

Overview

Introduction

On May 29, 2001, the House of Commons passed Bill C-7, the *Youth Criminal Justice Act (YCJA)* to replace the *Young Offenders Act (YOA)*. The *YCJA* builds on the strengths of the *YOA* and introduces significant reforms that address weaknesses in the *YOA*. The *YCJA* provides the legislative framework for a fairer and more effective youth justice system.

The tabling of the bill followed an extensive period of review and consultation that included the production of the following reports:

- A Review of the *Young Offenders Act* and the Youth Justice System in Canada, Report of the Federal-Provincial-Territorial Task Force on Youth Justice (1996)
- Renewing Youth Justice, report of the House of Commons Standing Committee on Justice and Human Rights (1997)
- A Strategy for the Renewal of Youth Justice, Department of Justice Canada (1998)

The **Overview** draws on these reports and describes the background to the *YCJA* and the rationale for its main provisions, and provides a summary of those provisions. It covers the changes implemented by the *YCJA*, the principles and objectives of the Act and the direction it sets for the youth justice system. The **Overview** is organized under the following headings:

- Improving the Youth Justice System
- Preamble and Declaration of Principle
- Extrajudicial Measures
- Conferences
- Pre-trial Detention
- Youth Sentences
- Adult Sentences
- Custody and Reintegration
- Publication
- Victims
- Conclusion

Improving the Youth Justice System

Seventeen years of experience indicates that the *YOA* did not provide clear legislative direction to guide appropriate implementation in several areas. The lack of clear legislative direction was an important factor contributing to problems in the youth justice system:

- The system lacks a clear and coherent youth justice philosophy.
- Canada has the highest youth incarceration rate in the Western world, including the United States.
- The courts are over-used for minor cases that can be better dealt with outside the courts.
- Sentencing decisions by the courts have resulted in disparities and unfairness in youth sentencing.
- The *YOA* does not ensure effective reintegration of a young person after being released from custody.
- The process for transfer to the adult system has resulted in unfairness, complexity and delay.
- The system does not make a clear distinction between serious violent offences and less serious offences.

- The system does not give sufficient recognition to the concerns and interests of victims.

The *YCJA* addresses these problems. The new legislation must be seen as part of the federal government's broad approach to youth crime and the reform of Canada's youth justice system. Apart from the *YCJA* itself, the major elements in this approach include:

- increased federal funding to the provinces and territories;
- crime prevention efforts;
- effective programs;
- innovative approaches;
- research;
- public education;
- partnerships with other sectors, such as education, child welfare and mental health;
- improvements to aboriginal communities; and
- appropriate implementation by provinces and territories.

Preamble and Declaration of Principle

One of the problems with the *YOA* has been the lack of clarity in the fundamental principles of the legislation. The Declaration of Principle is the primary source of principles to guide decision-making under the Act. It contains broad statements that reflect various themes, including the importance of accountability, the protection of society, the special needs of young persons and the rights of young persons. However, the principles did not provide real guidance to decision-makers under the Act because they lack coherence, are conflicting and are not ranked in terms of priority. Where principles are in conflict, there is no indication as to which one takes precedence.

The *YCJA* contains both a [Preamble](#) and a [Declaration of Principle](#) to clarify the principles and objectives of the youth justice system. The Preamble, while not legally enforceable, contains significant statements from parliament about the values on which the legislation is based. These statements can be used to help interpret the legislation and include:

- Society has a responsibility to address the developmental challenges and needs of young persons.
- Communities and families should work in partnership with others to prevent youth crime by addressing its underlying causes, responding to the needs of young persons and providing guidance and support.
- Accurate information about youth crime, the youth justice system and effective measures should be publicly available.
- Young persons have rights and freedoms, including those set out in the United Nations Convention on the Rights of the Child.
- The youth justice system should take account of the interests of victims and ensure accountability through meaningful consequences and rehabilitation and reintegration.

- The youth justice system should reserve its most serious interventions for the most serious crimes and reduce the over-reliance on incarceration.

The Declaration of Principle sets out the policy framework for the interpretation of the legislation. Unlike the *YOA*, the *YCJA* provides guidance on the priority that is to be given to key principles. For example, the new legislation makes clear that the nature of the system's response to an offence should reflect the needs and individual circumstances of a young person. However, the needs or social welfare problems of a young person should not result in longer or more severe penalties than what is fair and proportionate to the seriousness of the offence committed.

