A Strategy for the Renewal of Youth Justice

Today I am releasing the federal government's Response to *Renewing Youth Justice*, the Standing Committee on Justice and Legal Affairs' report on the *Young Offenders Act.* This Response outlines the government's proposed strategy for renewing Canada's approach to youth crime, and focuses on three areas:

- promoting crime prevention and effective alternatives to the formal youth justice system;
- ensuring that youth crime is met with meaningful consequences; and
- emphasizing rehabilitation and reintegration.

To implement the strategy and to underscore our commitment to the renewal of youth justice, I will ask Parliament to replace the *Young Offenders Act* with a new youth justice statute. This will send a clear signal to Canadians of all ages that a new legal framework is in place**.**

The new legislation will address the weaknesses of the *Young Offenders Act*, while building on its strengths. It will recognize the clear distinction between violent young offenders, from whom society needs to be protected, and the majority who are non-violent, lower-risk youth. The strategy will provide for different and appropriate measures to deal with both.

We will strengthen the youth justice system to ensure that judges have all the tools they need to address the full range of criminal behaviour of young people. However, we recognize that legislative change alone is not enough to address youth crime. Therefore, as part of the government's focus on children and youth, we will build links to community-based youth crime prevention programs and to initiatives that help prevent youth from getting involved in crime. In short, we will make every effort to help young offenders reform their behaviour and become law-abiding adults.

This strategy is the result of the efforts of many people over several years. Beginning in 1994, after the *Young Offenders Act* had been in place for a decade, the members of the Standing Committee on Justice and Legal Affairs thoroughly reviewed the youth justice system, holding hearings across Canada. Their April 1997 report, *Renewing Youth Justice*, forms the basis of our strategy, and I want to thank Ms. Shaughnessy Cohen (Chair) and all the members of the Standing Committee for their hard work and invaluable contribution to youth justice renewal.

Furthermore, the Premiers have signalled support for federal, provincial and territorial cooperation to discourage young people from turning to crime and to help rehabilitate those who do. The interest and willingness of Canadians, and of all orders of government that represent them, to work together on this issue will be the foundation for an effective renewal of youth justice.

As the Minister of Justice, I look forward to working with them and all Canadians on the challenge of renewing youth justice.

A. Anne McLellan

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Introduction

Canada's justice system enjoys the admiration and respect of Canadians and of many countries that desire to emulate its success. However, justice is a work in progress, and improving our justice system is an ongoing objective and challenge.

As Canadians' demands and expectations of their justice system change, governments and judicial institutions must be prepared to respond.

One area where it is clear that governments and policy makers must respond is youth justice. Canadians see youth crime as an important issue – even at a time when youth crime rates seem to be falling. However, while Canadians want to feel safe and secure in their homes and communities, they also want a youth justice system that does not abandon youth. Our youth justice system must protect society, reinforce social values and also give youth every opportunity to become productive, responsible citizens.

Though the youth justice system strives to achieve these goals, in the eyes of many Canadians it has fallen short. Our youth justice system can and must be improved.

The youth justice system has three main weaknesses. First, not enough is done to prevent troubled youth from entering a life of crime. Second, the system must improve the way it deals with the most serious, violent youth: not just in terms of sentencing but also in ensuring that these youth are provided with the intensive, long-term rehabilitation that is in their and society's interest. Third, the system relies too heavily on custody as a response to the vast majority of non-violent youth when alternative, community-based approaches can do a better a job of instilling social values such as responsibility and accountability, helping to right wrongs and ensuring that valuable resources are targeted where they are most needed.

There are no simple solutions to these problems. Few issues, in fact, pose more challenges to governments and policy makers than that of developing appropriate and responsible solutions to youth crime.

What is needed are approaches that provide for greater public involvement in the justice system without undermining the fundamental requirement for a uniform legal system. And what is also needed is a broad range of measures that include early intervention for children at risk, prevention programs, appropriately tailored sentencing and other broad, integrated approaches – involving families, communities, teachers, the police, social workers and many others – that combine to reinforce social values and respect for society.

Canadians know intuitively that youth justice renewal requires an integrated and balanced approach – one that involves a high degree of federal-provincial co-operation and functional integration of child welfare, mental health and court systems. This Response to the Standing Committee on Justice and Legal Affairs' Report on the Young Offenders Act, *Renewing Youth Justice*, is the federal government's proposed approach for renewing Canada's youth justice system and achieving this balance.

A Need for Balance

The objective of this strategy is the protection of society by reducing youth crime.

Protection of society is, first and foremost, achieved by preventing crime. This requires concerted effort by all levels of government and other partners employing preventive approaches designed to address the root causes of crime. Crime prevention is a significant part of the government's efforts to reduce crime, is especially important for young people, who are more susceptible to environmental influences, and carries long-lasting benefits for society.

Society is also protected, however, by having a youth justice system that commands respect, fosters responsibility, ensures accountability and makes it clear that violations of the law will meet with meaningful consequences.

Young people who commit crimes must be held accountable and responsible for their actions. They must learn that criminal behaviour offends society's collective values and is met with consequences. It is important to recognize, however, that often the most meaningful consequences for the vast majority of non-violent young offenders, their victims and communities are those that instruct youth about the impact of the crime on others and

require that efforts be made to repay those who were hurt. This fosters respect not only for the legal system but for underlying social values.

An effective youth justice system must be capable of responding to the range of crimes committed by young people. The government has made progress in addressing adult crime by taking firm measures with violent and high-risk offenders while encouraging community-based alternatives for lower-risk, non-violent offenders. Different approaches are also appropriate for the small number of young offenders who commit very violent crimes and for the vast majority of non-violent young offenders.

The belief in the rehabilitative capacity of young people is a fundamental principle of the youth justice system. Successful rehabilitation protects society and prevents further victimization, particularly since youth return to their communities at a relatively young age. This fact makes rehabilitation especially important for violent young offenders. Rehabilitation is also a key part of society's responsibility towards young people.

The renewal of youth justice thus proceeds on several fronts: prevention to address the root causes of youth crime; meaningful consequences for youth crime; and rehabilitation to help young people turn away from crime. It is a strategy that includes reform of our youth justice legislation but extends beyond it.

Children, Youth, and Youth Crime

One of our objectives as a country should be to ensure that all Canadian children have the best possible opportunity to develop their full potential. We must equip our children with the capacities they need to be ready to learn and to participate fully in our society. – September 1997 Speech from the Throne, p. 8

Children and Youth as National Priorities

The corollary of the public's entitlement to protection from youth crime is society's obligation to be supportive of children and youth. The September 23, 1997, Speech from the Throne stated that "One of our objectives as a country should be to ensure that all Canadian children have the best possible opportunity to develop their full potential. We must equip our children with the capacities they need to be ready to learn and to participate fully in our society." Young people who have come into conflict with the law represent a true test of our commitment to children and youth.

The Youth Justice System

Youth justice involves more than the criminal justice system. Violent and repeat offenders generally have histories of aggressive, disruptive and antisocial behaviour, often beginning in early childhood. Before most young people appear in court, many formal and informal institutions will have touched their lives. The great majority of serious and repeat young offenders are troubled youths from troubled families. Their backgrounds tend to be characterized by violence, substance abuse, inconsistent parenting, weak attachment to family and school, poverty, poor housing and under-resourced neighbourhoods. Many young offenders have also been victims of physical and sexual abuse. These conditions can lead to poor school performance, drug and alcohol abuse and associations with delinquent peers. Many serious and repeat young offenders have been dealt with by provincial child welfare and mental health systems. All will have ties to schools, peer groups, families and communities that may have recognized the children's needs and have identified emerging behavioural problems but have been ill-equipped to help. The problem of youth crime is complex and so are its solutions. Co-operative approaches to youth justice issues involving families, communities, the voluntary sector, victims, mentors, mental health and child welfare support can encourage young people to avoid and overcome criminality.

Shared Jurisdiction

The provincial, territorial and federal governments have a long-standing partnership on youth justice based on shared jurisdiction and a common commitment to young people. The federal government has the jurisdiction to enact legislation under the criminal law power. The provinces have the primary responsibility for the administration of justice and the supporting child welfare and health systems. Given that young offenders often have other significant problems, both provincial and federal programs may apply to the same person. These programs are more effective when they complement and reinforce each other. Provinces and territories have recognized the benefits of pursuing integrated approaches to troubled youth.

An effective renewal of youth justice must respect jurisdictional responsibilities and pursue co-operative approaches among federal, provincial and territorial governments to ensure that we meet our common objectives for children and youth.

