

The Youth Criminal Justice Act

THE PLEA

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Sometimes, young people find themselves in conflict with the law. Often a simple warning is enough to deal with the situation. Occasionally more formal actions are needed. Regardless of the course of action, young people aged 12 through 17 in conflict with criminal law are dealt with under the *Youth Criminal Justice Act* (YCJA).

But what exactly is the YCJA? How does it work to meet the unique needs of young people? This issue of *The PLEA* will introduce you to the *Youth Criminal Justice Act* and its role in the lives of young Canadians.

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A History of Youth Justice

Most nations have special laws for young people. However, this has not always been the case.

For a long time, there was only one criminal legal system. Youth and adults alike could be jailed, whipped, or even killed for breaking the law. Around 600AD, the Romans decided that children under the age of 7 should not be punished as criminals. By the 1700s, children under 13 were generally viewed as incapable of appreciating the nature and consequences of their conduct. During the 1800s, reformers began to develop a separate juvenile court and legal system. The philosophy of these reforms was an emphasis on rehabilitation. It was believed that saving young people from a life of crime was an important objective for society.

In Canada, our understandings of law and society have also evolved. Thus, the Canadian criminal justice system has changed over time.

EVOLUTION OF CANADIAN YOUTH JUSTICE

1908: Juvenile Delinquents Act

In 1908, the *Juvenile Delinquents Act* (JDA) marked the creation of Canada's separate juvenile justice system. The JDA:

- included youth aged 7 up to a maximum set by each province (age 16 in Saskatchewan)
- treated young persons in trouble with the law as misdirected and misguided children rather than as young adults legally responsible for their actions

1984: Young Offenders Act

In 1984, the *Young Offenders Act* (YOA) replaced the JDA. Partially due to public demands for a stronger response to youth crime, the YOA:

- increased the age of criminal responsibility from 7 to 12



- moved away from a welfare-oriented approach to one of responsibility and accountability
- emphasized protection of the public while still recognizing that youth have special needs because they are not fully mature

The YOA was criticized for a number of reasons. It was said that it did not do enough to prevent youth-at-risk from entering a life of crime. As well, some argued that its sentencing options were inadequate to deal with and provide long-term rehabilitation for the most serious violent youth.

Criticism was also levelled because of the over-use of jail sentences for non-violent young offenders who could be better served through community-based approaches that emphasized responsibility and accountability.

2003: Youth Criminal Justice Act

In 2003, the government responded to the perceived weaknesses of the YOA by replacing it with the *Youth Criminal Justice Act* (YCJA). Referring to values such as accountability, respect, responsibility, and fairness, the YCJA's preamble explained the law's rationale, and stated that:

addressing the needs of young people and preventing crime is a shared responsibility of society as a whole

- addressing the needs of young people and preventing crime is a shared responsibility of society as a whole
- prevention should be accomplished by addressing underlying causes of crime
- youth have legal rights that must be respected
 - the youth justice system should ensure accountability through meaningful consequences and rehabilitation and reintegration
 - the most serious interventions should be reserved for the most serious crimes
 - over-reliance on incarceration should be reduced for non-violent young persons
 - accurate information about youth justice should be available to the public

The YCJA included principles to provide clear direction to those dealing with youth in conflict with the law; emphasized out-of-court and non-custodial options for non-violent youth; and focused on reintegration and rehabilitation. At the same time, the YCJA provided custody options for youth who committed more serious offences.

2012: Amendments to the Youth Criminal Justice Act

In 2012 the government passed the *Safe Streets and Communities Act, an Act* that made important changes to the YCJA. The changes were designed to help ensure that youth who commit violent or repeat offences are held fully accountable.

Broadly speaking, the YCJA's general principles were amended and now highlight the protection of the public as a key goal of the youth justice system. The principles of the Act now state that the youth justice system is intended to protect the public by:

- holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of the responsibility of the young person
- promoting the rehabilitation and reintegration of young persons who have committed offences, and
- supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour

At the same time, the amendments also emphasize that the youth justice system must be based on the principle of diminished responsibility of young persons.

Additional amendments, dealing primarily with youth who commit violent and repeat offences, were also incorporated.

HAVE THESE EVOLVING LAWS WORKED?

Today, claims such as “youth crime is on the rise” and “youth crime is out

crime has been in steady decline for well over 20 years

of control” seem common in coffee shops and online message boards. There is one problem with such broad statements. They are not true.

