

Young Offender's Act Phase II Review

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in conjunction with
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and
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Young Offenders: Phase II Review

A. Introduction

This document is a response to the invitation to participate in the Phase II Review of the Young Offenders Act undertaken by the Standing Committee on Justice and Legal Affairs at the request of the Minister of Justice.

The John Howard Society of Canada welcomes the opportunity to participate in this broad, in-depth review of juvenile justice legislation in Canada. We have been concerned that the changes to the Young Offenders Act since its passage in 1984 by way of amendment have been done in a piecemeal fashion, primarily reacting to public demands for a "quick fix" to the perceived problems of youth crime. This more thorough review of all aspects of the legislation allows for change to occur through broad consultation within a framework based on clearly articulated principles and guiding philosophies of youth justice and supported by carefully constructed empirical research on the effectiveness of strategies for dealing with youth in contemporary Canadian society. We applaud such an approach and are strongly committed to the idea that our country's response to the problems of youth crime must be careful, principled and studied and not merely a reaction to fear, anger and public misconception.

This brief has been prepared in two major parts. The first part, Main Submission, addresses those points which we feel are most relevant to the current situation with respect to youth justice in Canada and the work of the Justice and Legal Affairs Committee during the Phase II Review of the Young Offenders Act.

The second part, Background Information, Analysis and Positions, is being submitted as a separate companion document which provides further clarification of the various issues and positions taken with respect to the policy and practice of juvenile justice in Canada. The proposals put forth are based on the long history of the John Howard Society across Canada in working with offenders, both adult and youth, and the communities in which they live. The recommendations are consistent with positions that have been developed and promoted over the years with respect to the reform of the criminal justice system. The views expressed also reflect and are consistent with international commitments made by Canada, specifically the United Nations Convention on the Rights of the Child and Standard Minimum Rules for the Administration of Juvenile Justice (known as the Beijing Rules), aimed at protecting and nurturing the children and youth of our country.

B. Executive summary

Since the Young Offenders Act came into effect in 1984, public criticism and a sensational press have pressed legislators into frequent and important changes to the Act. While some of the changes reflected needed house cleaning and other amendments were somewhat progressive, many of the changes given the highest profile increased the penalties that were available for serious offences. The changes were motivated by the perceived need to respond to public criticisms that the Act was lenient.

There have been three rounds of amendments to the Act since its proclamation (Hylton, 1994). The changes included:

- **In 1986,**
the three year maximum sentence was extended in the case of youths who committed a subsequent offence while still under sentence for a previous offence,
- the publication of names of dangerous offenders who were at large was permitted.
- **In 1992,**
the maximum disposition for first degree murder was increased from three to five years,
parole for young offenders convicted of murder in adult court was reduced in order to encourage the more frequent transfer of young offenders to adult court,
the test for transfer to adult court was changed to make the protection of the public the paramount consideration.
- **In 1994,**
the transfer to adult court provisions were changed to make transfers presumptive for those age 16 and 17 years charged with serious violent offence,
the maximum sentence for first and second murder was increased to ten and seven years respectively,
and the period before parole eligibility for those transferred to adult court and convicted of murder was extended.

The pursuit of public confidence through punitive means appears to have been futile. Amendments to transfer and other provisions have been made before there was time to evaluate the impact of the previous amendments. Yet public opinion appears to be unchanged - the myths of leniency continue to abound as get tough measures are seemingly forgotten immediately.

The fact is that public attitudes appear not to have been changed through legislation. At the same time, the research evidence indicates that public attitudes about young offender issues are not so simple as some would suggest. Indeed, the majority of the public still place rehabilitation as the primary objective of the young offender system. While they support rehabilitation, they also underestimate the harshness of the young offender system as well. Their notion that the system is excessively lenient is dependent on a distorted view, but one which is easily acquired from current media coverage about youth crime.

This brief reviews what we think is the most important issue in criminal justice today: the tendency of legislators to misinterpret public attitudes and the belief that punitive legislation will satiate those who promote deterrence as the cornerstone of youth corrections. We argue that the moderation reflected in the Declaration of Principles section of the YOA are good and that these principles must be protected through public education initiatives.

In the companion document, Background Information, Analysis and Positions, we review many of the issues relating to the YOA that have been debated since before the legislation was adopted. We provide our analysis, review some relevant research, and state our positions. We show that youth crime is not in crisis in Canada, sentences to custody for young people are as frequent and often longer than for adults, and young people are being charged for minor offences that would have brought a police warning in the past. We provide evidence that influencing social factors such as poverty, education, employment and addictions are far more important than punishment in reducing and preventing crime. Indeed, we point out that criminal justice legislation is unable to address any of the important factors that are associated with crime.

Punitive measures are measures of despair. They reflect our frustration with youth and an ageing population that fears youth more and tolerate youth less. But measures of despair do not breed confidence in the justice system nor do they act to reduce criminal activity. They act to build further divisions between generations and allow the older generations to ignore the increasingly difficult economic, employment, and otherwise highly stressed environments that our children are raised in today.

Many organizations in the voluntary sector, including the John Howard Society, see community education as an important part of their purpose. They will gladly join with the federal government to promote community understanding of the limits of criminal law and corrections as agents of social control and the effective alternatives which build strong healthy communities for our young people.

If governments are to work to provide a safe and just society for young people it must address public fears with information. Punitive responses always fail and lead to calls for more of the same. Our young people are too vulnerable and too valuable to use them as a balm for unrelated public anxiety.

Our primary recommendation is that:

- a major public education strategy must be designed and implemented on the reality of youth crime and corrections, especially compared to the United States, and
- continuing research into public attitudes be conducted.