Youth Crime

1996 % OF TOTAL Y.O. OFFENCES

Gaming and Betting	0.002 %
Abduction	0.01 %
Homicide	0.04 %
Attempted Murder	0.1 %
Sexual Offences other than Assault	0.1 %
Prostitution	0.1 %
Theft Over $5,000	0.5 %
Sexual Assault	1.2 %
Offensive Weapons	1.2 %
Fraud	1.8 %
Robbery	2.8 %
Other Fed Statutes	2.9 %
Drugs	4.3 %
Possession of Stolen Goods	5.0 %
Motor Vehicle Theft	5.4 %
Assault *	12.9 %
Break and Enter	14.5 %
Theft Under $5,000	24.7 %
Other *Criminal Code* Offences	23.8 %

* 68% were common assaults

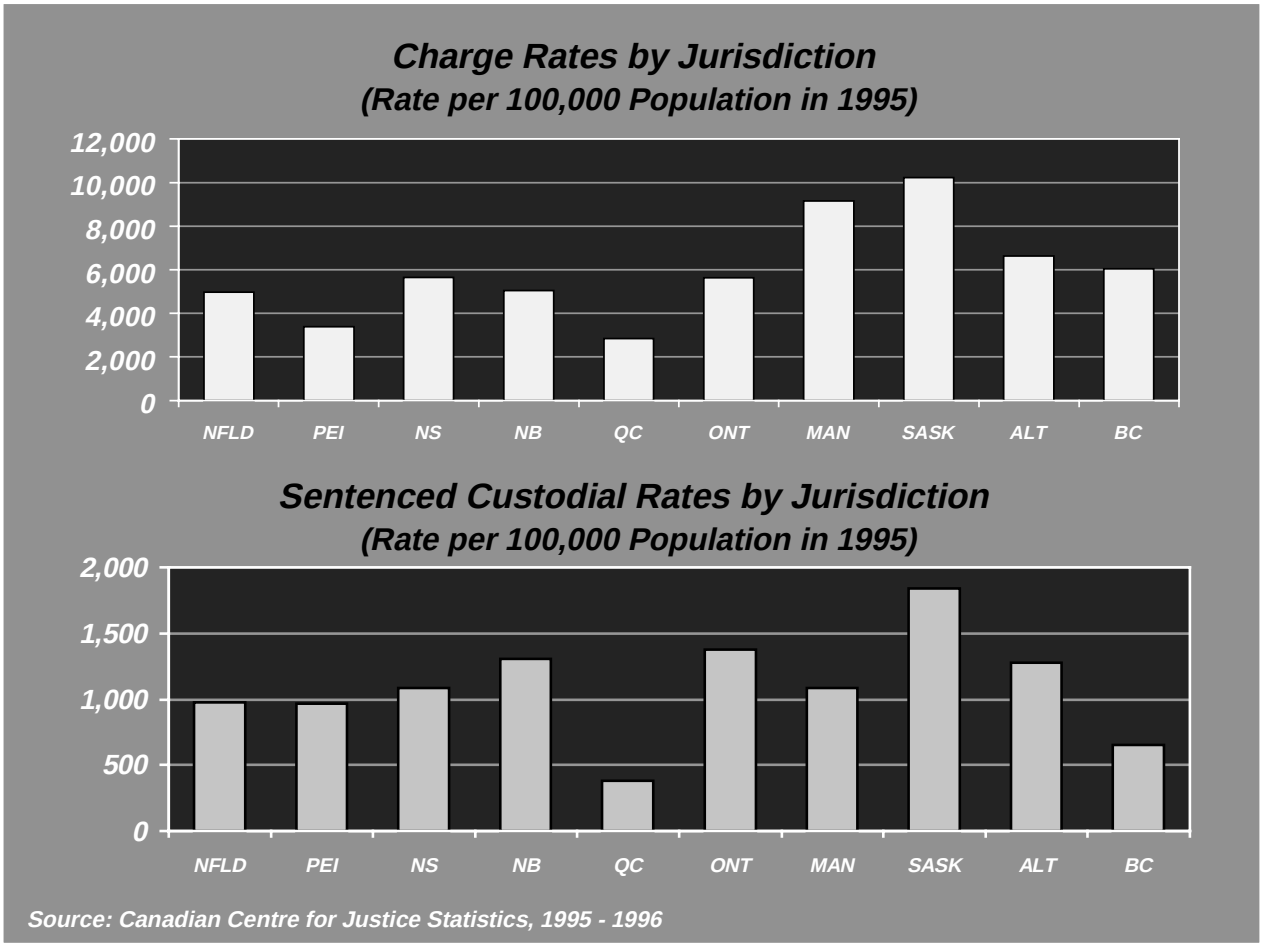
The statistics demonstrate that only a small number of youth are involved in serious and repeat criminal acts, particularly acts of violence. And yet the impact of those crimes on victims, families and others can be devastating. The renewal of our youth justice system will include more tailored and effective responses for the most violent youth.

The majority of charges against youth are for non-violent property offences – about one-half of these are for theft under $5,000. However, these offences can have a significant impact on victims and communities.

Formal and Informal Procedures

Troubling behaviour patterns in young people are often evident to families, schools, communities and the police. Addressing this behaviour early is often enough to stop young persons from offending without having to proceed through formal youth courts. Police can exercise their discretion not to lay formal charges in appropriate cases and, instead, to caution youth or steer them into diversion programs.

Of the approximately 110,000 cases heard in youth court in 1996-97, the largest group of cases involved youths who were 17 years of age (24 percent); 16-year-olds made up 24 percent of the case load; 15-year-olds, 22 percent; 14-year-olds, 15 percent; 13-year-olds, 8 percent; and 12-year-olds, 3 percent. In about two thirds of all the cases heard, the result was a verdict of guilty. While there is considerable variation from province to province, about one-third of those convicted received sentences of custody, half received probation, and only one-sixth received either community service orders, fines or other available sentences. Sentences of custody were given in approximately 25,000 cases, usually for short periods of time: over one-quarter received sentences of less than one month; about half the sentences were from one to three months; and eight percent were sentenced for more than six months. However, the rate at which the youth justice system in Canada sentences youth to custody is four times higher than the rate for adults. For the past five years, there have been approximately 3,500 to 4,000 youth in custody on any given day.



Concerns about the Current Youth Justice System

Public opinion surveys, media reports and anecdotal accounts together show widespread negative attitudes toward the *Young Offenders Act* and youth courts. Generally, the public believes that youth court judges are too lenient, that youth crime, particularly violent youth crime, is on the increase and longer sentences are necessary.
–*Renewing Youth Justice*, p.17

Lack of Public Confidence

In general, the public believes that the *Young Offenders Act* and youth court judges are too lenient, and questions the ability of the youth justice system to provide meaningful penalties proportionate to the seriousness of offences. The criticism of sentencing practices seems to be widespread, even though most judges dealing with youth are the same as those who hear adult cases and despite the fact that Canadian youth incarceration rates are higher than those of other countries and higher than incarceration rates for adults.

Early Intervention

Early intervention in the lives of young people was seen as an essential element in reducing long term youth offending, but it has to be appropriate, effective, community-based and supportive

The youth justice system is criticized for being too late in responding to the problems of youth. Many young offenders demonstrate a clear pattern of disruptive behaviour before they

of parents, families and extended families.– *Renewing Youth Justice*, p. 11

actually commit crimes. This reinforces the importance of early intervention to address underlying problems, which could help protect the public from crime and prevent children at risk from pursuing lives of crime.

Need for Effective Alternatives to Incarceration

By the time young people commit serious offences and get involved in the youth justice system, most have a long history of displaying antisocial behaviour. Attempts to instil pro-social attitudes in and modify the behaviour of delinquent adolescents ... require intensive, expensive remedial treatment. Clearly, protection of the public is best achieved if we can prevent youth from getting involved in crime in the first place. – *Renewing Youth Justice*, p. 25-26

Many sentences other than custody provide meaningful consequences for youth crime. Custody, in some cases, is simply used as a place where youth mark time and develop into more seasoned and sophisticated criminals. Alternatives that require young people to repay victims and society for the harm done teach responsibility and respect for others and reinforce social values.

The Standing Committee on Justice and Legal Affairs heard evidence that the rate of youth incarceration in Canada is much higher than that of many other western countries, including the United States, Australia and New Zealand. There is also considerable variation within Canada, with incarceration rates three to four times higher in some provinces than in others but without comparable variations in crime rates.

The high rates of youth incarceration may in part reflect a shortage of effective non-custodial sentencing options or their relatively infrequent use. Many criminal justice professionals and members of the public favour restricting custody to the most violent and persistent offenders and using the savings on more effective alternatives for non-violent, low-risk youth.

Inability to Deal with Violent and Repeat Offenders

Within the population of young offenders, however, a small proportion repetitively engage in serious offences against property and persons. Survey research indicates, not surprisingly, that these violent and repeat young offenders generate the most public anxiety.– *Renewing Youth Justice*, p. 25

The public questions the capacity of the youth justice system to deal effectively with violent youth crime. Many question whether the range of penalties available to the youth court is sufficient to hold youth accountable for repeat violent offences and to deter others. These reservations concerning the most violent offenders, whose acts are often widely publicized, can taint the public's confidence in the youth justice system as a whole.

Need for a Common Vision

The Committee believes it is important that the purpose and the guiding principles of both the youth justice system and the *Young Offenders Act* be made explicit and clear.– *Renewing Youth Justice*, p. 9

Some argue that the principles set out in the *Young Offenders Act* compete with one another and that the priorities are unclear – obscuring the purposes and objectives of the youth justice system. While there is a substantial consensus on the need for

enhanced crime prevention efforts and meaningful alternatives for non-violent offenders, there is less clarity on the fundamental objectives of the system and how the public is best protected.

Role of Parents, Family and Victims

...[T]he Committee ... favours an approach based on early intervention, where prevention efforts, community and family-based, informal, non-criminal justice strategies are given primacy. The full gamut of criminal justice instruments, including custodial dispositions, should be reserved for the most serious instances of youth offending. – *Renewing Youth Justice*, p. 41

The youth justice system has been criticized by some for intimidating and excluding parents and extended family. Others believe that parents should be required to assume greater responsibility for their children. The system has also been criticized for not recognizing the interests and needs of victims. The roles for parents and victims in the youth justice process must be more clearly defined.