The most recent data from Statistics Canada revealed that in 2013, the overall volume of youth crime declined by 16% from the previous year. This included drops in homicides, serious assaults, motor-vehicle thefts, and break-ins. This recent decline in youth crime is consistent with longer-term trends. In fact, Statistics Canada data reveals that crime has been in steady decline for well over 20 years.

In 1991 nearly 9,500 crimes were recorded per 100,000 youth in Canada, a peak in recent history. When the *Youth Criminal Justice Act* became law in 2003, there were nearly 7,500 crimes per 100,000 youth. By 2013, the number of crimes per 100,000 youth fell to just under 4,500. This is a 40% decline since the YCJA was enacted.

While many factors contribute to Canada's falling crime rates, the implementation of the *Youth Criminal Justice Act* may offer a partial explanation for Canada's falling youth crime rate.



The Police and Arrest

The police cannot arrest people on a whim. There must be good reasons.

The police cannot arrest anyone without any evidence of a crime. Nor can the police arrest or punish people just because they dislike something about them or the way they look. The police do not have the power to arrest people on discriminatory grounds such as race, colour, religion, disability, sex, sexual orientation, or age.

To arrest someone, the police need reasonable and probable grounds to believe that a person has committed or is about to commit an indictable (serious) offence. Reasonable grounds means that the police officer has a strong suspicion—and some evidence to back-up the suspicion—that a crime was or will be committed. The officer can then arrest and search the person for further evidence.

WHAT HAPPENS WHEN A YOUNG PERSON IS ARRESTED?

If a young person is placed under arrest, they have certain rights.

They have the right to know why they are being arrested. This allows the person who is arrested to know what charge they face.

People under arrest also have the right to remain silent, other than identifying themselves. This gives the young



person the chance to exercise their right to talk to a lawyer and a parent or other adult before talking to the police. Statements given to the police may be used against the young person in court, so having a lawyer or parent or other adult around can be important for protecting the young person's rights.

It is important to remember, however, that the right to remain silent does not include the right to lie to the police.

DO THE POLICE ARREST EVERYONE THEY SUSPECT OF BREAKING THE LAW?

Because police have some discretion, young people who are believed to have committed or are about to commit an offence may not be arrested. The police have several options available. Sometimes, they can use extrajudicial

measures such as cautions or warnings. This means the young person will not have to go to court. We'll talk more about extrajudicial measures on pages six and seven.

Sometimes a young person will not be arrested, but could be issued a ticket if the police believe they have broken a law. This is often the case for some provincial and local laws that do not fall under the *Criminal Code*, such as traffic laws or littering laws. (Local and provincial laws do not fall under the *Youth Criminal Justice Act*.) If a young person is issued a ticket, they can pay the fine or appear in court to challenge it.

Sometimes an offence is so serious that the young person will be arrested, charged, and then either released or kept in custody.

CONSIDER THIS SCENARIOS FOR ARREST

A police officer on patrol sees a red-faced young man in jogging shoes running down the street. Does the officer have the right to arrest the young person?

No. There is no evidence that a crime has been committed.

But then an elderly man points at the red-faced young man and shouts "He stole my wallet!" There is a wallet in the young man's hand. Does the officer now have reasonable grounds to arrest the young person?

Yes. There is some evidence which suggests an offence may have been committed.

Extrajudicial Measures and Extrajudicial Sanctions

Reducing the use of courts—especially for less-serious crimes—is an objective of the YCJA. But this does not mean young people are not accountable for their actions.

Not all crimes are necessarily best dealt with in a courtroom situation. To keep less serious cases out of the courts, the *Youth Criminal Justice Act* allows the police and crown prosecutors to use extrajudicial measures and extrajudicial sanctions.

EXTRAJUDICIAL MEASURES

Extrajudicial measures are an out-of-court alternative for dealing with offences committed by youth who are not serious, repeat offenders.

Before being charged with a crime, the police must first consider whether using an extrajudicial measure

extrajudicial measures are presumed to be adequate to deal with first-time, non-violent offenders

would be sufficient to hold the young person accountable for the offence.

Extrajudicial measures are presumed to be adequate to deal with first-time, non-violent offenders. They should also be used to deal with other situations if using such measures, instead of going to court, would hold the young person accountable for their offending behaviour.

If extrajudicial measures would be sufficient, the police are encouraged to:

- take no further action against the young person
- warn or caution the young person
- with consent, refer the young person to a community program to help him or her avoid committing further offences

Although youth who are warned, cautioned or referred to a community program are not required to admit guilt for the offence, police must keep a record of the extrajudicial measures. While a record of past warnings, cautions, or referrals cannot be considered in sentencing for a further offence, the police and crown prosecutors can use the record to help decide whether to charge a young person or use

extrajudicial measures in relation to subsequent offences.

