

# **YOUTH CRIMINAL JUSTICE ACT REVIEW**

**AUGUST 15, 2008**



**CANADIAN RESOURCE CENTRE FOR VICTIMS OF CRIME**

100 – 141 Catherine Street

Ottawa, ON

K2P 1C3

[www.crcvc.ca](http://www.crcvc.ca)

## **INTRODUCTION**

The Canadian Resource Centre for Victims of Crime (CRCVC) is a national, non-profit agency working to ensure the equitable treatment of crime victims in Canada. Funded by the Canadian Police Association since 1993, the CRCVC is one of the longest standing non-government agencies providing support, assistance and advocacy to victims and survivors of violent crime. The agency did not arise out of a single issue or event and strives to voice the concerns of many types of Canadian survivors of violence.

Our clientele includes many families impacted by youths who commit violent crimes both against other youths and against adults. On a daily basis, we hear many concerns with respect to the *Youth Criminal Justice Act* (YCJA) and the manner in which it responds to both youths who commit crime and the victims of such offenders.

The CRCVC believes that it is important for Canada to maintain a separate youth justice system because there is a relationship between successful rehabilitation and age, in that the chance of rehabilitating an offender is much greater when that person is a young person. We also support the recognition by the YCJA that young people are not adults, and therefore do not have the same amount of experience and knowledge to draw upon in their decision-making. That being said, the protection of society must be the ultimate goal of the youth criminal justice system. The government must also recognize that there is a strong need among the public to hold youths responsible for their actions, while also, whenever possible, treating them so that they can become law-abiding members of society.

## **PREVENTING CRIME BY YOUTHS**

Canadian society needs to do a better job tackling the root causes of crime. We believe that many youth, with the proper social supports, can be steered away from making poor choices that may lead to a criminal lifestyle.

We agree it is necessary for municipal sectors such as schools, housing, municipal planning, and police to identify the roots of crime problems, develop strategies to tackle those

problems, and implement and evaluate them.<sup>1</sup> Focusing particularly on reducing the number of young offenders, the CRCVC strongly calls for providing enriched, subsidized child care for all citizens; affordable housing; programs regarding anti-bullying, anti-violence and respect for gender/diversity be taught to young children in school; programs to ensure literacy; protecting children from family violence; after school programs; job training/shadowing for adolescents; anti-substance abuse programs in schools; access to mental health and addictions programs for those youths in need; etc...

Working with families impacted by homicide and other serious, violent crimes on a daily basis, we see the clear need to reduce violent victimization in Canada. The CRCVC knows all too well the devastating impact of violence on individuals and families, and see everyday in our work with survivors that it is the victims who too often suffer endlessly in many ways, including emotional, physical and psychological harm, pain and suffering, and lost productivity.

#### **PROTECTION OF PUBLIC SAFETY**

Although we ask that all levels of government place an emphasis on tackling the root causes of crime, we believe first and foremost that public safety must be the priority. In balancing the interests of the young person with the rights of the public to be protected from danger, the *Youth Criminal Justice Act* must ensure public safety first. We have advocated for a strong emphasis on public safety since the YCJA was introduced as Bill C-68 in 1999. When the YCJA was passed, we were disappointed to see that the final text failed to give the weight needed to public protection.

We agree with Commissioner Nunn<sup>2</sup> who recommended, in order to help solve the problem posed by the small group of dangerous and repeat offenders, that both short- and long-term

---

<sup>1</sup> "Making Communities Safer: Canadian Strategies and Practices," The Institute for the Prevention of Crime, Issue 2, July 2008. p.6. Accessed at: [http://www.socialsciences.uottawa.ca/ipc/eng/documents/IPC\\_MR2-Eng.pdf](http://www.socialsciences.uottawa.ca/ipc/eng/documents/IPC_MR2-Eng.pdf)

<sup>2</sup> On June 29, 2005, the government on Nova Scotia appointed Justice Merlin Nunn to head a public inquiry into the circumstances surrounding the release of a young offender who was convicted under the *Youth Criminal Justice Act* as the result of a fatal car crash. The report and supporting documents can be accessed at [http://www.gov.ns.ca/just/nunn\\_commission.asp](http://www.gov.ns.ca/just/nunn_commission.asp)

protection of the public be included among the principles set out in section 3 of the YCJA. At the present time, only long-term protection is included.<sup>3</sup>

We believe that the current wording of the legislation is fundamentally flawed in that the consideration of public safety is not permitted in decision-making surrounding the release of young offenders on bail. In that sense, we support the proposed amendment the government brought forward in November 2007 that would “change the current pre-trial detention provision in the YCJA to make it easier to detain youth in custody prior to their trials if the youth pose a risk to public safety.”