Inadequate Reintegration, Rehabilitation and After-Care

Studies have shown that providing young offenders with appropriate treatment, guidance and support both during custody and when they return to their communities is critical to ensuring that young offenders do not reoffend. Many observers have pointed to the absence of effective conditional-release mechanisms as a flaw of the current system, and stress the need for greater community support for reintegration.

Need to Ensure Equity

... [O]ne's ancestry, gender or race may be important in their contact with the youth justice system.– *Renewing Youth Justice*, p. 3

There is a need to ensure that the youth justice system deals fairly and effectively with all young people. The disproportionately high level of Aboriginal youth in the justice system, especially in custody, underscores the need for measures that address root causes of crime, as well as for procedures that hold youth accountable for their actions in a culturally appropriate and meaningful way within their communities.

Because few young females are convicted of personal injury or significant property offences, few specialized programs have been developed for them, although many young female offenders require programs to deal with prior sexual abuse and health-related issues. Girls still make up only 20 percent of all youth apprehended by police and only 14 and 10 percent of cases committed to open and secure custody, respectively. However, more females have been charged with personal injury offences since the mid-1980s and there is increasing concern about girls becoming involved in violent, gang-related activities. There is a clear need for more research in this area, so that

appropriate programs for these young women can be developed.

Timeliness and Improved Administration

Long delays between the time when an offence is committed and the time when formal sentences are imposed can make the sentences seem less meaningful for youth, victims and the community. This is particularly true for cases that include an application to transfer the youth to adult court – the transfer hearing, appeals from the decision, and the trial can take years to complete.

Many also argue that costly and inflexible provisions in the existing law impede the administration of justice, that the process could be streamlined by giving the police and correctional officials the power to exercise more discretion, and by simplifying administrative procedures.

Public Knowledge

... [M]embers of the Committee were acutely aware of the lack of congruence between public perceptions of youth crime and the youth justice system, and the reality. – *Renewing Youth Justice*, p. 17

There is also a need to improve the public's access to information about youth crime and the youth justice system. Fear of crime and growing concerns about the effectiveness of the *Young Offenders Act* are heightened, in part, by high-profile cases involving violent youth crime. The public is less frequently informed of the youth justice system's success stories involving the majority of youth who offend once and never reoffend. Steps need to be taken by all partners in the youth justice system to provide Canadians with better and more complete information about youth crime in their communities.

Time for Renewal

The [Young Offenders] Act is highly controversial, and questions have been raised about whether it remains the best model of juvenile justice in Canada in the current age. In my view, in order to restore public confidence in the youth justice system, it would be helpful for the Committee to undertake a thorough, open-minded and critical examination of the Act and its provisions. – June 2, 1994, letter from Minister of Justice to the Chair of the Standing Committee

Now is the time to renew the youth justice system. The federal, provincial and territorial governments have identified children and youth as priorities; the Premiers have encouraged meaningful legislative amendments and pledged co-operation on key elements of youth justice; the Federal-Provincial-Territorial Task Force, the Standing Committee and others have made thoughtful recommendations.

The *Young Offenders Act* has been the subject of ongoing debate since it came into force in 1984. Replacing the 1908 *Juvenile Delinquents Act*, which was characterized by a philosophy directed towards child welfare, informal procedures

and considerable judicial discretion, the *Young Offenders Act* blended four fundamental principles: that young people must assume responsibility for their illegal behaviour; that society has a right to be protected from illegal behaviour; that if young people are held responsible for their criminal acts, they are entitled to traditional legal rights and some additional protections; and that young people, because they are not fully grown or mature, have special needs and should not be held accountable in the same manner or to the same extent as adults. Heralded as a major social reform at the time, the *Young Offenders Act* allowed a range of sentences, including absolute discharges, fines, compensation orders, treatment orders, probation and custodial orders for a maximum of three years. Provisions also allowed a young person, under certain circumstances, to be transferred to the adult system and dealt with as an adult.

To support the implementation and administration of the Act, the federal government entered into cost-sharing agreements with the provinces and territories. While the earlier federal-provincial-territorial cost-sharing regime under the Canada Assistance Plan was based on child welfare-related objectives and basically limited to custody costs, the original *Young Offenders Act* agreements maintained the coverage for custody but were broadened to include post-adjudication detention, alternative measures and bail-supervision programs as items eligible for a 50 percent federal contribution. Other items, including probation and predisposition reports, were added to the list of cost-shareable items so that the federal government reimbursed the provinces for 50 percent of the increase in costs to these existing services. However, because the federal contribution was determined by how much the provinces and territories would spend on various programs, nearly three-quarters of the federal contribution was directed to custody and custodial programming, which resulted in proportionately less federal support for provinces with lower custody rates.

Federal funding was frozen in 1989 at $156 million. The overall federal share of eligible provincial costs has fallen to an average of approximately 30 percent, largely because of the increases in expenditures for young offender services in most provinces since the capping of the federal contribution program in 1989 and also because of reductions in federal funding resulting from the government-wide program review exercise (3.9 percent in 1996-97 and 3.5 percent in 1998-99).

In response to concerns raised over the years, *the Young Offenders Act* has been amended three times: in 1986, 1992 and 1995. The last two sets of amendments responded to public concerns that the Act was too lenient, and increased sentence lengths for young murderers. The 1992 amendments extended the possible length of sentences in the youth court from three to five years less one day for murder, and clarified the test for transferring young people to the adult system. The 1995 amendments again increased the length of sentences in youth court to ten years for those who commit first degree murder; introduced a presumption that 16- and 17-year-olds charged with murder, attempted murder, manslaughter and aggravated sexual assault should be dealt with in the adult system; changed parole ineligibility periods; allowed for victim impact statements to be read in youth court; provided for greater information-sharing among youth justice professionals; allowed for retention of records for some offences; and encouraged community-based dispositions for youths charged with minor and non-violent offences.

While the most recent set of amendments were being tabled on June 2, 1994, the then Minister of Justice wrote to the Chair of the Standing Committee on Justice and Legal Affairs proposing a fundamental review of the *Young Offenders Act*. The Minister noted that the Act was controversial and that questions had been raised about whether it remained the best model for juvenile justice in Canada.

At the same time, a Task Force on Youth Justice was established by the federal, provincial and territorial Ministers Responsible for Justice to provide a comprehensive review of the Act. Its report, completed in August 1996, contained recommendations on key elements of the youth justice system such as age limits, serious offenders, alternatives to the courts, transfers to adult court, improvements to the administration of justice and sentencing. The work of the Task Force is recognized as an important analysis and a significant contribution, and it was referred to the Standing Committee for consideration.

After an extensive review of the youth justice system involving roundtable discussions and a National Forum, trips to different parts of Canada, witnesses representing more than 100 organizations and various governments and more than 100 written briefs, the Standing Committee on Justice and Legal Affairs released its report, *Renewing Youth Justice*, in April

1997. It included significant findings about the youth justice system and made 14 specific recommendations.

The Premiers, with the exception of the Premier of Québec, agreed that the federal government should move expeditiously to introduce meaningful amendments to the *Young Offenders Act* to combat youth crime, protect communities and restore public confidence in the youth justice system. Premiers also agreed that the federal, provincial and territorial governments should co-operate to improve preventative and rehabilitative programs for young offenders. – August 8, 1997, Premiers' Meeting on Social Policy Renewal

Calls for reform have continued since the Report was tabled. At their August 1997 conference, Premiers encouraged the federal government to act on youth justice issues. With the exception of Quebec, the Premiers agreed that "the federal government should move expeditiously to introduce meaningful amendments to the *Young Offenders Act* to combat youth crime, protect communities and restore public confidence in the youth justice system. Premiers also agreed that the federal, provincial and territorial governments should co-operate to improve preventative and rehabilitative programs for young offenders."

At the December 1997 Federal-Provincial-Territorial Meeting of Ministers Responsible for Justice, the Ministers of Alberta, Manitoba, Prince Edward Island and Ontario tabled proposed amendments to the *Young Offenders Act*. In February 1998, the Saskatchewan Minister of Justice also called for amendments to deal more effectively with violent and serious young offenders.

Comprehensive studies have been conducted; extensive consultations have been undertaken; considerable consensus has been achieved. This response to the Thirteenth Report of the Standing Committee on Justice and Legal Affairs on Renewing Youth Justice will set out the federal government's strategy and principal directions for the renewal of youth justice. The intent is that, after an intensive period of focused consultation, a Bill to support the renewal of youth justice will be introduced in the fall of 1998.

Key Directions for the Renewal of Youth Justice

Strong and fair legislation will provide an important foundation for the renewal. Legislation alone, however, is not enough to protect Canadians. A multifaceted approach will be adopted, including prevention and measures targeted at the root causes of delinquency.

All Canadians have an interest in the development of our children and youth. Effectively addressing youth crime is a challenge for all Canadians and all governments within Canada. Many communities have already accepted the challenge and are identifying measures to prevent crime and correct the behaviour of young people who have come into conflict with the

law. This trend will be encouraged. Co-operative approaches to youth justice issues involving families, communities, the voluntary sector, victims and mentors will promote effective and enduring solutions to youth crime.

The goal of youth justice renewal is to reduce youth crime through three complementary strategies:

1. Prevention and Meaningful Alternatives

The best way to deal with youth crime is to prevent it – through community-based crime prevention and by addressing the social conditions associated with the root causes of delinquency.

A number of alternatives to the formal justice system can be employed effectively to deal with the majority of non-violent young offenders – such as family-group conferencing, diversion programs and police cautioning. These alternative approaches hold youth accountable for their behaviour, acknowledge and repair the harm caused to the victim and the community and help to instil or reinforce values such as responsibility and respect for others.

