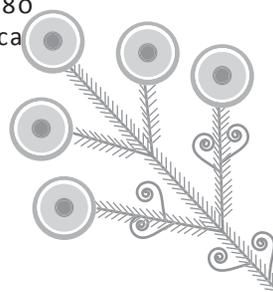


**KAHNAWÀ:KE SHAKOTIIA'TAKENHNHAS
COMMUNITY SERVICES**

YOUTH CRIMINAL JUSTICE ACT



Services Complex, 1 River Road
P.O. Box 1440
Kahnawà:ke, Quebec
J0L1B0
450-632-6880
www.kscs.ca



**KSCS SUPPORT SERVICES
YOUTH CRIMINAL JUSTICE ACT**



**KAHNAWÀ:KE
SHAKOTIIA'TAKEHNHAS
COMMUNITY SERVICES**





Informational content of this pamphlet has been reproduced in its entirety from document called *Young Offenders and the Criminal Justice System: Youth Criminal Justice Act*. Gouvernement du Québec. Ministère de la Santé et des Services sociaux. Direction des communications. Youth Criminal Justice Act. 2004.



ordered by the Youth Court at the time the judge imposes a sentence. If the young offender refuses or does not comply with the conditions, he may be subject to a laying of information, which will lead to a new court appearance. In certain exceptional circumstances, the Youth Court may impose a sentence normally reserved for adults. The young person is then considered an adult under the Act and is subject to the criminal justice system for adults.

PERIOD OF ACCESS TO RECORDS

The period of access to records kept by the Youth Court varies from one to five years. If a young person reoffends after reaching 18 years of age and the period of access to his record has not ended, the offences committed before the young person became an adult will be considered a prior criminal record when handing down the adult sentence. The Youth Criminal Justice Act prohibits the disclosure or publication of the name of a young offender or any information that would make it possible to identify the young person.

YOUTH CRIMINAL JUSTICE ACT



This brochure is for young people and their parents, CLSC youth workers, and educational and community stakeholders. It presents the main principles of the Youth Criminal Justice Act.

The Youth Criminal Justice Act* came into force on April 1, 2003. It applies to young people aged 12-17 years who have committed an offence under the Criminal Code or any other federal legislation. The youth criminal justice system remains separate from that of adults in terms of objectives and judicial and extrajudicial measures. The main goals of the Youth Criminal Justice Act are to –

- Make young offenders accountable for their behaviour by making them acknowledge the consequences of their offence and by encouraging them to repair the harm done to victims and the community
- Reintegrate young offenders into society
- Ensure the protection of the public
- Involve the parents so young offenders as well as the community as a whole in the measures taken for their social reintegration
- Take the expectations of victims into consideration

The Act requires those in charge of enforcing it to first take into account the seriousness of the offence committed by young offenders, who must assume responsibility for their acts. The special circumstances of the young offender must also be taken into consideration when choosing an intervention, which must, insofar as possible, be carried out in their community. The Youth Criminal Justice Act also emphasizes the need for timely interventions in response to offending behaviour. It encourages extrajudicial measures that allow young offenders to assume their responsibilities without necessarily appearing before a youth justice court, called the Youth Court in Québec.

* In this brochure, *young person* and *youth* refer to both girls and boys. In addition, the masculine is only used for the sake of conciseness.

THE ACT PROVIDES FOR THREE TYPES OF MEASURE:

- Discretionary measures applied by police officers
- Extrajudicial sanctions applied by the provincial director (in Québec, this is the Youth Protection Director)
- Judicial sanctions applied by the Youth Court

DISCRETIONARY MEASURES APPLIED BY POLICE OFFICERS

Following an investigation and in the exercise of their duties, police officers may, for a minor offence that does not involve violence (theft of an item of little value, or mischief, for example), make one of the following decisions:

- Take no action against the young person
- Warn the young person
- Refer the young person to a community organization

The purpose of referring a young person to a community organization is to give him the assistance he needs to discourage him from committing another offence. The young person must, however, agree to take part in the activities proposed by the organization. When a police officer warns a young person or refers him to a community organization, the young offender's name and the information relating to the police officer's decision is entered in a provincial registry. This information is kept on file for two years and may be taken into consideration if the young person reoffends. When a young person commits another offence or if

To help determine the sentence, the judge may ask for a pre-sentence report from the youth worker. The evaluation is based on the same factors used to determine an extrajudicial sanction.

VARIOUS SENTENCES

- Absolute discharge
- Conditional discharge
- Fine
- Volunteer work
- Participation in a non-residential program (without accommodation)
- Probation
- Intensive support and supervision program
- Differed custody and supervision
- Custody and supervision
- The Youth Court may impose one or more of these punishments.