### **RECENT TRENDS**

In the five years since the YCJA was proclaimed we have seen reductions in the number of youths sentenced to custody, both in secure and open custody, and reductions in the amount of time that youth are spending in custody. These declines are generally seen with youths under the age of sixteen. Custody admissions for youths aged sixteen and seventeen have increased, and this group now makes up approximately one-third of those in custody.<sup>4</sup>

These changes are in keeping with one of the primary goals of the YCJA, to reduce the number of youth in custody. As a society though, we must ensure that the youths who are diverted from custody are appropriately diverted, and that violent offenders are receiving custodial sentences. The violent crime rate for offences committed by youth has not declined over the life of the YCJA; it has in fact been slowly increasing.<sup>5</sup> There are also several areas of the legislation which we feel allows for too much latitude in the treatment of violent offenders.

---

<sup>3</sup> “Bill C-25, An Act to Amend the Youth Criminal Justice Act,” Library of Parliament, Accessed at: [http://www.parl.gc.ca/common/bills\\_ls.asp?lang=E&ls=c25&source=library\\_prb&Parl=39&Ses=2](http://www.parl.gc.ca/common/bills_ls.asp?lang=E&ls=c25&source=library_prb&Parl=39&Ses=2)

<sup>4</sup> Canadian Centre for Justice Statistics, <http://www.statcan.ca/english/freepub/85-002-XIE/85-002-XIE2008008.pdf>

<sup>5</sup> Canadian Centre For Justice Statistics, <http://www.statcan.ca/english/freepub/85-002-XIE/85-002-XIE2008007.pdf>

## **DETERRENCE AND DENUNCIATION**

We believe deterrence and denunciation are both important objectives of sentencing that are missing from the YCJA. While there is evidence that youths do not consider the sentence they may get for committing a crime; the criminal justice system nonetheless must hold them specifically accountable for the harm they have caused, especially when it is serious harm.

There also needs to be a component of the youth justice system that allows judges to publicly denounce very serious crimes. This is not to say that young people should not receive treatment and rehabilitation. We believe that denunciation is important to Canadian society and especially to the victims and survivors as it is an expression of the abhorrence of the actions of an individual and the harm that has been caused. While we know that it can be healing for the victims to hear a judge publicly acknowledge the harm they have suffered; we believe it may also be beneficial for a young person in understanding the true impact and consequence of their actions to also hear the violent act denounced by a judge.

## **ACCOUNTABILITY AND RESPONSIBILITY**

If, as a society, we agree that youths must be treated differently than adult offenders, we should do so. We must go beyond just giving them different sentences and hiding their identities from the communities. The focus should be teaching youths the lessons that are contained in the preamble and declaration of principles: accountability, responsibility, repairing harm to the victims, etc... Young people must be encouraged to take responsibility for their actions, not to avoid them. This is the mistake we so often make in the adult justice system – we have become so concerned with the concept of rights that we have forgotten responsibility.

This is not to say that we should not provide young people protections under the law, but youth courts should apply those rights liberally, in the best interests of everyone involved. Allowing a young person to “get off” with the minimal sentence is not always in the best interests of the young person, let alone the community.

We believe the YCJA works for most young people, the majority of whom do not commit serious crimes and never get in trouble again. We must continue to find ways to divert these young people out of the criminal justice system, while at the same time we must focus on those young people who are a serious threat to public safety, and those who do not get the message that criminal behaviour is not tolerable. Like the adult system, we know that there is a small percentage of young people responsible for a large percentage of crime.

