



**Canadian Centre for Policy Alternatives
Centre canadien de politiques alternatives**

Getting Tough On Kids

**Young Offenders and
the “Law and Order Agenda”**

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November 1999



ISBN:0-88627-212-2

Abstract

The Canadian public gets most of its information about young offenders from the media. This source seriously misrepresents both the quantity and quality of youth crime. Yet it is this misinformed public opinion which tends to drive public policy in the area of criminal justice.

An examination of the statistics and the literature shows that evidence does not support the generally-held view that youth crime is rampant. Yet the demonization of our children by politicians and the media continues.

This paper examines briefly the situation of Aboriginal youth, youth "gangs", and girls—all of which have been singled out as especially bad or dangerous. It concludes that public concerns about these groups, although not to be dismissed, have been seriously exaggerated because of extensive misinformation about young offenders.

Alternatives to the Canadian style of justice system have been successful elsewhere in the world. So have some of the more recent efforts locally. This paper describes some of these as well as a few of the programs which have been failures. It briefly summarizes risk factors associated with youth crime, and makes recommendations for future action to deal with young offenders in a system which emphasizes healing, restoration of harmony, rehabilitation and the participation of the community.

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Getting Tough on Kids: Young Offenders and the "Law and Order" Agenda

"If the only tool you have is a hammer, you see every problem as a nail." (Mathews).

"There is a big difference between making young people accountable and making them disposable." (QCJJ).

I. Introduction

Canadians believe that there is a crime wave among young people. They also believe that today's young offenders are far more violent than in the past, and that they are being treated too leniently by the criminal justice system.

This paper will examine these beliefs, based on an assessment of the current statistics on young offenders and the facts about the harshness of our justice system. It will look at specific areas of concern that are raised regularly by the media and politicians, including an assessment of the new *Youth Criminal Justice Act (YCJA)*. Finally, it will critique the "get tough" approach, and recommend programs aimed at reducing the use of incarceration, while at the same time reducing recidivism and increasing public confidence in the criminal justice system.

II. "Tough" Public Attitudes: The Misinformation Campaign

1. The degree of reliance on misinformation

Where do Canadians get the information about young offenders that convinces them that youth crime is rampant, violent and leniently treated? Is this information accurate? A study by Jane Sprott reveals that virtually everyone who is not involved directly in the youth justice system gets her or his information about young offenders from the news media. After investigating the accuracy of public perceptions gleaned from these sources, Sprott found that people overestimate the amount of serious crime, believe that crime is increasing (despite statistics to the contrary), and underestimate the harshness of the *Young Offenders Act (YOA)*, the federal statute governing young offenders in Canada (Sprott).

Sprott points out that although only 22 percent of principle charges against young offenders in Ontario in 1995 involved violence, 94 percent of the stories about youth crime appearing in a sample of Toronto newspapers involved crimes of violence. It is not surprising, then, that the public has the perception that violent crime is rampant among young people. As criminologist Rosemary Gartner says, "people's perceptions and fear of crime is not affected by statistics. It's affected by the media, what they read in the newspaper every day, see on TV, the political discussions going on around them" (Appleby and Palmer).

Seventy-four percent of the people interviewed in Sprott's study, for example, believed that the murder rate in Canada had increased. This was (and is), of course, not true—the murder rate has been falling steadily for decades. Interviewees also seriously underestimated the harshness of the *YOA*. For example, only 6 percent knew that the maximum sentence for young offenders for a minor assault was as high as two

years (54 percent of the sample thought it was six months). Only 14 percent knew that a 17-year-old could be transferred to adult court for any offence—violent or nonviolent, serious or not, first offence or not. Only 20 percent knew that children could be transferred to adult court as early as age 14.

And the misinformation continues. A poll conducted by Angus Reid in August 1998 was reported in the *Globe and Mail* (Mackie). The paper headlined its story "Schools are more violent: poll," giving the impression that violence in schools is rising. The poll, however, said nothing of the kind. What it did say was that most adults *believe* that violence in schools is rising. One might ask why this is even relevant, since the data on violence in schools does not conclusively support this belief. Yet the *Globe* report is likely to convince its readers that crime in schools is increasing.¹

Predictably, a few days after this poll was released, a representative of the Canadian Safe Schools Network was heard to insist that violent incidents in schools had gone up over 100 percent, and that violence is part and parcel of school life now (CBC, 1998a). Others were categorical that "incidents of violence have taken a sharp downturn since the division revised its student conduct policy four years ago." This school superintendent reported a "phenomenal" drop in the number of students suspended more than once for violent incidents (Pritchard). And more recently, both police and education officials have said that Manitoba's schools are as safe as ever (Robertson).

It is interesting to note that despite the misconceptions that many Canadians have about the justice system, Sprott's study showed that her interviewees changed their "tough" positions on young offenders when given full and specific information. In fact, those who think youth court sentences are too lenient do not even favour custody in all cases. In Baron and Hartnagel's 1993 study conducted in the Winnipeg area, 78 percent of the respondents thought youth courts had become too lenient.

Yet most (62 percent) did not think sending youths to jail would stop them from committing crimes, and 70 percent thought rehabilitation was more important for youths than punishment (Baron and Hartnagel). This is encouraging data for those who would argue for fewer jail cells for youths, and for alternatives to custody.

2. Misinformation about the treatment of young offenders in Canada

Canada has one of the harshest regimes for young offenders in the western world. We often refer to the U.S. as the industrialized country which incarcerates more people per capita than any other, but the truth is that Canada incarcerates young offenders at twice the rate of most American states. We jail about 25,000 youths per year and have 4,000 in custody on any given day (Cayley, 1999). By contrast, Finland (population 5 million) in 1997 had only 10 children under age 18 in secure custody.²

Fully 34 percent of young people who go to criminal court in Canada end up with custodial dispositions (CCJS, 1998b; Doob, 1999)—not 16 percent, as reported by the *Globe and Mail* (Appleby, 1998b). A shocking 81 percent of those young offenders in Canada who are sentenced to custody are there for nonviolent offences. In 1991-1992, more children were incarcerated for failing to comply with court orders than for violent offences (47 percent compared to 38 percent) (Reitsma-Street).

The rate of custody in Canada has doubled since the introduction of the new *YOA* in 1984³ (Corrado and Markwart), and it continues to increase (CCJS, 1998b). In 1997, only 25 percent of Canadian young offenders were dealt with outside the criminal court system, compared with 53 percent in the United States, 57 percent in Britain and 61 percent in New Zealand (Department of Justice, 1999).

Further, Manitoba is one of the harshest jurisdictions in Canada when it comes to incar-

cerating youth (Corrado and Markwart). For example, between 1984 and 1988, Manitoba transferred 87 percent of those youths charged with murder to adult court, thus permitting the more serious adult sentence. The comparable numbers for other provinces were 54 percent for Ontario, 48 percent for British Columbia and only 15 percent for Quebec (Marron). Marcel Laurendeau, a Manitoba MLA, recently boasted that about half of all the young offenders in Canada who are transferred to adult court are Manitobans (Laurendeau). (Manitoba's population comprises about 3 percent of Canada's). About one-third of these children are being transferred to adult court for property crimes, and 7 percent go to adult court for failing to comply with conditions of the court (CCJS, 1998a).

According to Statistics Canada, in 1997-1998 Manitoba was charging far more youths with criminal offences than any other province except Saskatchewan. Whereas the average overall figure for Canada was 453 cases per 100,000, Manitoba's rate was 792 (CCJS, 1999a).

The dramatic differences among provinces in the rate of taking youth to court prompted criminologists Tony Doob and Jane Sprott to say the differences are due more to "the response of adult criminal justice officials to crime than ... to the behaviour of young offenders" (Doob and Sprott, p. 187). In this regard, it is interesting to note that Quebec has the lowest rate per capita of youth incarceration in the country (Corrado and Markwart).

Quebec also notably has the most integrated system for dealing with the *YOA* of all of the provinces. This involves "multi-disciplinary assessment and intervention teams operating in integrated social services centres [with] a common purpose—rehabilitation. Where many provinces fail to deal with the sometime contradictory goals of the *YOA*, Quebec has "administratively superimposed and applied a clear and concerted policy involving extensive diversion, and a multi-disciplinary treatment focus" (Corrado and Markwart).

The concerted effort of the Quebec system to steer young offenders away from jail and toward rehabilitation programs in the community has resulted in a drop in its prison population by almost 10 percent (*Globe*, 1998). One in 57 youths who commit an offence in Quebec end up in court, while in Ontario the number is one in 17 (Cayley, 1998). Meanwhile, the number of young offenders in custody in Manitoba is increasing to the point where the province is building 263 new jail cells (Kuxhaus). The cost of keeping one youngster in jail for a year in Manitoba is estimated at about \$46,000 (MCYS). Other estimates are as high as \$100,000 per year (see page 26).

Both Quebec and New Brunswick have recently announced policies of decarceration. In 1996, Quebec's public security minister called for the closing of up to six of Quebec's prisons and a reduction in prison numbers of 13 percent. New Brunswick for its part promised a reduction of 25 percent in jail capacity. Most of the savings in New Brunswick (\$54 million) will be diverted to community-based programs and hiring more probation officers. Due to the government's efforts to educate the citizenry about the reforms, there has been little or no negative reaction from the public (Cayley, 1998).

With respect to the misperception that youth court sentences are too lenient, it is important for the public to know that sentences in youth court are often much tougher than sentences for the same offences in adult court. A person sentenced to two years as a youth is likely to serve the full two years. There is no time off for good behaviour, no automatic consideration for parole at one-third of the sentence and no statutory release after two-thirds of the sentence (Corrado and Markwart). Although there is a mechanism by which young offenders can apply to have part of their sentence converted to probation, the review is not automatic, nor is it applied with any consistency from jurisdiction to jurisdiction.

The same two-year sentence is much more lenient in adult court:

- In adult court, a two-year sentence is regularly reduced by at least two-thirds (the earliest date at which one can receive full parole). Therefore a two-year sentence becomes eight months in jail with sixteen months parole.
- An adult is eligible to receive day parole (returning to the prison at night) at one-sixth of her/his sentence. Thus for a two-year sentence, she or he could potentially be "on the street" in four months.
- And in virtually every case, even where parole has been denied, an adult is automatically released at two-thirds of his sentence—potentially seven months sooner than a young offender in the same circumstances.

