Brief to the Standing Committee on Justice and Human Rights

Bill C-4

An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts

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Preface

The Canadian Resource Centre for Victims of Crime (CRCVC) is a national, non-profit advocacy group for victims and survivors of serious, violent crime. We provide direct assistance and support to victims across the country, as well as advocating for public safety and improved services and rights for crime victims. Over the years, we have commented on various government proposals to reform the youth criminal justice system. The CRCVC is pleased to appear today before the Standing Committee on Justice and Human Rights to take part in the debate over Bill C-4, *an Act to amend the Youth Criminal Justice Act* and to make consequential and related amendments to other Acts, also known as Sébastien's law. In this submission, we examine the proposed amendments and also provide some recommendations we have made in the past with respect to ensuring the interests of crime victims are met.

Introduction

The CRCVC's clientele includes many families impacted by youths who commit violent crimes against both other youths and adults. We frequently hear concerns with respect to the *Youth Criminal Justice Act* (YCJA) and the manner in which it responds to both youths who commit crime and the victims of such offenders. As an organization, we are very concerned by violent crimes committed by youths due to the lasting impacts on victims. According to Statistics Canada's report, Police-reported crime statistics in Canada, 2009, although youth crime severity has generally been declining since 2001, the youth violent crime rate was 11% higher than in 1999[1]. While many groups who have testified before you state that the YCJA has been an unmitigated success; we remain concerned about violent crime committed by youths in Canada.

Protection of the Public

The CRCVC recognizes that most youths come in contact with the law as a result of fairly minor incidents and the importance of diverting these youth away from the formal criminal justice system through the use of warnings, cautions and referrals to community programs. That being said, we feel the protection of society must be the ultimate goal of the youth criminal justice system. We agree with Commissioner Nunn[2] who recommended, in order to help solve the problem posed by the small group of dangerous and repeat offenders, that both short- and long-term protection of the public be included among the principles set out in section 3 of the YCJA.

[1] Mia Dauvergne and John Turner, Police-reported crime statistics in Canada, 2009, accessed online 4 March 2011 at: http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11292-eng.htm#a16

[2] On June 29, 2005, the government on Nova Scotia appointed Justice Merlin Nunn to head a public inquiry into the circumstances surrounding the release of a young offender who was convicted under the *Youth Criminal Justice Act* as the result of a fatal car crash. The report and supporting documents can be accessed at http://www.gov.ns.ca/just/nunn_commission.asp

Preventing Crimes Committed by Youths

Canadian society needs to do a better job tackling the root causes of crime. We believe that many youth, with the proper social supports, can be steered away from making poor choices that may lead to a criminal lifestyle. We agree it is necessary for municipal sectors such as schools, housing, municipal planning, and police to identify the roots of crime problems, develop strategies to tackle those problems, and implement and evaluate them. Focusing particularly on reducing the number of young offenders, the CRCVC strongly calls for providing enriched, subsidized child care for all citizens; affordable housing; programs regarding anti-bullying, anti violence and respect for gender/diversity be taught to young children in school; programs to ensure literacy; protecting children from family violence; after school programs; job training/shadowing for adolescents; anti-substance abuse programs in schools; access to mental health and addictions programs for those youths in need; etc...

We see the clear need to reduce violent victimization in Canada. The CRCVC knows all too well the devastating impact of violence on individuals and families, and see everyday in our work with survivors that it is the victims who too often suffer endlessly in many ways, including emotional, physical and psychological harm, pain and suffering, and lost productivity.

Including the Presumption of Diminished Moral Blameworthiness

We support amending section 3(1)(b) to add the principle of "diminished moral blameworthiness or culpability" of young persons. We believe that youths do not have the same amount of experience and knowledge to draw upon in their decision-making.

Definition of Serious Violent Offence

The CRCVC is pleased to see that the definition of a serious violent offence has been clarified, and includes acts of murder in the first- or second-degree, attempts to commit murder, manslaughter, and aggravated sexual assault. We feel that this definition adequately captures the most serious violent offences that are committed, and it removes any uncertainty as to which offences should be included. The creation of a clear definition for these types of offences is in keeping with one of the primary goals of the YCJA, a reduction in the number of youth in custody, while ensuring that there is a clear indication of which crimes require more serious sanctions and custodial sentences.

