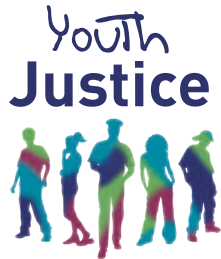




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RECENT CHANGES TO CANADA'S YOUTH JUSTICE SYSTEM



In 2012, the Government of Canada passed a new law, known as the *Safe Streets and Communities Act*, which made important changes to the *Youth Criminal Justice Act* (YCJA). These changes, which came into force on October 23, 2012, are designed to strengthen the ways in which the youth justice system deals with serious violent and repeat offenders.

The following is a brief synopsis of the key amendments to the YCJA. This information is of a general nature and is not intended as legal advice. For more information, see the *Youth Criminal Justice Act: Summary and Background*, the fact sheets or the full text of the YCJA.

Overview of YCJA Amendments

• Amended the YCJA's General Principles

The YCJA now highlights the protection of the public as a key goal of the youth justice system. The amendment makes clear that the youth criminal justice system is intended to protect the public by holding young offenders accountable; by promoting their rehabilitation and reintegration into society; and by preventing crime by addressing the circumstances underlying their offending behaviour.

The YCJA also recognizes a fundamental principle of justice identified by the Supreme Court of Canada in the 2008 case of *R. v. D.B.*: the youth justice system must be based on the principle of diminished moral blameworthiness or culpability of young persons.

For the full text of these changes, please see s.3 of the YCJA.

• Clarified Pre-Trial Detention Provisions

The new test for pre-trial detention of youth is now self-contained within the YCJA, without requiring reference to the *Criminal Code* grounds for detention as was previously the case. The new test targets youth charged with serious offences or youth who have a history that shows a pattern of either outstanding charges or findings of guilt. There is no longer a presumption against pre-trial detention on the basis that a young person could not, upon being found guilty of the offence, be committed to custody under the YCJA.

A “serious offence” is defined as any indictable offence for which the maximum punishment for an adult is imprisonment for five years or more, including violent offences, some property offences (for example, theft over \$5,000, auto theft), and offences that could endanger the public (for example, dangerous driving, public mischief, unauthorized possession of a firearm and murder).

For the full text of these changes, please see s.29 of the YCJA.

• Added Sentencing Principles and Criteria for Custody

The YCJA has been amended to broaden the youth sentencing principles and criteria for custody to ensure that violent or repeat young offenders will receive sentences that reflect the seriousness of their offences and the degree of responsibility of the young person.

• Specific Deterrence and Denunciation

The YCJA now includes specific deterrence and denunciation as youth justice sentencing principles to discourage, where necessary, the young person who is being sentenced from committing further offences. Specific deterrence focuses on deterring the particular young person before the court by imposing a sentence that will have meaningful consequences for him or her. However, the sentence must still be proportionate to both the seriousness of the offence and the degree of responsibility of the young person.

For the full text of these changes, please see s.38(2) of the YCJA.



- **New Definition of “Violent Offence”**

Under the YCJA, a young person may be sentenced to custody if he or she has committed a violent offence.

The new expanded definition of “violent offence” in the YCJA includes offences that could endanger the life or safety of another person by creating a substantial likelihood of causing bodily harm. This broader definition will serve to increase the range of offences that will be eligible for a custodial sentence under this section of the YCJA. This change would give the courts a necessary tool to help ensure accountability and the protection of society when the circumstances of the offence require it.

For the full text of these changes, please see s.2(1) and s.39 of the YCJA.

- **A Pattern of Criminal Activity**

The YCJA now allows the court to consider “extrajudicial sanctions” in addition to “findings of guilt” in determining whether a young person could be eligible for a custodial sentence due to a pattern of criminal activity. This will allow the courts to take the offender’s full history into account when determining if a custodial sentence is appropriate.

For the full text of these changes, please see s.39 of the YCJA.

- **Adult Sentences**

The YCJA now requires that the Crown consider seeking an adult sentence for youth aged 14 and older who are charged with murder, attempted murder, manslaughter, or aggravated sexual assault. The Crown is also required to advise the court if they choose not to apply for an adult sentence in a case involving one of these serious violent offences.

Provinces and territories have the discretion to set the age at which these Crown obligations apply – from 14 to 16 years of age.

In addition, in light of the Supreme Court of Canada’s decision in the 2008 case of *R. v. D.B.*, the presumptive offence provisions in the YCJA have been repealed. The test for the imposition of an adult sentence has been revised, and the onus is always on the Crown to satisfy the court as to the appropriateness of an adult sentence if the Crown decides to seek one.

For the full text of these changes, please see s.64 and s.72 of the YCJA.

- **Amended Publication Ban Provisions**

Under the YCJA, the identity of a young person is generally protected, and identifying information can be published only in limited circumstances.

The YCJA now gives judges discretion to lift a publication ban whenever a youth is given a youth sentence for a violent offence. Judges are required to determine whether the young person poses a significant risk of committing another violent offence and whether the lifting of the publication ban is necessary to protect the public against that risk.

As noted above, the definition of “violent offence” includes offences in which the young person causes, attempts or threatens to cause bodily harm, or endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.

For the full text of these changes, please see s.2 and s.75 of the YCJA.

- **Amended Police Record-Keeping Requirements**

The YCJA now requires police to keep records when they impose extrajudicial measures, in order to make it easier to identify patterns of re-offending. Typically these extrajudicial measures could include using warnings, cautions or referrals to community agencies to respond to an alleged offence by a young person.

By requiring that records be kept of these extrajudicial measures, police will be better informed of any past allegations of offending so that they can take appropriate action in respect of any subsequent offence allegations against a particular young person.

For the full text of these changes, please see s.115 of the YCJA.

- **Amended Custody Placement Provisions**

The YCJA now clearly states that no young person under the age of 18 will serve their sentence in an adult prison or penitentiary, regardless of whether they are given an adult or youth sentence.

For the full text of these changes, please see s.76(2) of the YCJA.