

1994

CHILDREN & FAMILY INITIATIVE

POSITION PAPER ON THE REVIEW OF THE YOUNG OFFENDERS ACT

EXECUTIVE SUMMARY

In June 1994, the Minister of Justice and Attorney General of Canada initiated a review of the Youth Justice system. An important piece of this review pertains to amending the Young Offenders Act (YOA). This position paper represents the views of the Children and Family Initiative (C & FI) on the proposed amendments to the YOA.

Under the proposed changes, protection of society becomes the primary objective. As well, longer sentences are suggested for first degree murder and young offenders aged 16 and 17 charged with murder will be tried in adult court. It is also proposed that young offenders serve a longer period before they are eligible for parole. Information on young offenders will be shared with police, schools, and child welfare agencies. Records of young offenders will also be kept for a longer period of time.

The above amendments are proposed amidst the public misperception that the crime rate is on the rise and that the YOA is not tough enough in punishing young offenders. Therefore, in order to protect society and prevent crime, we have to impose tougher sentences under the YOA.

The fact is the crime rate is not on the rise when we recognize that the total number of young offenders charged between 1991 and 1993 actually decreased. Nor is the YOA a lenient piece of legislation as the public perceives. The inherent problems lie, not in the existing provisions of the YOA but, on the amount of resources available to make this piece of legislation effective.

Society's call for protection against unlawful acts is indeed a legitimate concern. Upholding justice is equally irrefutable. However, measures to administer justice do not necessarily yield results of prevention. Our justice system has very limited implications for crime prevention. Society cannot be protected against youth crime by institutionalizing young offenders.

Society can only be protected from youth crime if we prevent the occurrence of youth crime in the first place. We protect society by understanding the origins of youth crime, by fearlessly confronting the causes and vigorously resolving them. Crime prevention calls for a comprehensive social development approach, instead of punitive programs and legislations. We have to examine our entire social and economic environment. We have to look at early identification of dysfunctional families and providing support to such families; eradicating child poverty and income insecurity; combating family violence and substance abuse; providing meaningful employment opportunities for youth and

designing education alternatives which can meet the needs of young persons.

Our youth does not grow out of a vacuum. Nor does crime. As part of a family, a community and a nation, we raise our youth. We are part of the problem and we can certainly be part of the solution.

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DRAFT (Final)

A. Background

The Children and Family Initiative (CFI) is a collaborative project launched in Edmonton in 1992 to address the harmful effects of poverty on children and families. CFI is a unique, multi-sectoral partnership consisting of representatives from human service organizations, funding bodies, education, health and policing authorities. Members from the local community and business sectors are also actively involved. (See Appendix I for CFI membership).

In November 1993, CFI conducted an extensive community consultation process to identify specific issues and prioritize actions to reduce the damaging effects of poverty. Results of this consultation re-affirmed our mandate to address the detrimental impact of poverty on families and children and the desperate need to help our children succeed.

We believe that the reform of the youth justice system, announced by the Minister of Justice and Attorney General of Canada in June 1994, will not only deal with amending a piece of legislation, it will inevitably unfold important issues which are close to the heart of the concerns of our Initiative.

This paper represents CFI's views on Phase I of the youth justice system reform. Our comments pertain particularly to the proposed amendments to the Young Offenders Act (YOA) Bill C-37.

