C-4: An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts

BRIEF TO THE

STANDING COMMITTEE ON JUSTICE and HUMAN RIGHTS

HOUSE OF COMMONS
40th Parliament, 3rd Session

On Amendments to the *Youth Criminal Justice Act*

Bill C-4

Presented by
St. Leonard's Society of Canada
Ottawa, Ontario

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Background of St. Leonard's Society of Canada:

St. Leonard's Society of Canada (SLSC) is pleased to have the opportunity to present this brief to the Standing Committee on Justice and Human Rights after having given consideration to Bill C-4, *An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts.*

SLSC is a membership-based, charitable organization dedicated to community safety since 1967.[1] During the development of the YCJA, SLSC welcomed the opportunity to make submissions on the proposed legislation and has continued to follow the implementation of the Act with interest and approval through both volunteer and staff engagements. The mission of SLSC is to promote a humane and informed justice policy and responsible leadership to foster safe communities. We endorse evidence-based approaches to criminal and social justice, conduct research and develop policy, support our member affiliates, and advance collaborative relationships and communication among individuals and organizations dedicated to social justice. Our membership of twelve direct service agencies across Canada provides residential and day programs to more than 15,000 youth and adults annually.

SLSC acknowledges that the YCJA has been the object of some concerns; however, our position is that these are the result of a misunderstanding or ignorance of the facts of youth crime in Canada. We understand the government's intention to further improve the functioning of youth justice; but, we have concerns regarding C-4 in its current form and its potential overall/long-term effects on public safety and youth in conflict with the law. We outline these concerns within this brief and look forward to your questions and comments.

History of the Youth Criminal Justice Act:

In April 2003, after a lengthy process of investigation and consultation, the Youth Criminal Justice Act (YCJA) replaced the Young Offenders Act (YOA), passed in 1984. The YCJA emerged in response to the growing criticism of the YOA despite its several amendments in 1986, 1992, and 1995. Those amendments were made based on criticisms that it was not "tough enough" on young people charged with serious crimes, and so it created longer sentences for murder and a reverse onus of proof so that young offenders would have to prove that they should *not* be tried in an adult court, in relevant cases. [2] The critique of the YOA that it placed more emphasis on reintegration and rehabilitation rather than on public protection continued despite the fact that in the almost ten years that followed until the enactment of the YCJA, Canada had acquired the dubious reputation of having the highest rate of incarceration of youths aged 12-17 among Western countries.[3]

The YCJA attempted to address the concerns with the YOA by creating a more comprehensive Act that focused on reducing rates of court involvement and incarceration, and created more consistency than

[1] Incorporation #12894 06600 RR0001. Online: www.stleonards.ca. SLSC is not a religious organization.
[2] Casavant, L., & Valiquet, D. (2010). *Bill C-4, An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts.* Legislative Summary, Publication No. 40-3-C4-E. p.5-6.
[3] Kong, R. (2009). *Youth Custody and community services in Canada, 2007-2008*. Juristat, Statistics Canada Catalogue No. 85-002-SX, 29 (2), p.7.

the preceding Act. It contains a preamble intended to clarify the Act for those responsible for imposing penalties, with guidelines stating that

> [T]he youth criminal justice system should take the interest of victims into account, foster responsibility and ensure accountability through meaningful consequences and effective rehabilitation and reintegration through the elimination of the underlying causes of crime among young persons, and reduce over-reliance on incarceration for non-violent young persons.[4]

Significantly, The YCJA also contains several other underlying principles that include: the long term protection of the public; having young offenders acknowledge the consequences of their actions and encouraging the reparation of harms done to victims and the community; involving the parents and the community as a whole, as appropriate; considering the expectations of victims; and considering the ethnic background, language, and gender with respect to how best to hold the young person accountable in relation to the seriousness of the offence and the young person's degree of responsibility for that offence. The YCJA sets accountability as an objective that guides sentences imposed both by youth courts as well as extrajudicial measures.[5]

The YCJA has operated successfully since its enactment in 2003, and it has resulted in a substantial decrease in the youth incarceration rate, with no significant increase in youth crime. Despite this achievement, and in relation to the 42% decline in detention of youths after conviction, an increase in the youth crime rate has *not* followed as recorded by Statistics Canada in 2008[6] and the youth crime rate has generally dropped since the YCJA came into force. As recognized by the Canadian Bar Association's National Criminal Justice Section, "the goals of the YCJA have largely been realized: there are fewer court cases and fewer youth in custody, without a concomitant increase in violent youth crime."[7]