A youth worker monitors and supervises the conditions imposed on the young offender by the Youth Court. The interventions of the youth worker are aimed at protecting the public and promoting the rehabilitation and reintegration into society of the young person. Sentences involving placement in a rehabilitation centre and supervision are reserved for the most serious crimes. They are only imposed when the protection of the public is required and when there is no alternative to custody in the community. All custody orders for placing a young offender in a rehabilitation centre include a period of supervision in the community during which the young person must comply with conditions of release. The young offender must comply with all the conditions

- Performing volunteer work
- Giving a donation to a community organization

An extrajudicial sanction may also involve activities aimed at developing specific social skills of the young person with regard to the delinquent behaviour.

If the young person does not fulfil his obligations regarding the extrajudicial sanction, the youth worker may submit the case to the Crown Attorney to start legal proceedings with regard to the offence. The proof gathered by the police officer during the investigation will be used in the Youth Court. Information on the participation of a young person in an extrajudicial sanction is kept in a provincial registry for two years. It may be provided to the Youth Court if the young person appears before the court for new charges.

JUDICIAL SANCTIONS ARE IMPOSED BY THE YOUTH COURT

The Youth Court judge, after finding a young person guilty of an offence, imposes a punishment, also called a judicial sanction. To determine the punishment, the judge must take into consideration a number of factors set out in the Act as well as others related to the young person's personality and social environment (family, friends, school, work, leisure activities, life habits, attitude, etc.).

The punishment imposed by the judge—

- Must be fair and proportionate to the offence and the degree of participation of the young person in the commission of the offence,
- Cannot be greater than that imposed on an adult for the same offence, and
- Must be as appropriate as possible for the specific circumstances of the young person.

the first offence involved violence, the police officer may request that legal action be taken against the young offender. The police officer then sends the request to the office of the Crown Attorney, who determines whether there is sufficient proof to prosecute the young person. If there is sufficient proof, and based on the nature and severity of the offence, the Crown Attorney may either ask the provincial director to examine the young offender's circumstances in order to determine whether he is eligible for an extrajudicial sanction or to lay a charge before the Youth Court.

THE RIGHTS

A young offender has the right to—

- Participate in proceedings taken against him
- Be represented by counsel
- Accept or turn down an extrajudicial sanction
- Choose to appear before the Youth Court even if the youth worker offers an extrajudicial sanction

EXTRAJUDICIAL SANCTIONS UNDER THE AUTHORITY OF THE PROVINCIAL DIRECTOR

When the Crown Attorney asks the provincial director to study a young offender's circumstances, a youth worker (expert in juvenile delinquency from a youth centre) evaluates the young person's eligibility for an extrajudicial sanction.

The youth worker consults the young person and his parents as well as the victim and other adults who know the young person. The purpose of the evaluation is to analyze and take into consideration—

- The social adjustment of the young person,
- The young person's level of development and maturity, and his capacities,
- The offence committed, the young person's reaction and willingness to make amends for the harm caused to the victim and to society,
- The risk of re-offending,
- The resources available in the young person's family and social environment, and
- The victim's expectations.

After the evaluation, the youth worker makes a decision that best suits the young person's circumstances:

- Stopping the intervention if appropriate and if sufficient action has been taken with regard to the young person by his parents or other adults
- Recommending an extrajudicial sanction
- Forwarding the young person's case to the Crown Attorney for an appearance before a Youth Court judge

The purpose of all three possibilities is to hold the young person responsible for his offending behaviour. They must also allow the young person to repair the harm caused to the victim of his offence. However, for a youth worker to consider ending an intervention or offering an extrajudicial sanction, the young person must first accept responsibility for the offence. If a youth worker recommends an extrajudicial sanction, he must explain the sanction to the young person and the young person's parents and emphasize the importance of the young person's commitment. The participation and support of the parents in the young person's social integration is also recommended. The young person and the youth worker sign an agreement lasting no more than six months. The parents have the right—

- To be notified of any proceedings taken against their adolescent, and
- To actively participate in measures to foster the social reintegration of their adolescent.

When a youth worker decides to resort to an extrajudicial sanction and the victim of the offence agrees to accept reparation for the harm caused by the young offender, the victim meets with the young offender in the presence of a mediator. Together, they determine the nature and duration of the sanction, which is then put in writing in a formal agreement between the victim and the young person. The victim—

- May be given the identity of the young person who committed the offence,
- Must be notified of any proceedings taken against the young person and have the opportunity to take part, and 7
- Maintains the right to take legal action against the young person who caused the harm.

EXTRAJUDICIAL

An extrajudicial sanction is most often a form of reparation for the harm caused to the victim and may consist of—

- Performing volunteer work
- Returning stolen items to the victim
- Writing a letter of apology to the victim
- Participating in any other form of reparation consented to by the young person and the victim during the mediation session

In certain cases, the extrajudicial sanction may be reparation for the harm caused to the community and may consist of—