children, Seniors and Social Development, or any like agency focusing on the social/emotional functioning of the young person.

Any history of previous sentences from Youth Justice Court and comments regarding the young person's attitude, response, and compliance with such sentences should be included.

A written consent to release information must be obtained when seeking information from external agencies.

12. **Future Plans of Young Person**

This section will be self-reported by the young person allowing him/her to formulate, to the greatest extent possible, plans to avoid future conflicts with the law and plans for positive change in his/her life. Future goals with respect to the education and/or employment of the young person should also be included. Any major discrepancies between plans and abilities, or past performance, may be discussed with the young person, and noted in the report, if appropriate.

13. **Needs of Young Person and Available Services**

This section should provide an assessment of the needs of the young person, in conjunction with a statement of available services and/or resources which could assist in meeting such needs. This assessment may be made with reference to the information presented in previous sections of the Pre-Sentence Report.

Such needs may include but are not limited to the following: psychiatric, psychological and medical; educational, vocational and life skills; counselling services addressing specific problems; family intervention of a specific nature; community involvement/integration; and control and limit setting.

The services and/or resources may include, but are not limited to; psychiatric/psychological facilities; addictions counselling; employment counselling; family counselling; organized social and recreational activities; intervention by other programs within the Department of Children, Seniors and Social Development; and intervention by other agencies.

This section provides an assessment for a potential plan of action which may include the names of available services and/or resources as well as the young person's willingness to participate in such activities. If appropriate, an assessment of suitability for a Community Service Order may be presented, in accordance with Policy section 3.28.

If needs related to physical or mental health treatment are identified, the agreement of the youth to participate in such treatment must be explored. A statement must be included in the Pre-Sentence Report, that the young person does or does not consent to the identified treatment, as required under section 42(8), *Youth Criminal Justice Act*.

14. **Results of Conference (if Applicable)**

15. **Summary**

A brief summary of major points included in the report should be given, as well as any information considered relevant. An elaboration of any problem areas previously identified may be made, in relationship to any concluding assessment of need.

16. **Recommendation**

A recommendation regarding appropriate sentences for the young person may be made once the needs of the young person and the community, and availability of resources, has been considered. If a young person does not consent to participate in a proposed physical or mental health treatment plan, then such treatment cannot be recommended as a sentencing option.

**Standards of Care of the Operation of Police Lockups as Designated Places of  
Temporary Detention and Secure Custody for Young Persons (2001)**

1. Because police lockups are generally very limited in terms of space and facilities, there are certain limitations in these environments in terms of meeting the needs of young offenders being held on temporary detention status. Young offenders should, therefore, be held in police lock-ups as a last resort, and for as short a period of time as possible. The police will be responsible to pursue placement in a designated young offender facility, including a designated place of community detention (i.e. in a designated group home placement) before allowing any extended holding in a designated police lock-up.
  
2. Youths held pursuant to a youth justice court order in any of the police lockups which have been designated as places of temporary detention, may be held for a maximum period of 96 hours of court ordered temporary detention (from the time of first court appearance), after which the police will be required to complete a transfer to a young offender facility operated by either the Department of Justice or Department of Children, Seniors and Social Development. Any extension to this time limit can only be authorized through the provisions of sections 30(2), 30(3), 30(7), *Youth Criminal Justice Act*, or section 24(2)(3), *Young Offenders Act*, with the following exception:

The police would be permitted to continue to hold the young person in the designated police lockup if the period of court-ordered remand which remains to be served at the end of the authorized 96 hours (i.e. the period of time remaining until the scheduled re-appearance in youth justice court) is: a) less than a further 24 hours; b) less than 48 hours and the distance to a designated young offender facility is more than 400 km (if flying) or three hours driving (if travelling by car) one way, or; c) less than 72 hours and the distance to a designated young offender facility is greater than 600 km (if flying) or five hours highway driving (if travelling by car) one way.

3. Subject to all necessary safety and security requirements, and in consideration of the youth's behaviour, youths should be allowed out of their cells within the lockup, or be held in unlocked cells for as large a proportion of the day as possible.

Subject to the above considerations, a reasonable period of unlocked holding is to be considered daily by the Officer in Charge.

4. If exceptional circumstances exist, or if the needs and conduct of the youth suggest that a limiting of the period of temporary detention to less than 96 hours in a designated police lock-up is necessary, such a limitation should be imposed by the officer-in-charge. Consideration of such action will be based on the age, maturity, behaviour, and special needs of the youth, and upon any pertinent safety and security considerations.

5. Where a youth is being detained in a designated lock-up, every reasonable effort should be made to provide a daily period of physical exercise or large muscle activity in an area conducive to such activity, in accordance with appropriate exercise standards for adolescents.
6. All youths detained in designated police lock-ups are to have access to toilet, washing and shower facilities at all times and at reasonable intervals. They are to be provided with appropriate toilet items (e.g. soap, shampoo, towels, etc.). They are to be permitted to shower once per day and are to be strongly encouraged to do so.
7. All youths detained in designated police lock-ups should be provided with the opportunity to change their clothing daily and are to be strongly encouraged to do so. If the youth does not have sufficient clothing with him/her at the time of admission, parents or the social worker should be asked to provide same.
8. Food service to youths detained in designated lock-ups should be consistent with the nutritional needs of adolescents, and should provide an appropriate balance of all the major food groups in the Canada Food Guide.
9. Visitation by the youth's parents and other immediate family members is to be permitted, with as much flexibility as possible in the times, time limits, and number of visitors, subject to the physical environment, and other safety and security concerns. Other non-relative visitors may be authorized at the discretion of the police.
10. Visitation by representatives of helping agencies and other professionals is to be permitted at all reasonable times, subject to the physical environment and other safety and security concerns. This includes social workers, clergy, medical professionals, teachers, legal counsel, etc.
11. Provision must be made for private consultation between the youth and his/her legal counsel and social worker(s). Consultation with others (e.g. clergy, other helping professionals, members of the House of Assembly or Parliament of Canada, etc.) may be authorized at the discretion of the Officer-in-Charge, subject to all relevant legal, policy, safety and security considerations and with a type of level of supervision as deemed appropriate by him/her.
12. Access to telephone at reasonable times and intervals must be afforded the youth, for the purpose of contact with immediate family, legal counsel and social worker. Other persons who would normally have access for visitation with the youth may be authorized at the discretion of the police. This standard also applies to incoming telephone calls from authorized parties.