Current Proposal (C-4):

The Library of Parliament's legislative summary of Bill C-4 presents the principal amendments as follows:

C-4

- expands the case law definition of a violent offence to include reckless behaviour endangering public safety (clause 2);
- amends the rules for pre-sentence detention (also called "pre-trial detention") to facilitate the detention of young persons accused of crimes against property punishable by a maximum term of five years or more (clause 4);

[4] *ibid*
[5] *Supra* Note 2 at 6.
[6] Statistics Canada, Canadian Centre for Justice Statistics, *Uniform Crime Reporting Survey, 2008.*
[7] Canadian Bar Association's National Criminal Justice Section (2010). *Bill C-4 – Youth Criminal Justice Act amendments.* P.2.

- establishes deterrence and denunciation as sentencing principles similar to the principles provided in the adult criminal justice system (clause 7);
- authorizes the court to impose a prison sentence on a young person who has previously been subject to a number of extrajudicial sanctions (clause 8);
- requires the Crown to consider the possibility of seeking an adult sentence for young offenders 14 to 17 years of age convicted of murder, attempted murder, manslaughter or aggravated sexual assault (clauses 11 and 18);
- facilitates publication of the names of young offenders convicted of violent offences (clauses 20 and 24);
- requires police to keep a record of any extrajudicial measures imposed on young persons so that their criminal tendencies can be documented (clause 25);
- prohibits the imprisonment of young persons in adult correctional facilities (clause 21).

Bill C-4 also includes the essential aspects of the two features contained in the former Bill C-25[8]: the addition of deterrence and denunciation as sentencing principles and, second, rules facilitating the pre-sentencing detention of young persons.[9]

SLSC is in favour of the following proposed amendments:

- inclusion in Section 3 of "diminished moral blameworthiness or culpability" as a principle that guides the application of judicial measures for young persons; and

- prohibition against the imprisonment of young persons in adult correctional facilities (Clause 21).

SLSC believes that the YCJA embodies a successful approach to youth justice. It is our view that the proposed amendments (namely clauses 4, 7, 8, 11, 18, 20, and 24) would create a retroactive path to the criticisms previously faced by the YOA and now overcome by the YCJA. Canadian crime rates have been dropping since the early 1990s and violent crime by youth has remained stable for several years.[10] We argue that the current amendments respond to isolated and sensationalized cases and that a more thorough examination of research in the areas of youth justice, crime, mental health, and the general findings on the psychological development of adolescents vs. adults is essential prior to enacting these provisions. Specifically:

Clause 4: amends the rules for pre-sentence detention to facilitate the detention of young persons accused of crimes against property punishable by a maximum term of five years or more. SLSC believes that such an amendment places the onus on courts to focus on detention for a much broader spectrum of offences listed in the Criminal Code, leaving only a very few minor offences not to be considered. For example, offences with a maximum penalty of 5 or 10 years include: fraud over $5000 (section

[8] Bill C-25: An Act to amend the Youth Criminal Justice Act, 2nd Session, 39th Parliament.
[9] *Supra* Note 1 at 1.
[10] Thomas, J. (2008). *Youth Court Statistics, 2006/2007.* Canadian Centre for Justice Statistics (Statistics Canada: Catalogue no. 85-002-XIE, Vol. 28, no. 4.

380(1)(a)); assault *simpliciter* (section 266(a)); uttering threats (section 264.1); obstruct justice (section 139); theft over $5000 (section 334(a)); uttering a forged document (section 366-368), possession of a stolen credit card (section 342)and public mischief (section140), to name a few. Given the proposed amendment to section 29 of the Act, youths charged with any of those offences would also be eligible for pre-trial detention. We argue that this change is unnecessary given that the current focus of the Act is to consider *meaningful* consequences for the most violent and habitual offenders. It also gives authority to detain a young person if the action can be justified in the youth court under Section 515 of the Criminal Code.[11] The Act, therefore, does not lack focus on the issues raised by the amendments, nor would the person(s) in question, or the public, benefit from expanding the groups eligible for pre-trial detention (considering arguments listed regarding Clause 7, below). SLSC finds that the current relevant sections of the YCJA that pertain to pre-trial detention to be sufficient guidance for the courts.

