Submission to the

Standing Committee on Justice and Human Rights
of the Government of Canada

Regarding

C-4: An Act to Amend the Youth Criminal Justice Act and to Make Consequential and Related Amendments to Other Acts

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Prepared by the
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The John Howard Society and its role in responding to Bill C-4

The John Howard Society of Canada is a network of 65 offices in all provinces and territories committed to the mission of "effective, just and humane responses to the causes and consequences of crime." Our front-line workers deliver evidence-based services to people in conflict with the law, incarcerated people, those released from prison, their families and children, as well as a range of primary crime prevention services to those at risk of coming into conflict with the law. Our institutional workers prepare prisoners for safe and effective re-integration and our policy units, at the John Howard Society of Canada in Kingston and the John Howard Ontario in Toronto, locate and analyze the peer-reviewed correctional research from around the world to ascertain where the 'best practices' can be found and advocate for their inclusion and employment in Canada's criminal justice policies.

As a matter of principle, John Howard Societies are drawn to evidence-based research which demonstrates how to effectively prevent and reduce crime – in the first instance – and reduce the rate of re-offending by persons released from prison. Taking our inspiration from John Howard himself, we advocate for a correctional system that does not make *worse* those youth and adults who have committed crimes.

Punishment versus community safety

Our long history and experience – and the scientific evidence – convinces us that punishment and punitivism does not prevent or reduce crime. Nor do they promote rehabilitation. In truth, punishment "tends to have the opposite effect by increasing the likelihood that people will commit crimes."[1] We understand that society as a whole expects to see some punitive consequence as a means to confirm social norms and expectations, but we contend that there can be no justification for punishments that exceed these social goals. Punishment is inherently destructive and expensive and, accordingly, should only be used with the utmost restraint and in accordance with fundamental principles that are coherent and thoughtfully applied so as to minimize unintended and harmful consequences. Punishments that deepen already existing harms – be they physical, mental, social – undermine community connections or interferes with the educational treatment or pro-social opportunities normally available to individuals is to be avoided. The criminal justice system ought to be driven by the goal of intervening to reduce further offending by those in conflict with the law.

Punishment does not relieve us of our collective responsibility to care for the young person and contribute to their pro-social growth as healthy and responsible citizens. We cannot justify removing from a young person in conflict

[1]Paul Redekop, Changing Paradigms: Punishment and Restorative Discipline (Waterloo: Herald Press, 2008) 54.

with the law those supportive elements of family and community life that we acknowledge are essential for the full development of all young persons. The youth criminal justice system can enhance public protection only to the extent that it facilitates rehabilitation and safe and effective reintegration of a young person back into the community. Custody alone offers very limited public protection and may even *increase* a young person's risk of re-offending. We have found no evidence to contradict – and much evidence to confirm – the conclusion of the *National Advisory Commission on Criminal Justice Standards and Goals* that "the prison, the reformatory, and the jail have achieved nothing but a shocking record of failure. There is overwhelming evidence that these institutions create crime rather than prevent it."[2]

The Youth Criminal Justice Act

We consider the current *Youth Criminal Justice Act* (YCJA) to exemplify evidence-based policy in as much as it recognizes that youth are still learning and are less responsible than adults. Youth deserve special attention under criminal justice legislation. Indeed, the very young should not be brought under criminal justice legislation at all, but managed through child welfare legislation. The recognition of immaturity should be reflected as the primary focus of the youth justice system by ensuring the greatest restraint in the use of punishment and avoidance of all sentencing practices that are not grounded in the principle of proportionality and buttressed by evidence-based best practices. We have been highly impressed with the Act's ability to dramatically decrease unnecessary incarceration. It is important to be reminded that prior to the introduction of the *YCJA*, Canada had the negative distinction of having the highest rate of incarcerated youth in the Western industrialized world. While we have further to go, this Act brought us closer in line with the more humane and effective youth criminal justice systems of our international counterparts.

