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c 80 Provincial Offences Statute Law Amendment Act, 1983

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CHAPTER 80

**An Act to amend certain Statutes relating
to the Commission of Offences by Young Persons**

Assented to December 16th, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PROVINCIAL OFFENCES ACT

1. The *Provincial Offences Act*, being chapter 400 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

Part V-A,
(ss. 91a-91q),
enacted

PART V-A

YOUNG PERSONS

91a. In this Part,

Interpre-
tation

- (a) "parent", when used with reference to a young person, includes an adult with whom the young person ordinarily resides;
- (b) "young person" means a person who is or, in the absence of evidence to the contrary, appears to be,
 - (i) twelve years of age or more, but
 - (ii) under sixteen years of age,

and includes a person sixteen years of age or more charged with having committed an offence while he was twelve years of age or more but under sixteen years of age.

91b. No person shall be convicted of an offence committed while he was under twelve years of age.

Minimum
age

Offence
notice not
to be used

91c. A proceeding commenced against a young person by certificate of offence shall not be initiated by an offence notice under clause 3 (2) (a).

Notice to
parent

91d.—(1) Where a summons is served upon a young person or a young person is released on a recognizance under this Act, the provincial offences officer, in the case of a summons, or the officer in charge, in the case of a recognizance, shall as soon as practicable give notice to a parent of the young person by delivering a copy of the summons or recognizance to the parent.

Where no
notice given

(2) Where notice has not been given under subsection (1) and no person to whom notice could have been given appears with the young person, the court may,

- (a) adjourn the hearing to another time to permit notice to be given; or
- (b) dispense with notice.

Saving

(3) Failure to give notice to a parent under subsection (1) does not in itself invalidate the proceedings against the young person.

Sentence
where
proceedings
commenced
by certificate

91e.—(1) Notwithstanding subsection 12 (1), where a young person is found guilty of an offence in proceedings commenced by certificate, the court may,

- (a) convict the young person and,
 - (i) order the young person to pay a fine not exceeding the set fine that would be payable for the offence by an adult, the maximum fine prescribed for the offence, or \$300, whichever is the least, or
 - (ii) suspend the passing of sentence and direct that the young person comply with the conditions prescribed in a probation order; or

(b) discharge the young person absolutely.

Term of
probation
order

(2) Section 72 applies with necessary modifications to a probation order made under subclause (1) (a) (ii), in the same manner as if the proceedings were commenced by information, except that the probation order shall not remain in force for more than ninety days from the date when it takes effect.

(3) Subsection 12 (2) applies with necessary modifications where a young person is convicted of an offence in proceedings initiated by summons, in the same manner as if the proceedings were initiated by offence notice.

s. 12 (2) applies where proceedings initiated by summons

91f.—(1) Subject to subsection 53 (1) and subsection (2), a young person shall be present in court during the whole of his trial.

Young person to be present at trial

(2) The court may permit a young person to be absent during the whole or any part of his trial, on such conditions as the court considers proper.

Court may permit absence

(3) Sections 43 and 55 do not apply to a young person who is a defendant.

Application of ss. 43, 55

(4) Where a young person who is a defendant does not appear at the time and place appointed for a hearing and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that a summons was served, an undertaking to appear was given or a recognizance to appear was entered into, as the case may be, or where the young person does not appear upon the resumption of a hearing that has been adjourned, the court may adjourn the hearing and issue a summons to appear or issue a warrant in the prescribed form for the arrest of the young person.

Failure of young person to appear

(5) Where a young person does not attend personally in response to a summons issued under section 52 and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that the summons was served, the court may adjourn the hearing and issue a further summons or issue a warrant in the prescribed form for the arrest of the young person.

Compelling young person's attendance

91g.—(1) No person shall publish by any means a report,

Identity of young person not to be published

(a) of an offence committed or alleged to have been committed by a young person; or

(b) of a hearing, adjudication, sentence or appeal concerning a young person who committed or is alleged to have committed an offence,

in which the name of or any information serving to identify the young person is disclosed.

(2) Every person who contravenes subsection (1) and every director, officer or employee of a corporation who authorizes, permits or acquiesces in a contravention of subsection (1) by

Offence

the corporation is guilty of an offence and is liable on conviction to a fine of not more than \$10,000.

Pre-sentence
report

91h.—(1) Section 57 applies with necessary modifications where a young person is convicted of an offence in a proceeding commenced by certificate of offence, in the same manner as if the proceeding were commenced by information.

Pre-sentence
report
mandatory
where
imprisonment
considered

(2) Where a young person who is bound by a probation order is convicted of an offence under section 75 and the court is considering imposing a sentence of imprisonment, the court shall direct a probation officer to prepare and file with the court a report in writing relating to the defendant for the purpose of assisting the court in imposing sentence, and the clerk of the court shall cause a copy of the report to be provided to the defendant or his counsel or agent and to the prosecutor.

Penalties
limited

91i.—(1) Notwithstanding the provisions of this or any other Act, no young person shall be sentenced,

- (a) to be imprisoned, except under clause 75 (d); or
- (b) to pay a fine exceeding \$1,000.

Sentence
where
proceedings
commenced
by
information

(2) Where a young person is found guilty of an offence in proceedings commenced by information, the court may,

- (a) convict the young person and,
 - (i) order the young person to pay a fine not exceeding the maximum prescribed for the offence or \$1,000, whichever is less, or
 - (ii) suspend the passing of sentence and direct that the young person comply with the conditions prescribed in a probation order; or
- (b) discharge the young person absolutely.

Term of
probation
order

(3) A probation order made under subclause (2) (a) (ii) shall not remain in force for more than one year from the date when it takes effect.

