


PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

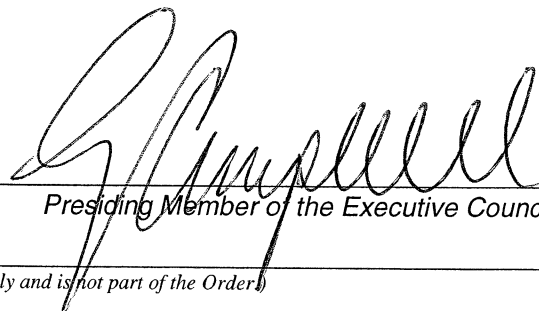
Order in Council No. 227, Approved and Ordered MAR 17 2005

  
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Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective April 18, 2005,

- (a) sections 36, 40 and 43 (a) and (b) of the *Correction Act*, S.B.C. 2004, c. 46, are brought into force,
- (b) B. C. Reg. 562/77 is repealed, and
- (c) the attached Youth Custody Regulation is made.

  
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Minister of Children and Family Development  
\_\_\_\_\_  
Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order)

Authority under which Order is made:

Act and section:- Youth Justice Act, S.B.C. 2003, c. 85, s. 44

Correction Act, S.B.C. 2004, c. 46, s. 44

Other (specify):- oic 3730/77

# YOUTH CUSTODY REGULATION

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## **PART 1 – DEFINITIONS**

### **Definitions**

- 1 (1) In this regulation:

“Act” means the *Youth Justice Act*;

“privileged person” means

- (a) a child and youth officer appointed under the *Office for Children and Youth Act*,
- (b) a director under the *Child, Family and Community Services Act*,
- (c) a justice or a peace officer on duty,
- (d) a member of Parliament or of the Legislative Assembly,
- (e) the Ombudsman,

- (f) a provincial director, a person conducting an inspection under section 37 of the Act or a person conducting an investigation under section 38 of the Act,
- (g) a youth's lawyer, or a lawyer from a jurisdiction other than British Columbia who is able to satisfy the person in charge that he or she is qualified to practise law in that jurisdiction and is a lawyer representing the youth in respect of a legal matter in that jurisdiction, and
- (h) if a youth is detained or subject to a warrant for arrest and detention under the *Immigration Act* (Canada), an immigration officer as defined in that Act, or, if the youth is detained or subject to a warrant for arrest and detention under the *Immigration and Refugee Protection Act* (Canada), a person designated as an officer under that Act;

**“rule of conduct”** means a rule established under section 2 (2) (b);

**“visitor”** means, in relation to a youth custody centre, any person other than a staff member or youth at the youth custody centre;

**“youth”** means a young person in custody at a youth custody centre.

- (2) In the Act and this regulation, **“intoxicant”** means a substance that, if taken into the body, has the potential to impair or alter judgment, behaviour or the capacity to recognize reality or to meet the ordinary demands of life, but does not include caffeine, nicotine or any authorized medication used in accordance with the directions given by a staff member or a medical practitioner.

## **PART 2 – OVERALL RESPONSIBILITY OF PERSONS IN CHARGE**

### **Management, operation, discipline and security**

- 2 (1) The person in charge of a youth custody centre is responsible for managing and operating the youth custody centre in a manner that
  - (a) provides and maintains order, discipline and security in the youth custody centre,
  - (b) protects the safety of persons in the youth custody centre, and
  - (c) promotes the rehabilitation of youth and their reintegration into the community.
- (2) For the purposes of subsection (1), the person in charge
  - (a) must act in accordance with any directives of the provincial director in carrying out responsibilities under that subsection, and
  - (b) may establish written rules governing the conduct of youth that the person in charge considers necessary or advisable.
- (3) A rule of conduct under subsection (2) (b) does not become effective unless approved by the provincial director.

## **PART 3 – YOUTH CUSTODY PROGRAMS**

### **Youth custody programs**

- 3 (1) The person in charge of a youth custody centre must, as far as practicable, establish programs for youth, including programs designed to assist youth in the following:
  - (a) improving their training or education;
  - (b) reducing the risk they present to the community;
  - (c) their rehabilitation and their reintegration into the community.
- (2) A youth must participate in a program as directed by the person in charge unless
  - (a) the youth is excused by a staff member or medical practitioner,
  - (b) the program is a religious program and the youth does not choose to participate in it, or
  - (c) the program conflicts with a recognized day of religious observance of the religious faith that the youth practices.