Definitions of "Serious" and "Violent" Offences

We are pleased to see the inclusion of a definition of a "serious" offence as it pertains to pre-trial detention. We feel that it helps to clarify the provisions in section 29, which previously cross-referenced to section 39. This created a level of complexity to the provisions and implied that the goals and purposes of pre-trial detention are the same as for sentencing. This is not always the case. We acknowledge that the definition, in referring to offences that carry a maximum (adult) sentence of five years or more, may seem to cast a wide net. We would

like to point out that it is but one of the criteria that a judge or justice uses when determining detention in custody. This definition is necessary to allow judges and justices to hold violent and repeat offenders in custody while awaiting trial.

The addition of a definition of a “violent” offence is designed to attach significance to those behaviours that do not result in harm to any individuals, but carry the risk of doing so. A youth that led a high speed car chase through a residential neighbourhood would be an example of a violent offence under this definition, regardless of whether anyone was hurt. The fact that the chase was carried out in a residential neighbourhood, where many people live, including children, makes the behaviour very high risk. Crimes of this nature do pose a significant risk to the public, and need to be acknowledged as such in order to be included in those offences for which a custodial sentence can be considered. This does not say that a custodial sentence is recommended or required in all cases that pose a risk to the public, only that they are eligible.

Adding Deterrence and Denunciation

We are in agreement with the inclusion of deterrence and denunciation to the principles of sentencing. They are both important objectives that are missing from the YCJA. While there is evidence that youths do not consider the sentence they may get for committing a crime; the criminal justice system nonetheless must hold them specifically accountable for the harm they have caused, especially when it is serious harm. There is a public expectation to do so.

There also needs to be a component of the youth justice system that allows judges to publicly denounce very serious crimes. This is not to say that young people should not receive treatment and rehabilitation. We believe that denunciation is important to Canadian society and especially to the victims and survivors as it is an expression of the abhorrence of the actions of an individual and the harm that has been caused. While we know that it can be healing for the victims to hear a judge publicly acknowledge the harm they have suffered; we believe it may also be beneficial for a young person in understanding the true impact and consequence of their actions to also hear the violent act denounced by a judge.

Record Keeping

The provisions that require access to records of prior participation in extra-judicial measures as criteria for determining custodial sentences are necessary for establishing a pattern of criminal activity. This will allow the judge or justice to take into account a youth's full criminal history when considering sentence, and thus determine what sentence is appropriate, and if a custodial sentence is warranted. This amendment should not interfere with the discretionary powers of the police or deter them from considering extra-judicial sanctions as an option for keeping youth out of the justice system. Rather, it allows the youth court to pinpoint patterns of escalating frequency or severity of criminal behaviour.

Mandatory Crown Consideration of Adult Sentences

Section 11(1) of Bill C-4 adds the new section 64(1.1) to the YCJA, requiring Crown Counsel to consider whether it would be appropriate to apply for an adult sentence in a particular case. If the Crown decides not to apply for an adult sentence, they must inform the court that they are not doing so. We feel this does not encroach on prosecutorial discretion but rather creates more openness and accountability in Crown decision-making, something victims and the public in general often request.

Publication Bans for Youth

The provision that allows for a judge to consider lifting a publication ban for a conviction in a violent offence is something that CRCVC has long advocated for. There has been an assumption that by not identifying youths, we are somehow protecting them. We have always questioned the wisdom in doing so for serious, repeat young offenders. Part of accountability and responsibility is facing the community. Also, what protection are we offering innocent citizens who may not know of a young person's record for violence or sexual assault? As a society, we must remain cognizant about why we are protecting a young person and if such protection is in keeping with the broader protection of all of society.

Conclusion

In general, we support the proposed amendments to the *Youth Criminal Justice Act*. Unfortunately, the YCJA can only be reactive; it can only deal with young people who have already broken the law. As a society, we must invest more strongly in social development programs to ensure that all children benefit. Schools, housing, social services, municipal planning, and other municipal services all have key roles to play in addressing local crime and community safety problems.