B. Introduction

1. Bill C-37 was introduced by the Federal Government primarily to honor its commitment during the election campaign and to respond to a general public perception that the crime rate is on the rise. The result of this perception has been a belief that the Young Offenders Act has to be made tougher.
2. To debate whether or not political motivations are good causes behind law reform will be beyond the scope of this paper. However, it is important to note that the public's outcry against the "escalating" crime rate is, more often than not, based on a few highly publicized crime incidences and not necessarily on facts and figures of committed offences.
3. Public perceptions would be far more accurate if we recognize that the total number of young offenders charged between 1991 and 1993 went down 21%; the number of charges against youths for breakins fell by 46%; car thefts went down 35% and shoplifting fell by 29%.¹ In 1991-92, 17% of the offences committed by young offenders were recorded as violent offences.² Yet the majority of these offences had minor assault as the principle charge. (Minor assault refers to assault which does not involve a weapon or serious injury.) These cases were categorized under violent crimes due to changes made to the Uniform Crime Reporting Survey.³ This categorization gives the impression that violent crime is on the rise.
4. The perception about the YOA not being tough enough in punishing young offenders and deterring crime is misconstrued to say the least. First of all, the YOA is not a lenient piece of legislation as perceived by the public. Alberta charges and process more youth than most other provinces. In 1991-92, Alberta had the fourth highest youth court case rate in the country. Our case rate has been increasing while those in B.C. and Quebec have remained stable over time.⁴ The number of cases brought before Alberta Youth Court in 1991-92 was 19,573 out of a youth population of 213,300, while in B.C. the figures were 11,204 cases out of a youth population of 246,300.⁵
5. Secondly, we need to distinguish between punishment and deterrence of crime. These are two different issues. Our legislation is designed to administer justice and punishment. To a certain extent, it is also a reflection of how society seeks vengeance for the victims of crime. Legislation like the YOA is not meant to deal with crime prevention. Having said this does not imply that prevention is more important than justice or vice versa. We simply cannot expect a piece of legislation to perform a role which is totally beyond its reach. Neither can we deceive ourselves believing that, by

punishing young offenders, crime will disappear.

6. The review of the YOA not only provides us with an opportunity to take a closer look at our own perception and understanding of crime, it also forces us to examine critically our expectation of the Act, our interpretation of justice, punishment and prevention and, most important of all, our fundamental belief that all Canadians have equal rights to due process, which is the key principle behind the YOA.

We hope that the CFI will be able to address these concerns in this paper.

C. The Principles Behind the YOA

1. The YOA evolved from the Juvenile Delinquents Act which was first enacted in 1908 and revised in 1929. The YOA was first passed in 1984 and some revisions were made since then. It has been one of the most significant and controversial pieces of social policy legislation in the Canadian legal system.
2. The YOA represents a major shift from the doctrine of *parens patriae* to the recognition of the rights and responsibilities of the young person. It addresses the concerns of a young person's right to due process in the justice system as well as society's need for protection from illegal behaviour. For the first time, it sets a maximum age across the country and stipulates clearly a definition for a young person (i.e., age 12 to 17 inclusive). The YOA further establishes a system of youth court, procedures and a range of dispositions which, with good reasons, are separate from the adult system.
3. There are four key principles on which the Act is based:⁶
 - a. Young people should be held more responsible for their behaviour but not always as accountable as adults, since they are not yet fully mature.
 - b. Society has a right to protection from illegal behaviour and a responsibility to prevent criminal conduct by young people.
 - c. Young people have special needs because they are dependent at varying levels of development and maturity. In view of society's right to protection and these special needs, young people may not only require supervision, discipline and control, but must also be given guidance and assistance.
 - d. Young people have the same rights as adults to due process of law and fair and equal treatment including all the rights stated in the Canadian Charter of Rights and

Freedoms and in the 1960 Bill of Rights.

4. We believe that the above principles clearly stress the *importance of attaining a balance between the needs of a young person and the interest of society. Amendments to the YOA should reflect and support such a balance.*

D. Comments on Bill C-37

There are 9 major amendments proposed in Bill C-37.¹ We briefly outline the amendments followed by our comments.

1. Amendment to Declaration of Principle

- a. It is proposed that the declaration be changed to indicate that a primary objective of the youth justice system is protection of society, which is best served by the rehabilitation of young offenders wherever possible.
- b. The declaration would also recognize that community-based crime prevention is key to long term reduction of youth crime and that effective crime prevention must address the underlying causes of youth crime, responding to the needs of children at risk before they ever become involved with the criminal justice system.

Comments

- a. *Instead of favouring society's rights over the young person's rights, our legislation should deliberate on the importance of attaining a balance.* It took 76 years from the enactment of the Juvenile Delinquent Act in 1908 to the YOA in 1984 for Canada to recognize the needs, rights and aspirations of young persons and Canadians of all ages and the importance in balancing individual's rights with that of society's.

The proposed amendment in the Declaration clearly indicates that protection of society is the primary and more important goal versus the rights of a young person. This deviates from the aforementioned principles of the YOA. This change will have a definite influence in the court's dispositions.