#### **PREAMBLE**

The Preamble of the *Youth Criminal Justice Act* completely fails to mention the protection of public safety, which should be the paramount consideration of any criminal justice legislation. The CRCVC believes the government must amend the Preamble of the YCJA to include both short- and long-term protection of the public.

**Recommendation: The Preamble should also state more clearly that public protection is paramount.**

#### **DECLARATION OF PRINCIPLE**

While it is very important to protect the rights of young people, we feel the YCJA is an overly rights-oriented piece of legislation, favouring the offender. For example, section 3(1)(b)(iii) talks about having a system separate from the adult system that emphasizes “enhanced procedural protection to ensure that young persons are treated fairly and that their rights...are protected.” Subsection (d)(i) reinforces this by saying that “young people have special guarantees of their rights and freedoms.”

This strong focus on the young person’s rights obscures the other important messages set out in the Principles, namely meaningful consequences, accountability, timely intervention that reinforces the link between the offending behaviour and its consequences, repairing harm to the victims, etc... As a society, we must be careful not to send contradictory messages to young people in conflict with the law.

**Recommendation: Section 3(1)(b)(iii) be amended to read “procedural protection of the rights of young people to be applied consistently with the need to hold young people accountable and ensure they accept responsibility for their actions.”**

## **RESPECTING THE INTERESTS OF CRIME VICTIMS**

In the Declaration of Principle, reference is made in section 3(c)(ii) to repairing the harm done to the victim; in s.3(d)(ii) with regards to victims being treated with courtesy and compassion; and s.3(d)(iii) with regards to victims being provided information. While these provisions are important and appreciated, we submit that the language used in the legislation is not strong enough and that the courts will not recognize the rights of victims as long as governments continue to use words like “should” instead of “shall”.

**Recommendation: Amend sections 3.(1)(d)(ii) and (iii) to read victims “shall be treated,” and “victims shall be provided information about the proceedings and will be given an opportunity to participate and be heard if they wish.”**

In our involvement with a number of families impacted by the violent actions of young offenders, we have seen that the YCJA (and those officers of the law and the court who must comply with it) often does not treat victims with the dignity and respect they deserve. Consider the experiences of the following two Canadian families:

### **The Hunt family, Edmonton, Alberta**

Gary and Julie Hunt lost their eldest son Josh on October 14, 2006. He was only 16 years old when he was stabbed in the heart by a 17-year old young offender with 14 previous convictions under the YCJA for crimes such as break and enter, armed robbery and assault with a weapon. “Our lives have forever changed. We have been given a life sentence. There isn’t a minute that goes by that we don’t think of our precious son. We miss him more than words can say and describe. Josh was a loving, caring, giving person. He was full of life and enjoyed life and because of this he had more friends than we ever knew. At this funeral, more than 750 people attended,” said Josh’s parents.

The Hunts feel that their son’s killer, who was seventeen years and nine months old at the time of the murder, should not be treated as a youth automatically. They do not feel he was “too young to know that putting a big knife through someone’s heart would hurt them or kill them.”

The Hunt family feels strongly that anyone who is accused of committing murder (first or second-degree) should not be released under section 31 (Placement of young person in care of responsible person) of the YCJA, no matter their age. Such persons are an ongoing threat to public safety.

To better enhance public safety, the Hunt family feels the identity of the accused should not be protected.

Young offenders who breach conditions (Josh's killer has breached conditions placed on him 10 times but is still free waiting for trial) should be held in secure detention while awaiting trial.

The victims should be protected from intimidation and retaliation by the young offender who is released on conditions prior to the trial and from his or her family during any youth court proceedings. The Hunt family has suffered numerous unpleasant encounters with the accused and his family, including threats, taunting and physical aggressiveness toward them.

The victim's family must not be prevented from participating in the criminal justice process. Gary and Julie Hunt were "not permitted to attend the preliminary hearing because they may be called as a witness even though they were not even present at the crime scene." Their two other children were permitted to enter the courtroom, but were told they could not discuss anything they saw or heard with their parents. Gary and Julie were devastated that they could not support their two surviving children through their traumatic experience in the courtroom.

The Hunt family has not been treated with the respect they deserve in their dealings with the Crown attorney's office. While they should be provided with information about the scheduling, progress and final outcome of the proceedings; the Crown will not speak with them directly, "if they tell us at all, it has to be in writing," they said.