A Parliamentary Committee in 1997 recommended that the youth criminal justice system be changed to reduce the use of custody and increase the use of community-based sanctions for youth.[3] The Committee, together with academics and provincial officials, recognized that custody was overused for minor offences and administration of justice charges, expensive and ineffective at reducing re-offending by youth.[4]

The *YCJA* was introduced with the clear goal of decreasing the use of custodial sentences for young people. The Act explicitly strives for the increased use of non-custodial sanctions for non-serious crimes, increases in consistency, and

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[2]United States National Advisory Commission on Criminal Justice Standards and Goals. Reports. (Washington: Unites States Government, 1973) 597.
[3] Anthony Doob & Jane Sprott. "Punishing Youth Crime in Canada," Punishment & Society. 8.2 (2006): 224
[4] ibid

clearer guidance to the court around sentencing.[5] While the *YCJA* was initially presented as a 'tough on youth crime' approach, the Act was intended to reduce the impact of punitivism in the youth justice system.[6] The Act placed rehabilitation and reintegration central to the system with its clear and coherent Preamble and Declaration of Principles. In the seven years since the proclamation of the Act, significant positive changes have been seen. The use of community-based sanctions has increased[7] and the number of youth sentenced to custody has declined significantly.[8] However, our incarceration rate, in particular pre-trial detention rate, of young people is still too high, and the provision, accessibility and use of community corrections programs too low.

The John Howard Society, therefore, strongly opposes most aspects of Bill C-4, which seek primarily to dismantle what we consider to be important positive aspects of the Act. The Act will, amongst others, have the direct impact of increasing rates of youth incarceration, reducing the rate of youth choosing to participate in Extrajudicial Sanctions and reducing the number of youth who are granted bail. As the Star noted in an Editorial, "[this Act's] purpose is to treat more youth as adults, put them behind bars for longer periods, and shame them by publicly identifying them."[9]

The John Howard Society recommends that the Committee abandon or significantly amend Bill C-4.

Position and recommendations on specific amendments

1. *Redefining "violent offence"*

This proposed amendment is extremely concerning as it widens the category of violent offence to include many offences that are far from the common sense definition of violence. Using the vague phrase "creating a substantial likelihood of causing bodily harm, "this amendment will dilute the meaning of the word violence. We are concerned that this redefinition would widen the net by increasing the number of youth facing serious criminal justice interventions.

Moreover, this amendment suggests that a significant or increasing social concern exists with regard to violent crime by youth. As the government is aware from its own research, this is far from the case. Youth crime has decreased in step with broader crime rates and violent crime by youth (under the current

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[5] Raymond Corrado et al., "Should deterrence be a sentencing principle under the *Youth Criminal Justice Act?*," Canadian Bar Review. 85 (2007)
[6] Anthony Doob & Jane Sprott.
[7] Nicholas Bala and Sanjeev Anand. "The first months under the Youth Criminal Justice Act: A Survey and Analysis of Case Law," Canadian Journal of Criminology and Criminal Justice. 46.3 (2004)
[8] Statistics Canada. *The Daily.* 8 December 2009
[9] Toronto Star. Editorial section. 20 March 2010

definition) has remained relatively stable[10]. Why then the need for an expanded definition of "violent crime"? An Editorial in the Toronto Star argues: "there is a lot more spin than substance involved here, regarding both the dangers Canadians face and the effectiveness of the government's proposed solutions."[11]

Recommendation: Reject the expansion of the definition of "violent crime," and in particular remove references to "likelihood" of causing harm.

2. Protection of the public

While it may intuitively seem that the general "protection of the public" should be stated as a primary goal of the *YCJA*, we must be cognizant of the implication of this phrase. This addition to the Declaration of Principle would imply that the "short-term" protection of the public should be a focus of dealing with youth who come into conflict with the law. Bill C-4 thus seeks to dilute and shift the primary focus of the *YCJA*, namely prevention, rehabilitation and long-term goals, towards more punitive goals and the short term protection of the public.

