

Canada's Youth Criminal Justice Act



A New Law – A New Approach

KF
9781
C32
1999

Department of Justice
Canada

Ministère de la Justice
Canada

Canada 

KF 9781 C32 1999

**CANADA'S YOUTH CRIMINAL JUSTICE ACT :
A NEW LAW, A NEW APPROACH.**

Canada. Department of Justice.

Property of the
DEPARTMENT OF JUSTICE
WINNIFEG REGIONAL OFFICE
LIBRARY

Canada's *Youth Criminal Justice Act*

	Page
Introduction	1
Preamble and declaration of principle	1
Sentencing	1
Publication and search	1
Changes to formal court procedures	1

A New Law – A New Approach

Canadian Cataloguing in Publication Data

Main entry under title:

Canada's Youth Criminal Justice Act: a new law, a new approach

Text in English and French with French text on inverted pages.

Title on added t.p.: *La loi sur la justice pénale pour les adolescents.*

ISBN 0-662-64147-7

Cat. no. J2-157/1999

1. Canada. Youth Criminal Justice Act.
 2. Youth – Legal status, laws, etc. – Canada.
 3. Juvenile justice, Administration of – Canada.
1. Canada. Dept. of Justice.

HV9108.C32 1999 345.71'03'02638 C99-980126-0E

Published by authority of the Minister of Justice and Attorney General of Canada by

Communications and Executive Services

Department of Justice Canada

Ottawa, Ontario

K1H 0H8

JUS-761

© Minister of Public Works and Government Services Canada 1999

Printed in Canada

Table of Contents

	Page
Canada's New <i>Youth Criminal Justice Act</i>	1
Introduction	1
A new approach	3
The <i>Youth Criminal Justice Act</i>	5
Preamble and declaration of principle	6
Sentencing	8
Publication and records	10
Custody and reintegration into the community	11
Changes to formal court procedures	13
Measures Outside The Formal Court Process	14
Implementation	17
Youth Justice Reference Group	18
Consultations and training	18
Public information and accountability	19
Funding	19

Canada's New *Youth Criminal Justice Act*

INTRODUCTION

The Government of Canada is working to establish a renewed youth justice system — one that commands respect, fosters values such as accountability and responsibility and makes it clear that criminal behaviour will lead to meaningful consequences. A renewed youth justice system must also make a distinction between violent and non-violent crime and ensure that youth face consequences that reflect the seriousness of their offence. Finally, it must make every effort possible to prevent youth crime and to support youth, if they do become involved in crime, to turn their lives around. Establishing a youth justice system that promotes accountability and is more effective and reflective of current social values is key to regaining public confidence.

These are the basic principles on which the Government of Canada has based its strategy for the renewal of youth justice. The strategy focuses on three key areas that work together to protect the public:

preventing youth crime; ensuring there are meaningful consequences that encourage accountability for offences committed by youth; and improving rehabilitation and reintegration for youth who will return to the community.

Since the release of the Youth Justice Strategy in May, 1998, the Government of Canada has consulted widely with Canadians on specific proposals for a new youth justice system. These included a series of round-table discussions with experts across Canada, as well as consultations with the provinces, victims, police, the legal community, municipal representatives, community organizations and many others. These discussions have helped in developing a new law, the *Youth Criminal Justice Act*, which will replace the *Young Offenders Act*. The new Act, and the programs to support it, address the needs and concerns of all Canadians.

A NEW APPROACH

The changes the government has proposed to the youth justice system share a number of important features:

Flexibility for the provinces. The government's reforms recognize the unique needs, problems and differences in approach that exist among the provinces. Within a framework that ensures the law is applied consistently across the country and that the objectives of the Youth Justice Strategy are met, the government's proposals offer individual provinces a balanced, flexible approach that allows them to choose options in some areas that best meet their needs and suit their systems.

Treating violent and non-violent crimes differently. Not all offences committed by youth are the same. The reforms reflect the basic principle that different kinds of crime should be addressed in different ways and, particularly, that non-violent crimes should be treated differently than violent crimes. The proposals ensure that formal measures, including custody, are always available for offences that warrant this approach, but also encourage the use of informal responses that focus on accountability, involve communities, victims and families, and that are often more effective in dealing with less serious crimes.