Clause 7: deterrence and denunciation as sentencing principles similar to the principles provided in the adult criminal justice system. SLSC believes that Canada, in common with many other nations with similar fundamental values and justice systems,[12] has taken steps to acknowledge research showing principled reasons such as studies on youth impulsivity and maturity, for treating youths differently from adults. This is currently reflected in the YCJA with the focus on rehabilitation and reintegration as key components of the Act that heed the recommendations of such evidence-based approaches.

In Section 3 and its subsections, the YCJA provides youth courts with an appropriate guide for sentencing, including requirements that the sentence must be in proportion to the seriousness of the offence. It requires consideration of the degree of responsibility of the young person and that a sentence afford the best chance of rehabilitation and reintegration into society. It must be the least restrictive in achieving its purpose and must be no greater than punishment that is appropriate for an adult.[13] This is an effective and balanced approach.

The Supreme Court of Canada has ruled that deterrence does not constitute a sentencing principle for young offenders under the current rule of the YCJA, because the YCJA had introduced an entirely new and different set of sentencing principles pertaining to youth.[14] Now to legislate a deterrence principle into the Act will undermine needlessly the sentencing framework. SLSC believes that Section 3 and its current subsections adequately manage deterrence and denunciation as it pertains to youth. We also support the Supreme Court of Canada's ruling that deterrence does and should not constitute a sentencing principle for youths, with the recognition that youth have a diminished moral culpability. The YCJA's current set of principles allows the court to provide appropriate sentencing opportunities based on the degree of responsibility of the offender whilst maintaining the crucial principle of providing the

[11] The reverse onus provisions in subsection 515(6) of the *Criminal Code* do not apply where the presumption referred to in subsection 29(2) of the YCJA applies (see Department of Justice, "Pre-Trial Detention," *YCJA Explained*).
[12] See, *R. v. B. (D.)* 231 CCC (3d) 363, para 85, which references the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. See also page 359 of that decision, para 67.
[13] Subsection 38(1) of the YCJA.
[14] *R.* v. *B.W.P.; R.* v. *B.V.N.* [2006] 1 S.C.R. 941, para. 4.

greatest chance of rehabilitation and reintegration into society. The bottom line is that there are plenty of sanctioning opportunities, without the need for legislative change.

SLSC supports the position of the Canadian Bar Association that deterrence in and of itself is a controversial sentencing theory with minimal evidence to support that it is effective in preventing adults from committing offences, and, therefore, it is very unlikely that it would be effective in preventing youths from committing offences given their diminished capacities. In accordance with this belief, we submit that the YCJA deliberately omits deterrence as a sentencing principle with good reason, and the current section adequately addresses the needs of the court in providing appropriate sentencing for youths. Specific deterrence principles will exacerbate the conflict between judges' ability to provide the best chance for rehabilitation and reintegration as is required by the Act, and the expectation of their imposing longer, harsher sentences that will ultimately impede that goal. The sections of the Act that clarify the imposition of a jail sentence are to be used only as a last resort, to ensure community safety. It is well known that incarceration is a generally ineffective deterrent for young persons, from data that has been substantiated over several years of empirical research.[15]

Clause 8: authorizes the court to impose a prison sentence on a young person who has previously been subject to a number of extrajudicial sanctions. The YCJA holds that the court may impose a custodial sentence on a young person who has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and who has had several findings of guilt under the YCJA or YOA. Expanding the criteria for this section to include extrajudicial sanctions as a means for imposing prison sentences ultimately minimizes the fundamental reasons for having extrajudicial measures in the first place. Extrajudicial measures are in place to support the youth courts in finding alternative options for reprimanding youths who are guilty of committing an offence. They support the core values of the YCJA in its aim to avoid custodial sentences in support of finding more viable alternatives that increase the likelihood of making a positive impact with young offenders. We support the current approach of the YCJA which allows extrajudicial sanctions based on the young persons' admission of guilt, and that the admission of guilt will not be admissible evidence for custodial sentencing. As it currently stands, the YCJA already allows for extrajudicial sanctions to be illustrated as evidence to establish the person's criminal conduct,[16] and, therefore, we do not see any need to amend this section. Additionally, SLSC believes that this amendment will disrupt current successful practices utilized by the police to enforce and encourage extrajudicial sanctions, placing them in a position whereby they must keep more detailed records of each interaction in case it should be required as admissible evidence in court, should the young person happen to be charged with a violent offence in the future. SLSC does not believe that this values the time and efforts of the police, and may discourage police from utilizing extrajudicial sanctions to the detriment of police interaction with youth.

