REPRESENTATIVE FOR
CHILDREN AND YOUTH

Submission to the House of Commons Standing Committee on Justice and Human Rights

respecting

Bill C-10
Youth Criminal Justice Act Amendments

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Table of Contents

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Why the B.C. Representative for Children and Youth submits a brief on the *Youth Criminal Justice Act (YCJ Act)*

The mandate of the British Columbia Representative for Children and Youth, as described in the *Representative for Children and Youth Act,* is to improve services and outcomes for all children in B.C. through advocacy, accountability and review. This means I must consider the interests of a broad range of children and youth – those who have committed offences, those who have been the victims of offences committed by either adults or other youths, and those who have been victimized and have also harmed others. Whatever their other experiences, and whatever labels might be affixed to them, they are children, first and foremost. In my work I find this a helpful foundation on which to ground our response to the myriad adolescent behaviours, some harmful, some hopeful, that we encounter. As adults, we have a responsibility to create and sustain reinforcing systems in which each child can grow, learn and assume increasing responsibility for their behaviour.

I approach these proposed *Youth Criminal Justice Act* (*YCJ Act)* amendments as a mother of four children, an advocate for children and youth, and an experienced Youth Court judge. My office has a vigorous program of research on the needs of children and youth, and outcomes in terms of health, education, safety, and economic well-being. I believe that good legislation and policy is grounded on solid research, evaluation of current systems, and careful deliberation.

Of particular interest to me is the systemic overlap of youth in the care of child protection authorities, youth living in the home of a relative, Aboriginal youth, youth with developmental disabilities and youth in conflict with the law. "Developmental disabilities" are severe, chronic intellectual or cognitive disabilities that manifest at birth or during childhood, are expect to continue indefinitely and substantially restrict the individual's functioning. I will talk more about children who are challenged by these disabilities toward the close of this submission.

In 2009, the Provincial Health Officer and I released a joint special report entitled *Kids, Crime and Care: Health and Well-Being of Children in Care: Youth Justice Experiences and Outcomes*, which studied 50,551 children born in 1986. It is the largest study of its kind ever undertaken in Canada, tracking an entire birth cohort and how it moved through to adulthood. While fewer than five per cent of the total study population appeared in a youth court, 36 per cent of the youth in care did. One in six youth in care spent time in custody. Tragically, youth in care are more likely to attend a youth court hearing than they are to attend their high school graduation ceremony.

I believe we all share the goal of improving safety, educational and health outcomes for all youth, including Aboriginal and non-Aboriginal youth, and irrespective of whether they live at home, with relatives, or in the care of the government. And I am convinced that doing our best for these youth, drawing on our experience and the research evidence, will make our nation safer and our communities stronger, more cohesive, and fairer.

Our Knowledge of Youth Offending and Our Experience with the *YCJ Act*

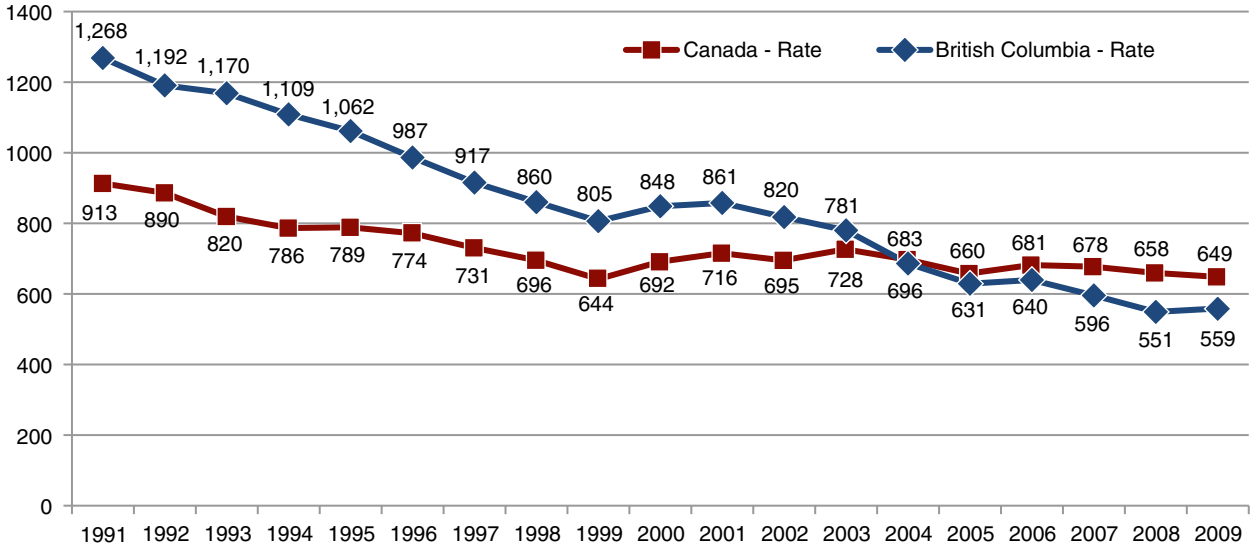
Our understanding of the developmental circumstances of adolescents has advanced rapidly in recent years, based on research in both neuroscience and the behavioural sciences (Steinberg 2010). Public policy which acknowledges this evidence and invests in interventions based upon it will produce significant returns, both in terms of enhanced safety and cost-effectiveness (Vancouver Board of Trade 2010). Money invested in sound child development programs and practices delivers good value. While there might be some quibbling about the details, there is substantial consensus in criminology and child development fields about how youth crime might be further reduced:

