

**RESPONSE
TO
THE YOUNG OFFENDERS ACT
PROVINCIAL REVIEW**

**JOHN HOWARD SOCIETY OF ALBERTA
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INTRODUCTION

The Young Offenders Act has received unprecedented attention of late. The Young Offenders Act Provincial Review is just one of many large scale examinations of youth justice in Canada. It is not surprising that the government is responding to public pressure to change the Canadian youth justice system. What is surprising is the public's fear of young people and the belief that young people are out of control. Certainly the media have some responsibility for the situation. The media have been guilty of sensationalizing the crimes of young people and manipulating public understanding of youth justice. The public's misunderstanding of the Young Offenders Act has resulted in a public hysteria of sorts which has fuelled legislative change.

Ultimately, public misunderstanding about youth justice and the Young Offenders Act needs to be corrected. However, the youth justice issues at the forefront of public scrutiny need to be addressed. Many of the issues which are currently being raised by the Alberta Young Offenders Act Provincial Review were previously considered by the federal Department of Justice's *Towards Safer Communities* consultations in 1993. Thus, the recommendations which arose from the earlier discussion are equally applicable to the present review. The John Howard Society of Alberta makes the following recommendations with respect to the individual areas of concern outlined in the discussion guide. Directions for the future of youth justice in Alberta are also suggested.

JHSA RESPONSE TO DISCUSSION DOCUMENT ISSUES

Sentencing Practices

The issue of young offender sentencing practices has been reconsidered several times since the inception of the Young Offenders Act in 1982. One major concern raised by several authors (Doob, 1989; Reid & Reitsma-Street, 1984; Corrado & Markwart, 1992) is the lack of uniformity in sentencing practices across jurisdictions. Public dissatisfaction with current sentencing practices stems mainly from an apparent lack of predictability and consistency in young offender dispositions. Reid and Reitsma-Street (1984) suggest that these discrepancies arise due to the flexibility of goals offered by the Declaration of Principle of the Young Offenders Act. While this flexibility of goals was originally considered progressive, the result has been inadequate guidance for Canada's judiciary. However, to proscribe specific sentences for particular offences would oversimplify the issue. It would be far better to prioritize the goals already established within the Act. As Bala (1994) points out:

Clearer guidelines, with somewhat more emphasis on accountability, should go some way towards restoring public confidence in the youth justice system, and it would give youths a greater sense that they were being dealt with fairly. (p. 263)

Recommendation 1: A comprehensive review of the Young Offenders Act's Declaration of Principle should be undertaken in order to prioritize its goals.

With respect to the individual questions raised concerning sentencing practices, the John Howard Society calls for limited use of custody dispositions. The Declaration of Principle directs that the principle of least possible interference be applied whenever possible. This practice balances the needs of the community with the needs of the offender. By addressing offenders' needs, communities are, in fact, ensuring the long term protection of society.

Recommendation 2: The use of custody should be limited, and the principle of least possible interference must be applied whenever possible.

With respect to the use of custody for violent offenders, the John Howard Society does not recommend the use of automatic imprisonment. As indicated in the discussion guide on page 5, the increase in violent crimes has resulted mainly from an increase in minor assaults, commonly school yard fights. The imposition of custody in such cases would be excessive and would ignore the basic issues underlying the crime, including inappropriate, excessive and violent responses to interpersonal conflicts. Furthermore, custody dispositions should not be imposed based solely on the number of previous offences. A policy based on the number of previous offences does not consider the nature of the offences. There is considerable difficulty in creating blanket rules for the use of custody. It inhibits consideration of the unique circumstances of each case.

Recommendation 3: Custody dispositions should be based on case specific information.

The John Howard Society of Alberta does not support the use of minimum sentencing for offences. This practice would limit the ability of the judiciary to consider the specific circumstances involved in different cases. Referring to the above example of minor assault, a minimum custody sentence for assault would not account for those cases involving minor fights. Furthermore, minimum custody sentences would result in institutional overcrowding, excessive correctional costs and questionable release mechanisms designed to make room for incoming offenders. It is self defeating to impose minimum custody sentences when release practices are then adapted to release offenders earlier.

Recommendation 4: Minimum sentencing should not be developed.

Young offender dispositions do not need to be more severe. As Corrado and Markwart (1994) point out:

...persons are not deterred generally by what the punishment will be, but rather by what they *believe* it will be. If parents, the media, and even law enforcement authorities persistently tell young people that nothing or little will happen with them under the YOA, then surely general deterrence will be undermined. (p. 365)

Given these misconceptions, criminal justice education programs which address the accountability of young people for their actions and the consequences of committing a criminal offence should be made available to all young people.

Further, the province of Alberta is not presently soft on crime; the province detains more youth pre-trial, finds more youth guilty and puts more youth in custody, mostly for non-violent offences, than in many other jurisdictions. In 1991/92, 5,017 youths were admitted to custody in Alberta (Alberta Solicitor General, 1992a). This was up 28% from 1987/88. The average length of time served in custody for young offenders in Alberta is 79 days - more than twice the average length for adults (Alberta Solicitor General, 1992). During 1987/88, 28% of custody orders were to secure facilities. This rose to 36.2% during 1992 (Alberta Solicitor General, 1992). Despite increases in incarceration rates, youth crime continues to increase. More severe sentences are not the answer to youth crime. The solutions to youth crime lie in innovative programs which prevent its development.