The goals of the education strategy and public attitude research would be to ensure that:

- public attitudes are based on the true facts, and
- legislators do not misjudge the public demand for punishment.

C. Young offender policy and public perception

Canadians have become increasingly concerned about crime as a social issue. These concerns have many dimensions: the increase and apparent randomness of violent crime; the assumed rising participation of young people in crime; the importation and use of firearms, particularly handguns, in crime; the fear of personal victimization; and concern generally about the stresses imposed by crime upon the Canadian quality of life (Ogrodnik, 1994, p.2).

The empirical and statistical evidence on the youth crime rate to date shows that youth crime generally is not increasing and, although violent crime may be increasing, it has not reached a level that should alarm us (Doob et al, 1995). However, there is, as Grossberg (1992:284) suggests, an "affective epidemic" throughout North America. Regardless of the empirical evidence, it is clear that "youth gone wild" is a popularly recognized and increasingly forceful area of social concern. There is currently a consensual moment of crisis concerning youth wherein the public exhibits affective responses of despair, desire and fear with respect to youth generally, and young offenders in particular.

Begin (1993) argues that a number of factors fuel the public's fear of crime. First, there is a common misconception in regard to the actual amount of violent crime in Canada. A public opinion poll conducted in 1990 found that 75% of Canadians believed violent crime accounted for 30% of all crime. In reality, violent offences constitute less than 10% of crimes reported to the police. Second, one third of Canadians believed that violent crime in Canada was the same or worse than violent crime in the United States. In 1991, there were 24,000 homicide cases in the United States, and only 753 in Canada. Despite the overwhelming fear of violence, crime in Canada is mainly a problem of property loss or damage. Finally, the media are often accused of fuelling a climate of fear. Begin (1993) argues that the media's tendency to focus on sensational and spectacular criminal events distorts the picture of typical criminality, creates the impression that crime is rampant, and heightens public fears.

A 1993 poll reported that 64% of Canadians felt that the "behaviour" of young people had "become worse" compared to a similar poll in 1990 which reported only 47% of Canadians indicating such an opinion (General Social Survey, 1993). In addition, one in three Canadians believe that the rate of violence in Canada is the same as or worse than that of the United States (Abraham, 1993). These misconceptions have been promoted through more and more media attention drawn to those rare cases of violent youth behaviour in Canada and the United States as a form of "public education". The reality of the youth crime picture is, however, quite different. When one looks at the homicide rate, persons under the age of 18 years accounted for 6% of all persons accused of homicide in 1992-93 which is down from 9% for the previous year. In comparing youth homicide rates between 1972 and 1993, there is no discernible trend in the number of persons charged between the ages of 12 to 17 years. The numbers range from a high of 68 in 1975 to a low of 35 in 1987 (Silverman, 1990; Meloff and Silverman, 1992; Silverman and Kennedy, 1993). Comparing the youth homicide rate in Canada with that of the United States, the US crime statistics show a difference in magnitude of three or four times that of the Canadian data. The Canadian rate of youth homicide is only one-tenth of the rate of New York City (Silverman and Kennedy, 1993; Zimring, 1984). Corrado and Turnbull (1992) report that there were between 700 and 800 youth gang murders in Los Angeles in 1992 which runs in sharp contrast to the total homicide rate including both youth and adults for the whole of Canada at 630 homicides. The Federal Bureau of Investigation (FBI) reported over 24,000 homicides in the United States during 1992-93 indicative of a rate which is four times that of the Canadian homicide rate (Fedorowycz, 1994).

The Canadian public largely overestimates both the rate of offending by juveniles and the rate of violent crime committed by young people. In a recent survey, respondents were asked to estimate the percentage of crimes in Canada that is committed by young people. The average percentage response was 32% with a range between 5% and 80% of all crimes committed in Canada being committed by youth. The respondents were then asked to estimate of those young people committing criminal offences, what percentage of crimes committed did they think were violent. Again, the average percentage response was 31% with a range of 1% and 80% of all young offender crimes involving violence (Reid-MacNevin, forthcoming). According to police reported crime statistics for 1993, youth crime accounted for 22% of all Criminal Code violations and the proportion of youths charged with violent offences was 18% (Chard, 1995). Of the respondents in the survey on public perception of youth crime, 65% overestimated the amount of crime committed by young people and 70% overestimated the amount of violent crime committed by young persons.

Hartnagel and Baron (1995) report on data taken from the 1993 Alberta Survey with 1261 respondents in which respondents were asked to agree or disagree on a seven-point scale with the following statements: Young offenders who commit a second offence should be tried in adult courts; and, Youth courts have become too lenient with young offenders (in general). The data clearly indicated agreement with these statements with only 9% disagreeing that youth should not be tried in adult court on a second offence, and 6% indicating disagreement with the view that youth courts are too lenient. This data suggests that the Canadian public has a punitive view of the youth justice system.

Roberts (1994) argues that the public has a highly negative view of the YOA but have little awareness of its provisions and effects. He goes on to suggest that people do not understand the philosophy nor provisions of the legislation and "probably regard it as yet another manifestation of leniency on the part of the criminal justice system" (p.43).

