

**RESPONSE
TO
RENEWING YOUTH JUSTICE**

**JOHN HOWARD SOCIETY OF ALBERTA
1997**

TABLE OF CONTENTS

INTRODUCTION	1
JHSA RESPONSE TO SPECIFIC RECOMMENDATIONS	
<u>IN RENEWING YOUTH JUSTICE</u>	1
Recommendation 1	1
Recommendation 2	1
Recommendation 3	2
Recommendation 4	2
Recommendation 5	3
Recommendation 6	3
Recommendation 7	3
Recommendation 8	3
Recommendation 9	4
Recommendation 10	5
Recommendation 11	5
Recommendation 12	6
Recommendation 13	6
Recommendation 14	7
DISCUSSION	7
REFERENCES	8

INTRODUCTION

The Young Offenders Act (YOA) has been shrouded in controversy since its inception in 1984 and has undergone a series of amendments. In June, 1994, in response to widespread public dissatisfaction with the YOA, then Minister of Justice and Attorney General of Canada Allan Rock announced a two part reform of the Young Offenders Act. Phase I entailed proposed amendments to the Young Offenders Act (Bill C-37). Bill C-37 was subsequently proclaimed in force in December, 1995. Phase II commenced in June, 1996, involving a comprehensive review of young offender laws and systems in Canada by the Standing Committee on Justice and Legal Affairs. This review culminated in Renewing Youth Justice, the thirteenth report of the Standing Committee on Justice and Legal Affairs. The report contains numerous recommendations regarding the long term reform of youth justice in Canada. The John Howard Society of Alberta (JHSA) offers the following response to the recommendations contained in Renewing Youth Justice.

JHSA RESPONSE TO SPECIFIC RECOMMENDATIONS IN RENEWING YOUTH JUSTICE

Recommendation 1

The John Howard Society of Alberta is pleased with the Standing Committee on Justice and Legal Affairs' recommendation that a separate youth justice system be maintained. The John Howard Society has long supported a youth justice system that is separate and distinct from the adult justice system. We agree with the perspective of the Committee that young people are more dependent and vulnerable and, therefore, require greater assistance and treatment than older offenders. The John Howard Society of Alberta also believes that young people lack the experience and judgment associated with adulthood and, therefore, warrant special protection. A separate justice system for youth is consistent with other established social regulations which protect youth from alcohol, drugs and cigarettes.

Recommendation 2

The John Howard Society of Alberta has always believed that the protection of society is best served through crime prevention and rehabilitation. However, we are concerned with the wording of Recommendation 2 of the Standing Committee. While the John Howard Society of Alberta agrees that "protection of society, crime prevention and rehabilitation are mutually reinforcing strategies and values that can be effectively applied and realized in dealing with youth offending," we feel that establishing protection of society as the main goal of the youth justice system may be subject to misinterpretation. The John Howard Society of Alberta would prefer that any statement of purpose and principles of the Young Offenders Act be carefully worded such that protection of society cannot be read in isolation of prevention and rehabilitation.

Recommendation 3

The John Howard Society of Alberta applauds the Standing Committee's recommendation calling for public education campaigns on youth crime, the Young Offenders Act and the youth justice system. The John Howard Society has long believed that public dissatisfaction with youth justice in Canada is due, in part, to misinformation about the nature of youth crime, the YOA and the youth justice process. Studies on public perceptions of youth crime suggest a public perception that youth crime is rising, particularly violent youth crime (Macleans/CTV poll..., 1993; McDonald, 1995). Studies also show that the public perceives the Young Offenders Act to be too lenient (Hartnagel & Baron, 1994, 1995; Doob, Marinos, & Varma, 1995; Teele, 1994; Dube, 1994; Grace, 1994).

However, these perceptions of youth crime and the YOA are not supported by the official statistics. For example, in terms of proportions, homicide rates are deemed to be the most accurate indicators of crime trends. This is because the offence of murder affords little opportunity at any point in the criminal justice process for outside factors to bias a case's handling (ie., the seriousness of murder means reporting or charging rates for this crime should not change over time). Canadian Centre for Justice Statistics (CCJS) data show that youths are responsible for approximately 47 murders each year (CCJS, 1996, July), or roughly 8% of all homicides, a proportion that has remained unchanged for at least a decade (CCJS, 1995, August). Canadian statistics also show that youths actually receive harsh treatment by the youth justice system. For example, in 1992 the rate of detention for adults in Canada was 151 per 100,000; for youth, 219 per 100,000 were incarcerated (Correctional Service of Canada, 1995).

