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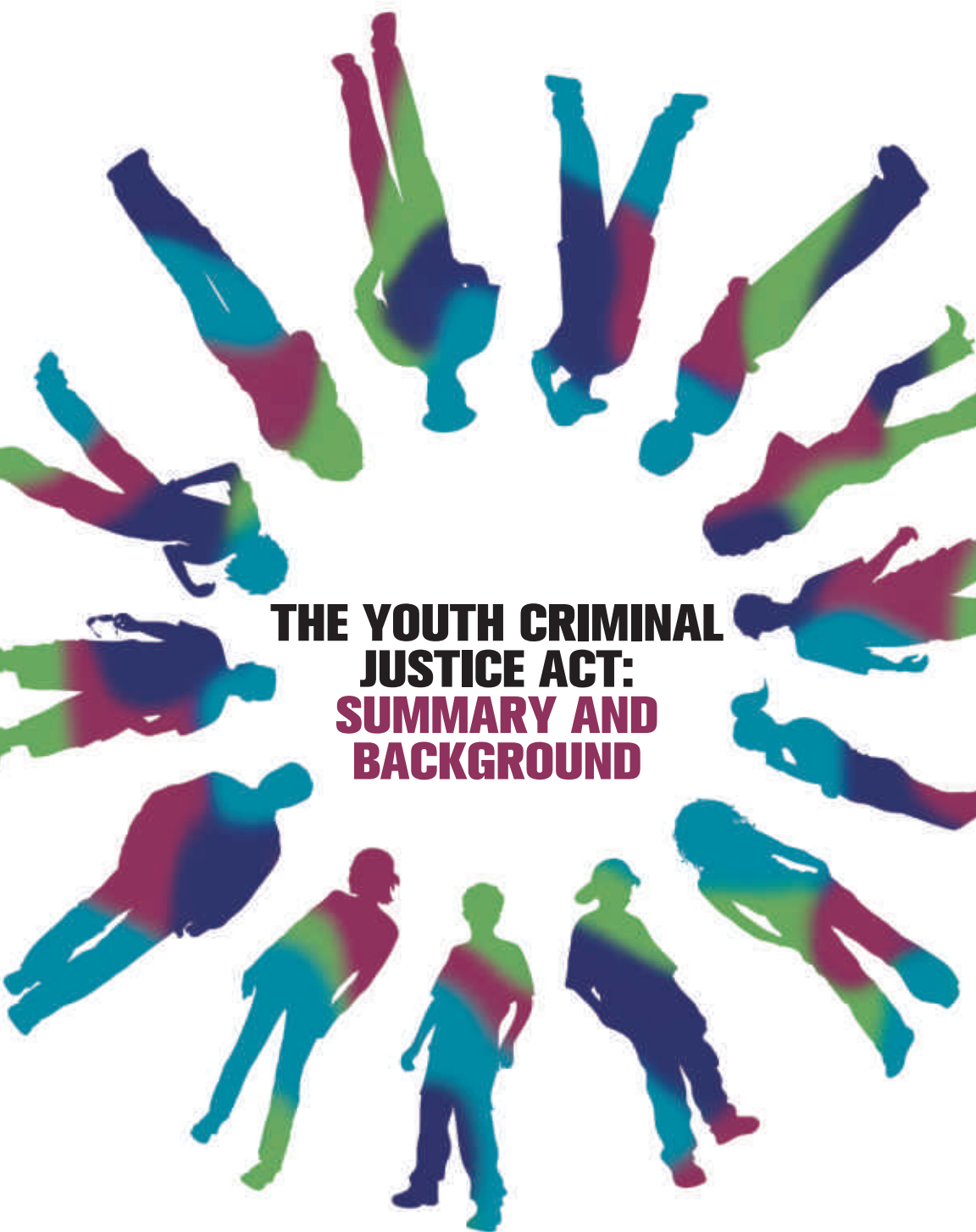
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THE YOUTH CRIMINAL JUSTICE ACT: SUMMARY AND BACKGROUND



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THE YOUTH CRIMINAL JUSTICE ACT:

SUMMARY AND BACKGROUND

INTRODUCTION

The *Youth Criminal Justice Act* is the law that governs Canada's youth justice system. It applies to youth who are at least 12 but under 18 years old, who are alleged to have committed criminal offences. In over a century of youth justice legislation in Canada, there have been three youth justice statutes: the *Juvenile Delinquents Act* (1908–1984), the *Young Offenders Act* (YOA) (1984–2003), and the *Youth Criminal Justice Act* (YCJA) (2003–present). A set of amendments to the YCJA was adopted by Parliament in 2012. The purpose of this document is to explain the background of the YCJA, to provide a summary of its main provisions and the rationale behind them, and to highlight the experience under the YCJA.

Background

On April 1, 2003, the YCJA came into force, completely replacing the previous legislation, the YOA. The YCJA introduced significant reforms to address concerns about how the youth justice system had evolved under the YOA.

