

INTRODUCTION TO THE CANADIAN JUVENILE JUSTICE SYSTEM

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I. INTRODUCTION

This paper presents a description of some features of the Canadian youth justice system, including the principles underlying the system and procedures followed in the system. We will begin, though, with a review of the importance of addressing youth crime, some alternative models of juvenile justice, and principles of best practice.

II. THE ISSUE OF YOUTH CRIME

Criminal activity of children and adolescents represents one of our most significant social issues. Its importance is reflected in public opinion polls where the issue of youth crime is nearly always cited as one of the leading public concerns. It is also reflected in the media, where reports of youth crime, particularly violent crime, inevitably receive prominent coverage. Its significance is represented well in the rhetoric of some politicians who build political platforms around concerns about juvenile crime and who frequently advocate drastic solutions to the “problem.”

Our society places a great deal of emphasis on youth and this is undoubtedly one factor accounting for our intense concern with youth crime. There are other considerations as well. Fear of being a victim of crime is a factor. Surveys show, for example, that many young people and their parents are concerned with violence in schools, and there are data showing that many people do not feel safe in their neighbourhoods. These fears may be exaggerated in some cases, but they are real to the people holding them.

There is likely a general feeling as well that we have less control over the actions of children and adolescents than adults. There are two considerations. First, we recognize that primary responsibility for controlling the behavior of young people rests with parents, and there is a widespread feeling that many parents are unable or unwilling to meet their responsibilities in this respect. Second, there is a perception on the part of some that the justice system is too “lenient” with children and adolescents than adults. This is often an erroneous perception, but it does influence public opinion.

Finally, criminal activity on the part of young people often represents social conditions that we find difficult to confront. Poverty, racial prejudice, unemployment, family conflict and violence are all conditions associated with youth crime, and they also represent difficult social problems for which we often have no easy solutions. Some of our anxiety about youth crime probably reflects our feelings of helplessness in the face of these problems and perhaps some degree of guilt over our inability to solve them.

These observations about the bases for our concerns about youth crime are not intended to deny its importance. Tremendous costs are associated with these activities. First, there is the significant harm often suffered by the victims of crime. Physical pain and psychological trauma to the victim are often the consequences of violent crimes, and the families of victims may also suffer from these actions. Even so-called property crimes such as vandalism, shoplifting, and petty theft may result in burdensome monetary costs to individuals and organizations, as does the need to fund police and security services. There are, as well, significant costs associated with the processing of young people in juvenile justice systems and housing them in custody and other residential facilities. These costs escalate dramatically, of course, where the young person continues the criminal activity into adulthood.

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One should also consider the consequences for the young person engaging in the criminal activity. It is sometimes difficult for those who are the victims of crime and for those who work closely with these youth to feel compassion for them. Some, in fact, do “get away” with their crime and some are treated in an apparently lenient way by the justice system, but many boys and girls do experience the consequences of their actions through stigmatization, periods of removal from their family and community, or, where they do not desist from their criminal actions, through continued conflicts with the justice system. In the latter case, the highest price is paid by society through its loss of a productive member of the community.

Parents and families of the youth committing the crime may suffer. Some parents may be indifferent to their child’s criminal activity and cases exist where parents encourage the activity. These, however, are exceptions, and in many cases the criminal activity of the youth places great strains on parents and has a negative impact on the functioning of the family.

One final potential cost associated with youthful criminal activity should be noted. Some politicians and members of the public have used fears about alleged escalating rates of youth crime to propose drastic solutions. The latter may involve suspending or modifying traditional judicial rights or introducing severe punitive measures. However, these actions do not always have the desired effects and in some cases may have unintended and undesirable consequences. To illustrate, some jurisdictions in an effort to “crack down on youth crime” have increased the numbers of youths incarcerated in custody facilities. However, incarcerating youths, especially low risk young people, may have the effect of increasing levels of criminal activity. Judicial systems within a democracy are fragile creations and should be tampered with only with great caution.

III. ALTERNATIVE MODELS OF JUVENILE JUSTICE

We can identify three broad goals for a juvenile justice system. First, systems are responsible for providing the public with protection from criminal activity. This is particularly important from the point of view of public support for any police or juvenile justice system. Second, the system is responsible for providing accountability to victims of crime. Victims have a right to see that those who have harmed them are held accountable for their actions and, where possible, receive some form of compensation for their injury. Third, and this a somewhat more controversial point, a juvenile justice system is responsible for addressing the factors that placed the youth at risk of the criminal activity. The goal in this case is developing positive competencies in the youth to reduce the likelihood they will engage in further criminal activity.

