



The *Youth Criminal Justice Act* and Current Trends in Youth Justice

The *Youth Criminal Justice Act* (YCJA) and Youth Crime

Contrary to popular belief, youth crime has been on a general decline for the past decade. The *Youth Criminal Justice Act* (YCJA) was implemented in 2003 and was specifically designed to reduce the use of custody for youth (ages 12-17).

The YCJA contains clear guidelines for police, lawyers, and judges at every stage of the criminal justice process for how youth cases should be handled. Since its implementation, there has been an increase in the number of youth being diverted out of the court system; remaining in the community while on bail; and serving community-based sentences; which is what the YCJA was designed to do.

Since the YCJA has been in practice for over 10 years, it is now possible to examine trends in youth criminal justice processing since its inception to determine how well it has succeeded in meeting its intended goals.

Types of Offences & Youth Characteristics

The majority of youth crime is minor and non-violent, with theft under and over \$5,000 being the most common crimes committed by youth. The most common violent offence committed by youth is a minor assault. Other typical youth offences include breaking and entering; failing to comply with a court order (e.g. breaching probation); minor mischief; possession of drugs; and uttering threats.

Police-reported statistics show:

- A 20% decline in youth crime rates since 2009, suggesting that the declining crime rate is forming a pattern. This includes youth crime rates for serious assaults, robberies, and homicides.
- The majority of youth charged with criminal offences (60%) are 16 or 17 years old.
- Most youth crime, unlike adult crime, is committed in public spaces, particularly around shopping malls, commercial areas, and public transit stations, and typically outside of the neighbourhoods they live in.
- When crimes are committed at school, they tend to occur during normal school hours.

Police Contact & Arrest

Declining crime rates may be the result of actual declines in crimes, or may be the result of changes in police charging practices. That is, police may be less inclined than in previous decades to formally charge a youth.

Recent data suggests that youth are coming into less contact with police than before. An average of 5,200 youth per 100,000 came to the police's attention in 2012, a number which includes both youth who were formally charged and diverted through other means.

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Reading List

Trends in Youth Justice

www.statcan.gc.ca/pub/85-002-x/2013001/article/11803-eng.htm

Trends in Youth Custody

www.statcan.gc.ca/pub/85-002-x/2009002/article/10846-eng.htm#a7

Admissions to Youth Correctional Services

www.statcan.gc.ca/pub/85-002-x/2014001/article/11917-eng.htm

Rural and Geographic Barriers for Youth Justice

www.justice.gc.ca/eng/rp-pr/cj-jp/yj-jj/rr03_yj5-rr03_jj5/p2.html

Police-Reported Youth Crime Statistics

www.statcan.gc.ca/pub/85-002-x/2013001/article/11854-eng.htm#a7

Data on Youth on Remand

www.statcan.gc.ca/pub/85-002-x/2011001/article/11440-eng.htm#a2

Where Youth Crime is Committed

www.statcan.gc.ca/pub/85-561-m/2011022/part-partie1-eng.htm

Youth Diversion

www.justice.gc.ca/eng/rp-pr/cj-jp/yj-jj/moyer_basic/decision/p3.html#p28

A Comparative Analysis of Youth Justice Approaches

www.children.gov.on.ca/htdocs/English/topics/youthandthelaw/roots/volume4/comparative_analysis.aspx

Secure Isolation

Provincial Advocate for Children & Youth. (2015). It's a Matter of Time. Systemic Review of Secure Isolation in Ontario Youth Justice Facilities. provincialadvocate.on.ca/documents/en/SIU_Report_2015_En.pdf

Pre- and Post-Charge Diversion

Pre-Charge Diversion

Pre-charge diversion (*Extrajudicial measures*) is known as police diversion because youth are diverted away from the criminal justice system by police before they have been formally charged. Police diversion programs have been effective at reducing the number of youth being brought to court and formally charged with minor offences.

Youth diverted from the court system via police diversion are less likely to reoffend compared to youth formally charged. However, police-diverted youth also tend to have committed less serious offences, are less likely to have prior offences, and tend to be younger, all of which place them at a lower risk to re-offend, regardless of whether or not they are diverted.

Despite these benefits, police diversion has been criticized by some academics for potentially 'widening the net of social control.' This is because in the absence of police diversion programs, these youth could be dealt with even less formally by police

(such as a warning) and not be brought under any kind of programming and not have their names formally recorded by police.

Post-Charge Diversion

If a youth is formally charged by police, they are still eligible for post-charge diversion through the courts (*Extrajudicial sanctions*). This is often known as 'formal diversion.' A Crown Attorney may decide that due to the nature of the charge, a youth is eligible for diversion programming. If a youth agrees, they are required to complete the designated program, and only upon successful completion will their charge be withdrawn. Data shows that youth typically offered diversion in the courts tend to be younger (under age 16), female, living with their parents, and facing a charge for a non-violent offence.

Previous charges and findings of guilt do not preclude a youth from being eligible for diversion a second time; however, youth are more likely to receive post-charge diversion if they have no prior convictions and no current outstanding charges.

"Police diversion programs have been found to reduce the number of youth being brought to court and formally charged with minor offences."



The Use of Remand and Bail for Youth

The use of remand (pre-trial custody) remains alarmingly high among youth. The YCJA stipulates that a youth cannot be held in pre-trial custody for social welfare purposes, such as a poor living situation or failure to attend school in the community, nor can they be held in pre-trial custody for an offence that would not receive a custodial sentence if they are found guilty.