#### **The Penner family, Port Coquitlam, British Columbia**

Gord Penner's son, Jesse, was just 21 years old when he was murdered by a young offender with ten previous convictions. In February of 2006, Ryan Ross Crossley was out on bail awaiting sentencing for his fourth assault conviction, this time assault with a weapon, when he murdered Jesse.

"Jesse was just dropping off some of his friends at a house party, when he noticed his younger brother's friend being assaulted and beaten by a number of youths. Jesse and a couple of his friends ran over to try and help this young man when suddenly Jesse was bear sprayed by Crossley. Ryan Crossley's bail conditions on this night prohibited him from carrying a weapon, but he would end up stabbing my son Jesse to death in the beating that ensued," said Gord.

The Penners cannot understand how the system allowed the offender to be released to a dysfunctional family setting with a history of violence and a proven track record of not being able to control their children, or care for them. Pre-sentencing reports on family history and offender history must be received and read before the release of violent young offenders, especially if the court is considering a release under s.31. How can society expect the young person to succeed when there is no appropriate support system in place to guide a violent youth in a better direction?

The Penners feel strongly that both judges and prosecutors have to be somewhat accountable in order for the youth criminal justice system to learn from serious mistakes that may occur, like the wrongful death of their son Jesse, as well as to ensure better transparency of the system.



The Penner family feels that if a young offender has a history or propensity for violence and will not recognize the magnitude of his/her crime, or does not make any attempt to rehabilitate themselves with the programs offered they should stay in custody until they do so. The young offenders' incentive should be their freedom, and they must realize their criminal behavior is not acceptable in society.

The reports of police officers to the youth court should have more weight when the recommendation is that the offender be detained in prison until sentencing.

The Penner family believes there should be a dangerous young offender designation enacted. Similarly, they feel the names of violent young offenders should be released as a reasonable and appropriate consequence of their actions.

#### Extra-judicial measures

Section 12 (Victim's right to information) provides victims the right to information about the identity of the young person and how the offence has been dealt with if the young person has been dealt with via an extra-judicial sanction. We want to ensure that victims receive information about the proceedings/sentences/sentence review hearings if the youth was not dealt with via an extra-judicial sentence.

**Recommendation: Section 12 be amended to include court proceedings, plea arrangements, sentencing hearings, review of sentencing hearings, the rights under this act and the applicable rights under the *Criminal Code*.**

#### Access to records

Section 119 provides victims the right to access youth records. We would recommend that victims also be given access to the pre-sentence report since they may be interviewed under s. 40(2)(b).

**Recommendation: Amend s.40(5) to give victims the right to access to the pre-sentence report.**

#### Youth justice committees

Section 18(2)(a)(ii) makes reference to the role of the Youth Justice Committee in supporting the victim of the offence "by soliciting his or her concerns and facilitating the reconciliation of the victim and the young person." We have concerns with the wording of this section as it respects reconciliation. We agree that for some victims, victim-

reconciliation programs are important. Others want no part of such an initiative, no matter how well intended the committee might be and this must be respected.

**Recommendation: Subsection 18(2)(a)(ii) be amended to read “inquiring as to the victim’s interest in a reconciliation with the young person.”**

#### Victim impact statements

We recommend that victim impact statements be included to assist judges in making decisions about transfers to adult court and when considering a young person’s sentence.

**Recommendation: Subsection 42(1) (considerations as to youth sentence) and s.71 (hearing - adult sentences) be amended to explicitly include oral/written victim impact statements.**

#### Victim fine surcharge

Section 53(2) deals with victim fine surcharge and we believe they should be automatic for young people. We think that such an amendment is consistent with meaningful consequences and values like responsibility, accountability and repairing the harm done to victims.

**Recommendation: Section 53(2) be amended to make the imposition of victim fine surcharges automatic.**

#### Definition of victim

We are concerned that there is no definition of “victim” in the act. To determine who a victim is for the purposes of a victim impact statement, a judge can simply refer to the *Criminal Code*. But what about for other provisions, such as s.119 that gives victims the right to youth records? Are judges supposed to apply the same broad definition found in the *Criminal Code*? This is important because we know of several cases where parents were denied information, or experienced extreme difficulty in obtaining information because they were not the “victim”. This generally occurs in cases of homicide, including one case where the parents of a boy whose son was murdered by a young offender, and they asked for information from the Crown. The Crown’s position was that there was no definition of victim in the legislation and therefore the victim was their dead son.