Controversies arise over the best strategies to achieve these goals, and the controversies are complicated by the perception that three goals are contradictory. That is, strategies for ensuring public protection may run counter to strategies required for improving the youth’s competencies through rehabilitative strategies. We will see later that strategies for achieving the goals do not have to be contradictory in spite of the polarized public debates.

Corrado (1992) has provided a useful framework for describing alternative strategies for addressing the issue of youth crime. At one extreme is the Corporatist model where the treatment of the youthful offender is integrated into the broader social service system. The Scottish system represents this approach, where educational, mental health, juvenile offending, and child protection are all integrated into a single social service system for children and families. At the other extreme is the Crime Control model where the focus is solely on limiting criminal activity through the use of judicial processing and punitive sanctions.

However, most juvenile justice systems are based on what Corrado terms Justice or Modified Justice models. These are systems that incorporate both punitive and rehabilitative strategies within a formal judicial framework. We will see this approach illustrated in the Canadian juvenile justice system discussed later in the paper.

IV. THE RESEARCH EVIDENCE

The two earlier papers in this series indicated that considerable research has now been reported on best practices in the treatment of juvenile offenders (see Loeber & Farrington, 1998, Guerra, Kim, & Boxer, 2008; Hoge, 2001). We can ask what lessons that research provides us in selecting among the alternative models.

A. General Findings from the Research

Research on the effects of alternative intervention strategies has provided us with four important conclusions:

- Early prevention programmes carefully targeted to the needs of the child and the family and delivered effectively can be effective in reducing future antisocial activities;
- Punitive sanctions are generally not effective in discouraging initial criminal activity or reducing the likelihood of continued activity on the part of those exposed to the punishment;
- Appropriate treatment programmes delivered effectively can be effective in reducing criminal activity;
- Appropriate prevention and treatment programmes delivered effectively can reflect a favourable cost/benefit ratio; that is, the programmes can pay for themselves in longer term outcomes.

B. Importance of Best Practices

Two important qualifications represented in the latter two conclusions should be noted. First, programmes must be delivered effectively or with fidelity. In too many cases evidence-based programmes do not have the desired effects because of inadequacies in their delivery.

The second point relates to the qualification regarding 'appropriate treatment programmes.' Not everything works and some programmes work better than others. Fortunately we now have guidelines for effective programmes based on the principles of best practice emerging from research in psychology and criminology. These guidelines, reviewed in the second paper in this series, indicate that effective programmes (a) observe the risk, need, and responsivity principles of case classification, (b) deliver services in the community setting where possible, (c) where institutionalization is necessary, provide needed services, (d) address the full range of needs of the youth (multimodal), and (e) utilize evidence-based programming. The effectiveness of any juvenile young offender system will depend on the extent to which these principles are observed.

V. THE CANADIAN YOUNG OFFENDER SYSTEM

The Youth Criminal Justice Act is the current law governing the treatment of youth (ages 12 to 18) engaged in criminal activity. The law is an act of the Federal Parliament of Canada, while the administration of the law is the responsibility of each of the 10 provinces and three territories of Canada. The Act provides guidelines regarding definitions of illegal acts, legal procedures to be observed in dealing with the youthful offender, and the range and conditions of available dispositions for youth convicted of a criminal action. The provinces and territories are then responsible for the structure of the court, the probation system, the various institutional facilities used with juvenile offenders, and juvenile offender programming. We will see more details on this later in the paper.

A. History

No special laws relating to juvenile crime existed in Canada prior to 1908, although an Act for Establishing Prisons for Young Offenders was passed in 1857 to establish separate prisons for youthful offenders. The first law specifically applying to young people charged with criminal acts was passed in 1908 and since that time two other laws have been declared:

- Juvenile Delinquents Act (1908-1984)
- Young Offenders Act (1984-2003)
- Youth Criminal Justice Act (2003-present)

Each of those acts was preceded by heated parliamentary debates over the most effective strategy for addressing youth crime. Those debates always revolved around the three goals of juvenile justice systems discussed above with the real issue the balance of punitive and rehabilitative focus. However, the resulting system has always reflected what Corrado (1992) refers to as a Modified Justice model. That is, it is a system including both punitive and rehabilitative elements within a formal judicial system. The Canadian judicial system has always exhibited a more child welfare oriented approach to youthful offenders than many other systems, but still the relative emphasis on the punitive and rehabilitative elements has shifted back and forth over the years.

