

**RESPONSE (1994)
TO
THE YOUNG OFFENDERS ACT
AMENDMENTS**

**JOHN HOWARD SOCIETY OF ALBERTA
1994**

TABLE OF CONTENTS

| | |
|---|---|
| INTRODUCTION | 1 |
| JHSA RESPONSE TO SPECIFIC AMENDMENTS IN BILL C-37 | 1 |
| Declaration of Principle | 1 |
| Transfer to Adult Court | 2 |
| Ban on Publication | 2 |
| Dispositions for Murder | 3 |
| Treatment | 4 |
| Factors in Considering a Custodial Disposition | 5 |
| Records | 5 |
| DIRECTIONS FOR THE GOVERNMENT OF CANADA | 5 |
| CONCLUSION | 7 |

INTRODUCTION

The Young Offenders Act has received unprecedented attention of late. Bill C-37 was released in response to growing discontent with 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 proposed amendments in Bill C-37 reflect issues which were previously considered by the Department of Justice's *Towards Safer Communities* consultations in 1993. Thus, the recommendations which arose from the earlier discussion are equally applicable to the current Bill. The John Howard Society of Alberta makes the following recommendations with respect to the specific amendments to the Young Offenders Act proposed in Bill C-37. Directions for the future of youth justice in Canada are also suggested.

JHSA RESPONSE TO SPECIFIC AMENDMENTS IN BILL C-37

Declaration of Principle

The proposed additions to the Declaration of Principle are progressive. Crime prevention is an integral part of community safety and the John Howard Society of Alberta agrees that this warrants recognition in the Declaration of Principle. Proactive strategies like crime prevention programs offer more promise of success than reactive approaches to youth crime. Once a young person's problems are manifested in criminal behaviour, the problems are far more difficult to address. However, it has become clear that the Declaration of Principle is not always reflected in the daily application of the Young Offenders Act. Therefore, the John Howard Society of Alberta advises the government of Canada to develop and implement preventive strategies in a timely fashion. Crime prevention will be discussed in further detail later in this response paper.

The proposed addition to the Declaration of Principle which specifies that the protection of society is best accomplished through the rehabilitation of young offenders is also commendable. A reality of the Canadian criminal justice system is that virtually all offenders are returned to the community at some point. Clearly, the problems which led to a young person's misbehaviour need to be addressed if there is to be an expectation that the young person will become a law abiding, contributing member of society. The John Howard Society of Alberta expects to see this principle reflected in the application of the Young Offenders Act, particularly with regard to sentencing.

Recommendation: The John Howard Society of Alberta recommends that the proposed additions to the Declaration of Principle be endorsed and, more importantly, be reflected in the application of the Young Offenders Act.

Transfer to Adult Court

The John Howard Society of Alberta does not support the automatic transfer of certain youths to adult court. This practice would prohibit the consideration of the circumstances of 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)

Automatic transfer is a regressive concept which undermines the whole notion of a separate justice system for young people. The provision of automatic transfer proposed in Bill C-37 treats youth like a privilege that can be taken away under specific conditions, rather than a state of dependency and decreased responsibility.

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 eight times the national suicide rate per 100,000 (John Howard Society of Ontario, 1994b).

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: Automatic transfer to adult court should not be implemented.

Ban on Publication

The John Howard Society of Alberta believes that the current 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). 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. Under Canadian law, virtually all offenders will be returned to the community after their sentence is served. Therefore, efforts should be made to ensure the effective reintegration of offenders into the community.

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

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: 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.

Dispositions for Murder

The John Howard Society of Alberta finds the proposed increases to the dispositions for first and second degree murder unacceptable. A progressive society cannot justify such lengthy sentences for its young people. 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)

The dispositions for murder have already been increased once before in Bill C-12, which became law in December, 1991. The amendments to the Young Offenders Act which came out of Bill C-12 did not end public demands for tougher sanctions, and it is unlikely that the increases in the dispositions for murder proposed in Bill C-37 will experience any more success. Public discontent with the Young Offenders Act will not end until society gains an understanding of the factors which contribute to the development of criminal behaviour in young people.

Further, it is important to recognize that despite increases in incarceration rates, youth crime continues to increase. More severe sentences are clearly not the answer to youth crime. The solutions to youth crime lie in innovative programs which prevent its development.

However, young people's misperceptions of the Young Offenders Act also need to be addressed. 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.

Recommendation: The dispositions for first and second degree murder should not be increased.

Treatment

The Young Offenders Act currently lacks the flexibility needed to ensure that young offenders get the treatment services they require. Further, 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: The Young Offenders Act should be changed to allow greater flexibility for youth to get access to treatment, and a minimum level of treatment services should be available to every young offender.

Factors in Considering a Custodial Disposition

The John Howard Society of Alberta supports the proposed factors to be taken into account by the court in considering a custodial disposition. By requiring courts to consider all appropriate alternatives to custody and to promote reconciliation with victims and society, the proposed factors observe a principle tenet of the Young Offenders Act that custody is a disposition of last resort. Further, the proposed consideration that custody is not a replacement for any gaps in social programs for young people may stimulate the development of needed services for youth.

Recommendation: The proposed factors to be taken into account when considering a custodial disposition should be implemented.

Records

The John Howard Society of Alberta supports reducing the length of time that summary conviction records are accessible. There should be a difference between the destruction of records of summary conviction and indictable offences committed by young people. Allowing records of summary conviction offences to be destroyed earlier upholds the ideal of a second chance for young people. However, the John Howard Society of Alberta does not support proposed provisions to allow the records of young offenders convicted of first or second degree murder to be kept indefinitely. This provision is regressive and challenges a fundamental philosophy of contemporary youth justice that young people deserve a second chance. A permanent record, even with restricted access, is contradictory to the successful rehabilitation of a young person. A permanent record suggests that it is expected that the young person will re-offend.

Recommendation: Young offender records should not be kept indefinitely.

However, public misconceptions about young offender records need to be addressed. A common misunderstanding is that a young offender's record is destroyed upon the young person's 18th birthday. The public needs to be educated about the reality of young offender records.

Recommendation: Public misunderstanding of young offender records needs to be corrected.

DIRECTIONS FOR THE GOVERNMENT OF CANADA

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). 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 Canada. The Canadian 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: Crime prevention should be a top priority of the government of Canada.

CONCLUSION

In conclusion, many of the proposed amendments to the Young Offenders Act outlined in Bill C-37 are quite progressive, including the proposed additions to the Declaration of Principle and the proposed factors to be considered in choosing a custodial disposition. Other proposed amendments, however, are highly regressive, including the proposed increases in the dispositions for first and second degree murder and the proposed changes relating to the publication of a young person's identity. Regardless, 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. 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.

REFERENCES

- 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, July). Youth offences - Adult consequences. Canadian Journal of Criminology, 36(3), 329-341.
- Corrado, R., & Markwart, A. (1994, July). The need to reform the YOA in response to violent young offenders: Confusion, reality or myth? Canadian Journal of Criminology, 36(3), 343-378.
- John Howard Society of Ontario. (1994). Response to *Towards Safer Communities: Violent and Repeat Offending by Young People*. Submitted to Department of Justice Canada.
- John Howard Society of Ontario (1994b, March). Jailing kids in adult prisons.
- MacKillop, B., & Clarke, M. (1989). Safer tomorrows begin today: Promoting safer, healthier communities through early investment in children. Ottawa: Canadian Council on Children and Youth.