

# Has the pendulum swung too far?

Youths used to get jailed too often, now, public thinks justice is too soft

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When it comes to public perception of what's contributing to youth crime, one of the leading culprits is the law itself.

Whether it was at the public forums in Mayor Peter Kelly's round table on violence, in letters to the editor or in talk shows, there's no shortage of frustration with the Youth Criminal Justice Act.

It's too lax on young criminals, harp the vocal crowd. Teens get away with too much, they believe. Stick 'em in jail where they belong, they say.

But concerns with the YCJA - the federal law that governs youth crime - are not exclusive to the "lock 'em up and throw away the key" crowd. Halifax Regional Police Chief Frank Beazley has said - and retired justice Merlin Nunn in his review on youth crime said - the legislation needs work.

Wrote Nunn: "Since its inception, the prevailing attitude among police, judges, Crown attorneys, defence counsel and related staff people and many of the public is that YCJA initials actually mean 'You Can't Jail Anyone.'"

The thing is, for the vast majority of young offenders who come to youth court, the YCJA works fine. They come in, they don't come back.

However, a small proportion of offenders do come back - and they come back for crimes that are getting more serious and more violent. That's the issue Nunn focused on, and urged the provincial government to lobby the federal government to change.

Nunn recommended that the province lobby Ottawa to tweak the YCJA to better deal with that small minority who are constantly in trouble with the law.

The retired judge's recommendations revolved around ensuring public safety. That would be done with recommendations (see box, Nunn Recommendations) on making public safety the primary goal of the act and making it easier to put someone in pre-trial custody.

In Nunn's report, he said there are portions of the population that believe in a more revenge-based approach to sentencing that would be harder on young criminals. He urged caution.

"I cannot overestimate the importance of taking a balanced approach. Parts of the YCJA must be changed in order to create a workable and effective approach to handling repeat offenders in a manner based upon protection of the public as a primary concern, as well as providing a means to step in to halt unacceptable criminal behaviours in a timely manner. This is not an option. It is critical."

To fully understand the Youth Criminal Justice Act, one needs to understand where it came from.

Its predecessor, the Young Offenders Act, gave Canada the dubious reputation of having one of the highest rates of incarcerated youths. Kids would get in trouble with law, be sent to jail and had higher than desired rates of getting into trouble with the law again.

To remedy that, the YCJA became law of the land in 2003 and promised a more holistic approach to sentencing. That is, instead of relying heavily on putting kids in custody, the YCJA would seek to remedy what caused the youth to commit crime in the first place.

While working to establish the priorities of accountability, rehabilitation and responsibility, youths in trouble with the law are dealt with in a manner that is more indicative of their particular situations.

Donna Franey, executive director of the Dalhousie Legal Aid Service, explains the change in law and says the penalties get more severe, until reaching custody.

At first, an offender could get a verbal warning. Next, comes restorative justice.

"It's taking it out of the court process and signing a contract to address the issues that got them into committing offenses in the first place. (Those issues could be) perhaps substance abuse, difficult home situations or making amends to the community for whatever the crime it is they've committed," Franey says.

That could mean anger management courses, various programs, written apologies, listening to presentations, or other solutions. These, she says, are more for non-violent crimes such as shoplifting, mischief or causing a disturbance.

Next up the chain is deferred sentences, in which the court sentences someone to a deferred-custody order, essentially akin to house arrest or curfew. If the youth breaches the order, he or she can get sent to custody immediately.

Higher up the rung comes custody.

This more holistic approach to youth crime, however, depends on providing more resources to helping youths at risk.

To Franey, that didn't happen to the level that was needed with the implementation of the YCJA.

"History in Nova Scotia will show you that the resources that were meant to be in place to help this act have a positive impact - and I think it has to a certain extent - on the youth in Nova Scotia were not there when the act was proclaimed in 2003," Franey says.

"Things like the Nunn Commission have revealed that. They've uncovered the lack of resources put in to assist youth, especially youth at risk. There's no question about that."