The current act, the Youth Criminal Justice Act, represents an interesting compromise. It provides somewhat harsher dispositions for very serious offences than did the earlier Young Offenders Act, but it places considerable stress on diversion and rehabilitative strategies for youth charged with lesser crimes. An effort was made to observe the principles of best practice reviewed above in developing the Act. The following section provides a discussion of the major principles of the Youth Criminal Justice Act.

B. Principles of the Canadian Youth Criminal Justice Act

The Act is built on three general principles. These state that the youth criminal justice system is intended to:

- Prevent crime by addressing the circumstances underlying a young person's offending behaviour;
- Rehabilitate young persons who commit offences and reintegrate them into society; and
- Ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public.

As can be seen, provision is made for both rehabilitative and punitive strategies. The goal of accountability to the victim is also represented through the indication that dispositions should "encourage the repair of harm done to victims and the community."

The Act also includes sentencing guidelines for judges, and while these allow for the provision of punitive sanctions including incarceration, there is also a strong rehabilitative emphasis represented. The following are the major sentencing principles:

- All available alternatives to custody must be considered;
- The sentence must be the least restrictive sentence consistent with other sentencing principles;
- The sentence selected must be that most likely to rehabilitate the young person and reintegrate them into society and promote a sense of responsibility in the young person.

As indicated above, the Act also provides for a harsher sentence for 14 to 18 year old youth committing serious violent crime by allowing the judge to assign an adult sentence. However, the parole eligibility dates are earlier for offenders committed as youth, and there is an assumption that the individual will receive rehabilitative services while in custody. The provision is not used often.

C. Specific Provisions of the Youth Criminal Justice Act

The principles of the Act are then supplemented by a set of specific guidelines regarding appropriate actions. The following is a brief discussion of some of the major provisions.

1. Extrajudicial Measures

These measures are designed to divert youth from the justice system. The use of this option is at the discretion of the police, with the following options available: release, release with informal warning, release with formal warning, or referral to a community-based intervention programme. The provision is designed for low to moderate risk youth committing relatively minor crimes. The goal is to keep youth out of the judicial system wherever possible but to provide interventions where needs exist. Restorative justice procedures may also be included as extrajudicial measures. Details of one of the diversion programmes will be presented later.

2. Extrajudicial Sanctions

These are alternatives to formal court processing and are applied after the youth has been charged with a crime but prior to trial. They represent a post-charge diversion action designed to reduce the use of custody. The sanction will generally involve successful completion of a community-based treatment programme.

3. Probation

A period of supervision in the community by a probation officer is the most common disposition for youth convicted of a crime. Because of the rehabilitative focus of the Act, services are to be provided during the probation period to address the risk and need factors of the young person. Probation officers are also responsible for supervision of youth for a period of time following release from custody.

4. Custody

Each province and territory is required to maintain institutional settings for youth assigned a custody disposition. These are generally secure facilities or more open group homes. Authorities are responsible for ensuring that appropriate programming is provided the youth in these settings. However, as we have seen above, the Act directs judges to use custody only where all alternatives are considered inappropriate. In fact, the use of custody has declined significantly since introduction of the Act in 2003.

5. Intensive Rehabilitative Custody and Supervision

These programmes represent community or institution-based interventions for youth with serious mental health issues. They are staffed by mental health professionals.

D. Applications of the Youth Criminal Justice Act in Ontario

As indicated above, the administration of the Youth Criminal Justice Act is the responsibility of the provincial and territorial governments. This inevitably means that there will be some variability across Canada in the actual treatment of a juvenile offender. Some of this variability will arise from financial considerations and some from cultural differences among regions of the country. However, the Act provides reasonably strict guidelines for the treatment of the offender, and the differences across regions of the country tend to be relatively minor. The following is a description of some features of the application of the Act in the Province of Ontario.

Ontario is one of the larger provinces in terms of population and relatively speaking one of the wealthiest. However, it confronts a number of serious issues. The immense size of the province and relatively small populations in more remote areas presents serious problems in providing services. The larger cities have also had to deal with large numbers of immigrant families, many from third-world countries. Special challenges are also presented by the remote Aboriginal communities in the north of the province, many of which face serious economic and social problems. These issues should be kept in mind in considering the following discussion of some features of the province's juvenile justice system.

1. Diversion Programmes

Diversion of as many youth as possible out of the justice system is one of the most important goals of the Act. Each region of the province is required to have a structured diversion programme, although some are more advanced than others. The City of Ottawa has developed one of the most effective programmes operated by the Boys and Girls Club and Ottawa Police Services. Police Services perform the initial screening of the youth, and those deemed eligible for the programme are then referred to the Boys and Girls Club for more intensive assessment and referral to community-based programmes suited to the needs of the youth. This programme addresses two of the major goals of the Act by diverting low and moderate risk youth out of the justice system and by providing rehabilitative services for those in need.

