Achieving Restraint in the Use of the Criminal Justice System: Canada's Youth Criminal Justice Act

*Richard Barnhorst**

Introduction

Canada's *Youth Criminal Justice Act* (YCJA) came into force in 2003 and helped to bring about major changes in the youth justice system. The legislative changes of the YCJA made it distinctly different not only from its predecessor, the Young Offenders Act (YOA), but also from the Criminal Code. The legislative provisions appear to have been a significant factor, but not the only factor, in the achievement of the YCJA's policy objectives.

The overall policy objective of the YCJA was to achieve greater restraint in the use of the youth criminal justice system. The system has undergone a fundamental reorientation toward a more restrained approach in the use of charging, court cases, pretrial detention and custody sentences.

The central question addressed in this paper is: What lessons can those interested in achieving greater restraint in the adult criminal justice system learn from the YCJA? In answering this question, the general approach of the paper is to show the differences between the YCJA provisions and the *Criminal Code* provisions in three key decision-making areas: (a) charging and use of the court; (b) sentencing; and (c) pretrial detention. In each of these areas, the paper also discusses the experience under the YCJA over nearly twenty years and contrasts it with the experience in the adult system under the *Criminal Code* over the same time period. The paper concludes with a discussion of some of the factors other than the legislative provisions that appear to have had an impact on the success of the YCJA: (a) the legislative drafting approach or style, (b) the range of implementation efforts prior to the YCJA coming into force, and (c) factors that seemed to help in the passage of the YCJA by Parliament.

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As will be discussed in detail throughout the paper, there have been remarkable and, in some areas, huge changes in Canada's youth justice system under the YCJA, including:

- The youth charge rate has decreased by 78%.
- Police diversion of cases through extrajudicial measures has increased from 41% to 57% of youths accused of a crime.
- Youth court cases have declined by 81%.
- Youth custodial sentences have decreased by an astounding 95%.
- Despite smaller court caseloads, the percentage of guilty cases resulting in custodial sentences has dropped to less than half of the percentage under the YOA.
- The number of youths in detention has decreased by 77%.
- Canada's overall youth incarceration rate, which includes both custody and detention, has declined by 84%.
- The youth crime rate has dropped by 70%.
- Most provinces have closed or repurposed youth correctional facilities due to the drastic reduction in youths in custody or detention.

The YCJA is a success in that these significant changes in youth justice are all consistent with the objectives of the YCJA. The objectives were developed in response to problems with the YOA. Many commentators and the federal Department of Justice (DOJ) had identified problems with the YOA, including a lack of clarity and coherence in its fundamental principles; overuse of custody and detention; overuse of courts for minor cases; sentences that were often unfair and disproportionate to the seriousness of the youth's offence; sentences that were often inappropriately based on the social welfare needs of youths; and the lack of a clear distinction between responses to serious violent offences and responses to less serious offences.[1] To the extent that these or similar problems exist in the adult criminal justice system, the experience under the YCJA may provide lessons for those interested in improving the adult system.

1. Police Charging and Diversion

The diversion of cases from the criminal justice process has been used for decades in both the youth and adult criminal justice systems. The YOA referred to diversion as "alternative measures" and an

1. Department of Justice Canada, *The Youth Criminal Justice Act: Summary and Background*, 2003.

amendment to the *Criminal Code* later added provisions that are basically the same as the alternative measures provisions of the YOA.

Experience under the YOA

Several issues with the use of alternative measures arose under the YOA, including continued overuse of the court for minor cases and restricting alternative measures to primarily first-time offenders, despite no such restriction in the law. A survey of youth court judges across the country indicated their support for using measures outside the court for responding to a significant proportion of cases coming to court.[2]

The YOA *permitted* the use of alternative measures. However, it did not encourage or promote their use. This permissive wording has continued under the Code. The experience in the youth justice system under the YOA suggested that stronger legislative direction was needed to encourage greater use of extrajudicial measures.

How YCJA Diversion Provisions are Different from the Criminal Code

The YCJA replaced the term "alternative measures" with the term "extrajudicial measures". It introduced several new provisions that made the law significantly different from the YOA and the Code. The main objective of these new provisions was to increase the use of extrajudicial measures, reduce the number of charges against youths and reduce the use of the court, particularly for less serious offences. They also were intended to give legislative support and justification to police and prosecutors in deciding to use alternatives to the court process.

The Code's guidance to police and prosecutors regarding the use of alternative measures with adults is simply to be satisfied that it "would be appropriate" and it is "not inconsistent with the protection of society" (s. 717(1)). These provisions are relatively vague in comparison to the YCJA provisions.

Following is a summary of YCJA provisions that are not included in the Code provisions on charging and alternative measures.

A range of extrajudicial measures. Rather than simply defining alternative measures as "measures other than judicial proceedings . . . used to deal with a person. . . alleged to have committed an offence" (Code, s. 716), the YCJA (ss. 6-10) sets out a range of extrajudicial

2. Doob, A., "Youth Court Judges' Views of the Youth Justice System", Department of Justice Canada (2001).

measure options for police and prosecutors: taking no further action; informal warnings; police cautions; Crown cautions; referrals to a community program; and extrajudicial sanctions.

This listing of non-court options helps to send a message to police, prosecutors and the public that Parliament recognizes these options, including a decision to take no further action, as legitimate responses to less serious crime.

Extrajudicial sanctions, which are basically the same as alternative measures under the Code, are the most serious extrajudicial measure. The YCJA and the Code have the same basic prerequisites for a referral to an extrajudicial sanctions/alternative measures program (e.g., sufficient evidence to prosecute the offence). However, the YCJA created a context for the use of extrajudicial sanctions that is different from the Code, as explained below.

Extrajudicial sanctions are not to be used unless a warning, caution or referral would not be adequate to hold the youth accountable (s. 10). Underlying this provision is the idea that there are various levels of appropriate responses to youth crime beginning with the least intrusive no further action, warnings, cautions and referrals followed by the more intrusive extrajudicial sanctions, which are followed by the most intrusive response — the court.

The YCJA *(s. 4(d)) directs that extrajudicial measures, rather than a charge, should be used if an extrajudicial measure would be adequate to hold the youth accountable*. Rather than assume that the normal response is to charge the youth and proceed to court, police and prosecutors must in all cases make a determination as to whether an extrajudicial measure would be adequate to hold the youth accountable. If it would be adequate, it should be used. This is not a matter of leniency or giving the youth "a break". It is simply the appropriate action to take under the YCJA.

Extrajudicial measures are presumed to be adequate to hold a young person accountable if the young person has committed a nonviolent offence and has not previously been found guilty of an offence (s. 4(c)). This presumption is a strong direction from Parliament that it expects first-time, nonviolent offenders generally to be dealt with outside the youth court. A nonviolent offender who has a previous offence that was dealt with by an extrajudicial measure continues to have the benefit of the presumption.

In 2019, an amendment to the YCJA (s. 4.1) added another presumption that focuses on administration of justice offences (e.g., breach of a condition of probation). It provides that extrajudicial measures are presumed to be adequate for administration of justice offences unless the youth has a history of repetitive breaches or the

breach caused harm or risk of harm to public safety. It recognizes that these offences are generally not serious offences — many of them would not even be offences outside the context of a court order — and that they have historically led to a large percentage of custodial sentences. The presumption may apply even if the youth has previously been found guilty of an offence.

The repeated use of extrajudicial measures with the same youth is authorized (s. 4(d)). This provision is a response to the common practice under the YOA of allowing a youth to be dealt with only once by alternative measures. Under the YOA, only 2% of the youths involved in alternative measures had a history of prior participation in such a program, and less than 1% had a prior youth court record.[3] Parliament's implicit message is that less serious offences are still less serious even though the youth has committed previous offences, and that it is likely that an extrajudicial measure would be adequate to hold the youth accountable.

An extrajudicial measure must be proportionate to the seriousness of the offence (s. 5). This provision was intended, in part, to respond to concerns raised under the YOA that a youth sometimes was subjected to alternative measures that may have been intended to help the youth, but were disproportionate to the offence and more onerous than sentences that the youth would have received in court. This concern about disproportionate measures may also be relevant to adult alternative programs, such as a drug treatment court.

The YCJA authorizes and encourages the use of "conferences" (s. 19), which enable members of the community to assist decision-makers in the youth justice system. They can take a variety of forms, including a restorative justice forum to which police or prosecutors can make referrals in their diversion of cases from the court.

