



## Youth and Crime

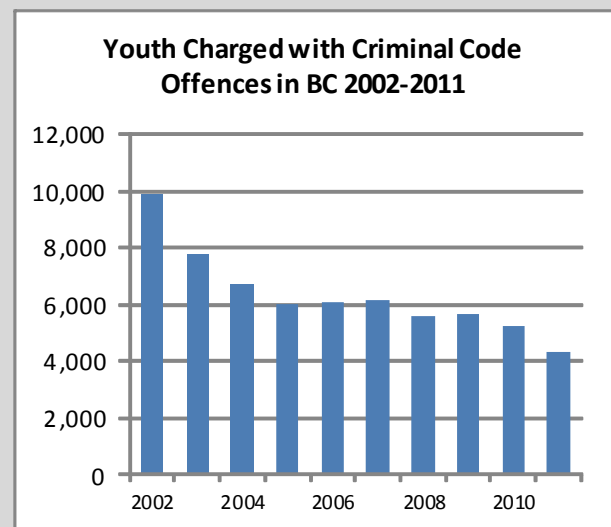
### Views on Youth Offenders

Views on the treatment of youth who commit crime have changed over time. In the 1800s, youth were routinely incarcerated with adults and subject to corporal punishment. For the better part of the 1900s, youth were incarcerated separately from adults, but still subject to the inconsistent and inequitable treatment by the criminal justice system. Under the current legislation, the Youth Criminal Justice Act (YCJA) of 2003, youth are provided with meaningful consequences to their actions that are proportionate to the seriousness of their offence, in an attempt to reduce reoffending and overall crime.

### Primary Purposes of the YCJA

The primary purposes of the YCJA are to:

- Hold youth accountable through fair and proportionate consequences
- Repair harm done to victims
- Involve family and community
- Respect differences like gender and ethnicity
- Reinforce respect for societal values
- Increase procedural protection of the youth (for example, rights to privacy)
- Provide timely intervention



### A Snapshot of Youth Offenders

The number of youth charged with Criminal Code offences in BC has decreased over the past 10 years, from 9,858 in 2002, to 4,340 in 2011, a reduction of 56 percent.

Of the 4,340 youth charged with offences,

- 39% were charged with violent offences
- 35% were charged with property offences,
- 26% were charged with other offences.

BC reported the lowest rate in the country, at 33 per 10,000 youth, less than half the overall average. (Stats Can)

# The Evolution of Youth Law

Before any formal youth legislation came into effect, youth in Canada were being incarcerated in adult jails and prisons, facing the same punishment and harsh conditions as adults. Historical records show that in 1839, there were 30 boys incarcerated in Kingston Prison, 6 between 12 and 15 years of age, and 24 between 16 and 20 years of age. Eventually, society began to realize that sentencing youth this way was ineffective. Rather than providing an opportunity for rehabilitation, incarceration resulted in higher levels of reoffending. It became evident that, due to their lack of life experience, their immaturity, and vulnerability, youth needed to be separated from adults in the criminal justice system.

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## Juvenile Delinquent Act of 1908

The Juvenile Delinquent Act (JDA) was the first legislation passed dealing with youth. The Act was driven by the idea that youth were misguided and mistreated, and that their criminal tendencies were a direct result of their upbringing. The JDA aimed to “save” the child by providing an intervention. The Act provided sentencing options, restricted the types of punishments that could be administered, and disallowed the practice of incarcerating youth with adults. However, it was criticized for allowing the inconsistent and inequitable treatment of youth by the criminal justice system, and for not protecting their rights. In the intervening years, the Canadian Bill of Rights of 1960 and the Canadian Charter of Rights and Freedoms of 1982 were passed, but the rights enshrined in these bills were not reflected in the JDA. In 1984, the JDA was struck down and replaced by the Young Offenders Act.

## Young Offenders Act of 1984

The Young Offenders Act (YOA) strengthened the legal rights of youth, and focused on holding youth responsible for their actions. Community-based solutions became common practice for dealing with youth as one of the YOA’s key goals was to minimize the impact of the criminal justice system on young persons. It established the minimum age at which a youth could be criminally charged at 12 years of age. The YOA went through several changes throughout the years it was in force, such as implementing pre-trial detention (remand) and increasing detention time for serious offences. Although the YOA had many strengths over the previous legislation, the overall public perception of the Act was that

it relied too heavily on incarceration. In 2003, new legislation was introduced which took a new approach to dealing with youth crime.

## The Youth Criminal Justice Act of 2003

The Youth Criminal Justice Act (YCJA) was brought into effect in 2003, and is still in force today. Like the YOA, it sets the minimum age at which a youth can be criminally charged at 12 years of age. The YCJA focuses on providing meaningful consequences to youth in an attempt to reduce reoffending and overall crime. The long-term protection of the public is stated as its intention, and it holds that steps to rehabilitate and reintegrate youth are a key component in reducing crime. The YCJA tries to prevent the majority of minor offences from going through the court system by providing alternative measures for dealing with most youth crime where such an approach can provide meaningful consequences.

# Youth and the Law

Youth have the right to “due process” - the right to be heard and to take part in any proceedings that affect them. They also have rights under the Canadian Charter of Rights and Freedoms. The Charter sections most relevant are:

- **Section 7:** Right to life, liberty, and security
- **Section 8:** Freedom from unlawful search and

seizure

- **Section 9:** Freedom from arbitrary (unlawful) detainment or imprisonment
- **Section 10:** Right to legal counsel, habeas corpus (being brought before the court)

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Youth also have rights under the YCJA. Section 26 of the YCJA states upon arrest police must:

- Notify a parent or guardian
- State the reason for the arrest
- State the place of detention of the youth
- Inform them of their Charter rights

**The right to a lawyer** is also enshrined in the YCJA. Youth have the right to talk to a lawyer whenever they are detained by police, when they are considered for extrajudicial sanctions and when they appear in court. During the criminal justice process, police, prosecutors and judges must ensure that youth are

aware of their rights regarding lawyers. In BC, legal services are provided free of charge to all youth charged with a crime.