Put another way, a two-year sentence for a young offender is more or less the equivalent of a six-year sentence for an adult. In fact, Bala and Lilles (1989) note the paradox that youth courts have been known to refuse to transfer a youth to adult court for the very reason that the young offender will do more jail time in the youth system.

Meanwhile, we know that longer custody sentences (and custody in general) are not an effective deterrent. On the contrary, for young offenders, the longer the sentence, the sooner they are likely to reoffend on release (Corrado and Martwart). Of those who have served time in custody, 75 percent will reoffend (Marron). A recent comprehensive review of available research done for the Ontario government found no evidence that young offenders are deterred by stiff sentences; in fact, there was some evidence that harsh punishments make kids worse (Leschied et al.).

3. Misinformation drives public policy

Despite these facts, an often misinformed public has driven public policy makers to “toughen up” the *YOA*, emphasizing more punishment for more children. For example, in response to public concerns, the federal government passed amendments to the *YOA* which increased maximum sentences for murder from 3 to 5 years. In 1995, further amendments increased the maximum sentence for murder from 5 to 10 years. The 1995 amendments also created a presumption for 16- and 17-year-olds that they would be transferred to adult court for certain serious violent offences. These amendments have resulted in more and longer custodial sentences.

Also in response to public concerns, there were at least three Independent Member’s Bills before Parliament in 1998, all demanding that extraordinary measures be taken against young offenders. One of these would have required, among other things, that the age of “accountability” be changed to ages 10 to 16; that youths may be designated dangerous offenders (with extremely serious custodial consequences); that *all* youths aged 14 and 15 charged with violent offences be tried in adult court; and that those convicted of violent crimes be kept in closed custody (Ramsay).

Reactions such as these are fuelled by inaccurate portrayals of the amount of crime committed by young people. These views are not exclusive to any particular political ideology. For example, a Manitoba NDP document says, “An alarming number of children under 12 are repeatedly committing (sic) acts which are considered criminal, but for which there can be no charges” (NDP, 1994). In fact, only about 3 percent of youth accused by police of crimes are ages 10-11 (CCJS, 1998a), and of the tiny numbers of under-twelves who get into trouble, only “a very small proportion commit ‘serious’ police-reported crime.” Most of their crimes are theft under \$5,000, mischief and break and enter (Clark and O’Reilly-Fleming).⁴

It is true that we have to find ways to deal with the really violent young offender, but the answer is not legislation that would cast a wide net to incarcerate vast numbers of youngsters. Statistics Canada points out, for example, that common assaults (which account for fully 60 percent of reported violent incidents) include behaviour like “pushing, slapping, punching, face-to-face verbal threats, and threats by an act or gesture” (Tremblay). Waving a fist under someone’s nose can be an assault. Do we want to send our children to jail for this type of behaviour?

Like “assault,” the word “robbery” conjures up images of desperate and dangerous gun battles in banks. Yet Statistics Canada notes that over 40 percent of robberies involve no weapons (Kong). Purse-snatching meets the definition of robbery. Under proposed new legislation, this behaviour could routinely result in jail sentences for children.

And what of the young offender who does use a weapon? Well, as Doob and Sprott point out, under our criminal justice system, “virtually anything can be a ‘weapon’” (1998). “Weapon” does not always mean gun or knife. It can mean broom or fist or book. Are these the types of “weapons” for which we want to see our young people incarcerated? Judge Lucien Beaulieu rightly warns against “[em-barking] merrily on the bandwagon that carries us to . . . tougher law and sentences for youth” (1994).

4. The new *Youth Criminal Justice Act* (YCJA)

In March 1999, Justice Minister Anne McLellan responded to public pressure by introducing the new *Youth Criminal Justice Act*. While the new bill purports to divert more children out of the criminal justice system, it in fact will result in longer and more punitive sentences, allowing judges to incarcerate for non-violent, victimless and minor offences.

Principles of the YCJA

The Bill's Preamble talks about reducing "the over-reliance on incarceration for nonviolent young persons." Yet there is nothing in the Bill which prohibits custodial sentences for nonviolent crimes, and much which will lead to this result. The Declaration of Principle also emphasizes rehabilitation and reintegration, but these sensible principles are seriously undermined by new provisions requiring adult (lengthy) sentences of incarceration.

Custodial sentences

For example, under the YCJA, custody is explicitly set out as a possible sentence where a young person has failed to comply with previous non-custodial sentences (s. 38). The infraction could be anything from failure to keep a curfew to failure to live at a particular address to failure to report to a probation officer. A youngster may also go to jail where he or she has a prior record and is now convicted of an indictable offence for which an adult could receive more than two years. This could include, for example, possession of small amounts of soft drugs, impaired driving, and school locker break-ins.

There is also a "basket" clause which would allow a judge to incarcerate wherever it is thought that a noncustodial sentence would be "inconsistent with the purpose and principles set out in section 37."⁵ Thus, incarceration is permitted for virtually any offence. Young people can (and will) be sentenced to custody for minor and nonviolent offences, thus putting the lie to the lofty principles enunciated earlier.

Violent offences

The YCJA also contains new definitions for "violent," "nonviolent" and "serious violent" offences, and a judge is not to order custody unless (among other things, including those noted above) the young person has committed a "violent offence" (s. 38).

"Violent offence" is defined as an offence that "causes or creates *a substantial risk of causing bodily harm*" (my emphasis). Thus a judge

is permitted to consider custody for a young person involved in an offence in which:

- someone *might* have sustained bodily harm but was not in fact harmed;
- the bodily harm which did not in fact occur might have been as slight as a bruise; and
- the young person has never been in any kind of trouble with the law previously.

By contrast, the present *YOA* says a young person who commits "an offence that does not involve serious personal injury" should be dealt with by means of noncustodial dispositions whenever appropriate (S. 24(1.1)). This standard of "serious personal injury" is much higher than that of the proposed standard of "creating a substantial risk of causing bodily harm." The new version can be seized on by courts to justify harsh custodial sentences for essentially nonviolent behaviour.

Mandatory adult sentences

The age for mandatory adult sentencing has been lowered from 16 to 14. Fourteen-year-olds will now be sentenced as adults for virtually any offence except the most minor (that is, for any offence for which an adult could receive a sentence of more than two years: possession of small amounts of soft drugs, school locker break-ins, etc.). This will happen unless the young person succeeds in an application to the judge at the time of sentencing (Ss. 61, 62). There will no longer be automatic access to a transfer hearing. This creates a new and very serious reverse onus situation for young offenders.

Three-strikes-and-you're-out

Finally, if the YCJA is proclaimed in its present form, Canada will have its first "three-strikes-and-you're-out" law—designed especially for children. The Bill significantly enlarges the group of "presumptive" offences by

including any “serious violent offence” for which an adult could receive more than two years if the young person has already been found guilty of two previous “serious violent offences.” (S. 61). All of these youngsters will be sentenced as adults unless they can satisfy the new reverse onus at the sentencing hearing.

When we look at the definition of “serious violent offence,” we begin to see how broad this group of offences now is. A “serious violent offence” is an offence which “causes or creates a substantial risk of causing serious bodily harm” (my emphasis). Thus, a young person can be hijacked into an adult sentence if he or she has committed three offences in which again nobody actually got hurt. And even in the event that someone did actually get hurt, we still have no idea what constitutes “serious” bodily harm for the purposes of this provision. These are definitions which do not exist for adults under the Criminal Code.

Meanwhile, research in the United States has shown that the three-strikes law is no deterrent. In California, for example, “crime has fallen by about the same rate in counties that aggressively enforce the three strikes law as those who do not” (Werier). In California the penalty for three strikes is life in prison, yet the age group that was supposed to be deterred by this law is actually committing more crime than before. As well, most of those convicted and locked up for life are nonviolent offenders, mainly guilty of drug possession and property crimes.

5. Conclusion

There are other provisions of the proposed legislation that cause concern, notably those which permit the identification of more young offenders. But in view of all of these changes, perhaps we need to be looking within ourselves for the roots of our vindictive response to youth crime. Nicholas Bala, in noting that custody dispositions have increased “significantly” since the *YOA* came into effect in 1985, says:

One has to wonder whether some of the hostility towards the *YOA* is part of ... anti-youth sentiment. . . . Some of the public concern about youth crime may be masking concerns about youth in general—about their lack of deference to adults, or about their rising unemployment rates. It may even reflect unease among some Canadians about increases in the numbers of visible minority youth in Canada (1994).

It is important to recognize these motives in ourselves, and to reassess and reaffirm our fundamental faith in the decency of our young people. Canadian youth are accomplishing wonderful things on a daily basis, and need to be recognized for this. For those few whose behaviour causes concern for public safety, appropriate measures can be taken without criminalizing and incarcerating large numbers of youth for minor transgressions.

III. The Politics of Getting Tough on Young Offenders

In light of the high costs and limited benefits of incarceration, one wonders why so many state and county policymakers and professionals continue to rely on it so heavily. The reasons have little or nothing to do with public safety or with controlling juvenile crime. Instead, they have to do with such issues as providing jobs, keeping the economy of some small community going, and giving the appearance of being “tough” on juvenile crime (Schwartz, p. 57).

Getting tough on crime is a very popular political policy, apparently guaranteed to win votes. The 1998 United States election campaign was one of the first to show how effective the “get-tough” policy can be. When George Bush’s workers ran TV ads highlighting the release of black ex-convict Willy Horton, who then committed a vicious crime while on

parole, Bush's election was virtually assured. Why? Because he promised to get tough on crime.

Al Bronstein, head of the National Prison Project of the American Civil Liberties Union, described the effect of this ad campaign: "all of our politicians thereafter began to realize that the way to win elections, which has nothing to do with crime, is to promise to be tough on prisoners, to be tough on criminals, to be tough on offenders, to be tough on ex-offenders" (Cayley, 1998).

Similarly, in Britain, a serious crackdown on young offenders took place in the wake of the murder of toddler James Bulger by two ten-year-olds. The political response was to reduce immediately the use of "cautions" (where police issue warnings to youngsters rather than laying a charge), and to introduce military-style boot camps. "We must condemn a little more and understand a little less," intoned then-Prime Minister John Major. Not to be outdone, the Labour Party proposed abolishing the legal doctrine which in Britain sets the minimum age of 14 years at which a child can be convicted of a crime (Economist, 1997). The age is now 10.