Widespread public education campaigns would go a long way toward correcting public misconceptions about youth crime, the Young Offenders Act and the youth justice system in Canada. It is particularly important that the media become better informed about youth justice issues and more accurately report youth crime, given the public's reliance upon them for information; in the Canadian Sentencing Commission's (1987) study, the media was cited as the primary source of criminal justice information for 95% of those surveyed. It is also critical that the fears which accompany public misconceptions about youth crime be respected and addressed (Doob, cited in Church Council on Justice and Corrections, 1995).

Recommendation 4

The John Howard Society of Alberta supports the Standing Committee's recommendation to shift resources away from criminal justice into crime prevention initiatives. We have long believed that the criminal justice system is not an effective venue for crime prevention. The John Howard Society supports the prevention of crime through social development measures which address the social and economic factors related to crime. We recognize the vitally important roles that community development and community empowerment play in crime prevention strategies. Youth crime prevention strategies need to be developed based on community initiatives that target the specific needs of the local community.

Recommendation 5

The John Howard Society of Alberta is delighted with the Standing Committee's recommendation that resources be shifted from custodial institutions into community resources to help youth at risk and their families. We promote the application of the least onerous sanction and advocate for the use of imprisonment as a last resort only. The John Howard Society of Alberta is pleased with the Committee's recognition of the limits of the youth justice system in dealing with a problem as complex as youth crime.

Recommendation 6

The John Howard Society of Alberta supports the Standing Committee's recommendation that 80% of youth justice resources be spent on community corrections. The John Howard Society of Alberta believes that behaviour that causes conflict or harm should be addressed in and by the community, with the justice process used as a last resort. The Society has long argued that the Canadian youth justice system overuses custodial dispositions. Statistics show that the rate of youth incarceration in Canada exceeds the adult incarceration rate. In 1992 the rate of detention for adults in Canada was 151 per 100,000; for youth, 219 per 100,000 were incarcerated (Correctional Service of Canada, 1995). These statistics are a national disgrace. The Committee's recommendation to amend the federal-provincial cost sharing agreement to require that 80% of youth justice resources to be spent on community corrections would send a message to the provinces that custody is to be used only in the most extreme cases.

Recommendation 7

The John Howard Society of Alberta has long supported alternatives to the formal youth justice system. The formal youth justice system has a stigmatizing effect on youth and exposes young people to further negative influences. We believe that alternatives to formal youth justice processing have not been utilized to their full potential. We support reforms to the youth justice system which accommodate greater use of alternatives such as family group conferencing, circle sentencing and police cautioning. However, adequate funding to expand alternatives to the youth justice system must be provided.

Recommendation 8

The John Howard Society of Alberta supports the Standing Committee's recommendation to increase the prominence of youth justice committees in the youth justice system. We believe that youth justice committees are a successful alternative to the youth justice system which have been under utilized in many parts of the country. However, we again call for adequate resources for the expansion of such alternatives to formal youth justice processing. We also call for the provision of standardized training to youth justice committees to encourage some consistency in the sanctions imposed. Guidelines should be developed for youth justice committees, including maximum sanctions which may be imposed.

Recommendation 9

The John Howard Society of Alberta does not support processing any child under 12 years of age in the youth justice system. We believe that children under 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 tenet of a humane criminal justice system. According to Judge Omer Archambault (1986, p. 48), the minimum age of 12 years “reflects the level of development and maturity which justifies holding a young person responsible for illegal behaviour.” Early developmental psychologist Jean Piaget found that at roughly 12 years of age a child’s thinking and reasoning patterns move from concrete to more abstract or formal (Peterson, 1988). Furthermore, psychologist Lawrence Kohlberg found that formal thought processes are necessary for the occurrence of a shift in moral reasoning from pre-conventional to conventional (Berger & Thompson, 1991). These types of thinking and reasoning patterns are crucial to grasping the workings of the law and making reasoned decisions, making early adolescence 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, 1995). Generally speaking, lowering the age of criminal responsibility would ignore the significance of development which occurs during the pre-adolescent stages.

