

Canada's Juvenile Justice System: Promoting Community-Based Responses to Youth Crime

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INTRODUCTION: THE YOUTH JUSTICE CONTEXT IN CANADA

There have been profound changes in Canada's juvenile justice system during the century that it has been in existence, most recently when the Youth Criminal Justice Act (YCJA)¹ came into force in April 2003. A major rationale for enacting the statute was to reduce Canada's high rate of custody for adolescent offenders, based on the belief that community-based responses are more effective for dealing with most young offenders. The YCJA continues to protect the legal rights of youth, such as access to counsel. This chapter discusses the evolution of Canada's juvenile justice system over the past two decades. It considers the policy concerns that led to the enactment of the YCJA and the impact that the new law is having. The new statute addresses some problems in youth justice that have been uncovered by empirical research, and is thus to a significant degree, evidence-driven. Where appropriate, we provide Canadian research findings relevant to the specific policy developments.

By way of introduction it should be noted that Canada is a federal country with 10 provinces and 3 territories. It has a population of about 31.6 million, of whom about 8% are between 12 and 18 years, the age range for jurisdiction under the YCJA; in 2003–2004 about 17% of charges by police were laid against youth.² Under Canada's Constitution the jurisdiction for the enactment of criminal laws, including those that govern juvenile offenders, rests with the federal Parliament. However, responsibility for the enforcement of criminal laws and the provision of services for youthful offenders rests with the provinces and territories, which also have full responsibility for the enactment of laws and provision of services in such related fields as child welfare, education and health. As a consequence of this overlap of responsibility, in practice the enactment of new juvenile legislation has involved the federal government consulting extensively with the provinces and territories before enacting the new law, and providing some funding support for its implementation.

¹YCJA., S.C. 2002, c. 1. In force from 1 April 2003.

²Statistics Canada (2005), *Youth Court Statistics 2003–04*, Juristat, Vol. 25, No. 4, p. 3.

1. A CENTURY OF CHANGE IN CANADA'S JUVENILE JUSTICE SYSTEM

Canada's first national juvenile justice law, the Juvenile Delinquents Act (JDA)³ of 1908 recognized that children and youths are different from adults and should not be held accountable for violations of the criminal law in the same fashion as adults.

In 1984, the JDA was replaced by the Young Offenders Act (YOA).⁴ The introduction of the YOA represented a dramatic change in Canada's response to youth offending, moving from a discretionary welfare-oriented regime that, in theory at least, promoted the "best interests" of juvenile offenders, to a regime that was clearly criminal law. The YOA was in turn replaced by the YCJA in 2003. While there are significant differences between these two most recent statutes, both statutes share some important characteristics, emphasizing respect for legal rights and the accountability of young offenders, albeit not holding youths accountable to the same extent as adult offenders.

2. THE JUVENILE DELINQUENTS ACT (1908–1984)

The JDA had an explicitly welfare-oriented philosophy and stated that juveniles who violated the law were not to be treated as "criminal offenders," but rather as "misdirected and misguided" children, "needing aid, encouragement, help and assistance."⁵ Since the focus of the law was on the promotion of the welfare of the child, there was little concern for legal rights, and during much of the time that the JDA was in force many Juvenile Court judges did not have legal training. The express legislative concerns about the special needs and rehabilitation of youth did not, however, necessarily translate into more lenient treatment. Sentencing under the JDA could result in light sanctions for some adolescents, particularly those from "good homes" with middle-class parents, but it also resulted in an intrusive response to some youthful offenders, especially juveniles from marginalized backgrounds who were often placed in custody facilities for much longer periods than adults who committed the same offences. Adolescent girls were sometimes placed in custody for the vaguely worded delinquency of "sexual immorality." Aboriginal juveniles were placed in juvenile correctional facilities in disproportionate numbers.

³Juvenile Delinquents Act, first enacted as S.C. 1908, c. 40; subject to minor amendments over the years, finally as Juvenile Delinquents Act, R.S.C. 1970, c. J-3. Starting in the mid-19th century provincial governments began to enact legislation that provided for the confinement of children separate from adults in prisons and the establishment of juvenile reformatories.

⁴YOA, R.S.C. 1985, c. Y-1, enacted as S.C. 1980–81–82–83, c. 110.

⁵JDA, s. 38.