The Declaration of Principle provides that:

- The objectives of the youth justice system are to prevent crime; rehabilitate and reintegrate young persons into society; and ensure meaningful consequences for offences. In these ways, the system can contribute to the long-term protection of society.
- The youth justice system must reflect the fact that young persons lack the maturity of adults. The youth system is different from the adult system in many respects, including: measures of accountability are consistent with young persons' reduced level of maturity; procedural protections are enhanced; rehabilitation and reintegration are given special emphasis; and the importance of timely intervention is recognized.
- Young persons are to be held accountable through interventions that are fair and in proportion to the seriousness of the offence.
- Within the limits of fair and proportionate accountability, interventions should reinforce respect for societal values, encourage the repair of harm done, be meaningful to the young person, respect gender, ethnic, cultural and linguistic differences and respond to the needs of Aboriginal young persons and of young persons with special requirements.
- Youth justice proceedings require special guarantees to protect the rights of young people; courtesy, compassion and respect for victims; the opportunity for victims to be informed and to participate; and that parents be informed and encouraged to participate in addressing the young person's offending behaviour.

In addition to the Preamble and the Declaration of Principle, the *YCJA* includes other more specific principles to guide decisions provided for by key parts of the legislation, including Part 1, Extrajudicial Measures, Part 4, Sentencing, and Part 5, Custody and Supervision. These additional principles are discussed in subsequent sections of the **Overview**.

Extrajudicial Measures

Experience in Canada and other countries has shown that measures outside the court process can provide effective responses to less serious youth crime. Part [1](#) of the *YCJA* deals with Extrajudicial Measures and begins with a [declaration of principles](#). One of the key [objectives](#) of the *YCJA* is to increase the use of effective and timely responses that do not involve the court with less serious offences by youth. Such extrajudicial measures provide meaningful consequences, such as requiring the young person to repair the harm done to the victim. They also allow early intervention with young people and provide the opportunity for the community to play an important role in developing community-based responses to

youth crime. Increasing the use of extrajudicial measures not only improves the response to less serious youth crime, it also enables the courts to focus on more serious cases.

More cases could be dealt with effectively outside the court process. Most cases in youth court are non-violent. Minor assault makes up nearly half of the violent offences. More than forty percent of the cases in youth court fall into four categories of less serious offence: theft under \$5000 (e.g. shoplifting); possession of stolen property; failure to appear; and failure to comply with a disposition. (e.g. breach of a condition of probation). (See [Principal Charge in Majority of Cases in Youth Court](#).)

Provinces vary considerably in their use of the youth court. For example, Quebec brings into court 20 youth for every 1000 youth in the population (or about one case for every 50 youth) and Ontario brings into court 45 youth for every 1000 youth in the population (or about one case for every 22 youth). (See [Provincial Rate of Bringing Cases into Youth Court](#).) Provinces that bring cases into court at a relatively high rate do not appear to have more serious cases in court compared to other provinces.

Youth court judges in every region of the country believe that a significant proportion of cases coming to court could be dealt with adequately outside of the youth court. A recent national survey of youth court judges found that 54% of judges believed that half or more of the cases coming before them could have been dealt with as adequately or more adequately outside of the youth court. Even in Quebec, which has the lowest number of cases brought to court, 27% of judges indicated that half or more than half of the cases they were hearing could be dealt with adequately outside of the youth court.

The *YCJA* contains many provisions to increase the appropriate use of extrajudicial measures for less serious offences. For details about these provisions, see the [Extrajudicial Measures](#) module.

Conferences

In many parts of Canada, there is an increasing use of conferences to assist in the making of decisions regarding young persons who are involved in the youth justice system. In general, “conference” refers to various types of processes in which affected or interested parties come together to formulate plans to address the circumstances and needs involved in a youth justice case.

Conferences are not referred to in the *YOA*. They generally operate in an informal manner. They can take the form of family group conferencing, youth justice committees, community accountability panels, sentencing circles or inter-agency case conferences. Conferences provide an opportunity for a wider range of perspectives on a case, more creative solutions, better coordination of services and increased involvement of the victim and other community members in the youth justice system.

The *YCJA* authorizes and encourages the convening of conferences to assist decision-makers in the youth justice system. A conference is defined as a group of people brought together to give advice to a police officer, judge, justice of the peace, prosecutor, provincial director or youth worker who is required to make a decision under the Act. A conference may give advice on a variety of decisions. For details about conferences, see the [Conferences](#) module.

Pre-trial Detention

Most of the provisions of the *YOA* related to pre-trial detention remain the same under the *YCJA*, including the application of the provisions of the *Criminal Code*. However, in response to concerns that pre-trial detention is over-used under the *YOA*, the *YCJA* includes the following changes:

- Pre-trial detention is not to be used as a substitute for child protection, mental health or other social measures.

