



WEST VANCOUVER POLICE DEPARTMENT

Operational Policy

OK0200: Young Persons - General

1.0 PURPOSE

- 1.1 The purpose of this policy is to ensure the practice of the Department with respect to Young Persons is in keeping with the objectives, principles and provisions of the federal YCJA and the BC Youth Justice Act.

2.0 DEFINITIONS

- 2.1 For the purposes of this policy, the following definitions will apply:

“CCC” means the Criminal Code of Canada, R.S.C. 1985, c. C-46, as amended from time to time.

“CFCSA” means the Child, Family and Community Service Act, (RSBC 1996) Chapter 46, as amended from time to time.

“Department” means the West Vancouver Police Department.

“Extrajudicial Measures” means measures other than judicial proceedings under the YCJA used to deal with a young person alleged to have committed an offence and includes Extrajudicial Sanctions.

“Extrajudicial Sanction” means a sanction that is part of a program referred to in Sec. 10 of the YCJA.

“Member” means a sworn peace officer employed at the Department.

“YCJA” means the Youth Criminal Justice Act (S.C. 2002, c. 1), as amended from time to time.

“Young Person” means a person who is or, in the absence of evidence to the contrary, appears to be twelve years old or older, but less than eighteen years old.

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3.0 POLICY

- 3.1 The Department will address and treat Young Persons in a manner that complies fully with legal requirements.

4.0 PROCEDURES

General

- 4.1 The YCJA covers offences against the CCC and other federal statutes and regulations for persons aged twelve to seventeen (12-17) years, inclusive. A person who commits a federal offence, and is under 12 years of age, will be dealt with under the provisions of the CFCSA.
- 4.2 The principles of the YCJA are set out in Section 3 of the Act and should be carefully noted and their intent and spirit applied in dealing with Young Persons. They are as follows:
- a) Extrajudicial Measures are often the most appropriate and effective way to address youth crime;
 - b) Extrajudicial Measures allow for effective and timely interventions focused on correcting offending behaviour;
 - c) Extrajudicial Measures are presumed to be adequate to hold a Young Person accountable for his or her offending behaviour if the Young Person has committed a non-violent offence and has not previously been found guilty of an offence; and
 - d) Extrajudicial Measures should be used if they are adequate to hold a Young Person accountable for his or her offending behaviour and, if the use of Extrajudicial Measures is consistent with the principles set out in this section, nothing in the YCJA precludes their use in respect of a Young Person who:
 - i. has previously been dealt with by the use of Extrajudicial Measures; or
 - ii. has previously been found guilty of an offence.
- 4.3 The objectives of the YCJA in applying Extrajudicial Measures are to:
- a) provide an effective and timely response to offending behaviour outside of judicial proceedings;

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- b) encourage Young Persons to acknowledge and repair the harm caused to the victim and the community;
- c) encourage the involvement of families, including extended families and members of the community, in designing and implementing the measures;
- d) provide victims with an opportunity to participate in decisions that relate to the measures that are selected, and to receive reparation; and
- e) respect the rights and freedoms of Young Persons, and be proportionate to the seriousness of the offence.

Extrajudicial Measures

- 4.4 Before initiating judicial proceedings a Member must consider whether it would be sufficient to administer one of the following measures listed in YCJA:
- a) take no further action against the Young Person;
 - b) give the Young Person a warning;
 - c) issue a caution to the Young Person; or
 - d) refer the Young Person, with his or her consent, to a program or agency in the community that may assist him or her not to commit offences.
- 4.5 If a Young Person commits a non-violent first offence, it is presumed that an Extrajudicial Measure is sufficient to address the youth's actions. The decision as to which Extrajudicial Measure is appropriate must be applied fairly and be proportionate to the offence.
- 4.6 Members applying Extrajudicial Measures will use the least restrictive measure that will hold the youth accountable, ensuring the minimum intervention warranted to respond to the conduct. The measure should always be less than one a court would impose for this conduct, should the youth have been tried and found guilty of the offence.
- 4.7 Within the limits of fair and proportionate accountability, the measure should be designed and applied with the following principles and objectives in mind:
- a) emphasize timeliness (ensuring the measure is applied with as close a link to the conduct as possible, to help the youth understand the relationship between action and consequences);
 - b) be an effective intervention;

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- c) promote the rehabilitation of the youth;
- d) offer meaningful consequences to the youth;
- e) encourage the youth to acknowledge harm he or she may have caused;
- f) encourage the youth to repair harm he or she may have caused;
- g) involve the family of the youth; and
- h) respect the youth's rights, and especially any special protections or guarantees of rights applying to youth.