We must also remember that not all communities are able to provide social services equally, so the YCJA must address some of those gaps legislatively, and must recognize that there are offenders who require more serious interventions. Generally, the CRCVC supports diversion programs to keep youths out of custody for non-violent offences. However, when we are dealing with serious, violent crime, youths must be held accountable for their actions, and for some who are very dangerous/out of control, the use of incarceration is necessary to protect the public. Justice must be seen to be done even when we are dealing with young offenders. When the justice system does not respond in a serious manner to serious harm, no matter the age of the perpetrator, the public loses confidence in the justice system.

The CRCVC urges that the committee support this Bill and the amendments to the *Youth Criminal Justice Act* that it proposes.

RESPECTING THE INTERESTS OF CRIME VICTIMS

In the Declaration of Principle, reference is made in section 3(c)(ii) to repairing the harm done to the victim; in s.3(d)(ii) with regards to victims being treated with courtesy and compassion; and s.3(d)(iii) with regards to victims being provided information. While these provisions are important and appreciated, we submit that the language used in the legislation is not strong enough and that the courts will not recognize the rights of victims as long as governments continue to use words like "should" instead of "shall".

> **Recommendation: Amend sections 3.(1)(d)(ii) and (iii) to read victims "shall be treated," and "victims shall be provided information about the proceedings and will be given an opportunity to participate and be heard if they wish."**

Extra-judicial measures

Section 12 (Victim's right to information) provides victims the right to information about the identity of the young person and how the offence has been dealt with if the young person has been dealt with via an extra-judicial sanction. We want to ensure that victims receive information about the proceedings/sentences/sentence review hearings if the youth was not dealt with via an extra-judicial sentence.

> **Recommendation: Section 12 be amended to include court proceedings, plea arrangements, sentencing hearings, review of sentencing hearings, the rights under this act and the applicable rights under the *Criminal Code*.**

Access to records

Section 119 provides victims the right to access youth records. We would recommend that victims also be given access to the pre-sentence report since they may be interviewed under s. 40(2)(b).

> **Recommendation: Amend s.40(5) to give victims the right to access to the pre-sentence report.**

Youth justice committees

Section 18(2)(a)(ii) makes reference to the role of the Youth Justice Committee in supporting the victim of the offence "by soliciting his or her concerns and facilitating the reconciliation of the victim and the young person." We have concerns with the wording of this section as it respects reconciliation. We agree that for some victims, victim-reconciliation programs are important. Others want no part of such an initiative, no matter how well intended the committee might be and this must be respected.

> **Recommendation: Subsection 18(2)(a)(ii) be amended to read "inquiring as to the victim's interest in a reconciliation with the young person."**

Victim impact statements

We recommend that victim impact statements be included to assist judges in making decisions about transfers to adult court and when considering a young person's sentence.

> **Recommendation: Subsection 42(1) (considerations as to youth sentence) and s.71 (hearing – adult sentences) be amended to explicitly include oral/written victim impact statements.**

Victim fine surcharge

Section 53(2) deals with victim fine surcharge and we believe they should be automatic for young people. We think that such an amendment is consistent with meaningful consequences and values like responsibility, accountability and repairing the harm done to victims.

> **Recommendation: Section 53(2) be amended to make the imposition of victim fine surcharges automatic.**

Definition of victim

We are concerned that there is no definition of "victim" in the act. To determine who a victim is for the purposes of a victim impact statement, a judge can simply refer to the *Criminal Code*. But what about for other provisions, such as s.119 that gives victims the right to youth records? Are judges supposed to apply the same broad definition found in the *Criminal Code*? This is important because we know of several cases where parents were denied information, or experienced extreme difficulty in obtaining information because they were not the "victim". This generally occurs in cases of homicide, including one case where the parents of a boy who was murdered by a young offender asked for information from the Crown. The Crown's position was that there was no definition of victim in the legislation and therefore the victim was their dead son.

> **Recommendation: Add a definition of victim for provisions under the *YCJA* for which the definition of victim under the *Criminal Code* may be too broad, or the absence of a definition interpreted too narrowly.**