We are not advocating that young persons should not be held responsible for their illegal actions. It is perfectly legitimate that justice be upheld and young offenders be given appropriate sentences for offenses which they commit. However, when we talk about protection of society, we are actually referring to protecting society from possible events in the future. This event or perceived future offense has not been

committed by the young person and may never occur. By stipulating that we should give more protection to society, we are asking the young person to forfeit some of his rights.

Young persons in our society are often the invisible population. They do not yet have the right to vote and they do not possess the power to make or influence policies as adults do. Their lives are very much confined by systems, institutions, policies and rules which are set by the adult world. If adults, policy-makers and politicians have the privilege of setting the rules, we also have the responsibility to ensure that our children are properly cared for and given the necessary tools so they can play by the rules in the first place. If we decide to accord more rights and protection to ourselves, we must make sure that we are not sacrificing our children and youth in the process.

- b. We very much agree with the Declaration that community-based crime prevention is the key to long-term reduction of youth crime. Our young people do not grow out of a vacuum. Nor does crime. We fail our youth as much as our youth fails us. *The family and the community is the environment in which young persons grow.* In many ways, we encourage our young people to be independent, to be different. Yet when they deviate from our beliefs and rebel against society's norms, we condemn them. On one hand, we legislate compulsory education, yet we do not provide our children with enough food so that they can have the energy to learn in the first place. We want parents to assume more responsibilities, yet we refuse to give them the necessary support they need. We preach the importance of work, yet we do not provide enough jobs for our young people. We certainly ask our young people to pursue their dreams, yet we are giving them experiences which haunt them in their nightmares.

As part of a family, a community and a nation, we raise our children. We provide the parameters and the context. We also provide the contradictions and inconsistencies. We are part of the problem. Unequivocally, *we should be part of the solution.*

The establishment of the National Crime Prevention Council is an important initiative undertaken by the Federal Government.

When serious consideration is given to the causes of youth crime, it is crystal clear that we need to look at dysfunctional families, inappropriate parenting, child poverty, youth unemployment, rigid school systems, and

the society as a whole which in many ways glorifies violence.

We need to steer away from fragmented and piece meal Government programs that primarily support punitive solutions and institutionalization of offenders. These measures have proven continually to be ineffective. We have to address youth crime through comprehensive social development approaches. Prevention is where the emphasis must be placed. It is the key in the review of our youth justice system.

2. Amendment to increase youth court sentences for murder

- a. It is proposed that youth court sentences be increased from 5 to 10 years for first degree murder and to 7 years for second degree murder. Young offenders convicted of murder will have to serve a longer period before they are eligible for parole. The period will be increased to seven and ten years respectively for second and first degree murder.

Comments

- a. The above amendments are clearly made to appease the public's criticism that the YOA is not adequately dealing with youth crime.

This is not the first time that the maximum sentence has been or will be increased. It was increased from three years to five years previously under public pressure. It will be increased again and again until the general public comes to an understanding that institutionalization is not a solution to crime. Until politicians cease to jump on the law-and-order bandwagon and call for the return of the lash and the noose, until the media assist in educating and informing the public that the inherent problems lie not in the YOA but in the amount of resources devoted to make the legislation effective, and until we confront head on the causes and prevention of crime, the crime rate will always be seen to be on the rise and the public will continue to push for harsher sentences for young offenders.

There may be a case for increasing sentences and/or serving a longer period before becoming eligible for parole for a relatively small number of hard core convicted young offenders. Even for such cases, we need to address the reasons behind the pattern of behaviour and ask the more important questions, 'why' and 'what' causes the recidivism.

It has to be noted, however, that under the current provisions of the YOA, young offenders can already be transferred to the adult court systems, where much longer sentences, including life imprisonment, can be imposed.

Instead of advocating for longer sentences and warehousing young offenders, perhaps we should be looking at why Alberta detains more youths in pre-trial detention than other jurisdictions. On April 30, 1992, the count at the Edmonton Young Offenders Centre, which is only one of the several detention centres in Alberta where youths are held prior to trial, was 97. On the same day, the count throughout the entire province of British Columbia was 43.⁸ On average, why do youths spend more time in custody than adults? The average length of time served in custody for young offenders in Alberta is 79 days - more than twice the average for adults.⁹ Why isn't our court system dealing more quickly with young offenders which was the original intent of the YOA?¹⁰ According to a media report, youth cases appearing before the court in August, have trial dates set for January 1995.¹¹ Why are we lumping open-custody teens with seasoned teenage criminals in closed-custody units?¹²

3. Amendment to Transfer to Adult Court

- a. Under the proposals, 16 and 17 year olds charged with murder, attempted murder, manslaughter, aggravated sexual assault and aggravated assault will be tried in adult court. The cases can still be tried in youth court if that young person makes an application and demonstrates that the objectives of protection of the public and rehabilitation can be met in youth court.
- b. In making the decision whether to transfer to youth court, public protection remains paramount in the judges consideration.