No im-
prisonment
for non-
payment
of fine
Probation
order in
lieu of
imprisonment

91j.—(1) No warrant of committal shall be issued against a young person under section 70.

(2) Where it would be appropriate, but for subsection (1), to issue a warrant against a young person under subsection 70 (3) or (4), a judge may direct that the young person comply with

the conditions prescribed in a probation order, where the young person has been given fifteen days notice of the intent to make a probation order and has had an opportunity to be heard.

(3) A probation order made under subsection (2) shall not remain in force for more than ninety days from the date when it takes effect.

Term of probation order

91k. Where a young person is sentenced to a term of imprisonment for breach of probation under clause 75 (d), the term of imprisonment shall be served in a place of open custody designated under section 24 of the *Young Offenders Act* (Canada).

Open custody

29-30-31, Eliz. II, c. 110

91l. In a proceeding under this Act, a parent's testimony as to a young person's age and any other evidence of a young person's age that the court considers credible or trustworthy in the circumstances are admissible.

Evidence of young person's age

91m. Where the defendant is a young person, an appeal under subsection 118 (1) shall be to the county or district court of the county or district in which the adjudication was made, but the procedures and the powers of the court and any appeal from the judgment of the court shall be the same as if the appeal were to the provincial court (criminal division).

Appeal

91n. No person shall exercise an authority under this or any other Act to arrest a young person without warrant unless the person has reasonable and probable grounds to believe that it is necessary in the public interest to do so in order to,

Arrest without warrant limited

- (a) establish the young person's identity; or
- (b) prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or to the person or property of another.

91o.—(1) Section 133 does not apply to a young person who has been arrested.

s. 133 does not apply

(2) Where a police officer acting under a warrant or other power of arrest arrests a young person, the police officer shall, as soon as is practicable, release the young person from custody unconditionally or after serving him with a summons unless he has reasonable and probable grounds to believe that it is necessary in the public interest for the young person to be detained in order to,

Release after arrest by officer

- (a) establish the young person's identity; or

- (b) prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or the person or property of another.

Release
by officer
in charge

(3) Where a young person is not released from custody under subsection (2), the police officer shall deliver him to the officer in charge who shall, where in his opinion the conditions set out in clause (2) (a) or (b) do not or no longer exist, release the young person,

- (a) unconditionally;
- (b) upon serving him with a summons; or
- (c) upon his entering into a recognizance in the prescribed form without sureties conditioned for his appearance in court.

Notice to
parent

(4) Where the officer in charge does not release the young person under subsection (3), the officer in charge shall as soon as possible notify a parent of the young person by advising the parent, orally or in writing, of the young person's arrest, the reason for the arrest and the place of detention.

ss. 134, 135
apply

(5) Sections 134 and 135 apply with necessary modifications to the release of a young person from custody under this section.

Place of
custody

(6) No young person who is detained under section 134 shall be detained in any part of a place in which an adult who has been charged with or convicted of an offence is detained unless a justice so authorizes, on being satisfied that,

- (a) the young person cannot, having regard to the young person's own safety or the safety of others, be detained in a place of temporary detention for young persons; or
- (b) no place of temporary detention for young persons is available within a reasonable distance.

Idem

(7) Wherever practicable, a young person who is detained in custody shall be detained in a place of temporary detention designated under subsection 7 (1) of the *Young Offenders Act* (Canada).

29-30-31,
Eliz. II,
c. 110

Functions of
justice of
peace
limited

91p. The functions of a justice with respect to a defendant who is a young person shall be performed only by a judge, except under Parts III and VII.

91q. This Part applies to proceedings commenced after this Part comes into force. Application

PROVINCIAL COURTS ACT

2.—(1) Section 10 of the *Provincial Courts Act*, being chapter 398 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections: s. 10,
amended

(2a) The Chief Judge of the Provincial Courts (Family Division) is the chief judge of the provincial courts (family division) sitting as provincial offences courts. Where
family court
sits as
provincial
offences
court

(2b) Subsection (2) and subsection 19 (1) do not apply to the Unified Family Court sitting as a provincial offences court. Where Uni-
fied Family
Court sits as
provincial
offences
court

(2) Section 18 of the said Act is amended by adding thereto the following subsection: s. 18,
amended

(3) Notwithstanding subsection (2), a proceeding in a provincial offences court against a young person shall be conducted in the provincial court (family division) in the same county or district, or, in the Judicial District of Hamilton-Wentworth, in the Unified Family Court, sitting as a provincial offences court. Exception:
young
persons

(3) Clause 23 (2) (b) of the said Act is repealed and the following substituted therefor: s. 23 (2) (b),
re-enacted

(b) shall be deemed to be and shall sit as a provincial offences court for the purpose of dealing with young persons as defined in the *Provincial Offences Act*. R.S.O. 1980,
c. 400

(4) Section 33 of the said Act is amended by adding thereto the following subsections: s. 33,
amended

(2a) The clerk of a provincial court (family division) is the clerk of that court sitting as a provincial offences court. Where
family court
sits as
provincial
offences
court

(2b) The clerk of the Unified Family Court is the clerk of that court sitting as a provincial offences court. Where Uni-
fied Family
Court sits as
provincial
offences
court

UNIFIED FAMILY COURT ACT

s. 16 (b),
re-enacted

3. Clause 16 (b) of the *Unified Family Court Act*, being chapter 515 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(b) shall be deemed to be and shall sit as a provincial offences court for the purpose of dealing with young persons as defined in the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

Commence-
ment

4. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

5. The short title of this Act is the *Provincial Offences Statute Law Amendment Act, 1983*.