

Young offenders: A correctional policy perspective

The Young Offenders Act is based on the premise that youths should be held responsible for their illegal actions, but that young people have special needs as they develop and mature. Therefore, the Act creates a youth justice system *separate* from the adult system.

In response to recent intense criticism of the Act, the Minister of Justice has initiated a two-phase youth justice strategy. The first phase was a bill, tabled in June 1994, to amend the Young Offenders Act. The second phase involves both a Parliamentary Committee and a federal-provincial-territorial task force that will review broader youth crime issues.

This article looks at the potentially significant impacts of three key components of the proposed amendments to the Young Offenders Act: presumptive transfers of young offenders to adult court, an increase in the maximum youth court sentences for murder and increased access to young offender criminal records -from a correctional policy perspective.

Presumptive transfers to adult court

A young offender transfer to adult court means just that. The youth is no longer subject to the *Young Offenders Act* and is treated as an adult (although the youth is subject to the Act insofar as the parole eligibility period for a life sentence for murder is different and the judge can direct whether a youth's sentence will be served in a youth facility or in a federal or provincial adult facility).

The proposed amendments to the *Young Offenders Act* would radically alter this portion of the Act. No longer will there be an assumption that youths should remain within the youth justice system. There will instead be a presumption that serious personal injury offences (murder, attempted murder, manslaughter, aggravated sexual assault and aggravated assault) should be dealt with in adult court, unless the **offender** can demonstrate that the youth justice system provides an adequate response to the both the offender and his or her alleged offence.

This change could significantly alter the flow of young offenders into the adult correctional system. After the implementation of the *Young Offenders Act* in 1984, the number of 16- and 17-year-old offenders in adult penitentiaries declined dramatically as these offenders fell under the youth system (see the Boe article in this issue). Further, although there has not been sufficient time since 1992 amendments to the Act⁽²⁾ to study the impact of longer youth court murder sentences and shorter periods of parole ineligibility for youths convicted in the adult system, the reduction in the gap between youth and adult sentences was expected to keep still more young offenders within the youth justice system.

Although it is difficult to determine with any certainty what the impact of presumptive transfers will be, it is inevitable that the proposed changes would result in more young offenders entering the adult system and serving their sentences in adult correctional facilities.

How would this unique offender population be handled?

The establishment of special young offender units or institutions would have a negative effect on the youths, as it would prevent their placement in institutions with the most appropriate security level, programs and access to the offender's home community.

Further, overcrowded institutions and continued budget reductions make special treatment of young offenders within adult facilities unlikely. At the same time, however, it must be ensured that existing assessment tools and programming options meet the needs of this new young offender population.

The legislation is also likely to be applied differently across the country, with provinces applying different standards of proof for demonstrating that a young offender should remain within the youth system. For example, Quebec has publicly disagreed with the presumptive transfer policy and has stated that most youths in that province would remain within the young offender system.

In other jurisdictions, there is likely to be the opposite approach, with more young offenders routinely being transferred to the adult system. It will be particularly important to monitor the application of the transfer provisions to aboriginal, visible minority and female offenders.

Longer youth court sentences for murder

Lengthening the maximum youth court sentences for murder to 10 years for first-degree murder and seven years for second-degree murder may also cause some problems. For example, a youth convicted of murder at age 17 could still be considered a young offender at age 27. Although the *Young Offenders Act* does allow for the transfer of young offenders to adult provincial correctional facilities at age 18, long sentences would then be served in provincial prisons that are geared to managing sentences of two years or less.

This, therefore, might lead to further amendments to the Act to allow for the transfer of these young offenders to federal correctional facilities. Considering ongoing provincial deficit-reduction initiatives and the capping of federal payments to the provinces, there is likely to be considerable support for such a move. This would, obviously, create significant resource and management implications for federal corrections.

Transferring offenders between youth and adult facilities, and between provincial and federal facilities could significantly hurt program continuity. It could also lead to difficulties in motivating young offenders to participate in programming. Alternatively, young offenders may seek transfers to adult facilities at the earliest possible time if they feel that their access to particular programs will be enhanced.

In addition, youth court sentences are managed differently from adult sentences. There is no parole in the youth justice system. The youth court simply reviews an offender's case on a regular basis and, if released, the offender is placed on probation for the balance of his or her sentence.

In contrast, an adult offender would be eligible for conditional release programs of various types. This disparity between the two systems may well mean that some young offenders will choose to remain in the adult system, perceiving it to be less punitive.

However, from the perspective of correctional policy, parole is preferential to probation. Parole supervision is generally more intensive, in large part owing to lower parole case loads. Intervention is also possible if the offender's risk level increases - there is always the threat of being returned to custody. An offender on probation can be returned to custody only if charged with breach of probation under the *Criminal Code* and long delays also tend to occur before these cases reach court.

This segment of the proposed amendments also increases the period of parole ineligibility for young offenders who receive a life sentence in adult court. This too will affect already-crowded adult correctional facilities. The move from judicially set (between five and 10 years) periods of parole ineligibility to a mandatory seven-year period for second-degree murder and a 10-year period for first-degree murder will generally mean longer sentences.

Increased access to young offender records

The amendments also propose to increase the length of time that young offender records would be available to authorities. If a young offender is convicted of a subsequent offence, access to his or her record would be extended. The offender's record would, therefore, be "erased" after the specified time period only if the offender has not been subsequently reconvicted as either a youth or an adult.

The intention is to ensure that chronic offenders do not "lose" their criminal record at age 18. Young offenders who do not commit additional crimes will, however, still have their records closed.

This access will facilitate police investigation of crimes and correctional staff understanding of an offender's risk and needs. Increased access to young offender records will also ensure that repeat and violent offenders are identified and not treated as first-time offenders within the adult system, significantly enhancing protection of the public.

Moving forward...

The current public environment is such that toughening of the *Young Offenders Act* is almost inevitable as the public seeks a visible response to crime and violence in society. Nevertheless, a balance is necessary between treating a large number of young offenders as adults and seeking solutions to youth crime in the broader social context.

Public policy makers must be sensitive to the consequences of blurring the lines between a youth system that is capable of responding to all youth crime and a system that systematically treats certain youths as adults.

(1) Correctional Service of Canada, 4E-340 Laurier Avenue West, Ottawa, Ontario K1A 0P9. Please note that this article was written in September 1994, before the bill was considered in Parliament.

(2) Before the 1992 amendments, the longest youth court sentence for first-degree murder was three years, while adults received a mandatory life sentence (with no eligibility for parole for 25 years) for the same offence.