A cooperative, integrated approach to youth crime. The proposals also reflect the need for a broader, more comprehensive approach to youth justice that looks beyond the justice system for solutions to youth crime. Experience has shown that the justice system is only one piece of the puzzle. Long-lasting solutions that address the causes of youth crime must involve a variety of individuals, organizations and governments in such areas as crime prevention, child welfare, mental health, education, social services and employment. Families, communities and victims will also have a larger role in addressing youth crime under the government's new strategy.

Children as a national priority. The new Youth Justice Strategy supports the government's national priorities of children and youth. The strategy has strong links to the National Children's Agenda and the Government of Canada's National Strategy on Community Safety and Crime Prevention. These programs are part of a broader federal commitment to improve the health, safety and well-being of Canada's children and youth so that they have the best possible opportunity to develop their full potential.

The Government of Canada's youth justice initiative has a number of components, including a new law and a new framework of supporting programs.

The Youth Criminal Justice Act

The new *Youth Criminal Justice Act* will improve the youth justice system in four ways:

- it promotes **accountability, responsibility and meaningful consequences** for the full range of youth crime;
- it supports more **constructive, long-term and sustainable solutions** to youth crime that: reinforce important social values like respect, responsibility and accountability; focus on the individual needs of youth in ways that are also sensitive to culture and gender; make clearer distinctions between violent and non-violent crimes, so that young people who have committed a crime face consequences that reflect the seriousness of their offence; involve communities in identifying and finding innovative solutions to their unique youth crime problems; expand the role of victims; and support improved rehabilitation and reintegration measures;
- it is more **consistent with national and international human rights** in protecting the interests of children while, at the same time, protecting public safety; and

- it promotes a more **flexible and streamlined** youth justice system that is less time-consuming, more responsive to the needs of victims and families, and permits provinces to develop measures that meet their unique needs.

The new legislation contains the following key elements:

PREAMBLE AND DECLARATION OF PRINCIPLE

The new legislation will contain a preamble and declaration of principle that make clear the purpose of the youth justice system. The preamble and principles underscore that protection of society is the primary objective of the youth justice system. The preamble will also underscore the rights and responsibilities of youth and society in addressing youth crime and reinforce societal values about children and youth. The preamble recognizes the United Nations Convention on the Rights of the Child, to which Canada is a signatory.

The core principles state that:

- protection of society is the paramount objective of the youth justice system, which is best achieved through prevention, meaningful consequences for youth crime and rehabilitation;
- young people should be treated separately from adults under criminal law and in a separate youth justice system that emphasizes fair and proportionate accountability, keeping in mind the

dependency and level of development and maturity of youth. A separate youth justice system also includes special due process protections for youth as well as rehabilitation and reintegration;

- measures to address youth crime must: hold the offender accountable; address the offending behaviour of the youth; reinforce respect for social values; encourage repair of the harm done to victims and the community; respect gender, ethnic, cultural and linguistic differences; involve the family, community and other agencies; and be responsive to the circumstances of youth with special requirements; and
- parents and victims have a constructive role to play in the youth justice system, should be kept informed and encouraged to participate.

SENTENCING

The new legislation will:

- give the youth justice court the power to impose adult sentences in appropriate cases;
- contain a statement that the purpose of sentencing is to hold young people accountable for their behaviour in a way that fits the seriousness of what they have done and their level of maturity. A key principle of sentencing under the new legislation is that the sentence a youth receives should be in proportion to the seriousness of the offence;
- allow an adult sentence for any youth 14 years old or more who is convicted of an offence punishable by more than two years in jail, if the Crown successfully applies to the court;
- expand the offences for which a youth convicted of an offence is expected to be given an adult sentence to include a pattern of convictions for serious, violent offences. At present, only 16- and 17-year-olds accused of murder, attempted murder, manslaughter and aggravated sexual assault are presumed to be subject to adult sentences;
- extend the group of offenders who are expected to receive an adult sentence to include 14- and 15-year-olds;

- create an intensive custody and supervision sentence for the most high-risk youth who are repeat violent offenders or have committed murder, attempted murder, manslaughter or aggravated sexual assault. These sentences are intended for those with psychological, mental or emotional illness or disturbances. The sentence would require a plan for intensive treatment and supervision of these offenders and would require a court to make all decisions to release them under controlled reintegration programs;
- add a number of other sentencing options to deal with the full range of youth crime, including support and supervision and imposing conditions that the youth would have to meet in the community;
- encourage community-based sentences, where appropriate, such as compensation or restitution to the victim, community service or probation;
- permit harsher penalties for adults who wilfully fail to comply with an undertaking made to the court to properly supervise youth who have been denied bail and placed in their care by making this a criminal offence punishable through either summary conviction or indictment; and
- permit victim impact statements to be introduced in youth court.