Comments

- a. & b. Under the proposed amendment, a transfer to adult court no longer becomes a measure of last resort as is the case under current legislation. 16 and 17 year olds charged with serious indictable offenses will automatically be tried in adult court. We have two concerns related to this proposed amendment. First, automatic transfer to adult court, to some extent, presumes that the young offender is guilty and, therefore, deserves the more severe sentences available in adult court. This is a violation of the principle of presumed innocence until proven guilty. To place the onus on young offenders to demonstrate that they should be tried in the youth court

is also contrary to common law practices. The duty of proving guilt does not lie on the defence but on the prosecution.

Secondly, this amendment echoes the proposed changes in the Declaration of Principles, i.e., Society has more rights than the young person. The importance of striking a balance between the two is undermined by the paramount objective to protect society.

By transferring a case to adult court, the young person faces maximum sentences ranging from six months to life imprisonment. He or she will not have the safeguards developed for young offenders, such as the review procedures. The judge will not be obliged to consider the young person's maturity and character and what treatment or correctional resources are available. These are serious repercussions for a young offender.

While we concur that protection of society and administering justice is important, we also advocate that the rehabilitation of a young offender is as important. The proposed amendment unfortunately only emphasizes punishment and condemnation rather than treatment and prevention.

4. Amendment to Information Sharing and Records

- a. Bill C-37 proposes that information on young offenders be shared between police, school officials or child welfare agencies. Information can also be released to affected members of the public but not to the mass media.
- b. Records of young offenders will be kept for ten years instead of five year for serious offences and three years instead of two years for summary offences.

Comments

- a. & b. The intent behind the above amendment, as highlighted by the Department of Justice, was to promote partnerships among the various professionals who work with young people in the community, and to make it easier for police to identify repeat offenders through their records. Keeping records for a longer period of time will definitely assist police in identifying repeat offenders. However, to suggest that the amendment will promote partnerships among professionals seems a bit far fetched. If what we want to achieve out of partnership is helping the young person integrate back into society as a contributing member, we need more than information. We need to ensure that young persons have ready access to

supporting services. We need to provide the necessary community support for young offenders returning home after incarceration. We need to provide them with alternative forms of schooling and/or other positive employment opportunities. We need to help young persons establish better physical, social and economic environments so they can have a better chance of success.

Without the presence of necessary community support, releasing information to the public will not help a young person rehabilitate or integrate. It will only run the risk of further ostracizing the individual from society.

5. Amendment to Victims Impact Statements

To be in line with the sentencing of adults, victims could, if they wished, make a statement about how a young offender's crime has affected them.

Comments

We believe that hearing from the people affected by the offence is part of the healing process for the victim. It is also an important part of the rehabilitation of the young offender.

6. Amendment to Conditional Supervision

The proposed amendment allows a judge to impose conditional protection at any time when he or she feels stricter controls are necessary for the benefit of the youth or to protect the public.

Comments

It is justifiable that conditions be set on probation dispositions as long as such conditions are reasonable and attainable by the young person.

7. Amendment to Psychological Assessments

- a. Under this amendment, the court will be authorized to request that a psychological or medical assessment be done for chronic or serious young offenders.
- b. The proposed bill would also repeal provisions in the YOA that required young offenders to consent to treatment.

Comments

- a. To facilitate the court to arrive at dispositions which best serve the interest of the individual and that of

society, information such as psychological or medical assessment of chronic or serious young offenders will definitely be helpful.

Criminal behaviour, more often than not, is fostered by the personal experiences and circumstances of the offender. The young offender, in numerous cases, is probably a victim as well. He or she may have been physically, sexually or emotionally abused. The young person may be suffering from brain injury or other physical disorders which affect his or her behaviour. A dysfunctional family background may also affect a youth's ability to establish positive relationships with people and the community. It is important that our justice system have access to information which enhances the court's understanding of why the youth is in trouble and what can be done to help the young person.