Taking No Further Action

- 4.8 For many minor offences, a decision by the Member to take no further action may be the most appropriate response in cases, for example, where the parents of the Young Person, the victim or others may have already taken sufficient steps to hold the Young Person accountable. There would be no need to expend further police resources and other youth justice system resources on such a case.

Warning Young Person

- 4.9 Warnings by Members as detailed in Sec. 6 of the YCJA, are intended to be informal warnings and are an example of a traditional exercise of police discretion.
- 4.10 In many minor cases, a warning by a Member is a sufficient response from the justice system, and identifies and reinforces for a youth the limits of acceptable behaviour. There is also evidence that, in terms of recidivism, a warning or taking no further action is as effective as charging the youth or referring him or her to an alternative measures program.

Police Caution

- 4.11 Police cautions are more formal warnings by the police. It is expected that a police caution will be in the form of a letter from the police to the Young Person and the parents, or it may involve a process in which the Young Person and the parents are requested to appear at a police station to talk to a senior Member about the alleged offence.
- 4.12 A police caution is intended to make clear to the Young Person the seriousness of the alleged offence and to provide a police response that is between an informal warning and a charge. As with all Extrajudicial Measures, a police caution may only be used if the Member has reasonable grounds to charge the

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Young Person with an offence and should not be used in cases in which taking no further action or an informal warning would be sufficient.

Referrals to Community Programs

- 4.13 As an alternative to a formal charge Members may refer the Young Person to a community program or agency that may help prevent commission of offences in the future. The consent of the Young Person is required. The referral may be to a wide range of community resources, including recreation programs, counseling agencies, child welfare agencies and mental health programs.
- 4.14 The purpose of the referral is to connect the Young Person to a program or agency that may address factors that seem to be related to the Young Person's involvement in crime.
- 4.15 This type of Extrajudicial Measure is a form of pre-charge, police-based diversion and is consistent with the concept of community policing. The extent of its use depends greatly on the extent to which police-community partnerships have been developed.

Extrajudicial Sanctions

- 4.16 Extrajudicial Sanctions, (previously known as alternative measures under the YOA), are a type of Extrajudicial Measure that is intended for more serious offences and offenders than would be dealt with by warnings, cautions and referrals. In comparison to other types of Extrajudicial Measures, a more formal set of rules applies to Extrajudicial Sanctions.
- 4.17 Extrajudicial Sanctions may be used only if other Extrajudicial Measures would not be adequate. The YCJA provides that an Extrajudicial Sanction may be used only if the Young Person cannot be adequately dealt with by another type of Extrajudicial Measure.
- 4.18 Extrajudicial Sanctions may only be used if:
- a) it is part of a program authorized by the government of the jurisdiction;
 - b) the person considering using the sanction believes that it would be appropriate, given the needs of the Young Person and the interests of society;
 - c) the Young Person has been informed about the sanction, has been advised of his or her right to counsel, has been given an opportunity to consult counsel and then have consented to its use;

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- d) the Young Person must have accepted responsibility for the act or omission that forms the basis of the offence. An Extrajudicial Sanction cannot be used if the Young Person denies the offence or wishes to have the charge dealt with by the youth court; and
 - e) Crown Counsel must believe there is sufficient evidence to proceed with a charge and the prosecution must not be barred.
- 4.19 Use of an Extrajudicial Sanction does not impact the authority of Crown Counsel to lay a charge or to proceed with a prosecution, the Court has the authority, however, to dismiss the charge in such cases.

Notification of Parents

- 4.20 Immediately after a Young Person is arrested or detained in custody, the parents will be notified by the investigating Member, either orally or in writing, of the place of detention and the reason for the arrest. If no parent is available, a notice may be given to an adult relative or other adult known to the Young Person who is likely to provide assistance.
- 4.21 If no responsible parent/guardian can be located, the Young Person must be turned over to the Ministry of Children and Family Development Emergency Services Section.
- 4.22 The parent of the Young Person must be notified if the Young Person is dealt with by an Extrajudicial Sanction. The requirement to notify a parent reflects the principle that parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.
- 4.23 A Member must not hesitate to hospitalize a Young Person found to be intoxicated by liquor or drugs to the extent that the well being of the Young Person is in doubt. If the Member decides the hospitalization of the Young Person is necessary, immediate steps must be taken to notify the parent/guardian of the Young Person or the duty worker at the Ministry of Children and Family Development as to the location and condition of the Young Person.