The John Howard Society of Alberta is pleased that the Standing Committee did not support a general lowering of the minimum age of criminal responsibility. However, we are disappointed that the Standing Committee recommended that the Young Offenders Act be amended to allow possible youth court jurisdiction over cases of 10 and 11-year-olds alleged to have committed offences involving death or serious harm. We are particularly disappointed with the Standing Committee’s recommendation that one of the factors that a youth court judge should consider in deciding whether a child under 12 should be processed by the youth justice system is whether appropriate child welfare, mental health or other community resources are available to deal with the child. We are offended by the suggestion that the youth justice system be used to address the needs of a child due to a lack of community resources. If community resources are lacking to assist deeply troubled children, funding should be re-directed or provided to ensure that (a) community resources are available and (b) as a result, children do not end up in the youth justice system by default.

It is ironic that at a time when the youth justice system is trying to divert more and more 12 - 17 year olds into more effective community based alternatives, that it is simultaneously trying to include certain children under 12. The John Howard Society of Alberta believes that age is a more important determinant of which children should be included in young offender legislation than the nature of the offence committed. The nature of an offence committed by a child under 12 years of age is not an indication of the child’s sophistication. Rather, it is an indication of the child’s need for assistance.

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. Adequate funding must be secured in these areas and we urge the government to make this a priority.

Recommendation 10

The John Howard Society of Alberta is pleased that the Standing Committee has recommended the retention of the current upper age limit of the Young Offenders Act at 17 years. We believe that it is unlikely that offenders under the age of 18 fully appreciate the consequences of their actions, lacking adequate judgment and foresight. 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 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.

It should also be noted that the 17-year-old maximum age jurisdiction of the Young Offenders Act is consistent with the established age of majority at 18 years, at which time young people come under the jurisdiction of the adult justice system. This is also consistent with the age of majority in other western democratic countries such as the United States and Britain. The 17-year-old maximum is also consistent with 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. In addition, young people must reach the age of majority before they are considered competent enough to vote and sign legal contracts. 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. It is for these reasons that the John Howard Society of Alberta is pleased with the Standing Committee's recommendation that the maximum age of Young Offenders Act jurisdiction of 17 years be retained.

Recommendation 11

The John Howard Society of Alberta supports the Standing Committee's recommendation that the Young Offenders Act be amended such that, in the case of non-presumptive transfers to adult court, young offenders be tried in youth court and sentenced in adult court. Currently, "at the transfer hearing...the nature of the offence, and the circumstances surrounding its commission, are essentially hearsay. It is assumed that the prosecution will be able to prove the alleged offence. What is essentially a dispositional (sentencing) hearing is being held prior to a finding of guilt" (Beaulieu,

1994, p. 338). We agree with the Standing Committee's observation that the present non-presumptive transfer provisions violate a principle tenet of criminal law that an accused is presumed innocent until proven guilty.

Recommendation 12

The John Howard Society of Alberta has mixed feelings about the Standing Committee's recommendation to require parents/guardians to attend youth court. While the John Howard Society recognizes the importance of involving parents in their children's lives, we are hesitant to support legislation which requires parents to attend youth court. Rather, we feel that mechanisms should be in place which facilitate and encourage parental involvement. We cannot support any measure which would serve to penalize parents. Penalizing parents can only serve to further deteriorate already tenuous relationships between parents and their troubled children.

Recommendation 13

The John Howard Society of Alberta is disappointed with the Standing Committee's recommendation to allow general public disclosure of the identity of young offenders where they present a risk of harm to the community or where public disclosure is needed for safety reasons. The John Howard Society of Alberta believes that the publication ban in the Young Offenders Act should not be loosened further. It has been suggested that the only purpose served by publishing the names of young offenders is to promote public humiliation (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 many Canadian jurisdictions 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. Publicly identifying young offenders, particularly if the public has not been given appropriate advice on how to interpret and act on the information provided, causes more harm than good.

Recommendation 14

The John Howard Society of Alberta opposes the Standing Committee's recommendation to allow youth court judges discretion regarding whether a young person's statement to a peace officer or authority figure should be admitted into evidence. The John Howard Society of Alberta objects to any erosion of legal safeguards for young people. We believe that young people lack the experience and judgment associated with adulthood and, therefore, warrant special protection. Young people, by virtue of their condition of dependency and lack of life experience, are vulnerable and require special protection when involved in the criminal justice system. Young people are often not in a position to be aware of their rights. Furthermore, young people may waive their rights for immature reasons such as, for example, in the hope that their parents will not find out about the charges against them. The John Howard Society of Alberta calls for strict adherence to Section 56(2) of the Young Offenders Act which sets out specific rules for the taking of statements from young persons for them to be admissible in youth court.