We suggest that the addition of short–term interests is, in fact, short sighted. Sound youth criminal justice systems, including the current *YCJA*, are intended precisely to be thoughtful of the long-term safety and protection of society. The Nunn Commissions report, on which this amendment is based, did not seek to dilute the broader focus of the *YCJA* on the long-term, rehabilitative needs of young people.

The current legislation recognizes that by addressing the underlying causes of youth offending, and through rehabilitation and reintegration - while still subjecting youth to 'meaningful consequences' for their actions - the long-term protection of the public may be achieved. This reflects the research evidence that a focus on criminogenic factors is what will effectively reduce the risk of recidivism. The notion that incarcerating more youth will "protect the public" is not only misinformed, but in fact the opposite of what has been shown in numerous research studies to be successful.

Another important consideration with respect to the proposed amendment is that the youth who would actually be affected – in terms of being incarcerated – are those who commit relatively minor offences, as opposed to more serious young offenders from whom the public would likely assume they would be protected.

To be compliant with the UN Convention on the Rights of the Child, the *YCJA* must have as its very basic principle the 'best interests of the child.'[12] Adding a focus on the short-term protection of the public would act to weaken this

[10] Statistics Canada. *The Daily.* 21 July 2009
[11] ibid
[12] United Nations Convention on the Rights of the Child. Adopted 1989

principle. We argue that the public is adequately protected by the current legislation and that the rehabilitation of young people corresponds with the long-term safety and interests of Canadian communities.

Recommendation: **Retain the rehabilitative focus of the *YCJA* by rejecting references to the short term protection of the public**

3. Pre-trial detention

One of our primary concerns about this Bill is its expansion of the grounds for holding a youth in pre-trial detention. Pre-trial detention is and should be used as a measure of very last resort with young people, and used for the shortest possible time. Significant justification for restraint in the use of remand is found in a range of sources, from the research literature to international human rights principles to fiscal responsibility. In contrast, Bill C-4 actually seeks to *increase* the use of pre-trial detention. By including a variety of new offences in a new definition of "serious offences," many more young people will be detained on remand. There are a variety of reasons that this section should be amended.

First, the research, including a study published by the Canadian government, shows that time spent in custody is actually a criminogenic factor for youth.[13] To be clear, this means that the incarceration of a young person actually *increases* the likelihood that the he or she will re-offend. Thus if the goal of the youth criminal justice system includes reducing recidivism, protecting the public, saving money or the best interests of youth, then pre-trial detention should never be used except as a very last resort.

A Department of Justice study found that the detention experience of young persons, when other factors such as prior record are controlled for, affects the likelihood of pleading guilty and receiving the most severe sentence. Those that are not released by the court after being detained at their "first" arrest are disproportionately sentenced to custody as are those who have multiple stays in pre-trial detention.[14]

Second, relaxing the conditions under which a young person can be detained prior to trial increases the risk of police and the courts using remand to deliver a "short, sharp, shock" or "wakeup call" to youth. Regrettably, many local John Howard Societies report that pre-trial detention decisions in their area already appear at times to be made with the goal of modifying a young person's behaviour, *prior to their conviction of any crime.* It is regrettable because young

[13] Paula Smith, Clair Goggin & Paul Gendreau, "The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences. (Ottawa: Solicitor General Canada, 2002)

[14] Sharon Moyer. Pre-trial Detention under the Young Offenders Act: A Study of Urban Courts (Ottawa: Department of Justice, 2004)

Canadians have the constitutional right to not be punished for a crime for which they have not been found guilty.