Tougher sanctions may seem to be an easy answer to public dissatisfaction with youth justice in Canada. However, as the John Howard Society of Ontario (1990) cautions:

The Y.O.A. is tough, but it did not end calls for a tougher juvenile system. In fact, since the Y.O.A. was passed the pressure has increased. What we should learn from all this is that *harsh penalties do not reduce public fears*. Harsh penalties simply confirm public apprehension and this apprehension generates more calls for harsher sentencing. (p. 1)

Recommendation 5: Young offender sentences should not be more severe.

Minimum Age

The minimum age of criminal responsibility has been discussed many times. In the last years of the Juvenile Delinquents Act, several authors suggested that an age lower than 12 or 14 would be unacceptable (John Howard Society of Ontario, 1994). The 1975 government document, Young Persons in Conflict with the Law, recommended that the minimum age jurisdiction of youth court be raised from 7 to 14. In 1981, Solicitor General Robert Kaplan argued that children under the age of 12 could be better dealt with under welfare and neglect legislation than under criminal law (John Howard Society of Ontario, 1994).

Most children under the age of 12 lack the necessary knowledge and experience to fully understand the consequences of their actions. Further, children under 12 do not have the cognitive ability to fully participate in proceedings against them. This is a basic requirement of a humane criminal justice system. Early developmental psychologist Jean Piaget found that at roughly 12 years of age a person's thinking and reasoning patterns move from concrete to more abstract or formal (Peterson, 1988). This type of reasoning is crucial to grasping the workings of the law, making this age appropriate for the assumption of some criminal responsibility. Peterson (1988) found that younger children (10 or 11 years old) had a less realistic understanding of the intricacies of the criminal justice system than children who were slightly older (13 or 14 years old). Several other studies have come to similar conclusions (Peterson-Badali & Abramovitch, 1992; Abramovitch, Higgins-Biss, & Biss, 1993; Abramovitch, Peterson-Badali, & Rohan, in press). Generally speaking, lowering the age of criminal

responsibility would ignore the significance of development which occurs during the pre-adolescent stages.

Lowering the minimum age of the Young Offenders Act would be purposeless. We need to ask ourselves what could possibly be gained by dealing with children under the age of 12 in the criminal justice system. Treating children like criminals will not address the problems which are causing their misbehaviour. It will, however, stigmatize these children and may lead to further criminal actions and a lack of respect for the law. The most appropriate response to criminal cases involving children under the age of 12 is to handle them through child welfare and children's mental health services.

Recommendation 6: The criminal behaviour of children under 12 years of age should continue to be dealt with by child welfare and children's mental health services. These services should be examined to ensure that children are receiving the level of services they require.

There is no evidence that crime committed by children under the age of 12 is a serious problem. Indeed, a study of offences committed by children under 12 from 1988-92 found that children under 12 commit 2% of offences in Canada (Clark & O'Reilly-Fleming, 1994). Of the offences committed by children under 12, 42% are mischief offences (Clark & O'Reilly-Fleming, 1994). The reality of criminal activity amongst young children is not considered in emotionally charged discussions of the age parameters of the Young Offenders Act. Rather, most discussions about lowering the age of criminal responsibility stem from anecdotal references and political speculation. Respect for the law can be best instilled in children, not by reducing the minimum age of criminal responsibility, but by living in healthy communities that provide guidance through the tough decisions that face young people growing up. For example, elementary school programs which address issues such as shoplifting and vandalism, would help children make responsible choices (Clark & O'Reilly-Fleming, 1994).

Recommendation 7: The minimum age jurisdiction of the Young Offenders Act should not be lowered, even in specific cases.

Maximum Age

The John Howard Society of Alberta does not support lowering the maximum age of the Young Offenders Act. Along with the debate surrounding the proper age jurisdiction of the Young Offenders Act comes a set of assumptions regarding the nature of childhood and adolescence. Contrary to the argument presented in the discussion guide on page 9, it is fairly unlikely that offenders under the age of 18 *fully* appreciate the consequences of their actions; "to the contrary, they lack judgment and foresight, and are prone to making unsound decisions about the future" (p. 250). As Congar (1975) indicates, most youth are egocentric and maintain feelings of invincibility. The risk of criminal repercussions is not as likely to be grasped by a 17-year-old as by a 20-year-old.

Given that 17-year-old individuals do not fully understand the consequences of their behaviour, it is not a feasible alternative to deal with these youths in the adult justice system for several reasons.

First, the adult system contains its own flaws. Dealing with young people in the adult justice system accomplishes nothing unique and serves no positive purpose. Second, placing young people in the adult system would expose kids to older, more experienced offenders who can be dangerous and who can transfer criminal knowledge to young people. Finally, contrary to popular opinion, changing the maximum age will not expose youths to tougher sentences. As indicated in the previous section, youths serve custody dispositions which are, on average, twice as long as the average adult institutional stay.