13. For purposes of informing the Department of Children, Seniors and Social Development of all youths being held:
  - a) The police shall contact the appropriate Office or on-call worker of the Department of Children, Seniors and Social Development without delay upon the detention of a youth under Court Order.
  - b) In the case of youths arrested and detained by the police prior to first youth justice court appearance, contact should be made with the appropriate Office on the morning of the next working day.
14. Should any concern arise with respect to the physical or mental health, emotional state, or general well-being of any young person being detained, the police must respond, without delay, by ensuring that the young person receives appropriate services. As well, the police should contact the appropriate Office or on-call worker of the Department of Children, Seniors and Social Development without delay to inform the social worker of the problem.
15. In addition to complying with the requirements under section 26 of the *Youth Criminal Justice Act*, police are to notify the parents of a detained youth, without delay, of any legal proceedings, as well as any significant incident involving the youth, (e.g. any form of injury, escape or attempted escape, excessive acting-out behaviour, any sudden change in behaviour, threats or acts or self-harm, new charges laid, etc.) which occurs while he/she is in the lock-up.
16. Where one custodian is responsible for supervision of the youth in a police lock-up, that person must be of the same sex as the youth. Where youths of both sexes are being held, custodians of both sexes must be present. As well, all appropriate measures must be taken to ensure the separation of male and female youths from each other and the safety and privacy of youths of different sexes.
17. Except where safety and security concerns require restriction of access, and as provided by the young person's family, social worker, volunteer agency, etc., reading materials appropriate to the age and sex of detained youths, including school books, may be accessible at all times during the youth's normal waking hours.
18. Except where safety and security concerns require restriction of access, and as provided by the young person's family, social worker, volunteer agency, etc., other static recreational items, which could include such items as radio, playing cards, puzzle or drawing books, games, etc., may be accessible at all times, during the youth's normal waking hours.
19. Where there is any indication of injury, disease, or any other concern, the appropriate medical assistance is to be sought immediately, either by calling in an appropriate medical professional, or by conveying the youth to a medical facility.



SCORING KEY

**PART I: ASSESSMENT OF RISK AND NEEDS**

1. Prior and Current Offences/Dispositions

**NOTE: THE WORKING OF ITEMS IN THIS SECTION  
MAY HAVE TO BE MODIFIED TO REFLECT  
LOCAL CONSIDERATIONS; THE NUMBER  
OF ITEMS SHOULD REMAIN THE SAME**

- a. 3 or more prior convictions: check this item if the youth has had 3 or more convictions prior to the convictions that are currently being dealt with.
- b. 2 or more prior failures to comply: these include failures to appear; probation/parole violation; escape from custody; failure to comply with alternative measures; unlawfully at large; note, applies only to actual convictions.
- c. prior probation: check if the youth has ever been on probation.
- d. prior custody: check if the youth has ever spent time in a custody facility; does not include pretrial detention.
- e. 3 or more current convictions: the youth has received three or more convictions for the current disposition(s).

**NOTE: ITEMS IN SECTION 2 - 8 GENERALLY APPLY TO THE  
YOUTH'S CURRENT SITUATION OR CONDITIONS  
PRESENT DURING THE PAST YEAR**

2. Family Circumstances/Parenting

- a. inadequate supervision: parents leave the youth unattended, are not aware of activities of the youth, leaves youth unsupervised without youth knowing how to reach the parent, or, in your judgment, otherwise exercises inadequate supervision of the youth. Also check if youth living independently without supervision.
- b. difficulty in controlling behaviour: parents have problem in exercising control over the youth's behaviour; youth disobeys parental instructions is out of control. Also check if youth is living independently and behaviour is not controlled.

- c. inappropriate discipline: there is an excessive use of corporal punishment; frequent use of yelling and threats; overly strict rules; or otherwise poor disciplinary practices on the part of the parent(s). Also check if parenting is overly permissive, with no effort at providing direction.
- d. inconsistent parenting: the parent(s) are inconsistent in application of rules or in the use of punishment/rewards; periods of harsh discipline may alternate with periods of neglect or extreme permissiveness. Check if parent cannot form (or articulate) clear rules regarding homework, curfews, friends, etc.
- e. poor relationship/father-youth: there is a particularly poor relationship (e.g., hostile, alienated, uncaring) between the youth and father or step-father. Youth does not have to be living with father/step-father to rate this item. In cases where there is a natural father and step-father, evaluate for the most prominent relationship over the past year. If father/step-father deceased, check this item if poor relationship continues to be an issue.
- f. poor relationship/mother-youth: there is a particularly poor relationship (e.g., hostile, alienated, uncaring) between the youth and mother or step-mother. Youth does not have to be living with mother/step-mother to rate this item. In cases where there is a natural mother and step-mother, evaluate for the most prominent relationship over the past year. If mother/step-mother deceased, check this item if poor relationship continues to be an issue.

### 3. Education/Employment

- a. disruptive classroom behaviour: youth is engaged in acting out, attention seeking, defiant, or other disruptive behaviors within the classroom setting; considered problem by teachers and other school staff.
- b. disruptive schoolyard behaviour: the youth is initiating violent actions or is otherwise engaging in misconduct on school property outside classroom setting; may include criminal activities such as theft, vandalism drug/alcohol use.
- c. low achievement: the youth is currently failing a subject or there are other indications of achievement problems.
- d. problems with peer relations: there is evidence that the youth is disliked, isolated withdraw, or there is other evidence of poor relations with peers in the school setting.
- e. problems with teacher relations: there is evidence of significant and continuing problems between youth and teacher; youth hates teachers or is hostile toward them.

- f. truancy: youth is currently missing school days or skipping classes without legitimate excuses.
  - g. unemployed/not seeking employment: youth should have a job or be engaged in employment related activities (e.g. actively seeking work, engaged in employment training or work schemes), but is not.
- 4. Peer Relation
  - a. some delinquent acquaintances: some of the youth's acquaintances/casual friends are known offenders or exhibit antisocial attitudes.
  - b. some delinquent friends: some of the youth's close friends are known offenders or exhibit antisocial attitudes.
  - c. no or few positive acquaintances: youth has no or very few acquaintances/casual friends who represent positive role models (e.g. doing well in school; not into crime, alcohol or drugs).
  - d. no or few positive friends: youth has no or very few close friends who represent positive role models (e.g. doing well in school; not into crime, alcohol, or drugs).
- 5. Substance Abuse
  - a. occasional drug use: there is evidence that the youth is an occasional user of an illicit drug.
  - b. chronic drug use: there is evidence that the youth is a regular user of an illicit drug.
  - c. chronic alcohol use: the youth regularly consumer alcoholic beverages.
  - d. substance use interferes with functioning: drug and/or alcohol use affects the youth's physical or social functioning and/or is associated with antisocial activity. May involve interference with school work or job, tensions with parents, loss of friends, accidents, etc.
  - e. substance use linked with offences: there is reason to believe that the youth's criminal activity is related to drug or alcohol use.
- 6. Leisure/Recreation
  - a. limited organized participation: there is no evidence that the youth participates in sports, clubs, or other types of organized positive activities.

- b. could make better use of time: the youth spends too much time in passive or unconstructive activities (e.g. watching TV or videos, playing video games, partying, hanging around).
- c. no personal interests: the youth appears to have no personal interests of a positive nature (e.g. sports, reading, hobbies).

## 7. Personality/Behaviour

- a. inflated self-esteem: youth thinks he/she is superior to others; brags constantly; feeling of self-worth seems to exceed accomplishments.
- b. physically aggressive: youth initiates acts of physical aggression against others; starts fights; has engaged in violent actions. Youth believes physical aggression is an appropriate way of expressing oneself and dealing with others.
- c. tantrums: youth displays acts of temper; loses control when frustrated or angry.
- d. short attention span: youth has difficulty attending to the task at hand; difficulty completing tasks; is hyperactive.
- e. poor frustration tolerance: youth deals poorly with frustration; loses patience easily; tends to act impulsively.
- f. inadequate guilt feelings: youth feels no remorse when his or her behaviour has caused harm to another; does not accept responsibility for actions, offers excuses.
- g. verbally aggressive: youth is often verbally abusive in dealing with others; uses language in hostile or threatening manner.