Clauses 11 and 18: require the Crown to consider the possibility of seeking an adult sentence for young offenders 14 to 17 years of age convicted of murder, attempted murder, manslaughter or aggravated

[15] See, for example, Professor N. Bala, *Submission on Bill C-4, YCJA Amendments* at 9, and particularly references therein at footnote 9.
[16] Ss. 9 and 10 and subpara. 40(2)(*d*)(iv) of the YCJA. See also Hamel (2009), pp. 35 to 45.

sexual assault. Currently under sections 62, 63 and 72 of the YCJA there is a presumption that an adult sentence will be imposed upon conviction for any of the aforementioned offences, though the presumption may be rebutted if the court is persuaded that the length of the youth sentence is sufficient to hold the youth responsible for the offence.[17] This presumption has been addressed in Ontario,[18] Quebec,[19] and ruled further by the Supreme Court of Canada[20] with a finding that requiring a young person to challenge the presumption that an adult sentence applies, rather than having the Crown attempt to prove that an adult sentence is justified, is in violation of Section 7 of the Charter of Rights and Freedoms. Bill C-4 annuls this presumption and creates mandatory conditions on the Crown that SLSC deems unnecessary given the relevant sections of the Act that already take adult sentencing into consideration. It has also been noted by the Canadian Bar Association that Clause 11 undermines the decision making capacity of the Crown and offers "a general mistrust of Crown counsel and their ability to properly use prosecutorial discretion in serious and violent cases."[21]

Clauses 20 and 24: facilitate publication of the names of young offenders convicted of violent offences. SLSC strongly opposes this proposed amendment. The publication ban for youths convicted of criminal offences has been an operating principle of the Canadian youth justice system since the Juvenile Delinquents Act in 1908. Today SLSC continues to support this principle for its original intents and purposes: to prevent its adverse effects on reintegrating youths into society, and to protect the greater chance of providing rehabilitation to young persons convicted of criminal offences. SLSC acknowledges the need for the YCJA to maintain exceptions for a publication ban when public safety and the safety of the young person is at risk; however, the YCJA currently holds a sufficient amount of discretion to maintain such risks. The current Act offers an automatic name publication if the youth receives an adult sentence,[22] and this can be inclusive of cases where youths are subjected to an adult sentence but receive a youth sentence for certain offences (murder, attempted murder, manslaughter, aggravated sexual assault or a third serious violent offence).[23] Also, under Section 110 the Act enables a judge to allow temporary publication of names when needed, for example if a dangerous youth has escaped and needs to be apprehended. SLSC supports the Act in its current form since it appropriately supports the concerns of public safety for violent/serious offences while maintaining the principles for which a publication ban has existed for more than 100 years.

The proposed amendments appear to be responsive to particular cases rather than as the result of a thorough analysis. By enacting the proposed amendments to the publication ban, youth courts would have to consider the publication of names for all "violent offences" that appear before them, a large impediment for the courts to take on given the breadth of this category of offences. By widening the scope of consideration for judges in all violent cases, it not only undermines the discretion of the legal

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[17] *Supra* Note 2 at 12.
[18] *R.* v. *B.(D.)*, (2006), 206 C.C.C. (3d) 289.
[19] *Québec (Ministre de la Justice)* c. *Canada (Ministre de la Justice)*, [2003] R.J.Q. 1118 *(Renvoi relatif au projet de loi C-7 sur le système de justice pénale pour les adolescents)*.
[20] [2008] 2 S.C.R. 3.
[21] *Supra* Note 7 at 11.
[22] Para. 110(2)(*a*) of the YCJA. See *R.* v. *D.B.*, [2008] 2 S.C.R. 3, para. 29.
[23] S. 75 and para. 110(2)(*b*) of the YCJA.

system, but forces excessive consideration of punitive measures beyond the current demands and needs of the youth criminal justice system. Additionally, it directly undermines the ruling by the Supreme Court of Canada in *R. v. B. (D.)*[24] that takes into consideration empirically based concerns regarding the effects of stigmatization and labelling of youths. Given the history and research that has been invested in understanding the effects of labelling on youths, and the substantiated efforts that have been in place for more than a century in Canada, SLSC strongly opposes Clauses 20 and 24 of the proposed amendments.