**Recommendation: Add a definition of victim for provisions under the YCJA for which the definition of victim under the *Criminal Code* may be too broad, or the absence of a definition interpreted too narrowly.**

#### **ALTERNATIVE/EXTRA-JUDICIAL MEASURES**

We support the increased focus on the use of extra-judicial measures in the YCJA. Diverting first time, non-violent offenders away from the formal youth justice system serves all of society. Such programs are in need of sustained resources to ensure they work to their potential.

Section 4(c) says that extra-judicial measures are **presumed to be adequate** for those who have not been found guilty of an offence before and whose offence is non-violent. Section 4(d) goes on to say that such measures **should be used** even if a youth has benefited from extra-judicial measures before or has been previously found guilty of an offence. Section 6(1) says police shall consider alternatives. These sections make clear the federal government's desire to focus more on the use of alternatives to the formal justice system. While we support the use of such mechanisms for some offenders, we think the wording of the legislation may be too strong.

**Recommendation: Section 4(c) be amended to read that extra-judicial measures *should be* used for non-violent, first time offenders who have not benefited from such measures before. Section 4(d) be amended to read that extra-judicial measures *may be* used for non-violent offenders even if the offender has benefited from extra-judicial measures before or has been convicted of an offence previously.**

#### Non-violent offences

Drafts of the YCJA proposed that the definition of "non-violent offence" was, "an offence that does not cause or create a substantial risk of causing bodily harm." While this definition was not included in the final legislation, we believe that it is applied in relation to the YCJA. Unfortunately, it makes no mention of sexually-based offences. We must ensure that sexually-based offences are not eligible for alternative/extra-judicial measures. Sexual offences, by their nature, are violent.

**Recommendation: Include a definition of a non-violent offence, which excludes sexual offences.**

## **ADMISSABILITY OF STATEMENTS**

We have long recommended that the rules governing the admissibility of statements given to the police by young people be relaxed. We believe that a system in which young people admitted their crime but saw those admissions tossed out of court did not teach young people the right lessons.

Section 10(4) (Admissions not admissible in evidence) says that statements made to police officers in the context of extra-judicial measures are inadmissible in evidence. We would recommend that the rules surrounding these statements be relaxed. If a statement about guilt is made in light of a discussion about an extra-judicial measure (which require a young person to accept guilt) and the young person then does not participate in, complete or is later found ineligible for such measures, statements taken in good faith should be admissible.

**Recommendation: Amend s.10(4) to permit statements that were taken in good faith to be admissible where the youth decides not to take part or complete the program.**

## **PARENTAL RESPONSIBILITY**

We previously supported amendments to the *Young Offender's Act* to focus more on parental accountability. Sometimes before we teach young people about responsibility, we must teach their parents about it. Having said that, we must also acknowledge that there are many Canadian parents who are trying their best to keep their children on the right path, but either lack the financial resources, the time or the knowledge to be successful. We believe it is important to provide the necessary social assistance and support to families at risk, as well as hold some parents responsible for the actions of their children, especially those who have undertaken to ensure their child abides by a number of conditions of release.

We must acknowledge the important work of late Member of Parliament, Chuck Cadman, whose Private Member's Bill would have held parents who undertake to be responsible for their children when released, but do not do so, accountable. The CRCVC still believes the law should hold such parents accountable if they do not take such an undertaking seriously.

There must also be a mechanism in place that allows for the courts to monitor the conduct of both the parents/guardians and the youth in cases where a youth is released into their care as an alternative to custody.

**Recommendation: Amend s.31 to allow for the removal of a parent/guardian as a “responsible person” if the courts deem that they are unable to ensure that the youth abide by conditions imposed upon them by the court.**

**Recommendation: Amend provisions regarding parental responsibility to allow a youth court judge the power to impose mandatory family counselling.**

Section 25(10) (Recovery of costs of counsel) allows authorities to retrieve court costs from parents. Once again, we support this mechanism for those parents who are financially capable of paying but it should not be used against those who cannot.