These concerns included the overuse of the courts and incarceration in less serious cases, disparity and unfairness in sentencing, a lack of effective reintegration of young people released from custody, and the need to better take into account the interests of victims. The YCJA provided the legislative framework for a fairer and more effective youth justice system. The amendments adopted by Parliament in 2012 aimed to strengthen the ways in which the youth justice system deals with repeat and violent offenders.

PREAMBLE AND DECLARATION OF PRINCIPLE

The YCJA contains both a Preamble and a Declaration of Principle that applies throughout the Act. The Preamble contains significant statements from Parliament about the values upon which the legislation is based. These statements can be used to help interpret the legislation and include the following:

- Society has a responsibility to address the developmental challenges and needs of young persons.

- Communities and families should work in partnership with others to prevent youth crime by addressing its underlying causes, responding to the needs of young persons and providing guidance and support.
- Accurate information about youth crime, the youth justice system and effective measures should be publicly available.
- Young persons have special guarantees of their rights and freedoms, including those set out in the United Nations Convention on the Rights of the Child.
- The youth justice system should take into account the interests of victims and ensure accountability through meaningful consequences, rehabilitation and reintegration.
- The youth justice system should reserve its most serious interventions for the most serious crimes and reduce the over-reliance on incarceration.

The Declaration of Principle sets out the policy framework of the legislation. Unlike previous youth justice legislation, the YCJA provides guidance on the priority that is to be given to key principles.

The Declaration of Principle provides that:

- The youth justice system is intended to protect the public by (i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person, (ii) promoting the rehabilitation and reintegration of young persons, and (iii) supporting crime prevention by referring young persons to programs or

agencies in the community to address the circumstances underlying their offending behaviour.

- The youth justice system must be separate from the adult system and must be based on the principle of diminished moral blameworthiness or culpability.
- The youth justice system must reflect the fact that young people lack the maturity of adults. The youth system is different from the adult system in many respects: measures of accountability are consistent with young persons' reduced level of maturity, procedural protections are enhanced, rehabilitation and reintegration are given special emphasis, and the importance of timely intervention is recognized.
- Young persons are to be held accountable through interventions that are fair and in proportion to the seriousness of the offence.
- Within the limits of fair and proportionate accountability, interventions should reinforce respect for societal values; encourage the repair of harm done; be meaningful to the young person; respect gender, ethnic, cultural and linguistic differences; and respond to the needs of Aboriginal young persons and young persons with special requirements.
- Youth justice proceedings require a recognition that young persons have rights and freedoms in their own right and special guarantees of these rights and freedoms; courtesy, compassion and respect for victims; the opportunity for victims to be informed

and to participate; and that parents be informed and encouraged to participate in addressing the young person's offending behaviour.

In addition to the Preamble and the Declaration of Principle, the YCJA includes other more specific principles to guide decision-making at key points in the youth justice process: Extrajudicial Measures, Youth Sentencing, and Custody and Supervision. These additional principles are discussed below.

EXTRAJUDICIAL MEASURES

Background

Experience in Canada and other countries shows that measures outside the court process can provide effective responses to less serious youth crime. One of the key objectives of the YCJA is to increase the use of effective and timely non-court responses to less serious offences by youth. These extrajudicial measures provide meaningful consequences, such as requiring the young person to repair the harm done to the victim. They also allow early intervention with young people and provide the opportunity for the broader community to play an important role in developing community-based responses to youth crime. Increasing the use of non-court responses also enables the courts to focus on the more serious cases of youth crime.

Prior to the YCJA, youth courts were dealing with a large number of relatively minor offences that did not require a

court proceeding in order to adequately hold the young person accountable. In addition, the extent to which cases were diverted from the court process varied considerably between provinces.

YCJA Provisions

The YCJA contains provisions to increase the appropriate use of extrajudicial measures for less serious offences, including the following principles:

- Extrajudicial measures should be used in all cases where they would be adequate to hold the young person accountable.
- Extrajudicial measures are presumed to be adequate to hold first-time, non-violent offenders accountable.
- Extrajudicial measures may be used if the young person has previously been dealt with by extrajudicial measures or has been found guilty of an offence. As amended in 2012, the YCJA requires police to keep records of any extrajudicial measures used with a young person. These records will better inform police so that they can take appropriate action in respect of subsequent alleged offences.

The YCJA also sets out clear objectives to guide the use of extrajudicial measures, including repairing the harm caused to the victim and the community; providing an opportunity for victims to participate in decisions; ensuring that the measures are proportionate to the seriousness of the offence; and encouraging the involvement of families, victims and other members of the community.