A Mental Health Perspective:

In recent years, SLSC has had a particular interest in understanding the co-relation between mental health and conflict with the law. Over the past decade as we have witnessed an increase in the rates of mental health disorders among the residents of our affiliate Community-based Residential Facilities (halfway houses). For the purposes of this paper we will focus our recommendations for improving the mental health service sector to incorporate a greater percentage of its efforts towards youth in conflict with the law and community corrections clients. We urge the Standing Committee, however, also to consider the evidence put forth by those referenced throughout the summary above, particularly the position paper offered by the Canadian Bar Association's National Criminal Justice Section on Bill C4.

SLSC has produced a series of reports on mental health and corrections, beginning with *Towards an Integrated Network (2008),* and our most recent publication *Community Connections: The Key to Community Corrections for Individuals with Mental Health Disorders (2010)*, sponsored by Public Safety Canada, the Law Foundation of Ontario, and Correctional Service of Canada. It is our understanding that the provision of care for community corrections clients with mental health disorders must encompass a network of service providers in the community that makes the health care needs of the client a top priority in order to help maintain and ensure the highest degree of public safety. This is particularly urgent with youth in conflict with the law who have mental health needs, and understanding the relationship between youth crime and mental health has never been more important in Canada as the adult prison system continues to house the largest psychiatric population in the country.

In 2002, approximately 10% of the general population (2.6 million individuals) in Canada reported symptoms consistent with mental health disorders.[25] Though many are able to cope with their illness and are not involved with the justice system, a proportion of these individuals are in conflict with the law. More significantly, within the prison population rates of mental health disorders hover around 12-15% though some experts place their estimations closer to 20% when taking underreporting/misdiagnosis into consideration. According to Public Safety Canada's statistics Committee, in 2008 11.1% of offenders incarcerated in Canadian prisons were identified with having a mental health disorder upon intake. When broken down by gender, 10.4% of men and 21.8% of women

[24] (2008) SCC 31460.

[25] Sinha, M. (2009). *An Investigation into the Feasibility of Collecting Data on the Involvement of Adults and Youth with Mental Health Issues in the Criminal Justice System.* Canadian Centre for Justice Statistics, Statistics Canada. P.12

were identified as having mental health disorders upon intake.[26] The rates of mental health disorders among the adult prison population has risen over the past decade, making it especially significant to identify mental health issues among vulnerable youth who may be at risk of becoming involved with the justice system. This issue is of grave concern due to the reported 70% co-morbidity rate among incarcerated youth who have mental health and substance abuse problems. Additionally it has been found that more than 30% of youth with a major medical issue also have mental health issues.[27] It is evident that there is a disconnect between good mental health results and good justice results; therefore, criminal justice involvement should not be increased to resolve mental health concerns. We need to look no farther for proof than the Correctional Investigator's report on Ashley Smith which clearly demonstrates that those youth who are most troubled face extraordinarily limited access to appropriate mental health resources, resulting in more incarceration and entrenchment within the criminal justice system - sometimes with deadly results. The tragic death of Reyal Jensen Jardine-Douglas, in Toronto on August 29, 2010 is yet another example of the terrible price our young people with mental health issues too often pay.