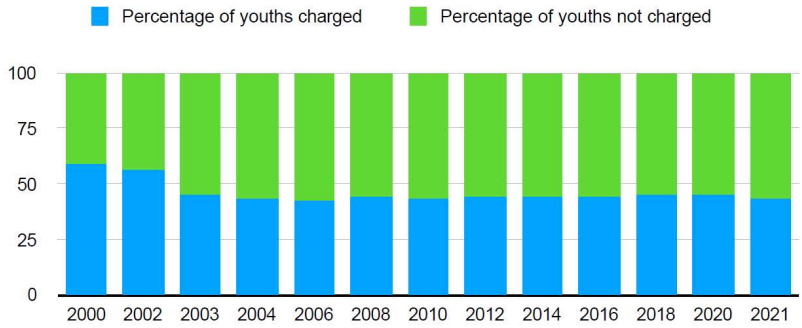
Experience under the YCJA: Charging and Diversion

Charging v. Not Charging of Youths

The experience under the YCJA is that charging has decreased significantly and police diversion of cases through extrajudicial measures has increased significantly. As the chart below shows,[4] in 2000, 59% of chargeable youths were charged; 41% were not charged. In 2003, the first year of the YCJA, only 45% of chargeable youths were charged; 55% were not charged — a major reversal of

3. Canadian Centre for Justice Statistics, "Alternative Measures Canada 1998-1999" (2000) 20:6 *Juristat*.
4. The statistics in all charts in this paper are from Statistics Canada.

charging and the use of diversion. Since that reversal, the percentages of youths charged and not charged have remained relatively stable.



Source: Statistics Canada, Incident-based crime statistics by detailed violations

"Youths who were charged" includes those who were recommended for charging by police in provinces in which the prosecutor makes the decision on charging. "Youths who were not charged" includes youths diverted from the court process through the use of warnings, referrals to community programs, cautions, and *pre-charge* extrajudicial sanctions. The change in police charging behaviour occurred without evidence of "net widening".[5]

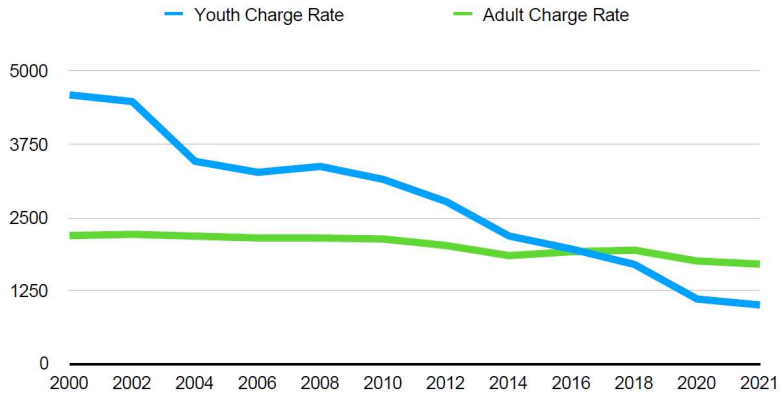
The stability of the percentages of youths charged and not charged continued as the number of chargeable youths decreased over time. The number of chargeable youths generally increased over the first six years of the YCJA, but starting in 2009, the number began a steady decline. The number of chargeable youths dropped by 71% between 2008 and 2021. With a much smaller number of youths in 2021, police charged about the same percentage (43%) of youths. Therefore, the lower number of charges going to youth court under the YCJA was a result of not only a change in police charging practices but also fewer youths coming to the attention of the police.

Charge Rates

Under the YCJA, there has also been a significant drop in the youth charge rate (the number of charges per 100,000 youths in the

5. See Bala, N., Carrington, P., & Roberts, J. (2009). Evaluating the Youth Criminal Justice Act after five years: A qualified success. *Canadian Journal of Criminology and Criminal Justice*, 51(2).

population). In the last five years of the YOA, the youth charge rate dropped by 7%. In the first year of the YCJA, the youth charge rate dropped by 28%. Between 2000 and 2021, the *rate of charges against youths decreased by 78%*. During this same time period, *the rate of charges per 100,000 adults in the population also decreased, but by 22%*.



Source: Statistics Canada, Incident-based crime statistics by detailed violations

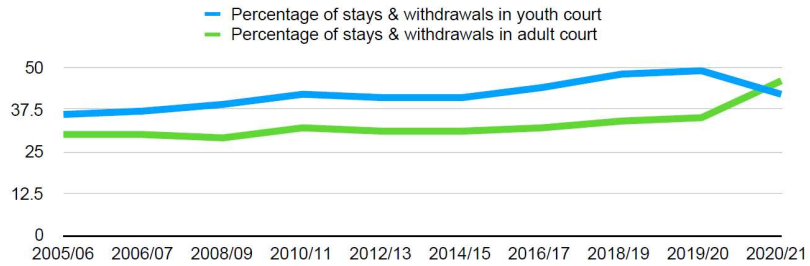
Post-charge diversion

The use of post-charge extrajudicial sanctions also appears to have increased in the youth justice system under the YCJA. Under Statistics Canada's categorization of court decisions, the category of stays and withdrawals includes dismissals as well as court referrals to post-charge diversion. Although these types of court decisions are grouped as one category, it seems likely that a significant percentage of these decisions are referrals initiated by prosecutors to post-charge diversion.

The proportion of stays and withdrawals has generally been greater in youth courts than in adult courts. In reviewing the data from 2007/08 to 2016/17, Statistics Canada concluded: "*The proportion of cases that have been stayed or withdrawn in adult criminal court has been stable over the decade, at about one-third. In contrast, the proportion of stayed or withdrawn cases in youth court has increased from 38% of cases in 2007/2008 to 44% of cases in 2016/2017.*"[6] These trends generally continued through 2019/20. The proportion of stays and withdrawals in 2019/20 in adult court was

6. Statistics Canada, Adult criminal and youth court statistics 2016/17.

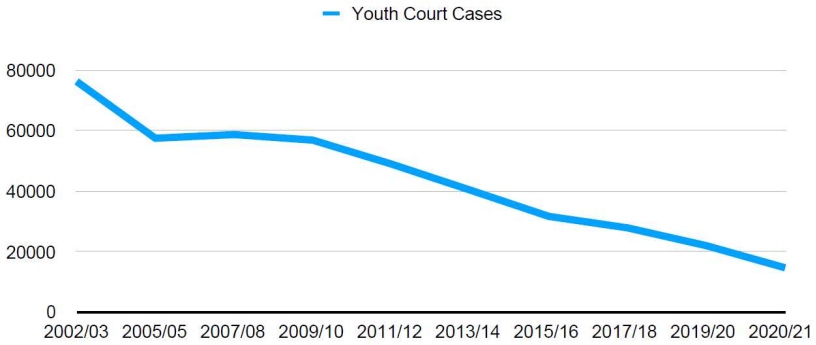
35% while the proportion in youth court increased to 49%. As the chart below indicates, in 2020/21, the first year of the COVID pandemic, there were sharp departures from the long-term trends for both youth and adult court. It is not clear yet whether these changes are temporary or not.



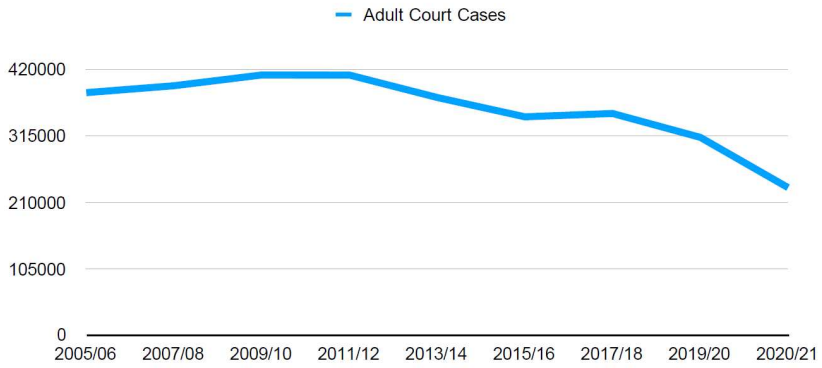
Source: Statistics Canada, Youth courts and adult criminal courts, number of cases and charges by type of decision

2. Use of the Court

There has also been a significant reduction in the use of the court under the YCJA. In the last six years of the YOA, court cases dropped by 12%. The decline continued under the YCJA. *In 2020/21, the number of youth court cases was 81% lower than in the last year of the YOA. In addition, the decline accelerated under the YCJA.* In the first six years under the YCJA, court cases dropped by 23%; in the next six years, it dropped by 43%; and in the most recent five years, it dropped by 53%.