The YCJA requires police officers to consider the use of extrajudicial measures before deciding to charge a young person. Police and prosecutors are specifically authorized to use various types of extrajudicial measures:

- *Taking no further action.*
- *Warnings*, which are informal warnings by police officers.
- *Police cautions*, which are more formal warnings by the police. The YCJA authorizes provinces to establish police cautioning programs. Police cautions may be in the form of a letter from the police to the young person and the parents, or they may involve a process in which the young person and the parents are requested to appear at a police station to talk to a senior police officer.
- *Crown cautions*, which are similar to police cautions but prosecutors give the caution after the police refer the case to them. In one province where they are currently being used, Crown cautions are in the form of a letter to the young person and the parents.
- *Referrals*, which are referrals by police officers of young persons to community programs or agencies that may help them not to commit offences. The referral may be to a wide range of community resources, including recreation programs and counseling agencies.
- *Extrajudicial sanctions*, which are the most formal type of extrajudicial measure, may be pre-charge or post-charge. Unlike the other types of

extrajudicial measures, they may be used only if the young person admits responsibility for the offending behaviour and consents to be subject to the sanction. The admission of responsibility is not a plea of guilty to the alleged offence. Prior to consenting, the young person must be informed of what the sanction would be and given the opportunity to consult with a lawyer. The Attorney General of the province must determine that there is sufficient evidence to proceed with a prosecution of the offence. In addition, the sanctions must be part of an extrajudicial sanctions program designated by the Attorney General. If the young person fails to comply with the terms and conditions of the sanction, the case may proceed through the court process. An extrajudicial sanction can be used only if the young person cannot be adequately dealt with by a warning, caution or referral.

Experience under the YCJA

In keeping with the Act's objectives, charging has decreased significantly under the YCJA and police diversion of cases through extrajudicial measures has increased significantly. Under the YOA in 1999, 63 percent of youths accused of a crime were charged and 37 percent were not charged. Under the YCJA in 2010, 42 percent of youths accused of a crime were charged and 58 percent were not charged (see Figure 1). The number of accused young persons who were charged includes those who were recommended for charging by police in

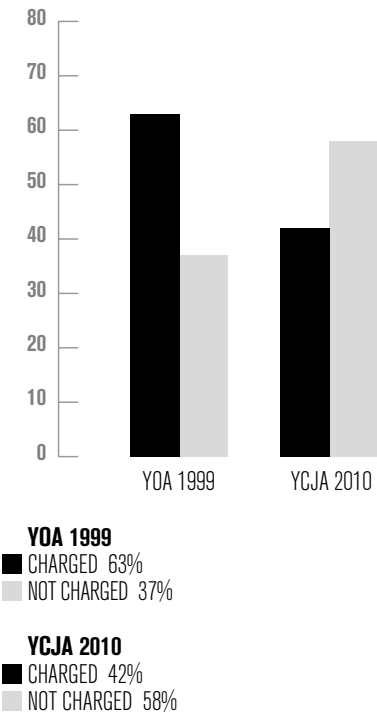
provinces in which the prosecutor makes the decision on charging. Young persons who were not charged include youths diverted from the court process through the use of warnings, referrals to community programs, cautions and pre-charge extrajudicial sanctions. This change in police behaviour occurred without evidence of net-widening; in other words, the evidence does not suggest an increase in the number of young persons drawn into the system and subjected to informal measures, but rather an increase in the use of informal measures as an alternative to laying charges.

There has also been a significant reduction in the use of the court under the YCJA. Youth court cases declined by 26 percent between 2002–03 and 2009–10 (see Figure 2). After a large initial drop, the number of youth court cases has remained relatively stable. There have been declines in court cases in all provinces and territories, with declines of more than 20 percent in seven jurisdictions. Court cases have declined significantly in all major offence categories.

Despite the significant reduction in the number of court cases, most cases still involve offences that are relatively “less serious.” The most serious offence in one of every six court cases is an administration of justice offence (17 percent of cases), which typically involves behaviour that would not be an offence outside of a court order, such as breaching a probation condition (e.g., a curfew).

FIGURE 1

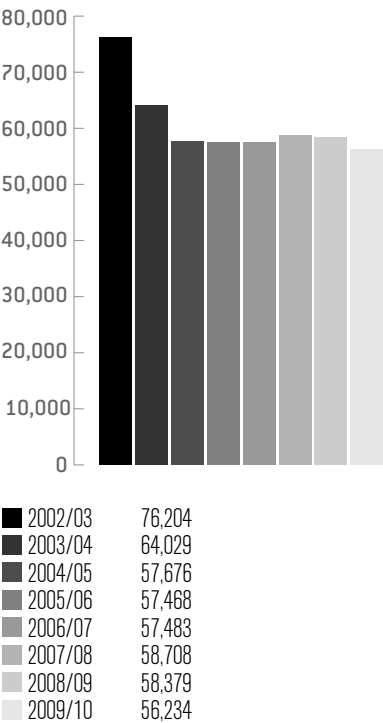
**ACCUSED YOUTHS:
CHARGED V. NOT CHARGED
1999 AND 2010**



Source:
Canadian Centre for Justice Statistics, Incident-based
crime statistics

FIGURE 2

**YOUTH COURT CASES, CANADA:
2002/03 TO 2009/10**



Source:
Canadian Centre for Justice Statistics,
Youth Court Survey

involved in the youth justice system. In general, a conference refers to various types of processes in which affected or interested parties come together to formulate plans to address the circumstances involved in individual youth cases. Conferences operated without legislative authority and in an informal manner.