This means that youth cannot be denied bail unless their present offence is of a violent nature or they have a history of repeat offending, which satisfies the criteria for a custodial sentence after being found guilty. Still, recent statistics suggest that the majority of youth in custody are awaiting trial - not serving a sentence. In 2012, only 16% of all admissions to custody were for custodial sentences. Thus, 84% of

youth in custody are awaiting trial. Remand admissions tend to be one month or less in duration, whereas custodial sentences tend to be longer.

Perhaps most significantly, the majority of youth held on remand are detained for offences related to administration of justice or failing to comply with a court order, such as being out past curfew.

Bail Conditions on Youth: Creating Crime

When youth are granted bail, they are generally released to a surety (often a parent or guardian) and are ordered by the court to follow a particular set of conditions or rules. Recent research suggests the move towards releasing youth on bail and minimizing the use of custody has

resulted in increased administration of justice charges (e.g. breaching a court order to attend school). Since more youth are awaiting the conclusion of their cases in the community, they are often subject to increasingly punitive bail conditions for significant periods of time.

The longer youth are subject to a bail order and the more conditions they have to follow, the more likely they are to breach their conditions and be re-arrested for failing to comply. This phenomenon has been referred to as 'creating crime.'

Additionally, administration of justice charges (i.e. charges for breaching bail conditions) increase the risk a youth will be held on remand before the conclusions of their current charge. These issues are only beginning to emerge as a pressing problem in Canadian youth justice.

Sentencing

As previously mentioned, admissions to custody for sentenced youth have been declining across the country, with the exception of Manitoba and Prince Edward Island. This means more youth are serving sentences in the community. However, male and Aboriginal youth are over-represented in custodial populations. Youth tend to serve sentences in the community via probation or other supervision types, and older age (16-17) appears to be a significant factor in whether or not a youth will serve a formal sentence of any kind.

Probation is the most common sentence for youth found guilty of a crime. After the introduction of the YCJA, admissions to all formal sentences decreased dramatically as more youth were diverted out of the court system. However, admissions to probation have since remained stable, with just under 20,000 youth serving a probation sentence in the most recent estimates from 2008.

The YCJA also introduced two new sentencing options for youth requiring more supervision than is provided by

probation. Both are community-based and incorporate intensive supervision with serious consequences for breaches: the threat of being placed in custody. These sentencing options were designed to target high-needs youth while still providing non-custodial options for sentencing.

A *Deferred Custody and Supervision Order* is similar to a conditional sentence for an adult. Youth who would otherwise be sentenced to custody are allowed to serve their sentence in the community under strict supervision and conditions. Breaching these conditions may result in completing their sentence in custody.

The second new sentencing option is the *Intensive Support and Supervision Program*, which is a 'step up' from probation with stricter supervision and support provision. The most recent findings from 2008 suggest that 390 youth in seven provinces have been sentenced to intensive support and supervision programs since their inception in 2003.

Current Issues in Youth Justice

Fact Sheets are a publication of the John Howard Society of Ontario on a variety of social and criminal justice issues, intended for John Howard Society staff and community partners. All Fact Sheets are available on our website.

Rural/geographic issues. Rural and isolated communities face significant challenges responding to youth crime due to a severe lack of resources. Known as 'justice by geography,' the types of sanctions that are common in a particular area of the country/province may simply reflect what services and programs are available to respond effectively to them. For instance, if possession of drugs is a rare offence in a particular area, addiction services may not be readily available, so youth experiencing addiction issues may not be able to access appropriate services.

Further, rural and isolated communities are often less likely to have a sufficient number of criminal justice actors available to them. Fly-in programs exist for rural areas that bring in judges, lawyers, and medical professionals to try and respond to this need. However, this still leaves vulnerable communities with no permanent resident resources, which hinders their ability to respond effectively and appropriately to youth crime.

Secure isolation. A pressing issue related to the incarceration of youth is the use of secure isolation. Secure isolation entails locking youth in a designated room or cell and isolating them for a period of time. As a behaviour management tool, it should only be used as a last resort by youth justice facilities.

In 2015, Ontario's Provincial Advocate for Children and Youth (PACY) released a report detailing the findings of its systemic review of secure isolation in Ontario youth justice facilities. While this review found that overall the use of secure isolation has declined in recent years, the placement of youth in secure custody beyond 24 hours or 72 hours remains problematic. The PACY report notes that the negative psychological, emotional and physiological effects of isolation may be especially pronounced for youth. The report calls for greater vigilance and safeguards around the use of secure isolation in youth justice facilities. It also recommends prohibiting "the placement of a young person in secure isolation for a period that exceeds 24 hours without exception."

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The John Howard Society Position

Canada's approach to youth justice—outlined in the *Youth Criminal Justice Act (YCJA)*—is reflective of the reality that youth are still learning and developing, and should be treated differently than adults. Youth deserve special attention under criminal justice legislation.

This recognition is woven into the fabric of our youth justice system, where emphasis is placed on exercising significant restraint in the use of punishment and avoidance of incarceration for youth.

As highlighted throughout this FactSheet, all recent data points to the success of the YCJA's approach:

since its implementation, the use of incarceration for youth has dramatically decreased, and non-custodial options are more readily utilized.



Prior to the introduction of the YCJA, Canada had the dubious honour of having the highest rate of incarcerated youth in the Western industrialized world.

The YCJA has created a more just and effective youth criminal justice system in Canada. Moving forward, we should continue to build on the successes to date: more can be done to ensure that youth are diverted from the justice system wherever possible; that we further reduce the use of custody; that conditions of youth confinement are humane; and that we focus on evidence-based prevention services.