

Canada's youth justice system - under review

Canada's youth justice system was radically reformed with the introduction of the Young Offenders Act in 1984. This law replaced the Juvenile Delinquents Act, which had remained virtually unchanged since its inception in 1908. The new youth law was heralded as a major social and legal reform, and was characterized by several fundamental principles:

- youths should take responsibility for their criminal acts, although not necessarily in the same way, or to the same extent, as adults;
- society should be protected from the crimes of young persons and should take steps to prevent youth crime. Yet, young persons have special needs and require supervision and control, as well as guidance and assistance; and
- young persons have the same rights as adults and require additional legal safeguards to protect these rights.

In the 10 years since the Act's introduction, however, there has been growing criticism of certain aspects of the law. Concerns have been expressed about whether the Act's minimum age ⁽¹²⁾ is too low, whether its upper limit ⁽¹⁷⁾ is too high, whether custody is imposed too frequently and in circumstances that do not warrant it, and whether the maximum youth court sentence of five years is inadequate for serious violent offences, particularly murder.

In response to this criticism, the Minister of Justice tabled Bill C-37, An Act to Amend the Young Offenders Act and the Criminal Code, in June 1994. This legislative initiative is one part of a full-scale review of Canada's youth justice system, coinciding with the 10th anniversary of the Young Offenders Act.

This article highlights the major proposals for reform contained in the June bill and assesses the general effects they would potentially have on the Act (if passed). Declaration of principle The bill proposes two major changes to the I declaration of principle in the *Young Offenders Act*. First, the declaration must recognize that crime prevention is essential to the long-term protection of society. Therefore, the underlying causes of youth crime must be studied and multidisciplinary approaches to identifying and responding to young persons at risk of criminal behaviour must be developed.

However, the declaration must also recognize the relationship between the protection of society and the rehabilitation of offenders. The proposed amendment clearly states that the protection of society, a primary objective of the criminal law, is best served by rehabilitation (whenever possible) of young offenders. Further, rehabilitation is best achieved by addressing the needs and circumstances relevant to youth criminality.

This change would primarily address the failure of the original declaration to focus on crime prevention. It would also remedy the declaration's relative silence on rehabilitation and the relationship between rehabilitation and protection of the public. Maximum penalties The bill proposes an increase in the maximum youth court penalty for first-degree murder (to 10 years, with a maximum of six years to be

served in custody) and for second-degree murder (seven years, with a maximum of four years in custody).

Such sentences represent a significant increase from the Act's maximum sentence of five years, of which a maximum of three years is usually spent in custody. Of course, young persons transferred to adult court are subject to adult sentences and murder carries a mandatory sentence of life imprisonment. Still, transferred youths are eligible to apply for parole earlier than adults convicted of murder. Transfer to adult court As for transfers to adult court, the bill requires 16- and 17-year-old youths charged with offences of serious personal injury (murder, attempted murder, manslaughter, aggravated sexual assault and aggravated assault) to be tried in adult court unless the **youth** can show that the youth justice system is appropriate for his or her particular situation.

This would be a significant departure from treating all youths eligible to be transferred to adult court (those aged 14 to 17 inclusive at the time of their alleged offence) the same way. The **Crown** must currently demonstrate that the objectives of protection of the public and rehabilitation could not both be satisfied with the sentences available to youth court to successfully transfer a youth case to adult court. Victim impact statements The bill also proposes a change that will ensure that victims can, if they wish, make a victim impact statement to the court before the sentencing of a young offender. This would allow victims to express their grief and state their expectations about the youth's sentence.

This change would, in part, meet the strong demand of victims to be part of the criminal justice process. Even without such changes, it is still possible to include transcripts of a victim interview in a presentence report, but these reports are not mandatory unless a custodial sentence or transfer to adult court is being considered. Information sharing Changes are also proposed to improve the sharing of information within the youth justice system. This would allow information about young offenders to be shared among professionals such as police officers, school officials and welfare agencies.

Changes would also authorize the sharing of information with selected members of the public, through court applications, in situations where individuals may be at serious risk from a youth convicted of a serious personal injury offence.

These changes are important because, until now, the courts have been interpreting the Act as restricting the sharing of information to those working with young offenders, such as police officers and school officials. Community intervention The bill also encourages community-based responses to youth crime, wherever and whenever appropriate, so that youths who commit minor offences can take active responsibility for their actions in a restorative way within the community.

Even without this change, the Act provides a broad range of community-based sentencing alternatives. Still, custody is resorted to for slightly less than one third of convicted young offenders. The custody component of the youth justice system alone costs more than \$350 million per year. Records Finally, the bill alters the records provisions of the *Young Offenders Act*. This will assist in offence investigating by allowing police to keep open the criminal records of young offenders convicted of serious offences for longer periods. However, the records of those involved in one-time, minor offending will be kept open for shorter periods of time. What next?

Parliament is to study the proposed amendments to the *Young Offenders Act* during the fall of 1994. After the bill is considered, a Parliamentary Committee and a youth justice task force (made up of senior officials from the federal, provincial and territorial governments) will undertake a broader review of the full youth justice system.

These reviews will examine other aspects of the Act and Canada's response to youth crime, including:

- developing Canada's youth crime prevention strategies;
- encouraging the most effective responses to youths who do commit crimes - especially repeat and violent offenders;
- involving parents more in keeping their children out of crime;
- restoring public confidence and involving more Canadians in the challenge of guiding adolescents to responsible adulthood;
- stemming the tide of young offender graduates into the adult justice system; and
- discussing a broad range of implementation issues, including the most effective and efficient use of limited resources.

In short, every effort will be made in the months ahead to learn about and implement innovations directed at the improved management of the youth justice system.

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