Pre-Trial Release and Detention

- 4.24 The powers of arrest, detention and release granted by the CCC are the same for Young Persons and adults, however, in general, both the YCJA and related provisions of the CCC that are incorporated in this phase of youth justice system set up by the YCJA are based on a presumption of release.

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- 4.25 Only in exceptional circumstances should the Young Person be arrested and detained. Unless the Member determines that a CCC provision either requires or justifies the Young Person's pre-trial detention, the Young Person must be released.
- 4.26 In exercising their discretion to release or detain, Members should be mindful of the following objectives that are central to the system set up by the YCJA:
- a) policy of restraint in using the criminal law power;
 - b) direction to choose the least restrictive alternative; and
 - c) objective of reducing youth incarceration.

Informing Victims

- 4.27 The victim of an offence is entitled, on request, to be informed of the identity of the Young Person who has been dealt with by an Extrajudicial Sanction as well as how the offence has been dealt with. This entitlement of victims is consistent with the provisions in Sec. 3(d) - Declaration of Principle, that victims should be treated with courtesy and respect and that they should be provided with information about proceedings against Young Persons.

Publication

- 4.28 A central principle of the youth justice system is to protect the identity of a Young Person who is dealt with under the YCJA. As a general rule, the YCJA prohibits the publication of a Young Person's name and of any information that could lead to the Young Person's identification.
- 4.29 There are, however, some exceptions to the general rule. Members should note publication is not banned where:
- a) information is published in the course of the administration of justice, if the publication's purpose is not to make the information known to the community; or
 - b) a judge is satisfied there is reason to believe the Young Person is a danger to others and publication is necessary to assist in the apprehension of the Young Person.

Records

- 4.30 Part 6 of the YCJA provides the framework for the keeping of records on Young Persons including the disclosure of records. Generally, Youth Courts, police, governments, and professional and community-based organizations may keep

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records on Young Persons for the purpose of investigations and judicial and extrajudicial proceedings.

4.31 A peace officer may disclose information contained in a record to:

- a) the youth and or the youth's counsel; may have access to the record at anytime;
- b) any person, where it is necessary to disclose the information during the offence's investigation;
- c) the Minister of Justice of Canada, where disclosure is necessary to deal with a request to or by a foreign state under the Mutual Legal Assistance in Criminal Matters Act, or for the purposes of any extradition matter under the Extradition Act;
- d) an insurance company for the purpose of investigating a claim arising out of the Young Person's offence or alleged offence; or
- e) any professional or other person engaged in the Young Person's supervision or care (including administrators of schools, school boards, etc.), where necessary to ensure the Young Person's compliance, facilitate rehabilitation, or protect staff and students.

Breaches of Condition

4.32 Under the YCJA, where the Young Person breaches a condition of a probation order or an intensive support and supervision order, the preferred approach is to consider non-judicial responses or to apply to the court for a review of the order, rather than to charge the Young Person with a new offence. This is consistent with principles and objectives in the YCJA to:

- a) reduce use of court;
- b) reduce youth incarceration, particularly for non-violent offences;
- c) ensure measures taken against Young Persons are fair and proportionate to the seriousness of the offence; and
- d) reserve the system's most serious interventions for the most serious offences.

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4.33 Police should consider referring such situations to a probation officer or youth worker to determine what, if any, action should be taken in the matter. One option would be to seek a review of the sentence by applying to a youth justice court when the:

- a) Young Person's circumstances change materially;
- b) Young Person is unable or struggling to comply with the terms of a sentence; or
- c) terms of the sentence have negative effects on the Young Person's education, employment, or access to services. (Sec. 59 of the YCJA.)

Revised: April 18, 1996	
Date Approved: WVPD Executive: 2018-09-19 Policy & Procedure Comm.: 2018-10-17 Police Board: 2018-10-25	Date Published: 2018-10-30