- strong supports for mothers-to-be and young children, to develop healthy, resilient and responsible children and youth;
- measured responses for early and first offenders, requiring accountability and nurturing pro-social relationships and behaviour; and
- robust interventions with high risk youth offenders, to assertively manage their risk, in secure settings if necessary, while providing treatment with the best prospects of success.

The use of custody as the remedy of last resort is wise policy in terms of community safety, child development and good stewardship of public funds. In British Columbia a good program of community supervision and intervention with a youth offender costs about $20,000 per year, compared with about $215,000 for a year in custody. Custody cost avoidance makes resources available for community programming, which is demonstrably more effective for the large majority of offenders (Andrews and Bonta 2010, Annie E. Casey Foundaton 2011).

The Province of Quebec was identified last year during the submissions on the previous Bill C-4 as a model of a successful, child-centred approach, operating within the legislative framework of the current *YCJ Act*. The Committee may not be aware that British Columbia shares many youth justice attributes with Quebec, and enjoys similar results. B.C. has a supportive youth court culture and a strong and capably led system of youth justice programs and services, well integrated with the larger child and youth development system. Programming, evaluation and ongoing staff training are all founded on child development principles. This approach pre-dates the *YCJ Act* and B.C. adapted readily to the new legislation, under which even better outcomes have been experienced. Much of the British Columbia experience illustrates positive trends and outcomes for children, such as significant and consistent declines in youth crime.

Youth Crime Rates: Young Persons (charged and not charged) dealt with by the Police, Criminal Code Offences (excluding Traffic), British Columbia and Canada, 1991–2009



Rate per 10,000 Population
"Charged" in B.C. means a Report to Crown Counsel has been filed
Source: UCR Aggregate Survey, Canadian Centre for Justice Statistics, February 2011 extraction.

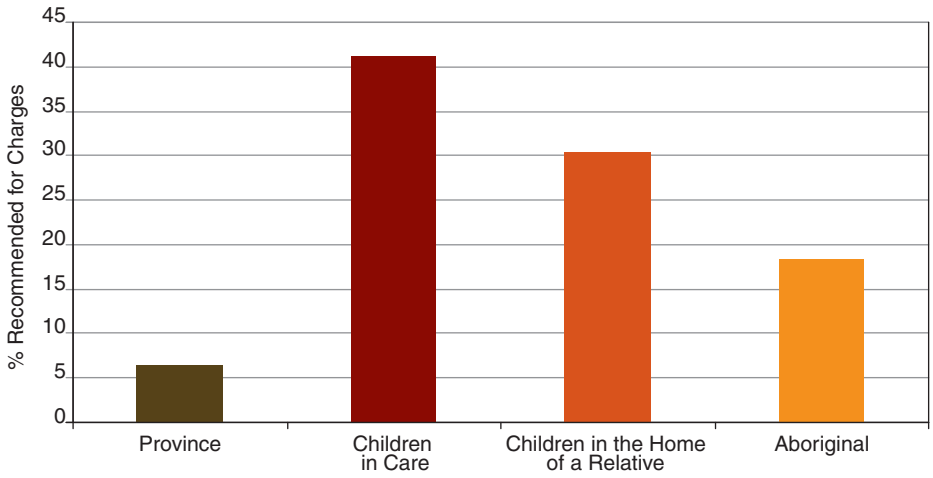
British Columbia now has the second-lowest youth crime rate in the country, after Quebec, and with Quebec, has the lowest per capita rate of youth in custody (see Appendix "Per Capita Rates of Youth in Custody by Province 2009/2010"). It is not simply a case that fewer youth committing crime results in fewer youth in custody. British Columbia's modest use of custody is a long-standing practice and prevailed even when British Columbia's youth crime rate was above the national average. Efforts to tackle this unacceptable crime rate did not include increased use of custody, and the youth crime rate decreased even as youth custody rates fell further. The relationship between crime rates and incarceration levels is complex and indirect, and conclusions should be tendered cautiously. However, Quebec and British Columbia clearly demonstrate that a low rate of youth custody is not an impediment to achieving lower youth crime rates.