## 8. Attitudes/Orientation

- a. antisocial/procriminal attitudes: the youth's attitudes are supportive of a criminal or anti-conventional life style; consider attitudes, values, beliefs and rationalizations concerning the crime and victim; youth does not think social rules and laws apply to her/him.
- b. not seeking help: youth is not seeking help; is reluctant to seek needed interventions; does not recognize the need for help.
- c. actively rejecting help: youth is actively resisting the interventions of helping persons or agencies.

- d. defies authority: youth refuses to follow directions from parents, teachers or other authority figures; youth is hostile to the criminal justice system.
- e. callous, little concern for others: youth shows little concern for the feelings or welfare of others.

### **PART III: ASSESSMENT OF OTHER NEEDS/SPECIAL CONSIDERATIONS**

#### **1. Family/Parents**

(Note: parent may also refer to legal guardians)

- a. chronic history of crime: members of the youth's immediate family (parents or siblings) now or have in the past engaged in repeated criminal acts.
- b. emotional distress/psychiatric: either or both parents have a current psychiatric disability or a recent history of such problems.
- c. drug-alcohol abuse: either or both parents have current substance abuse problem or a recent history of such a problem.
- d. marital conflict: the parents are currently in conflict or have recently experienced conflict.
- e. financial/accommodations problems: the family is currently facing a financial and/or housing problem.
- f. uncooperative parent(s): parent(s) unwilling to cooperate in efforts to address the youth's problems.
- g. cultural/ethnic issues: the family is facing difficulties or conflicts relating to cultural/ethnic/religious adjustment.
- h. abusive father: the father has engaged in physical, emotional, or sexual abuse of a family member.
- i. abusive mother: the mother has engaged in physical, emotional, or sexual abuse of a family member.
- j. significant family trauma: this may relate to death or illness in the family, family break-up, or similar type of crisis.

## 2. Youth

- a. health problems: the youth is currently suffering from a medical problem.
- b. physical disability: the youth suffers from a disabling physical condition.
- c. low intelligence/developmental delay: youth exhibits obvious and disabling intellectual deficits.
- d. learning disability: while of normal intelligence, the youth has difficulty doing academic work.
- e. underachievement: the youth is performing below his or her capacity in school.
- f. problem solving skills: youth has difficulty in resolving personal/social problems; does not cope well in interpersonal situations.
- g. victim of physical/sexual abuse: the youth is currently or has in the past experienced physical or sexual abuse.
- h. victim of neglect: youth is experiencing or has in the past experienced neglect.
- i. shy/withdrawn: youth lacks significant relationships with others; does not appear motivated to form relationships.
- j. peers outside age range: youth spends a lot of time with significantly younger or older youths.
- k. depressed: the youth appears to be in a depressed state.
- l. low self-esteem: youth has little feeling of self-worth; poor self-concept.
- m. inappropriate sexual activity: the youth engages in illegal or otherwise inappropriate sexual activities (e.g. prostitution, exhibitionism).
- n. racist/sexist attitudes: youth expresses antisocial attitudes regarding women or members of ethnic or religious groups.
- o. poor social skills: the youth appears to function poorly in social situations; lacks normal social skills.
- p. engages in denial: youth seems unable to admit guilt; unable to admit to problems.

- q. suicide attempts: history of suicide attempts.
- r. diagnosis of psychosis: youth has been diagnosed as psychotic or other serious psychiatric condition.
- s. third part threat: youth is at risk because of influence of third party or is threatened by third party.
- t. history of sexual/physical assault: youth has a history of directing sexual or physical assaults against others.
- u. history of assault on authority figures: youth has a history of violent assaults on teachers, parents, corrections personnel, or other authority figures.
- v. history of weapon use: youth has a history of using any type of weapon.
- w. history of fire setting: youth has a history of arson or arson attempts.
- x. history of escapes: youth has history of escapes or attempted escapes from custody facilities
- y. protection issues: child welfare or other protection agencies are involved with the youth.
- z. adverse living conditions: youth is living on the street or otherwise inappropriately housed.

### **Quick Reference Guide** **Sentence Calculation**

#### 1. Definitions

- \* SD refers to the start date of an order
- \* SED refers to the sentence expiry date
- \* RFC refers to release from custody date

#### 2. Always “round down” calculation of custody days.

#### 3. Steps in calculating the RFC (release from custody) date of a single custody and supervision order:

Step 1: Calculate the SED of the new sentence

Step 2: Calculate the number of days between the SD (sentence start date) and SED (sentence expiry date), including both dates

Step 3: Calculate the custody component of the custody and supervision order by taking

the total number of days (identified in step 2) and multiply by 2/3. (Multiply by

2 and divide the total by 3). Any fraction is rounded down.

Step 4: Determine the RFC by going to the start date of the sentence and counting off the number of days calculated in Step 3 above

#### 4. In calculating the SD of a new sentence: $A + B =$ custodial portion of merged sentence

- (i) for concurrent orders the start date of the order is the date it is ordered; and;
- (ii) for consecutive orders the start date of the order is the day after the first order expires.

#### 5(a). Steps in the basic merge process:

1. Calculate the SED of the new order;
2. Calculate the “A” of the merge formula eg. the remainder of custody days to be served as of the new sentence hearing date;
3. Calculate the “B” of the merge formula eg. take the original SED, move ahead one day, and count the number of days, up to and including the date the new sentence expires. Multiply this total by 2/3;
4. Add “A” and “B” together to get the number of custody days in the new sentence;
5. To calculate the new RFC date, take the day total, from the formula, and starting on the date the new order was issued, advance forward by those number of days;
6. Secure custody will always be served first in any combination of secure and open custody and supervision orders.



- 5(b). Merging will not change the RFC date when a second order, or successive order, is concurrent to the first and will expire before the original sentence does - eg. if the SED is not extended, the RFC is not altered.
6. A youth receives credit for the first day of a UAL and the date of apprehension. Any days unlawfully-at-large, excluding the first day and day the young person is apprehended, will have to be satisfied and will alter both the SED and RFC of the original order.
7. Merging must still occur when a new sentence is given during the conditional or community supervision portion of a previous sentence. In situations where community or conditional supervision is being suspended, the clock stops only when a warrant of apprehension is issued and resumes when that warrant is executed. This process will alter the SED of the order eg. the SED is extended by the number of days where the warrant has not been executed (excluding the date of issue and date of apprehension).



**DEPARTMENT OF CHILDREN, SENIORS AND SOCIAL DEVELOPMENT  
COMMUNITY YOUTH CORRECTIONS (CYC)  
DOCUMENTATION GUIDE**

## INTRODUCTION

Written documentation is an essential communication tool between social workers and their clients, supervisors, other professionals and the court system. A social worker's documentation is relied upon as the method of expressing family strengths, risk factors, goals, progress and outcomes. Effective client documentation in Children, Seniors and Social Development (CSSD) practice is therefore an essential component of competent social work practice.

For the Community Youth Corrections (CYC) program, all interventions and services provided to young persons and/or their families are to be delivered in accordance with the principles of applicable legislation and related program policies and procedures. The applicable legislation includes the *Youth Criminal Justice Act* and the *Young Persons Offences Act*. Provincial policy is reflected in the "Community Youth Corrections Standards and Practices Manual", the "Residential Services Standards and Practices Manual", and the "Extrajudicial Sanctions Standards and Practices Manual".