Conferences can take the form of family group conferencing, youth justice committees, community accountability panels, sentencing circles and inter-agency case conferences. Conferences provide an opportunity for a wide range of perspectives on a case, more creative solutions, better coordination of services and increased involvement of the victim and other community members in the youth justice system.

YCJA Provisions

The YCJA authorizes and encourages the convening of conferences to assist decision makers in the youth justice system. Under the legislation, a conference is defined as a group of people brought together to give advice to a police officer, judge, justice of the peace, prosecutor, provincial director or youth worker who is required to make a decision under the YCJA. A conference can give advice on decisions such as:

- appropriate extrajudicial measures;
- conditions for release from pre-trial detention;
- appropriate sentences; and
- plans for reintegrating the young person back into his or her community after being in custody.

CONFERENCES

Background

Prior to the YCJA, the use of conferences was increasing in many parts of Canada in order to assist in the making of decisions regarding young persons who were

A conference can be composed of a variety of people depending on the situation. It can include the parents of the young person, the victim, others who are familiar with the young person and his or her neighbourhood, and community agencies or professionals with a particular expertise that is needed for a decision. A conference can be a restorative mechanism that is focused on developing proposals for repairing the harm done to the victim of the young person's offence. It can also be a professional case conference in which professionals discuss how the young person's needs can best be met and how services in the community can be coordinated to assist the young person.

A conference under the YCJA is not a decision-making body. It provides advice or recommendations to a decision maker, such as a judge or a prosecutor. The recommendations can be accepted by the decision maker only if they are consistent with the YCJA. For example, the decision maker cannot accept the recommendations of a conference if they would result in an extrajudicial measure or sentence that is disproportionate to the seriousness of the young person's offence.

PRE-TRIAL DETENTION

Background

Prior to the YCJA, there was considerable evidence that pre-trial detention was being over-used. In particular, large numbers of youths who were charged with relatively minor offences were being

detained. Youths were often detained on charges for which adults were not detained. Pre-trial detention was often used as a way of responding to a youth's social-welfare needs rather than for legitimate criminal law reasons.

YCJA Provisions

Most of the provisions related to pre-trial detention under the YOA were not changed with the coming into force of the YCJA, including the application of the *Criminal Code*. However, in response to concerns that pre-trial detention was being over-used, the YCJA, when passed by Parliament, included the following changes:

- Pre-trial detention is not to be used as a substitute for child protection, mental health or other social measures.
- If a young person would otherwise be detained, the judge is required to inquire as to whether a responsible adult is available who would be willing to take care of the young person as an alternative to pre-trial detention.
- If the young person could not be sentenced to custody if convicted, the judge was required to presume that pre-trial detention of the young person is not necessary for the protection or safety of the public. This provision proved to be complex and was the subject of much judicial consideration, often resulting in inconsistent interpretations and application.

In 2012, the pre-trial detention provisions in the YCJA were amended by Parliament. The objective of the amendments was to reduce complexity in order to facilitate effective decision-making at the pre-trial stage, which includes managing youth in the community where possible, while at the same time ensuring that youth who should be detained can be detained.

Rather than applying the grounds for detention in the *Criminal Code* to youth, the amendments created a new stand-alone test for pre-trial detention of youth in the YCJA. Now a court may detain a youth if the following criteria are met:

- (a) the youth has been charged with a serious offence (an offence for which an adult would be liable to imprisonment for five years or more) or has a history of either outstanding charges or findings of guilt;
- (b) one of the following grounds exists:
 - (i) there is a substantial likelihood that, if released, the youth will not appear in court when required;
 - (ii) detention is necessary for public protection, having regard to the circumstances, including whether there is a substantial likelihood that the young person will, if released, commit a serious offence; or
 - (iii) if the youth has been charged with a serious offence and neither (i) nor (ii) applies (i.e., detention is not necessary to ensure that the youth appears in court or to protect the public), but there

are exceptional circumstances that justify detention as necessary to maintain confidence in the administration of justice; and

- (c) releasing the youth with conditions would not be sufficient to address the court's concern about releasing the youth.

Experience under the YCJA

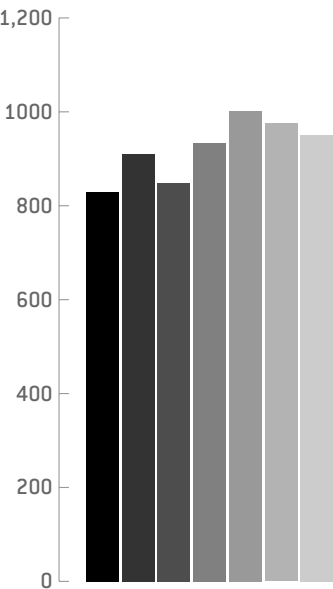
In 2009–10, the average daily number of youths in remand was 15 percent higher than in 2003–04 (see Figure 3). Six of the 10 provinces had a higher number of youths in remand in 2008–09 than in 2003–04.