It should also be noted that the 17-year-old maximum is consistent with other established social regulations which determine the boundary between youth and adulthood. There is public consensus that young people need to be protected from alcohol, drugs and cigarettes and are not competent enough to vote. However, there is also a growing public sentiment that young people deserve to be treated like adults when they do something wrong. These conflicting sentiments reveal an hypocrisy in our society's attitudes toward its youth.

Recommendation 8: The maximum age jurisdiction of the Young Offenders Act should not be lowered.

Transfer to Adult Court

Consistent with our views regarding sentencing practices, the John Howard Society of Alberta does not support the automatic transfer of youths to adult court. This practice would prohibit the consideration of the circumstances that apply in individual cases. Further, the youth justice system should aim to meet the needs of all young offenders. As Beaulieu (1994) points out:

If we have a separate youth justice system, should we not be ensuring that it is comprehensive and capable of meeting the exigencies of all cases involving youthful offenders? (p. 337)

Transfer provisions are a poor answer to more difficult cases.

Transferring youths to adult court and, possibly, adult jails exposes young people to tremendous risks. Studies have shown that adult prisons have 14 times the murder rate per 100,000 of the community and 8 times the national suicide rate per 100,000 (John Howard Society of Ontario, 1994).

The treatment possibilities for transferred youths are also disturbing. Treatment programs are typically lacking in adult institutions and are not geared to the needs of younger participants. Whenever rehabilitation is an option, youths should be provided with the opportunity to take full advantage. Counselling resources are scarce in adult prisons and are typically consumed quickly. Educational and vocational training programs do not match the quality of those provided in youth residential centres. In those cases where a youth is so disturbed that he or she is no longer suitable for the youth system,

the John Howard Society of Alberta believes that it would be more appropriate to make use of provisions under mental health legislation. By protecting young people from the harshness of the adult system, it is more likely that young people will simply outgrow criminal behaviour and develop into law abiding, contributing members of society.

Recommendation 9: Automatic transfer to adult court should not be implemented under any circumstances.

Ban on Publication

The John Howard Society of Alberta believes that the publication ban should remain in the Young Offenders Act. It has been suggested that the only purpose served by publishing the names of young offenders is to promote public humiliation (The John Howard Society of Ontario, 1994). However, labelling theory cautions that people who are labelled as criminals come to view themselves as deviant and behave accordingly. If the principles of labelling theory are applied, an increase in the criminal behaviour of the youth can be expected.

There is no evidence supporting the view that the publication of names would make the community safer. Bala (1994) points out “the reality that members of the public can do little to protect themselves by having access to identifying information” (p. 258). Rather, recent experience in the Edmonton area has shown that such information is used to drive families and young people out of the community. Given that, ultimately, all offenders are returned to the community, driving offenders out of the community is counterproductive and does not promote a crime free lifestyle on behalf of the young person.

Recommendation 10: The publication ban should remain in the Young Offenders Act.

Mandatory Treatment

Forcing offenders to accept treatment would be ineffective. Motivation to change is the most important prerequisite to change. As a society, we readily acknowledge that smokers do not quit smoking until they really want to and that alcoholics will not stop drinking until they accept that they have a problem. These insights apply equally well to the problems underlying criminal behaviour. Young offenders will not change their behaviour unless they realize that their behaviour is detrimental and that they have a problem. Once that decision is made, effective treatment programming can ensue.

The research on whether mandatory treatment is effective is complex. Research on patient success in treatment programs indicates that when young offenders are pressured by the courts to stay in a treatment program, they are more likely to overcome initial discomfort with treatment and remain in a treatment program (Pompi & Resnick, 1987). Pompi and Resnick (1987) also claim that successful treatment is more probable the longer a young offender remains in treatment. Some object that such findings do not indicate anything more than that the young offender remains in treatment

longer; whether this is a positive result of court ordered treatment is subject to interpretation (Bastien & Adelman, 1984). Rather, Bastien and Adelman (1984, p. 175) found that:

Residents who reported low perceptions of choice about initial placement but high choice about remaining in the program were progressing significantly better than those whose perceptions of choice were low ... those whose perceived choice increased demonstrated comparable progress to that of those whose levels of perceived choice were consistently high.

Similarly, Miller and Burt (1982) assert that coerced treatment is likely to be fraught with difficulty, and Bastien and Adelman (1984) have found that, when given the choice of whether to receive treatment, patients tend to rate the treatment as more beneficial. However, others feel that the courts are given too much discretion in this area in that no limitations are placed on the length of time that the young offender can be detained for treatment (Landau, 1983).

Section 22 of the Young Offenders Act indicates that young offenders have the right to refuse intrusive treatment as guaranteed under section 7 of the Charter of Rights and Freedoms (John Howard Society of Ontario, 1994). However, by declining treatment, offenders are more likely to receive custodial sentences rather than community based dispositions. This problem is exacerbated by lawyers who feel it is their professional obligation to assist their clients in avoiding treatment regimens. The preferred option would be to maintain the standard set under section 22 but to create an understanding and environment which are conducive to the development of clinically appropriate treatment programs. In order to accomplish this, intrusive treatment would be defined as those programs which require detention, involve medical procedures or cause trauma.

Recommendation 11: Mandatory treatment should be restricted to those treatments which are minimally intrusive and do not involve detention, medical procedures or trauma.