- b. To rescind a young offender's right to refuse treatment is a serious proposition. Treatment, be it psychological or medical, has to have the cooperation and commitment of the client or patient. Treatment by coercion or force will have very minimal or nil chances of positive results.

We believe that, should treatment be found as the only means to rehabilitate the young offender, every effort should be made to have the young offender's consent. Failing that, compulsory treatment is not the best disposition.

8. Amendment to Alternatives to Custody for Less Serious Crimes

- a. Under the proposals, medical and psychological predisposition reports would have to include the various community based alternatives to custody and reasons why such alternatives are not appropriate.
- b. It is proposed that for less serious offenses, alternatives to custody should be explored wherever appropriate.
- c. Youth court judges will have to give reasons why a young offender is sentenced to custody versus a community based alternative.

Comments

- a.b. & c. We support the above amendments. Alternative measures and community based alternatives should be preferred to institutionalization of young offenders. These alternatives have proven effective in addressing the needs of most young offenders. At the same time, the community is actively involved in efforts to prevent recurrence of unlawful acts by young persons.

While we emphasize the need to fully utilize alternative measures in the community, we have to ensure that sufficient resources are provided to these programs. In 1993/94, the Alternative Measures Program (AMP) in Edmonton served 1482 youths - 245 more youths than in 1992/93. Yet the total budget allocated by the provincial government to the program was down 10% in 1993/94.¹³ This implies that the number of hours for direct social work to handle the increased case load will not be increased. Larger caseloads will also mean some cases do not receive as much supervision and intervention from a worker as before. There will also be longer waiting periods for assessments. Staff time available for obtaining community placements will likely be decreased.

The use of more effective and less expensive alternatives like the AMP will not be able to serve the needs of the individual or the society if we fail to provide the resources to make these alternatives work.

9. Amendment to Young Offender Statements to Authority

The amendment will clarify the provisions of the YOA which deal with the admissibility of statements by young people to the police or other people in authority.

Comments

We would not object to the above clarification provided that the rights of young people are not minimized.

B. Concluding Remarks

The YOA is a piece of legislation which recognizes the *rights of young persons and the equally important right of society* to protection. This principle of striking a balance between individual rights and right of society should be preserved when we review our youth justice system.

We need to be very clear in our minds of what we expect from a piece of legislation like the YOA. The YOA, like most other

legislation, deals with issues related to justice when the law is violated. It does not and cannot deal with the prevention of crime.

The continued increase in sentences, transfer to adult court, retention of young offenders' records for longer periods of time, making it more difficult to be eligible for parole, or taking away all the rights of young offenders, cannot decrease the crime rate.

Prevention of crime calls for different and collaborative strategies. It involves early identification and intervention of high risk families and youths, providing these families with adequate support, addressing income insecurity, dealing with family violence, combating substance abuse, providing meaningful employment experiences for youth and ensuring easy access to education programs and alternatives which can meet the needs of young people. *Crime prevention should be our goal.* To achieve this, we need to examine our entire social and economic environment and not just a piece of legislation.

The establishment of the National Crime Prevention Council is a very encouraging step taken by the Federal Government to address the above issues. The CFI looks forward to working closely with the Council and actively participating in Phase II of the Youth Justice Reform.

Notes

1. "Youth Crime Drops, but Violence Up", *Edmonton Journal*, June 21, 1994.
2. *Fact Sheet - Young Offenders Crime*, John Howard Society 1993.
3. *ibid*
4. *ibid*
5. *ibid*
6. "Highlights of the Young Offenders Act", Solicitor General, 1982
7. "Backgrounder, Proposed Young Offenders Act Amendments", Minister of Justice and Attorney General of Canada, June 1994.
8. Fact sheet - Young Offenders - Outcomes, John Howard Society, 1993.
9. *ibid*
10. "Youth and Crime: Is the Young Offenders Act Working?", Marilena Carminati, *Law NOW*, June/July 1994.
11. "Coping with a troubled teen", *Edmonton Journal*, August 2, 1994.
12. "Prisoners sleep on floor in packed Youth Centre", *Journal*, July 6, 1994.
13. Alternative Measures Program, Annual Report (draft), 1993-1994, Community & Family Services, City of Edmonton, July 4, 1994.