This *CSSD Documentation Guide* also reflects and supplements the standards in the *Canadian Association of Social Workers: Guidelines for Ethical Practice 2005* (Appendix A) and the NLASW Standards for Social Work Recording (Appendix B).

Note: In this document social worker applies to the "front line" social worker and the clinical program supervisor.

## DOCUMENTATION: GENERAL PRINCIPLES

The file must contain documentation of all services and interventions provided to the client by the social worker or program supervisor. The social worker shall document only pertinent information obtained in a format that facilitates the assessment, planning, monitoring and evaluation of the intervention.

The social worker or program supervisor must document in the client's file or appropriate documents all significant information and actions taken during the provision of services. The file must be kept confidential and maintained in a secured location.

Social workers are accountable to their clients, their employer, their professional association and the court system with respect to client documentation.

Documentation must be:

- Chronological
- Factual (date, place, type of contact, purpose, outcome and plans)
- Objective
- Clear and concise
- Complete in detail but not a process recording

- Legible
- Identify the full name, qualifications and position of the recorder

## **TIMEFRAME FOR DOCUMENTATION**

Provincial policy establishes parameters for the completion of various court based and program based documents, however, there are also expectations regarding documenting various types of client contacts (face-to-face meetings, telephone contacts, etc.). To accurately reflect documentation of case notes related to ongoing client involvement and/or supervision activities, case notes should be recorded as soon as possible following contact but no later than five (5) working days after the contact.

## **CASE NOTES**

The case notes form an essential record of day to day contacts and events that occur with clients. Case notes complement all other required file documentation such as risk management documents, plans of care, court applications, consent forms, and any other required forms.

The case notes should indicate the date the social worker was assigned to the case, the reason for assignment i.e. to respond to a referral of alleged maltreatment, and the date the social worker completed the file review (when a file is assigned the social worker is responsible for reviewing the file to familiarize themselves with all social work intervention to date).

When referring to oneself in the case notes, as well as all other documentation, it is preferable to that the social worker refer to herself/himself as “I” instead of “this worker” or “the undersigned”.

Case notes are to include facts as well as clinical/professional judgments. Facts include the direct and objective observations of the social worker, and statements made by clients (parent or child), witnesses, collateral sources, as well as statements made by the social worker.

A social worker cannot capture every detail of a conversation with a client but should ensure (i) the recording identifies the purpose of the contact; and (ii) captures key pieces of information learned during the course of that contact. Where possible, quote any particular relevant statement verbatim. For example, instead of writing, “Mrs. Brown stated that her son refuses to abide by the curfew established in his probation order”; the worker should enter, “Mrs. Brown stated: “David won’t listen to me when I tell him he’s not supposed to be out after 9:00 p.m. He told me he doesn’t give a damn what the court order says.” The social worker should also, to the degree possible, document quotes of other professionals and collateral sources in the case note.

It is inevitable that there will be times when the social worker misses recording details that later prove relevant. For example, a young person visits a worker at his/her office for a scheduled supervision appointment. The worker realizes later that the young person left his/her office in the company of an individual who has a criminal record and/or is referenced in the client's probation order as an individual with whom the client should have no contact. The event should be recorded on the day this "connection" is made and should reference to the date of the office visit when the worker originally saw the two young persons together.

## **DOCUMENTING CLIENT CONTACT**

Case notes may be documented in point or narrative form.

### **What to Document?**

1. Date and time of contact
2. Types of contact with client:
  - in person meeting
  - telephone call (include who called whom)
  - written communication (email correspondence, letter, etc.)
3. Location of contact including:
  - client's home
  - school
  - social worker's office
  - group home or other residential setting
  - remand or secure custody facility
4. Identify who was present along with the client including:
  - parents or guardians
  - teacher, counselor, other social worker
  - residential service provider
  - secure custody social worker
5. Purpose for Contact (including):
  - preparation of a court based report eg. pre-sentence report, community progress reports for non-custodial reviews
  - as part of ongoing supervision requirements established under the parameter of the "*Youth Level of Service – Case Management Inventory*"

- to follow-up on client's completion of specific court ordered requirements including, for example, completion of community service work
- to follow-up on activities related to the young person's service plan

6. Nature of Discussion

- information shared by social worker to client
- information social worker received from his/her client
- information social worker received from another source who was present
- information social worker obtained through observation

7. Areas Identified for Follow-Up

- activity related to documented service plan
- new task or activity e.g. service referral
- person responsible for task completion and timeframe

8. Unsuccessful Attempts to Contact Client

- date and time of attempted contact
- reason for contact
- whether contact was scheduled or unannounced

Within the CYC program the frequency and nature of client contacts is directly related to client assessment using the "*Youth Level of Service – Case Management Inventory*". Client refusal to attend scheduled meetings-visits, may constitute grounds for either (i) initiating a failure to comply charge; or (ii) a suspension of community or conditional supervision, depending on the court order(s) in affect.

## **CASE CONFERENCES**

Case planning initiated by the social worker may be documented on the CMI component of the Youth Level of Service-Case Management Inventory or on the Youth Corrections Service Plan. If case planning is not being documented in these formats the social worker shall make a case note that identifies purpose, date, time, participants and outcomes of a case conference.

## **DOCUMENTING CLINICAL JUDGEMENT(S)**

As with all social work assessments the case notes must include facts as well as clinical-professional judgements. Facts include the direct, and objective, observations of a social worker, statements made by clients, witnesses, collateral resources, as well as statements made by the social worker herself or himself.

Clinical judgments are fundamental to social work practice. A social worker's actions pertaining to an investigation or other form of intervention are often based on clinical judgment. Such judgments are required in order to explain the actions taken by a social worker. When a social worker is making a clinical judgment, this should be documented separately from the facts and clearly indicated as the clinical judgment of the social worker.

When making clinical judgments the social worker must be cognizant of the requirements-expectations being placed on a young person related to his/her legal status. Provincial policy and procedure provides a framework or lens against which judgments are made. When a social worker is making a clinical judgment, it should be documented separately from the facts and clearly indicate as the clinical judgment of the social worker.

An example of how to document facts and clinical judgment is as follows:

Daryl arrived one half hour late for his scheduled appointment. He wore an oversized hooded jacket that partially covered his face. His responses to my questions were almost inaudible and were limited, primarily, to "yes" or "maybe". Daryl refused to make eye contact. He, at one point, almost slid out of his chair and spent much of the time fiddling with his fingers. He giggled when asked if he had been using any drugs.

Daryl has a history of abusing drugs like marijuana. The refusal to make eye contact, the attempt to hide his face, his body posture, and reluctance to answer questions contrast sharply with his demeanor during past appointments. During periods when Daryl was known to be actively using drugs these types of behaviour were noted by his parents. It is my judgment that Daryl's manner suggests he had been using drugs on the day of his office visit in direct contravention of his probation order.

## **DOCUMENTING CONTACT WITH PERSONS OTHER THAN CLIENT**

### *With Supervisors*

The social worker shall document in the case notes the purpose for the consultation, the date/time, and any decision(s) regarding plans for the child or youth and their parent(s) and/or any directives given by the program supervisor. The social worker is responsible for advising the program supervisor that the consultation has been recorded in the case notes. The program supervisor will then review the social worker's entry and confirm that it accurately reflects the direction(s) given and the decision(s) made.