The success of treatment programs is a difficult issue and cannot readily be determined by even the most qualified of criminologists. Success is most typically considered an absolute cessation of known criminal activity as measured by recidivism rates. However, these statistics do not take into account those offenders who commit crimes without being caught. Further, the degree of criminal activity is not taken into consideration. Sometimes, treatment may change the nature of the criminal activity. For example, some violent offenders may stop committing violent crimes only to start shoplifting. Further, the minor objectives of treatment programs may be left unconsidered by simply measuring recidivism. If a program is geared to increase education and employability, measures should also be used to gauge its success at meeting those goals. The long term impact of certain treatment programs cannot be easily determined. For example, while a violent offender may not fully grasp the ideas taught through an anger management course, those skills may be picked up on by future generations who may, consequently, break the cycle of criminal behaviour. The issue of

measurement needs to be determined by those most involved in the program since they are most capable of recognizing the program's impact.

The Young Offenders Act should not dictate the attendance of young offenders in specific treatment programs. The Act needs to remain open to new opportunities for dealing with offenders. However, a minimum standard of available services needs to be developed to ensure that adequate treatment services for young people are available. Ideally, the individual treatment needs of every young person in crisis should be met. As Bala (1994) points out, "the real obstacle to the provision of rehabilitative services to young offenders is not s. 22, but rather the reluctance of provincial governments to provide adequate resources for these services" (p. 251).

Recommendation 12: A minimum level of treatment services should be available to every young offender.

Parental Accountability

A principle tenet of the Young Offenders Act set out in the Declaration of Principle is that young people are to take responsibility for their actions. If parents are held accountable as well as or instead of the young person, young people will not learn to take responsibility for their actions and will be less likely to alter their behaviour. However, it is important to address the offender in the context of family (Polauck, 1993). Young people should not be treated in isolation from family members. Treatment efforts are made in vain if a young person is to be returned to a destructive environment.

Recommendation 13: Parents should not be held accountable for the criminal behaviour of their children. However, rehabilitative efforts must address the young person in the context of family.

The real issue is the lack of parenting skills, resources and community support. Parents want to provide for their children, but circumstances beyond their control may prevent them from providing the level of care and supervision necessary for a proper upbringing. Parents of misbehaving children may not know how to discipline effectively (Wells & Rankin, 1988). For example, parents may not know that both overly permissive and excessively strict parenting styles are ineffective; intermediate levels of parental discipline and control have been found to be most effective in eliciting desired behaviour in children (Wells & Rankin, 1988). Wilson (1980) states that "lax parenting methods are often the result of chronic stress, situations arising from frequent or prolonged spells of unemployment, physical or mental disabilities among members of the family, and an often permanent condition of poverty" (p. 233). However, parenting skills need to be addressed given findings such as that of Loeber and Stoutbamer-Loeber (1986) that "lack of parental supervision, parental rejection and lack of parent-child involvement, were among the most powerful predictors of juvenile conduct problems and delinquency" (cited in Goetting, 1992, p. 4).

A progressive society could not support penalizing parents for the actions of their children. Rather, society should assist parents in need. Parenting skills programs, readily accessible daycare and access

to social programs are just some of the many things society could be doing to help parents. The government would be wise to invest in adequate housing for low income families, quality kindergarten programs, support for single parent families, community centres and child care (Polauck, 1993). Thus, the court is not the proper milieu for addressing parenting problems; the problem is a social issue, not a legal one.

Recommendation 14: Assistance should be readily available for parents in need, including parenting skills programs, universal daycare and social programs.

Alternative Measures

Alternative measures programs for young offenders should be expanded. Such programs, when supported by adequate staff and funding, have proven to be highly beneficial. Lower levels of recidivism, increased community involvement and the opportunity for victim-offender interaction are just some of the many benefits of alternative measures programs. The success of alternative measures programs is particularly marked when they are run by Youth Justice Committees.

Alternative measures programs are tough; they force the young person to be accountable to the community. This accountability to the community is likely to have a greater impact on a young person than a more impersonal and abstract accountability to the larger society. Alternative measures programs foster positive interaction between the young offender and the community. Further, these programs teach respect for property and an appreciation of community values.

Moreover, many young offenders who today appear in youth court would have been dealt with by parents, neighbours, school principals and the police not long ago. If these authority figures are no longer able to control youths, then an alternative is needed. However, the formal justice system is not a proper alternative. Rather, an alternative measures program may be more suitable.

Recommendation 15: The use of alternative measures programs in Alberta should be increased.

In addition, alternative measures programs should not be limited to first time offenders. Current program restrictions deny program access to many offenders who would potentially benefit from alternative measures. Indeed, other provinces in Canada are currently using alternative measures programs for second and third time offenders (Edmonton John Howard Society, 1993). Broad eligibility criteria should be put in place to enable more case-specific program referrals.

Public safety would not be compromised by expanding alternative measures programs to include other than first time offenders. The Young Offenders Act requires due consideration to the needs of the offender and the interests of society in deciding whether to refer a young person to an alternative measures program. Youths who pose considerable threat to community safety would still be dealt with by the criminal justice system. Alternative measures programs will be discussed in greater detail later in this submission.