- If the young person could not be sentenced to custody if convicted, the judge is required to presume that pre-trial detention of the young person is not necessary for the protection or safety of the public.
- If a young person would otherwise be detained, the judge is required to inquire as to whether a responsible adult is available who would be willing to take care of the young person as an alternative to pre-trial detention.

For details about pre-trial detention, see the [Pre-trial Detention](#) module.

Youth Sentences

There have been concerns that the *YOA* does not provide clear guidance to judges on sentencing. Its principles are general, inconsistent with each other, and not ranked in terms of priority. A related concern about the experience under the *YOA* is the very high use of custody as a sentence, particularly for less serious and non-violent offences and for young persons who are not serious repeat offenders:

- The youth incarceration rate is higher in Canada than other Western countries, including the United States. (See [Overall Rate of Youth Court Judges Imposing Custody in Canada and the US.](#))
- The youth incarceration rate is higher than the adult incarceration rate in Canada.
- Provinces vary considerably in their youth incarceration rates. (See [Provincial Rate of Youth Sentenced to Custody.](#))
- For eight of the nine most common offences in youth court, youth receive longer periods of custody than adults who receive custody for the same offence; in addition, youth spend more time in custody than adults with similar sentences due to the adult conditional release provisions.
- About 80% of custodial sentences are for non-violent offences.
- Almost half of the cases resulting in a custodial sentence fall into four categories of less serious offences: theft under \$5000 (e.g. shoplifting); possession of stolen property; failure to appear; and failure to comply with a disposition (e.g. breach of a condition of probation). (See [Majority of Cases Sentenced to Custody.](#))
- Almost half of young persons whose most serious offence was failure to comply with a disposition (e.g., breach of a condition of probation) were sentenced to custody. (See [Administration of Justice Offences: Percent Sentenced to Custody.](#))
- Many first offenders found guilty of minor theft are sentenced to custody. For example, 8% of such offenders in Ontario and over 7% in Quebec were sentenced to custody. (See [Effect of Criminal Record on Proportion Receiving Custody for Minor Theft.](#))

Part 4 of the *YCJA* is devoted to sentencing and includes a statement of [purpose](#) and a set of [sentencing principles](#) to guide judges in deciding on a fair and appropriate youth sentence. Under the *YCJA*, the purpose of youth sentences is to hold young persons accountable through just sanctions that ensure meaningful consequences for them and promote their rehabilitation and reintegration into society.

Custody is to be reserved primarily for violent offenders and serious repeat offenders. A specific set of criteria must be met before the [committal to custody](#) of a young person. Before imposing a custodial sentence, the court must also have considered all reasonable [alternatives to custody](#) and must have determined that there is no reasonable alternative that would be capable of holding the young person accountable in accordance with the purpose and principles of sentencing discussed above. This means, for example, that although a young person has failed to comply with previous non-custodial sentences, he or she may receive another non-custodial sentence if the court determines that it would be adequate to hold the young person accountable.

Sentencing Options

In general, the sentencing options that are available to the court under the *YOA* are retained in the *YCJA*. However, the *YCJA* contains significant improvements regarding custody orders, non-custodial sentencing options and sentencing for serious violent offenders.

Custody orders under the *YOA* do not include a period of community supervision after release of the young person from custody. This has been seen as a significant weakness of the *YOA* because it does not ensure appropriate supervision and support for the young person during the transition from custody back to his or her community. The *YCJA* replaces the usual custody order with an order of custody and supervision. This new sentence requires that the custodial portion be followed by a period of supervision and support in the community.

The addition of other new sentences in the *YCJA* provides youth court judges with more options to deal with the full range of youth crime. The new sentences include:

1. **Reprimand.** A reprimand is expected to be essentially a stern lecture or warning from the judge in minor cases in which the experience of being apprehended, taken through the court process and reprimanded appears to be sufficient to hold the young person accountable for the offence.
2. **Intensive support and supervision order.** This sentencing option provides closer monitoring and more support than a probation order to assist the young person in changing his or her behaviour. It involves much smaller caseloads than probation and is particularly well suited for many offenders who under the *YOA* have been sentenced to custody.
3. **Attendance order.** This order requires the young person to attend a program at specified times and on conditions set by the judge. It can be crafted to address the particular circumstances of the young person. For example, it might be focussed on specific times and days when a young person is unsupervised and tends to violate the law.
4. **Deferred custody and supervision order.** This sentencing option allows a young person who would otherwise be sentenced to custody to serve the sentence in the community under conditions. If the conditions are violated, the young person can be sent to custody. This order is not available to the court if the young person has been found guilty of a serious violent offence.
5. **Intensive rehabilitative custody and supervision order.** This order is a special sentence for serious violent offenders. The Department of Justice Canada has set aside special funding for the provinces and territories to ensure that this sentencing option can be made available throughout the country. The court can make this order if:
 - The young person has been found guilty of murder, attempted murder, manslaughter, aggravated sexual assault or has a pattern of repeated, serious violent offences;
 - The young person is suffering from a mental or psychological disorder or an emotional disturbance;

- An individualized treatment plan has been developed for the young person; and
- An appropriate program is available and the young person is suitable for admission.