PUBLICATION AND RECORDS

The new legislation would:

- permit publication of the names of all youth convicted of a crime who receive an adult sentence. In addition, the names of 14- to 17-year-olds given a youth sentence for murder, attempted murder, manslaughter, aggravated sexual assault or repeat violent offences may be allowed. Publication would also be allowed if a youth is at large and is considered by a judge to be dangerous;
- permit the Crown to give notice at the beginning of a trial that it will not seek an adult sentence in a particular case. This means that the youth would receive a youth sentence and the youth's name would not be published; and
- treat the records of youth who receive adult sentences the same as the records of adult offenders. The new legislation would also clarify the record-keeping system for youth records and allow authorized people such as victims, police officers or school authorities to access youth records.

CUSTODY AND REINTEGRATION INTO THE COMMUNITY

An important principle in the Youth Justice Strategy is that, while young people must be held accountable for their crimes, they are also more likely than adult offenders to be rehabilitated and become law-abiding citizens. Programs to help rehabilitate, supervise and control these youth as they return to their communities protect the public because they help prevent further crimes.

The custody and reintegration provisions of the new law would:

- for the first time, include a statement of purpose and principles emphasizing that custody and supervised reintegration contribute to the protection of society;
- place criteria on the use of custody for young people so that it is used appropriately;
- require, in general, that youth be held separately from adults to reduce the risk that they will be exposed to adult criminals;
- give provinces more flexibility in deciding where a young person who has been sentenced to custody should be placed as well as more flexibility in moving youth who reach adult age while still in custody into adult facilities. A maximum age of 20 would be established as the limit for the youth justice system, but the legislation would permit provincial authorities to retain an offender in the youth system beyond this age if it is appropriate;

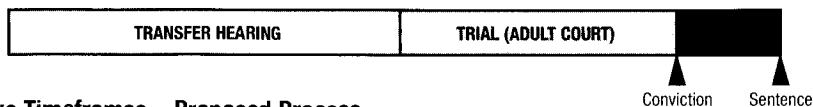
- require the judge to impose a period of supervision in the community following custody that is equal to half the period of custody imposed. This would allow authorities to closely monitor and control the young person and to ensure that he or she receives the necessary treatment and programs to return successfully to the community. The current system does not require a period of community supervision;
- require a youth worker to work with a young person who is in custody to develop a reintegration plan setting out effective programs and treatment for the youth to be undertaken when he or she is in custody or serving the period of supervision in the community; and
- ensure that conditions are imposed on youth during periods of supervision. Mandatory conditions would include keeping the peace and reporting to authorities. Optional conditions would be targetted to a youth's particular circumstances and could include measures to establish structure in the young person's life like attending school, finding employment or obeying a curfew, and measures to address particular problems like abstaining from alcohol and drugs, attending treatment programs or counselling and not associating with gang members.

CHANGES TO FORMAL COURT PROCEDURES

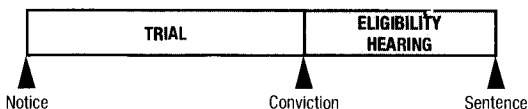
The new legislation will:

- replace the current process for transfer to adult court with a process that gives the youth justice court the power to impose adult sentences on conviction when certain criteria are met. This would result in a more efficient system that places less of a burden on victims and families, and would give any court hearing a case involving a youth the tools it needs to deal appropriately with the case;

Relative Timeframes – Current Process



Relative Timeframes – Proposed Process



- allow a judge to decide on the admissibility of statements made by a youth to a person in authority, such as a police officer. This would reduce the legal and administrative difficulties that currently exist in youth justice legislation as well as the number of statements that are ruled inadmissible simply because of a legal technicality.

Measures Outside the Formal Court Process

Many young people are brought into the formal justice system for minor offences that, in many cases, could be more effectively dealt with in the community in less formal but meaningful ways that focus on repairing the harm done. These options are often faster and more effective because they can involve a variety of community organizations and services as well as the victim, the youth, parents and others. They can also be tailored for the particular needs of an individual young person.

