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CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL  
**CROWN COUNSEL POLICY MANUAL**

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ARCS/ORCS FILE NUMBER: <b>58500-00</b>	EFFECTIVE DATE: <b>April 1, 2003</b>	POLICY CODE: <b>YOU 1.2</b>
SUBJECT: <b><i>Youth Criminal Justice Act – Continuation of Custody Hearings</i></b>		CROSS-REFERENCE:

### **POLICY**

**Applications to seek a continuation of custody order under s. 98 or s. 104 of the *Youth Criminal Justice Act* to detain a young person in custody beyond his or her normal supervision release date should be based on the risk the youth poses to the public as exemplified by the statutory factors enumerated in the *Youth Criminal Justice Act* and the paramount need to protect the public.**

**The Manager, High Risk Offenders Identification Program, should be advised of any application for continuation of custody of a young offender.**

### **DISCUSSION**

#### **Legislative framework**

The *Youth Criminal Justice Act* requires that all custodial sentences include a supervision component. An application can be brought before the Youth Justice Court for an order that young persons continue in custody beyond their release to supervision dates. Applications are governed by s. 98 for all custody and supervision sentences except murder, attempted murder, manslaughter, aggravated sexual assault and intensive rehabilitative custody and supervision order sentences which are governed by s. 104.

The statutory tests under ss. 98 and 104 are slightly different. Under s. 104, the Youth Justice Court must be satisfied that there are reasonable grounds to believe that the young person is likely to commit an offence causing the death of, or serious bodily harm to, another person before the expiry of the youth sentence the young person is then serving. Under s. 98, the court must be satisfied on reasonable grounds that the young person is likely to commit a serious violent offence before the expiry of the youth sentence and that conditions that would be imposed on the youth if he or she were to serve a portion of the youth sentence in the community would not be adequate to prevent the commission of that offence.

Under both sections the court “shall take into consideration any factor that is relevant to the case of the young person, including

1. Evidence of a pattern of persistent violent behaviour and, in particular,
  - a) the number of offences committed by the young person that caused physical or psychological harm to any other person;
  - b) the young person’s difficulties in controlling violent impulses to the point of endangering the safety of any other person;
  - c) the use of weapons in the commission of any offence;
  - d) explicit threats of violence;
  - e) behaviour of a brutal nature associated with the commission of any offence; and
  - f) a substantial degree of indifference on the part of the young person as to the reasonably foreseeable consequences, to other persons, of the young person’s behaviour.
2. Psychiatric or psychological evidence that a physical or mental illness or disorder of the young person is of such a nature that the young person is likely to commit, before the expiry of the young sentence the young person is then serving, an offence causing the death of or serious harm to another person.
3. Reliable information that satisfies the youth justice court that the young person is planning to commit, before the expiry of the youth sentence the young person is then serving, an offence causing the death of or serious harm to another person.
4. The availability of supervision programs in the community that would offer adequate protection to the public from the risk that the young person might otherwise present until the expiry of the youth sentence the young person is then serving.”

Two additional factors must be considered under s. 98

1. Whether the young person is more likely to re-offend if he or she serves a youth sentence entirely in custody without the benefits of serving a portion of the youth sentence in the community under supervision.
2. Evidence of a pattern of committing serious violent offences while he or she was serving a portion of a youth sentence in the community under supervision.

### File Continuity

Continuation of custody applications are viewed very seriously by the Branch. All continuation of custody hearings should occur before the original sentencing judge in the original trial location. Wherever possible, the original prosecutor should make the application. The use of video links is encouraged to facilitate these applications. In exceptional cases Crown Counsel may consider conducting the hearing in a different location if there are no concerns about file continuity, local transparency or the return of the young person to the community where the offence occurred.

### Timelines

The Criminal Justice Branch has indicated to the Ministry of Children and Family Development that applications for continuation of custody orders should be forwarded to Crown Counsel at least four months before the expiration of the custody portion of the sentence, to permit timely preparation of the application material and completion of the hearing before the scheduled release date.