Research on public attitudes toward young offenders from the United States has indicated that a majority of respondents in several studies did not favour giving young people the same sentences as adults. However, while the public appears to favour trying young people in adult court for serious crimes they do not support incarcerating convicted young people in adult prisons. In the recent study of 149 interviews conducted by Reid-MacNevin (forthcoming), 48% of the respondents felt that youths should be tried in adult court with the most frequent rationale that there is more punishment in the adult system. Like the research cited from the US, however, 59% of the respondents did not feel that young people should serve their sentences in adult institutions with the most frequent reason cited as the negative interaction between individuals within adult facilities. Of the respondents, 87% indicated that they felt that young offenders received treatment while being held in custody and 68% felt that conditions in young offender facilities were too liberal. However, when asked how familiar respondents were with young offender custodial settings, 62% indicated that they were not familiar with any young offender facility. When asked to estimate the cost of housing a young offender in a secure or closed custody facility for one year, 77% of the sample underestimated this cost and 53% of the respondents felt that it cost more to house an adult inmate than a young offender. Further 66% of the respondents overestimated the cost to supervise a young offender in the community for one year.

When asked how familiar respondents were with the Young Offenders Act, the Ontario study by Reid-MacNevin found that 47% of the respondents were not very familiar or not at all familiar with the legislation and 60% of the sample indicated that most of their knowledge about the YOA was gained from the newspaper or media. Hartnagel and Baron (1995) asked respondents in the Alberta study whether the mass media pays too much attention to crime and the criminal justice system. A majority of respondents agreed (57%) with 20% strongly agreeing with this suggestion.

There has been a considerable amount of research done on the public's fear of crime. Hartnagel and Baron (1995) asked respondents to indicate their level of fear of crime by responding on a four point scale to the question: How safe do you feel or would you feel walking alone in your neighbourhood at night? Of the respondents, 71% indicated that they felt safe. The same question was posed to respondents in the Reid-MacNevin study with 61% indicating that they felt safe. A significant difference between level of fear was found between males and females as has been shown in previous literature (Gartner & Doob, 1994) with males expressing less fear than females on this measure.

It is instructive to look at the academic literature on the public's perception and fear of crime and the influence of the media which is one influence on public's "educational" knowledge base on crime. A study conducted in Britain utilizing the National Crime Survey which is similar to the General Social Survey distributed in Canada, to assess respondents' fear of crime, and the newspapers coverage of crimes in 26 cities. The results of this study indicated that while homicide constituted only 0.02% of all crimes represented in Uniform Crime Reports, it represented 30% of all crime stories presented in the newspapers and that stories of homicide affected respondents level of fear much more than any other type of story. However, this study provides additional information regarding the placement of the news story on crime in the newspaper within the first fifteen pages as elevating fear more than in other sections of the newspaper. Further, fear of crime was affected negatively when newspapers reported homicides which were non-local, suggesting that crime in other cities makes people feel safe by comparison (Liska and Baccaglini, 1990). The data taken from the Ontario survey by Reid-MacNevin reiterates this notion of feeling safe by comparison. The respondents in this study were, for the most part from the Guelph, Kitchener- Waterloo area. A significant relationship was found between the newspaper read and how safe a respondent felt walking alone in his/her neighbourhood. Of those respondents who indicated that they felt very safe walking alone in their neighbourhood, 60% indicated that they normally read either the Toronto Star or the Toronto Sun. Conversely, of those individuals who indicated that they felt very unsafe walking in their neighbourhood alone, 66% indicated that they were likely to read their local daily paper.

When one considers the perceptions of the Canadian public as evidenced in the General Social Survey (1993), a similar trend emerges with few people (i.e. 10%) indicating that their neighbourhoods have more crime than other places in Canada. When respondents were interviewed in the Reid-MacNevin study in Ontario, 56% of the sample felt that 30% or less of the crimes committed in their neighbourhoods were committed by young persons with 62% of the respondents indicating theft and break and enter was the primary form of youth crime and 27% indicating vandalism as the primary form of crime committed by young offenders in their community. Further, when respondents were asked to estimate the rate of crime committed by

young people, they were also asked to indicate whether they were referring to crime in their own neighbourhood when giving their response. Of the respondents, 75% indicated that they were referring to youth crime outside of their neighbourhood.

The general public tends to focus, for the most part, on homicide cases and other serious violent offences which are few and far between, yet are sensationalised in the media. Young offenders accounted for only 6% of all homicide cases in Canada, in 1993, a 9% decrease from the previous year (Ogrodnik, 1994). Crime statistics are quite often reported in the media. An increase in crime, in particular violent crime makes headline news, but no change or a decrease in crime rates tend to get less coverage in the media. "An ordinary consumer of the mass media, therefore, would likely have encountered a number of stories in the past five years suggesting that crime has increased. The source and meaning of these statistics may not always be considered carefully. (Gartner & Doob, 1994:14) Thus, it is not surprising that the majority of Canadians believe youth crime is increasing. Furthermore, "if something goes awry that offends the public sense of 'justice' in these high profile cases, the natural tendency, in the absence of any other information is to generalize about the Act as a whole. Since the Act is seen to be soft in these few cases, then surely it must be soft on all youth crime. (Corrado et al., 1994:362)

Youth crime is not rampant in Canada, yet the constant portrayal of high profile cases in the media assist in painting a dismal picture of youth crime in Canada. The public is not only misinformed about the issues of youth crime, but in many cases choose to ignore the realities of youth crime and make generalizations about all young offenders based on limited knowledge.

Hebdige (1988:17) suggests that the portrayal of youth in society as troublesome and troubling comes about at strategic points to make a strong point about youth as a problem: The category "youth" gets mobilized in official documentary discourse, in concerned or outraged editorials and features or in the supposedly disinterested tracts emanating from the social sciences at those times when young people make their presence felt by going "out of bounds" by resisting through rituals, dressing strangely, striking bizarre attitudes, breaking rules, breaking bottles, windows, heads and issuing rhetorical challenges to the law.