Source: Statistics Canada, Youth court cases, number of cases and charges by type of decision



Source: Statistics Canada, Adult criminal courts, number of cases and charges by type of decision

Adult court cases also declined but the decline was less than the decline in youth court. Between 2005/06 and 2020/21, adult court cases declined by 39%. During the same period, youth court cases dropped by 74%.[7] Clearly, the YCJA's major objective of reducing the use of the youth court has been achieved.

Court Caseload Mix

The YCJA objectives related to use of the court were not only to reduce the number of youth court cases but also to reduce the use of the court for less serious offences. This raises the issue of whether the smaller caseload in youth court has been accompanied by a change in the mix of types of cases.

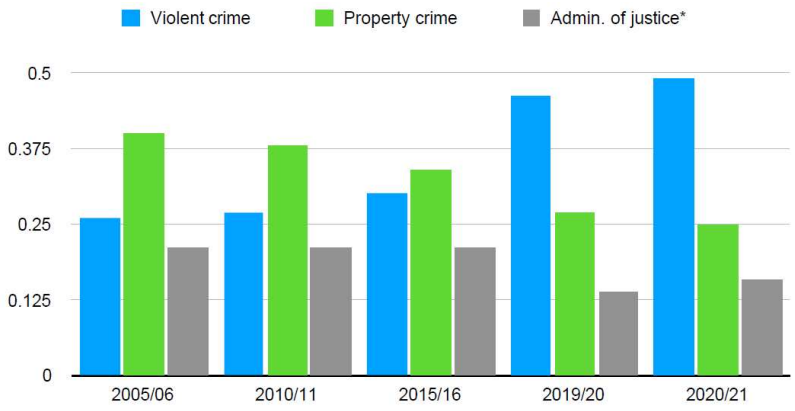
The largest number of offences in both youth court and adult court fall into three major offence categories: violent crime; property crime; and administration of justice offences. The following chart indicates that the mix of cases in *the smaller youth court caseloads has shifted to a larger percentage of more serious cases and a lower percentage of less serious cases*.

Over the fifteen-year span of 2005/06 to 2020/21, the proportions of cases of violent crimes and property crimes have reversed. In 2005/06, 40% of the court's total caseload were property crimes and in 2020/21, only 25% consisted of property crimes. Conversely, the proportion of violent crimes increased from 26% to 49%. Administration of justice offences decreased from 21% to 16%. These statistics suggest that both aspects of the YCJA's objective of reducing the use of the youth court — reduction in the total number of

7. Both youth courts and adult courts experienced their largest one-year declines in 2020/21, the first year of the COVID pandemic.

court cases and a reduction in the use of the court for less serious offences — have been achieved.

Percentage of Youth Court Cases by Offence Type

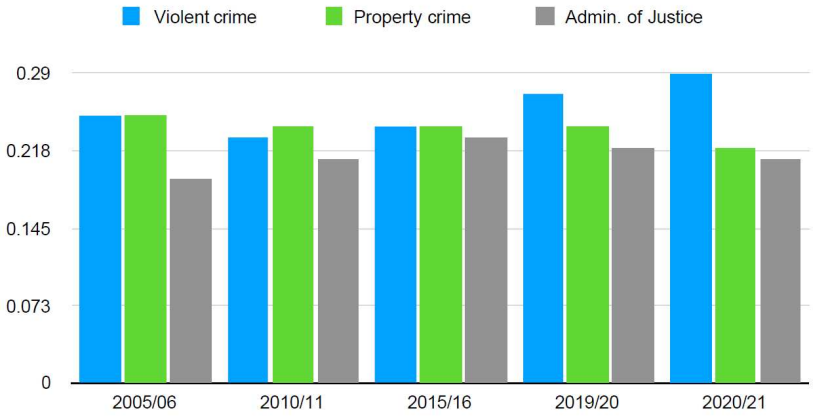


Source: Statistics Canada, Integrated Criminal Court Survey

** Includes offences under the Criminal Code and the YCJA.*

The following chart addresses the issue of whether the mix of cases in adult court has shifted to a greater emphasis on more serious cases.

Percentage of Adult Court Cases by Offence Type

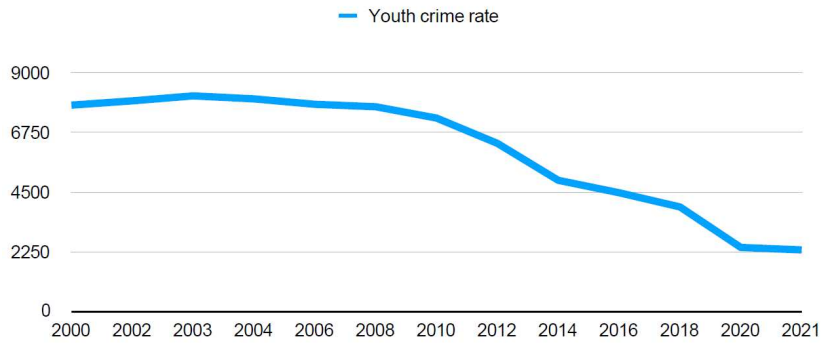


Source: Statistics Canada, Integrated Criminal Court Survey

Unlike the youth court, the mix of offence types in the adult court caseload has remained fairly stable. Over the fifteen-year time span, the proportion of violent crimes increased by 4 percentage points compared to an increase in the youth court of 23 percentage points. The proportion of property crimes decreased by 3 percentage points compared to a decrease in youth court of 15 percentage points. The proportion of administration of justice offences increased by 2 percentage points compared to a decrease in youth court of 5 percentage points.

3. Youth Crime Rate and Severity

An issue raised by the increase in the use of extrajudicial measures and the decrease in the use of the court (as well as the decrease in custodial sentences and detention, discussed below) is whether these changes have been accompanied by an increase in youth crime. Statistics indicate that the enactment of the YCJA has not resulted in an increase in youth crime. Rather, *the overall youth crime rate*[8] *decreased by 70%* between 2000 and 2021.



Source: Statistics Canada, Incident-based crime statistics by detailed violations

Also, as shown below, the crime rates for all major categories of youth crime decreased substantially over the same 21-year period. These decreases do not mean that the YCJA caused these changes in crime rates but they counter the concerns raised by some critics prior to the passage of the YCJA that less reliance on the formal youth justice system would cause an increase in youth crime rates.

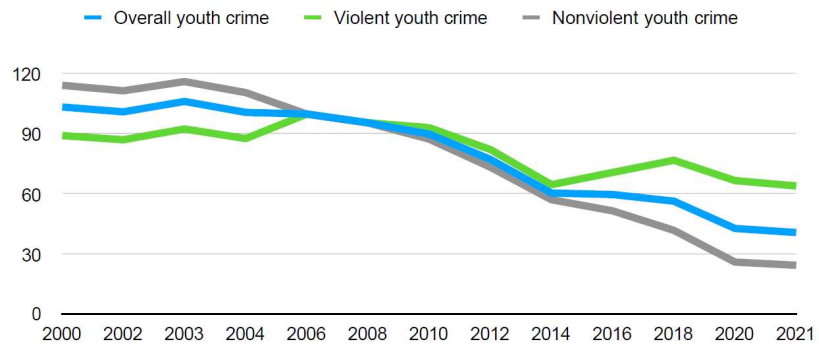
8. "Youth crime rate", as the term is used by Statistics Canada, refers to the number of youths who are apprehended and charged or not charged per 100,000 youths in the population.

Change in youth crime rates from 2000 to 2021

1. Overall "crime rate" (excluding traffic)	-70%
2. Violent crime	-44%
3. Property crime	-82%
4. Drug offences	-92%
5. YCJA/YOA	-90%

Similarly, the severity of youth crime was lower in 2021 than it was in the latter years of the YOA. Under the YCJA, *the severity of youth crime has generally been in steady decline*. Since 2000, the severity of overall youth crime has decreased by 60%; violent youth crime severity has decreased by 24%; and nonviolent youth crime severity has decreased by 78%. Again, these numbers do not mean that the YCJA caused the decrease in severity, but they make it clear that the YCJA and the reduced use of the courts did not cause an increase in severity.

Youth Crime Severity



Source: Statistics Canada, Youth Crime Severity Index

In summary, these statistics provide a possible lesson for the adult criminal justice system: *reducing the number of police charges, increasing the use of diversion and reducing the use of the youth court did not result in an increase in youth crime and it allowed the court to be reserved for more serious offences*.