## **PART 4 – VISITS**

### **Visits**

- 4 (1) The person in charge of a youth custody centre is responsible for providing
  - (a) a place within the youth custody centre for visits between youth and visitors, and
  - (b) a schedule of the hours and days during which those visits are allowed.
- (2) Subject to this section, visits between youth and visitors are permitted in places provided under subsection (1) (a) and in accordance with schedules provided under subsection (1) (b).
- (3) If the person in charge of a youth custody centre considers it necessary or advisable for the management, operation or security of or safety of persons in the youth custody centre, the person in charge may do the following in respect of a visit between a youth and a person other than a privileged person:
  - (a) prohibit the person from visiting with the youth;
  - (b) order the suspension, termination or cancellation of the visit;
  - (c) order that the visit be supervised;
  - (d) place restrictions on or make allowances for the nature, timing, frequency, length or location of the visit.
- (4) For purposes of subsection (3) (a) and (b), the person in charge may order the removal of a person from the youth custody centre or any part of it.
- (5) If the person in charge of a youth custody centre believes on reasonable grounds that a visit between a youth and a privileged person would
  - (a) jeopardize the security of the youth custody centre or the safety of any person, or

(b) result in the commission of an offence under an enactment of British Columbia or Canada,

the person in charge may do the following:

(c) place restrictions on or make allowances for the nature, timing, frequency, length or location of the visit, as the person in charge considers necessary to control the risk;

(d) if the person in charge believes that restrictions under paragraph (c) would not be adequate to control the risk, order the suspension, termination or cancellation of the visit.

#### **Offence of failure to comply with visiting prohibitions or orders**

5 A person who fails to comply with a prohibition or order under section 4 (3) or (4) commits an offence.

### **PART 5 – COMMUNICATION**

#### **Definitions**

6 In this Part:

“**privileged communication**” means communication between a youth and a privileged person;

“**youth communication**” means communication by mail or electronic means between a youth and another person, other than a privileged person.

#### **Monitoring and recording of youth communication**

- 7 (1) In the Act and this section, “**monitor**” means to
- (a) listen to a youth communication that is made by telephone or other electronic means or to a youth communication that was made by telephone or other electronic means and recorded, or
  - (b) read youth communication delivered to the youth custody centre or sent from within the youth custody centre.
- (2) Youth communication by telephone or other electronic means may be recorded.
- (3) Youth communication by telephone or other electronic means may be monitored by an authorized person if the authorized person has reasonable grounds to believe that
- (a) the youth is
    - (i) involved in illegal activities,
    - (ii) harassing or causing harm to others, or
    - (iii) participating in an activity that may threaten the management, operation or security of the youth custody centre or the safety of any person, or
  - (b) the monitoring is necessary to maintain or repair the recording system and the monitoring is performed only for the length of time and to the extent that is necessary to effect the maintenance or repair.

- (4) Youth communication by mail may be intercepted and examined by an authorized person to determine if the mail contains contraband.
- (5) Youth communication by mail may be monitored or recorded by an authorized person if the authorized person has reasonable grounds to believe that the youth is
  - (a) involved in illegal activities,
  - (b) harassing or causing harm to others, or
  - (c) participating in an activity that may threaten the management, operation or security of the youth custody centre or the safety of any person.

#### **Retention of recorded communication**

- 8 A recording of a youth communication made under section 7 (2) or (5) may be retained for a period not longer than 30 days, unless there are reasonable grounds to believe that the youth is
  - (a) involved in illegal activities,
  - (b) harassing or causing harm to others, or
  - (c) participating in an activity that may threaten the management, operation or security of the youth custody centre or the safety of any person.

#### **Restriction of youth communication**

- 9 (1) This section applies only in respect of youth communication by telephone or other electronic means.
- (2) If the person in charge of a youth custody centre considers it necessary or advisable for the management, operation or security of, or safety of persons in, the youth custody centre, the person in charge may
  - (a) restrict youth communication to persons specified by the person in charge, and
  - (b) restrict the frequency and timing of youth communication.

## **PART 6 – DISCIPLINE**

#### **Disciplinary infractions**

- 10 A youth commits a disciplinary infraction if the youth does any of the following:
  - (a) disobeys a direction of a staff member;
  - (b) enters an area of the youth custody centre in which the youth is not authorized to be without permission of a staff member;
  - (c) enters a living unit or room that is not assigned to the youth without permission of a staff member;
  - (d) wilfully or recklessly damages or destroys property that is not property of the youth;
  - (e) steals or possesses stolen property;
  - (f) possesses property that is not property of the youth, without permission of a staff member;
  - (g) gives or sells contraband to another youth;