Until the late 1980s, by tradition, British criminal justice policy was nonpartisan. Politicians did not take advantage of each other on the issue (Cayley, 1998). However, in the 1990s, all that has changed, and politicians in Britain, as in the U.S. and Canada, now score points off each other, often using the lives of troubled youngsters as ammunition.

Elsewhere in the world, too, attitudes have begun to harden in recent times. Whereas countries like Sweden and the Netherlands were once known for their more preventive and rehabilitative approaches to crime and punishment, since the 1980s their prison populations too have begun to inch upwards. Much of this change is due to the crackdown on drugs, but many ascribe the change to the neo-liberal, conservative-social-values politics of the eighties and nineties (Cayley, 1998; Baron and Hartnagel).

In Canada, even the harshest treatment is

not enough for some politicians. Ontario's crime commissioner, Jim Brown, considered Ottawa's recent efforts to toughen up the YOA as "namby pamby," "wishy washy" and "wimpy". Ontario Solicitor-General Bob Runciman said he thought "Canadians would be extremely upset talking about mandatory release of a young offender . . . after three-quarters of their sentence" (McCann, 1998a). (Mr. Runciman did not refer to the fact that adults are automatically released after two-thirds.)

Recent examples abound of "playing the crime card" in order to win elections. Mike Harris handily won the recent Ontario election in part by promising to crack down on "squeegee kids." The Conservative "Blueprint" also called for "mandatory adult sentences for crimes involving weapons and repeated offences such as break and enter" (Cayley, 1999). *Globe* columnist Jeffrey Simpson said of the Harris approach: "'Tough on crime' is simplistic political trash talk, but it's part of a socially conservative message that plays well" (Simpson). Another observer said "every election campaign includes an appeal to the law-and-order crowd," describing the approach as "direct and consciously superficial" and concluding that "whether or not it works, it wins elections in 1999" (Barber).

Manitoba politicians seem to have taken a page from the Harris book. In the words of a recent *Winnipeg Free Press* editorial, "the Tories' decision to play the law and order card in the lead up to the [September] election does not come as a huge surprise" (*WFP*, 1999). The writer suggested that the Conservatives were emphasizing crime, not because crime was getting out of control, but because it was a "motherhood" issue that deflected attention from more difficult issues. The editorial concluded that the Manitoba government was overplaying its hand.

Recent measures proposed by the Manitoba government included a *Community Protection Act* (which is likely to run afoul of the *Charter of Rights*), a proposal to reduce substantially the availability of Legal Aid for young offenders, and the construction of a new \$3.3 million

court house for the sole purpose of conducting a single trial of 40 alleged “gang” members (Samyn). (That’s \$825,000 per alleged miscreant, in addition to the costs of lawyers, judges, clerks, sheriffs, and so on).⁶

Meanwhile, the Manitoba government has of late been slow to fund programs which would prevent crime and deal with underlying social issues and the consequences of crime. Community-based justice groups in Winnipeg say that “while the Filmon government has declared a pre-election war on crime and poured millions into a massive law-and-order campaign, it is several months late with grants to their grassroots organizations” (Nairne, 1999b). The John Howard Society provides 25 different crime-rehabilitation programs in Manitoba, including literacy and domestic violence prevention training, which are effective in preventing crime. Yet their provincial funding has been cut by about 40 percent since 1991. And as of June this year, their funding was already three months late, severely hampering their effectiveness.

Nor is it encouraging that during the recent election campaign, the New Democrats and Liberals were not prepared to swim against the tide of current trends to get tough on crime. In fact, pre-election information from the NDP stated that “violent crime has increased dramatically here in the past four years. Manitoba now has the highest rates of violent crime, youth crime, and auto theft in the country.” While the document goes on to espouse certain preventative programs, much damage has been done both in alarmist tone and inaccurate content. Tough talk on crime seems to have been the ruling objective (NDP, 1999).

Norval Morris, an expert on crime prevention and treatment, blames the “cancerous growth of imprisonment” on “political irresponsibility.” He says, “I shall not hazard a guess as to when our political masters will acknowledge that vote gathering by these mendacious means is a sin against the future” (Morris, p. 230).

IV. The Reality of Youth Crime

1. The statistics

The 1998 figures from Statistics Canada show Canada’s crime rate at a 19-year low, dropping for the seventh consecutive year. The rate is down 22 percent from 1991. Virtually all offence categories decreased in 1998—homicides, manslaughter, other violent crime, and property crime. Only drug offences were up. The overall crime rate was down 4.1 percent from 1997, and the violent crime rate dropped for the sixth consecutive year. The use of weapons has been declining since 1994. In 1998 only 4.8 percent of violent crimes involved weapons (Tremblay).

Manitoba just recorded one of the largest declines in violent crime among the provinces. The province’s rate fell 6.7 percent in one year. In Winnipeg the drop was 11 percent. Opinions differ as to what this means, however. While some claim that Manitoba’s 1998 violent crime levels are still 40 percent higher than in 1990, others point out that these can largely be accounted for by zero-tolerance policies and by the rise in the least serious category of assault. Elsewhere, as an example of how perception often belies actuality, the staid city of Victoria posted a higher violent crime rate last year than Winnipeg (Robertson, 1999b).

These general decreases also hold true for youth crime in Canada which fell for the seventh consecutive year. Four percent fewer charges were laid against youngsters across the country in 1998 than in 1997, with a 1 percent drop in violent crime and an 8 percent drop in property offences (Tremblay).

Manitoba’s youth crime numbers are dramatically down from 1997. The percentage change in the homicide rate was -66.9 percent (representing 4 homicides in 1998); sexual assault, -1.8 percent (85 offences); assault, -4 percent (965 offences); and robbery, -18.6 percent (331 offences). Thus total violent crime rates for youth in Manitoba were down 8.6 percent (much better than the national improvement of

2 percent, including both youth and adults).

Girls accounted for 23 percent of those youth charged in 1998 throughout Canada. Although the number of girls charged with violent crime has risen over the last decade, in 1998 the rate of involvement for girls remained constant. The rate of girls charged with violent crime remains much lower than the rate for boys (472 per 100,000 as compared to 1,310 per 100,000) (Tremblay).

2. Factors affecting the statistics

Researchers disagree as to what the statistics mean. This is because there are so many factors which can affect the numbers. For example, commenting on somewhat earlier statistics, Corrado and Markwart concluded that the per capita rate of young persons charged with *Criminal Code* offences, and especially violent offences, increased substantially between 1986 and 1992. Peter Carrington, on the other hand, looked at the same evidence and came to a different conclusion.

Carrington's argument is persuasive. He says that the data are suspect because 1986 was a year in which youth crime reports were unusually low, while 1992 was a peak year. Thus, rather than a trend toward more crime, the difference might represent nothing more than a fluctuation. As well, his research showed that the propensity of police to charge young offenders increased substantially during the 1980s. Thus, offences which never appeared in the crime statistics in 1986 show up as police reports in 1992 (Carrington, 1995).

Carrington further points out that the only category of crime which increased significantly during the period 1986 to 1992 was the lower level of assault (which, as we have noted, includes pushing, slapping, threats and even gestures). There was far less increase at the level of more serious violence (Carrington, 1995).

More importantly, in the more recent period between 1991 and 1996, the only increase in violent crime among youths has been in the

lowest level of assault. The number of serious assaults has either decreased or remained the same (Doob and Sprott).

There are many other factors which affect the statistics, giving us a false impression that more violent crime is being committed by young people. For example, the adoption of "zero-tolerance" policies by school boards means that an altercation in the school yard which used to be handled by the school is now showing up in youth court as an assault (Nolan, Graydon). Zero-tolerance approaches to domestic assaults also produce more charges, partly because police (in Manitoba, at least) often charge both parties rather than only one. Sexual assaults today are being reported to police whereas in the past they were not. Thus the increased numbers do not necessarily mean that more sexual assaults are being committed. They do mean that the statistics reflect reality more accurately.

Statistics Canada says "as the tolerance for certain crimes lowers, reporting to police will increase, driving crime statistics upward. For example, increased education in the areas of family violence, sexual assault and youth crime have lowered society's tolerance for these behaviours, which, in turn, may encourage victims and witnesses to report to police" (Kong). Also, "over the last few decades, amendments to Canada's definition of criminal behaviour . . . may have influenced reporting to police as well as the nature of reported incidents" (Tremblay).

We need to be cautious, too, about increases expressed as percentages. In some cases a very tiny increase in the actual number of offences reported to police can look alarming when expressed in this way (Carrington, 1995). For example, it may be reported that "robberies have increased by 100 percent"—an alarming figure unless it turns out to mean 4 robberies rather than 2.

In another study, Carrington found that rates at which 12- to 15-year-olds were charged by police increased enormously between the years 1980-1984 and 1995. For example, in Saskatchewan, 25 percent of those who were apprehended by police were formally charged in years

prior to 1985. In 1995, however, 76 percent were charged. So even though the number of actual incidents may not have changed at all, the statistics reflect a 200 percent increase in numbers of charges (Carrington, 1998). Without this explanation, a casual observer could be forgiven for being alarmed.

It is important to observe again that large numbers of youths end up serving time in jail simply because they have failed to comply with some condition of their probation order. This could be anything from breaking curfew to failing to live at a designated address. In some institutions, fully 20 percent of the youths are in custody for failing to comply (Marron).

There are those who claim that decreases in crime statistics are also misleading. For example, the increasing use of alternative measures (which provide for the diversion of young offenders from criminal proceedings) is often cited as an explanation for any decrease in numbers of youth offences in the statistics (Haasbeek). Statistics Canada, however, says the data show that even the rate of youths who have come to the attention of the authorities but have *not* been charged has been declining since 1991. "This suggests that the decrease in youths charged is not simply a reflection of increased use of alternative measures." (Kong).

3. Conclusions from the statistics

When we look at crime statistics, especially with these factors in mind, we are compelled to conclude that crime is decreasing—both overall and among youth. The quantity and quality of youth violence in Manitoba is also decreasing, and hysterical reactions by the public and the politicians demanding tougher measures are not justified.