2. Meaningful Consequences for Youth Crime

Young people who commit crimes will be held responsible and accountable for their actions. The consequences for the crimes will depend on the seriousness of the offence and on the particular circumstances of the offender. Firm measures will be taken to protect the public from violent and repeat young offenders. Community-based penalties are often more effective than custody and will be encouraged for lower-risk, non-violent offenders – particularly measures that make clear to the youth the damage caused by the crime and its impact on others and which require steps to undo the harm done. These measures foster respect both for the legal system and for underlying social values.

3. Rehabilitation and Reintegration

The youth justice system is partly premised on the belief that the vast majority of young offenders, with proper guidance and support, can overcome past criminal behaviour and develop into law-abiding citizens. Successful rehabilitation and reintegration are important because of the obvious fact that young people

sentenced to custody return to their communities at some point. Rehabilitation is particularly important for serious, violent offenders, including those youth receiving adult sentences.

Effective programs that guide and assist a young person's return to the community protect society and support law-abiding conduct. Sentences should instil a sense of responsibility and encourage the participation of the youth in constructive measures that involve the victim, the family and the community.

RECOMMENDATION 4

The Committee recommends that the federal government, in consultation with the provinces and territories, allocate 1.5% a year of its current budget for police, courts and corrections to crime prevention, and that by the turn of the century, it should be spending at least 5% of its current criminal justice budget on crime prevention measures.

These resources should be directed wherever possible to community-based crime prevention efforts.

The Committee further recommends that the Minister of Justice undertake discussions with provincial and territorial ministers responsible for justice to foster the creation of local crime prevention and community safety councils. Membership of the council should be broadly based to include local justice agencies (governmental and non-governmental), local governments and welfare agencies, school boards, victim groups as well as a cross-section of the community. The mandate of the CPCS councils would be to co-ordinate community resources to prevent crime, to increase community alternatives to incarceration and to educate the community on the workings of the criminal justice system.

Key Preventive Components

All government and other programs that address the root causes of crime and support the development of children and youth contribute to the renewal of youth justice. Over time, these programs will, among other things, reduce the number of young people who commit criminal acts.

1. Crime Prevention Initiative

The federal government is about to launch a major community-based crime prevention initiative that includes children and youth as priorities. The former National Crime Prevention Council, which the government established in its first mandate, provided models for developing and implementing strategies that invest in children and youth. Its research has helped us understand the factors favouring healthy development – as well as those posing risks. The models developed by the Council assist in tailoring programs to the particular circumstances of individuals, respecting gender and cultural considerations.

Communities themselves are in the best position to assess the unique challenges facing their children and youth. The government has committed $32 million per year to support the development of community-based crime prevention and to help communities throughout Canada to identify the needs of young people and others and to devise programs and partnerships to prevent and reduce crime. The federal government will work with provincial and territorial governments and others to help communities identify their crime prevention needs and develop programs to address them.

The community in Ottawa's Debra-Dynes public housing project is actively involved in and raises resources for the Ottawa-Carleton Police Youth Centre. This initiative, founded in 1992 to improve relations between the police and children aged 6 to 19 in a troubled neighbourhood, now reaches 850 children. Many credit the Centre for the neighbourhood's drop in crime rates. In 1988, 57 individuals were charged with drug possession and trafficking in the area, but in 1993, there were no drug-related charges. The Centre provides young people with a place to go, and responds to their interests. While sports and recreational activities are the most popular, the Centre provides seminars on sex education, résumé writing, and first aid and a homework club. The Centre provides classes for students who have been expelled from local high schools, victim-offender mediation programs and an effective alternative to criminal charges for some. Both the federal government and the province of Ontario have invested in setting up this model in other communities.

2. National Children's Agenda

The experiences of Canada's children, especially in the early years, influence their health, their well-being, and their ability to learn and adapt throughout their entire lives. By investing now in the well-being of today's children, we improve the long-term health of our society. – September 1997 Speech from the Throne, p. 8

It is never too early to assist children, particularly children at risk. By the time many young people come into conflict with the law, behaviour problems that might have been corrected earlier have become entrenched and pose a more difficult challenge.

Federal, provincial and territorial social union ministers are making progress on a collaborative National Children's Agenda, a collective strategy to improve the well-being of Canada's children. This Agenda, for all Canadian children up to the age of 18, will have a special focus on moving from remedial action to prevention, levelling the playing field and investing where the impact is greatest.

As part of this national agenda, the federal government will . . . establish Centres of Excellence to deepen our understanding of children's development and well-being and to improve our ability to respond to their needs. – September 1997 Speech from the Throne, p. 9

The Agenda is likely to address many of the conditions associated with delinquency, including child poverty, early childhood development issues, parenting skills and family support. In the 1997 budget, the government announced an $850 million increase in the support it will provide to needy families with children through the new Canada Child Tax Benefit. To further support children in low-income families across Canada, the 1998 budget proposes to increase the Child Tax Benefit by an additional $850 million over two years, beginning in July 1999.

Addressing early childhood developmental issues is another key component of the National Children's Agenda. The 1997 budget provided $100 million over three years to the Community Action Program for Children, which will permit more community organizations to work with families to raise healthy and well-adjusted children. The September 1997 Speech from the Throne indicated that Centres of Excellence for Children's Well-Being would be established to promote understanding and measures for the physical and mental health needs of children and the critical factors for healthy childhood development.

Other government programs also assist children and youth with difficult transitional and environmental issues. Health Canada continues to lead and co-ordinate efforts to prevent family violence, which can be particularly damaging for children and youth.

Some experts believe that the lack of opportunities to succeed can encourage youth to pursue illegal means of achieving success. High rates of youth unemployment can be discouraging. Human Resources Development Canada began a new Youth Employment Strategy in February 1997 to assist young people in making the transition from school to work by improving access to information, building on programs that work and creating new internships. This Strategy includes programs such as Youth Service Canada, Youth Internship Canada and Student Summer Jobs Action, all designed to help young people bridge the gap between school and work.

3. Response to the Report of the Royal Commission on Aboriginal People (RCAP)

In its response to the report of the Royal Commission on Aboriginal People, *Gathering Strength*, the government renewed its commitment to support social change for Canada's Aboriginal people by focusing on improving health and public safety, investing in people and strengthening economic development.

Many troubled children in Aboriginal communities bear the consequences of long-standing economic and social difficulties and face significant developmental challenges, contributing to an overrepresentation of Aboriginal youth in the justice system. The federal government is committed to working in partnership with Aboriginal people, their communities and governments to develop a number of initiatives that will support individual, family

and community well-being. Indian and Northern Affairs Canada has chief responsibility for many of these initiatives, including the Aboriginal Healing Strategy, the continuation of the off-reserve Aboriginal Head Start Program and its expansion to on-reserve communities, and the continuation of the First Nations and Inuit Child Care Program.

On-reserve and urban Aboriginal youth benefit from a variety of federal youth employment programs sponsored by Canadian Heritage, National Defence and the Canada Mortgage and Housing Corporation, such as the Housing Internship Initiative and Young Canada Works for Urban Aboriginal Youth.

Further, the Department of Justice Aboriginal Justice Strategy, which develops community justice models with Aboriginal communities, will focus on supporting new community-based programs directed at Aboriginal youth. The experience of individual communities will be shared through the Aboriginal Justice Learning Network.

Legislative and Supporting Program Components

RECOMMENDATION 1

The Committee recommends that a separate youth justice system be maintained and that Parliament, mindful of the importance of ongoing consultation with the provinces and territories, continue to exercise its criminal law power arising from its jurisdiction to provide guidance as to how the core elements of this system should be applied.

1. New Legislative Framework

The *Young Offenders Act* will be replaced by a new youth justice statute to underscore the renewal of youth justice. A new legal framework will signal that young people will be held accountable and will experience meaningful consequences for their actions. The consequences for violent offences will be different from those for non-violent, lower risk behaviour. The new statute will preserve the effective elements of the *Young Offenders Act* while clarifying the principal objectives of the new youth justice system, including its basis in criminal law. It will include a clearer statement of principles and objectives and ensure that the rights of young people are protected.

A separate regime for the application of criminal laws to young people will be maintained. Youth are more vulnerable in the face of the state's criminal law power and need additional procedural protections. Their behaviour is often less entrenched and easier to correct, and they need support in overcoming the mistakes of youth.

RECOMMENDATION 10

The Committee recommends that the *Young Offenders Act* not be amended to change the maximum age.

The new youth justice legislation will retain the maximum age of 18. Generally speaking, 18 is the age at which young people in Canada acquire full adult civil rights and responsibilities. Retaining a maximum age of 18 is consistent with international standards and the practices of most Western industrialized countries as well as with the views and recommendations of the vast majority of stakeholders.

It will still be possible, however, to impose adult penalties on a small group of the most serious offenders who are under 18. The proposed reforms will, in fact, improve the process and strengthen the courts' ability to deal with the small number of youth who are often seen as the ultimate test of the youth justice system's effectiveness.

2. Statement of Principles and Objectives

RECOMMENDATION 2

The Committee recommends that the *Young Offenders Act* be amended by replacing the present declaration of principles with a statement of purpose and an enunciation of guiding principles for its implementation in all components of the youth justice system. The statement of purpose should establish that protection of society is the main goal of criminal law and that protection of society, crime prevention and rehabilitation are mutually reinforcing strategies and values that can be effectively applied and realized in dealing with youth offending.