4. Sentencing

Prior to the YCJA, there were concerns about sentencing under the YOA. A major concern of the Department of Justice was the very high use of custodial sentences.[9] More specifically:

- The youth incarceration rate was reported to be higher in Canada than other Western countries, including the United States.
- The youth incarceration rate was higher than the adult incarceration rate.
- About 80% of custodial sentences were for nonviolent offences.
- Youths often received longer sentences than adults for the same offence.
- Most youths sentenced to custody for a violent offence had been found guilty of the least serious form of assault — common assault.[10]

The YCJA introduced several sentencing provisions intended to address these problems. These provisions are quite different from the *Criminal Code* sentencing provisions and may provide lessons for the adult system.

How YCJA Sentencing Provisions are Different from the Criminal Code

Major points of contrast between the YCJA and the *Criminal Code* sentencing provisions are:

Purpose of sentencing. The YCJA's purpose of sentencing (s. 38) is to hold a youth accountable through sanctions that promote rehabilitation and reintegration of the youth. The promotion of **rehabilitation is a requirement**, not an option, of a youth sentence. The purpose also states that a youth sentence is intended to contribute to the **"*long-term* protection of society"**. The Supreme Court of Canada has stated that "protection of the public" in s. 38 is expressed, not as an immediate objective of sentencing, but rather as the long-term effect of a successful youth sentence.[11]

This emphasis on long-term protection suggests a recognition that short-term protection, particularly through incarceration, may not

9. Department of Justice Canada, note 2, above.
10. Doob, A. & Sprott, J. (1998). "Is the 'Quality' of Youth Violence Becoming More Serious?", 40 *Canadian Journal of Criminology*.
11. *R. v. P. (B.W.); R. v. B.V.N.*, 2006 CarswellBC 1528, [2006] S.C.J. No. 27 (S.C.C.).

protect society in the long term. Research indicates that a youth sentence focused on immediate or short-term impact (e.g., "short, sharp shocks") may actually increase the likelihood that the youth will reoffend.[12]

In contrast, the *Criminal Code*'s sentencing purpose (s. 718) is to contribute "to respect for the law and the maintenance of a just, peaceful and safe society." It lists rehabilitation as one of six possible objectives of a sentence. It does not make rehabilitation a requirement of a sentence. Unlike the YCJA, the Code does not require that the sentence focus on the *long-term* protection of society.

Mandatory principles. The YCJA makes several sentencing principles mandatory whereas similar principles in the Code are optional. In addition to the proportionality principle being mandatory (as in the Code), the YCJA (s. 38) states that a sentence *must* be the sentence **most likely to rehabilitate**, *must* be similar to sentences in similar cases; and *must* be the **least restrictive alternative** that will achieve the purpose of sentencing. In contrast, for example, the Code (s. 718.2(d)) states that "an offender *should* not be deprived of liberty, if less restrictive sanctions *may be appropriate in the circumstances"*. This provision does not require the use of the least restrictive alternative and "appropriate in the circumstances" is open to a wide range of interpretations.

Exclusion of Code provisions. The YCJA (s. 50) excludes the main sentencing provisions of the *Criminal Code*. Therefore, the YCJA sentencing provisions are essentially a stand-alone code of sentencing. The Code objectives of general deterrence and incapacitation do not apply under the YCJA. As originally enacted, the YCJA also excluded specific deterrence and denunciation from youth sentences. These exclusions were in the YCJA because they were consistent with a large body of research that showed that deterrence and incapacitation were not effective in reducing crime.[13] However, despite the research, the Conservative government, in 2012, added specific deterrence and denunciation as possible or optional objectives of a youth sentence. Unlike the mandatory aspect of many of the other YCJA sentencing provisions (but like the Code provisions), the amendment states that these objectives *may* be part of a sentence. It seems unlikely that the amendment would have much impact because, as optional objectives,

12. Doob, A. and Cesaroni, C. (2004). *Responding to Youth crime in Canada*. Toronto: University of Toronto Press.
13. See Doob, A. and Webster, C. (2003). Sentence severity and Crime: Accepting the null hypothesis. In M. Tonry (Ed.), *Crime and Justice: A review of research, vol. 30*. Chicago: University of Chicago Press.

deterrence and denunciation may be included in a sentence only after the court takes account of the purpose of sentencing, which requires that the sentence promote rehabilitation, as well as the mandatory principles of sentencing.

Restrictions on Custody. Probably the most significant difference between the sentencing provisions of the YCJA and the Code is s. 39, which prohibits the court from imposing a custodial sentence unless one of four criteria is met. *The Criminal Code has no comparable provision restricting all custodial sentences*. In general, s. 39 restricts custody to violent and serious repeat offenders. Unlike the Code, it provides much more explicit direction to the court regarding when custody may be an appropriate sentence. In particular, it responds to the concern under the YOA that custody sentences were overused for less serious offences and it reflects the YCJA's Preamble, which states that the Act is intended to reduce "over-reliance on the incarceration of non-violent young persons."

Section 39(1) provides that the court ***shall not*** commit a youth to custody unless one of the following threshold criteria is met:

(a) the young person has committed a **violent offence**;
(b) the young person has **failed to comply with more than one sentence** and, if the court is imposing a sentence for an **administration of justice offence**, the young person caused harm or risk of harm to public safety;[14]
(c) the young person has committed an indictable offence for which an **adult would be liable to more than two years imprisonment (i.e., five years or more)** and has a history that indicates a **pattern of offending**; or
(d) it is an **exceptional case**, where the young person has committed an indictable offence and the aggravating circumstances of the offence make the imposition of a noncustodial sentence inconsistent with the purpose and principles of sentencing.

Alternatives to custody. Both the YCJA (s. 38(2)(d)) and the Code (s. 718.2(e)) provide that the court "should consider" alternatives to custody for offenders, particularly aboriginal offenders. However, in addition to the restrictions on custody in s. 39, the YCJA goes further than the Code in directing the court's consideration of noncustodial alternatives. Even if one of the criteria in s. 39(1) is met, the court "shall not" impose a custodial sentence unless the court has made a

14. The part of this provision referring to administration of justice offences was added in 2019.

determination that there is no reasonable alternative that is in accordance with the purpose and principles of sentencing (s. 39(2)).

Section 39 also sets out several factors for the court to consider in determining whether there is an alternative to custody (s. 39(3)) and authorizes the court to use a noncustodial sentence that has been used previously with the youth (s. 39(4)).

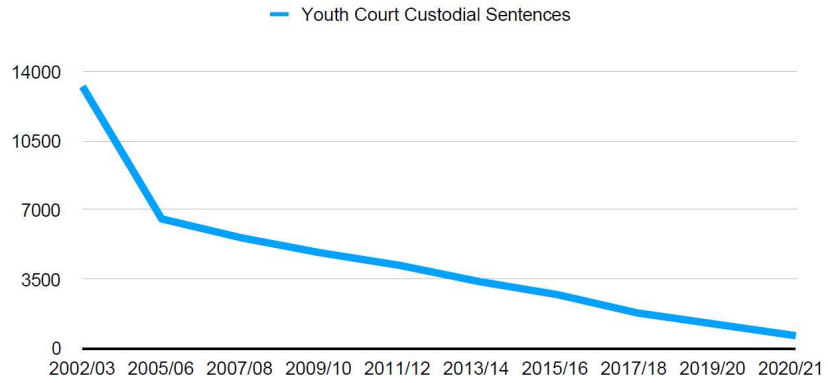
Reasons for sentence. If the court imposes a custodial sentence, s. 39(9) requires the court to justify its use of custody by stating reasons as to why it has determined that a noncustodial sentence is not adequate to achieve the purpose of sentencing; and, if applicable, what makes the case an "exceptional case" under s. 39(1)(d). The Code does not have a similar requirement.

Sentencing options. In comparison to the Code's sentencing provisions, the YCJA gives judges a wider range of sentencing options, particularly noncustodial options. In addition to probation, the YCJA noncustodial options include a reprimand; intensive support and supervision order; attendance order; and a deferred custody and supervision order. *None of these additional options is included in the Code, although the deferred custody and supervision is similar to the adult conditional sentence*.

Experience under the YCJA: Sentencing

Youth Court Custodial Sentences

In the last six years of the YOA, the number of youth custodial sentences declined by 24%, indicating that the reduction in custodial sentences was underway by the time of the YCJA. However, in 2002/03, there were 13,237 youth custodial sentences. From 2002/03 to 2020/21, *youth custodial sentences under the YCJA dropped to 659 - an astounding 95% decline*. After a sharp drop in the first few years of the YCJA, custodial sentences have continued a steady decline through 2020/21. Prior to the COVID pandemic year of 2020/21, the decline was 91%.