The use of custody prior to conviction can serve only two functions in a criminal justice system that values human rights: to prevent a person who has been identified as very dangerous from harming others whilst awaiting trial, and to ensure the court attendance of someone who has shown themselves unlikely to appear in court on a serious charge. The Department of Justice notes that "[t]he basic policy underpinning the provisions of the *Criminal Code* and the *YCJA* is that pre-trial detention is a highly intrusive measure that should be used with restraint and only if it is the least restrictive alternative."[15]

The Act and the Courts have very clearly determined that pre-trial detention is not to be used as a form of punishment. The right not to be arbitrarily or unjustly detained is further supported and protected in the Charter and a variety of International human rights instruments.[16] A *YCJA* that respects the principles of fundamental justice cannot include provisions for punishing a young person who has not been convicted of a crime. Public outrage and attempting to maintain confidence in the administration of justice is no justification for suppressing a person's rights and dignity.

This amendment was a direct response to certain recommendations of the Nunn Commission in Nova Scotia, which investigated the circumstances of a tragic death caused by a young person who had been released on bail. Commissioner Nunn went so far as to conclude that the *YCJA* was the "real culprit" in this sad event, and argued for the increased opportunity to hold youth in pre-trial detention.[17]

As is so often the case after tragic and senseless deaths, the response to the Theresa McEvoy tragedy was to seek increased punitiveness in the criminal justice system. But this response is not a thoughtful one. New Brunswick's Ombudsman observes of the similar Bill that preceded C-4 "[u]nfortunately, Bill C-25 appears to be something of a knee-jerk reaction to isolated incidents of violent youth crimes with tragic consequences."[18] Bad cases make bad law.

For many decades, the John Howard Society has struggled at such times to keep policy-makers focused on the research evidence when an aroused public calls for 'knee-jerk' punitive responses unsupported in principle or evidence. The fact remains that making laws "tougher" does little to improve community safety. As

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[15] Department of Justice. *YCJA Explained [3030301]*. (Ottawa: Department of Justice, 2002)
[16] Canadian Charter of Rights and Freedoms. United Nations Covenant on Civil and Political Rights.
[17] Nunn Commission of Inquiry. "Spiraling out of Control: lessons learned from a boy in trouble. (Halifax: Province of Nova Scotia, 2006)
[18] New Brunswick Ombudsman & Child and Youth Advocate. "Ashley Smith: a report on the services provided to youth involved in the youth criminal justice system." (Fredericton: OOCYA, 2008)

well, there is a substantial gap between the rhetoric of a youth crime crisis, and the actual rates of youth offending.[19] Fortunately, there is evidence that – when given clear information – Canadians are more likely to support criminal justice approaches based on principles of rehabilitation over punitivism.[20]

The reports of the Correctional Investigator and Ombudsman on the death of Ashley Smith provide a necessary balance to this discussion. These reports speak to the profoundly negative impact of custodial settings on young people, particularly those with mental health concerns, as well as the dangerous spiral of pre-trial detention and institutional charges.[21] There can be no doubt that detention centres cannot serve as treatment centres for youth with mental health concerns. Detention centres are notoriously poor at administering programs, often overcrowded, poorly serviced by mental health professionals and transient by nature. The New Brunswick Ombudsman's report argues that rather than changing the pre-trial detention process, the judiciary and provinces should develop and use community-based interventions that work.[22]

Furthermore, this amendment is inconsistent with the UN Convention on the Rights of the Child, which states that "The arrest, detention, or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."[23] The Convention recognizes that pre-trial detention is ineffective and even harmful, and should be used as a very last resort. Canada's obligation, as determined by the Supreme Court, is to comply and be consistent with the spirit of our international human rights obligations.

Recommendation: Reject any amendments that will expand the grounds for pre-trial detention of youth

4. Sentencing principles

The *YCJA* preamble meaningfully improved the youth criminal justice system by clarifying the intended purpose, goals and priorities of the court's approach to youth crime. Specifically, it acknowledged that behavioural concerns in young people cannot be addressed solely through the criminal justice system, directed the court to use incarceration with restraint, and explicitly emphasized the use of "meaningful consequences" and rehabilitation over punishment.