Recommendation 16: **Eligibility criteria for involvement in alternative measures programs should be broadened.**

Principles of the Act

The Declaration of Principle in the Young Offenders Act is the product of 20 years of research; it incorporates the best principles that could possibly have been developed. In the Declaration of Principle, the Young Offenders Act explicitly states that society must be afforded the necessary protection from illegal behaviour. It also states that responses to youth crime must be consistent with the protection of society. Both protection of society and the needs of the young person need to be emphasized if young offenders are to develop into productive members of society and if community safety is to be realized. Despite the high quality of the Declaration of Principle in the Act, improvements can always be made. We support the federal government's proposal in Bill C-37 to include in the Declaration of Principle a recognition that crime prevention is the best method of protecting society and that public protection is best achieved through the rehabilitation of youth. This proposed amendment to the Declaration of Principle addresses a common criticism of the Act that its principles are not prioritized, leading to sentencing disparities.

Recommendation 17: **The Declaration of Principle in the Young Offenders Act should maintain its current balance of the needs of the young person and the protection of society.**

Furthermore, all of the principles of the Young Offenders Act should be retained. More importantly, the application of the Act should better reflect the Declaration of Principle. For example, minimal interference with youth is a principle tenet of the Act and custody is intended as a disposition of last resort, to be used only after all other forms of intervention have failed. However, in Alberta in 1991/92, 21% of cases with findings of guilt resulted in a custody disposition (Canadian Centre for Justice Statistics, 1992). Moreover, only a small percentage of young offenders sentenced to custody committed violent crimes. In Canada, 50% of custody orders were for property offences; only 15% were for violent offences (Canadian Centre for Justice Statistics, 1992). Clearly, custody dispositions are being used far more often than necessary or appropriate.

Recommendation 18: **The application of the Young Offenders Act in Alberta should better reflect the Act's underlying principles.**

Probation

Probation dispositions should be expanded in Alberta. Probation keeps the young person in his or her community and allows the justice system to monitor the young person in the community setting. The province of Alberta has a tendency to overuse custody dispositions and underuse probation dispositions. In 1990/91, Alberta had the lowest level of probation use in Canada (Corrado et al., 1992, cited in Edmonton John Howard Society, 1993). This reality is disturbing given that young

offender custodial facilities are known to be “schools of crime.” Probation dispositions help shield young people from delinquent peers. Further, institutional environments are rarely representative of the outside world. They provide artificial worlds wherein conformity to regulations and dependence on formal and informal power brokers are rewarded, while independence and challenges to the institutional status quo are generally punished. On the other hand, 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 a custodial setting.

Community sanctions should be employed 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.

Recommendation 19: Probation dispositions should be used more frequently in Alberta.

Further, judges should be allowed to continue to order young offenders to attend school. Research has consistently shown that education is key to crime prevention. Young offenders are not throw-aways who are no longer in need of schooling; our society endorses the ideal of universal education. Without due attention to young people’s educational needs, society bears some responsibility for the plight of its citizens later in life. According to the Youth Affairs Branch of Employment and Education (1991):

Compared to high school graduates, dropouts make less money, have lower lifetime earnings, have problems finding and keeping a job, are unemployed more often and for longer times, and marry at earlier ages. (p. 2)

These difficulties experienced by early school leavers can only exacerbate criminal behaviour.

Recommendation 20: Judges should continue to order young offenders to attend school.

A more difficult issue is placement of the young person in an appropriate educational setting. If a youth has had problems in the past in a particular school, it is up to the school system and the justice system to find an appropriate placement for that student. Studies have shown that many young offenders have lower IQs, poor school performance and more problems in school. Ideally, early intervention programs such as quality preschool programs designed to give disadvantaged children a better start in life should be in place to counteract later IQ deficiencies and consequent poor school performance. These early childhood programs will be discussed further in the crime prevention section of this paper.

Recommendation 21: Appropriate school placements must be found for young people experiencing difficulties.

It is not difficult to understand the desire on the part of teachers and principals to have information about the young people in their schools. Ideally, schools should have access to young offender records in order to better meet the needs of those students who may require additional attention and instruction. However, there is some evidence that information of this kind is often used to deny the young person access to education rather than used in a constructive way, such as to help supervise and integrate the young person into the school successfully. Schools have not demonstrated their ability to use young offender records productively. However, if schools are to be given access to young offender records, comprehensive guidelines must be developed. These guidelines should specify which types of cases would be open to access by schools, what information could be shared and how the information could be used.

The publication ban in the Young Offenders Act is based on important principles. A ban on publishing the identity of a young offender is necessary to help minimize the stigmatization and labelling of a young person as “bad.” Further, the publication ban is necessary to live up to principles of the Act such as limited accountability and a second chance for young offenders (John Howard Society of Ontario, 1994).

Recommendation 22: The publication ban in the Young Offenders Act should continue to apply to schools unless it can be guaranteed that the information will be used to benefit the young person. Comprehensive guidelines for the use of young offender records by schools would need to be developed.