2. Probation Services

The Province of Ontario has developed a case management system operated by the Youth Justice Division of the Ministry of Children and Youth. Within this system a probation officer is responsible for the youth from the time of adjudication to discharge from the system. The probation officer's responsibilities include ensuring that the youth observes the conditions of the sentence and that the young person is able to access community-based services consistent with his or her needs. Where the youth is incarcerated, the probation officer works with institutional personnel in developing an intervention programme. The officer is also responsible for monitoring the youth for a period following release from custody. Probation officers hold a university degree and are provided six weeks of intensive training by the Ministry.

3. Alternative to Custody Programmes

We have seen that the provision for community-based post-adjudication programmes forms an important part of the Youth Criminal Justice Act. Ontario has established a variety of these programmes across the province. One example is the Attendance Centre programme. The initial step of the programme involves an intensive assessment of risk and need factors of the youth. The youth then attends group-based intervention programmes designed to address specific need areas: attitudes/behaviour change, peer group associations, alternatives to aggression, pro-social problem solving, substance abuse, and education/employment.

The Intensive Support and Supervision Program of Eastern Ontario Youth Justice Agency is an example

of a community-based programme specifically designed for youthful offenders with serious mental health issues. Staff members are experienced clinicians who are able to work intensively with the youth and his or her family. Community-based mental health services are also accessed.

4. Custody

The province directly operates five secure custody facilities for youth and contracts with non-profit organizations for an additional five facilities. The other type of custody facility, open custody, is less restrictive, and these involve group homes operated under contract by private or non-profit organizations. All facilities are expected to have intervention programmes available to meet the needs of the youth.

5. Aftercare Services

The Youth Criminal Justice Act stipulates that after release from custody youth must receive a period of supervision by the probation officer. Some specialized programmes have also been introduced for this post-release period. An example is the "A Different Street" programme in Ottawa. This programme is specifically designed for 16 to 18 year-old youth released from custody who would otherwise be homeless on release. The programme is housed in a residence accommodating 24 males. Staff within the programme are able to provide intensive counselling services for the young men and refer them to needed services outside the residence. The programme focuses on developing living, educational, and vocational skills in the clients.

E. Barriers and Strengths

The Youth Criminal Justice Act and the programmes being created across Canada in connection with that Act represent efforts to incorporate research-based principles of best practice and, as well, the UNICEF Guiding Principles for Organizations and Individuals Dealing with Child Welfare and the United Nations Convention on the Child.

However, it is useful to acknowledge barriers in fully implementing the Act. Political barriers arise from advocates of tough-on-crime policies that emphasize the use of punishment and consider rehabilitative efforts a waste of money. This type of pressure is seen from the public and politicians and, regrettably, sometimes from staff of juvenile justice systems. Educational efforts are the only way to counter this type of resistance.

Economic barriers arise because many programmes effective in addressing the needs of the youth are expensive and produce resistance from the public and politicians. Two responses to these economic barriers are appropriate. First, many of the community-based programmes, even the more costly ones, are often less expensive than incarceration. Second, many of the programmes are cost effective. In other words, if the interventions are implemented effectively, the costs will be recovered through future reductions in offending rates, lower school drop out rates, lesser demands on adult mental health facilities and other such outcomes. Fortunately, we are beginning to obtain good information from cost/benefit analyses that provide actual figures on the economic returns of many programmes (see Tyler, Ziedenberg, & Lokke, 2006).

Finally, we sometimes encounter practical barriers to implementing our programmes. First, and as we have seen, the range of our options may be limited by economic and resource considerations. We all have limited resources, and sometimes difficult choices must be made. The only response is to observe, as closely as possible, the principles of best practice. Another practical obstacle derives from the fragmented nature of our human service systems. Our youth often exhibit special needs in many areas and may have contacts outside the juvenile justice system, including special services in the schools, treatment in the mental health system, and services from child protection and other such service agencies. All of these systems must work together to effectively address the needs of the youth, but in too many cases barriers exist to that co-operation.

There are, on the other hand, positive developments to note. First, our understanding of the causes of youth crime and of the most effective means of addressing the phenomenon are advancing rapidly through psychological and criminological research. Second, and perhaps most important, are the countless individuals working in our juvenile justice systems who care about young people and who are willing to make efforts to address their needs. The potential profits of their efforts to society are incalculable.

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