The larger question remains: how can we best deal with young offenders so as to ensure that they do not reoffend? We know that harsh treatment (often masquerading as the enforcement of "accountability") does not work to reduce recidivism. As Anthony Doob says, "In

this country, if incarceration worked, you wouldn't see Saskatchewan having such a high crime rate when it has the highest incarceration rate in the country" (Appleby, 1998a). Even for young offenders who commit serious offences, it is important to devise alternatives to jail if we are to see the quality of our lives and the safety of our communities improve.

V. Special Concerns: Aboriginal Youth, "Gangs" and Girls

Much attention is being drawn these days to certain categories of young offenders. Continuous reference by the media and by public figures to Aboriginal young offenders, youth "gangs," and violent girls compels us to take a closer look at these groups in order to illustrate the degree of myth and misapprehension which exists about young offenders.

1. Aboriginal Youth

Ethnic minorities tend to be over-represented in jails and criminal courts in both Canada and the U.S. For example, African-Americans are incarcerated in the U.S. at a rate 7.5 times that of Caucasians (Morris, p. 214). In Canada, and particularly in Manitoba and Saskatchewan, Aboriginal people are also vastly over-represented in the criminal justice system.

Before World War II, the percentage of Aboriginal people in jails in Canada and their proportion in the population was more or less the same. Today, in Manitoba, only 12 percent of the population is Aboriginal, yet about half of the jail population (47 percent) is Aboriginal (Cayley, 1998). In 1991, Aboriginal women comprised 67 percent of the inmate population at the Portage Correctional Institution for women. In 1990, 64 percent of the Manitoba Youth Centre inmates and 78 percent of the Agassiz Youth Centre inmates were Aboriginal (Hamilton and Sinclair, 1991). In 1998, Abo-

original youth comprised 69 percent of the youth in custody in Manitoba (MCYS). What happened in those intervening fifty years, and what can be done about it?

Aboriginal young offenders in Manitoba receive open custody sentences which are, on average, twice as long as those given to non-Aboriginal youths. Data from 1991 indicated that 18 percent of Aboriginal youths received closed custody sentences compared to 11 percent of non-Aboriginal offenders. 35 percent of Aboriginal youths held in pre-trial detention were released in less than three days compared to 59 percent of non-Aboriginals. 34 percent of Aboriginal youths spent more than 28 days in pre-trial detention compared to 16 percent of non-Aboriginals. More than 90 percent of female young offenders held on remand were Aboriginal (Hamilton and Sinclair, 1991).

While the crime rate overall in Canada is steadily declining, the proportion of federal Aboriginal prisoners has increased by 6 percent since 1991. A maturing Aboriginal baby boom is likely to drive this number higher, since "it is one of the surest laws of criminology that young men commit more crimes than other segments of the population." A doubling of the proportion of Aboriginals in jail is projected over the next ten years if nothing else changes (Cayley, 1998).

The discriminatory patterns observed by Judges Sinclair and Hamilton, authors of the *Aboriginal Justice Inquiry Report (AJI Report)*, led them to conclude unequivocally that systemic and individual racism permeates the criminal justice system in Manitoba. One way to explain the enormous discrepancies detailed in the *AJI Report* would be to suggest that Aboriginal people are being charged with more serious offences than others, thus pushing up the numbers for incarceration. Yet the *AJI Report* concluded that "seriousness of the offence is not an adequate explanation for Aboriginal incarceration rates." Even for "common offences" (which include mischief, wilful damage, theft of less than \$1,000, and common assault), it was found that Aboriginal men aged 18-34 were

more likely to receive more and longer custodial sentences. While poverty, marginalization, and social and economic disadvantage all have a part to play, the role of racism must not be underestimated.

Despite the thorough and well-substantiated arguments of the *AJI Report* in favour of making serious changes to the system to accommodate the reality of Aboriginal society in Manitoba, subsequent governments have failed to act decisively. As well, prominent members of the community have attempted to undermine the impact of the *AJI Report*, not least of all the Chief Justice of the province, who has denied publicly that there is any systemic bias within the criminal justice system (Mallea).

Yet some efforts are being made. One program instituted recently in Winnipeg is the new Aboriginal Ganootamaage (Speaking for) Justice Services. Both adult and young offenders can be diverted to the new service, where they might be sentenced to community service, restitution or treatment programs. Both the victim and the offender must agree use this service, and violent crimes are unlikely to be handled there. Such a program has been under way in Toronto for six years, and it is hoped that the program will result in a lower rate of recidivism (Redekop).

This represents a start in what should be a coordinated and concerted effort to reduce Aboriginal incarceration rates to reflect more accurately their proportion of the population at large. The *AJI Report* is full of sensible prescriptions which would go a long way to correcting the situation. With respect to Aboriginal youth, there is a strong recommendation "to develop crime prevention programs for youth, based on the development of a full range of employment, cultural, social and recreational opportunities".

Finally, the recently elected NDP government has already pledged that it will implement the *AJI Report*. In doing so, it is expected that a parallel and separate justice system for Aborigi-

nal people will be established, drawing on earlier experimental efforts such as the remarkable healing circle at Hollow Water. It is hoped that this will be a prototype in Canada for implementing an holistic justice system for Aboriginal peoples. Such a system might well represent a breakthrough in terms of overhauling the dominant European-style system in operation elsewhere in the country—not only for Aboriginal people, but for everyone.

2. "Gangs"

"Gangs" are referred to here in quotations because the public, the police and the media have very different ideas about what constitutes a "gang." While police departments often use an acknowledged set of criteria to identify "gang" members⁷, the media are not so scrupulous. Any crime committed by more than one young person may be described by the media as a "gang-related" crime. Any gathering of young persons for any purpose may be described as a "gang." The impression created is that "gangs" of marauding young people are continually threatening law-abiding citizens (Schissel).

In Manitoba, and in Winnipeg particularly, it is true that there are identifiable "gangs". However, the numbers do not warrant the current escalation in public fear of this phenomenon. Nor do the types of activities in which members may be engaged.

Rhetoric within in the media and the legislature in Manitoba has been highly inflammatory. It was claimed in the legislature, for example, that "the horrid threat" of street gangs, growing like a "cancer," was responsible for an "astronomical increase in violent crime" (Hansard). While it was true that the government of the day had largely failed its mandate in the criminal justice portfolio, intemperate language by the opposition only fuelled fears among the public. Partisanship in this area served no useful purpose and unnecessarily raised the profile of "gangs," whose numbers had in fact stabilized and begun to drop by 1998

(see below).

The public has a legitimate right to be concerned about the presence of criminal "gangs." The question is: are they basing their fears on accurate information about the size and extent of this problem, especially with respect to young people?

Hagan and McCarthy point out in their study of children who live on the street that most street groups (54 percent) are in the nature of a "family" rather than a "gang." These young people congregate for personal safety, to obtain necessities, and to have a circle of friends and even designated "brothers," "sisters," "moms" and "dads" (Hagan and McCarthy). In most cases, the public would not object to children joining "gangs" which did not engage in criminal activity. In fact, "some positive 'gang' values (group cohesiveness, loyalty, respect and discipline) are encouraged to a large extent in legitimate activities, such as youth sports, clubs, and various other groups" (Fritsch et al.).

Most members of street "gangs" are adults, and not youths at all. In Winnipeg, it is estimated that only about 25 percent are youths (Cameron). If the total number of identified "gang" members is 1,000 (relying upon a recent estimate by Glen Cochrane, Winnipeg street gang prevention coordinator: Nairne, 1999a), then there are approximately 250 young "gang" members. Put into perspective (given a city population of 677,291), numbers do not yet warrant panic over "youth gangs." And recent indications are that membership in gangs in Winnipeg peaked at 1,300 to 1,400 and the numbers are now decreasing (Cameron; Nairne, 1999a; Silver).

At the same time, we cannot ignore the potential impact on the public of the activities of these young people, especially if it turns out that they are engaging in violence. So what is the evidence about the types of crimes being committed by "gangs"? To the surprise of many, most crimes committed by street "gangs" are not violent. According to Al Cameron of the Street Gang Unit of the Winnipeg Police Service, street "gangs" are mainly involved in crimes

like break and enters, thefts of automobiles and prostitution. There is some extortion as well, but the fastest-growing area of “gang” crime is in drug trafficking, a nonviolent crime. Thus, membership in a “gang” should not mean that all principles of sentencing should be jettisoned. Just as for other young offenders, incarceration should only be considered for the most serious offences, as a last resort, after other dispositions have failed.

Some have suggested that custody is the best response to “gang” leaders because it disrupts the gang hierarchy and slows down recruitment (Mackintosh, 1998). However, as one former gang member (now working for the Winnipeg Native Alliance in Winnipeg) says, putting “gang” members in jail only increases the problem, as they are then able to readily and successfully recruit new members from among the inmates (CBC, 1998b). These potential recruits might otherwise have remained unconnected, but are extremely susceptible while in custody to the prospect of “belonging.”

In our society for some reason the phenomenon of young people congregating together in groups or “gangs” elicits a particularly nervous response from the public. “Squeegee kids” are a good illustration. Their alarming appearance and the fact that they are gregarious and in groups frightens people. The public thus calls for prohibition of the activity of cleaning windshields on street corners for a small fee. And politicians respond to the pressure. Part of Mike Harris’ platform in winning the recent Ontario election was to “bust” the squeegee kids, as Rudy Giuliani did in New York. Yet many who cheered Giuliani in the early days now think he has gone too far. One could predict the same for Ontario (Barber).

While in opposition in Manitoba, the NDP commendably placed emphasis on creating alternatives to custody and providing preventative programs. However, the new Justice Minister has also considered the potential for adopting laws similar to anti-racket legislation in the U.S. in order to fight “gang” crime. Such laws would almost certainly require abrogating rights

under *The Canadian Charter of Rights and Freedoms* (Mackintosh). Do we want to go to these dubious extremes in order to attack the results of the problem? Or is it better to try to attack the root of the problem with preventative measures about which everyone can agree? (Cameron, Mackintosh).

Finally, some argue convincingly that the word “gang” has become a racist code word. Schissel says the issue of “gangs” has become one of geography, race and class. Thus, although “like all typical, relatively affluent Canadian cities, Saskatoon’s youth violence, gang membership and vandalism and graffiti are not restricted to inner city areas,” the target of the criminal justice system is inevitably the “marginalized, inner city, ethnically identifiable youth” (Schissel). We need to be asking ourselves whether our attitudes to “gangs” are entirely free of prejudice, and we need to be vigilant that media and enforcement agencies are not targeting youth according to these types of criteria.

