RESPONSE (1992) TO THE YOUNG OFFENDERS ACT AMENDMENTS

JOHN HOWARDSOCIETY OF ALBERTA
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BACKGROUND

The Young Offenders Act was proclaimed on April 2, 1984. The Young Offenders Act was to be legislation which would provide an innovative response to the serious difficulties associated with the Juvenile Delinquents Act. Initial concern was expressed that the Young Offenders Act provided an extremely legalistic response which may be less than appropriate to the situation of youths who are involved in the criminal justice system.

In 1986, the federal government amended the Young Offenders Act by passing Bill C-106.

These first amendments were primarily procedural changes which did not greatly alter the substance of the Young Offenders Act. On December 20, 1989, the federal Minister of Justice first presented Bill C-58 to the House of Commons. The Bill as originally introduced died on the order paper when the Parliamentary session was adjourned before a final vote could be taken. It was re-introduced as Bill C-12 and remained a source of considerable debate until it was passed by Parliament in December, 1991. Debate continued as the Senate Standing Committee on Justice and Constitutional Affairs studied the Bill. Ultimately, Bill C-12 was proclaimed in May, 1992.

Unlike the previous amendments, this proposed legislation included both procedural and substantive changes to the law regarding young offenders. The focus of Bill C-12 was to alter the way in which youths charged with serious criminal offences such as murder are treated. These amendments are a direct result of pressure from lobby groups and concerns expressed by the provincial Attorneys General regarding certain aspects of the Young Offenders Act.

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BILL C-12 AMENDMENTS

Bill C-12 proposed significant amendments to the Young Offenders Act with respect to the procedures and penalties for dealing with young people who are charged with and convicted of murder. These amendments will have impact on these youths in three different areas: transfer to ordinary court, maximum dispositions available for young offenders and the dispositions available if a youth is transferred to adult court.

Transfer from Youth Court to Adult (Ordinary) Court

Under the Young Offenders Act, an application can be made to the Youth Court to have a young person transferred to ordinary court. The young person must be 14 years of age and must be charged with an indictable offence other than an absolute jurisdiction offence (under section 553) of the Criminal Code. The Youth Court is required to make a determination about the potential for transfer. The Young Offenders Act previously stated that a young person could be transferred to adult court if the transfer was in the interest of society and having regard for the needs of the young person. It was unclear which of these objectives was more important.

Bill C-12 changed this section of the Act so that the wording of the section clearly states which objective is more important. The Act now says that the interest of society includes the objectives of providing protection to the public and serving the needs of the young person. The court may decide that these two objectives cannot both be met by the youth remaining in the young offender system. If this is the case, protection of the public will be paramount and the young person will be transferred to ordinary court.

Maximum Dispositions Available Under the Young Offenders Act

The Young Offenders Act presently provides that dispositions must not exceed two years except in the instance where the crime committed is one in which an adult charged with the same offence would be subject to life imprisonment, or in the situation where a number of offences are committed at different times. In the latter case, the maximum penalty can be two years, three years or greater than three years, depending on the number of offences and when they were committed. For example, if an offence is committed while the youth is already serving a disposition, then the combined duration may exceed three years.

Bill C-12 has extended the maximum sentence from three years to five years less a day. The five year sentence would be comprised of a maximum period of custody of three years followed by community supervision for the remaining time period. However, the youth could be denied release from custody if the court believes that release after three years would place the public at risk. Section 7 of Bill C-12, designated as the "continuation of custody" provision, is effectively a "gating" provision similar to the procedure adopted for dangerous adult offenders whereby their release on mandatory supervision can be blocked by the National Parole Board. In the case of a young offender, the Youth Court will be given the power to order that a young person remain in custody for the remainder of the disposition instead of being released on conditional supervision if the court feels that the youth is "likely to commit an offence causing the death of or serious harm to another person prior to the expiration of the disposition the young person is then serving."

Sentences Available Where Youth Is Transferred To Adult Court

Currently, a young offender who is charged with murder and transferred to ordinary court faces a mandatory sentence of life imprisonment. A sentence of life imprisonment means that the offender is not eligible for parole consideration for 25 years upon conviction for first degree murder and 10 years upon conviction for second degree murder. Bill C-12 amends the length of a sentence of life imprisonment for young offenders transferred to ordinary court and convicted of murder. The new provisions would allow a youth who was convicted of murder to be eligible for parole after serving a period of custody of between 5 and 10 years. The length of time to be served before parole eligibility would be determined by the judge, while parole would be authorized by the National Parole Board. A minimum of 4/5 of the sentence would have to be served before the offender would be eligible for temporary absences and day parole.

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JHSA RESPONSE TO THE AMENDMENTS

The John Howard Society of Alberta believes that there should be no amendments to the current transfer provisions articulated under section 16 of the Young Offenders Act. Rather

than continue the trend toward an increasingly punitive approach to addressing juvenile crime, the government is urged to consider a more collaborative approach which would involve the community and the criminal justice system working together to find new ways of dealing with this complex social problem. This collaborative approach should take into account the needs of young offenders, victims and the community, and should include a recognition of the need for the prevention of youthful crime as well as the response to it.