Comparisons of remand rates (i.e., the number of youths in remand per 10,000 youths in the population) also indicate an increase in the use of pre-trial detention under the YCJA. Based on statistics from the 10 provinces, the overall remand rate increased from 3.3 in 2003–04 to 3.8 in 2009–10 (see Figure 4).

Pre-trial detention under the YCJA is primarily used to detain youths charged with non-violent offences. The most serious offence charged in about 75 percent of admissions to detention is a non-violent offence. The most common offence leading to detention is an administration of justice offence, such as a breach of a bail condition.

FIGURE 3

AVERAGE DAILY NUMBER OF YOUTHS
IN REMAND, CANADA:
2003/04 TO 2009/10

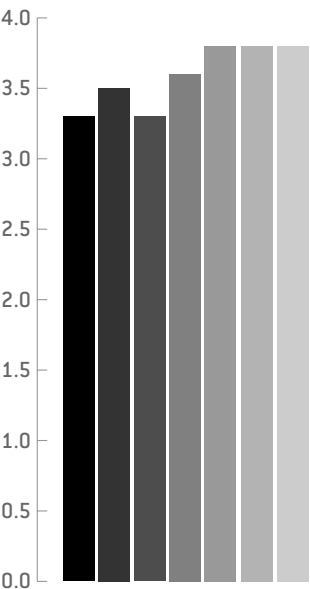


2003/04	830
2004/05	910
2005/06	848
2006/07	934
2007/08	1,002
2008/09	975
2009/10	950

Source:
Canadian Centre for Justice Statistics, Youth Custody
and Community Services Survey

FIGURE 4

YOUTH REMAND RATE, ALL PROVINCES:
2003/04 TO 2009/10



RATE: NUMBER OF YOUTHS IN REMAND PER 10,000 YOUTHS IN THE POPULATION	
2003/04	3.3
2004/05	3.5
2005/06	3.3
2006/07	3.6
2007/08	3.8
2008/09	3.8
2009/10	3.8

Source:
Canadian Centre for Justice Statistics, Youth Custody
and Community Services Survey

YOUTH SENTENCES

Background

Prior to the YCJA, Canada had one of the highest youth incarceration rates in the Western world. Youth sentences were not required to be proportionate to the seriousness of the offence committed, and custody was often imposed as a sentence in less serious cases. Youth courts sometimes imposed very intrusive sentences on young persons who committed relatively minor offences in an effort to address psychological or social needs. In addition, custody orders did not include a period of community supervision after the young person's release from custody, thus failing to ensure appropriate supervision and support for the young person during the transition from custody back into his or her community.

YCJA Provisions

1. Purpose and principles of sentencing

The YCJA includes a specific purpose and set of principles to guide judges in deciding on a fair and appropriate youth sentence. Under the YCJA, the purpose of youth sentences is to hold young persons accountable through just sanctions that ensure meaningful consequences for them and promote their rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

Specific sentencing principles emphasize that a youth sentence must:

- not be more severe than what an adult would receive for the same offence;
- be similar to youth sentences in similar cases;
- be proportionate to the seriousness of the offence and the degree of responsibility of the young person;
- within the limits of a proportionate response, (a) be the least restrictive alternative, (b) be the sentencing option that is most likely to rehabilitate and reintegrate the young person, and (c) promote in the young person a sense of responsibility and an acknowledgement of the harm done by the offence.

Proportionality is a basic principle of fairness that means less serious offences should result in less severe consequences and more serious offences should result in more severe consequences. The YCJA is clear that rehabilitative measures intended to address problems that appear to have caused the young person to commit an offence must not result in a sentence that is not in proportion to the seriousness of the offence committed. For example, a young person who has committed a relatively minor offence but has serious psychological needs that seem to have contributed to the behaviour should receive a sentence that reflects the seriousness of the offence and not the seriousness of the psychological needs.

As passed by Parliament in 2002, neither specific deterrence (i.e., deter the specific youth from committing offences) nor general deterrence (i.e., deter others from committing offences) were objectives of sentencing under the YCJA, despite the fact that they are adult sentencing objectives in the *Criminal Code*. The YCJA also did not provide for the adult sentencing objective of denunciation.

In 2012, Parliament amended the YCJA to permit a youth sentence to include the objectives of denunciation and specific deterrence. However, including these objectives must not result in a sentence that exceeds a proportionate response or is inconsistent with the purpose of sentencing and the mandatory sentencing principles mentioned above, such as choosing a sentence that is most likely to rehabilitate the young person.

2. Restrictions on Custody

Under the YCJA, custody sentences are intended to be reserved primarily for violent offenders and serious repeat offenders. As passed by Parliament in 2002, the Act provided that a young person could not be sentenced to custody unless:

- the young person had committed a violent offence (interpreted as an offence in which the young person caused, attempted or threatened to cause bodily harm);
- the young person had failed to comply with non-custodial sentences;
- the young person had committed a serious indictable offence and had a history that indicated a pattern of findings of guilt; or

- in exceptional cases where the young person had committed an indictable offence and the aggravating circumstances of the offence were such that a sentence other than custody would have been inconsistent with the purpose and principles of sentencing.