- (h) behaves in an insulting or abusive manner toward a person;
- (i) behaves in a manner toward another person that
  - (i) threatens or demeans the person or violates that person's dignity, or
  - (ii) shows hatred or contempt for the person based on the person's race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age;
- (j) engages in an indecent act;
- (k) engages in horseplay or roughhousing;
- (l) physically fights with another person;
- (m) assaults or threatens another person;
- (n) takes an intoxicant into his or her body;
- (o) uses a tobacco product;
- (p) obstructs a staff member in the execution of his or her duties;
- (q) creates or participates in
  - (i) a disturbance, or
  - (ii) any other activity that threatens or is likely to threaten the management, operation, discipline or security of, or the safety of any person in, the youth custody centre;
- (r) does anything for the purpose of escaping;
- (s) offers, gives or accepts a bribe;
- (t) gambles;
- (u) gives to or accepts from another youth money or other property without permission;
- (v) wilfully disobeys a rule of conduct;
- (w) provides a false or misleading statement to a staff member;
- (x) possesses or attempts to obtain contraband;
- (y) attempts to do, assists another person to do or attempts to assist another person in doing anything referred to in paragraphs (a) to (x).

**Steps to be taken by staff member**

- 11** (1) If a staff member believes on reasonable grounds that a youth is committing or has committed a disciplinary infraction, the staff member must do the following:
- (a) if the circumstances allow,
    - (i) stop the disciplinary infraction from occurring, or
    - (ii) give the youth an opportunity
      - (A) to stop the disciplinary infraction from occurring, or
      - (B) to correct his or her behaviour;
  - (b) inform the youth
    - (i) of the disciplinary infraction committed, and
    - (ii) what it consists of.

- (2) If, in the opinion of the staff member referred to in subsection (1), the disciplinary infraction has not been or cannot be satisfactorily resolved by the actions described in that subsection, the staff member must, as soon as practicable, file a written report with the person in charge of the youth custody centre, setting out
- (a) the disciplinary infraction that is alleged to have been committed,
  - (b) the circumstances surrounding the disciplinary infraction, and
  - (c) the action taken, if any, under subsection (1) (a) (ii).

### **Behaviour management consequences**

- 12 (1) If a youth commits a disciplinary infraction, the person in charge of the youth custody centre may order one or more of the following consequences:
- (a) a warning or reprimand;
  - (b) an oral or written apology;
  - (c) a reduction in the monetary allowance to which the youth would otherwise be entitled;
  - (d) full or partial monetary compensation for damage to or loss of property;
  - (e) temporary or permanent loss of one or more privileges or activities normally available to the youth;
  - (f) extra work, physical activity or other tasks, for a specified period not longer than 2 hours;
  - (g) confinement in a room, locked or unlocked, for a specified period not longer than 2 hours;
  - (h) transfer of the youth to a different room or living unit in the youth custody centre.
- (2) In addition to any consequences ordered under subsection (1), the person in charge may recommend any of the following to the provincial director:
- (a) revocation of an authorization made under section 35 (2) of the Act [*reintegration leave and day absences*] in respect of the youth;
  - (b) transfer of the youth to a different youth custody centre.
- (3) In determining appropriate consequences under subsection (1) and in making recommendations under subsection (2), the person in charge must consider
- (a) the minimum level of intervention required to correct the behaviour of the youth,
  - (b) the need to provide and maintain order, discipline and security and to protect the safety of persons in the youth custody centre, and
  - (c) the need for the consequences to be
    - (i) meaningful to the particular youth,
    - (ii) fair in the circumstances, and
    - (iii) proportionate to the harm done.



## PART 7 – SECURITY AND SAFETY MEASURES

### Separate confinement

- 13 (1) Subject to subsection (2), a person in charge of a youth custody centre may order a youth be confined separately from other youths in the youth custody centre if the person in charge believes on reasonable grounds that
- (a) the youth
    - (i) is endangering, or is likely to endanger, himself or herself or another person,
    - (ii) is threatening, or is likely to threaten, the management, operation or security of the youth custody centre,
    - (iii) has contraband hidden on or in his or her body, or
    - (iv) has taken an intoxicant into his or her body, and
  - (b) all other means of dealing with the youth have been exhausted or are not reasonable in the circumstances.
- (2) Unless subsection (3) applies, a youth may not be separately confined for a period longer than is necessary to address the concerns specified in subsection (1) (a) and, in any event, may not be separately confined for more than 72 hours.
- (3) The person in charge may, for medical or other reasons, authorize separate confinement of a youth for more than 72 hours with approval from the provincial director.
- (4) As soon as practicable after a youth is separately confined and in any event no more than 4 hours into that confinement, a staff member must explain to the youth the reasons for separate confinement.