DISCUSSION

Overall, the John Howard Society of Alberta is pleased with most of the recommendations of the Standing Committee on Justice and Legal Affairs in Renewing Youth Justice. The Standing Committee has made many thoughtful recommendations regarding youth crime, the Young Offenders Act and the youth justice system in Canada. However, there are several recommendations which are in direct contrast to the overall flavour of the report. These exceptions appear to be instances in which the Standing Committee fell prey to public pressures based on the very misconceptions the Committee observes in its report. The John Howard Society of Alberta trusts that the Standing Committee will re-evaluate some of its recommendations based on feedback on Renewing Youth Justice.

REFERENCES

- Abramovitch, R., Higgins-Biss, K., & Biss, S. (1993). Young persons' comprehension of waivers in criminal proceedings. Canadian Journal of Criminology, 34(3), 309-322.
- Abramovitch, R., Peterson-Badali, M., & Rohan, M. (1995). Young people's understanding and assertion of their rights to silence and legal counsel. Canadian Journal of Criminology, 37(1), 1-18.
- Archambault, O. (1986). Young Offenders Act: Philosophy and principles. In R. Silverman & J. Teevan, Jr. (Eds.), Crime in Canadian Society. Toronto: Butterworths.
- Bala, N. (1994, July). What's wrong with YOA bashing? What's wrong with the YOA? - Recognizing the limits of the law. Canadian Journal of Criminology, 36(3), 247-270.
- Beaulieu, L. (1994). Youth offences - Adult consequences. Canadian Journal of Criminology, 36(3), 329-341.
- Berger, K., & Thompson, R. (1991). The developing person through childhood and adolescence (3rd ed.). New York: Worth.
- Canadian Centre for Justice Statistics. (1996, July). Homicide in Canada - 1995. Juristat, 16(11).
- Canadian Centre for Justice Statistics. (1995, August). Canadian crime statistics, 1994. Juristat, 15(12).
- Canadian Sentencing Commission. (1987). Public knowledge of sentencing. In Sentencing reform: A Canadian approach, 87-100. Ottawa: Author.
- Church Council on Justice and Corrections. (1995). Fear of crime in Canada: Taking the pulse of a nation. Ottawa: Author.
- Congar, J. (1975). Adolescence and youth. New York: Harper and Row.
- Correctional Service of Canada. (1995). Basic facts about... Corrections in Canada (1994 ed.). Ottawa: Ministry of Supply and Services Canada.
- Doob, A., Marinos, V., & Varma, K. (1995). Youth crime and the youth justice system in Canada: A research perspective. Ottawa: Department of Justice Canada.

- Dube, F. (1994, October 2). Violence out of hand in schools, poll says; 56% of respondents believe students at risk in high school. Ottawa Citizen, B1.
- Grace, K. (1994, October 3). Deaf ears in Ottawa: The Danelesko murder sparks more cries for YOA reform. Alberta Report.
- Hartnagel, T., & Baron, S. (1994). "It's time to get serious": Public attitudes toward juvenile justice in Canada (Research discussion paper no. 103). Edmonton: University of Alberta, Population Research Laboratory.
- Hartnagel, T., & Baron, S. (1995). "Lock 'em up": Attitudes towards punishing juvenile offenders. Unpublished manuscript.
- John Howard Society of Ontario. (1994, March). Jailing kids in adult prisons.
- Macleans/CTV poll: The fear index. (1993, January 4). Macleans, 87.
- McDonald, M. (1995, January 2). The perception gap: Despite what crime experts say, demands for harsher penalties are growing louder. Macleans, 28.
- Peterson, M. (1988). Children's understanding of the juvenile justice system: A cognitive-developmental perspective. Canadian Journal of Criminology, 30(4), 381-395.
- Peterson-Badali, M., & Abramovitch, R. (1992). Children's knowledge of the legal system: Are they competent to instruct legal counsel? Canadian Journal of Criminology, 34(2), 139-160.
- Teele, G. (1994, August 1). All locked up and nowhere to go: Getting tough on youth crime produces overcrowded jails. Alberta Report, 20.