For details, see the [Youth Sentencing](#) module.

Adult Sentences

For nearly 100 years, under both the *Juvenile Delinquents Act* and the *YOA*, the law has allowed young persons 14 years of age or older to be transferred to the adult court under certain circumstances. If the young person is convicted in adult court, the court can impose an adult sentence. The *YCJA* does not lower the age at which a young person may be subject to an adult sentence.

Under the *YOA*, if a 16 or 17-year-old is charged with murder, attempted murder, manslaughter or aggravated sexual assault, it is presumed that he or she will be transferred to the adult court and, if convicted, will receive an adult sentence. The presumption does not mean that there will be an automatic adult sentence. It means that the young person must persuade the court that he or she should remain in the youth court.

Experience under the *YOA* has shown that:

- Relatively few young persons are transferred to the adult court.
- A large percentage of the transfers to adult court are for non-violent offences. For example, in the last three years, about 40% of the transfers were for non-violent offences. (See [Types of Cases Transferred to Adult Court](#).)
- Provinces vary considerably in the number of transfers to adult court. For example, in 1998-99, Manitoba led the country with 29 transfers. Quebec was next highest with 23 transfers, which was nearly four times the number in Ontario (6) and more than twice the number in British Columbia (11). (See [Provincial Variation in the Use of Transfers to Adult Court](#).)
- The transfer hearing can be complex and cause significant delays. Many consider it unfair because it takes place before a court has determined whether the young person is guilty of the offence.

The *YCJA* contains significant changes regarding adult sentences:

- The transfer process is eliminated. Instead, the youth court first determines whether or not the young person is guilty of the offence and then, under certain circumstances, the youth court may impose an adult sentence.
- A pattern of repeated, serious violent offences is added to the list of offences that give rise to the presumption of an adult sentence.
- The age at which the presumption of an adult sentence applies is lowered to 14. However, provinces have the authority to set the age at 15 or 16. The effect is that if a province chooses to set the age at 16, there would be no change from the *YOA*.

- If the Crown notifies the youth court that it will not be seeking an adult sentence for a presumptive offence, the court cannot impose an adult sentence.
- The test for an adult sentence requires the court to determine whether a youth sentence would be of sufficient length to hold the young person accountable. The accountability of the young person must be consistent with the greater dependency of young persons and their reduced level of maturity. If a youth sentence would be of sufficient length to hold the young person accountable, the court must impose a youth sentence.
- A young person under age 18 who receives an adult sentence is to be placed in a youth facility unless it would not be in the best interests of the young person or would jeopardize the safety of others.

For details, see the [Adult Sentences](#) module.

Custody and Reintegration

A significant weakness of the *YOA* is that it fails to ensure effective reintegration of a young person after release from custody. The *YCJA* includes many provisions to assist the young person's reintegration into the community. Underpinning the new legislation is the belief that young people can be rehabilitated and successfully reintegrated into the community. The focus of every custody sentence must be on reintegration and on measures aimed at assisting the young person not to re-offend. Part 5 of the *YCJA* is devoted to Custody and Supervision and begins with a [statement of purpose](#) and the [principles](#) used to achieve that purpose. For details, see the [Custody and Supervision](#) module.

Custody and Supervision in the Community

Under the *YCJA*, every period of custody is to be followed by a period of supervision in the community, as part of the sentence. This includes custody and supervision orders, intensive rehabilitative and supervision orders and youth sentences for murder. The judge, at the time of imposing a custody sentence, must clearly state in open court the portion of the sentence to be served in custody and the portion to be served in the community.

The *YCJA* contains a list of mandatory conditions that apply to all young persons while under supervision in the community. Additional conditions can be imposed to support the young person and address his or her needs, as well as to manage risk.

If a young person breaches a condition while under supervision in the community, reviews will be held that can result in a change in conditions or in the young person being returned to custody. If the provincial director has ordered the young person to be returned to custody, the court will conduct a review. If the court is satisfied that the young person has breached a condition, the court may order the young person to serve the remainder of the community portion in custody if the breach was serious. If the breach was not serious, the court may vary the conditions or impose new conditions.