In 2012, Parliament amended the YCJA by expanding the meaning of violent offence and pattern of findings of guilt. “Violent offence” is now defined in the Act as an offence in which the young person causes, attempts or threatens to cause bodily harm or endangers the life or safety of a person by creating a substantial likelihood of bodily harm.

The meaning of a “pattern” was expanded to include extrajudicial sanctions. This means that extrajudicial sanctions will be included with findings of guilt in determining whether the young person has a history that indicates a pattern of offences.

Before the court can impose a custodial sentence, it must consider all reasonable alternatives to custody and determine that there is no reasonable alternative capable of holding the young person accountable in accordance with the purpose and principles of sentencing discussed above. This means, for example, that although a young person has failed to comply with previous non-custodial sentences, he or she may receive another non-custodial sentence if the court determines that it would be adequate to hold the young person accountable.

Although the court must consider alternatives to custody for all offenders, particular attention must be given to the circumstances of young Aboriginal offenders.

3. Sentencing options

In general, the sentencing options that were available to the court under the YOA, such as probation or community service, were retained in the YCJA. However, the YCJA contains significant improvements regarding youth sentencing options.

The YCJA replaced the usual custody order with a custody and supervision order. This sentence is composed of a portion in custody and a portion in the community.

The YCJA also introduced a number of new sentencing options that allow youth court judges to deal with the full range of youth crime:

- *Reprimand*: A reprimand is essentially a stern lecture or warning from the judge in minor cases in which the experience of being apprehended, taken through the court process and reprimanded appears to be sufficient to hold the young person accountable for the offence.
- *Intensive support and supervision order*: This sentencing option provides closer monitoring and more support than a probation order to assist the young person in changing his or her behaviour.
- *Attendance order*: This order requires the young person to attend a program at specified times and on conditions set by the judge. It can be crafted to address the particular circumstances of the young person; for example, the order might target specific times and days when a young person is unsupervised and tends to violate the law.
- *Deferred custody and supervision order*: This sentencing option allows a young person who would otherwise be sentenced to custody to serve the sentence in the community under conditions. If the conditions are violated, the young person can be sent to custody. This order is not available to the court for offences in which a young person caused or attempted to cause serious bodily harm.
- *Intensive rehabilitative custody and supervision order*: This order is a special sentence for serious violent offenders. The court can make this order if:
 1. the young person has been found guilty of a serious violent offence (murder, attempted murder, manslaughter or aggravated sexual assault) or an offence in which the young person caused or attempted to cause serious bodily harm and for which an adult could be imprisoned for more than two years and the young person had previously been found guilty at least twice of such an offence;
 2. the young person is suffering from a mental or psychological disorder or an emotional disturbance;

3. an individualized treatment plan has been developed for the young person; and
4. an appropriate program is available and the young person is suitable for admission.

The federal government provides special funding for the provinces and territories to ensure that this intensive rehabilitative sentencing option is available throughout the country.

Experience under the YCJA

The number of custody sentences dropped by 64 percent between 2002–03 and 2009–10 (see Figure 5). All provinces had significant decreases, ranging from 48 percent to 79 percent.

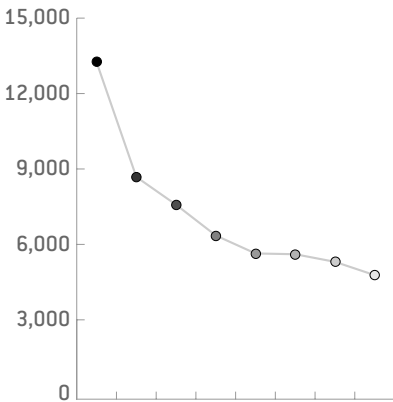
The percentage of guilty cases resulting in custody sentences also dropped from 27 percent in 2002–03 to 15 percent in 2008–09 (see Figure 6). While more than one in four guilty cases resulted in custody in the last year of the YOA, only one in about seven guilty cases did so in 2008–09. The percentage of guilty cases resulting in custody also dropped significantly in all provinces and territories.

More than half of all custody sentences have been imposed in cases involving relatively less serious offences such as theft, possession of stolen property, mischief, common assault in which no bodily harm was caused and administration of justice offences.

Canada’s overall youth incarceration rate, which includes both custody and detention, has declined by almost 50 percent under the YCJA, from 13 youths per 10,000 in 2002–03 to seven youths per 10,000 in 2008–09 (see Figure 7). After a significant decline in 2003–04, the youth incarceration rate has been stable.