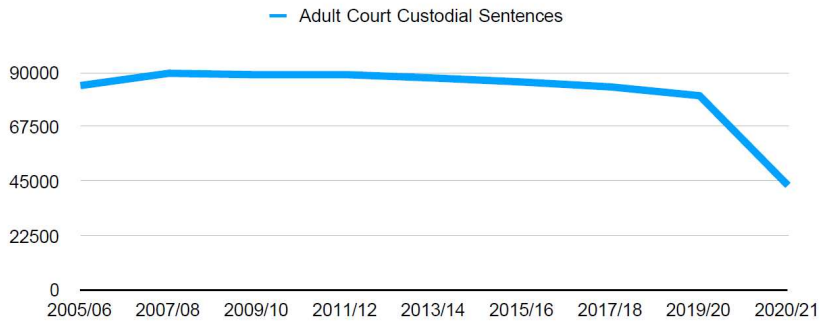
Source: Statistics Canada, Youth courts guilty cases by most serious sentence

Also, the *percentage of guilty cases resulting in custodial sentences declined from 27% in 2002/03 to 10% in 2020/21* — considerably less than half of the percentage under the YOA. It could have been reasonably expected that with the smaller court caseload and the shift to more serious offences, the percentage of custodial sentences would have increased. That did not happen.

Adult Court Custodial Sentences

Over a 14-year time span (2005/06 - 2019/20), *adult custodial sentences declined by 5%*. Then, in 2020/21, the first year of the COVID pandemic, there was a huge one-year decline of 46%, which suggests that the pandemic had a significant and perhaps temporary effect on judges' sentencing decisions. The inclusion of 2020/21 statistics would indicate that adult custodial sentences declined not by 5% but rather 49%.

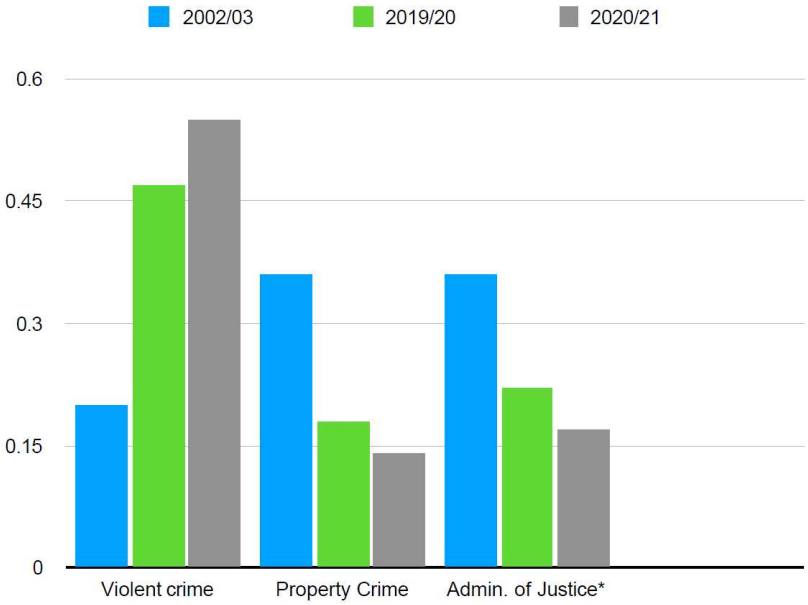
Over the same 14-year time span, the *percentage of guilty cases resulting in custody increased* from 34% to 42% (37% if 2020/21 is included), compared to a significant decline under the YCJA. In 2019/20, there were fewer guilty cases in adult court but, unlike the YCJA, there was a higher percentage of guilty cases that resulted in a custodial sentence.



Source: Statistics Canada, Adult courts, guilty cases by most serious sentence

There has also been a *significant increase in the percentage of youth custodial sentences for more serious offences*. In the last year of the YOA, 72% of custodial sentences were for property offences and administration of justice offences and 20% were for violent offences. In 2020/21, 31% of custodial sentences were for property offences and administration of justice offences and 55% were for violent offences. This shift to a much higher percentage of custodial sentences for violent offences is consistent with the objective of using the court and custody for more serious cases.

Percentage of Youth Custodial Sentences by Offence Type



Source: Statistics Canada, Youth courts, guilty cases by most serious sentence

** Includes offences under the Criminal Code, YCJA and YOA.*

Incarceration Rates

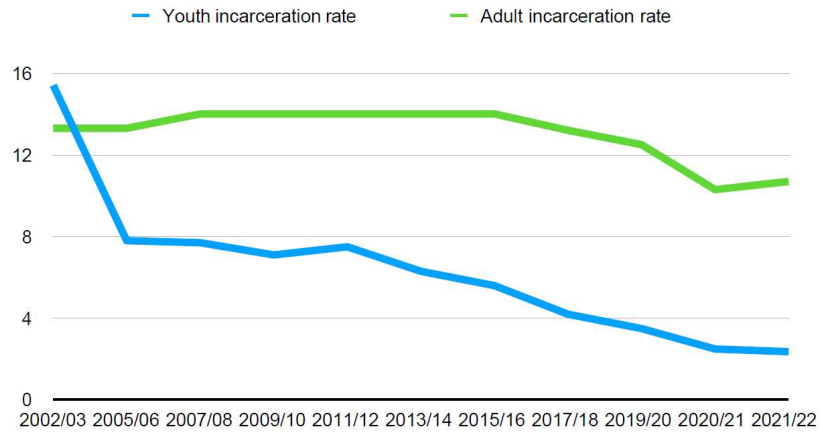
Youth Incarceration Rate

The youth justice system's greatly reduced reliance on incarceration is reflected not only in the huge drop in custodial sentences under the YCJA; it is also reflected in Canada's overall youth incarceration rate, which represents the number of youths per day in both sentenced custody and detention for every 10,000 youths in the population. Canada's youth incarceration rate has declined from 15.4 youths in the last year of the YOA to 2.4 youths in 2021/22 – *a major decline of 84%*.

Adult Incarceration Rate

The adult incarceration rate has been higher than the youth incarceration rate over most of the time period from 2002/03 to 2021/

22. However, it has declined from 13.3 in 2002/03 to 10.7 in 2021/22 – a *decline of 20%*. The adult incarceration rate began the time period slightly lower than the youth rate and by the end of the period the adult rate, although it had declined, was *4.5 times greater than the youth rate*.



Source: Statistics Canada, Average counts of youths and adults in correctional facilities

5. Pretrial Detention

There was a large increase in the use of pretrial detention under the YOA. In passing the YCJA, Parliament's objective of reducing the incarceration of youths included reducing the use of pretrial detention.

The YCJA retained most of the YOA's provisions related to pretrial detention, including the application of the provisions of the *Criminal Code*. The YCJA, however, included two new provisions related to the grounds for detention: s. 29(1) prohibited the use of pretrial detention for social welfare purposes and s. 29(2) created a rebuttable presumption that detention is not necessary for public safety if the young person, if found guilty, could not be sentenced to custody.

In the early years of the YCJA, concerns were raised about pretrial detention under the Act. The concerns, which eventually led to amendments that came into force in 2012, were summarized in a consultation paper released by DOJ in 2007:[15]

1. Continued high use of pretrial detention. After an initial drop in the youth detention rate in 2003/04, the rate generally increased from 3.3 to 4 in 2011/12.
2. A very high percentage of youths were detained whose most serious charge was a nonviolent offence, including a high percentage whose most serious charge was an administration of justice offence.
3. Large variation among provinces/territories in the rate of youths detained.
4. Continued use of detention for social welfare purposes.
5. Too many conditions of release were imposed. Some conditions were unrelated to the risk that the youth was alleged to pose and some conditions were difficult to comply with, thereby "setting up the youth for failure".

Unlike the areas of extrajudicial measures and sentencing, the two new YCJA pretrial detention provisions were applied within the general and relatively vague *Criminal Code* framework for adults. The limited impact of the pretrial provisions suggested that reducing pretrial detention required legislative provisions that were different from the Code and more explicit than the Code. In other words, the grounds for pretrial detention needed to be more like the YCJA provisions on extrajudicial measures and sentencing.

Amendments to the pretrial detention provisions of the YCJA came into force in October 2012. The amendment to s. 29(2) repealed the presumption against detention and inserted new grounds for detention. The *Criminal Code* grounds no longer apply. The amended, stand-alone grounds are a modified version of the Code grounds. As discussed below, the amended grounds are much more restrictive and explicit than the Code grounds.