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[19] Timothy Hartnagel. "The rhetoric of Youth Justice in Canada." Criminal Justice. 4.4 (2004)
[20] Julian V. Roberts Nicole Crutcher and Paul Verbrugge, "Public Attitudes to Sentencing in Canada: Exploring Recent Findings," Canadian Journal of Criminology and Criminal Justice, 49:1 (January 2007), pp. 75-107.
[21] New Brunswick Ombudsman & Child and Youth Advocate. "Ashley Smith: a report on the services provided to youth involved in the youth criminal justice system." (Fredericton: OOCYA, 2008)
[22] ibid
[23] United Nations Convention on the Rights of the Child. Adopted 1989

However, Bill C-4 seeks to add general deterrence and denunciation as sentencing principles. To this the John Howard Society strongly objects. These amendments are not supported by evidence, will not prevent crime or reduce re-offending, would inevitably increase the use of custodial sentences and may actually degrade the operation of the *YCJA*.

The use of general deterrence as a sentencing principle is deeply problematic as a matter of evidence. Not only is it without support in the academic literature as a means of reducing crime or improving public safety, it will also produce an inevitably negative impact. Punishing one for the benefit of another contravenes the principle of proportionality, a principle of fundamental justice, international human rights instruments and even thoughtful common sense.

John Howard Society workers across the country have long realized that sentencing severity has no meaningful general deterrent value for young people, or anyone for that matter. People who commit crimes simply do not consider the length of the sentence they might face when making this often split-second decision. For young people, this is even more relevant; a consequence of the young mind's characteristic immaturity, spontaneity and sense of infallibility.

The social development research literature supports this, particularly for the very people that the Bill C-4 Amendments are meant to target: youth who commit serious crime. A large scale meta-analysis from the Solicitor General's office in 2002 concluded that there exists no correlation between recidivism and type of sanction.[24] Specifically, the rates of recidivism are the same regardless of whether a person received an institutional or community-based sanction. Worse, the analysis provides a tentative indication that increases to the length of incarceration correlate with slightly greater rates of recidivism.

The concept of deterrence is based in rational choice theory - the idea that people assess the likely cost and benefit outcomes when making decisions about how to act. However, the evidence about whether young people actually use rational choice decision-making process when faced with the temptation to engage in anti-social behaviour is extremely unclear.[25] Corrado and his colleagues confirm that their research "underscores that seeking deterrence for young offenders is a misguided venture and of little value."[26] A classic study on the decision to recidivate found that few violent, incarcerated youth reported that – before

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[24] Paula Smith, Clair Goggin & Paul Gendreau, "The The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences. (Ottawa: Solicitor General Canada, 2002)

[25] Raymond Corrado et al., "Should deterrence be a sentencing principle under the Youth Criminal Justice Act?," Canadian Bar Review. 85 (2007)

[26] ibid

committing a crime – they thought about their chances of being caught, the impact on their family or the potential sentence they would receive if caught.[27]

There is, in fact, much literature to suggest that the very issues that are correlated with criminality in young people (such as family conflict, school disruption and substance abuse) are also correlated with high impulsivity, low self-control, mental health concerns and addictions; all issues that reduce capacity to perform balanced cost-benefit calculations.[28] For example, the use of alcohol and drugs is disproportionately high in youth prisoner samples and is reliably associated with a reduced capacity for rational decision-making.

The impact of past legislative and policy changes also provides us with plain evidence that people do not consider sentencing principles when making the decision to commit a crime. For example: the homicide rate in Canada has been generally declining since the mid 1970s despite capital punishment being effectively abolished in 1976;[29] Californian counties which enforced the notorious "Three Strikes" law did not show any decline in crime compared to more lenient counties[30], and American states that use the death penalty actually show consistently higher rates of homicide than those that do not.[31] The Department of Justice itself declares: "If incarceration was an effective deterrent, the U.S. would have one of the world's lowest crime rates. Retribution by the criminal justice system has been demonstrated to be an ineffective deterrent."[32]

It would appear that the only recipients of the general "message" of sentencing decisions are those concerned about courts being lax on crime. And while a message of punitivism may garner votes, it does not increase public safety. We submit that youth must not face undue incarceration or punitiveness for short-term vested political advantage in the absence of evidence that deterrence and punitiveness reduce crime or re-offending.