FIGURE 5

NUMBER OF CUSTODY SENTENCES,
CANADA 2002/03 TO 2009/10

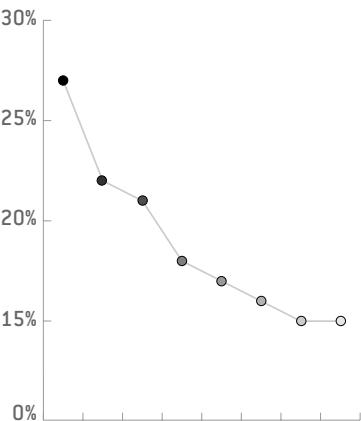


2002/03	13,246
2003/04	8,683
2004/05	7,578
2005/06	6,355
2006/07	5,640
2007/08	5,609
2008/09	5,307
2009/10	4,778

Source:
Canadian Centre for Justice Statistics,
Youth Court Survey

FIGURE 6

PERCENTAGE OF GUILTY CASES
SENTENCED TO CUSTODY, CANADA:
2002/03 TO 2009/10

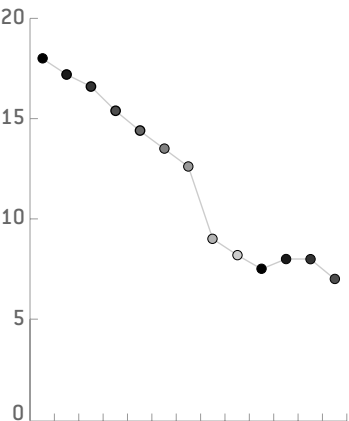


2002/03	27
2003/04	22
2004/05	21
2005/06	18
2006/07	17
2007/08	16
2008/09	15
2009/10	15

Source:
Canadian Centre for Justice Statistics,
Youth Court Survey

FIGURE 7

YOUTH INCARCERATION RATE, CANADA:
1996/97 TO 2008/09



Rate: Number of youths per 10,000 youths in the
population

1996/97	18.0
1997/98	17.2
1998/99	16.6
1999/00	15.4
2000/01	14.4
2001/02	13.5
2002/03	12.6
2003/04	9.0
2004/05	8.2
2005/06	7.5
2006/07	8.0
2007/08	8.0
2008/09	7.0

Source:
Canadian Centre for Justice Statistics, Youth Custody
and Community Services Survey

ADULT SENTENCES

Background

For nearly 100 years prior to the YCJA, Canada's youth justice legislation allowed young persons who were 14 years of age or older to be transferred to adult court under certain circumstances. If the young person was convicted in adult court, the court imposed an adult sentence.

Provisions were added to this under the YOA so that if a 16- or 17-year-old was charged with murder, attempted murder, manslaughter or aggravated sexual assault, it was presumed that he or she would be transferred to the adult court and, if convicted, would receive an adult sentence. The presumption did not mean that there would be an automatic transfer; it meant that the young person had to attempt to persuade the court that he or she should remain in the youth court. The transfer hearing was complex and caused significant delays. Many considered it to be unfair because it took place before a court had determined whether or not the young person was guilty of the offence.

YCJA Provisions

The YCJA eliminated the process of transferring young persons to adult court. Instead, the YCJA established a process whereby the youth court first determines whether or not the young person is guilty of the offence and then, under certain circumstances, the youth court may impose an adult sentence. Offences

that can lead to an adult sentence are indictable offences committed when the youth was at least 14 years old, for which an adult would be liable to imprisonment for more than two years. The YCJA, as passed by Parliament in 2002, also included a presumption that youth 14 or older found guilty of certain serious violent offences would receive an adult sentence. In these circumstances, the onus was on the young person to convince the court that a youth sentence would be appropriate.

In 2008 in the case of *R. v. D.B.*, the Supreme Court of Canada struck down the presumptive offence provisions of the YCJA as unconstitutional. The Court found that the presumption of an adult sentence in the provisions of the YCJA was inconsistent with the *Canadian Charter of Rights and Freedoms'* principle of fundamental justice that, in comparison to adults, young people are entitled to a presumption of diminished moral blameworthiness. The Court stated: "Because of their age, young people have heightened vulnerability, less maturity and a reduced capacity for moral judgment. This entitles them to a *presumption* of diminished moral blameworthiness or culpability." (*R. v. D.B.*, [2008] S.C.J. No. 25 (S.C.C.))

In 2012, Parliament removed the presumptive offence scheme from the YCJA while retaining Crown applications for adult sentences for youth. Parliament also amended the adult sentencing provisions to include the following:

- If a young person is 14 years of age or older and is charged with a serious violent offence, the prosecutor must consider applying to the court for an adult sentence. If the prosecutor decides not to apply for an adult sentence, the prosecutor must advise the court. A province may decide to change the age at which this obligation is triggered from 14 to 15 or 16.
- A court can impose an adult sentence only if (a) the prosecution rebuts the presumption that the young person has diminished moral blameworthiness or culpability and (b) a youth sentence would not be of sufficient length to hold the young person accountable.
- A young person under the age of 18 who receives an adult sentence is to be placed in a youth facility and may not be placed in an adult correctional facility. Once the young person turns 18, he or she may be placed in an adult facility.

Experience under the YCJA

The Canadian Centre for Justice Statistics does not provide statistics on adult sentences under the YCJA.

CUSTODY AND REINTEGRATION

Background

As mentioned previously, a significant weakness of the YOA was that it failed to address effective reintegration of a

young person into the community after being released from custody. Under the YOA, a young person could be released from custody with no required supervision and support to assist the young person in making the transition back to his or her community.