EXTRAJUDICIAL SANCTIONS

Extrajudicial sanctions are the most formal type of extrajudicial measure. A crown prosecutor must be satisfied that there is enough evidence to support prosecuting the offence. The youth must accept responsibility for their offending behaviour and agree to the extrajudicial sanction. An extrajudicial sanction can require the youth to do such things as:

- perform community service
- pay back the victim for any harm that may have been caused
- attend counselling or treatment programs

Young people have the right to talk to a lawyer before agreeing to an extrajudicial sanction. A record of an extrajudicial sanction may be considered by the court when sentencing a young person for a further offence.

FULFILLING EXTRAJUDICIAL MEASURES AND SANCTIONS

If the young person does not complete all the things required of them for an extrajudicial sanction, the matter may be dealt with in court. However, if the young person

admitted responsibility for the offence as a condition of the extrajudicial sanction, the admission cannot be used against them in later court proceedings regarding the same offence.

Provinces may have special rules that require permission from the government before charges can be laid in certain cases. This gives a final chance to deal with the offence without having to go to court.

young people have the right to talk to a lawyer before agreeing to an extrajudicial sanction



CONSIDER THIS

USING EXTRAJUDICIAL MEASURES AND EXTRAJUDICIAL SANCTIONS

Incident One: Alex and the Bicycle

Alex, 14 years old, is on his way home from school. He notices an expensive mountain bike inside a partially opened garage. The garage faces the alley and no one seems to be around. Alex enters the garage, looks around and decides to take the bicycle. After riding it around for a while he realizes he'd better get home. But he can't just show up with a bike that isn't his. He ditches it in an alley not too far from his house and then carries on.

Meanwhile, the owner of the bike has returned to his garage after going inside his house to get a drink. He immediately notices that the bike is gone and calls the police. The police manage to recover the bike later that night. Acting on a tip, the police attend at Alex's home to question him about the incident.

The police inform Alex that he has the right to speak with a lawyer. As the police begin to ask Alex about his involvement, in the presence of both of his parents, Alex immediately confesses to having taken the bike, expresses his remorse and acknowledges that it was a stupid thing to do.

Alex has no prior youth record. He is an average student and loves to play basketball and hockey.

DISCUSS

1. What would you do about Alex if you were the police? Make a list of several possibilities.
2. Consider and evaluate the consequences of each option.
3. Of the options, what do you believe to be the best? Justify your decision.

Incident Two: Jayne and Kirsten in Trouble

Jayne and Kirsten, both 15 years old, are caught stealing clothes valued at \$190 from a store. The police attend and, after asking the girls a few questions, decide to take them home and interview them with the girls' parents present. As they drive towards the girls' homes they request any available background information from central records.

Jayne's parents are not at home, but are well-known to the police and social services for failing to provide adequate supervision to their children. The report on Jayne discloses one previous incident where she was caught trying to steal some costume jewellery, valued at \$28, from the same store. She was given a warning. Jayne has nothing to say about the stolen clothes.

Kirsten admits stealing the clothes together with Jayne. She says that she has never been in trouble with the law before and her report doesn't disclose

any previous incidents. Kirsten's parents are very concerned to learn about her involvement in the theft and assure the police that she will be disciplined accordingly. They think the two girls should not be allowed to spend time together, although they attend the same school.

DISCUSS

1. Should Jayne and Kirsten be treated the same? Why or why not?
2. What options are open to the police?
3. What personal circumstances would you consider in determining an appropriate response to this incident?
4. If you were the officer involved, what action would you take in relation to each girl? Why?
5. Is having information about past incidents and how they were handled helpful? Explain.

What Happens in Youth Justice Court?

How have youth courts been designed to protect young people while administering justice?

Under the *Youth Criminal Justice Act*, all youth cases will be heard in Youth Justice Court.

Once in court, a young person has a guaranteed right to legal representation. This means that if the young person wishes to obtain counsel but is unable to, the court will order that counsel be provided if the young person asks.

In most cases, the trial will be open to the public and members of the news media. However, the public and the media are not usually permitted to publish or broadcast any information which reveals the identity of any young person involved in the trial.

The young person's parents or guardians must be notified of all proceedings and are encouraged or may be required to attend. When a parent or guardian has not attended court proceedings, the judge may issue a written order requiring the parent or guardian to attend.

At trial, the crown prosecutor and counsel representing the young person (if the young person has counsel) present their cases and may call witnesses. After both sides present their cases, the judge must make a decision based on what has been heard.