The inclusion of general deterrence is problematic from the perspective of basic principles of international law as it will result in sentencing practices that are based, at least in part, on the thoughts and actions of others. Justice for Children and Youth writes:

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[27] Anne Schneider. Deterrence and Juvenile Crime: Results from a National Policy Experiment. (New York: Springer-Verlag, 1990)
[28] Raymond Corrado et al.
[29] Statistics Canada. 2006. *The Daily.* "Homicides." November 8.
[30] Mike Males & Daniel Macallair. "Striking Out: The Failure of California's Three Strikes and You're Out Law." Stanford Law and Policy Review. 11.1 (1999):65-74
[31] Ernie Thomson. "Deterrence Versus Brutalization: The Case of Arizona" Homicide Study. 1.2 (1997): 110-128
[32] Department of Justice. "Website: Myths and Realities about Youth Justice." http://canada.justice.gc.ca/eng/pi/yj-jj/information/mythreal.html#r10#r10

> "Canada's international obligations under the UNCRC and the YCJA and its obligations to comply with international standards in the administration of justice for young people require Youth Justice Courts to impose sentences that ensure the care and protection of youthful offenders, that avoid the detrimental effects of detention as much as possible, that are proportional above all, and that consider the well-being of the individual offender. International standards do not allow any room for using a young person, or his or her sentence, as a tool to send a message to others.[33]

Indeed, instruments such as the Beijing Rules[34], the UN Convention on the Rights of the Child[35], and the UN Rules for the Protection of Juveniles Deprived of their Liberty,[36] mandate that youth sentences be minimal, proportional and in the child's best interest. The decision to impose a harsher sentence for one young person in order to prevent potential crime by others openly contravenes these principles.

A fundamentally important reason to keep deterrence out of the *YCJA* is that the principle is inconsistent and incompatible with rehabilitation, and therefore leads to great and unjust judicial variance. Under the *Young Offenders Act (YOA*), both deterrence and rehabilitation were included as sentencing principles without prioritization and this led to confusion and inconsistency across youth criminal court decisions.[37] Professors Doob and Bealieu concluded that this high variance was due to judges having to give precedence to one of these irreconcilable goals.[38]

The *YCJA* sets out clearly, in its Preamble and Declaration of Principle, that the objective of the legislation is to rehabilitate and reintegrate young people who commit crime. These principles will be contravened if deterrence and denunciation are added as sentencing principles through Bill C-4, re-creating the flaws and confusion that underlay the youth criminal justice system prior to 2003.

Another inevitable effect of adding deterrence to the *YCJA* sentencing principles will be an increase in the use and length of custodial sentences. Madame Justice Charon in a recent Supreme Court decision wrote that "unlike some other factors in sentencing, general deterrence has a unilateral effect on the sentence. When it

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[33] The Canadian Foundation for Children, Youth and the Law. "Factum of the Intervener" in SCC File Nos: 30512 & 30514 (R. v. B.V.N and R. v. B.W.P.)
[34] United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Adopted 1985
[35] United Nations Convention on the Rights of the Child. Adopted 1989
[36] United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Adopted 1990
[37] Raymond Corrado et al.
[38] Anthony Doob & Lucien Beaulieu "Variation in the Exercise of Judicial Discretion with Young Offenders." Canadian Journal of Criminology. 34 (1992) 35-50

is applied as a factor in sentencing, it will always serve to increase the penalty or make it harsher."[39] To the extent that general deterrence will increase the length and use of custodial sentences – thereby undermining the prior principle of rehabilitation – the John Howard Society deplores the re-introduction of deterrence as a sentencing principle in the *YCJA*.