Various studies have explored the relationship between youth crime and mental health, and there is strong evidence supporting the need to reduce the criminalization of youth with mental health disorders in order to increase rehabilitation and reintegration, public safety, and the chance of creating greater cost effectiveness in the criminal justice system. Increasing rehabilitation and reintegration aspects of youth criminal justice is imperative given our understanding of youth offending today in comparison to that of adult offending. It is widely accepted that young people lack the emotional and mental maturity of adults, and studies on adolescent deviance uncover the significance of factors such as impulsivity, risk calculation, and peer influence. Other unmeasured criminogenic factors for young offenders such as individual, familial, or contextual confounds may drive the correlation between mental health and crime. As Cueller et al suggest, if having a mental health disorder contributes to criminal behaviour, then targeting the disorder through treatment may reduce the likelihood of recidivism. [28]

In the past decade, evaluations of juvenile justice intervention in the US have found that for serious offenders more structural behavioural interventions such as interpersonal skills training and psychotherapy are more effective than vocational, deterrence, or alternative programs such as

[26] Public Safety Canada Portfolio Corrections Statistics Committee, (2009). *Corrections and Conditional Release Statistical Overview.* Retrieved August 16, 2010, from http://www.publicsafety.gc.ca/res/cor/rep/2009-ccrso-eng.aspx.

[27] See for example presentations by Dr. Simon Davidson (Executive Director of the Provincial Centre of Excellence for Child and Youth Mental Health/Chief of Psychiatry, Children's Hospital of Eastern Ontario (CHEO), Chair, Division of Child and Adolescent Psychiatry, Department of Psychiatry, University of Ottawa.) including: "Child and Youth Mental Health; Toward Collaboration and Integration" at the AGM of the Child and Youth Wellness Centre of Leeds & Grenville, June 6, 2007 and "Leading the Way Out of the Shadows Together," Brantford, October 3, 2008 and "Child and Youth Mental Health Matters - the Initiatives of the Child and Youth Advisory Committee (CYAC) of the Mental Health Commission of Canada (MHCC)" Banff, Alberta, November 13, 2008.

[28] Cueller et al. (2006). *A Cure for Crime: Can Mental Health Treatment Diversion Reduce Crime among Youth?* Journal of Policy Analysis and Management 25(1), p.200.

wilderness therapy.[29] Others have found that diversion in combination with skills training was more effective than diversion in combination with mentoring for a general delinquent population. In the case of mental health diversion, the programs can be tailored to specific problems or mental disorders that are thought to be associated with future justice system contact.[30] Evidence-based approaches such as these focus on client needs rather than the perceived needs of the public, and formulate the greatest chances of understanding and assisting young offenders who have mental health needs. This allows for a greater degree of sensitivity towards rehabilitating youth, as well as managing with greater efficiency the degree of risk that person poses to the community in the future. These studies demonstrate that there are avenues to success that are more effective if services are made available, while also supporting studies that repeatedly demonstrate that young persons who commit serious crimes are less likely to respond to deterrence.

Shifting the principles of the YCJA towards more punitive measures for serious offenders is contradictory to verifiable, empirical research on juvenile delinquency. Punitive reforms bring about harsh sanctions with high economic costs and low effectiveness, leaving unsatisfactory results for public and political opinion.[31] Crafting public policy that is both sensible and effective must take into account the fact that adolescents differ from adults. Policy and practice should be guided by sound evidence, not based on reactions from a few sensationalized cases.[32] Bill C4, has emerged, in part, from the murder of Sebastien Lacasse as well as Justice Merlin Nunn's report.[33] SLSC argues that Bill C4 has gone beyond the expectations of both the tragedy of the Lacasse case and Justice Nunn's report. In the case of Lacasse, the accused involved did plead guilty and received four year sentences for their crimes: the accused who delivered the fatal stab wounds also plead guilty to second degree murder and was sentenced to life in prison as an adult. SLSC does not believe that the current law functioned inadequately in this case, and additionally does not feel that this case should be exploited as such. SLSC notes that Justice Nunn has responded publicly to the proposed amendments, and been quoted as stating, "[t]hey have gone beyond what I did, and beyond the philosophy I accepted...I don't think it's wise."[34] He later stated, "there's no evidence anywhere in North America that I know of that keeping people in custody longer, punishing them longer, has any fruitful effects for society.... Custody should be the last ditch thing for a child."[35]

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[29] Lipsey, M.W. (1999). *Can intervention rehabilitate serious delinquents?* The Annals of the American Academy of Political and Social Science, 564, 142–166.

[30] Blechman, E.A. et al (2000). *Can mentoring or skill training reduce recidivism?* Observational study with propensity analysis. Prevention Science, 1(3), 139–155.