Within society, youth has always been seen as symbolically central to the social order as both that which holds the potential for unbounded successes and that which holds the possibility of dismal failures. Youth crime can be seen as a loss of a particular vision of the social order and therefore is readily available to demonstrate the importance of prudence and caution. Crime is at some level a coming apart of order. Panics as the concentration of popular concern, trigger the structured responses of social institutions to be ready to respond to the possibility of a "crime wave". The result of the rhetoric of "concern" for youth which is noted as the young person's "best interests" is really a focus on the "best interests" of the social order. Youth is a time when the adult culture is learned and therefore is always subject to constant state intervention, guidance and surveillance. The ideology of protection facilitates such intervention to guarantee the smooth reproduction of social relations and ultimately maintain social order.

Acland (1995:144) argues that it takes more than a perceived increase in the incidence of crime to constitute a moral panic. As youth are increasingly seen as dangerous and threatening, a more general panic among the public takes hold which is tied to an affective response or what he refers to as a "structure of feeling". Fear, panic and terror are lived responses to the "imagined" or real possibility of personal harm and this generalized fear of youth has become commonplace. The experiential condition of crisis organizes people's daily responses to and in the world. Fear, terror and a variety of anxieties about young people settle comfortably. The "violent" drive of youth has become taken for granted and rebellious acts are to be expected from youth. When such acts do occur, whether they are criminal or not, they are slotted into the appropriate criminal offences chronology. Acland (1995:146) concludes that the late twentieth century has seen a new conception of the period between childhood and adult: "where we have had a conception of the essential innocence of childhood, we now have another relation: the essential guilt of youth".

Why has there been such an affective response of fear, terror and panic among the general public to youth crime in recent years? A number of explanations are plausible. It may be that the current "youth crisis" is more a reflection of the uncertainty that all Canadians feel regarding social and economic stability and is merely reflected in the policies and practices surrounding children and youth who have always been seen as a potential threat to the social order. Gilbert (1986) suggests that there was no actual rise in youth crime during the 1950's when there was an equally alarming public response to youth as that which is being experienced today. Bell (1960) who was writing at the height of the hysteria surrounding youth in the late 1950's speaks of the "myth of the crime wave" where youth in general and juvenile delinquents in particular became the focus of fears regarding a change in class, gender and racial boundaries. The paranoia experienced in the present day "youth crisis" has been seen at other points in history wherein the category of youth becomes seen as a problem.

Another explanation may stem from changes in the demographic make up of the country. Cook and Laub (1986) report the ratio of adults (aged 18-65 years) to children (aged 10-17 years) in the United States. This data shows that this ratio has increased steadily from 3.49 in 1970 to 5.01 in 1983. They go on to project these ratios based on present demographic data and suggest the ratio will continue to increase to 5.34 in the year 2000. Considering the argument presented above regarding the ideology of protection, one might surmise that the greater the ratio of adults to children, the stronger the tendency to promote such state intervention directly. Further, the more adults there are in a society, the greater the likelihood of intervening in the surveillance of the culture of youth indirectly through the scrutiny of popular culture, the political process and the tolerance generally afforded to youth culture.

The problem of attempting to solve the "youth crime problem" by suggesting that there is not a youth crime crisis is that the popular culture has created a "spectacle" of youth which has created an affective response among the public to be fearsome of and threatened by youth. Popular culture has certain determinant political, ideological and economic effects which lead directly to the articulation of a commonsense experience of crisis. Rather than simply stating that the reality of youth crime in Canada is such that there is no need for alarm, it is more useful to engage in an awareness and understanding of the persistence of these powerful myths and determine the most suitable means of debunking the current "felt" crisis related to youth crime.

It is our belief that Canadians are generally misinformed about the specifics regarding youth crime policy and practice and that if they were informed about the reality of the youth justice system, most Canadians would support the principle of the use of rehabilitation as being the most effective response to ameliorating the youth crime problem for both the young person and the long term protection of society.

When one considers the results of public opinion surveys about criminal justice matters, it is interesting to note that for the most part, the public does not necessarily endorse harsher sanctions for criminal offenders. Doob (1994) suggests that when the public is asked simple questions, they will give simple responses. Conversely, when the public is asked more complex or thoughtful questions, they will give more thoughtful responses. He suggests that there is every reason to believe that the Canadian public would be just as thoughtful about young offenders as they were, in the case of the Canadian Sentencing Commission, about adult offenders (Doob and Roberts, 1983).

In the 1993 Alberta survey of public attitudes toward youth crime, 87% of the respondents indicated that they felt that youth courts in Canada had become too lenient (Hartnagel & Baron, 1995). However, when these respondents were asked to express their views regarding deterring and rehabilitating young offenders, 44% of the respondents indicated that sending young people to jail would not stop them from committing offences. Of the respondents, 64% indicated that rehabilitating a young offender is more important than making the offender pay for the crime. Further, there was a significant relationship between those respondents who supported rehabilitation with less social control of young offenders as measured by their desire to move second time offenders to adult court. This data suggests that while there may be a widespread belief that youth courts are too lenient, the preferred option of more intrusive intervention in the court is based upon a desire or expectation for enhanced rehabilitation rather than retribution or deterrence.

In the study of 150 respondents in Ontario, similar results regarding public perception of youth crime were found. While 65% of the respondents indicated that the biggest problem with the young offender system was that there was not enough punishment in the youth system or that young people did not have to face adult consequences, only 46% of the respondents felt that young persons should be tried in adult court. Of the respondents that indicated there was a need for more rehabilitation in the current young offender system, 64% considered themselves to be somewhat familiar with the current young offender system. It would appear that the more that one knows about the YOA, the more one recognizes the need for rehabilitation. (Reid-MacNevin, forthcoming).