The Standing Committee Report and the Federal-Provincial-Territorial Task Force both pointed out the need for clarity on fundamental objectives and principles for the youth justice system. They also recognized that reaching a consensus on these principles would be a challenge.

The following are proposed as key components of such a statement of principles and objectives:

- Protecting the public is the goal of the criminal law and the youth justice system, and meaningful consequences for crimes, rehabilitation and prevention all serve to protect the public by reducing youth crime.

- Crime prevention and the use of alternatives to the formal judicial process are often the most effective approaches for young people, victims, communities and society.

- Victims should be heard and treated with courtesy, compassion and with respect for their dignity and privacy, and should suffer the minimum degree of inconvenience as a result of their involvement with the youth justice system.

- Young people who commit crimes must be held responsible and experience appropriate consequences depending on the seriousness of the offence and the circumstances of the offender.

- Consequences are meaningful when they instruct the offender about the impact of the crime and focus on repairing the damage or paying back society in a constructive fashion, thus reinforcing underlying social values such as responsibility, accountability and respect for people and their property.

- According to their developing maturity, independence, morality, social conscience and behaviour, young people should be dealt with in a separate youth justice regime, based on the criminal law power, that has a greater emphasis on rehabilitation and reintegration.

- While most young offenders can account for their offences through community-based penalties and through fixed periods of youth custody, violent crimes and repeated failure to benefit from sentences available for youth would make serious young offenders eligible for the same sentences as adults.

- While sentences should be limited by what is needed to account for the offence, they should promote rehabilitation and reintegration based on individual needs. The commitment to rehabilitation must remain central, even if the youth receives an adult sentence.

For greater clarity, principles will be developed to assist the courts in determining meaningful sentences appropriate to the circumstances of the offence and the offender. They will also address both mitigating and aggravating factors, such as the use of a firearm in the commission of the offence.

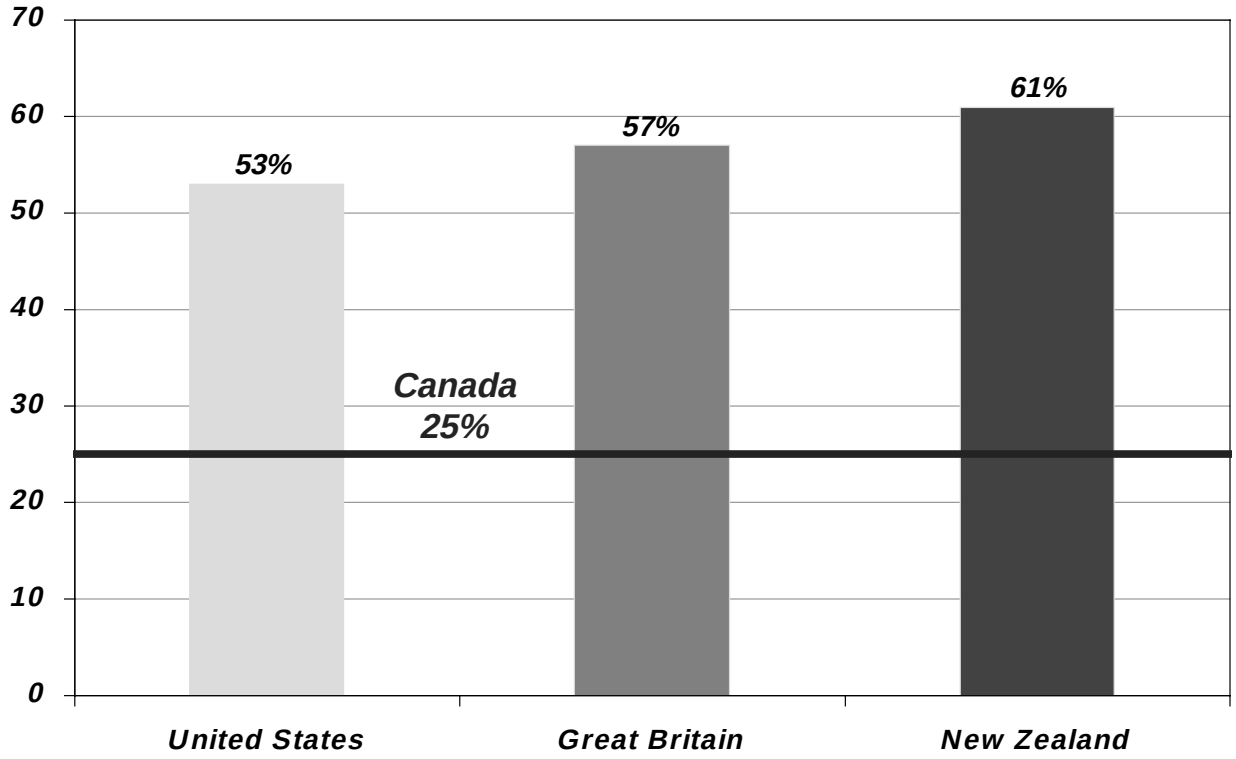
3. Alternatives to the Formal Court Process

RECOMMENDATION 7

The Committee recommends that the youth justice system be reformed to accommodate alternatives to it that are described in this report, such as police cautioning, family-group conferencing and circle sentencing, and, if necessary, that the *Young Offenders Act* be amended to ensure that these reforms are put in place.

Alternatives to the formal youth justice system are an important component of the youth justice strategy for the less-serious and temporary behaviour that accounts for the majority of youth crime. They allow for effective, early involvement to correct antisocial behaviour. The success of this type of intervention has been documented in New Zealand, Australia, the United States and Great Britain. The involvement of communities, offenders, victims, families and others in responding to the wrongdoing instils a sense of responsibility and can lead to more enduring solutions.

Canada's Diversion Rate Compared to Other Countries



A unique family-group conferencing model has been initiated in a number of Mi'Kmaq communities in Nova Scotia. The Alternative Measures Talking Circle provides a distinct justice process that is culturally relevant to Mi'Kmaq youth in conflict with the law.

The police have a key role to play in promoting the use of alternatives to the justice system. Not only can they screen youth into alternative programs, they can play important roles in informal and effective resolutions of delinquent behaviour.

The RCMP in some communities have already been successful with this approach. In British Columbia, for example, the Sparwood Youth Assistance Program is based on a family-group conferencing model and run by volunteer facilitators. Police refer candidates to the program on certain conditions, including admitting responsibility for the offence, agreeing to participate in a "resolution conference" with support people such as parents, relatives, siblings and teachers, and complying with the resolution. If the youth agrees, the involvement and support of the victim is sought. Volunteer facilitators then arrange for a conference to take place, usually within ten days of the accused having been identified. The resolution conference requires the youth to talk about the offence, permits the victim to participate and determines an appropriate penalty. This efficient alternative to the formal judicial process holds youths accountable for their behaviour while acknowledging and repairing the harm caused by the crime to the victim and the community. In the first 22 months of the program, 65 Sparwood youths were dealt with through the resolution conference and none went to youth court. The community had a reoffence rate of only 9%, all the offenders complied with the resolution, and the victims report being very satisfied with the program.

Alternatives to youth court proceedings such as diversion programs, family-group conferencing and other alternative measures programs hold great promise as appropriate, effective and efficient responses to youth crime. Communities and Youth Justice Committees have important roles to play in youth court alternatives. Responses and programs can be tailored to the needs of individual young people and their communities, allowing for cultural and gender sensitivity.

Police warning and formal police cautioning models have worked well in other jurisdictions, although the UK experience demonstrates that these should be limited to less-serious behaviour. Consistent with the recommendations of the Standing Committee, the new legislation will give the police flexibility to make use of effective alternatives to formal judicial procedures. In addition, the government will ensure that the youth justice system encourages alternatives to youth court proceedings such as family-group conferencing and other alternative measures programs.

4. Range of Community-Based Sentences

Community-based sentences fall into two broad categories: those that are sanctions in their own right, such as restitution orders; and those that are intended as alternatives to custody, such as intensive supervision programs. Both permit the development of meaningful and innovative approaches that allow the youth to

account for the crime while learning about the damage caused by the crime and making reparations to the victim and the community. These sentences encourage respect for others and the legal process.

Many alternative sentences give a voice to victims in the justice process. Not only is the resolution speedier but victims are more likely to see that the young person understands and regrets the harm caused by the behaviour. For the young person, sanctions such as restitution, personal services to the victims or public service can be much more meaningful than simply paying a fine or going on probation. These sanctions give the youth the opportunity to be accountable for his or her actions, to gain an understanding of the impact of the wrongdoing on others and to repair the harm done. Community-based alternatives also encourage family members and the larger community to participate in resolving conflicts and developing solutions to youthful offending.

The Atoskata Victims' Compensation Project, based in Regina, Saskatchewan, deals with Aboriginal and non-Aboriginal youths convicted of automobile theft. The project provides work opportunities, with earnings directed to the victims, opportunities to do personal service for victims, and mentoring relationships with Aboriginal elders, as well as individual guidance.

Community-based sentences can also be effective in dealing with some offenders who would otherwise be put in custody, a view shared by the Standing Committee. The differences in custody rates across the country, the fact that a substantial majority of youths are committed to custody for non-violent offences, the lack of effective rehabilitation and reintegration programs available to young offenders given short sentences of custody, and the success of other countries in reducing youth custody rates all indicate that the use of community-based alternatives can be increased without jeopardizing public safety.

This issue is particularly important with respect to Aboriginal young offenders. The Aboriginal justice inquiries in Alberta, Saskatchewan and Manitoba found disproportionately high pretrial detention and custodial rates for Aboriginal youth. The Manitoba inquiry recommended that Aboriginal communities be provided with resources to develop programs to serve as alternatives to detention.