[31] Steinberg, L. (2008). *Introducing the Issue.* The Future of Children, Volume 18, Number 2, Fall 2008. Princeton University. P.3

[32] *Ibid. P.5*

[33] Nunn Commission of Inquiry. (2006). *Spiralling out of control: lessons learned from a boy in trouble: report of the Nunn Commission of Inquiry.* Nova Scotia.

[34] Arenburg, P.B. September 9, 2008 article: "Former judge slams Tories' youth crime plan", *The Chronicle Herald*. Retrieved August 18, 2010, from http://thereissomethingyouneedtoknow.ca/stories/crime_safety/cs03.php.

[35] Bailey, S. September 30, 2008 article: "Judge shoots down Harper's crime plan", the *Canadian Press*. Retrieved August 18, 2010, from http://news.therecord.com/article/421859.

SLSC recommends that the Standing Committee look at proven approaches to effective treatment for young offenders, in order to maximize investments and opportunities in the youth justice system. We support the ongoing efforts of, among others, the Mental Health Commission of Canada, and the Canadian Mental Health Associations, who are attempting to coordinate support for cross sectoral services that are inclusive of public health, child and family services, education, housing, and employment in response to understanding the social determinants of health.[36] SLSC believes that the financial costs incurred for extended legal fees and detention, as well as the cost towards long term public safety are not in the interest of the criminal justice system, the welfare of youth in conflict with the law, or the Canadian public. SLSC urges the Standing Committee to consider the cost benefits of reallocating such expenses towards programs offered within Canadian communities that are undertaking more successful and effective practices towards rehabilitation and counselling for Canadian youth.

Summary of Proposed Policy Considerations:

1. St. Leonard's Society of Canada endorses the current orientation of the *Youth Criminal Justice Act* regarding sentencing principles: sentences should contribute to the long-term protection of the public via just and meaningful consequences promoting rehabilitation and reintegration into society. The addition of deterrence and denunciation as principles of youth sentencing does not contribute to this purpose. Evidence has shown that deterrence has little if any effect on youth while denunciation serves no constructive goal. Both these principles promote punishment oriented corrections and overreliance on incarceration.

2. St. Leonard's Society of Canada supports current legislation and the interpretation of the Supreme Court of Canada (in *R. v. D.B.*) that youth should not automatically be tried as adults. It is an established principle of law that youth should be treated separately under the criminal justice system and any burden for an exception to this treatment should rest with the Crown.

3. St. Leonard's Society of Canada promotes the *Youth Criminal Justice Act*'s goal to consider all options before reliance on incarceration. The implementation of automatic enhanced youth sentences contradicts this principle and diminishes judicial discretion.

4. St. Leonard's Society of Canada supports current youth legislation regarding the enforcement of publication bans. Measures exist within the current legislation for lifting the ban for the purpose of protection of the public, etc. The automatic lifting of the publication ban for punitive reasons contributes to stigmatization, a recognized problem in the youth justice system.

5. St. Leonard's Society of Canada endorses continued and improved investment in community options and programs with regard to youth justice solutions, as community engagement is an important element in youth corrections. The Society believes that alternative justice measures must be made

[36] For more information see: Canadian Mental Health Association, (2010). *The Windows of Opportunity for Mental Health Reform in Ontario.* Retrieved August 17, 2010, from http://www.ontario.cmha.ca/admin_ver2/maps/cmha-_ontario_windows_of_opportunity_201003.pdf

available and properly funded as evidence has shown them to be effective treatments for youth crime which are likewise meaningful to offenders.

6. St. Leonard's Society of Canada supports provisions within the *Youth Criminal Justice Act* for the intensive treatment of high risk – high need young offenders. The Society believes that through addressing the roots of a young person's criminal behaviour we are preventing future violence and ensuring public safety. These roots encompass a broad array of issues including youth gangs, youth mental health, poverty, discrimination, etc.

7. St. Leonard's Society of Canada believes the *Youth Criminal Justice Act* is oriented appropriately with regard to its philosophical approach to youth justice; however, in achieving its mandate the Act requires proper funding and implementation.

8. St. Leonard's Society of Canada endorses the aim of youth legislation in Canada in fostering responsibility, ensuring accountability, considering alternatives to incarceration, and implementing meaningful consequences and rehabilitative and reintegrative measures to guide youth into adulthood.