As has been pointed out by Doob (1994), crime levels among youth have little, if anything to do with the laws that govern youth crime. He goes on to suggest that, if the public could be convinced that the youth justice system can do little for crime, then it might consider not only more productive ways of dealing with youth crime but improve the actual operation of the youth justice system without the "baggage" of having to believe that youth crime can be solved within such a system (Doob, 1994:4). In the survey conducted by Reid-MacNevin discussed above, only 18% of those interviewed suggested that stricter legislation would prevent youth crime. Rather, respondents in this survey indicated the importance of a good education (27%), parental involvement (26%), and community involvement (24%) while only 5% suggested that nothing could be done to prevent youth crime. These results are encouraging and open the door to more dialogue with the community regarding more thoughtful and effective means of dealing with young persons who come in conflict with the law.

D. The role of non-governmental organizations

Canadian society has created a system of criminal justice to respond to those individuals who violate laws that have been prescribed to maintain social order and moral fortitude for all citizens. This system is designed to determine the guilt or innocence of the accused person within the machinery of the criminal justice system and encourage compliance by all members of society with the rules that have been laid out in law. The government departments that have been designated to carry out the functions of the criminal justice system have a clear mandate that is official, legal and specifically defined. For example, the Correctional Services of Canada exists through legislation which creates the body and gives it considerable authority and an absolute funding commitment from the Government of Canada. By way of contrast, the non-governmental organizations have a social mandate. They exist because citizens have banded together to "do something" about issues in criminal justice that concern them. While non-governmental organizations may receive some funding from government departments on a fee-for-service basis, they also solicit and raise funds through non-governmental sources such as the United Way and direct charitable contributions. Non-governmental organizations exist on the basis of voluntary participation in the community towards establishing a greater good, and as such, they carry with them the obvious advantage of being seen as charitable, moral and, therefore, good. It seems logical then, that creating a partnership between the government and the non-governmental organizations would allow each group to reap many benefits. By indirectly sharing the social mandate of the voluntary sector, the government would have a way of allowing those who work within the criminal justice system to benefit from the "good" or charitable image of the voluntary sector. This partnership also would create a mood through which the government could communicate directly with the community on matters of public concern. The involvement of hundreds or thousands of volunteers in the activities of criminal justice is a potent way of helping people understand the complexities of the system and bridge the gap between the public's perception of a youth crime crisis and the reality evident through statistical and empirical research.

The development of partnerships between government departments and non-governmental organizations recognizes the strengths that each partner brings to share and values the ability to do more together than separately. An alliance between the non-government organizations and government departments changes the image of a system that is responsible for the punishment of offenders from a simple-minded approach of applying "pain and torture" to those who break the law, to one which shows a careful articulation of values and principles which our society holds in high regard. Voluntary sector organizations do a great deal to promote the value of integration, to have people perceive the issues of criminal justice in terms other than simply punishment, and to broaden criminal justice issues so that they can be understood within the context of general social issues affecting other aspects of social and economic life in Canada.

An example of the strength of non-government organizations can be seen in the development of the Youth Justice Coalition in December of 1994. The Coalition brought together more than forty organizations and individuals to collectively voice their opposition to the notion that Canadian society was in the grip of a youth crime crisis. This group, which ranged in membership from leading experts in the field of criminology and children's mental health to front-line agencies which have little or no involvement with the criminal justice system (i.e. early childhood educators, Canadian Safety Council), joined together despite ideological differences or preferences for rehabilitation. They insisted that an over-reliance on punishment of young people, rather than focusing on illiteracy, inadequate housing, school failure, alcohol and drug abuse and so on, is a short-term strategy that will do little to reduce the root causes of youthful offending. The focus of this group and other like-minded non-governmental organizations, is one of community education wherein the hundreds and thousands of volunteers within local communities across Canada are able to work directly to inform and promote a more balanced vision of the value of rehabilitation of young persons for the ultimate goal of protecting society. As the organization responsible for the creation of the Youth Justice Coalition, the John Howard Society is committed to the value of partnership with other non-government organizations and government departments.

It is with this spirit of partnership and a sharing of our long history of work with offenders in the community that we offer the Standing Committee on Justice and Legal Affairs our reasoned positions related to youth justice in Canada. It is our hope that our efforts at strengthening the network and relationships between the non-government sector and the government organization will continue in the future. We believe that we are a valuable ally in the communication of the essential message presented in the now legislated principle of youth justice that "crime prevention is essential to the long-term protection of society and requires addressing the underlying causes of crime by young persons and developing multi-disciplinary approaches to identifying and effectively responding to children and young persons at risk of committing offending behaviour in the future" (s. 3(1)(a)).

E. Principles

The proposals and recommendations which we make grow out of a set of principles which the John Howard Society articulated in 1985 and have been the basis for analysis of current public issues since that time (John Howard Society of Ontario, 1985). The proposals put forth are influenced by current and past research which demonstrates policies, programs and services which increase the likelihood of a person who has committed criminal offences to re-establish themselves constructively in the community.

It is clear that we live in a society that sets rules of behaviour for its citizens and that society sometimes turns to the criminal justice system to respond when individuals violate those rules. One purpose of a criminal justice system is to reinforce the notion that the rules are still valid and respected by the population as a whole. Another purpose of a criminal justice system is to encourage those who have violated the laws, as well as those who might be tempted to violate the laws in the future, to live in law-abiding ways.