Great Britain, New Zealand and a number of European countries substantially reduced the number of youths in custody during the 1980s. A number of factors contributed to these decreases: changes in legislation regarding the use of custody; greater use of

police cautioning; and increases in funding for intensive, intermediate, community-based alternatives.

Several jurisdictions in Canada have established intensive supervision programs for young offenders. These programs use restitution, community service, surveillance and strict probation conditions. Specialized treatments are often used to target particular characteristics of the offender.

The Intensive Rehabilitation Program in New Brunswick and the Early Intervention and Placement Options Program in Prince Edward Island have also been developed as alternatives to custody.

The Child and Youth Protection Centre in the Quebec City area recently developed an intensive probation program for young offenders who would otherwise have been put in custody. It is a multidisciplinary initiative involving psychologists, social workers, teachers, police and family members who provide ongoing support and close monitoring of the youth. The initial results are encouraging. During the first two years, the reoffending rate for the participants was 44 percent as opposed to 77 percent for the control group, who were placed in custody.

The Youth Futures Residential and Day Attendance Program in British Columbia is a sentencing option for young offenders who require more than probation but not incarceration. Each youth is assigned a youth worker responsible for carrying out assessment plans, including monitoring curfews, providing individual support to the youth and participating in recreation and cultural programming. To aid in consistency and follow-through, the program emphasizes a collaborative case approach involving other service organizations.

A number of wilderness programs, which serve as an alternative to closed custody facilities, have been established in the Yukon and the Northwest Territories. Young offenders are given the opportunity to learn traditional life skills such as hunting and trapping in a structured, closely supervised setting. Youth receive individual counselling and mentoring as well as educational and cultural heritage programs.

Community-based alternatives can also be used as the basis for reintegration and after-care programs. These programs help provide a structured transition back to the community for high-risk youths who have been in custody, thereby reducing the chances of reoffending. The Youth After-Care Program in St. John's, Newfoundland, for example, provides young offenders with education programs, job training and individual counselling to assist their reintegration.

RECOMMENDATION 5

The Committee recommends that the Government of Canada enter into discussions with provincial and territorial ministers responsible for youth justice issues with the goal of shifting resources away from custodial institutions and into community-based services in support of children and families.

The experience in other countries and in certain Canadian examples demonstrates that innovative sentences can provide effective and meaningful alternatives to custody. Costly and often counter-productive reliance on custody can be safely reduced. The renewal of youth justice will include a legislative framework that encourages the use of innovative alternatives such as family-group conferencing, circle sentencing, police cautioning and other community-based alternatives.

RECOMMENDATION 6

The Committee recommends that the Minister of Justice, in consultation with his provincial and territorial counterparts, undertake renegotiation of the young offenders' cost-sharing agreement with the goal of ensuring that 80% of the shareable costs are to be allocated to non-custodial programs and services.

The development and implementation of these types of innovative programs will require financial resources. Over the years, federal, provincial and territorial governments have agreed to share the responsibility for funding various components of the youth justice system. The Standing Committee now recommends a significant shift in resources from custodial institutions to community-based services and the negotiation of new financial agreements that would reflect this objective.

While the government agrees with these directions, we realize that negotiating cost-sharing agreements when federal financial support has diminished over the past several years is a major challenge.

A priority in the negotiation of new agreements will be to encourage the development of a wide range of alternatives to courts and incarceration. Any additional federal funding would be used as seed money or assistance with start-up costs that would be tied to performance objectives and take into account the unique circumstances of each province. The resulting savings over time in youth correctional costs could fund the alternatives on an ongoing basis. Moreover, the savings could allow treatment efforts to be focused on the more serious offenders who should receive custodial sentences.

Co-operation with provinces and territories is essential to achieve shared objectives in the renewal of youth justice. The approach to alternatives and community-based sentences proposed in this response should help reduce administrative costs for the provinces, support a youth justice system with more choices available to judges and encourage less costly and more effective community-based sentencing alternatives. This, in turn, would assist in targeting custodial resources for treatment of violent and serious young offenders.

5. Violent and Repeat Young Offenders

The youth justice system must be able to protect society through just sentences and effective correctional measures for the most high-risk, violent and repeat offenders. It is also particularly important that all possible efforts are made to rehabilitate these offenders.

There are significant sanctions available under the current Act and, for a large number of offenders, these work well. Two earlier sets of amendments to the *Young Offenders Act* expanded the test for transferring young people to the adult system and then introduced a "presumptive transfer" scheme whereby a 16- or 17-year-old youth charged with murder, attempted murder, manslaughter or aggravated sexual assault would be presumed to be dealt with in the adult system unless the young person could demonstrate to a judge on the basis of certain criteria that the trial should be in youth court. While these amendments helped improve the credibility of the youth justice system, the calls continue for more transfers to the adult system.

Presumptive Offences

The Standing Committee recommended further study, for three years, of the current presumptive transfer provisions. We believe that now is the time to act. There are two possible approaches to imposing adult sentences: transferring the young person to adult court (the current system) or, as is proposed below, allowing the original trial court to impose an adult sentence. We propose that the category of offences where this would be presumed to happen be extended from the offences of murder, attempted murder, manslaughter and aggravated sexual assault to a fifth category of young persons who have a pattern of convictions for serious, violent offences. The presumptions currently apply to only 16- and 17-year-olds. This would be extended to 14- and 15-year-olds for the five categories of offences. Presumptions can be rebutted where youth court sentences are deemed appropriate.

RECOMMENDATION 11

The Committee recommends that the *Young Offenders Act* be amended so that the non-presumptive transfer provisions can be invoked at the post-adjudication, dispositional stage of proceedings.

The Committee further recommends that the presumptive transfer provisions contained in Bill C-37 be evaluated by the Department of Justice within three years and that the findings and recommendations of the review be reported back to the House of Commons Standing Committee on Justice and Legal Affairs.

Adult Sentences

The current transfer provisions provide that a transfer hearing take place before the trial. This process can be complex and can lead to significant delays in trial. If the primary purpose of transfer is to determine whether the interests of society would be served by an adult or youth court sentence, then that decision should be based on the most complete, proven and current information that can be made available, i.e. after a finding of guilt.

The longer the time period between the commission of an offence and the time of sentencing, the less meaningful the sentence becomes in reflecting the important social values of accountability and responsibility. Some transfer hearings, including appeals, have been known to take two years or more to complete. In these cases, the trial itself does not begin until long after the alleged commission of the offence. If the lengthy transfer hearings prior to the beginning of a trial were eliminated, a young person could be tried and sentenced in less time than it currently takes to complete the transfer hearing itself.

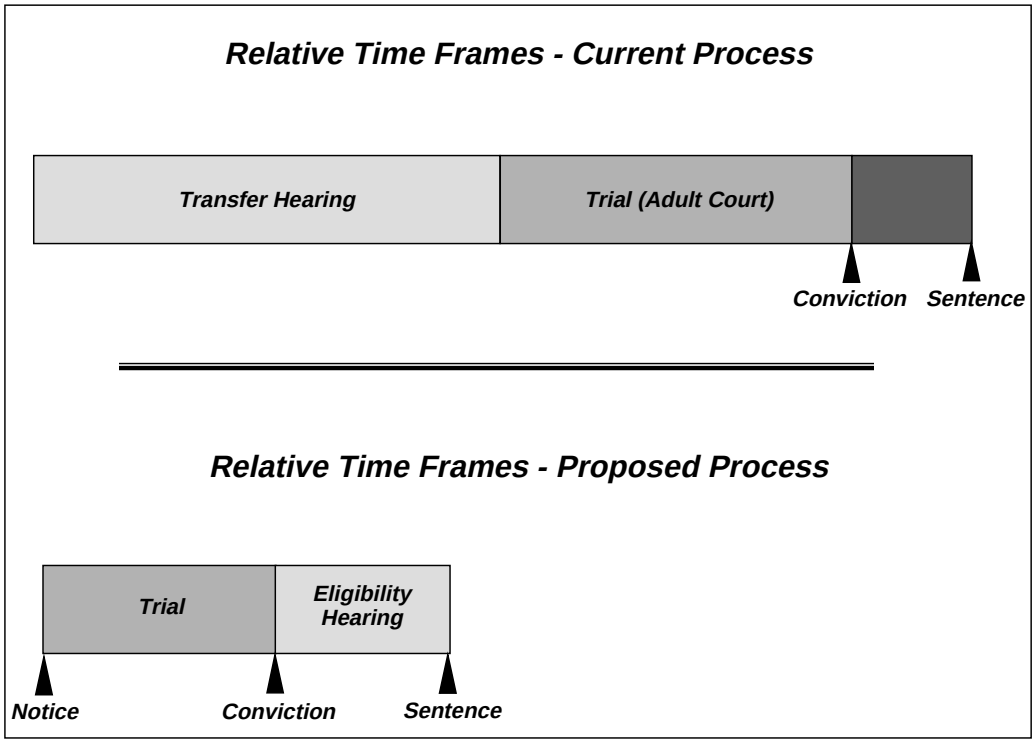
The Standing Committee and the Federal-Provincial-Territorial Task Force both proposed moving the decision to transfer the youth to adult court to the sentencing stage, after a finding of guilt. Consistent with these recommendations, the government proposes a new process to make the youth justice system more efficient and effective – significantly reducing the period between the laying of a charge and a verdict, eliminating procedural wrangling over the appropriate trial forum, and providing the trial court with the power in defined circumstances to use the full range of penalties applicable to adults when sentencing young offenders.