DIRECTIONS FOR THE GOVERNMENT OF ALBERTA

Tinkering with legislation is not the answer to youth crime. It is important to recognize that the law has, at best, a limited ability to deal with complex problems. Bala (1994) asserts that “much of the criticism is based on unrealistic expectations of what can be achieved or caused by any piece of legislation” (p. 247). Moreover, the Young Offenders Act is federal legislation. It would be more productive for the provincial government to concern itself with aspects of youth justice over which it has jurisdiction, for example, the implementation of the Young Offenders Act. Implementation responsibilities such as alternative measures programs, Youth Justice Committees and crime prevention programs should be the focus of provincial efforts in youth justice.

Alternative Measures

It is apparent that the traditional responses of the adult criminal justice system to crime have not been effective in reducing recidivism or deterring people from criminal involvement. What good can be accomplished by dealing with young offenders in the same manner? Dispositions which isolate

youths in custodial facilities, the lack of acceptance of offenders by communities upon release and the lack of funding for community based programs all contribute to society's problems with the behaviour of youths. Alternative ways of dealing with young offenders need to be explored.

The Young Offenders Act allows for some innovation in dealing with youth crime. For example, Section 4 of the Act provides for the use of alternative measures instead of formal court proceedings. Alternative measures programs have the potential to be a more productive way of responding to youth crime. Community service work and restitution can help an offender to get in touch with the impact of his or her actions. Young offenders can be shown that the community is displeased with their behaviour, not just the justice system. Communicating the community's dissatisfaction to a young offender personalizes the justice process.

The province of Alberta is not using alternative measures programs to their full potential. There is wide variation in the degree of innovation and creativity of alternative measures dispositions across jurisdictions. Many jurisdictions, such as Edmonton, Calgary and Grande Prairie, rely on community service orders and essays of apology almost exclusively (Edmonton Community and Family Services, 1990; Personal Communication, Calgary Young Offender Centre staff member, July 28, 1994; Personal Communication, Grande Prairie Community Corrections Department staff member, July 20, 1994). Other jurisdictions, such as Lethbridge, Medicine Hat and Red Deer, report more innovation in dispositions (Personal Communication, Lethbridge Probation Department staff member, July 27, 1994; Personal Communication, Medicine Hat Community Corrections Department staff member, July 20, 1994; Personal Communication, Red Deer Probation Office staff member, July 21, 1994). For example, a youth may be referred to a drug or alcohol treatment program or the Correctional Centre Visitation Program may be utilized.

Similarly, victim-offender reconciliation is used to a varying extent in alternative measures programs across Alberta. While Red Deer reports wide use of the victim-offender mediation program in their community, in Edmonton, victim-offender reconciliation is utilized in less than 5% of alternative measures cases (Edmonton John Howard Society, 1993). Other jurisdictions also report little, if any, use of victim-offender reconciliation. Jurisdictions cite a lack of personnel, inefficiency and victim disinterest as common reasons for limited use of victim-offender reconciliation. Of note, the victim-offender reconciliation program in Red Deer speculates that the slow referral process, averaging perhaps four months from the date of the offence, is responsible for much of the victim disinterest (Personal Communication, Red Deer John Howard Society staff member, June 21, 1994). Victim interest is likely to wane with time. The province of Alberta needs to place greater emphasis on victim involvement in youth justice; victim-offender reconciliation programs should be heralded as the disposition of choice for many young offenders. Victim involvement has numerous potential benefits including enabling the young person to understand the impact of his or her actions and personalizing the offence. Further, victim involvement would be beneficial in helping to dispel public misconceptions about young offenders and youth crime.

The success of alternative measures programs in Alberta is also limited by the types of offenders being referred to the programs. Most alternative measures programs in Alberta are restricted to first time offenders, although Edmonton has expanded its jurisdiction to include second-time offenders as well. Further, most of the offenders participating in alternative measures programs in Alberta have committed minor property crimes. While the need to balance the nature of the offence and the forum for addressing it is understood and acknowledged, these tight restrictions are disappointing. Alternative measures programs have the potential to benefit a wide variety of offenders, not just first-time property offenders. Ultimately, the stigmatizing effects of formal court processing on young people should be avoided if at all possible or appropriate.

Alternative measures programs in Alberta should be expanded to include a wide variety of offenders. In addition, the programs should be developed to allow more innovation and creativity in dispositions. Adequate funding and staffing levels must be provided to facilitate this expansion.

Youth Justice Committees

Section 69 of the Young Offenders Act promotes community involvement in the administration of juvenile justice by providing for the development of Youth Justice Committees (Ryant & Heinrich, 1988). The establishment of Youth Justice Committees is at the discretion of the provincial Department of Justice. These Committees are comprised of local citizens who assist in the administration of the Young Offenders Act and/or in programs and services for young offenders (Ryant & Heinrich, 1988). The provincial Department of Justice has the authority to specify how Committee members shall be selected and what the Committee's functions shall be. The ambiguity of Section 69 of the Young Offenders Act fosters diversity in Canada's Youth Justice Committees.

In 1993, the Alberta government formalized the procedure for the development of Youth Justice Committees under Section 69 of the Young Offenders Act. The Department of Justice released guidelines for the formation of such Committees. The document includes basic operating principles and objectives as well as steps to follow in setting up a Committee and application procedures for designation. The operating principles contain the acknowledgement that youths should be responsible for their criminal behaviour, that there should be a recognition of the rights of the youth and the victims, that parents have a responsibility for the care and supervision of their child, that the least intrusive alternative should be sought without jeopardizing public safety and that the community has a right and responsibility to participate in the administration of justice.

