

Youth Justice and Health: An argument against proposed changes to the Youth Criminal Justice Act

AS Elliott, DK Katzman; Canadian Paediatric Society
Adolescent Health Committee

Summary

The Canadian Paediatric Society is deeply concerned about the negative effects on the developmental, psychological and emotional health of young offenders if the Youth Criminal Justice Act is amended as proposed ^[1].

Canada currently has a youth justice system that reflects the United Nations (UN) Convention on the Rights of the Child, and acknowledges that youth (under 18 years) have not developed full moral and ethical responsibilities and cognitive abilities to process criminal intent. Changing Canada's youth crime law to achieve stiffer sentences for youth 14 years and older convicted of serious violent offences such as murder or manslaughter has the potential for serious negative consequences. There are also implications associated with no longer allowing publication bans on cases involving youth who commit violent crimes.

Evidence shows that treating adolescents as adults in the Canadian criminal justice system puts them at serious health and human rights risks—including trauma, violence and abuse—and interferes with their cognitive, emotional and psychological development ^{[2][3]}. Studies show that rates of depression, anxiety disorders, attention deficit/hyperactivity disorder (ADHD) and substance abuse are higher among youth in custody than among youth in the general population ^{[4][5]}. Evidence suggests that transferring youth to adult facilities generally leads to more recidivism—including violent crime—compared with youth retained in the juvenile justice system. The adult justice system is neither designed nor equipped to address the developmental needs of adolescents, which creates dangerous gaps in services, education, and healthcare. Thus, such transfers can do more harm than good ^[6].

Canada has ratified the UN Convention on the Rights of the Child, which explicitly deals with child-specific needs and rights and requires states to act in the best interests of the child. According to Article 37, “Children who break the law

should not be treated cruelly. They should not be put in prison with adults, should be able to keep in contact with their families, and should not be sentenced to death or life imprisonment without possibility of release.” International law binds countries like Canada to respect the Convention.

Developmental differences

Sensible and effective public policy around youth justice must reflect the fact that adolescents are different from adults. The current Youth Criminal Justice Act (YCJA), which is based in evidence, supports rehabilitation and reintegration. It recognizes that society shares a responsibility to guide them into adulthood and to address their developmental challenges and needs.

Evidence from developmental research clarifies that adolescents, because of their immaturity, should not be deemed as culpable as adults ^[2]. Adolescent traits that mitigate culpability include diminished decision-making capacity, susceptibility of peer influence, and unformed character ^[3]. Emerging neuro-scientific research reveals that young people's brains are not fully developed to allow for adult-level reasoning and weighing of consequences. Executive functions, including decision-making, consideration of alternatives, planning, setting long-range goals, and organization of sequential behaviour, are associated with the prefrontal cortex, which does not fully mature until well beyond age 18 ^[7].

Adolescents in custody also require both physical and mental health assessments, and guidelines for both short- and long-term placement—as described in the CPS statement on health care standards for youth in custodial facilities ^[5]—should be followed.

It is estimated that 70% of incarcerated adolescents may suffer from a mental disorder ^[8]. The significant needs of so many youth for mental health services will not be met in an already strained adult justice system.

Juvenile vs. adult facilities

There is also evidence that adolescents released from adult facilities are more likely to re-offend than those sentenced to juvenile facilities^{[3][6]}.

Social context is critical for youth to successfully reach developmental milestones, to transition to adulthood, and to stop committing crimes^[2]. Being placed in an adult facility may have long-term consequences on a youth's emotional and psychosocial development. Adult facilities are traditionally based on punishment, and turn prisoners into adversaries. Rehabilitation programs are sparse, and older prisoners may be mentors in crime for younger offenders.

On the other hand, juvenile facilities recognize that adolescents have developmental needs. The staff-to-offender ratio is greater, staff attitude more therapeutic, and more programs are available that lead to better outcomes, and reduced recidivism^{[2][9]}.

Deterrence and denunciation

Among the proposed changes to the Youth Criminal Justice Act, deterrence and denunciation would be principles guiding the sentencing of young offenders. Additionally, anyone 14 years and older who is convicted of murder or another serious, violent crime would no longer remain anonymous.

These concepts of deterrence and denunciation are not supported by developmental theory. Adolescents lack “future orientation”: They tend to focus on the here and now and are less likely to think about future consequences. Because adolescents may discount risks and calculate rewards differently than adults, they cannot be held accountable to the same degree. Adolescents are more impulsive and tend to take more risks^[2]. Scott et al found that “little evidence supports the claim that adolescents are deterred from criminal activity by the threat of harsh sanctions.”^[2]

The proposed measures to hold young offenders accountable to their victims and the larger community, and to ensure that violent or serious repeat offenders 14 years and over are tried as adults, are not based in evidence and have actually been shown to increase recidivism. The literature does not support these proposed changes, which may in fact lead to even worse outcomes for these youth^[6].

Recommendations

The Canadian Paediatric Society recommends the following:

- The federal Youth Criminal Justice Act should not be amended as proposed.
- International law binds Canada to respect the UN Convention on the Rights of the Child and explicitly states that children should not be put in prison with adults. Youth should only serve their sentence in a facility that is exclusively limited to youth.
- The federal government should work with provincial/territorial governments to establish a national youth crime prevention strategy, including early detection and treatment of mental and behavioural health issues that might otherwise lead to criminal activity.
- Youth convicted of a crime and incarcerated should be provided developmentally appropriate mental and physical health care, as well as rehabilitation and educational services, consistent with Canada's commitment to the UN Convention of the Rights of the Child.
- Health professionals—along with other youth-serving sectors including education and child protection services—should assume a more active role in advocating for youth in the criminal justice system.
- Any future amendments to the Youth Criminal Justice Act must consider the rights of youth and their mental, physical, developmental, and educational needs.

References

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ADOLESCENT HEALTH COMMITTEE

Members: Franziska Baltzer MD; Johanne Harvey MD; Debra K Katzman MD; Stan Lipnowski MD (board representative); Jorge Pinzon MD (chair); Danielle Taddeo MD (2003-2009)

Liaison: Margo Lane MD, CPS Adolescent Health Section

Principal authors: April S. Elliott MD; Debra K Katzman MD