It is also possible that a young person may not serve a portion of the sentence in the community following custody. Before the start of the community portion, the court can require the young person to remain in custody if the court is satisfied that there are reasonable grounds to believe that the young person will commit an offence causing death or serious harm before the end of the sentence.

Reintegration Plans and Reintegration Leaves

When a young person goes into custody, the *YCJA* requires that a youth worker plan with the young person for his or her reintegration into the community. The reintegration plan sets out the most effective programs for the young person to maximize his or her chances for successful reintegration.

When the young person is serving the community supervision portion of the sentence, the youth worker will supervise the young person, and provide support and assistance to the young person in respecting conditions and implementing the reintegration plan.

Under the *YCJA*, a young person may be authorized to have a reintegration leave for the purpose of the young person's rehabilitation and preparation for eventual reintegration into the community. Such leaves can also be used for medical, compassionate or humanitarian reasons. Leaves are for a period of thirty days, though the provincial director on reassessment of the case can renew them.

Separation from Adults

The *YCJA* retains the general rule that a young person who is serving a youth custody sentence is to be held separate and apart from adults. The *YCJA* also creates a presumption that if a young person in a youth facility reaches the age of twenty, he or she should be transferred from the youth facility to an adult facility to serve the remainder of the sentence.

When a young person serving a youth sentence reaches adult age, a judge may authorize the provincial director to place the young person in a correctional facility for adults if the court considers it to be in the best interests of the young person or in the public interest. If a young person is placed in an adult facility, the adult conditional release entitlements will apply to the young person. The privacy provisions associated with a youth sentence will continue to apply.

The *YCJA* also contains new provisions that relate to placement of a young person who receives an adult sentence. Unless the judge is satisfied that it would not be in the best interests of the young person or would jeopardize the safety of others:

- A young person who is under the age of eighteen at the time of sentencing will be placed in a youth custody facility.
- A young person who is over the age of eighteen at the time of sentencing will be placed in an adult facility.

Publication

A cornerstone of youth justice in Canada is that the identity of a young person should be protected. The rationale is that publication of the name of a young person would impede rehabilitation efforts and detrimentally affect young persons and compromise public safety in the long run. However, there are certain exceptions.

Under the *YOA*, one exception is that the publication of information that identifies the young person is permitted if the young person is transferred to adult court. A result of this provision is that the identifying information can be published before a court has determined whether or not the young person is guilty of the offence. This result is considered by many to be unfair to the young person.

Under the *YCJA*, the identifying information cannot be published until a youth court had found the young person guilty of the offence and imposed an adult sentence. The *YCJA* also allows publication of identifying information where a youth sentence is imposed for a presumptive offence. However, there are limitations:

- The court may decide that publication is not appropriate, taking into account the importance of rehabilitating the young person and the public interest.
- Publication is not permitted if the prosecutor has notified the court that an adult sentence will not be sought for the presumptive offence.

For details, see the [Publication and Records](#) module.

Victims

The youth justice system has been criticized for not adequately recognizing the interests and needs of victims. Under the *YCJA*, the interests and needs of victims are clearly recognized and the role of victims at different stages of the youth justice process is specified. Key provisions include:

- The principles of the *YCJA* specifically recognize the concerns of victims. Victims are to be given information about the proceedings and given an opportunity to participate and be heard. They are to be treated with courtesy, compassion and respect for their dignity and privacy.
- Victims have a right of access to youth court records.
- Victims are encouraged to participate in community-based approaches to responding to an offence.
- If a young person is dealt with by an extrajudicial sanction, the victim of the offence has a right to be informed of how the offence was dealt with.

Conclusion

The *YCJA* sets out a new legislative framework for Canada's youth justice system. It builds on the strengths and addresses the weaknesses of the current system. The *YCJA* provides needed legislative direction to assist in achieving a fairer and more effective youth justice system. Key objectives of the *YCJA* include:

- Clear and coherent principles to improve decision-making in the youth justice system;
- More appropriate use of the courts by addressing less serious cases effectively outside the court process;
- Fairness in sentencing;
- Reduction in the high rate of youth incarceration;
- Effective reintegration of young persons;
- Clear distinction between serious violent offences and less serious offences.

These objectives cannot be achieved by legislation alone. As noted earlier, the *Youth Criminal Justice Act* is an important part, but only a part, of the Government of Canada's broader approach to addressing youth crime and improving the youth justice system. The combination of the new legislation and important non-

legislative elements — such as increased federal funding for programs, crime prevention, public and professional education, partnerships with other sectors, and appropriate implementation by provinces and territories — can achieve the objectives and thereby create a fairer and more effective youth justice system.