

Handout: Youth Sentences

Because Canada once had one of the highest rates of youth incarceration in the western world, part of the thrust behind the *Youth Criminal Justice Act* is to establish a more targeted approach to the use of custody for young persons and to increase the use of community-based sentences for non-violent youth crime.



Under the YCJA, there are a number of sentencing options available to the Youth Justice Court. Many of these options do not involve a custodial sentence. In fact, under the YCJA, the use of custodial sentences is prohibited unless one of the following applies:

- the young person has committed a violent offence
- the young person has failed to comply with non-custodial orders
- the young person has committed a serious (indictable) offence and has a pattern of either judicial sanctions or findings of guilt or both
- the young person has committed a serious (indictable) offence and there are other aggravating circumstances that call for a custodial sentence

Even in cases where a custodial sentence would not be prohibited under the YCJA, the Youth Justice Court must still explore all reasonable alternatives to custody. The Youth Justice Court can't sentence a young person to custody as a substitute for appropriate child protection, mental health, or other social measures. In other words, young persons shouldn't be placed in custody "for their own good" or in situations where an adult wouldn't be jailed for the same behaviour.

Non-custodial sentencing options include reprimands, discharges, restitution, compensation orders, community service orders, prohibition orders, and probation. When determining a sentence, the Youth Justice Court must remember that the purpose of sentencing under the orders is to hold the young person accountable by using fair sanctions with meaningful consequences, and promoting their rehabilitation and reintegration into society. This principle is based on the belief that this is an effective way to contribute to the long-term protection of the public.

A sentence must not result in the young person receiving a harsher sentence than an adult would receive for the same offence in similar circumstances. There should be consistency between sentences, meaning that young persons found guilty of the same offence committed in similar circumstances should receive similar sentences.

It is important that sentences be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence. Under the Act youth courts have the ability to ensure that violent or repeat offenders receive a sentence that takes into consideration the serious nature of the offence and the degree of responsibility of the young person.

Non-custodial sentences that are reasonable in the circumstances should be considered for all young persons. The YCJA directs that particular attention be paid to the circumstances of Aboriginal persons.



A sentence generally must be the least restrictive option that is still capable of holding the young person accountable by using fair sanctions with meaningful consequences. The sentence must be the one most likely to rehabilitate the young person and to reintegrate them into society. It must promote a sense of responsibility in the young person and an acknowledgement of the harm done, both to the victim and the community. It may also be used to denounce the unlawful conduct and deter the young person from committing offences.

When a Youth Justice Court is deciding on a sentence for a young person, the following factors must be considered:

- the young person's level of involvement in the offence
- the harm to the victim and whether it was intentional or reasonably foreseeable
- whether the young person has compensated or otherwise made amends to the victim or the community
- time already spent in custody awaiting trial or sentencing
- any aggravating circumstances that support a more severe sentence than average, or any mitigating factors that would support a more lenient sentence than average
- the young person's previous findings of guilt

Most youth records will become inaccessible and unusable if the young person does not commit further offences for a specified period. In many cases where a youth record is still accessible, subsequent convictions for offences committed by the young person after they turn 18 will serve to convert active youth records to adult status.

Discuss

1. Think about the move away from custodial sentences for youth who have committed minor criminal offences and the restrictions on custodial sentences. Why would it be a good idea to keep youth who commit less serious crimes out of custody? Are there enough restrictions on the use of custody? Are there too many?
2. Some people suggest that youth criminal behaviour may be less established and easier to correct with proper support and supervision, because of the young person's level of development and maturity.
 - a. How is this reflected in the YCJA generally?
 - b. How is it specifically reflected in the sentencing provisions?
3. What different functions should a sentence serve?