The amendments are incompatible with the overall philosophy of the Act, which is the recognition that young people have special needs and that they should not be held accountable in the same manner as adults. Bill C-12's proposal to make public safety paramount in the case of a conflict between the needs of the young person and the protection of society contradicts this principle. The amendments to the Young Offenders Act will blur the distinction between young offenders and adult offenders. The proposal that the needs of the young person not be the primary consideration is contrary to the intent of the original legislation.

The basic purposes of criminal law should be carried out with no more interference with the freedom of individuals than is necessary. Transferring young persons to ordinary court results in a substantial interference with the freedom of the young person, given that the resulting disposition can be considerably more harsh than the dispositions available in Youth Court. The changes to the provisions for transfer to ordinary court will make it easier to carry out such transfers and will result in more young persons suffering the same consequences as adults for their behaviour. Society will not be best served by imposing short-term reactionary solutions to deal with as complex a problem as crimes committed by children. Well-resourced, community-based alternatives to incarceration, combined with a concerted effort to employ social development techniques which would prevent crime in the first instance, would be more reflective of the Declaration of Principles of the Young Offenders Act and would better serve the needs of our youths.

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FUTURE DIRECTION - PREVENTION AND REHABILITATION ALTERNATIVES

One of the most important and potentially effective means of addressing many of the issues which relate to young offenders is to focus on prevention through early intervention. Prevention can be accomplished through intervention at the time when the youth is identified as "at risk" by child welfare and/or mental health authorities. Another example of early intervention aimed at addressing the needs of very young children and their families is the "Head Start" Program.

The implementation of these types of preventive approaches is generally not seen as included within the jurisdictional responsibility of the criminal justice system. This is unfortunate, as it is only when such preventive measures are supported that ultimately there

will be far greater and more positive long term reduction in juvenile offending. Accordingly, in order to improve the existing services for children and minimize the potential for criminal offending, it is recommended that a collaborative cross-jurisdictional approach be undertaken and encouraged.

In addition to prevention, rehabilitation should be emphasized in any attempt to resolve concerns about the effectiveness of the Young Offenders Act. The current over-reliance on custodial sanctions as a means of addressing youth crime is both inappropriate and harmful to those affected - the youth, their victims and their communities. More effective and comprehensive client-centered, community-based interventions should be utilized.

There is a serious lack of residential treatment facilities for youths in most Canadian jurisdictions. A common practice is to place violent and disturbed youths in large institutional settings with staff whose primary responsibility is to maintain institutional security. Alternatives must be developed and implemented if there is to be any hope of creating communities in which youths are not a safety risk to themselves or to society.

A small, more home-like, therapeutic setting would be a more appropriate placement for youths who are not able to function well in the community. Small, secure, well-staffed treatment facilities in which youths receive consistent, appropriate, personal, therapeutic attention and intervention will undoubtedly provide a more positive and long-term impact on the youth than the secure custody sanctions currently employed.

Institutional environments are rarely representative of the outside world. They provide artificial worlds wherein conformity to regulations and dependency on formal and informal power brokers are rewarded, while independence and challenges to the institutional status quo are generally punished. Given this reality, it is not surprising that custodial sanctions are not conducive to the provision of rehabilitative options. Thus, a youth who is living in the community and who is involved in a therapeutic program designed to assist in addressing personal aggressive tendencies is more likely to have an opportunity to use what he or she has learned than would be the case if this individual were in an custodial setting.

Community sanctions should be utilized as frequently as possible for young offenders who are in need of non-custodial intervention. In addition to being less costly than institutional options, community dispositions are more likely to provide youths with opportunities to generalize any learning associated with the sanction to their day to day functioning.

A multi-disciplinary approach must be undertaken in order to improve the existing services for young offenders and to minimize potential for future criminal offending. Funding, cross-jurisdictional controls and the use of more creative, community-based dispositional options pursuant to the principles of the Young Offenders Act are all concerns which merit further development. For example, dispositional options which could be readily provided at present include: more intensive probation supervision, day programs at attendance centres, victim-offender reconciliation programs and victim-offender values groups which promote responsibility on the part of the offender for his or her actions and the harm done.

The move from the use of custodial sanctions to the use of community-based sanctions may be costly at the outset due to the cost of developing and implementing appropriate community programs. In the long term, however, community-based sanctions will prove more cost effective than custodial alternatives.

CONCLUSION

One result of highly publicized, tragic incidents of violence perpetrated by youths and adults alike is an upsurge in public pressure to "get tough" on criminals. However, rather than succumb to the urge to develop a short term reactionary strategy to deal with the public outrage associated with such relatively infrequent criminal transgressions, it will be more beneficial for the government and society to launch more long-term, proactive strategies aimed at the design and implementation of effective preventive services and comprehensive public education campaigns. Accordingly, it is recommended that the Justice Minister not further amend the Act. Additionally, the Minister is urged to focus the work of the Young Offenders Branch of the Justice Department on the development of practical guidelines in order to assist and positively guide the efforts of those charged with the responsibility of implementing the provisions of the Young Offenders Act and to actively become involved in education about the Act and its implementation.