### Use of force

- 14 (1) If all other means of dealing with the youth have been exhausted or are not reasonable in the circumstances, a staff member may use reasonable and necessary force to
- (a) prevent or discontinue harm to another person,
  - (b) prevent the commission or continuation of an offence, including the apprehension of a youth at large without lawful excuse, or
  - (c) overcome resistance or compel compliance necessary for the security of the youth custody centre.
- (2) A youth may not be physically restrained for a period longer than is necessary for the reasons specified in subsection (1).

### Use of physical restraint devices

- 15 (1) A staff member may use a type of physical restraint device that is approved by the provincial director to restrain a youth if circumstances require use of the physical restraint device to
- (a) prevent a youth from escaping,
  - (b) maintain custody and control of a youth, or

- (c) do any of following and all other means of dealing with the youth have been exhausted or are not reasonable in the circumstances:
  - (i) prevent or discontinue harm to a person,
  - (ii) prevent the commission or continuation of an offence, including the apprehension of a youth at large without lawful excuse, or
  - (iii) overcome resistance or compel compliance necessary for the security of the youth custody centre.
- (2) A physical restraint device may not be used to restrain a youth for more than one continuous hour unless
  - (a) authorized by the person in charge under subsection (3), or
  - (b) the youth is on an escorted absence from the youth custody centre.
- (3) The person in charge of a youth custody centre may authorize the use of a physical restraint device to restrain a youth for more than one continuous hour but, unless subsection (4) applies, for no more than 8 continuous hours, if
  - (a) the person in charge believes on reasonable grounds that the use of the physical restraint device is necessary for the safety of the youth or for the safety of another person, and
  - (b) other means of dealing with the youth have been exhausted or are not reasonable in the circumstances.
- (4) The person in charge may authorize the use of a physical restraint device to restrain a youth for more than 8 continuous hours with approval from the provincial director.
- (5) A person in charge who authorizes the use of a physical restraint device under subsection (4) must review the condition of the youth with the provincial director every 8 hours following the approval of the provincial director while the physical restraint device is being used.
- (6) The provincial director may at any time revoke approval under subsection (4).

## Searches

- 16 (1) In this section:
- “frisk search”** means a hand search or a search by use of a hand-held screening device, conducted by an authorized person,
- (a) of a clothed person, from head to foot, down the front and rear of the body, around the arms and legs, and inside clothing folds, pockets and footwear, and
  - (b) of any personal possessions, including clothing, that the person may be carrying or wearing;
- “screening search”** means a search by an authorized person of a clothed person and any personal possessions, including clothing, that the person may be carrying or wearing, that is conducted visually or with the use of a screening device, including a drug detection dog, ion spectrometry device, CO<sub>2</sub> detector, walk-through or hand-held metal detector or other screening device that is approved by the person in charge.

- (2) A search conducted in accordance with section 32.1 (1) or (3), 32.2 (1) or (4) (a), or 32.3 (2) (a) or (4) (a) of the Act may be conducted by a frisk search or a screening search.

#### **Strip searches – general**

- 17** (1) In this section, section 18 and the Act, “**strip search**” means a visual inspection by an authorized person of a nude person that includes
- (a) a visual inspection of the following:
    - (i) the person undressing completely;
    - (ii) the open mouth, hands or arms of the person;
    - (iii) the soles of the feet and the insides of the ears of the person;
    - (iv) the person running his or her fingers through his or her hair;
    - (v) the person bending over, and
  - (b) the person otherwise enabling the authorized person to perform the visual inspection.
- (2) If the circumstances allow, an authorized person must, before conducting a strip search,
- (a) inform the person to be strip searched of the reasons for the strip search, and
  - (b) explain how a strip search is conducted.
- (3) A strip search that is conducted by an authorized person must be
- (a) observed by one other authorized person,
  - (b) carried out in as private an area as the circumstances allow, and
  - (c) carried out as quickly as the circumstances allow.
- (4) The authorized person referred to in subsection (3) (a) must be the same gender as the person who is the subject of a strip search unless the person in charge believes on reasonable grounds that the delay that would be necessary in order to comply with this requirement would result in danger to human life or safety.

#### **Strip searches requiring written reports**

- 18** An authorized person conducting a strip search under any of the following provisions must complete a written report of the search and submit the report to the person in charge as soon as practicable after the search:
- (a) section 32.1 (3) of the Act [*search of young person for contraband or evidence relating to an offence*];
  - (b) section 32.2 (4) (a) and (5) of the Act [*search and detention of visitors*];
  - (c) section 32.3 (4) (a) and (5) of the Act [*search and detention of staff members*].

## **PART 8 – ABANDONED PROPERTY**

### **Abandoned clothing and personal effects**

- 19** Unclaimed property abandoned by a youth at a youth custody centre and not claimed by the youth or the youth's parent within 3 months from the date of the youth's release, transfer or escape from a youth custody centre is forfeited to the government.