

PRACTICE DIRECTION NO. 1 OF 2010

THE YOUTH JUSTICE LAW (2001 REVISION)

**GUIDELINES FOR REVIEW OF SENTENCES REQUIRING THAT
A YOUNG OFFENDER BE DETAINED AT THE COURT'S PLEASURE**

In *Hydes v The Queen* [2007 CILR 152] and in *Phillip Glennon Ebanks v The Queen* CICA No. 8 /08 (13/2007), the Court of Appeal of the Cayman Islands recommended that the Chief Justice issues guidelines for the procedure for the review of sentences requiring that a young offender (that is: someone less than 17 years old) be detained “during the Court’s pleasure”; which is understood to mean “at the discretion of the Court”.

As the Court of Appeal also noted in *Hydes v The Queen* (at paragraph 19); it is clear that the Youth Justice Law intends to treat young offenders who commit serious crimes differently from adult offenders who commit similar crimes. Hence the requirement that young offenders, who are found guilty for any offence for which a person who has attained the age of seventeen would be liable to imprisonment for life and in respect of whom the Court considers that a custodial sentence would be appropriate, are sentenced to be detained during the Court’s pleasure.

A sentence that a young offender shall be detained at the Court’s pleasure implies that the Court will from time to time in the exercise of its discretion review the sentence.

It is for the purposes of the periodic review of such sentences by the Court, that these guidelines are now issued:

1. At the time of sentencing, the Court will stipulate the first date for review of the sentence.
2. On each occasion, the Court will set the period after which the offender shall be brought before it for periodic review of his sentence.
3. Upon the occasion of each review, the Court will enquire into the question of the suitability of the offender for release into the community – whether he is truly ready to live a law abiding life in the community. While affording the offender the earliest and fullest opportunity for release will be a primary concern and objective; of paramount concern will be to ensure that the offender will not continue to present a substantial risk to the public.
4. The following list (which was drawn up by the Grand Court in **R v P.G. Ebanks** 2007 CILR Note 18 and subsequently noted with approval by the Court of Appeal), while not intended to be exhaustive, identifies many of the questions upon which evidence will be required by the Court for the conduct of its enquiry:
 - (i) The nature and circumstances of the offence;
 - (ii) Any comments made by the sentencing judge in relation to the need to protect the public. [To this will be added any recommendation made by the sentencing judge in relation to a

minimum period of sentence to be served before such an application can be entertained];

- (iii) The background of the offender, including the nature and circumstances of any previous offending;
- (iv) Whether the offender has made positive and successful efforts to address the attitudes and behavioural problems which contributed to the commission of the offence;
- (v) The offender's attitude towards and behaviour with other prisoners and prison staff, including the nature of any offences against prison discipline committed by the offender;
- (vi) The opinion of the Prison Service on the degree of risk to the public which would result from the offender's release;
- (vii) A recent Social Inquiry Report containing the opinion of a Probation Officer on the suitability of the resettlement plan and the dwelling place where the offender proposes to live;
- (viii) A recent psychiatric and/or psychological examination of the offender;
- (ix) Any indication of predicted risk as determined by a validated actuarial risk predictor model or any other structured assessment of the risk to the public which would result from the offender's release;
- (x) whether the offender is likely to comply with any conditions attached to the licence to be at large;

(xi) Any past breaches of the offender of a condition of a licence to be at large.

5. The Clerk of Courts (or his designate) will be responsible for ensuring that the required material is available to the Court for the conduct of its enquiry and for those purposes will liaise with the other responsible agencies, including the Prison Service.

Hon. Anthony Smellie
Chief Justice of
The Cayman Islands

ISSUED THE 30TH DAY OF JULY 2010