How YCJA Detention Provisions are Different from the Criminal Code

The *Criminal Code* (s. 515(10)) and the YCJA (amended s. 29(2)) have parallel grounds for detention. Each statute has a "primary" ground regarding ensuring that the accused will appear in court; a "secondary" ground regarding protection of the public; and a "tertiary" ground regarding maintaining confidence in the administration of justice. However, there are some significant

15. Department of Justice Canada, *Pretrial Detention under the Youth Criminal Justice Act: A Consultation Paper*, 2007.

differences between the YCJA grounds and the *Criminal Code* grounds:

1) The YCJA contains a threshold provision that limits the types of alleged offenders who may be eligible for detention. The court has no authority to detain unless the youth is charged with a ***serious offence*** **(an indictable offence for which the maximum adult sentence is 5 years or more), or has a history that indicates a pattern of previous findings of guilt or outstanding charges**. In contrast, the Code allows detention of "an accused who is charged with an offence."
2) Under the YCJA, the "primary ground" requires a **substantial likelihood of not appearing in court**. The Code states that detention is "necessary to ensure attendance in court".
3) Unlike the Code provisions, the "secondary ground" in the YCJA requires a substantial likelihood of a **serious offence** if the youth is released. In contrast, the Code refers to a substantial likelihood of **any criminal offence or interference with the administration of justice,** a much lower standard.
4) Unlike the Code provisions, the "tertiary ground" in the YCJA can be used only if the youth is charged with a **"serious offence"**; the **first two grounds do not apply**; and there are **"exceptional circumstances"** justifying detention on this ground. Unlike the primary and secondary grounds, it excludes a pattern of previous findings of guilt or outstanding charges.

The importance of the differences in the wording of the YCJA and Code provisions can be seen in the decision of the Supreme Court of Canada in *R. v. St-Cloud*.[16] The Court stated that the Code (s. 515(10)(c)) does not require a finding that the first two grounds do not apply before the tertiary ground can be used and it does not require that the circumstances be "exceptional" to justify detention on this ground. The absence of the word "exceptional" in the Code was significant in the Court's interpretation that s. 515(10)(c) allows the prosecutor and the court to rely on any type of crime to justify detention.

The most common administration of justice offences are outside the meaning of "serious offence" in s. 29(2). If a youth is charged with an administration of justice offence, this provision states that the youth cannot be detained on the ground of maintaining confidence in the administration of justice.

5) The court is prohibited from ordering detention unless it is

16. *R. v. St-Cloud*, 2015 CarswellQue 3556, [2015] S.C.J. No. 27 (S.C.C.).

satisfied that **conditions of release** would not adequately address a risk listed as a justification for detention in s. 29(2)(b) (e.g, protection of the public). In contrast, the Code allows release on conditions unless the prosecutor "shows cause" why detention is justified.

Prior to the amendments to s. 29 (and, therefore, under the *Criminal Code* grounds), it was not uncommon for youth courts to order release conditions in cases in which the reasons for judgment did not indicate that one of the grounds for detention would be met if conditions were not imposed. Similarly, it was not uncommon for conditions of release to be imposed in cases in which the reasons for judgment did not indicate how the conditions were related to one of the grounds for detention.

6) Under the YCJA, the **onus is on the Crown in all cases** (s. 29(3)). The reverse onus provisions of the Code do not apply under the YCJA. So, unlike the Code (s. 515(6)), in cases such as failure to appear in court or failure to comply with a release condition, the onus does not shift to the youth to show why he or she should not be detained.

Release Conditions

Violations of conditions often result in administration of justice charges. In December 2019, amendments to the YCJA's provisions on pretrial release conditions came into force. The amendments were intended to restrict the number and nature of conditions being imposed on youths.[17] DOJ noted that conditions were often unrelated to the offence, were too restrictive or impossible to comply with or improperly focused on social welfare objectives. Under s. 29(1), a release condition may be imposed only if:

- it is necessary to ensure attendance in court or to protect public safety;
- it is reasonable in the circumstances of the offending behaviour; and
- the youth will reasonably be able to comply with the condition.

This amendment does not allow conditions being used to "maintain confidence in the administration of justice". Therefore, this exclusion narrows the types of breaches of conditions that may lead to

17. Department of Justice Canada website, Youth Justice, *Recent Amendments to Canada's Youth Criminal Justice Act*.

administration of justice charges. In contrast, the Code allows a court to impose conditions if the court's concern is maintaining confidence in the administration of justice.

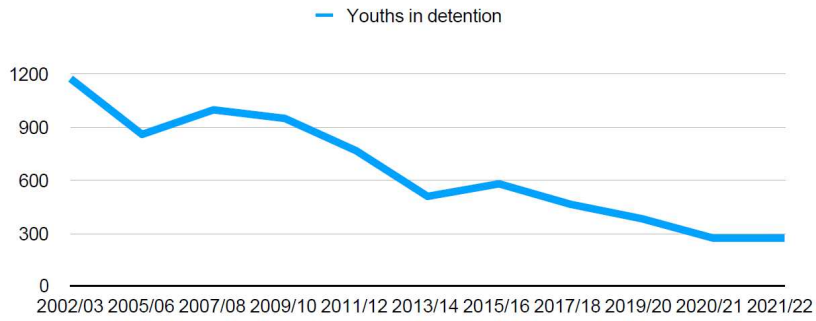
Experience under the YCJA: Detention

Number of Persons in Detention

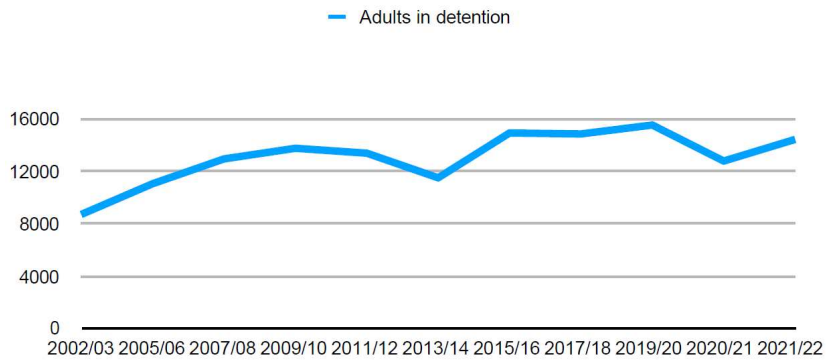
In the last six years of the YOA, the average number of youths in detention was fairly stable, with an overall average of 1149. Under the YCJA, the number decreased from 1171 in 2002/03 to 274.2 in 2021/22 – a *decrease of 77%*.

In contrast, over the same time period, the average number of adults in detention increased from 8,703.7 in 2002/03 to 14,414.5 in 2021/22 – an *increase of 67%*.

Unlike other areas of the YCJA — charging, use of extrajudicial measures, use of the court, and custody sentences — pretrial detention initially did not have consistent and significant changes that were in keeping with the YCJA's objective of decreasing the use of detention. After an initial decrease, the number of youths in detention increased to 996 in 2007/08 and generally stayed above 900 until 2011/12 (the year before the amended grounds for detention came into force), when it dropped to 766. Since 2011/12, the number of youths in detention has declined by 64%. The drop from the high of 996 began before the detention amendments but, after the amendments, the number has continued to generally decline, resulting in the *fewest youths in detention in all of the years reported by Statistics Canada: 274*.



Source: Statistics Canada, Average counts of young persons in provincial and territorial correctional facilities



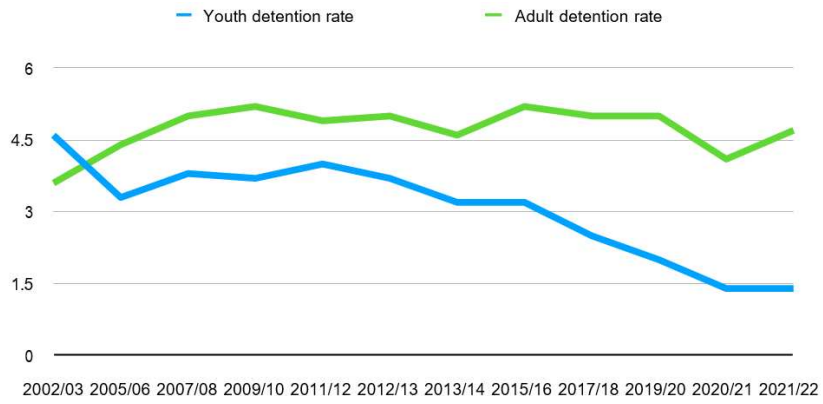
Source: Statistics Canada, Average counts of adults in provincial and territorial correctional facilities

Detention Rates

The youth detention rate (the number of youths in detention per 10,000 youths in the population) has also declined. In the last six years of the YOA, the youth detention rate was stable, with an average of 4.6. The youth detention rate of 4.6 in 2002/03 was higher than the adult rate and in 2021/22 it was 1.4 – a *decrease of 70%*. In contrast, the *adult detention rate increased by 30%*.