3. Girls

What can we make of the current public perception that young girls are at the forefront of a new crime wave? Statistics hardly support widespread fears of a rapidly increasing violent crime rate among girls. A study by Doob and Sprott, which looked at the numbers from 1991 to 1996, showed that the “trend” (towards higher numbers of minor assault cases in youth court) was much the same for girls as for boys. In 1998, the rate of female youths charged with violent crime remained constant. The rate was again much lower than that for male youth, (Tremblay) and female youths are half as likely to be “persistent repeat offenders” as males (CCJS, 1998a). As Reitsma-Street puts it, there is a gap between “the actual low rate of girl crime and the disproportionately high public fear that girls are out of control.”

Girls are under-represented at all levels of assault, but especially at the most serious levels. In 1995-1996, girls in Canada were charged

with only 2 murder/manslaughters out of 44 such youth cases (4.5 percent) (Doob and Sprott). Yet the Reena Virk case (in which a young girl was killed by a group of (mostly) girls in Victoria) netted volumes of commentary in the media, leaving the impression that girls are generally running amok. In fact, charges for murder and attempted murder by girls have remained infrequent and constant for the past twenty years (Reitsma-Street).⁸

In 1996, the number of girls in Canada charged with the most serious levels of assault (murder, manslaughter, attempted murder, aggravated assault) actually fell (from 60 to 41) (Nolan). By far most of the violent offences committed by girls comprise the category of minor assault which includes pushes, shoves and slaps (Tremblay). Whereas at one time, girls (and boys, for that matter) would not have been charged by police for this behaviour, now they are.

Kim Pate, Executive Director of the Canadian Association of Elizabeth Fry Societies says, "We're seeing an increased focus on behaviour that used to be ignored or rationalized away in other ways. . . . Girls fighting, taunting and teasing is not a new phenomenon. What's new is to have it result in charges of assault." Criminologist Anthony Doob says, "There is no evidence whatsoever of increases in the most serious kind of violence" among girls (Nolan; see also Reitsma-Street).

Nonetheless, in Manitoba, the number of girls being sentenced to custody has seriously increased. In June 1998, for example, a number of teenage boys had their sentences cut short in order to make room in the overcrowded Manitoba Youth Centre for the admission of teenage girls (Edmonds). At the same time, Quebec is pursuing its policy of minimal judicial intervention towards youth, including girls. In each of the last five years, Quebec has brought fewer than 100 girls to court, whereas Ontario (with about the same population) has prosecuted 2,000, or twenty times as many (Reitsma-Street).

The popular but inaccurate depiction of girl crime as a "cross-Canada crime wave of escalating violence" has become a convenient tool for anti-feminists, who immediately blame the "emancipation" of females (Nolan). Celeste McGovern, for example, writing in the *Alberta Report*, says "apparently, Canadians are still reluctant to accept that emancipated young females are capable of the same horrors as their male counterparts." Reitsma-Street, on the other hand, notes that it is the convictions for failing to comply with court orders which have soared for girls in recent years, increasing by 1,000 percent over fifteen years. She speculates that fail to comply is the charge which has come to replace the old "status" offences of sexual immorality, truancy, running away and disobeying parents (for which girls were traditionally prosecuted far more often than boys).

Those who have set out to find a link between feminism and violent female crime have failed to do so, and there is plenty of evidence to the contrary. In her book, *Sex, Power, and the Violent School Girl*, Sybille Artz describes the results of her study on violent, middle-class, white school girls.⁹ Artz's conclusions were that her control group shared with the other groups similar patterns of family violence, marital discord and alcohol. They behaved violently because they were the brunt of severe forms of sexism (including physical and sexual abuse) in their homes and at school, not at all because they were somehow "more emancipated." On the contrary, these girls did their best to adhere to the accepted traditional role of women as compliant and caring—they were by no means feminists.

According to University of Toronto criminologist Scot Wortley, girls' behaviour has not necessarily undergone radical change, "Rather . . . it may just be under greater scrutiny. . . . People argue that because of women's liberation, women are becoming more aggressive or likely to engage in these activities. I would really question that—I think there's a lot more criminal-justice focus

on women” (Appleby, 1998b).

There is also a disturbing misogynist trend among those who espouse “family values” to blame youth crime on mothers. Proponents tend to advocate policies that would put women back into homes where they suffer from abusive relationships, back into unpaid labour, back into a life of no choices. As Bernard Schissel points out, “Law-and-order campaigns . . . are in part veiled attacks on women and feminism. Media presentations maintain that women are more susceptible to victimization and poverty than men, but that they also, through inadequate parenting, are producers of criminality.” He goes on to say that the “‘family values’ jargon that has become so much a part of the conservative political creed is infused with references to the functional two-parent heterosexual family and the importance of male discipline and male role models.”

In essence, much youth crime, then, is being blamed on “working” mothers generally (those who are in paid work) and on single mothers specifically. Yet the evidence on youths who have been in contact with the courts shows that there is little correlation between single-parent families and lawbreaking behaviour (Schissel).

4. Conclusion

In dealing with these special areas of concern—Aboriginal youth, “gangs,” and girls—it is again apparent that the extent of any problem has been exaggerated. Media hysteria has fuelled a fear of violence out of all proportion to its presence in the community. Racism, sexism and ageism have played their part. Politicians have seized on these to promote tougher legislation and the effective demonization of our children.

This is not to say that no problems exist. It is to say that we need to get them into perspective, get our facts straight, and get on with the job of attacking the roots of the problem, and thinking of new ways to deliver justice.

VI. Risk Factors for Youth Crime

There are many factors which place our young people at risk for committing crime. Some sources point to learning difficulties, including learning disabilities, fetal alcohol syndrome, problems of school attendance, social interaction and overall achievement, elements of poverty, violence and substance abuse in the family environment (Henteleff).

Al Cameron of the Street Gang Unit in the Winnipeg Police Service says that social programming is essential to prevent crime, whether we are speaking of youths or adults. As resources are taken away, the problems increase. If we close public pools, social clubs and so on, he says, we add to the root causes of crime (Cameron).

James Bonta, chief of corrections research for Corrections Canada says that if potential recidivists are offered “some type of effective post-release treatment for alcohol or drug problems, anger management, job search skills and violence prevention, the number that get re-involved in crime can drop by almost half” (Janzen).

Factors leading to youth crime are summarized by the National Crime Prevention Council: family violence and neglect, lack of supervision, the degree of involvement of parents in the lives of their children, difficulties in school, poor housing, lack of recreational, health and education facilities, disintegration of social supports, peer pressure, youth unemployment and poverty (MacLeod).

Yet, as Al Cameron points out, not all youth crime, including “gang” crime, is rooted in poverty. Sociologist Rick Linden says poverty in itself does not explain high rates of violence and murder. “Otherwise, Newfoundland would be the homicide capital of Canada, and it hardly registers on the scale” (Roberts). There are middle-class “gangs” in Charleswood (an upscale area of Winnipeg), for example, and some of them are involved in violent crimes such as rob-

beries (Cameron). The Toronto police street crime unit also says that in the last decade or so, many more of those arrested are the more affluent youths who are still in school (Marron). There is ample evidence that “class” is not necessarily the defining feature for predicting delinquency and crime; rather factors like poor parenting, unemployment and abuse play a part (Hagan and McCarthy).

The litany continues:

- A 1991 report to the Ontario Ministry of Community and Social Services said that victims of child abuse are ten times more likely than other children to commit offences as adolescents (Marron).
- University of Western Ontario psychologist Professor Carol Crealock discovered that 30-40 percent of young offenders had learning disabilities, compared with 2-3 percent of the general population (Marron).
- A federal AIDs study in 1989 said there were between 100,000 and 200,000 youths living on the street (Marron). We know that youths who are most likely to become homeless because of abuse, neglect, and so on are also most likely to commit theft and prostitution in order to obtain the necessities of life (Hagan and McCarthy).
- In Ontario alone, there are 10,000 children on waiting lists for mental health treatment (Hagan and McCarthy). We know that the proportion of people with mental health problems in prisons is unduly high (Morris).
- Of those people serving time in Manitoba jails, a shocking 98 percent have not completed high school (MCYS). Thus, education is a key factor.

Alan Markwart, director of the Youth Justice team with the British Columbia Ministry

for Children and Families, puts it simply: “Get-tough approaches won’t solve youth crime. . . . There are two components [to programs that work]: strong support for and training of parents, and enhanced early education to encourage kids’ success in school” (Graydon).

These are the kinds of problems that must be attacked in order to get to the root of youth crime. It is not easy to admit that most of these problems are created for young people by us—the adults in their lives. Once having made the admission, though, we can move on to finding solutions which will keep our youngsters from getting into the kind of trouble which, in our society, leads to the criminal justice system.

VII. Programs that Work and Programs that Don’t

We have to stop scapegoating young people and give them a chance to make a meaningful contribution.

We are at a time when we have to dare to do things differently. For too long we’ve relied on official systems, and mainly the justice system, to solve our problems. This approach has left us quaking in our boots because we have forgotten how to deal with our own life problems. We have magnified even small problems into crimes that must be dealt with by experts. We must dare to challenge, trust and involve people. We must remember that people can solve many of their own problems. We must dare to expect the best from young people, from their families, from neighbours and community groups. Only then will we see the positive changes we need (NCPC).

1. Programs that don’t work

Custody

Over-reliance on custody is expensive, both in dollar terms and in costs to the community. The federal Justice Department data for 1993/

94 say it costs \$70,000 per year per youth for open custody, and \$95,000 per year per youth for closed custody (Henteleff). Another 1994 study by the department concluded that Canadian governments were spending \$262 million locking up youngsters for nonviolent crimes (calculated at \$12,000 for a 60-day sentence) (Cayley, 1999). Then-Justice Minister Alan Rock said recently that it costs \$100,000 per year for secure custody for a young offender (and up to \$300,000 in the territories) (Cayley, 1998).¹⁰

Prisons do not deter criminal activity. According to one source, 75 percent of the young inmates in Canada will reoffend upon release (Marron). Forty percent of adult inmates in federal institutions are people who had a juvenile record in their past (Henteleff). Over-reliance on incarceration is thus very costly in other ways. Criminologist Anthony Doob says:

The notion that we can deter young people by punishing (more severely) those before the courts is a notion that does not have backing in fact. The Canadian Sentencing Commission has reviewed much of this literature. . . . The logical, philosophical, and empirical arguments against the use of deterrence as a basis of sentencing . . . are laid out in that report (Doob).