Nine potential objectives for Youth Justice Committees were identified. First, Youth Justice Committees should operate as an alternative to the formal court system by operating as alternative measures programs. Second, Committees need to demonstrate a concern for the victim and take their views into consideration. Third, programs should provide community support to offenders in order to assist them to lead a positive life in the community. Fourth, Youth Justice Committees could operate to provide sentencing recommendations to Youth Court judges. Fifth, Committees could provide opportunities for offenders to complete community service orders and fine option programs. Sixth, programs could arrange for victim-offender reconciliation. Seventh, Committees could also

arrange for community sponsors to provide short term supervision for youths. Eighth, Committees should ensure that community resources are available and used. Finally, Committees should enhance community awareness of youth crime through public education.

The government also outlined an eight step process that should be used to set up a Youth Justice Committee. The steps include organizing a steering committee, informing the community of the initiative, identifying the needs and interests of the community, deciding upon activities to be undertaken by the Committee, developing a constitution and guidelines for operation, applying for designation under the Young Offenders Act, formalizing the Committee and providing training as required, and evaluating process, procedure and function.

There are presently 18 Youth Justice Committees operating across Alberta. The first programs were initiated by Aboriginal communities who felt that the Committees would allow them to actively participate in controlling youth crime while addressing the needs of the community. The idea quickly expanded into non-Aboriginal communities as well. While Aboriginal and non-Aboriginal communities coordinate and administer their programs in similar manners, there are two basic differences. First, Aboriginal Committees tend to use a court-based design as the basis for their programs whereas non-Aboriginal Committees prefer a pre-court diversion approach. Second, the Aboriginal programs tend to make use of elders as panel members whereas non-Aboriginal Committees use community members at large (provided that they receive security clearance). Beyond these differences, it is important to note that most Committees are designed to be responsive to the community, whether Aboriginal or non-Aboriginal. For example, most Committees are designed to hear the cases of culturally different clients since most communities are, in fact, culturally diverse.

There are two basic models which have been followed by Youth Justice Committees in Alberta. The first model is more common to Youth Justice Committees across Canada. This is the pre-court diversionary design. Youths are referred to the Committee at the pre-charge stage by police and the crown prosecutor. The youth does not appear in court. Rather, the youth is referred to the Youth Justice Committee which works with the youth to deal with the offence. The initial task of the Committee is to review the background information and the circumstances surrounding an offence. Once the information has been reviewed, the Committee and the offender negotiate a means by which the offender can make amends for the crime. In doing so, the needs of the community, the victim(s) and the offender can be addressed. This model offers the advantage of diverting youths from the formal criminal justice system and allowing the youth to avoid a criminal record. It is, however, limited to first time offenders.

The second model for Youth Justice Committees is the court-based model. In this case, the youth is charged with the crime and appears in court. Once a guilty plea is entered, the judge refers the case to the Committee for sentencing recommendations. The Committee then gathers background information and gives offenders and their families, victims and other involved parties the opportunity to voice their perspectives and concerns. Using this information, the Committee submits a recommendation to the judge who attempts to incorporate the recommendation into the sentence.

This model offers the advantage of dealing with repeat offenders, which can often provide insight into deeper social problems affecting the community and the individual.

These two models are in no way mutually exclusive. Many Committees have expressed an interest in expanding their roles to deal with both sentencing recommendations and pre-court referrals. Further, some Committees have expanded their jurisdiction to include adult offenders and family disputes.

Youth Justice Committees in Alberta have experienced an excellent start. However, the Committees are still open to improvement. A 1994 study of New Zealand's Community Conferences and Australia's Family Group Conferences conducted by criminologists John Braithwaite and Stephen Mugford suggests possible directions for Youth Justice Committees in Alberta. The study identifies reintegrative shaming as the most appropriate response to crime. Reintegrative shaming involves first, shaming offenders for their criminal actions and, then, welcoming them back into the community following a reintegration ceremony emphasizing reconciliation and restitution. In their observations of the conferences, Braithwaite and Mugford identify several conditions that contribute to a successful reintegration ceremony. Youth Justice Committees in Alberta could gain valuable insights from the Australia and New Zealand experience.

Youth Justice Committees operate as advisory committees and citizen courts. Committee members work in partnership with youth justice personnel in helping the young offender to lead a constructive and responsible life within the community. In addition, Youth Justice Committees seek restitution for community members who have been victimized by the young offender. Youth Justice Committees also monitor the procedures and dispositions of the youth courts and ensure that community resources for young offenders are available and utilized. Most importantly, Youth Justice Committees increase community involvement in the youth justice system.

Youth Justice Committees in Canada are noted for their success in decreasing recidivism rates and securing the compliance of young offenders. Manitoba's Youth Justice Committees have experienced 80 - 90% success rates, defined in terms of recidivism (Government Office staff member, personal communication, May 5, 1992). More importantly, Youth Justice Committees instill a sense of involvement in communities. Community involvement in the administration of youth justice has increased satisfaction with the process and communities have a stronger feeling that justice has been achieved. The concerns and criticisms raised of other community involvement models in other countries have largely been avoided in Canada. Net-widening has not typically been raised as a concern by those involved in Youth Justice Committees. The court-based model would not likely increase the number of individuals under the jurisdiction of the criminal justice system since the Committee provides sentencing recommendations, not ancillary court services. The pre-court diversion model, however, may cause net-widening. These programs are designed to deal with minor first time offences which are also the most likely to be dismissed by police and prosecutors. No evidence has been collected regarding the net-widening impact of pre-court diversion.