The detention rate in the early years of the YCJA did not reflect the kind of change that was intended by Parliament. After an initial drop in the youth detention rate, the rate generally increased from 3.3 to 4 in 2011/12. However, in 2012/13, the year that the YCJA's pretrial detention amendments came into force, the youth detention rate dropped to 3.7 and continued to decline to a rate of 1.4 in 2021/22.

In summary, under the YCJA, the number of youths in detention has dropped by 77% and the youth detention rate has dropped by 70%. Over the same time period, the number of adults in detention has gone up by 47% and the adult detention rate has gone up by 14%. Although the legislation is not the only explanation for this difference, it is likely that it is a significant factor.



Source: Statistics Canada, Average counts of youths and adults in provincial and territorial correctional facilities

6. Other Factors that Contributed to the YCJA's Success[18]

It is important to recognize that there are many factors beyond the scope of this paper that help to explain the YCJA's success. For example, Webster, Sprott and Doob, in discussing the successful decarceration of youth in Canada, have identified not only the impact of the YCJA but also several broad factors from the 1960s to the 1990s that helped to initiate changes in youth justice and set the stage for the legislative reforms of the YCJA.[19] They provide an overview of Canadian youth justice policy until the early 1990s that "highlights a gradual change in culture, manifest in a shift in approach to young offenders from a social welfare model in which prison was seen as a rehabilitative tool to one rooted in the belief of restraint in the use of incarceration."[20] They also describe the historical, sociocultural and political context of the 1990s, which led to broad political support for youth decarceration and "set in motion the dramatic decline in youth imprisonment."[21]

This paper has had, to this point, a narrower focus on specific

18. This part of the paper is derived from Barnhorst, R., (2012) "Youth Justice Policy Reform: The Youth Criminal Justice Act", in Ismaili, K., et al, eds., *Canadian Criminal Justice Policy*. Toronto: Oxford.
19. Webster et al, "The Will to Change: Lessons from Canada's Successful Decarceration of Youth", *Law & Society Review*, Volume 53, Number 4 (2019).
20. Webster et al, "The Will to Change: Lessons from Canada's Successful Decarceration of Youth", *Law & Society Review*, Volume 53, Number 4 (2019), at p. 1096.
21. Webster et al, "The Will to Change: Lessons from Canada's Successful

legislative provisions as a significant factor contributing to the YCJA's success. The YCJA provisions are very different from both the YOA and the *Criminal Code* at key decision points in the criminal justice process. Major changes in charging, court cases, pretrial detention, and sentencing occurred following the introduction of these provisions into the law.[22] Although they were not the only factor in bringing about change in the youth justice system, it is reasonable to conclude that the new legislative provisions are an important factor in explaining why the youth justice system under the YCJA reflects greater restraint in the use of the system when compared to the YOA and the adult system under the Code. Similar provisions in the Code would likely help the adult system to move in the direction of greater restraint in its use.

This final part of the paper will focus on additional factors between 1998 and 2003 that were important to the success of the Act and provide possible lessons for those interested in bringing about similar restraint reforms in the adult system. These factors include: the legislative drafting approach or style; the range of implementation efforts prior to the YCJA coming into force; and factors that helped in the passage of the YCJA by Parliament.

Legislative Drafting

1. *Clarity in the Act's policy objectives*. In contrast to the YOA and the Criminal Code, the YCJA is relatively clear about what the legislation is intended to achieve. In general, the YCJA's policy objective is to reduce the reliance on the formal criminal justice system in responding to youth crime. More specifically, the objectives of this policy of restraint are to increase diversion, reduce the use of the court, and reduce the use of incarceration at the detention and sentencing stages of the justice process. The drafting approach was to make clearer what the justice system decision-makers should be trying to achieve through their decisions. There is evidence that clarity in objectives can assist in decision-making. For example, the YCJA's clear objective of reducing incarceration influenced the Supreme Court of Canada's decision in *R. v. D. (C.); R. v. C.D.K.*[23] to adopt a

Decarceration of Youth", *Law & Society Review*, Volume 53, Number 4 (2019), at p. 1096.

22. Decreases in pretrial detention began before the amendments to s. 29(2) came into force in 2012. After the amendments, the decreases generally continued through 2020/21 when the number of youths in detention reached an all-time low.

narrow interpretation of "violent offence", which is one of the criteria for a custodial sentence.

2. *Structuring decision-making through explicit wording*. Major reductions in the use of the court and custodial sentences and major increases in the use of diversion occurred under the YCJA, even in the early years under the Act. These are the two areas in which the drafting of the YCJA is most explicit and detailed in its decision-making provisions. The provisions are much more explicit than comparable provisions in the *Criminal Code*.

   In contrast, the area of detention initially did not have changes that were in keeping with the YCJA's objective of decreasing its use. From a legislative drafting perspective, the difference was that the original YCJA provisions on detention primarily continued the approach under the YOA of relying on the general and relatively vague provisions of the Criminal Code. The detention amendments that came into force in 2012/13 removed the applicability of the Code's grounds for detention and inserted a separate, more restrictive, and more explicit set of grounds for detention. They made it more difficult to detain youths charged with less serious offences. Significant decline in detention numbers began a year before the amendments, but the amendments were followed by a continuing general decline that resulted in a 77% decrease compared to the last year of the YOA.

   A possible lesson from these amendments to the grounds for detention under the YCJA is that provisions that structure decision-making by being more specific and directive and that are consistent with a statute's policy objective may make it more likely that a policy objective will be achieved.

3. *A new statute rather than amendments*. Two reports on the YOA and the youth justice system by a federal/provincial/territorial task force (1996) and a parliamentary committee (1997) did not question the basic approach of the YOA and recommended some relatively minor amendments. The federal government responded to these reports with *A Strategy for the Renewal of Youth Justice*, a 1998 policy paper, which included an announcement that rather than amending the YOA, the government would be introducing a bill that would replace the

23. *R. v. D. (C.); R. v. C.D.K.*, 2005 CarswellAlta 1869, [2005] S.C.J. No. 79 (S.C.C.).

YOA with a new youth justice statute. This sent a message to judges and other youth justice professionals that rather than tinkering with the existing rules, a new legal approach to youth justice was being taken. For example, the YCJA sentencing provisions were entirely different from those under the YOA. One effect of the new provisions was that YOA case law was of limited relevance regarding appropriate sentencing. This effect can be seen in the *R. v. P. (B.W.); R. v. B.V.N.*[24] decision of the Supreme Court of Canada in which the Court concluded that deterrence was not a sentencing objective of the YCJA. The court stated: "The YCJA created such a different sentencing regime that the former provisions of the YOA and the precedents decided under it ..... are of limited value. The focus must be rather on the relevant provisions of the new statute." The lesson here appears to be that if a new legal approach is being taken, it is advisable to make a clean break from the old law by enacting a new statute or at least removing any existing provisions that might conflict with the new provisions.

4. *System-Wide Reform*. The drafting approach of the YCJA was system-wide and coordinated. It addressed the key decisions at all stages of the youth justice process. It took into account how decisions by police and prosecutors at the front-end of the system can have an impact on the achievement of back-end objectives. For example, the increased use of extrajudicial measures to reduce the flow of cases into the courts probably helped to reduce the number of custodial sentences. This reduction, in turn, meant no youth court record or a shorter youth court record for youths, which can be important factors used by courts to increase the severity of a sentence. In short, it is important to consider the potential impact of a legislative change in one area of the justice system on other areas.

5. *The drafters*. Within the federal government's broad policy direction on youth justice reform, there was considerable scope regarding how it should be turned into legislative provisions. Many judgments on policy matters and specific wording were made by the DOJ's small legal team, which was responsible for designing and drafting the YCJA. For example, the government's objective of reducing custodial sentences left open important issues, such as the types of cases eligible for custody and how explicit and restrictive the wording of the sentencing

24. *R. v. P. (B.W.); R. v. B.V.N.*, 2006 CarswellBC 1528, [2006] S.C.J. No. 27 (S.C.C.).

provisions should be. These judgments by the legal team were, of course, subject to approval by the DOJ as well as by Parliament. Subject to these approvals, "who was holding the pen" mattered.