If the young person is found not guilty, they will be acquitted, and that is the end of the case. If there is no appeal, all records will be sealed or destroyed two months after the appeal period passes. If there is an appeal, and that appeal is not successful, all records will be sealed or destroyed three months after the appeal proceedings.



If the judge finds the young person guilty, the judge will decide upon an appropriate sentence. Before giving the sentence, they will listen to any suggestions made by the crown prosecutor, the young person, their lawyer, their parents, or their youth worker. Judges must apply the sentencing principles of the YCJA.

Judges also have the option of calling a conference of community members for

advice on an appropriate way to hold the young person accountable. Judges could also ask for a pre-sentence report, which is a written report given by a youth worker. In writing the report, the youth worker will talk to the young person, their parents, and possibly their teachers or others who know the young person. The victim may also be interviewed.

If the judge considers that the young person is suffering from physical or mental illness, the judge can ask for a medical, psychological or psychiatric assessment to help decide on a sentence.

In deciding what sentence to give, the youth justice court considers such things as how involved the young person was in the crime, how much the victim suffered, whether the young

person has compensated the victim or made amends to the community at large, and whether the young person has any prior findings of guilt or previous extrajudicial sanctions. Possible sentences include:

- a reprimand
- an absolute or conditional discharge
- a fine of up to \$1,000
- doing community service work or personal service for the victim
- paying for, replacing, or returning stolen or damaged property
- probation for up to two years
- a period of custody followed by supervision in the community

In cases where a young person is eligible to receive custody, the judge must first consider all reasonable alternatives before imposing a period of custody.

If a young person gets custody, they will be held in a youth facility. If the young person turns 18 while in custody, the young person may either continue to serve their sentence in the youth facility until the age of 20 or be transferred to an adult facility depending on circumstances. In some instances, a young person may be allowed to remain in a youth facility after turning 20.

If a young person is under community supervision, they will live in the

the judge must first consider all reasonable alternatives before imposing a period of custody

community under the supervision of a responsible adult such as a parent. The young person must abide by a number of conditions as part of community supervision.

Generally, a young person's identity will not be published if they are found guilty under the YCJA. The court may allow the publication of names for youth who commit violent offences if there are concerns that the youth will commit another violent offence. As well, if a youth receives

an adult sentence, their names may be published.

ADULT SENTENCES

On rare occasions, young people who are found guilty of crimes can receive an adult sentence. Only youth who are at least 14 can be sentenced as adults. Provinces can change the minimum age to 15 or 16.

generally
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person's
identity
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published

If a youth, who is at least 14 years old, has been found guilty of an indictable offence for which an adult could receive a prison sentence of two or more years, the prosecution can apply to the court for an adult sentence. If the youth has been found guilty of a serious violent offence—murder, attempted murder, manslaughter or aggravated sexual assault—the prosecutor must consider

applying for an adult sentence. If they decide not to seek an adult sentence in these circumstances they must advise the court.

If a young person receives an adult sentence, their identity can be published. Their criminal record for that offence is not protected in the same way that youth records are. The sentence may also be much longer, as the limits on youth sentences do not apply. However, young people sentenced to an adult sentence must be held in a youth facility until they reach 18.



CONSIDER THIS APPLYING YOUTH JUSTICE

1. The Canadian Bar Association—the organization representing Canada's legal profession—has said that “experience has shown that at-risk youth learn or reinforce criminal behaviour in custodial centres; only when diverted to community options are they more likely to be reformed.” With this in mind, is it always best for judges to choose custody as a possible sentence?
2. Russel Smandych, Professor of Sociology at the University of Manitoba, believed that the publication of youth names will create long-term problems for the reintegration of youth into society. He said that “Anyone who forever Googles their name is going to find that they were in the Winnipeg Free Press or in the CBC News and that they were shamed when they were 14 years old because they did this stupid thing. Do we really want that for our young people?”
 - a) Do you think that publishing a young offender's name will result in long-term harm for that person? How will this affect society as a whole?
 - b) Should people be judged by their past actions or their present ones? Explain.

Case Study: D.P. v. R.

When youth justice court must decide on a case, they must follow the principles of the *Youth Criminal Justice Act*.

THE FACTS OF THE CASE

Fifteen year-old D.P. pled guilty to a drinking and driving charge.

He was stopped by the police at 2:00 AM after they observed him speeding and swerving. In addition to D.P. there were three other teenaged passengers in the car. D.P. was a new driver and as such was not allowed to drive after midnight. The police found open and partly empty liquor bottles in the car. They also found marijuana and paraphernalia for using marijuana in

the car. A breathalyzer test showed D.P.'s blood alcohol content to be .1 which was over the limit of .08 but not a particularly high reading.