Our position has long been that custodial sentences should only be used when they are (a) the least restrictive option and (b) for young people who pose a significant risk to public well being. Canada continues to incarcerate young people at rates higher than any Western democracies including the United States – despite the overwhelming research demonstrating that incarceration fails to reduce the likelihood of youth recidivism or promote public safety.[40] The amendments proposed in Bill C-4 are incompatible with the stated goals and principles of the *YCJA*: to reduce over-reliance on incarceration for non-violent young people.

Recommendation: Reject the addition of deterrence and denunciation as sentencing principles

5. Extrajudicial Sanctions

The John Howard Society strongly opposes the amendments contained in Clause 8, namely the provision that participation in Extrajudicial Sanctions be considered in sentencing and contribute to the likelihood of a custodial sentence being rendered. This amendment is counterproductive and undermines the rehabilitative spirit of the *YCJA* and runs counter to the reparative spirit of the Restorative Justice Approach on which these Sanctions are founded.

The proposed amendment can only result in a decrease in the number of youth choosing to participate in Extrajudicial Sanctions. This would be extremely regrettable and also expensive; the prioritization of Extrajudicial Sanctions in the *YCJA* has been a wide success. This approach is more effective with regard to reducing recidivism than incarceration when used effectively, and is also far less expensive than both going through the formal court process and incarceration.

This amendment also raises concerns with regard to the legal rights of youth. The requirement that youth "take responsibility" when agreeing to undertake an Extrajudicial Sanction cannot be equated with a finding of "guilt" under the law. The finding of guilt is a significant event, delivered by a judge after taking into account the arguments of the defendant's lawyer during a hearing to which evidentiary rules apply. To conflate this with a youth informally 'taking responsibility' outside of a courtroom (a process that should be supported) is absurd. The UN Convention on the Rights of the Child mandates that youth

[39] R. v. B.W.P.; R. v. B.V.N., [2006] 1 S.C.R. 941, 2006 SCC 27
[40] Smith, Goggin & Gendreau.

should be presumed innocent until proven guilty[41] and participation in Extrajudicial Sanctions does not equate to proven guilt.

This amendment also threatens to dilute an important focus by the *YCJA* of not unnecessarily propelling young people into the criminal justice system and criminalizing what are often very minor acts. The potential for minor incidents to begin a pattern of escalating criminal justice system involvement when they are unnecessarily criminalized can be seen clearly in the Ashley Smith case; Ashley's first 'offence', which began her journey through the legal and carceral system, was throwing crab apples at a postal worker.[42]

Recommendation: reject the proposal to have participation in Extrajudicial Sanctions considered in sentencing

6. *Youth held in youth facilities*

The John Howard Society supports the proposal to amend the *YCJA* with regard to youth incarcerated exclusively in youth-only facilities.

7. Diminished moral blameworthiness

The John Howard Society supports the addition of "diminished blameworthiness or culpability of young persons" as principles of the *YCJA*.

Summary of recommendations

1. Recommendation: Reject the expansion of the definition of "violent crime," and in particular remove references to "likelihood" of causing harm

2. Recommendation: Retain the rehabilitative focus of the *YCJA* by rejecting references to the short term protection of the public

3. Recommendation: Reject any amendments that will expand the grounds for pre-trial detention of youth

4. Recommendation: Reject the addition of deterrence and denunciation as sentencing principles

[41] United Nations Convention on the Rights of the Child. Adopted 1989
[42]New Brunswick Ombudsman & Child and Youth Advocate. "Ashley Smith: a report on the services provided to youth involved in the youth criminal justice system." (Fredericton: OOCYA, 2008)

5. Recommendation: reject the proposal to have participation in Extrajudicial Sanctions considered in sentencing