The consequence of violating the law is punishment. We believe that the criminal justice system is not the only or best way to encourage compliance with the law. Coercion can be used effectively to block morally undesirable behaviour, but it is not an effective tool for motivating people to undertake morally acceptable actions.

Community based methods of encouraging acceptable behaviour should take precedence over the use of the criminal justice system whenever possible. Schools, family and other social organizations and institutions should be encouraged and supported in their key role to build a safe and peaceful society.

In our society, punishment is often seen to be an appropriate and logical consequence of the criminal act of the individual. In response to this expectation of punishment, we have established a system of criminal justice to determine guilt and punish the offender. Because we would defeat the purpose of encouraging compliance with the law and only ensure our future victimization by applying excessive and/or brutal punishments, we have set limits to the punishments that can be used. These two principles of sentencing characterize the criminal justice systems in modern civilized societies. Principles that apply to sentencing which the John Howard Society supports are contained in the principles attached to Canadian sentencing legislation for both young people and adults. These sentencing principles include the following:

- The least onerous punishment should be used that can be justified. We support a proportional sentencing model that considers the use of imprisonment as a last resort and intrudes into a person's life only to the extent that can be clearly justified.
- Punishment should involve the loss of choice or freedoms and nothing more. Punishment which involves physical or mental torture, deprivations of the necessities of life, or which are demeaning or humiliating are rejected.

The application of punishment falls to correctional officials. It is their responsibility to see that the sentence stipulated by the courts is carried out within the law. While they have the legal mandate to apply the specific deprivations of freedom and choice which have been authorized by the sentence, it is also their responsibility to provide for the care of those in their charge to ensure that there are no unintended consequences of the punishment which are dehumanizing or destructive to the individual. We consider that a correctional system that is more constructive than harmful to the individual and the community must operate according to the following additional principles:

- Corrections officials have an obligation to make available to those in its care those programs and services that our society feels obliged to offer its members generally. We cannot expect offenders to live successfully in the community if they have been deprived of those services and programs which we provide to individuals in the community.
- Services and programs should be provided on the basis of need rather than desert. Deprivation of important services and programs for punitive purposes only serves to deny the obvious interest which society has in seeing the offender change his or her behaviour.
- Coercive measures taken by correctional officials should be no more than is needed to ensure that the sentence of the court is carried out. Levels of security within institutions and decisions to place a person in an institution as opposed to a community setting should be determined by the willingness and ability of the individual to abide by the rules. Levels of security should not be used for additional punitive purposes
- Appropriate measures must be in place to ensure the safety of those in custody. Exposure to assaults and violence generates defences which will inevitably undermine any rehabilitative efforts.
- Rules of fundamental justice must characterize the administration of correctional programs. The correctional environment must model the values and attitudes which we expect offenders to adopt.

It is our view that these principles apply to those that are being dealt with as young offenders as much as they apply to adult offenders. It is also our view that the importance of the principles are both obvious and largely non-controversial. Application of the principles, however, will be difficult unless the principles are kept in mind during the drafting of law and the design and implementation of correctional programs. For these principles to be applied thoughtfully and effectively it is clear that their reasoned application must take into consideration the fact that young offenders are distinguishable from adult offenders by a number of important criteria. The design of criminal justice processes and social institutions must recognize these differences or they will fail to uphold the principles.

We feel that most of our recommendations are simply obvious choices once the principles and the research are understood. At the same time we recognize that the field of criminal justice is poorly understood by many. False information and environments that are hostile to measured reason militate against our proposals. We believe that if the public was informed of the reality of youth crime in Canada, most Canadians would see the importance of the principles outlined above and promote social policy for young offenders which strengthened currently existing social institutions and organizations focusing primarily on the value of rehabilitation for the long term protection of society. We must first address the matter of public opinion and support for reform before drafting new legislation for young offenders.

F. Summary of positions

Our primary recommendation is that:

- a major public education strategy must be designed and implemented on the reality of youth crime and corrections, especially compared to the United States, and
- continuing research into public attitudes be conducted.

The goals of the education strategy and public attitude research would be to ensure that:

- public attitudes are based on the true facts, and
- legislators do not misjudge the public demand for punishment.

Over the years the Society has developed positions relating to young offender policy and legislation. Our positions are more fully developed in the companion submission entitled Background Information, Analysis and Positions. Some of our key positions include:

1. The federal government should recognize and promote the crime prevention benefits of activities geared to ensuring the physical, mental, emotional well-being of all Canadian children and youth.
2. The federal government should work with the provinces to develop and implement national early childhood intervention programs targeted at economically and socially disadvantaged children.
3. Governments should promote and encourage restraint in the use of criminal justice.
 - Police should be trained in the use of non-criminal justice responses and to become more familiar with resources in their communities.
 - Guidelines for the use of police discretion should be developed and implemented.
 - Police and community organizations should be encouraged to work together to deal with children and youth for whom judicial processing is unnecessary or would be ineffective, even harmful.
 - National standards for Alternative Measures should be set to ensure that practices are consistent with the purposes of diversion from judicial proceedings and of restraint in the use of criminal justice measures. The programs should be carefully monitored and their impact on police diversion evaluated.
4. Criminal justice measures should not be used to ensure that young people have access to needed services.
 - The federal government should work with the provinces to ensure that child welfare, children's mental health and other community services aimed at improving the lives of children and youth are adequately funded.
 - The federal government should monitor the work at the provincial level with respect to child welfare and children's mental health services to those children under the age of criminal responsibility and, together with the provinces, improve the availability and accessibility of services to this age group.
5. The separate youth justice system in Canada should be maintained with: separate courts and judges with specialized knowledge and experience with youth, a system of sanctions that recognizes the reduced culpability and special needs and circumstances of youth, and programs and facilities that are completely separate from adults.