Those resources, she says, are now starting to come in with programs like the Halifax Youth Attendance Centre, an academic centre meant for at risk youths.

And that, she says, is helping.

For the small percentage of young offenders that don't respond to this approach, changes to the YCJA are badly needed. And with Nunn's report came recommendations to make it stronger.

The department's director general for youth justice policy Catherine Latimer says the federal government has heeded the recommendations made by Nunn.

On Nov. 19, the feds tabled amendments to the YCJA. Those are particularly related to pre-trial detention.

As Latimer explains it, the amendments will make it easier to detain a broader section of youth who may pose a safety risk.

Nunn's recommendations, she says, were certainly heard.

"I think it was extremely influential in terms of establishing priorities," Latimer said.

Nova Scotia Justice Minister Cecil Clarke says the province intends to be part of a federal review of the YCJA next year.

"In the early new year, we will be launching into the process for Nova Scotia's own review and analysis of the Youth Criminal Justice Act so we can position ourselves for a full role in the federal government's review," Clarke said.

He said the province will be looking for feedback and input in coming months "to make sure that Nova Scotia's position continues to be one of balance and of reasonable requests to the government of Canada and recognizing that the vast number of young offenders go through the system in a positive way."

The province has already accepted all of Nunn's recommendations, and is about to launch its crime-prevention strategy.

Last week, however, the federal government's amendments to the YCJA had one senior Halifax Regional Police officer expressing concern.

Deputy chief Chris McNeil, who testified at the Nunn Commission of Inquiry, told The Canadian Press that "The minor provisions being proposed right now, in my view, simply are carefully crafted to do nothing."

McNeil said the changes would affect the wording of a section on pre-trial detention. It would allow judges to detain youths in cases where their release could create "a substantial likelihood of serious bodily harm to another person."

However, McNeil said that phrase isn't likely to be strong enough to alter a tendency of judges to release youths from detention. He argued that judges will still look at the overall intent of the act, which presumes that jailing youths isn't desirable.

"When you talk about substantial risk of bodily harm, and you go back to the original purpose of the act, we're going to have the same legal discussion and narrow interpretation by the courts of what these terms mean," he said.

"You can't just change one piece of the legislation and expect it will have the desired change. You have to bite the bullet and say public safety is a primary purpose of this legislation," McNeil said.

In an interview with *The Daily News*, Nunn seemed to agree with McNeil.

He said the provincial government has lobbied Ottawa strongly, but said the resulting bill "doesn't do very much."

"The trouble is, when the legal side gets at that through the courts, with the rest of the act, it will be interpreted just as narrowly as they can possibly interpret it," Nunn said.

"A year ago in one of (the Supreme Court of Canada's) cases, it clearly indicated that the purpose of the act was to deal with children without putting our youths in detention. (It ruled) the act should be construed that way," Nunn said.

Clarke later responded in the legislature about McNeil's concerns that the changes are "a positive next step and will provide our judiciary with another tool to be tough on crime in this province."

In an interview, Clarke said that as the changes to the YCJA are explored, it's important that a reversal back to the days of the Young Offenders Act not happen.

"What we don't want is to go from one extreme to another. What we need to deal with is the recognition and knowledge that unfortunately in the small instance the level of youth crime is getting more severe and intense," Clarke said.

"The severity of that is alarming to the public."

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*The Nunn Commission report made the following recommendations regarding the Youth Criminal Justice Act:*

- Remove the time limits on the sentencing of youths to community programs like the Halifax Attendance Centre.
- Make protection of the public a primary goal.
- Change the definition of "violent offence" to include conduct that could endanger the life or safety of another person.
- Change the requirement for a demonstrated "pattern of findings of guilt" to "a pattern of offences," when determining pre-trial custody.
- Simplify the YCJA's rules on pre-trial detention.
- Change the YCJA so that if the designated "responsible person" is no longer willing or able to provide supervision, the youth must continue to abide by the court's undertaking.
- Remove the requirement for a new bail hearing before placing a youth in pre-trial custody when the designated "responsible person" is relieved of his or her obligations.