### Pre-Trial Detention

The YCJA has attempted to decrease the use of pre-trial detention by not allowing incarceration to be used for social services reasons. Pre-trial detention is generally justified only if police need to:

- Establish the youth's identity;
- Secure evidence;
- Prevent the youth from reoffending
- Ensure safety of victim or witness
- Ensure attendance at court

## Diverting youth out of the court system

The intent of the youth criminal justice system is to hold youth accountable for their actions. In contrast to previous legislation, the YCJA strives to divert youth out of the court system and use alternatives measures, called extrajudicial measures and sanctions, when dealing with youth where such a response can be effective at holding youth accountable. Throughout the criminal justice process, there are many opportunities to employ diversion instead of the court system.

### Extrajudicial Measures

When the police conduct a criminal investigation involving a youth, they have the following options as to how to proceed:

- Close the case
- Refer the case outside of the court system using an extrajudicial measure
- Recommend to Crown Counsel that charges be laid

The police officer's decision is based on various factors, including the seriousness of the offence, whether there has been prior contacts with police, the victim's preferences, the Youth's age, school situation and parental concern. The YCJA provides specific guidance and criteria when determining if an extrajudicial measure should be used. However, if a youth commits a non-violent offence, and has not previously been found guilty of an offence, the police officer must always consider extrajudicial measures.

Extrajudicial measures allow for youth to take responsibility for their behaviour after they have

committed a crime, without having to go through the courts. BC's extrajudicial measures options are to:

- Pursue no further action
- Give a warning or caution, which will be kept in police records in case the youth comes in contact with the police again, and/or
- Refer the youth to a community program

Extrajudicial measures can be very effective at preventing youth from reoffending because they provide timely and effective intervention, which is often enough to stop the offending behavior.

### Extrajudicial Sanctions

If the police have recommended charges, Crown counsel may still refer the case to diversion, called extrajudicial sanctions, instead of proceeding through the court system. Extrajudicial sanctions are often used for serious offences, and are only used if an extrajudicial measure is not sufficient. In order to be considered for extrajudicial sanctions instead of a court proceeding, a youth must take responsibility for his actions and must agree to take part in extrajudicial sanctions.

Examples of extrajudicial sanctions are:

- Counselling
- Restitution to victims
- Assisting or apologizing to victims
- Community service
- Writing an essay

Once extrajudicial sanctions are applied, the youth will have a court record.

# Youth and the Courts

If the charge proceeds to court and the youth is found guilty, the court has many sentencing options, both non-custodial and custodial. Non-custodial sentencing options include:

- Reprimand – lecture from the judge
- Absolute Discharge – no conditions and record is sealed after one year
- Conditional Discharge – released to the community with conditions that must be followed. Record is sealed after three years
- Fine – Up to \$1000
- Restitution – compensating for loss or injury
- Community Service – cannot exceed 240 hours
- Probation – conditions the youth must follow
- Attendance Order – programs the youth must attend at specific times
- Intensive Support and Supervision (ISSP) – high level of support in the community

Custodial sentencing options include:

- Custody and Supervision
- Deferred Custody and Supervision – Very strict community sentence where violating conditions results in being sent to prison
- Intensive Rehabilitative Custody and Supervision (IRCS) - An individualized treatment plan used for violent youth who have a psychological disorder, a mental illness, or an emotional disturbance

## Transferring Youth to Adult Court

Both the JDA and YOA set the minimum age for transfers at 14. Under the YOA, if a youth committed a serious offence, like murder, it was presumed they would be transferred to adult court. The onus (burden) was on the youth to prove that they should not be transferred. When the YCJA took effect, The Supreme Court of Canada ruled that presumption of an adult sentence was unlawful and put the burden on the crown prosecutor to prove the youth should be sentenced as an adult. The YCJA does not transfer youth to adult court during the court process, but considers adult sentences after the youth is convicted.

## Children under Age 12

“Children under 12 cannot be tried or charged for a criminal offence in Canada. When a child is caught doing something illegal, the police officer will likely inform the parents, who then may seek assistance from a community organization or the child’s school. (JusticeBC).”

## Having a Youth Record

Having a youth record can make it difficult to travel out of the country, get a job, or attend some universities. However, unlike an adult record, a youth record will be automatically sealed, provided the youth does not commit more crimes. The length of time is dependent on how severe the offence was, and how court proceedings went. If a youth commits crimes as an adult, the youth record may be unsealed.

## A Study of BC’s Youth Custodial Population

A 2005 study conducted in BC by the McCreary Centre Society focused on identifying the profile of offenders in the BC youth custody centres. The study revealed that youth in custody have had very troubled upbringings, and become involved in crime at a very young age. They suffered from both typical youth-related issues – smoking cigarettes, experiencing anxiety, and having concerns about their weight, as well as atypical issues such as drinking and driving, contemplating or actually attempting suicide, and being homeless. It concludes,

“To transcend their past and thrive in adult life, Youth in custody must overcome enormous obstacles. Despite the difficulties they face, this survey shows that youth in custody have optimistic aspirations for a better future. In fact, most youth in custody

want to attain the same goals in life that others want: a future that includes education, jobs, family and a home of their own.” (Time Out II: A profile of BC Youth in custody, 2005, p.5)

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*“Effective, just and humane responses to the causes and consequences of crime.”*