#### **PRE-TRIAL DETENTION**

The CRCVC concurs with Commissioner Nunn’s recommendations regarding the wording of the provisions that govern pre-trial detention of youth.<sup>6</sup> The YCJA, in s.29, currently refers to the provisions in s.39 when considering pre-trial detention. This creates a level of complexity to the provisions, and implies that the goals and purposes of pre-trial detention are the same as for sentencing. This is not always the case.

**Recommendation: The provisions in s.29 clarify the conditions for pre-trial detention without confusing reference to provisions in s.39, which are intended for sentencing.**

We agree that pre-trial detention should be reserved for the most serious offences, and those offenders who commit a multitude of offences. There is too much latitude in the wording of s.39, which governs custodial sentences. The provisions in s.39 (1)(a) make reference to a “violent offence” and, as discussed above, we feel that the definition of a violent offence is too narrow.

---

<sup>6</sup> Nunn Commission of Inquiry, [http://www.gov.ns.ca/just/nunn\\_commission/docs/Report\\_Nunn\\_Final.pdf](http://www.gov.ns.ca/just/nunn_commission/docs/Report_Nunn_Final.pdf)

We further feel that s.39 (1)(c), in referring to a pattern of findings of guilt, fails to capture youth who have committed multiple offences, but have not yet had convictions entered for those offences. There must be provisions in place to allow these youth to be considered for pre-trial detention. In order to allow for the detention of young persons accused of a series of crimes in rapid succession, Commissioner Nunn recommended replacing the obligation to demonstrate a “pattern of findings of guilt” with the obligation to demonstrate “a pattern of offences.”

**Recommendation: Amend the provisions contained in s.39 to allow for an amended definition of “violent offence”, and those who have not yet been convicted of multiple offences that would qualify them for pre-trial detention.**

## **SENTENCING**

We support the principle that any period of closed custody will be followed by a period of supervision in the community. It makes sense to duplicate the process in the adult system to help young people re-adjust to the community and give them the support they may likely need. We also support section 42(4) (Youth justice court statement) in which judges will be required to state that a youth will serve X amount of time in closed custody, X amount of time in open custody and X amount of time being supervised in the community. This is one of the problems with the adult system – what people hear in the courtroom as a sentence is not what the offender may serve in custody.

We believe section 39 (committal to custody) places an onerous task on judges to justify custodial sentences.

**Recommendation: Make affiliation in organized crime an aggravating factor to be considered in sentencing.**

**Recommendation: Amend s.42(2)(q) to allow a judge to set the periods of open and closed custody for youths convicted of first- and second-degree murder and who are sentenced in youth court.**

**Recommendation: Amend section 55(2) to add a condition of no contact (i.e. with victims) as an option.**

## **ADULT COURT AND TRANSFERS PROCESS**

We believe sexual assault with a weapon and aggravated assault should be included as presumptive offences.

**Recommendation: Add sexual assault with a weapon and aggravated assault to the list of presumptive offences.**

### **R. v. D.B.**

The CRCVC is disappointed with the recent Supreme Court of Canada decision regarding presumptive offences. We felt the reverse onus clause was fair, and that it was also fair that the burden of proof for establishing that a youth sentence (as opposed to an adult sentence) fell to the accused given the serious harm they caused.

Judge Rothstein wrote for the minority: "In enacting the presumptive offence scheme, it was entirely appropriate for Parliament to consider the competing interests, on the one hand, of young persons to have their reduced moral blameworthiness taken into account and, on the other, of society to be protected from violent young offenders and to have confidence that the youth justice system ensures the accountability of violent young offenders. This balancing was a legitimate exercise of Parliament's authority to determine how best to penalize particular criminal activity, a power this Court has recognized as broad and discretionary. The YCJA presumption of adult sentences and publication for serious violent offences is in accordance with principles of fundamental justice because it in no way precludes a youth sentence or a publication ban where considered appropriate by the youth criminal justice court."

