

Summary of SLSC's Brief to the Standing Committee on Justice and Human Rights

Submitted September 8, 2010 Re: Bill C-4: An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts.

Current Proposal (C-4):

- Expands case law definition of a violent offence to include reckless behaviour endangering public safety (clause 2);
- Amends the rules for pre-sentence detention (“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);
- 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 names of young offenders convicted of violent offences (clauses 20 & 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 aspects of two features contained in the former Bill C-25¹: 1) adding deterrence and denunciation as sentencing principles and; 2) rules facilitating the pre-sentencing detention of young persons.²

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.

The brief also offers a section on perspectives in mental health and youth justice (pp. 8-11).

¹ Bill C-25: An Act to amend the Youth Criminal Justice Act, 2nd Session, 39th Parliament.

² *Supra* Note 1 at 1.

Summary of SLSC's 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 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.

SLSC 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.

Conclusion

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.