Other studies have revealed similar findings (Baron and Kennedy).

One interesting illustration of the ineffectiveness of deterrence is that teenagers in the United Kingdom smoke marijuana at 10 times the rate of those in Spain and the Netherlands. Yet the U.K. has harsh penalties for this, while Spain and the Netherlands have decriminalized marijuana altogether (Cayley, 1998).

Youth jails are excellent training grounds for potential adult offenders. As one young inmate said, "A lot of guys say this is like the nursery. They can't wait till they move on out of here and start doing serious crime and then go to places like Millhaven"¹¹ (Marron). An-

other said that in going to prison, "I found a place where the crazier I was and the more violent and aggressive, the more recognition I got" (Cayley, 1998). This is a recipe for recidivism.

Sgt. Gary Shewchuk, Youth Gang Coordinator at the Winnipeg Police Department says, "incarceration is a sad method of responding to youth in conflict with the law" (MYTF). The authors of the *AJI Report* said, "We find the heavy and inappropriate reliance on custody for young people to be repugnant."

For those who labour under the illusion that Canadian youth custodial centres are akin to country clubs, a visit to one would be recommended. In every institution there is an undercurrent of violence, and every child suffers intensely from the loss of freedom. Hard-core offenders poison the atmosphere for everyone, and all of the youths emerge with virtually no friends except the offenders they have met inside. To people who think our treatment of young offenders is "too soft," one youngster said, "They wouldn't think that, if they ever saw what happens in this place, the emotional and mental damage it does" (Marron). The Director of the York Detention Centre in Toronto says we need to give youths a setting in which they can examine their lives, deal with their problems and learn to live in the community—"I don't think they can do that in an environment with clanging doors and razor wire" (Marron).

Programs for girls are particularly lacking. One girl at the Vanier Correctional Centre in Ontario said the institution was more like a mental hospital: "there were girls with severe problems, but little in the way of psychological help for them" (Marron).

The authors of the *AJI Report* were shocked at the conditions within certain of Manitoba's youth centres:

The high level of security at the Manitoba Youth Centre . . . is extremely disturbing. While we could understand and accept the need for this level of security for a few offenders, all who reside in the facility are subjected to the same

high level of security as soon as they are within the walls. Such an atmosphere of oppression and tension has to have a negative if not devastating, effect on young people (Hamilton and Sinclair).

Meanwhile, because incarceration costs so much money, funding is not available for preventative programs that do work to prevent youth crime. In 1989, just before introducing amendments to the *YOA* which would result in higher rates of incarceration, the federal government froze the amount of money going to provincial juvenile justice services for the next five years. As a consequence, nearly all of the available federal money was being spent on custody beds, leaving little to fund other types of programs (Marron). Today, fully 80 percent of federal funding for youth justice goes to custody (Cayley, 1998).

Boot Camps

Boot camps for youths are operating in Alberta, Manitoba and Ontario (Cayley, 1998). They are meant to provide strict discipline, long hours and a military-style experience for their inmates. The hope is that this will instil respect for the law and for the value of work, and a degree of self-discipline which will deter the inmate from re-offending upon release. Thirty states in the United States have opened 57 boot camps with about 7,000 beds. The evidence is that they don't work (Begin; Valpy; Katel et al.).

Patricia Begin reports that any improvements in attitudes and behaviour which were observed within boot camps soon dissipated on release, and that the recidivism rate was generally the same as that of prison inmates. Any success with boot camp graduates was attributed to the rehabilitation program and aftercare, not to the physical exercise and military discipline of the program. In no way did boot camps lower correctional populations or costs.

One study of inmates released from Louisiana boot camps in 1991 found that 37 percent were arrested at least once during their first year of release, compared with only 25.7 percent of parolees from the normal system. And disturb-

ingly, boot camps probably result in increases to the prison population, since most of the people who go to them would otherwise be on probation. As well, many of these end up in penitentiaries because of minor infractions of strict, post-camp probation (Katel et al.).

Unlike the U.S., Canadian jurisdictions which advocate boot camps only advocate them for young offenders. As young people themselves point out: "Boot camps are a drastic measure that shouldn't be considered for youth, particularly when they are not an option . . . for adults" (MYTF).

Dr. Jalal Shamsie, Professor of Child Psychiatry at the University of Toronto and Director of Toronto's Institute for the Study of Anti-social Behaviour in Youth, has done detailed research on boot camps for young people. He concludes that they do not lower recidivism. He also rejects the underlying rationale that a strict regime will "straighten out" kids who "choose to be bad" but who would otherwise be perfectly ordinary kids. As he points out, these are not ordinary kids, but most likely have learning disorders, attention deficit and hyperactivity disorder, low attachment to their parents and other problems which need to be addressed (Valpy).

Dr. Shamsie recommends a program called "Second Chance," in which highly trained workers go into the homes of young repeat violent offenders and work with the family. The idea is that "if a kid is going to change, he's going to change for mum" (Valpy). The Second Chance program does produce lower levels of recidivism where it has been tried in the United States.

In the face of this evidence, why do governments continue to insist on boot camps as a solution for youth crime? Journalist Michael Valpy speculates that "for elected officials scrambling to appear tough on crime, boot camps are [an] . . . easy way of placating angry constituents"; also, "after-care doesn't play as vividly on the tube as push-ups" (Valpy).

Scared Straight

Scared Straight was a very tough-minded

program piloted in the 1970s in the United States and also in Kingston Penitentiary in Canada. It involved bringing young offenders into maximum security prisons where hard-core adult inmates gave them the third-degree, describing life in prison and the fate that awaited them if they persisted in a life of crime. It was a brutal experience for the youngsters and the idea was to scare them into going "straight."

Follow-up research on the Scared Straight program showed that young offenders who had been exposed to prison life became more aggressive. Those involved in the program also were more likely to reoffend than others. "Getting tough" in this case did not work (Marron).

Curfews

Some towns in Manitoba have resorted to curfews in an effort to reduce youth crime. Proponents claim success, although in one case, that of Portage La Prairie, a recreation centre for youth was opened at the same time that the curfew was imposed. One could speculate that the availability of a place for young people to spend their leisure time may have had a greater influence than the curfew on any improvement in crime statistics.

What do we know about the effect of curfews? A Justice Policy Institute release in the U.S. in June 1998 said that "youth curfews do not reduce youth crime. This [is] true for any race of youth, for any region, for any type of crime." In some instances, curfews actually seemed to push youth crime rates up. And curfews certainly result in arrests for violation of curfews, pushing up offence rates further (WFP, 1998).

The Justice Policy Institute study singled out an area north of Los Angeles (Monrovia) which instituted a school day curfew. The result: "Police reports show youth crime actually jumped by 53 percent during the school year when the curfew was in force. It dropped by 12 percent in summer months, when the curfew was suspended." (WFP, 1998). Criminologist James Fox says that curfews don't work, as kids

commit most crimes in the late afternoon when they are out of school and unsupervised (Beck et al.).

Curfews do not accomplish what they are meant to do, and there are serious problems with this approach:

- Curfews are applied to all children, innocent and guilty. Thus all children are tarred with the same brush and penalized.
- Part-time jobs or volunteer work can be a problem for young people under curfews unless there are special provisions allowing for this.
- Curfews end up being selectively enforced in poorer districts. As one police officer said, "At first, curfew violators came from every district: rich, poor, black and white. Since then, the wealthier children have headed out to the suburbs, where loitering is legal" (Economist, 1996).
- Parents are no longer free to raise their children according to their own standards (Economist, 1996).
- Curfews impose a new obligation on authorities to charge and sentence children, often to send them to jail, for breach of curfew.

Writing on the subject recently in *Crime and Delinquency*, Hemmens and Bennett say:

The recent surge in the popularity of curfew enactment and enforcement and the urgency with which some cities have turned to them . . . suggest that juvenile curfews are a sign of public hysteria rather than a reasoned response to juvenile crime and delinquency. Surely, criminalizing another activity instead of addressing the underlying social problems is unwise, unproductive, and

doomed for failure.

One illustration of this hysteria can be found in the words of a California police officer: “We’re mindful of the fact that these steely-eyed 17-year-old killers started out as 14-year-old loiterers” (Beck et al.).

2. Programs that work¹²

Britain

Before being defeated by the Labour Party in 1997, the Tory government in Britain proposed a less punitive approach to youth crime, and some of these programs have already proved successful. One scheme educated young offenders about the consequences of their crimes. The program reduced the rate of recidivism among shoplifters from 35 percent to 3 percent. Another program paired young offenders with trained mentors—there was a reduction of recidivism to 20 percent. At the same time, an experiment in south London showed that curfews were unnecessary, since more carefully targeted restraints were already available under existing laws (Economist, 1997).

The United States

One of the most remarkable examples of what works is the program pioneered by Jerry Miller when he was appointed Commissioner of Youth for the Commonwealth of Massachusetts in 1969. At the time he was appointed, the state had about 1,000 juvenile offenders in custody. Four years later, there were 40. He had closed all 10 juvenile correctional institutions and placed the young offenders in community-based programs.

The follow-up research done by Harvard University showed no increase in juvenile crime, less repeat offending and a decline in the percentage of adult prisoners who had come through the juvenile system. In 1989 (some twenty years later), Massachusetts tried only 12 youths in adult court, compared with more than 4,000 in Florida. In the meantime, Massachu-

sets had come to rank 46th of the 50 states in number of reported juvenile crimes (Schissel).

Miller went on to work in Pennsylvania, where he similarly reduced the population of young offenders in prison at Camp Hill. This was done by creating individualized plans for each of them, thus providing an alternative to the only two previously available options: probation or prison. As long as the options were restricted to probation or prison, the panel judged 95 percent of the 400 boys to be in need of secure custody. When carefully crafted alternatives were presented to them they decided only 40 needed to be in jail. About 12,000 individualized sentences have been crafted by Jerry Miller’s organization.