YCJA Provisions

The YCJA includes many provisions to assist the young person's reintegration into the community. Underpinning the YCJA is the belief that young people can be rehabilitated and successfully reintegrated into the community. The focus of every custody sentence must be on reintegration and on measures aimed at assisting the young person not to re-offend.

1. Custody and Supervision in the Community

Under the YCJA, every period of custody is followed by a period of supervision and support in the community, as part of the young person's sentence. This includes custody and supervision orders, intensive rehabilitative custody and supervision orders, and youth sentences for murder. Judges must clearly state in open court the portion of the sentence to be served in custody and the portion to be served in the community.

The YCJA contains a list of mandatory conditions that apply to all young persons under supervision in the community. Additional conditions can be imposed to support the young person and address his or her needs, as well as to manage risk.

If a young person breaches a condition while under supervision in the community, a review is held, which may result in a change in conditions or in the young person being returned to custody. If the provincial director with responsibility for youth corrections has ordered the young person to be returned to custody, the court will conduct a review. If the court is satisfied that the young person has breached a condition and the breach was serious, it may order the young person to serve the remainder of the community portion in custody. If the breach was not serious, the court may vary the conditions or impose new or additional conditions.

Before the start of the community supervision portion, the court can require the young person to remain in custody if the court is satisfied that there are reasonable grounds to believe the young person will commit an offence causing death or serious harm if released into the community before the end of the sentence.

2. Reintegration Plans and Reintegration Leaves

When a young person goes into custody, the YCJA requires that a youth worker work with the young person to plan for his or her reintegration into the community. The reintegration plan identifies programs and activities aimed at maximizing the young person's chances for successful reintegration into the community.

When the young person is serving the community supervision portion of the sentence, the youth worker supervises

the young person and provides support and assistance in order to help the young person respect conditions and implement the reintegration plan.

In addition to community supervision and support after release from custody, a young person's rehabilitation and reintegration back into the community can be promoted prior to release from custody through reintegration leaves. A young person may be authorized to have a reintegration leave for medical, compassionate or humanitarian reasons. Leaves are for a period of up to 30 days, but the provincial director can renew them.

3. Separation from Adults

A general rule under the YCJA is that a young person who is serving a youth custody sentence is to be held separate and apart from adults. When a young person serving a youth sentence reaches the age of 18, a judge may authorize the provincial director to place the young person in an adult correctional facility if the court considers it to be in the best interests of the young person or in the public interest. The YCJA also creates a presumption that if a young person in a youth facility reaches the age of 20, he or she should be transferred from the youth facility to an adult facility to serve the remainder of the sentence. If a young person is placed in an adult facility, special provisions govern how the adult conditional release entitlements apply to the young person. The privacy provisions associated with a youth sentence continue to apply (see section on Publication below).

As noted above, the YCJA also contains provisions relating to placement of a young person who receives an adult sentence. In 2012, Parliament passed an amendment that provides that a young person who is under the age of 18 at the time of sentencing must be placed in a youth custody facility. Thus, no young person under 18 can serve any portion of a sentence in a provincial correctional centre for adults or a penitentiary.

PUBLICATION

Background

A cornerstone of youth justice in Canada is that, as a general rule, the identity of a young person should be protected. The rationale for this rule is that publication of a young person's name would impede rehabilitation efforts, detrimentally affect the young person and, in the long run, compromise public safety.

Under the YOA, an important exception to this general rule was that the publication of information that identified the young person was permitted if the young person was transferred to adult court. As a result of this provision, identifying information could be published before a court determined whether or not the young person was guilty of the offence, which was widely considered to be unfair.

YCJA Provisions

Under the YCJA, the general rule against publication of identifying information is maintained. However, publication is allowed in certain limited circumstances. For example, information that identifies the young person can be published if a youth court has imposed an adult sentence. As amended by Parliament in 2012, the YCJA also allows publication of identifying information where a youth sentence is imposed for a violent offence if the following requirements are met:

- The court must take into account the YCJA's general principles as well as the Act's specific purpose and principles of sentencing.
- The court must determine that the young person poses a significant risk of committing another violent offence and that publishing the identity of the young person is necessary to protect the public against that risk.

VICTIMS

Background

Prior to the YCJA, the youth justice system had been criticized for not adequately recognizing the interests and needs of victims of offences committed by young persons.

YCJA Provisions

Under the YCJA, the interests and needs of victims are clearly recognized and the role of victims at different stages of the youth justice process is specified. Key provisions include:

- The principles of the YCJA specifically recognize the concerns of victims. Victims are to be given information about the proceedings and an opportunity to participate and be heard. They are to be treated with courtesy, compassion and respect for their dignity and privacy.
- Victims have a right of access to youth court records.
- Victims' participation in community-based approaches to responding to offences is encouraged.
- If a young person is dealt with by an extrajudicial sanction, the victim of the offence is entitled to be informed as to how the offence was dealt with.

CONCLUSION

The YCJA sets out the legislative framework for Canada's youth justice system and provides legislative direction to assist in achieving a system that is fair and effective.