The pre-sentence report indicated that D.P. had never been involved with the criminal justice system before, that he was a high school student with plans to take engineering at university, that he participated in sports and that he held down a part-time job. The report also explained that D.P.'s parents were divorced and that his mother had moved to another

country. As a result D.P. had little contact with his mother. His father struggled with depression and alcohol abuse. D.P. had begun drinking alcohol and using marijuana as well as exhibiting some anger issues.

The trial judge sentenced D.P. to probation. D.P.'s lawyer had argued for a conditional discharge. The prosecutor asked for probation but did not submit any arguments against a conditional discharge. Probation is a harsher sentence than a conditional discharge mainly because with probation a youth's record can be accessed for a longer period of time.

In deciding on probation the sentencing judge

referred to another case where she sentenced an adult to jail for causing someone's death while driving under the influence of alcohol, as well as referring to the need to impress on youthful offenders that drinking and driving is a serious criminal matter and her concern that D.P.'s alcohol and marijuana use could lead D.P. to drink and drive again.

D.P. appealed the probation sentence arguing that it did not conform to the sentencing principles of the *Youth Criminal Justice Act*.

probation is a harsher sentence than a conditional discharge

THE LAW

The YCJA has a number of sentencing principles. Below is a summary of some of the ones considered in this case.

The YCJA states that youth sentences must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence. Keeping this rule in mind youth sentences must also:

- be the least restrictive sentence that is capable of achieving the purpose set out in the Act
- be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and
- promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community

Youth sentences must also fulfill the following objectives:

- to denounce unlawful conduct
- to deter the young person from committing offences.



THE APPEAL COURT'S DECISION

The court determined that the trial judge failed to consider some relevant factors under the YCJA, overturned the decision of the trial judge, and sentenced D.P. to a conditional discharge.

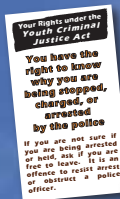
The appeal court found that the trial judge had not considered the requirement to impose the least restrictive sanction capable of achieving the guiding principles of sentencing under the YCJA or the need to emphasize rehabilitation and reintegration. The court also found that the trial judge had overemphasized the need to deter D.P. from drinking and driving again and the need to deter other young people. The court came to this conclusion based on the judge's comments about the impaired driver she had sentenced to jail as well as other comments she made before and after this comment about the need to deter D.P. and others from drinking and driving.



CONSIDER THIS APPLYING SENTENCING PRINCIPLES

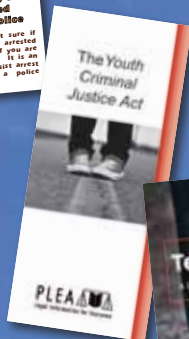
1. Which of the above principles do you think the trial judge relied on in choosing the harsher sentence of probation?
2. When a sentence is appealed the court hearing the appeal cannot change the sentence just because they would have given a different sentence. They can only change the sentence if the trial judge did not apply the principles in the YCJA properly. Which court do you think best-applied the YCJA's sentencing principles? The lower court or the appeal court?

Further Resources from PLEA



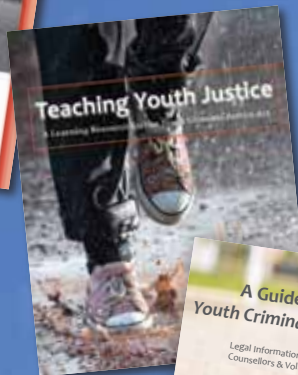
Your Rights under the *Youth Criminal Justice Act*

These pocket-sized cards outline the rights youth have when dealing with police.



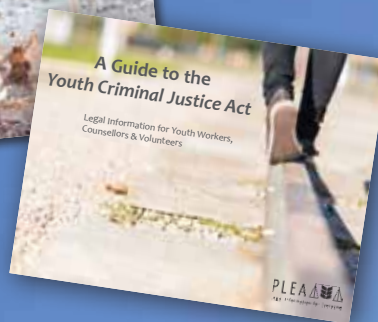
The *Youth Criminal Justice Act*

This pamphlet is a brief outline of the YCJA.



Teaching Youth Justice

This full-length learning resource is ideal for teachers looking to explore the YCJA in their classrooms.



A Guide to the *Youth Criminal Justice Act*

This full-length resource is ideal for people who work with youth involved with the youth justice system.

As with all PLEA resources, these are available at no charge. Download online or order print copies from plea.org.

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plea@plea.org
306.653.1868

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