Europe

Some of the most progressive approaches to dealing with young offenders can be seen in Europe. For example, in 1975, Norway abolished its youth prison system altogether. This was done without negative consequences for the community. One of the leaders of these changes, Thomas Mathiesen, attributes much of the success of their system to an association of prisoners, social workers, academics and other citizens who are interested in prison reform. This group meets in an annual retreat to expose the prison system to rational scrutiny. It is a major event which attempts to establish an alternative public sphere of discussion and principled argumentation. As people get closer to the issues and the personalities involved, they begin to understand more.

Mathiesen says that although at first the prison administration refused to come to these meetings, with the encouragement of the media, eventually they did. At first prisoners were not allowed to come, but now they do. And every year approximately 50 percent of the participants are newcomers. In this atmosphere of continuing dialogue, solutions are found which are more in line with helping an offender out of his/her situation than with punishment.

Finland’s Director General of Prisons, K.J. Lang, has also nearly eliminated the jailing of

juveniles. This was done through legislation to de-penalize. The legislation was passed by Finland's Parliament without any opposing votes. Lang says, "The biggest problem, I think, is early recruitment to a prison career. You should never put a young person in prison during his teens. . . . In the age from perhaps 12, 14 to 19, we are shaping the part of the population which is staying with the criminal justice system to the end of their life."

In Finland in 1997 there are only 10 boys under 18 in the prison system in a country whose population is over 5 million. Lang says, "You don't get a good criminal justice system by sacrificing one person's right for another's; you get a good criminal justice system when you try to balance contradictory interests."

New Zealand

In New Zealand, since 1989 Family Group Conferences (FGCs) have handled sentences for young offenders who plead guilty. FGCs force the offenders to face their victims and make amends. The results have been remarkable. Even in the most egregious cases, offenders who are steered clear of custody and complete their conditions rarely are seen by the justice system again. In the first year, out of 100 young offenders, only 2 were incarcerated. In Canada, the number would be closer to 30.

An example of how the FGC works was given by youth justice coordinator Matt Hakiha. He described a case in which four young offenders broke into a school and accidentally set a fire, burning it to the ground and causing half-a-million dollars worth of damage. The Family Group Conference took about three days. In it, teachers and parents were able to vent their feelings of animosity and anger. The young offenders were completely unmoved, unemotional. Then a little girl came up to them with her charred and ruined scrapbook. She explained that the only photographs of her brother had been in the scrapbook, and that they were the only memory of him that she had. He had died a year ago. That was when all four boys broke down into tears.

Hakiha said that "the impact made by the victims was amazing. And I wonder whether a court process would allow this emotion to come out. . . . It meant that the offence was personalized to the offenders. It meant that they were able to take ownership of the offence. And it meant also that they could deal with their own feelings about it."

These boys had no means to pay for the damage. They were required to apologize, in writing, to all parties affected. Then they were required to build a new playground at the school. At first they resisted this condition, but it was made clear to them that the alternative was to go to court and probably be sentenced to jail. The parents of the young offenders took responsibility for seeing that they did the work. It took them six months, every weekend, at the end of which there was a ceremony, unveiling the hard work they had done.

In conclusion, Matt Hakiha said: "Oh, look, I mean, personally, I think, they got off too light in the end, because they were looked on as heroes. They were. But I'll tell you what: I've never seen those four boys since. And I doubt whether they'll ever go through the criminal system, I doubt it. . . . This is six years ago, and these young boys are 21, 22 now. They're men.

Japan

Like New Zealand, the Japanese place the emphasis on addressing grievances and restoring social harmony, rather than in making an example of offenders. As a result very few convicted offenders, adult or youths, go to jail. Much more emphasis is placed on the satisfaction of the victims. In Canada, Aboriginal models of justice are strikingly similar.

Canada

There are countless imaginative programs being initiated across the country which are aimed at reducing crime among young people. Those dealing with the social risk factors described above are outside the scope of this paper. For further information on programs under

way across the country, publications of the National Crime Prevention Council of Canada are recommended (see Bibliography).

What follows are examples of programs which provide alternatives to incarceration when dealing with youth crime. Space does not permit a full description of each program, and the list is by no means comprehensive.

Alternative Measures

This method of diverting youths from court to a community-based alternative has been very successful. Eighty-nine percent of youths complete all the conditions of their agreements (CCJS, 1999b).

Community Mobilization Program

This program is provided by the National Crime Prevention Centre with government assistance. It provides funding to support local projects aimed at crime prevention, including everything from housing projects to sports and recreation to policing and public health (National Crime Prevention Centre).

British Columbia: Sparwood: Resolution Conferences

This small community in B.C. adopted a system resembling the community conferences of New Zealand, which had been recommended to the House of Commons justice committee by Yukon Territorial Judge Heino Lilles. After four years of referring youngsters to these conferences rather than trying them in youth court, the rate of compliance with conditions (apologies, restitution, personal service, etc.) was 99 percent. Only 2 percent were re-offending, compared with 42 percent of youth elsewhere in Canada (Cayley, 1999).

British Columbia: Langley: Fraser Valley Community Justice Initiatives

This program is one of the few in the country which successfully addresses serious violent crime through victim-offender mediation. Since "an offender fears nothing more than his

victim," it is often the victim who holds the key to resolving the effects of such crimes for both parties.

One example: a victim of a masked rapist was so emotionally damaged by her attacker that she eventually decided to meet with him in prison in the hope of resolving some of the worst effects. She had been attacked at four a.m. and her clock radio was accidentally turned on in the struggle. As a consequence, for nine years she had been unable to sleep between the hours of three and five a.m., or to listen to any kind of music, among other things.

After meeting the offender, the "monster of her nightmares was no more." She was immediately able to sleep through the night, enjoy music and get on with her life. The offender too acknowledged that he had received a gift through her courage.

British Columbia: The Shame Feast

The Gitksan and Wet'suwet'en people have revived a type of "reintegrative shaming" which works to release the offender from guilt. Part of the ritual involves gestures of reacceptance by the community in which the essential goodness of the offender is reaffirmed.

British Columbia and Ontario: Vancouver and Toronto: Crime Control vs. Social Welfare

In their very extensive empirical study of street youths in Vancouver and Toronto, Hagan and McCarthy found that the two cities take different approaches. Vancouver uses a crime control model while Toronto has a social welfare orientation. The result, say the authors, is that crimes related to drugs, theft and prostitution are lower in Toronto (Hagan and McCarthy).

Alberta: Calgary: S.A.F.E.S.T.

Support for Youth in Conflict with the Law and their Parents is a short-term program for youth who are in conflict with the law or at risk for encounters with the justice system. The goal is to help youngsters learn coping skills, to build

confidence and competency, and to create strong peer support (NCPC, 1997b).

Alberta: Calgary: Community Conferencing.

A pilot project is being conducted in Calgary to deal with youths who plead guilty to serious violent offences by community conferencing (CBC, 1998c). In an intensely personal process, the victims of the crime come to know the young offender, and in many cases to feel sympathy and affection for him or her. The offender sees the reality of the pain and anger he or she has caused.

The example given is not of a violent crime, but it does illustrate how the program works. The young offender, Owen, had broken into the McLarens' house. Mr. McLaren said he was very angry. He wanted the kid to pay for his crime. But after he came to know Owen through conferencing, he had no more fear or anger, and no longer felt that every kid on the street was a little trouble-maker. For his part, Owen said he and his victims were friends now, that they had forgiven him, but that he "owed" them and would "owe them" twenty years from now. In the process, Owen got to know his grandparents, and came to realize that his mother was suffering as much because of his crime as he was. Nobody involved in the exercise believes that Owen will commit another crime.

The secret to this conferencing program lies in the preparation for the meeting between victims and offender. Seventy-five percent of the work is done in the homes before the conference is held. The conference itself takes 4-6 hours on a weekend. All parties get to ask questions and resolve their issues. Then in court, everyone can speak to the judge, even, in this case, the McLaren children.

But what happens if the young offender is a manipulator? Wouldn't such an offender be able to exploit the situation? Workers say that this is why the preparation is so important—manipulation can be detected and dealt with. What then about the incorrigibles? Workers say that these offenders may need a different ver-

sion of conferencing—a lot of these kids have never had a personal experience in the justice system. Such an experience can turn the offender around. And what about the really dangerous kids? The workers say that in these cases custody is an option, but not a foregone conclusion.

The advantages of conferencing are that it is community-centred, that it brings a sceptical public around, that it provides good results for victims, keeps young offenders out of jail, lowers recidivism, puts a face to the offender and to the victim. As Mr. McLaren said, this was much better than jail—he got his house painted by Owen! The whole process has a reaffirming, healing result. Perhaps most important, the victims in this case now have confidence in the justice system. And Owen is not caught in the revolving door of recidivism.

Alberta: Edmonton: The Community Approach to Prevention.

Crime prevention officers are the first to agree that we must develop a different approach to young offenders. In Edmonton, for example, a study of the dramatic drop in property crime rates among young people concluded:

Police have targeted problem areas and are encouraged to deal with the root causes of crime rather than simply taking a report. . . . Community involvement with policy changes the nature of how complaints are defined (i.e. they become problems rather than crimes) both by the police and by the complainant. In addition, police who do respond to complaints use more discretion; complaints brought to community stations, where cars are not dispatched to the scene of the incident, are even less likely to result in arrests; problem-solving approaches lower the numbers of disorder crimes and increase crime prevention; and at-risk groups are easier for community-based programmes and projects to track and deter. These changes in police behaviour are reflected not only in the lower levels of reported crime but also in the lower reports of victimisation (Kennedy and

Veitch).

Manitoba: Winnipeg: Manitoba Mediation Services.

This is the largest program of “community conferences” in the country. It was started by the Mennonite Central Committee and now operates independently. The emphasis is on redress and reconciliation rather than retribution (Saunders). A typical year sees 1,000 referrals. About 400 per year are mediated (Cayley, 1999).

Manitoba: Winnipeg: Aboriginal Ganootamaage Justice Services.

This, too, is a type of community conference especially adapted for Aboriginal people. It is described best as a “healing circle,” and is enjoying considerable success (see above for more detail).

Manitoba: Hollow Water: Community Holistic Circle Healing

In this small community where most of the people had either been sexually abused or had perpetrated sexual abuse, a group of social workers in concert with the Manitoba government organized this alternative program to deal with the situation. In the result, over a ten-year period, of 48 offenders only 5 went to jail. Only 2 ever reoffended. The others remained as contributing members of the community with no recidivism.