Implementation of the Act

1. *The length of the reform process*. The process of legislative reform took roughly seven years from establishment of the Federal/Provincial/Territorial Task Force on Youth Justice to passage of the YCJA in 2002. The government then delayed the coming into force of the Act for one year to allow for planning and implementation across the country. This long time period was important to the successful implementation of the YCJA. During these years, the DOJ legal team carried out extensive consultations with provincial government officials and others. Especially after the introduction of the YCJA bill in 1999, youth justice professionals became very familiar with the issues, new policy directions and legislative proposals, which allowed for a smoother transition to the new approach to youth justice.
2. *Federal-Provincial-Territorial cost sharing agreement*. A few years before the Act was passed, the DOJ reached a new cost-sharing agreement with the provinces/ territories, which included nearly $1 billion in federal funding. The agreement included financial incentives for the provinces to spend the funds in ways that were consistent with federal policy objectives (e.g., increase diversion). This helped to shift provincial programming and practice toward the Act's policy objectives well before the Act came into force.
3. *Professional education programs*. In the year between passage of the Act and its coming into force, DOJ carried out a wide range of educational programs, including a five-day judicial education program in collaboration with the National Judicial Institute. The program was followed by similar judicial education programs at the provincial/territorial level. In addition, DOJ lawyers carried out two-day training programs for other youth justice professionals (e.g. police, prosecutors) in the provinces and territories. In contrast, the DOJ did not carry out similar professional education programs regarding the 2012 amendments to the grounds for pretrial detention. The absence of professional education in this area may partially explain why

the amendments had only limited impact in the early years after coming into force.

4. *Educational materials*. DOJ developed various educational materials on the YCJA, including *YCJA Explained*, a comprehensive on-line explanation of the Act for youth justice professionals. In addition, a booklet, entitled *The Youth Criminal Justice Act: Summary and Background*, provided a basic explanation of the Act that was suitable for a variety of audiences. The goal of these materials was to promote wide understanding of the new act and the rationale behind it.

5. *Special project funding*. DOJ established the Youth Justice Renewal Fund to provide special funding for innovative pilot projects and their evaluation related to the Act's objectives. It also provided funding for "capacity-building" projects to assist Indigenous communities in developing alternative resources intended to make it more likely that Indigenous youths involved with the justice system could remain in their own communities. As with the F/P/T cost-sharing agreement, this funding began prior to the coming into force of the YCJA, thereby encouraging program changes that could help in the successful implementation of the YCJA.

6. *Provincial/territorial implementation*. Provinces/territories played an important role in the implementation of the YCJA and the achievement of the Act's objectives. Provinces not only pay most of the costs of the youth justice system; they also make decisions regarding programs, training and policies that can have a major impact on whether federal youth justice legislation is successfully implemented. Based on the success of the YCJA, it appears that provinces made implementation decisions that were consistent with the Act's policy objectives.

Getting the YCJA through Parliament

The best law reform proposals on paper are obviously of limited value unless they can be enacted. Therefore, another lesson of the YCJA is to understand factors that help to explain how the YCJA was able to get through Parliament, despite opposition from several critics, including some provincial governments and political parties. These factors include:

1. *Areas of agreement*. At a general level, there were several areas

of agreement, including a broad consensus that the YOA needed to be changed. According to polls, the YOA was very unpopular. The minister acknowledged that it was the most unpopular of all federal statutes. There was also broad agreement that certain issues should be addressed, such as the high use of youth incarceration, particularly for less serious offenders. It was generally agreed that having one of the highest youth incarceration rates in the world was embarrassing and needed to be changed. Many of the key principles on which the YCJA bill was based were, in most respects, not controversial — e.g., restraint, accountability, proportionality, and rehabilitation. However, throughout the parliamentary process, there was significant disagreement about how these principles should be applied.[25]

2. *Majority government*. The majority Liberal government was a major factor in getting the bill through Parliament. Despite opposition from get-tough critics (e.g., Ontario's Conservative government) and YOA supporters (e.g., Bloc Quebecois), the government's majority in Parliament meant that it did not have to make significant compromises to get the YCJA passed. In addition, the government had the political commitment and party discipline to ensure that the YCJA passed.

3. *Serious offending vs. less serious offending*. The YCJA contained a two-pronged policy approach that made a distinction between how to deal with serious offences and less serious offences. It was intended to counter the perception of some members of the public and the media that youth justice legislation was too lenient with youths who committed serious offences. Although not discussed in this paper, the YCJA contained some "tough" provisions, including presumptive adult sentences for serious violent offenders and publication of a youth's identity after a youth sentence for a presumptive offence. These provisions helped to balance the "softer" approach of reducing use of the court and incarceration for less serious offenders. These tough provisions were emphasized in the government's initial communication pieces on the YCJA. As it turned out, the tougher provisions were either held to be unconstitutional by the Supreme Court of Canada or in practice had little or no effect.[26]

25. See Barnhorst, R. (2012), note 18 above, for a discussion of areas of controversy during the parliamentary process.
26. See *R. v. B. (D.)*, 2008 CarswellOnt 2708, [2008] S.C.J. No. 25 (S.C.C.).

4. *Research and statistics*. The YCJA proposals were based on research and statistics that provided independent evidence of problems in the youth justice system and how to address them. The DOJ legal team received significant help from academic criminologists in obtaining this information. During the parliamentary process, critics of the bill did not produce contradictory research or statistics to counter the YCJA proposals.

5. *Size and complexity of the YCJA*. Throughout the parliamentary process, the YCJA was often criticized by politicians or witnesses for being too large and too complex, making it difficult to read for some.[27] Despite the criticism, the size and complexity of the bill may have helped its passage. It was difficult to make simple, media-friendly criticisms about the bill as a whole because of the wide range and diversity of issues being addressed by the bill. Although most people commenting on the Act were neither totally opposed nor totally supportive, they were able to find areas of the Act with which they agreed. The conflicting positions enabled the Liberal Government to argue that it was taking a balanced approach that was a reasonable middle ground in a contentious and complicated area of justice policy.

Conclusion

The YCJA has been successful in achieving its policy objectives and it has received international recognition as progressive legislation that is a model for reform in other countries.[28] Indicators of its success in achieving restraint are the major changes in the operation and outcomes of Canada's youth justice system under the YCJA. These changes are in sharp contrast to the experience in the adult system. Following is a summary of some of the comparisons discussed in this paper:

27. It is important to recognize, however, that in the key decision-making areas of the YCJA, which are used on a daily basis by police, prosecutors, defence counsel and judges, the relevant provisions are clear and easy to understand.
28. Solomon, E. and Allen, R, (2009). *Reducing child imprisonment in England and Wales - lessons from abroad*. Prison Reform Trust, http://www.juvenilejusticepanel.org.

Changes in Youth Criminal Justice System and Adult Criminal Justice System — 2002/03 v. 2020/21[29]

	Youth Criminal Justice System	Adult Criminal Justice System
Custodial sentences	95% decrease	7% decrease*
Custodial sentences as a percentage of guilty cases	17 percentage point decrease	8 percentage point increase**
Incarceration rate	84% decrease	20% decrease
Number in pretrial detention	77% decrease	67% increase
Pretrial detention rate	70% decrease	30% increase
Charge rate	78% decrease	22% decrease
Court cases	81% decrease	39% decrease
Court caseload mix	Shift to more serious cases	Stable – no significant change

* If the massive 46% decrease in 2020/2021, the first year of the COVID pandemic, is included, the decrease would be 49%.
* * If 2020/21 is included, the increase would be 3 percentage points.

As noted earlier, the changes in the youth justice system were not accompanied by an increase in the youth crime rate or youth crime severity.

Greater restraint in the use of both the youth and adult criminal justice systems has been an objective stated by federal Liberal governments and others for decades.[30] Although, as the above table indicates, there are some signs of increased restraint in the adult system (e.g., decrease in adult custodial sentences), they pale in comparison to the evidence of much greater restraint in the youth system. There are also areas in which the youth system has moved toward greater restraint while the adult system has moved in the opposite direction (e.g., 30% increase in the number of adults in pretrial detention). After so many years of calls for restraint in the use of the justice system, the YCJA and the factors related to its success have changed those aspirations of restraint into a reality of restraint in law and practice. For those who are interested in bringing about similar results in the adult system, it appears that there are many

29. The time frames for the changes in the table vary depending on available data. See the relevant sections of the paper for the years covered by the statistics.
30. Webster et al, "The Will to Change: Lessons from Canada's Successful Decarceration of Youth", *Law & Society Review*, Volume 53, Number 4 (2019).

lessons to be learned from the YCJA, the process of its development, and its implementation.