We believe that Parliament should act to reverse this decision by the high court given that Statistics Canada is reporting that between 1997 and 2006, the overall violent crime rate among youth has risen 12% and has climbed 30% since 1991. By 2006, youth accused of violent offences accounted for nearly a quarter of youth crime. Much of this increase in the rate of violent crime has been youth involvement in assault. Also in 2006, both the number and rate of youth aged 12 to 17 years accused of homicide reached their highest point since data was first collected in 1961.<sup>7</sup>

---

<sup>7</sup> Christina Spencer, "Fewer youths doing time," Ottawa Sun, July 22, 2008.

**Recommendation: Address the limitations resulting from the decision in R. v. D.B. to better balance the appropriate treatment of young offenders with the interest of public safety. Amend the presumptive offences to include a separate section of young offenders who are repeat offenders, which would include five past criminal convictions and/or a pattern of offences.**

#### **PUBLICATION OF NAMES/YOUTH RECORDS**

We agree with the provisions that allow for the publication of a youth's name if convicted of adult sentences and youth sentences for presumptive offences. There has been an assumption that by not identifying youths, we are somehow protecting them. We have always questioned the wisdom in doing so for serious, repeat young offenders. Part of accountability and responsibility is facing the community. Also, what protection are we offering innocent citizens who may not know of a young person's record for violence or sexual assault? As a society, we must remain cognizant about why we are protecting a young person and if such protection is in keeping with the broader protection of all of society.

With regards to the retention of youth records, we want to ensure that records will be made available to parole boards if a youth continues on a life of crime. For example, the recidivism rate for sex offenders whose first offence is committed while a teenager is quite high.

We also support the publication of a youth record if the youth gets an adult record. For example, if a 22-year-old man is convicted of sexual assault, it should be made public that he committed a similar offence when he was 15. Once he is an adult and a recidivist, there is no reason to protect a youth record.

**Recommendation: Ensure that youth records follow an offender to the adult system and that they be available to parole boards. Youth records should be made public if an offender commits offences when an adult.**

#### **PRIVACY ISSUES**

The CRCVC remains concerned about the many victims of crime in Canada who lose their rights to privacy as a result of the crime committed against them, or worse, in favor of the rights of the person who harmed them.



This would include, but is not limited to, families affected in young offender cases where the victim's identity is withheld in order to protect the accused's privacy. The *Youth Criminal Justice Act* states, under section 111. (1) that that the identity of a victim or witness may not be published.

Identity of victim or witness not to be published

**111. (1)** Subject to this section, no person shall publish the name of a child or young person, or any other information related to a child or a young person, if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person.

We work directly with families in young offender cases who want nothing more than the identity of their child back. In cases where a young victim does not survive, their identity cannot be published and therefore the victim's story cannot be told. A mother recently told us that she yearns for nothing more than to be able to talk publicly about her son, the amazing boy he was and was going to be. She has already lost his life and until the accused's trial is complete, she suffers incredibly as his identity is lost as well. While the YCJA provides an exception to the rule in cases where the young person is deceased, parents are generally told not to talk publicly about their murdered child while the matter is before the youth court.

**Recommendation: S.111 (1) be removed from the YCJA, given that it offers no further protections to accused youth than what is already contained in the Act.**

**CONCLUSION**

We support, in general, the provisions of the *Youth Criminal Justice Act*. Unfortunately, the YCJA can only be reactive; it can only deal with young people who have already broken the law.

As a society, we must invest more strongly in social development programs to ensure that all children benefit. Schools, housing, social services, municipal planning, and other municipal services all have key roles to play in addressing local crime and community safety problems.<sup>8</sup> We must also remember that not all communities are able to provide social services equally, so the YCJA must address some of those gaps legislatively, and must recognize that there are offenders who require more serious interventions.

Generally, the CRCVC supports diversion programs to keep youths out of custody for non-violent offences. However, when we are dealing with serious, violent crime, youths must be held accountable for their actions, and for some who are very dangerous/out of control, the use of incarceration is necessary to protect the public. Justice must be seen to be done even when we are dealing with young offenders. When the justice system does not respond in a serious manner to serious harm, no matter the age of the perpetrator, the public loses confidence in the justice system.

The recommendations contained above address the gaps that we have identified, in our work with the families of those harmed by youth, and through our research.