The new process would require the Crown to serve notice of intention to seek an adult sentence, after which the matter would proceed to trial. Consistent with the current practice, the notice could be given for any youth 14 or older charged with an indictable offence, where the Crown believes that the criteria for an adult sentence are met. If the notice is filed or if the youth is charged with one of the presumptive offences, the accused could elect to be tried by a provincial court judge, by a superior court judge or by a superior court sitting with a jury. Filing a notice of intention to seek an adult sentence would be the

equivalent of the current process under which the Crown applies for a transfer.

If the Crown has given notice of its intention to seek an adult sentence and a finding of guilt is made, the court where the trial takes place would then hold a hearing to determine whether the criteria for an adult sentence have been met. With certain charges, the presumption that a youth is liable to an adult sentence would apply. For example, a youth 14 or older convicted of one of the five enumerated offences would be presumed to be subject to an adult sentence unless the young person rebutted the presumption.

If the judge determines that the criteria for an adult sentence have been met, then he or she would have access to adult *Criminal Code* penalties. In this way, the trial court is given the tools it needs to impose the appropriate penalties in these unique circumstances. Once the court decides that the criteria are met, the offender would be treated as an adult for other purposes, including publication of identity and record-keeping. Consistent with current practices, these offenders could be placed in youth correctional facilities and, as discussed below, receive special sentences that guarantee treatment and enhanced supervision.



Special Sentence for Violent Young Offenders

The government is also developing an additional sentencing option for the most violent, high risk young offenders. Members of this group may require a combination of longer periods of control with guaranteed treatment aimed at rehabilitation.

The judge would be able to make a finding that an offender requires this special sentence. It would require an individualized program of rehabilitation and regular reviews of progress and would include the capacity to provide supervision and support when the offender is returned into the community. The government is consulting with correctional and treatment personnel, legal experts and provincial and territorial governments on the design of this initiative.

One further important issue should be noted: the provinces and territories have been particularly concerned about young people who receive longer sentences in the youth justice system. Their concerns are related both to costs and to the major problem of managing these most difficult young adults in youth facilities, particularly as they reach and pass adult age. At the same time, even with youth transferred to adult court, experience shows that there is value in keeping many in youth facilities. Rehabilitating young offenders is more difficult when they are placed in facilities with seasoned adult offenders. As well, the objective of rehabilitation should not diminish or be lost sight of just because they have been given an adult sentence or placed in adult correctional facilities.

Accordingly, any legislative provisions that extend presumptions of transfer, allow the courts in selected cases to impose an adult sentence or create a special sentencing/correctional regime for the most violent young offenders would be subject to additional federal resources being allocated, both for the special regime and to facilitate the movement of young offenders serving adult sentences into appropriate adult facilities, with the needed treatment capacity, when they become adults.

6. Minimum Age

The Committee recommended that, in exceptional circumstances, 10- and 11-year-olds suspected of committing extremely violent offences should be subject to the criminal regime for youth. Any discussion of lowering the minimum age must consider a number

RECOMMENDATION 9

The Committee recommends that Section 13 of the *Criminal Code* (which establishes 12 as the minimum age of criminal liability) and the *Young Offenders Act* be amended so as to provide the Youth Court with jurisdiction to deal with 10- and 11-year-old young persons alleged to have committed criminal offences causing death or serious harm. Such an amendment should require the Attorney General, after consultation with the appropriate child protection/child welfare, mental health, education and other authorities, to personally consent to prosecuting such young persons before Youth Court. Any such amendment should further require the Youth Court judge to review the seriousness and circumstances of the alleged offence, the character and background of the young person, and the availability of appropriate child protection/child welfare, mental health, education, or other services or programs before deciding if the young person should be dealt with in the youth justice system. Under this amendment, if the Youth Court judge decides to refer the young person to services and programs outside the youth justice system, the criminal charges would be held in abeyance while the young person is being dealt with by these other services and programs. If, under this amendment, these services and programs deal effectively with the young person's offending behaviour, the criminal charges held in abeyance could be dismissed by the Youth Court judge.

of factors, including concern for public safety; the capacity of the young person to form a criminal intent; the ability of the child to instruct counsel and participate in criminal proceedings; and the possibility that the child could be handled more effectively through the child welfare or mental health system.

Very few offenders under the age of 12 are involved in serious, violent offences. If they were included, recent experience suggests that fewer than three or four a year across Canada would be charged with one of the presumptive offences. Police statistics from 1992-93 indicate that only 1.1 percent of those arrested for criminal offences were under 12. Over 85 percent of these children were arrested for non-violent offences, mostly minor theft and other property offences such as mischief. The vast majority of those arrested for violent offences were involved in less-serious common assaults.

Most of these children can be dealt with more effectively by parents and the community without involving the state. When a more formal approach is required, child welfare or mental health systems are usually the preferred approach. These systems have access to a wider array of services that are more age-appropriate, family-oriented and therapeutic than those available through the criminal justice system.

While very violent or repeat offending by young children is uncommon, society clearly has an interest in ensuring that appropriate measures are taken to intervene, control and rehabilitate these children. The National Crime Prevention Council was particularly concerned about the development issues associated with anti-social behaviour, and recommended targeted crime prevention efforts.

The Committee's recommendation was presumably based on the need for a safety valve, given concerns that the approaches and resources of child welfare/mental health systems were not capable of dealing appropriately with these children. The Committee recommended that any decision to make the youth justice system apply to children under 12 would need to be limited to violent and repeat offenders in exceptional circumstances and should require the consent of the provincial Attorney General. The Committee also recommended that the court's discretion to apply the youth justice regime to children under 12 would be limited to those who are at least 10 years of age and to those youth charged with a specified, narrow group of violent offences. The court's authority would include the possibility of placing the child in the care of the child welfare

authorities as explained by the Standing Committee in its recommendation.

The Committee's recommendation has been seriously considered, but the preferred approach at this time is to seek to work with the provinces to identify and respond to the child welfare and mental health needs of this small number of children. The commission of serious violence by very young children indicates significant developmental, emotional or psychiatric issues that can best be addressed through provincial child welfare and mental health programs. The federal government will work collaboratively with the provinces in an effort to develop approaches to ensure that the public is appropriately protected while these children receive the treatment they need.

RECOMMENDATION 13

The Committee recommends that the *Young Offenders Act* be amended to provide Youth Court judges with discretion to allow the general publication of the name of a young offender in circumstances where persons are at risk of serious harm, and where, for safety reasons, the public interest requires that this be done.

7. Publishing the Names of Young Persons

The Standing Committee recommended that the *Young Offenders Act* be amended to provide youth court judges with the discretion to allow general publication of the name of a young offender in circumstances where people are at risk of serious harm and where, for safety reasons, the public interest requires that this be done.

The current legislation permits the media to report on youth court proceedings, provided the identity or information leading to the identification of young offenders is not revealed. There are several exceptions to this prohibition. The identification of a young offender transferred to adult court can be revealed. The youth court may authorize the release of the name of a young accused if the youth is at large and a danger to others, and the publication is necessary to assist in his or her apprehension. A young person can apply to the youth court to have his or her name released to the public and the youth court may grant the application if it is not deemed to be contrary to the youth's best interests. The youth court may also, on application from the Crown or a peace officer, authorize the release of information to designated persons in order to avoid serious harm, if the young person has been found guilty of an offence involving serious personal harm or poses a risk of serious personal harm. Information may be shared with school officials about a young offender where such a step is required to ensure the safety of staff, students and others.

There continues to be a great deal of debate about whether the identity of a young person accused or found guilty of an offence should be published in the media. Those who say that the current restrictions should apply assert that the stigma associated with publication would impede rehabilitation efforts and detrimentally affect young persons, thereby compromising public safety in the long run. They argue that the youth justice system is already public and open to the media, which is fully adequate to ensure public accountability consistent with fundamental principles of justice. They fear that the publicity may unfairly tarnish well-intentioned parents and innocent siblings. Since most youth eventually mature into law-abiding citizens, their future employment and educational prospects should not be prejudiced. They also argue that some youth actually seek notoriety and that publication may not only fail to act as a deterrent but instead reinforce the behaviour.

Many Canadians who argue for a change in the publication provisions favour its use for serious, violent and chronic young offenders. Some believe that publicity will deter youth from committing crimes and encourage parents to take more responsibility for their children. They argue that the public, especially parents, has a right to know the identities of these young offenders. Many see publishing of names as tied to fundamental principles of openness and transparency in the justice system. They point out that there is an intrinsic value in the public's right to know that is abridged by the failure to release the names of young people, which in turn undermines confidence in the youth justice system. Others see it as an issue involving freedom of the press. Most important, there is a strong feeling that the publication of names – at least regarding young people convicted of certain violent crimes – is a basic form of accountability.

Essentially, the debate surrounding the publication of names of young persons involves two legitimate and competing values: the need to encourage rehabilitation by avoiding the negative effect of publicity on the youth versus the need for greater openness and transparency in the justice system, which contributes to public confidence in an open and accountable justice system.

The government proposes an approach that permits publication in certain circumstances after conviction. Currently, the names of young people transferred to the adult system can be made public. It is proposed that the identity of a young person be made public if he or she is found by a judge to qualify for an adult sentence. The new legislation would also permit the publication of names of young offenders 14 or older convicted of one of the five presumptive offences (murder, attempted murder, manslaughter, aggravated sexual assault and an offence which forms part of a pattern of serious violent offences), even if they do not receive an adult sentence. In these cases, however, the judge would have the discretion to order that the name not be made public.