### *With Zone Managers*

The supervisor shall document in the case notes consultations with a zone manager. The documentation shall include any clinical decisions by a zone manager on matters of high clinical importance including, but not limited to, service planning, court matters, a critical incident, or the death of a young person. Upon completion of the documentation, the supervisor must advise the zone manager that the consultation has been recorded in the case notes. If a social worker was involved in the consultation, the social worker shall document the consultation and advise the supervisor and zone manager that the consultation has been recorded in the case notes. The zone manager will then review the entry and confirm that it accurately reflects the direction(s) given and the decision(s) made.

### *With Other Professionals*

The social worker shall document consultations with other professionals and collateral sources. The documentation shall include who participated in the consultation, the purpose and the outcome. The date, time and place of the consultation must also be included.

### *With Solicitors*

Details of consultations with the Department of Justice and Public Safety solicitors or with solicitors, who are contracted to represent the Director of CYC, are not to be stated in the case notes. This would include letters, e-mails, memos, faxes or contact notes that relate to legal judgments, legal strategy, and/or litigation. The social worker shall reference these consultations in the case notes (i.e. date, time and name of the solicitor) but the specific legal advice is to be documented separately from the case note. (may develop a form to capture the legal consult which would be placed in the appropriate section of the client file).

### *References to Other Persons*

Social workers must ensure that references to persons having involvement with the young person and their parent(s) are clear to all persons who may need to review the case notes at a later date. The first time a person is mentioned in the note that person must be fully identified, for example, “the young person’s mother, Jane Smith”. Thereafter, continue to refer to that person by his/her name. It is acceptable to refer to clients by using first names as long as it identifies to whom it refers. If the person being referred to is a professional involved with the family, you must document the person’s role.

### *Young Person*

After identifying the young person completely (i.e. full name and date of birth) at the beginning of the case note, it is appropriate to refer to the young person by his/her first name, as long as it is clear to whom the name refers. If the young person uses a preferred



name for example, the proper name is “John” but the child/youth goes by “Jack” then this alternate name must also be clearly referenced.

### **USE OF SOCIAL WORK TERMINOLOGY**

The social worker should take care regarding the use of professional terminology as the information may be reviewed by persons who are not social workers. When using social work language the terms must be clearly explained so that anyone (i.e. other professionals, clients, or judges, etc.) reviewing the file would know the social worker’s assessment. For example instead of stating; “the child is parentified”; you should state; “I have observed the child preparing meals, sweeping the floors, washing dishes, attending to the younger sibling’s physical needs and reminding the mother to get ready for her doctors appointment. My professional assessment of these actions is that the child has assumed the parental role and responsibility within the family”.

### **USE OF ABBREVIATIONS**

The use of abbreviations may lead to confusion. For example, the abbreviation “DD” could mean “dual diagnoses” or “developmental delay”. For this reason, the only abbreviations permitted are those stated in the CYC approved abbreviation list which is attached as Appendix C.

### **SOCIAL WORK FIELD PLACEMENT STUDENTS**

Students are not employees of CSSD. Social work students must document in the case notes any contacts they have with a client. The student’s field instructor must review the information entered by the student and record in the case notes that he/she has reviewed that information.

### **WHAT NOT TO RECORD IN THE CLIENT FILE**

The file is to contain only relevant information pertaining to the client. Often information is documented that should not be entered.

The following are examples of information that should not be included in the client file:

- social worker performance issues
- social worker absences from work due to vacation, illness, etc.
- social worker reasons for missed visits with clients
- social worker’s commentary on decisions

## Appendix A

Reproduced from: Canadian Association of Social Workers: Guidelines for Ethical Practice 2005 <http://www.casw-acts.ca/>

### **1.7 Maintenance and Handling of Client Records**

Social workers maintain one written record of professional interventions and judgments, with due care to the obligations and standards of their employer and relevant regulatory body. Social workers document information impartially and accurately and with an appreciation that the record may be revealed to clients or disclosed during court proceedings.

Social workers are encouraged to take care to

- report only essential and relevant details
- refrain from using emotive or derogatory language
- acknowledge the basis of professional judgments
- protect clients' privacy and that of others involved.

**1.7.1** Social workers do not state a professional judgment unless it can be supported by their own assessment or by the documented assessment of another professional.

**1.7.2** Where records are shared across professions or agencies, information is recorded only to the degree that it addresses clients' needs and meets the requirements of an employer or professional standards of practice.

**1.7.3** Before using clients' records for any purpose beyond professional services, for example education, social workers obtain the informed consent of clients.

**1.7.4** In some circumstances, access to client records may be officially authorized or required by statute. Where consent of clients is not required, social workers attempt to notify clients that such access has been granted, if such notification does not involve a risk to others.

**1.7.5** Social workers ensure that clients have reasonable access to official social work records concerning them. However, if there are compelling professional, ethical or legal reasons for refusing access, social workers advise clients of their right to request a review of the decision through organizational or legal channels, e.g., *Access to Information Act* (1983).

**1.7.6** Social workers take due care to protect the confidences of others when providing clients with access to records. This may involve masking third party information in the record.

**1.7.7** If clients are not satisfied with their records, social workers advise them regarding complaint mechanisms.

- 1.7.8** Social workers protect client's records, store them securely and retain them for any required statutory period.
- 1.7.9** Social workers transfer or dispose of client's records in a manner that protects client's confidentiality and is consistent with provincial/territorial statutes governing records and social work regulation. Social workers also ensure that mechanical or electronic records are properly transferred or disposed of.

## **Appendix B**

### **NLASW Standards for Social Work Recording**

Reproduced from: Standards for Social Work Recording. NL Association  
Of Social Workers [www.nlasw.ca](http://www.nlasw.ca)

#### **Standard 1**

Documentation of social work interventions with clients are contained in one written record (or master file) as per the Canadian Association of Social Workers Code of Ethics. Social workers are required to maintain records on all clients or client systems within that one written record.

#### **Standard 2**

Confidentiality is an important element in social work recording. Clients, families, groups and communities are made aware of the limits to confidentiality before initiating the social work relationship and throughout the relationship as needed.

#### **Standard 3**

Assessment is the foundation of social work documentation. Assessments are based upon facts that should be clearly documented. Only facts that is clearly relevant to the assessment and planned Intervention should be recorded.

#### **Standard 4**

Social work documentation must be in a format that facilitates monitoring and evaluation of the social work intervention.

#### **Standard 5**

Outcomes are important. Documentation must include a Plan and the termination of the social work intervention should be clearly documented.

#### **Standard 6**

Policies should be developed to ensure timely recording and Auditing of social work documentation that is consistent with agency Standards.

#### **Standard 7**

Documentation of community development processes, Project planning, policy development, and research is grounded in the Values, ethics, and philosophy of the profession and reflects adherence to The Canadian Association of Social Workers (CASW) Code of Ethics and The Canadian Association of Social Workers (CASW) Standards of Practice.

## Appendix C

### **CYC Approved Abbreviation List**

The following is a list of approved abbreviations to be used when recording client information.