Manitoba: Brandon: MAPP

Brandon, Manitoba, has an innovative program called MAPP (Multi-Agency Preventive Program for High Risk Youth). The Brandon Youth Services Committee has since 1993 embarked on a computerized, cooperative effort to track and treat high-risk youth (Tait). Twenty-two agencies are involved (including the police department, social services, schools, child and family services, addictions services, and so on) in this effort to achieve five goals: coordination of treatment for high-risk youth; utilization of community and family support; preven-

tion of further problem behaviour; consistent and timely enforcement of Court Orders; and safety to the community (MAPP).

A maximum of 40 youths are monitored at any given time (there were 31 at the time of the interview), and these are categorized into one of three levels.

Youths in level 3 are those who have already been involved in crime, and who are bound by probation orders. These youths (there will be no more than 10 of them at any given time) are subject to “intensive monitoring.” This means, among other things, that if they are arrested for further offences, they will be lodged in custody immediately and held for a bail hearing.

At the other two levels, a multi-agency case plan is developed for the youths, and monitoring takes place together with preventive planning. The project adopts an holistic approach to the youths and their families, and a youth cannot enter the program without the signed consent of the parent or guardian. It is hoped that this attention to swift and sure consequences, as well as to developing appropriate preventive and intervention strategies, will result in reducing problem behaviour and providing the system with a viable alternative to custody.

Although it is too early to tell what impact the MAPP program will have on young offenders in Brandon, the idea of sharing information, working together, and emphasizing monitoring and preventive programming is congruent with the best research on the subject.

Ontario: Citizen Committees.

In this program being tested in six Ontario cities, a peer committee rather than a court decides on punishment for minor offences by youth. Possible penalties include apologizing to the victim, doing community service, repaying the victim, and so on. The pilot project shows that youths were half as likely to reoffend as if they had gone to court (McCann, 1999b).

Nova Scotia: Halifax: “Stoplifting” Program.

This program was started in 1995 by the Youth Alternative Society (YAS). An educational approach is used to offer early intervention to youth charged with shoplifting and referred to them by the courts. Discussions are held with the corporate victim, the police and YAS facilitators. A recommendation is then made to ask for withdrawal of the charges if there has been full compliance with the program (NCPC, 1997b).

New Brunswick: Moncton: MOVE

This pilot project also deals with serious cases in victim-offender mediation. In one case, a female victim had been the clerk at a convenience store when she was robbed and terrorized at knife-point. The robber said he would come back and get her if she talked to the police. She was not able afterwards to get over the fear. She suffered bulimia and insomnia, had nightmares, her marriage broke down and so on. The robber got five years.

When the offender was told of this, he was amazed at the victim’s fear. He thought she would know that every robber says “if you call the cops, I’ll come back and get you.” The offender was living every day in fear in the prison. He had no idea that the same was true for his victim on the outside.

When the two met in the prison, they shared their stories. The victim got all of the answers she needed. She knew that the offender was genuinely sorry for what he had done. They struck an agreement about how they would greet each other when they met in the streets of their small town upon his release.

For the victim, the fear was gone. The nightmares were gone. She said, “This matter is over. I’m healed.”

Northwest Territories: Dene Traditional Justice Project

Dogrib researchers investigated how justice was done before Europeans came and when the people still lived on the land. They published *Doing Things the Right Way* (Ryan), which has

resulted in a number of “initiatives that return responsibility for justice to local communities”.

Yukon: Whitehorse: Kwanlin Dun Community Justice Project

This is another project which works with offenders and victims in a type of circle sentencing. In this community there have been “dramatic decreases in the frequency and seriousness of criminal behaviour. Among offenders who had committed an average of almost twenty criminal offences throughout their lives . . . their rate of serious offences . . . dropped 80 percent.”

VIII. Conclusion

The case for “get-tough” policies on youth crime is not supported by the evidence about what works to reduce crime rates. It is up to our policy-makers to provide information to the public which will propose, explain and justify alternatives to criminal charges and incarceration. Getting tough only “creates an illusion of action. It may be good politics but it’s very poor public policy” (Cayley, 1998).

Getting tough is also the easy way out. Even in cases where the citizenry has legitimate concerns about certain kinds of crime, resorting to tougher sentences and more jails is not the answer. As Australian criminologist John Braithwaite says, “the effectiveness of sanctions depends not on their severity but on their social embeddedness” (Cayley, 1998). In other words, the more effective form of action is that which is centred in the local community.

Back in 1981, lawyer Doug Call of Genesee County, New York, led a movement against the expansion of a local jail. He said, “When you build them, you fill them.” He argued that jail is “the easy way.” In the course of his campaign, he shifted his community “out of the sterile ‘hard-on-crime, soft-on-crime’ debate that still preoccupies so much of the . . . country.” In the result, “Genesee Justice” now advocates community service sentences, and has successfully

kept countless young offenders out of jail (Cayley, 1998). The effectiveness of this local program cannot be overestimated.

This is a debate which we need to have in Canada. It is important to shift ourselves out of the current paralyzing discussion about how tough to be, and into a discussion of new approaches. All of the programs that have been shown to succeed involve a high degree of cooperation and coordination, and they all involve the community. To take advantage of this knowledge will require a fundamental re-thinking of our entire system, not just a tinkering with what now exists.

Yukon Territorial Judge Heino Lilles has harsh words for the Canadian criminal justice system:

The justice system isn't a system at all. It consists of a number of independent agencies—police, Crown attorneys, probation, judges, corrections—who operate totally independently. They have different contradictory objectives. There's no single game plan. There's no mission statement. They have different bosses, political bosses. They don't work together. We end up working against each other. When you have that kind of disparity, you usually end up at the lowest common denominator. . . . I think that's one of the major reasons for our high incarceration rates (Cayley, 1998).

In Canada and in Manitoba we need to go forward and convince our politicians that we will support them in taking a different, more effective and holistic approach to young offenders. We must reverse the trend to use the criminal justice system more and more to deal with their misbehaviour. It is time to stop demonizing children, and to look to ourselves as both the source of the problem and of its solution.

IX. Recommendations

1. That private citizens demand that public officials reduce the number of jail cells for children in Manitoba.
2. That private citizens discourage and condemn inflammatory and misleading language about youngsters and youth crime wherever it occurs.
3. That private citizens demand that the youth criminal justice system be treated by politicians as a nonpartisan matter, and that children be treated with dignity and respect as our youngest citizens.
4. That a public education campaign be undertaken to inform the public about the expense of the criminal justice system and its effects on young offenders, and about alternatives which work to reintegrate youngsters into their communities.
5. That continuing education courses for those working in the criminal justice system (judges, lawyers, correctional workers, politicians, police, social workers, probation officers and so on) be undertaken. These should explain the counter-productivity and expense of incarceration, and the availability and effectiveness of alternatives.
6. That the Manitoba government implement the provisions of the *AJI Report* recommending a parallel and separate justice system for Aboriginal peoples.
7. That the Manitoba government recognize the community as the basis for preventative and restorative programs in criminal justice as alternatives to suppression and incarceration, and that it fund local, community-based organizations accordingly. Such programs could include: the creation of recreational facilities and drop-in centres, better and more flexible educational opportunities, social security for all kinds of families, the creation of job opportunities for youth and job search skills training, alcohol and drug prevention and rehabili-

tation programs, anger management programs, mental health programs, learning disability programs, health programs dealing with nutrition, foetal alcohol syndrome and addictions.

8. That Manitobans, including young people, participate in a fundamental debate as to the type of justice system which would best benefit our young people and our society. This debate could be initiated by politicians, professionals or the community at large. It must be premised on the notion that our way of dealing with criminal justice issues has to change fundamentally, and that we must consider all reasonable alternatives available to us.

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Endnotes

- ¹ Even outside the media and politics we find a reliance at times upon conjecture, anecdotal evidence and studies inquiring into the degree of fear that people feel (Gabor). Use of this kind of information to extrapolate conclusions that young people are probably engaging in more violent crime (flying in the face of reliable data from Statistics Canada) is highly misleading.
- ² Catherine Latimer, director of youth-justice policy for the federal Justice Department, says “we’re world leaders in jailing kids” (Cayley, 1999). The Supreme Court of Canada also recently remarked that we jail too many offenders in this country. See also Quigley (1999), Cayley (1998) and Doob (1999).
- ³ This is true even where the numbers are adjusted to reflect the fact that 17- and 18-year-olds became part of the young offender system at that time.
- ⁴ As recently as 1998, the current Justice Minister supported the position that children as young as 10 should face criminal charges in exceptional cases, if there should continue to be no available alternative program for children involved in heinous crimes.
- ⁵ Section 37 sets out at length the principles of sentencing of the YCJA.
- ⁶ So many of the alleged “gang” members have recently pleaded guilty (a circumstance that could have been anticipated) that it is unlikely the new facility would have been needed in any event.
- ⁷ The six-point criteria used to identify “gang” members are: a reliable source of information identifies a person as a “gang” member; association with “gangs” has been observed; the person admits being a member; the person has engaged in “gang-motivated” crime; a court of law has made a finding that the person is a “gang” member; and the person adopts the symbols of a “gang” (such as particular clothing).
- ⁸ It does not help for the media to run a story headlined “Girls are becoming more violent”, when the story is not really about violence.
- ⁹ Psychologist Wendy Craig talked to school officials about girls showing “aggression” by spreading false rumours about their victims. “You don’t get charged for starting a rumour someone’s pregnant,” she says, “but the victimization is the same as someone’s getting hit.”
- ⁹ By choosing to study this particular group, she hoped to avoid the prescriptions often applied to ethnic minorities, the poor and the underprivileged (who are more usually the subject of such studies).
- ¹⁰ In Britain it costs more to keep a young offender in custody than to send him or her to Eton (Economist, 1997). In the U.S., educational budgets are being cut in order to find dollars for prisons (Morris). In the last twenty years, California has built 21 new prisons, but only one university (Ziedenberg).
- ¹¹ Millhaven is a maximum-security adult institution.
- ¹² What follows (except where otherwise noted) is derived largely from David Cayley’s book, The Expanding Prison, cited as Cayley, 1998.