We would also like to express our sincere appreciation to the Hunt and Penner families<sup>9</sup> for sharing their personal pain in the hopes of reducing the harm experienced by innocent victims in the future. These families also work tirelessly to raise awareness of the need for the Canadian justice system to respond more seriously to violent crime committed by young offenders and improve the treatment afforded to the victims of these youth.

---

<sup>8</sup> Supra note 1 at 10.

<sup>9</sup> As well as thanking all of the survivors who have not been named for their important contributions.

## **Consolidated Recommendations**

**Recommendation 1:** The Preamble should also state more clearly that public protection is paramount.

**Recommendation 2:** Section 3(1)(b)(iii) be amended to read “procedural protection of the rights of young people to be applied consistently with the need to hold young people accountable and ensure they accept responsibility for their actions.”

**Recommendation 3:** Amend sections 3.(1)(d)(ii) and (iii) to read victims “shall be treated,” and “victims shall be provided information about the proceedings and will be given an opportunity to participate and be heard if they wish.”

**Recommendation 4:** Section 12 be amended to include court proceedings, plea arrangements, sentencing hearings, review of sentencing hearings, the rights under this act and the applicable rights under the *Criminal Code*.

**Recommendation 5:** Amend s.40(5) to give victims the right to access to the pre-sentence report.

**Recommendation 6:** Subsection 18(2)(a)(ii) be amended to read “inquiring as to the victim’s interest in a reconciliation with the young person.”

**Recommendation 7:** Subsection 42(1) (Considerations as to youth sentence) and s.71 (hearing – adult sentences) be amended to explicitly include oral/written victim impact statements.

**Recommendation 8:** Subsection 53(2) be amended to make the imposition of victim fine surcharges automatic.

**Recommendation 9:** Add a definition of victim for provisions under the *YCJA* for which the definition of victim under the *Criminal Code* may be too broad, or the absence of a definition interpreted too narrowly.

**Recommendation 10:** Section 4(c) be amended to read that extra-judicial measures *should be* used for non-violent, first time offenders who have not benefited from such measures before. Section 4(d) be amended to read that extra-judicial measures *may be* used for non-violent offenders even if the offender has benefited from extra-judicial measures before or has been convicted of an offence previously.

**Recommendation 11:** Include a definition of non-violent offence, which excludes sexual offences.

**Recommendation 12:** Amend s.10(4) to permit statements that were taken in good faith to be admissible where the youth decides not to take part or complete the program.

**Recommendation 13:** Amend s.31 to allow for the removal of a parent/guardian as a “responsible person” if the courts deem that they are unable to ensure that the youth abide by conditions imposed upon them by the court.

**Recommendation 14:** Amend provisions regarding parental responsibility to allow a youth court judge the power to impose mandatory family counselling.

**Recommendation 15:** The provisions in s.29 clarify the conditions for pre-trial detention without confusing reference to provisions in s.39, which are intended for sentencing.

**Recommendation 16:** Amend the provisions contained in s.39 to allow for an amended definition of “violent offence”, and those who have not yet been convicted of multiple offences that would qualify them for pre-trial detention.

**Recommendation 17:** Make affiliation in organized crime an aggravating factor to be considered in sentencing.

**Recommendation 18:** Amend s.42(2)(q) to allow a judge to set the periods of open and closed custody for youths convicted of first- and second-degree murder and who are sentenced in youth court.

**Recommendation 19:** Amend section 55(2) to add a condition of no contact (i.e. with victims) as an option.

**Recommendation 20:** Add sexual assault with a weapon and aggravated assault to the list of presumptive offences.

**Recommendation 21:** Address the limitations resulting from the decision in R. v. D.B. to better balance the appropriate treatment of young offenders with the interest of public safety. Amend the presumptive offences to include a separate section of young offenders who are repeat offenders, which would include five past criminal convictions and/or a pattern of offences.

**Recommendation 22:** Ensure that youth records follow an offender to the adult system and that they be available to parole boards. Youth records should be made public if an offender commits offences when an adult.

**Recommendation 23:** S.111 (1) be removed from the YCJA, given that it offers no further protections to accused youth than what is already contained in the Act.