Apt.	Apartment
Appt.	Appointment
@	at
B/C	because
B & L	Board and Lodging
CC	case conference
C/L	common law
CSO	Community Service Order
CYC	Community Youth Corrections
CSSD	Children, Seniors and Social Development
Dept.	Department
DOB	Date of Birth
EPU	Emergency Place Unit
FV	family visit
HV	Home Visit
IRCS	Intensive Rehabilitative Custody and Supervision
L/M	left message
Msg	message
O/d	overdose
OV	office visit
P/C	phone call
Prog.	Program
PS	program supervisor
PSR	Pre-Sentence Report
Rec'd	received
Rel/ship	relationship
Ret'd	returned
RS	Referral Source
SC	supervisor consultation
SV	School visit
TC	telephone call
Thru	through
V/M	voice message
W/F	waiting for
Wker	worker
YLS-CMI	Youth Level of Service – Case Management Inventory
YS	Youth Services

### Segmented File Folder Guide Community Youth Corrections

Section	Category	Content
A	Case Notes	<ul style="list-style-type: none"> <li>• Service Notes</li> <li>• Personal Information</li> </ul>
B	Sentence Calculation	<ul style="list-style-type: none"> <li>• Sentence Summary Sheet(s)</li> <li>• Sentence Calculation Notes</li> </ul>
C	Youth Sentence Orders (Chronological Order)	<ul style="list-style-type: none"> <li>• Undertakings (JIR)</li> <li>• Sentence Orders</li> <li>• Non-Custodial Review Orders</li> <li>• Custodial Review Orders</li> <li>• Orders in Relation to Suspension Hearings</li> <li>• Warrant(s) of Committal to Custody</li> </ul>
D	Court/Legal Documents	<ul style="list-style-type: none"> <li>• Application for Non-Custodial Reviews</li> <li>• Application for Custodial Reviews</li> <li>• Notice of Hearing</li> <li>• Affidavits of Service/Supporting Affidavit</li> <li>• Setting of Conditions for Custody and Supervision Orders</li> <li>• Breach of Conditions on a Custody and Supervision Order</li> <li>• Warrant(s) of Apprehension and Order of Remand</li> <li>• Attorney General's Consent for Waiver of Jurisdiction</li> <li>• Waiver of Jurisdiction of Sentencing Order</li> <li>• Application for Age Related Transfer from a Youth Facility to Adult Facility</li> <li>• Application for Continuation of Custody</li> </ul>
E	Assessment(s)/Reports Related to Case Supervision	<ul style="list-style-type: none"> <li>• Pre-Sentence Reports (PSRs)</li> <li>• Risk-Need Assessment (YLS-CMI)</li> <li>• Initial Assessment Re: Application of section 55(2)(g) and/or 105(3)(e)</li> <li>• Checklist for Order to Reside Living Arrangements</li> <li>• Documentation Re: Failure to Comply</li> <li>• Progress Report for Non-Custodial Review</li> <li>• Progress Report for Custodial Review</li> <li>• Suspension Report</li> </ul>

<b>Section</b>	<b>Category</b>	<b>Content</b>
F	Referrals for Service and Related Reports	<ul style="list-style-type: none"> <li>• Referrals for Services</li> <li>• Agreement to provide Assessment and Treatment</li> <li>• Reports completed in Relation to Counselling, Educational, and Vocational Referrals</li> <li>• Medical, Psychological, and/or Psychiatric Assessments and Reports</li> </ul>
G	Custody Placements	<ul style="list-style-type: none"> <li>• Incident Report(s)</li> <li>• Reintegration Leave Form(s) (Day and Full)</li> <li>• Revocation of Reintegration Leave</li> <li>• Discharge Plan Summary Form</li> <li>• Authorization for Administrative Transfers to Secure Custody under section 24(2)(9) of <u>Young Offenders Act</u></li> <li>• Record of Non-compliance with Designated Lock-up Standards</li> </ul>
H	Miscellaneous (including CSO/PSO Related)	<ul style="list-style-type: none"> <li>• Consent for Referral</li> <li>• Letters of Apology</li> <li>• Copies of Court Required written Assignments (completed as a requirement of a court order)</li> <li>• Correspondence to Youth and/or Parents-Guardians ie. Notice of Appointment</li> <li>• Consultations with Legal Counsel</li> <li>• Contract (CSO/PSO)</li> <li>• Placement Record (CSO)</li> <li>• Evaluation Form (CSO)</li> <li>• Work Record Card (CSO/PSO)</li> <li>• Letters to Sponsoring Agency</li> </ul>
Separate White File	Financial	<ul style="list-style-type: none"> <li>• Request for Funding</li> <li>• Approval of Funding</li> <li>• Vision Care Program Authority and Invoice Form</li> <li>• Application for Canada Child Tax Benefit</li> <li>• Verification of Transportation</li> </ul>

### Pre-Sentence Report Checklist

- ☐ Case file established
- ☐ Interview of young person completed
- ☐ Home visit completed
- ☐ Interview of parents/guardian (when possible) completed
- ☐ Youth and parents advised of list of relevant interviewees
- ☐ *“Consent to Release or Obtain Client Information”* form signed if required
- ☐ All relevant sources interviewed
- ☐ Review of relevant CSSD records and files
- ☐ Contents of report discussed with the young person/parents prior to the hearing
- ☐ PSR report submitted to the court (3 copies)
- ☐ Copy of PSR report retained in file
- ☐ *“Alert Sheet: Potential Placement to Open Custody”* form completed if required



### Order to Reside: Placement Approval Checklist

- ☐ Written assessment completed including
  - Summary of home visits and all interviews
  - Documentation of youth's view and wishes
  - Description of relationship between youth and proposed providers
  - Recommendations
- ☐ "*Safety Checklist for Group Home and Order-to-Reside Living Arrangements*" form completed
- ☐ Interview of all residents of the home
- ☐ Police checks on all adults 18 and over
- ☐ Youth Corrections check of residents under 18
- ☐ CSSD records check
- ☐ "*Reference Check – Order-to-Reside Placements*" form completed
- ☐ "*Declaration of Confidentiality*" completed
- ☐ Financial Support provided
  - Base rate requested
  - Request for additional funding if applicable
- ☐ CTB application completed
- ☐ NLPDP application completed if required

### Open Custody Admission Checklist

- ☐ Case file established
- ☐ Documents package to accompany young person at time of placement includes:
  - Warrant of Committal to Custody;
  - Pre-Sentence Report;
  - copies of Pertinent Case File Information (ex. ISSP, YLS/CMI, Progress Report, Discharge Plan, any other pertinent assessment information);
  - clothing list (only applicable when a youth is being transferred from one place of custody to another);
  - MCP, hospital card(s), and social insurance number;
  - educational reports (including assessments, course list, current transcripts, etc. as available);
  - legal guardian's name, address and telephone number;
  - legal status;
  - name of referring social worker, location number, and contact information for the worker's immediate supervisor;
  - medical history information including contact information for family doctor, specialist(s), or any other health professional involved with the young person; and,
  - any medication or prescription information.
- ☐ CTB application completed
- ☐ Contact made with open custody social worker
- ☐ Sentences added electronically
- ☐ Manual sentence calculation completed

## Highlights Sentence Calculation Rules

### Definition and Basic Principles

The following are some basic definitions and principles that apply to sentence calculation:

- (i) the Youth Criminal Justice Act identifies several sanctions that may be applied at the time of sentencing eg. probation, intensive and supervision, custody;
- (ii) a sentence is a decision rendered by a Youth Justice Court and may consist of one or more sanctions that are not inconsistent with one another eg. CSO and probation or custody followed by probation;
- (iii) the sentence made by a Youth Justice Court comes on the day imposed unless the court specifies a later date;
- (iv) orders can be concurrent or consecutive to each other if an order does not specify it is deemed to be concurrent to any orders of the same date or currently serving;
- (v) for the purpose of sentence calculation a month is defined as a calendar month starting on a given day and running until the same day in the subsequent month minus one day;
- (vi) the only exception to (v) above occurs when the end month does not have a corresponding date that matches the sentence date. In such circumstances the sentence expiry date (SED) is the last day of the end month. Example: Three month sentence imposed on November 30, 2002. End of third month is February 28, 2003. SED is February 28, 2003.
- (vii) an order may be given in months or days, however, in the administration of youth custody sentences all orders are converted to days.
- (viii) when custody sentences are merged and the days to serve is not equally divisible by 3, any portion of the period (day) is rounded up and credited as a full day to the community portion.

### **Limited on the Length of Individual Youth Sentences**

Non-custodial sentence for a single offence is:

- (i) generally 2 years;

Custodial sentence for a single offence is:

- (i) generally 2 years;
- (ii) 3 years if it is an offence that an individual could receive life in prison under the Criminal Code of Canada;
- (iii) 3 years if the young person is convicted of manslaughter, attempted murder or aggravated sexual assault;
- (iv) 7 years if it is second degree murder; and;
- (v) 10 years if it is first degree murder.

### **Administratively Determined Caps on Combined/Multiple Sentences**

1. Usually the combined duration of multiple custodial or community sentences is three years, unless one of the sentences is for first degree murder in which case it is 10 years or one of the sentences is for second degree murder in which case it is 7 years.
2. The young person shall serve no more than six years in custody, where the youth receives a new custodial sentence while serving a custodial sentence and the new sentence is for an offence that was committed prior to the commencement of the existing sentence.
3. There is no cap on the combined sentence length where the court orders a new sentence (custodial and/or non-custodial) and the new offence occurred while serving the existing sentence.
4. Prohibition orders run until they expire. They are not subject to the ordinary rules with respect sentence caps.

### **Custody Sentences: Calculation of Community Release Dates**

1. All custodial sentences under the YCJA are comprised of a period in custody and a period of supervision in the community. Although there are two parts to the sentence, for all purposes it is one sentence comprised as follows: Section 42(2)(n) custody and supervision order. Two thirds in custody and one third in the community on community supervision.

Section 42(2)(o) custody and supervision for listed presumptive offences;  
42(2)(q) custody and supervision for murder; 42(2)(r) intensive rehabilitative custody and supervision order: court determines period in custody and period in community on conditional supervision.

With those facts in mind, when a court makes a custody and supervision order the following rules apply to determine:

- the date the sentence expires, and
  - the date the youth will be released from custody to community supervision.
1. **Any portion of a day served on a sentence counts as a full day served on the sentence.**
  2. The expiry date of a sentence is calculated as follows:
    - If the sentence is expressed in months:
      - Go forward to the corresponding calendar date of the final month and back one day.  
Eg: 4 month sentence starting January 15. Go forward four months to May 15 and back one day. The expiry date is May 14.
      - If there is no corresponding calendar date in the final month the last existing calendar date is the expiry date. Eg. One month sentence starting January 30. There is no February 30. The expiry date is the last date of February.
    - If the sentence is expressed in days, the expiry date is on the last day of the sentence.
    - If the sentence is expressed in years, go forward to the corresponding calendar date in the final year and back one day. Eg. 2 year sentence starting July 1, 2001. Go forward to July 1, 2003 and back one day. Expiry date will be June 30, 2003.
    - If the sentence is expressed in weeks, convert to days. One week is seven days. The last day is the expiry date.
    - If the sentence includes a reference to a “half month”, the “half month” is 15 days regardless of the month in which the sentence imposed. Eg. Two and one-half month sentence starting January 15 go forward two months to March 15, add 15 days and subtract one day. Expiry date is March 29.
  3. The date the offender is released from custody to serve the community portion of their sentence is calculated as follows:
    - Determine the total number of days in the sentence. Count the first day and expiry date.
    - Multiply the number of days by  $\frac{2}{3}$ . Any fraction is rounded down. This is the number of days to the last custody day.
    - The person should be released on the last custody day. The portion of the sentence served under supervision in the community will commence the following day.

Calculation of Start and Expiry Dates when there are multiple orders some of which are custody orders and some of which are not.

1. Consecutive orders of the same type and start on consecutive days. Example: On January 1, 2001 the court imposes a 10 month custody and supervision order followed by a six month probation order. The period of supervision in the community in the custody and supervision order will expire at midnight October 31, 2001 and the probation order will start the next day, that is, at 12:01 November 1, 2001 and expire on April 30, 2002.
2. Where a non-custodial order is followed by a custody order, there will be one day which will be served on both orders. Example: On January 1, the court orders a delayed 6 month custody and supervision order and a 6 month probation order. The custody and supervision order starts May 1 (that is 4 months and 1 day after January 1). The probation order starts January 1 and runs to including May 1. The custody and supervision order starts May 1 and runs to and including October 31 (that is, May 1 counts as a day on probation and a day served on the custody and supervision order). On November 1, the probation order restarts and runs until December 30.
3. Probation orders and intensive supervision and support orders come into force: (i) on the day they are made; or (ii) if ordered in conjunction with custody and supervision they begin at the conclusion of this order. The one exception to this rule is when intermittent custody is used. In this circumstance, the probation order or intensive supervision order begins on the date ordered.

### **Merger of Custodial Sentences under 42(2)(n)**

When a youth is serving a custodial sentence and receives a new custodial sentence, the old and new sentences are merged and become one sentence. The merged sentence begins from the date of imposition of the first of the sentences and ends on the date of expiration of the last of them to be served. The length of a custody sentence includes the period in custody and the period of supervision in the community. That is the sentence expires at the end of the community portion of the custodial sentence. The consecutive or concurrent direction of the individual sentences is respecting in determining the total of merged sentence. The merged sentence serves as the basis for calculating the start of the community portion of the custodial sentence.

1. **Where the merged sentence is not longer than the existing custodial sentence there is no change to start of the community portion of the custodial sentence.**
2. **Where the total merged sentence is longer than the total length of the existing sentence the new start date for the community portion of a custodial sentence is calculated as follows:**

- **Start with the date that the new sentence was imposed.**
- **If the new sentence is a custody and supervision order under 42(2)(n) then take the unexpired custodial portion of the existing sentence and add two-thirds (2/3) of the time from original sentence expiry to a new sentence expiry.**

This rule can also be expressed using the following formula:

Where the additional sentence is under 42(2)(n):

$A + B$  = Custodial portion of merged sentence.

$A$  = unexpired custodial portion of the existing sentence on the day the new 42(2)(n) sentence was imposed;

$B$  = New sentence expiry date minus the old sentence expiry date  $\times 2/3$

The result will give you the number of days remaining to be served on the custodial portion of the merged sentence, from and including the day the new sentence was imposed.