6. The youth justice system should be inclusive of all those persons defined as young persons regardless of the nature of the offence.
 - The present provision permitting transfers to adult court should be abolished.
7. The age provisions for the youth justice system should continue to reflect an understanding of the developmental process and the special protections generally afforded to youth in other areas in our society.
 - The age of criminal responsibility should be no lower than the present age of twelve.
 - The maximum age for the youth justice system should not be changed from eighteen years of age.
8. The Declaration of Principles should be retained and continue to define as key principles: the role of crime prevention, restraint in the use of criminal justice measures, the special needs and circumstances of youth, the reduced culpability of youth, preference for the use of community sanctions, restricting the use of custody to a measure of last resort, and protection of society best served by rehabilitation of the young offender.
9. Sentencing Guidelines should be developed to give substance to the Declaration of Principles and a Sentencing Commission should be established to develop and oversee sentencing guidelines for young offenders.
10. The legal and procedural safeguards should respect the special needs and circumstances of youth and our obligation to provide special protection to those young people in conflict with the law.
 - There should be no legislative action which erodes those provisions of the Young Offenders Act relating to legal and procedural safeguards.
 - The legislation should be amended to reflect the young person's right to refuse intrusive treatment.
11. The federal government should undertake a thorough review of the implementation of the Young Offenders Act by the provinces and identify "best practices" which support the Declaration of Principles. The results of the review should be used to develop national standards relating to administration of the Act.

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G. History and mandate of the John Howard Society

The John Howard Society of Canada is a federation of provincial/territorial and local Societies comprised of people whose goal is to understand and respond to problems of crime, to work with people who have come into conflict with the law, to review, evaluate and advocate for changes in the criminal justice process and to engage in public education on matters involving criminal law and its application.

There are provincial/territorial Societies in each of the ten provinces and in the Northwest Territories. Local branches and affiliates are associated with each provincial/territorial Society. Across Canada, there are 78 John Howard Society offices providing 451 programs serving clients, clients' families and the public at large.

Direct service to individuals is delivered primarily by the local branches and affiliates. The original focus of the founders of the John Howard Society was helping men released from prison. While aftercare continues to be a core service to this day, the activities of local Societies have expanded over the years. The services now include working with men in correctional facilities both federal and provincial, with people in community correctional programmes, with young offenders both in custody and in the community and, most recently, with people defined as being at risk of involvement in criminal activity.

Generally, the provincial/territorial Societies take primary responsibility for reform and community education activities and provide administrative support to the branches and affiliates. Activities such as communications (for example, compiling, publishing and distributing A Directory of John Howard Programs Across Canada) and research on federal matters tend to be done through the national Society.

The John Howard Society depends on public involvement. All levels of the organization are governed by voluntary Boards of Directors. Volunteers are extensively involved in the direct service work of the Society. Many also support the work of the John Howard Society through donations.

Branches and affiliates provide a wide range of services and programs to young offenders including education for youth at the primary prevention level, training and employment services for youth, counselling (some specific to problems such as drug and alcohol abuse and sexual offending), literacy and/or life skills programmes for youth, supervision of young offender Community Service Orders, young offender Victim Offender Reconciliation/Restitution programmes, young offender Attendance Centre programmes, and residential programs. At the provincial/territorial and national levels, activities have included providing testimony in a professional capacity at young offender transfer hearings, preparing community education bulletins, position papers and briefs related to the issues of youth crime and young offenders and working with a coalition of organizations and individuals concerned about the welfare of children.

H. Core values - John Howard Society of Canada

1. People have the right to live in a safe and peaceful society as well as a responsibility implied in this right to respect the law.
2. Every person has intrinsic worth and the right to be treated with dignity, equity, fairness and compassion without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability when involved with the criminal justice system.
3. All people have the potential to become responsible citizens.
4. Every person has the right and the responsibility to be informed about, and involved in, the criminal justice system.
5. Justice is best served through measures that resolve conflicts, repair harm, and restore peaceful relations in society.
6. Independent, autonomous non-government organizations have a vital role in the criminal justice process.

I. Description of John Howard Society services and programs for youth

Prevention services provided by the John Howard Society focus mainly on program and community awareness presentations geared to educate on or about the criminal justice system.

At the primary level, programs target early prevention through presentations to school and youth organizations. Examples of these initiatives included: Community Education programs (Newfoundland); Choices - School Education/Prevention program re: Drugs/Alcohol/Crime (British Columbia); Public Legal education Programs (Alberta); Public Education Program (Saskatchewan); Services to Youth (Manitoba); Primary Prevention presentations (Ontario); Accent on Youth (New Brunswick); Criminal Justice Education Programs (Nova Scotia); and Community Awareness Programs (Prince Edward Island).

At the secondary level, programs are geared toward youth at risk of entering the criminal justice system. Examples of these services include: Intrusive Children's Program (British Columbia); Work Orientation Workshops (Alberta); Youth Employment Service/Housing and Outreach Program (Ontario); Violence Preventions Initiatives (Ontario); Choices (Ontario), RISE UP Program (Ontario); and General Assistance Programs (New Brunswick).

The tertiary level provides programs and services to discourage recurrence and promote a positive reintegration for youths who have come into contact with the youth criminal justice system. Programs include: Services to Youth Offenders (Northwest Territories); Youth Services Program (Newfoundland); Summerside Youth Employment Services (Prince Edward Island); Intensive Day Programs for Young Offenders (Saskatchewan); Anger Management (Alberta and Ontario); Transition Program (British Columbia); Headstart (British Columbia); and Self-Management (Ontario).