The Youth Justice Strategy expands the options available for dealing with youth convicted of an offence, supporting the establishment of a range of programs and alternatives for less serious crimes while always reserving the formal court process for more serious offences where it is clearly needed. In all cases, the emphasis is on ensuring the youth is held accountable for his or her actions and faces meaningful consequences that teach important social values.

The range of options would include:

- verbal warnings and cautions from police;
- informal police diversion programs such as a referral to a “family group conference,” a program that involves the youth, the youth’s family, the victim and others in addressing the young person’s offence; and
- formal programs requiring community service or repairing the harm done to the victim through, for example, compensation or restitution to the victim.

The proposed Act would also require police to consider all options, including informal alternatives to the court process, before laying charges and allow the provinces, if they choose to do so, to require Crown counsel to screen charges before they are laid against a youth. These measures help to ensure that the more expensive and formal court process is reserved for youth crimes that warrant it.

There are many community-based programs for youth and children at risk already operating successfully in Canadian communities. These include: the Ottawa-Carleton Police Youth Centre, which has been credited with contributing to a significant drop in drug-related charges in the Debra-Dynes public housing community it serves; the Sparwood Youth Assistance Program, a B.C. police diversion program

which, through a conferencing model that involves the youth, family and victim, has established a low re-offending rate of only nine percent; the Atoskata Victims' Compensation Project in Regina, which provides work opportunities to youth with earnings directed to the victim; the Earls court Outreach Program in Toronto, which offers successful treatment and mentoring programs to children under 12; and the Child and Youth Protection Centre in Quebec City, which offers an intensive probation program for young people convicted of an offence who would otherwise have been placed in custody. The program has reduced the reoffending rate among this group by more than 30 percent.

The law enforcement community is an important partner in informal community-based measures. Police officers, working on the front lines in neighbourhoods, schools and in the community, are often the first to deal directly with children at risk, youthful offenders and their families. The Government of Canada recognizes this important role and is working closely with law enforcement organizations in developing and implementing this key element of the Youth Justice Strategy.

Implementation

The Government of Canada is proposing a major restructuring of Canada's youth justice system. This process involves a number of partners at every level of government and in the community — the provinces and territories; the legal profession; law enforcement; social service and child welfare officials; parents; educators; and many others.

Such significant change requires consultation, cooperation and public accountability and openness. The Government of Canada will establish a five-to-six-year implementation phase to allow the federal government, the provinces and the territories to work together with organizations and communities on specific measures, informing the public and developing innovative programs to support the more collaborative, community-based approach of the Youth Justice Strategy.

Measures the government is taking during the implementation period include:

YOUTH JUSTICE REFERENCE GROUP

During consultations on the Youth Justice Strategy, many Canadians expressed an interest in how the strategy would be implemented and how they and the groups they represent could be involved in making the new system work. The government intends to create a Reference Group that reflects the broad range of partners involved in youth justice, including the provinces, territories and municipalities, police, boards of education, victims, child advocates, crime prevention experts, Aboriginal organizations, the judiciary and the legal profession. The Reference Group would be consulted on implementation issues and would encourage participation from many Canadians in addressing the complex problem of youth crime.

CONSULTATIONS AND TRAINING

Many professionals working in the system will need information on the government's new approach as well as training. They will also need to be consulted on implementation issues that affect their professional groups. The Government of Canada will be working with the law enforcement community, legal professionals, the judiciary, corrections officials, child welfare and social services organizations and many others to ensure they are involved in implementing the new system and that they have the training they need to make it work.

PUBLIC INFORMATION AND ACCOUNTABILITY

Canadians need accurate information about how their justice system, including the new youth justice system, works. They also need to be assured that the Government of Canada is meeting the objectives it has set for the new system. The federal government will develop a program to evaluate the new youth justice system, along with measures to ensure Canadians are informed about the Strategy, its objectives and its effectiveness. This will include a national public information program and regular national reports to Canadians on how the government's efforts to renew the system and make it more effective are progressing.

FUNDING

There has been significant cooperation between the federal government, the provinces and the territories on youth justice issues in recent years. The Government of Canada believes that a collaborative approach is essential to improving the youth justice system. The government has committed \$206 million over the first three years of the Youth Justice Strategy for implementation; most of these resources will be made available to the provinces and territories to support the objectives of the Youth Justice Strategy. The government is also committed to providing more long-term stability and equity in federal funding to the provinces and territories.