The jurisdiction of many Alberta Youth Justice Committees has not been limited. Those Committees which use a court-based model are not limited to first time offenders who have committed minor crimes. Cases have involved repeat offenders who have committed very serious crimes such as sexual assault. The pre-trial diversion model Committees, however, are limited to first time offenders. This limited jurisdiction has not been met with much criticism in Alberta given the dominant law and order political atmosphere.

Limited access to information has been a concern in Canada. Under Canadian legislation, it is a violation of the rights of young offenders to share sensitive information. However, some communities have reported that information sharing does occur without complication. In some cases, young offenders and their families give specific authorization to the Youth Justice Committee to gather whatever information is necessary.

Processing speed has not been a great concern for Alberta's Youth Justice Committees. A 1983 study conducted by Collins found that, in Grande Prairie, there was a slightly longer period that youths waited from the time they were charged until the time they were seen by the Reconciliation project. Conversely, however, dispositions were received from the project slightly more quickly than they would have been in the courts. No other studies have since been conducted. Some Committees have indicated that their guidelines contain a requirement to see the youth and dispose of the case quickly.

Committee member training has also been raised as a potential concern. Some communities in Alberta have taken this very seriously and have mandated extensive training for their Committee members with respect to mediation and the court process. Other communities have argued that it is better for Committee members to be untrained and thereby allow them to represent the community in hearings. Once trained, their perceptions of what constitutes an appropriate response is altered. While these concerns have not been completely addressed to date, there is considerable satisfaction with the operation of the Committees in Alberta.

Youth Justice Committees offer a promising alternative to the traditional channels for dealing with wayward youth. Canada has the opportunity to learn from the successes as well as the difficulties experienced by other jurisdictions with community corrections. It is clear that the government's role in Youth Justice Committees is to facilitate their development but not run them. The Alberta government should continue to support the formation and operation of Youth Justice Committees. Ultimately, Youth Justice Committees should be operating in every community in Alberta.

Recommendation 23: The use of Youth Justice Committees should be expanded in the province.

Prevention

Many of the known factors related to delinquency are preventable. Early intervention is potentially the most effective means of addressing many of the issues which relate to young offenders. Further,

early intervention and diversion are the best long term solutions to youth crime. 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. For example, poor school achievement can be counteracted by high quality preschool programs (MacKillop & Clarke, 1989). Participants in the Perry Preschool Project, one of the most renowned early childhood programs, fared better in school and were more successful at securing employment. Further, program participants were less likely to get involved in crime and evidenced lower levels of teenage pregnancy. Similarly, poor parenting techniques can be addressed through parent education and support programs. One such program, the Syracuse University Family Development Research Program, found that providing deprived families with child care services, parenting education, community service referrals and parent association involvement had a positive impact on disadvantaged children. The children demonstrated better school performance, higher self esteem and decreased delinquency levels evidenced by less probation involvement and lower offence severity.

Crime prevention pays; it has been estimated that there is a \$7 return for each dollar invested in the Perry Preschool Project (MacKillop & Clarke, 1989). Similarly, the American Select Committee on Children, Youth and Families estimates that every dollar invested in quality preschool education returns \$4.75 because the preschool participants are less likely to come into contact with the law or be dependent on public assistance, and are more likely to experience success in school and be gainfully employed in adulthood (cited in MacKillop & Clarke, 1989). However, MacKillop and Clarke (1989) caution that:

Such programs cannot be run in isolation. A wide range of factors, such as adequate income, prenatal and postnatal health care, affordable housing programs, parent support and education services and early childhood support and education, contribute to the optimum development of children. (p. 8)

Crime prevention should be a top priority for the government of Alberta. The Alberta government should promote crime prevention initiatives and encourage communities to get involved. Ultimately, crime prevention is a community responsibility. Communities should be educated on the reality that:

If we ignore the problems faced by children at risk of becoming offenders, we will certainly suffer the consequences. If we abandon these children to lives of unfulfilled promise and limited opportunities, we will pay for it in the future through the costs of an alienated population and lost productivity and creativity. (MacKillop & Clarke, 1989, p. 1)

Recommendation 24: Crime prevention should be a top priority of the Alberta government.

CONCLUSION

In conclusion, legislative change is, at best, a short term reactionary strategy to deal with public pressure to “get tough” on criminals. It would 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 Young Offenders Act not be amended further. Additionally, the provincial government is urged to focus its efforts on its own jurisdiction, namely, the implementation of the Young Offenders Act. Alternative measures programs and Youth Justice Committees are effective, progressive ways to deal with youth crime. The government of Alberta should funnel its resources into the expansion of these youth justice alternatives. Ultimately, public attitudes toward youth crime need to be addressed. Until the general public’s misunderstandings about youth justice and the Young Offenders Act are addressed, dissatisfaction will continue.

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