The John Howard Society provides residential facilities for youth, as well as supportive community based programs. Residences provide supportive home environments for youth. These supervised facilities also focus on educational and lifeskills programs. Examples of these residences included: Hobden House (British Columbia); Birchy House (Newfoundland); Bea Phillips House (New Brunswick); Howard House (Alberta); The Red Deer Youth Residential Centre (Alberta); St. John's Group Home for Youth (Newfoundland); and Discovery Centre Program (British Columbia).

Community based programs provide services including counselling, supervision, reconciliation, advocacy, and mediation. Advocacy services address such needs as employment, housing, access to social services and legal services. Mediation services support young people who have come in contact with the criminal justice system to meet with their victims to learn about the consequences of their crime and of taking a more accountable position regarding their crime. Examples of community based programs across Canada include: Attendance Centre Program (Ontario); Transportation Program (Alberta); Youth Alcohol and Drug Services (British Columbia); Intensive Day Programs for Young Offenders (Saskatchewan); Y.E.C.C. and Futures (Ontario); Courtwork Program (British Columbia); Youth Advocacy and mediation Services (Alberta); Independent Living Program (British Columbia); Victim-Witness Preparation Program (Ontario); and Street Support Groups (New Brunswick).

Diversion/Alternative measures attempt to direct youth away from the criminal justice system by providing non-criminal alternatives to formal prosecution. The measures offer alternatives both prior to (pre) and following (post) criminal justice proceedings. Programs offered across Canada include: Fine Options (Northwest Territories); Community Service Hours (Northwest Territories); NAB - Neighbourhood Accountability Board (British Columbia); Victim/Young Reparation Program (British Columbia); Community Service Supervision (New Brunswick); Community Options Program (Ontario); Fine Option Program (Manitoba); Youth Mediation Program (Saskatchewan); Young Offender Community Development Project (Nova Scotia); Shoplifting program (Alberta); Community Service Order Program (Ontario); and stop - Lift Education Programs (Saskatchewan).

J. John Howard Society youth programs across Canada

Northwest Territories

Fine Options (Youth And Adult)
Community Service Hours (Youth and Adult)
Services to Offenders (Youth and Adult)

British Columbia

Hobden House
Victim/Offender Reconciliation Program
Courtwork Program
Choices - School Education/Prevention Program re: Drugs/Alcohol/Crime
Neighbourhood Accountability Board (NAB)
Community Service Order Supervision
Youth Diversion
Victim/Young Offender Reparation Program
Intensive Supervision/Work Activity Program
YOA Services
Intrusive Children's Program
Discovery Centre Program
Headstart
Work Orientation Workshops
Youth Alcohol and Drug Services
Alcohol and Drug Prevention Program
Community Development and Training
Lakeview Alcohol and Drug Program
Youth/Parent Mediation Program
Independent Living Program
Transition Program
Family Support Program

Alberta

Research
School Program
Community Education Program
Youth Advocacy and Mediation Services
Victim/Young Offender Reconciliation Program
Transportation Program
LEEP (Learning Employment and Enhancement Program)
Public Legal Education
Howard House
Anger Management
Public Education - School Programs
Work Orientation Workshops
Re-integration Program
Criminal Justice Education
Vandalism
Shoplifting
Juvenile Justice System
Mock Trial Workshops
Elementary Schools
High Schools
The Red Deer Youth Residential Centre

Saskatchewan

Stop - Lift Education Programs
Youth Mediation Program
Community Service Order for Youth
Public Education
Youth Mediation Program
Community Service Order for Youth
Juvenile Diversion
Intensive Day Programs for Young Offenders

Manitoba

Consultation and Development
Fine Option Program
Services to Youth
Community Participation

Ontario

Primary Prevention Presentations
Youth Employment Service/Housing and Outreach Program
Attendance Centre Program
Anti-Shoplifting/Anti-Vandalism Program
Community Service Order Program (Adult and Youth)
Self Management Program
Alternative Measures Program
Violence Prevention Initiatives
Youth and Community Employment Counselling Program
"Work" Program
The W.O.W. Program
JobsOntario Youth (JOY)
Community Education and Crime Prevention
Community Options Program
Crime Prevention Program
Choices Employment Experience Program
Community Education Program
RISE UP Program
Y.E.C.C. and Futures
Youth and Community Employment Services
Futures
Teenworks
Youth Employment Services
Literacy
Youth Diversion
Program Intervention Program for Youths Affected by Male Violence Against Women
Youth Employment Counselling Services
Peterborough Community Youth Support Program
Victim-Witness Preparation Program
Drug and Alcohol Treatment and Education (D.A.T.E.)
Youth Family Violence Program
Anger Management
Counselling (Young Persons)
Community Service Order
Community Youth Support Program
Community Awareness and Prevention Services
Northern Try-Star Service
Drug/Alcohol Program
Adolescent Drug and Alcohol Crisis Intervention Program
School Prevention Group Work
Drug/Alcohol Group Counselling
"REVISE" Program (Reduce Violence in School Environments)

New Brunswick

Public Education and Community Involvement
Residences for Young Offenders
Accent on Youth
Bea Phillips House
Community Academic Services Program (CASP)
General Assistance

Nova Scotia

Criminal Justice Education Program
Young Offender Community Development Program
Public Education

Prince Edward Island

Youth Employment Services (Summerside)
Community Awareness

Newfoundland

Community Education
Group Home for Youth- St. John's
Youth Services Program
Birchy House