Recommendations:

St Leonard's Society of Canada recommends that the Standing Committee:

1. Proceed with the inclusion in Section 3 of "diminished moral blameworthiness or culpability" as a principle that guides the application of judicial measures for young persons; and the prohibition against the imprisonment of young persons in adult correctional facilities (Clause 21).

2. Not proceed with Clause 4: *amend the rules for pre-sentence detention to facilitate the detention of young persons accused of crimes against property punishable by a maximum term of five years or more.*

3. Not proceed with Clause 7: *deterrence and denunciation as sentencing principles similar to the principles provided in the adult criminal justice system.*

4. Not proceed with Clause 8: *authorizes the court to impose a prison sentence on a young person who has previously been subject to a number of extrajudicial sanctions.*

5. Not proceed with Clauses 11 and 18: *requires the Crown to consider the possibility of seeking an adult sentence for young offenders 14 to 17 years of age convicted of murder, attempted murder, manslaughter or aggravated sexual assault.*

6. Not proceed with Clauses 20 and 24: *facilitates publication of the names of young offenders convicted of violent offences.*

Additionally, SLSC recommends considering the following alternatives:

7. With regard to SLSC's opposition to Clauses 7, 11, and 18, we recommend that the Standing Committee consider increased support for the use and delivery of Intensive Rehabilitative Custody and Supervision (IRCS) sentences for young offenders convicted of serious crimes who have a mental health

disorder. We argue in favour of those who support IRCS sentences for a variety of reasons including: its cost effectiveness in comparison to the costs of institutionalization; and its effectiveness in providing client centered care that minimizes the effects of having clients "slip through the cracks" towards recidivism or other harmful acts by utilizing a multidisciplinary approach.[37] SLSC supports the argument that the redistribution of incarceration costs for youth is better spent funding an IRCS sentence. Doing so would fund services including and beyond custodial sentences, to place young offenders in a circle of support made up of experts from the fields of psychology/psychiatry, education, social work, etc. that continues post-release as a community support service that is tailored to individuals based on their unique case and needs. SLSC stresses the fact that the cost of incarceration has not been proven worthwhile; whereas those same dollars would provide not only accountability through IRCS custodial component, but better treatment options, higher likelihood of rehabilitation, plus additional follow-up in the community. With the availability of options such as these, there is no conceivable reason why an increase in ineffective punitive measures should be undertaken.

Conclusion:

From its perspective as a long-established criminal justice organization active in community corrections working with men, women, youth and communities; SLSC cannot support the passing of Bill C4 in its current form. Our extensive experience on the ground across Canada convinces us that the amendments, if passed, would prevent the youth criminal justice system from effectively achieving the goals that it has set out to accomplish. SLSC is committed to evidence-based approaches that incorporate pro-social programming and development that is in the interest of long-term public safety. This commitment is inextricably linked to understanding the root causes of criminal activity beyond sensationalized cases, by understanding the needs of those Canadians who are in conflict with the law and who find themselves involved in the Canadian criminal justice system, sometimes on a recurring basis.

Taking into consideration the goals of the YCJA, research on deviant youth, and statistical analysis of youth crime, the YCJA in its current state should be considered nothing short of an undisputed success. SLSC acknowledges the responsibility of Parliament to scrutinize and reshape policy in order to enact changes that are required to ensure the safety and security of Canadian citizens; however, Bill C-4 does little to consider the practicality of creating effective change for some of Canada's most vulnerable citizens: its youth.

Should the Standing Committee feel that there is reason for more study on the impact of punitive measures and the incarceration of young offenders, SLSC would be eager to offer assistance. For example, we are willing to design and implement a study on effective programming for young offenders on behalf of the Standing Committee. SLSC is also available to undertake a public education campaign, possibly in partnership with government criminal justice organizations, should the Committee believe it

[37] For more information on IRCS sentencing programs see, for example, Banyan Community Services, Hamilton, ON (http://www.banyancommunityservices.org/detail.aspx?menu=4&app=181&cat1=528&tp=12&lk=g&dt=1036953).

would be useful in addressing both unwarranted fear and cautionary measures relating to young offenders.

SLSC submits that there is indeed a need to take action on youth justice; however, it is neither legislation nor incarceration but rather vastly enhanced access to interventions and support through collaborative federal/provincial/territorial initiatives that is needed.