*Commentary:* Calculate the number new days to be served and multiply that number by two-thirds to determine the additional number of days to be served in custody. Any portion of a day is equal to zero.

*Example:* On July 1, 2009 a 6 month custody and supervision order is imposed (concurrent). At the time the young person is serving a 3 month custody and supervision order that started May 15, 2009. The custody portion of that sentence is to expire July 14. Therefore, there are 14 days unexpired in the custody term of the first sentence.

The existing order would expire August 14, 2009. The new order expires December 31, 2009.

Calculate the number of days between August 14, 2009 and December 31, 2009 (Do not count August 14 as it has been counted when calculating the number of unexpired days in the custody portion of the first sentence)  $17+30+31+30+31=139$ . For the purpose of calculation this period starts the day following the expiry date of the first sentence up to and including the new sentence expiry date (August 15 to December 31 inclusive).

Multiply 139 by  $2/3 = 92.67$ . Because you are calculating the portion served in custody, any fraction is rounded down. Thus the new portion to be served in custody is 92 days.

Add the unexpired custody portion of the original sentence that is 14 days:  $92 + 14 = 106$ .

The custody portion of the merged sentence will be 106 days from the date that the new sentence was imposed. The young person will be released from custody to supervision in the community 106 days after July 1, 2009. That is October 14, 2009.

### **Suspension of Community Supervision**

Community supervision is enforced by a breach of conditions. This is not a new charge. Suspension of the community portion in writing by the Provincial Director does not stop the running of a sentence. The issuing of a warrant of apprehension (Appendix 16) is the only thing that stops the running of the sentence during the community portion. The young person, however, is considered to have served his/her sentence for the day the warrant was issued and the day the warrant is executed ie. the day the youth is apprehended.

### **Merger of Custodial Sentences for Presumptive Offences**

→ **If the new sentence is a concurrent sentence under 42(2)(o)(q)(r) take the unexpired custodial portion of the existing sentence and add the custodial portion of the new sentence that extends beyond the expiry of the custodial portion of the original sentences.**

This rule can also be expressed using the following formula:

Where the additional sentence is “concurrent” and under 42(2)(o), (q) or (r):

$A + B =$  Custodial portion of merged sentence.

A = unexpired custodial portion of the existing sentence on the day the new 42(2)(o),(q) or (r) sentence was imposed;

B = Date custodial portion of new sentence expires minus the date the custodial portion of the existing sentence expires.

This will give you the number of days remaining to be served in custody on the merged sentence, from and including the day the new sentence was imposed.

*Commentary:* When calculating the custodial portion of concurrent sentences under (o)(q) or (r) you add the custody portion that extends beyond the original release date. The calculation is different when you are dealing with a (n) sentence because the portions of the sentence served in custody and under supervision in the community are set by the court and not governed by the 2/3 1/3 formula that applies to (n) sentences.

*Example:* On July 1, 2001 a new sentence under (o) is imposed. It is comprised of a period of 12 months in custody followed by 12 months conditional supervision. Thus the custody portion of that sentence will expire on June 30, 2002.



The custody portion of the existing sentence expires on July 31, 2001. That is one month from the start of the new sentence. Therefore on August 1, 2001 there will 11 months remaining to be served on the new sentence.

The new release date is 12 months from July 1, 2001 or June 30, 2002.

→ **If the new sentence is a consecutive sentence under 42(2)(o)(q)(r) take the unexpired custody portion of the existing sentence and add the additional custody portion that is ordered.**

The rule can also be expressed using the following formula:

Where the additional sentence is “consecutive” and under 42(2)(o),(q) or (r):

$A + B =$  Custodial portion of merged sentence.

$A =$  unexpired custodial portion of the existing sentence on the day the new 42(2)(o),(q) or (r) sentence was imposed.

$B =$  Custodial portion of new sentence.

This will give you the number of days remaining to be served on the custodial portion of the merged sentence, from and including the day the new sentence was imposed.

*Commentary:* Where there is a consecutive (o),(q) or (r) sentence the total custodial portion of the sentence is added to the remaining custodial portion to be served on the existing sentence. Again, the calculation is different when you are dealing with a (n) sentence because the portions of the sentence served in custody and under supervision in the community are set by the court and not governed by the  $2/3 - 1/3$  formula that applies to (n) sentences.

*Example:* On July 1, 2001 a new sentence under (o) is imposed it is comprised of a period of 12 months in custody followed by 12 months conditional supervision. The custodial portion of the existing sentence expires August 1, 2002. Add the additional 12 months custody ordered in the new sentence. For the purpose of calculation this period starts the day following the expiry date of the custodial portion of the first sentence. Thus the new release date is 12 months from August 2, 2001 or August 1, 2002.

**Where there is a merger of custody and supervision orders and the period of supervision in the community could be either on community or conditional supervision the supervision will be on conditions set by the court in a conditional supervision order.**

### **Intermittent Custody**

When an intermittent sentence is imposed, the custodial portion is served on an intermittent basis while the community supervision component is served continuously upon completion of the custody component. Probation orders issued concurrently with intermittent custody begin on the day the order is issued unlike other forms of custody and supervision orders where the probation is consecutive to the order.

### **Deferred Custody and Supervision Orders**

Deferred custody and supervision orders are community orders and are not merged. If two or more sentences of this type are concurrent or consecutive to each other, they continue to be enforced as separate orders. When a deferred custody and supervision order is breached and the balance of the time remaining is converted to a custody and supervision order, the converted sentence must be merged as any other custody and supervision order under 42(2)(n).

### Sentence Calculation Grid

<b>Day of Conviction</b>	<b>February</b>	<b>February (Leap Years)</b>	<b>April/June Sept/Nov</b>	<b>Jan/March/May/ July/Aug/Oct/Dec</b>
	28	29	30	31
01	28	29	30	31
02	27	28	29	30
03	26	27	28	29
04	25	26	27	28
05	24	25	26	27
06	23	24	25	26
07	22	23	24	25
08	21	22	23	24
09	20	21	22	23
10	19	20	21	22
11	18	19	20	21
12	17	18	19	20
13	16	17	18	19
14	15	16	17	18
15	14	15	16	17
16	13	14	15	16
17	12	13	14	15
18	11	12	13	14
19	10	11	12	13
20	09	10	11	12
21	08	09	10	11
22	07	08	09	10
23	06	07	08	09
24	05	06	07	08
25	04	05	06	07
26	03	04	05	06
27	02	03	04	05
28	01	02	03	04
29		01	02	03
30			01	02
31				01

**Value of a Month**

<b>Sentence</b>	<b>Custody</b>	<b>Community</b>		<b>Sentence</b>	<b>Custody</b>	<b>Community</b>
<b>Two</b>	<b>Months</b>			<b>Six</b>	<b>Months</b>	
59	39	20		179	119	60
60	40	20		180	120	60
61	40	21		181	120	61
62	41	21		182	121	61
				183	122	61
<b>Three</b>	<b>Months</b>			184	122	62
89	59	30				
90	60	30		<b>Twelve</b>	<b>Months</b>	
91	60	31		365	243	122
92	61	31		366	244	122
<b>Four</b>	<b>Months</b>			<b>Eighteen</b>	<b>Months</b>	
119	79	40		546	364	182
120	80	40		547	364	183
121	80	41		548	365	183
122	81	41		549	366	183
123	82	41				