8. Discretion to Admit Statements

RECOMMENDATION 14

The Committee recommends that Section 56(2) of the *Young Offenders Act* be amended to provide for the exercise of judicial discretion in determining whether statements by young persons to peace officers or persons in authority may be admitted into evidence against them by Youth Court judges, where to do so would not bring the administration of justice into disrepute.

Some *Young Offenders Act* provisions are overly prescriptive in an effort to protect the due-process rights of youth. Section 56, for example, deals with the admissibility of statements made by young people. It sets out the rights of the young accused, the information that must be given and the procedures that must be followed by the police in order for a statement to be admissible in evidence at the trial of a young person. The complexity of the requirements can lead to voluntary statements being excluded from the trial for technical rather than substantive reasons. Even so, due-process rights and special protections justifiably extended to young accused must be respected.

Consistent with the recommendation of the Standing Committee, the new youth justice statute will allow for judicial discretion to determine whether voluntary statements could be admitted into evidence, where to do so would not bring the administration of justice into disrepute.

9. Role of Parents and Victims

RECOMMENDATION 12

The Committee recommends that the *Young Offenders Act* be amended to provide that parents or guardians be required to attend Youth Court whenever a notice is sent to a young person, provided, however, that a Youth Court judge could excuse a parent or guardian in exceptional circumstances.

Parents and victims have unique relationships with the young person in conflict with the law, and their role in the youth justice process needs to be respected.

Parental Involvement

Young people need the supportive involvement of parents and extended-family members. Most parents are able and willing to be involved in the youth justice process, but all too often they

find themselves on the fringes. Many feel they are only observers in a complex and intimidating judicial process.

There are many reasons why parents may not be involved in the justice system. In some cases, it is a result of family dysfunction, a lack of interest or poor parenting. In other cases, parental attendance is hampered by other considerations such as employment, other family-related obligations, the time and costs associated with travelling and an alienating judicial process.

The Standing Committee recommended that, except in exceptional circumstances, parents be required to attend youth court whenever a notice is sent to a young person. Though the motivation behind this recommendation is laudable – increasing parental responsibility, accountability and general involvement in the justice system – the current provisions of the *Young Offenders Act* can already achieve these goals.

Current provisions of the Act setting out the rights of parents to receive notice and information should be maintained. There are also circumstances where parents may make applications on matters related to their child and where the court must hear representations from them. Further, provisions will be maintained that allow courts to require a parent to attend at any stage of the proceedings in youth court. A parent who fails to attend when ordered to do so would be guilty of contempt of court and could be subject to an arrest warrant to compel attendance.

Legal Representation

A young person is currently guaranteed the right to a lawyer once he or she appears in youth court. If a young person charged with an offence applies for and is refused legal aid because he or she does not qualify, the youth court must appoint a lawyer to represent the young person regardless of the nature of the offence involved or the financial circumstances of the young person or parents. The Attorney General of the province is then required to make arrangements for the appointment and payment of such counsel.

We must continue to guarantee that young people have access to legal counsel, as prescribed in the *Canadian Charter of Rights and Freedoms*. In view of today's fiscal realities, however, it is difficult to justify this practice when the young

person or parents are able to pay. Costs of court-appointed counsel directly affect whether legal aid programs can fund other needed services.

The new legislation would continue to guarantee legal representation but would allow provinces to recover the costs of court-appointed counsel after the proceedings from parents and young people who are fully capable of paying.

Victims

Enhancing the role of the victim in the criminal justice system is a priority for this government. While a victim's particular experience is unique, crime victims share several common needs regardless of whether the offender is an adult or a youth. Some of the most important needs for victims are for information about the criminal justice system and their role in it, as well as information about the particular case that may demand their participation. Law reform initiatives to address victims' concerns will aim for consistency in approach, bearing in mind that the youth justice process may provide additional or alternative opportunities for victim involvement.

A Parliamentary Standing Committee on Justice and Human Rights will soon be studying the need for further victims' legislation and related issues, and it is expected to report to Parliament in the fall of 1998. The Committee has been asked to consider specific proposals for victims and whether they could be applied to the youth justice system. A Federal-Provincial-Territorial Working Group on Victims of Crime is currently examining a variety of issues, including co-ordination and delivery of victim services, the need for specialized services and the provision of information to victims. Once the Standing Committee reports, the government will act to expand services for victims, and these will be available to the victims of youth crimes as well. The Working Group has been asked to explore services related to the victims of young offenders.

Many of the proposed alternatives and community-based programs, such as family-group conferencing and circle sentencing, will involve victims in significant ways in the youth justice process. Requiring young offenders to confront the harm caused by their crimes often educates the offender and prevents repetition of the offending behaviour. Victims may also benefit by having their experiences validated, hearing the offender express remorse and being compensated for their losses through restitution orders.

An ongoing concern of victims is a sense of alienation from the judicial process. In many instances, victims are excluded simply through a lack of adequate information regarding procedures and the opportunities for involvement. In an effort to treat victims with courtesy, compassion and respect, the new legislation will address the issue of providing victims with information about proceedings against young people so that they may have an opportunity to be involved.

10. Efficient and Effective Administration

The new legislation will simplify provisions, streamline processes, remove unnecessarily prescriptive provisions and give officials the power to achieve results and exercise discretion in their work with young persons.

Currently, there are technical and procedural requirements that are costly, cumbersome and unnecessary. For example, with appropriate safeguards, correctional officials would have increased authority to determine the level of security within the youth correctional system appropriate for a particular offender. The complexity of some provisions may result in unnecessary costs and ineffective programming. The government is consulting with those responsible for the administration of the youth justice regime to develop a legislative framework that is operationally sound and cost-effective.

Public Participation and Information

RECOMMENDATION 8

The Committee recommends that the current provision in the *Young Offenders Act* (Section 69) dealing with youth justice committees be strengthened considerably to reflect the prominence this institution should play in a renewed youth justice system. There should be enough built-in flexibility in any renewed legislative provision to allow communities to determine the role to be played by these committees in relation to the coordination and delivery of services to young people. Any such amendment to the Act should immediately follow other recommended amendments

1. Participation in Community-Based Alternatives

An effective youth justice strategy depends on the participation of families, communities, the voluntary sector, victims, mentors and mental health and child welfare workers. Some of the most important and lasting contributions to the support of young people in trouble with the law come from outside the formal justice system. Concerned citizens are vital to the success of important community-based programs, such as crime prevention and youth justice committees. Composed of interested citizens, youth justice committees are designated as official entities by the Attorney General of the province and may assist in any aspect of the administration of the youth justice legislation or in any program or service for young offenders. Family members and others can often provide the necessary support during difficult times and help to encourage and support

setting out a new statement of purpose for the Act and enunciation of its guiding principles.

crime-free behaviour. The number of youth justice committees in some jurisdictions like Manitoba speaks to the commitment and willingness of many Canadians to help young people in trouble with the law. This trend needs to be recognized and encouraged in the new legislation. Advice from citizens will be sought during the development of new legislation and supporting programs to ensure that concerned Canadians are given an enhanced and relevant role.

2. Public Information, Education and Accountability

RECOMMENDATION 3

The Committee recommends that the Minister of Justice undertake discussions with provincial and territorial ministers responsible for youth justice to foster, in conjunction with community agencies, comprehensive, multifaceted education campaigns on youth crime, the *Young Offenders Act* and the youth justice system to be directed at the general public, those who work in the system and those who come into contact with it.

The Standing Committee and others have pointed to the existence of popular misperceptions about youth crime and the youth justice system. The lack of complete and accurate information can lead to misunderstandings that undermine confidence in the youth justice regime.

The Federal-Provincial-Territorial Task Force Report advised that there was not enough research and program evaluation information to assess the effectiveness and efficiency of different types of program initiatives. Rehabilitative objectives are served by obtaining and sharing information on effective programming. The Ontario government has recently announced its intention to evaluate youth justice programs. The youth justice renewal strategy will include mechanisms for evaluating and disseminating information about effective programs.

The youth justice strategy will include ways to provide information to the public about youth crime and the youth justice system on an ongoing basis. The information highway will be used and members of youth justice committees will be kept well informed and be sources of information at the community level.

The youth justice renewal strategy has clear objectives and directions, and Canadians will be kept informed of how the government is doing. A mechanism will be developed to allow for a public accounting of our collective progress. Consideration will be given to providing annual reports on youth crime in Canada and how well we are responding to it.

Conclusion

Developing a fair and effective youth justice system that protects the public and encourages youth to become law-abiding adults is a challenge for all Canadians and all levels of government. Canadians share a commitment to certain fundamental principles in this area: safe communities; fair and effective justice systems; and the healthy development of children and youth. By working together, differences can be bridged to achieve a youth justice system consistent with our shared values and objectives.

Now is the time to adopt a multifaceted, co-operative strategy for the renewal of youth justice to protect the public. Statutory reforms should ensure that youth experience meaningful consequences for their crimes, but efforts must also be made to improve the chances of successful rehabilitation and reintegration of youth as constructive members of their communities.

Legislation alone, however, is not enough to address youth crime, and the proposed changes to our youth justice legislation represent only one part of our comprehensive renewal of youth justice. The multifaceted approach set out in this document will also provide immediate and longer-term responses to youth crime by building links to community-based youth crime prevention programs and to initiatives that address the root causes of criminal behaviour.

The renewal of youth justice is both a great challenge and an opportunity to realize shared objectives for justice and youth.