When incarceration cannot be avoided, youth justice staff work hard to care for youth in modern, well programmed centres. British Columbia is the first jurisdiction in North America to have its youth custody centres accredited by the international Council on Accreditation, an achievement which deserves commendation.

My experience in Saskatchewan provides an instructive comparison with the British Columbia and Quebec situations. Saskatchewan is my home; my own First Nation is there – the Muskeg Lake Cree Nation, and my children are also members of the Band. Youth justice in Saskatchewan is nearly overwhelmed by the numbers and needs of Aboriginal youth raised in environments of poverty and intergenerational trauma and other adverse childhood experiences. The massive overrepresentation of Aboriginal youth in the Saskatchewan justice system and the child welfare system is a significant justice issue, as other systems of support appear to not protect these children adequately prior to age 12 years. It provokes a compelling question – how can the circumstances of Canadian children and youth be so different merely because of the accident of birthplace?

While circumstances are measurably better in British Columbia, even in a relatively successful jurisdiction, significant challenges remain. While absolute numbers of Aboriginal youth in custody have declined, the decarceration effect of the *YCJ Act* has disproportionately benefited non-Aboriginal youth. The proportion of Aboriginal youth in custody in B.C. has actually grown from 29 per cent in 2000/01 to nearly 50 per cent in 2009/10 (Ministry of Children and Family Development, Youth Justice Branch). Aboriginal youth were five times more likely to face custody than the general study population in our report *Kids, Crime and Care* (Figure 1).

Figure 1: Vulnerable youth recommended for charges in B.C.[1] (12–17)*



* (Aboriginal number includes Aboriginal Children in Care (CIC)/Children in the Home of Relative (CIHR) and Aboriginal non-CIC/CIHR)

[1] Representative for Children and Youth and Office of the Provincial Health Officer (2009). *Kids, Crime and Care: Health and Well-Being of Children in Care: Youth Justice Experiences and Outcomes* Victoria: Province of British Columbia , Figure 5, pg 26

While some youth from stable situations get into trouble (usually a short-lived phase) there is a clear pattern of connection between living outside the family home, educational problems, and poverty. (See Appendix "Percentage of involvement with the justice system" and "Characteristics of youth involved with the youth justice system.") If we are to make any progress in tackling these interrelated clusters of vulnerability, a supportive legislative framework for youth justice is vital. I believe a mistaken association between public safety and more severe sentencing of youth will damage the often fragile progress being made in many jurisdictions, and will disproportionately impact Aboriginal youth and youth in care, populations deserving of proven successful strategies.

I was one of many professionals who made submissions to the Committee's hearings on the previous Bill C-4. Through the Committee, the Government was provided access to an impressive repository of research, experience and wisdom from the disciplines of law, law enforcement, child development, criminology, and youth justice administration. While each submission was unique, the prevailing narrative welcomed a small number of amendments, while deploring the unhelpfulness of the majority of the amendments. The minor changes made from the previous Bill C-4 to the current Bill C-10, while not entirely unwelcome, do not reflect the state of knowledge about either crime reduction or child development. Canada has the expertise and credibility to provide the international community with a model *Youth Criminal Justice Act*. The Committee has the opportunity to recommend the changes that will make this so.

Comments on Proposed Amendments

Section 2(1): New definitions of "serious" and "violent" offences

While intended to address the legitimate concerns of Mr. Justice Nunn about the court's ability to detain a youth recklessly driving a stolen car, the proposed amendments cast the detention net more widely than necessary.

The proposed new definition of a "serious offence" would capture, among others, *Criminal Code* Section 252 (failing to stop at the scene of an accident) and Sections 322/332/334(a) Theft Over $5,000. As well, this definition is not congruent with the sentencing limitations in Section 39(1) which do not permit a custodial sentence for a serious offence. Thus, youths could be remanded in custody for offences for which they could not ultimately be sentenced to custody. It is difficult to calculate the full effect of this change, but the potential impact on vulnerable youth, increasing the risk of a custodial sentence, is worrisome.

The proposed definition of "violent offence" may capture *Criminal Code* Section 249(1) and (2) (dangerous driving without injury) and Section 266 (common assault, which can include behaviour as minor as spitting or shoving). The need to account for the "endangerment" factor is understood, but the definition as proposed leads us down a path of "what ifs" which will be potentially very problematic at the bail hearing, when alleged facts can appear more convincing than the facts found later at trial.

Both Professor Nick Bala and the Canadian Bar Association have suggested adding either a "mental element" or a "knowledge element" to ensure the youth could or should have anticipated the dangerous nature of the conduct, and I endorse the suggested approach.

Section 3(1)(a): Deletion of "long term protection of the public"

Where the current *YCJ Act* articulates three equal objectives (prevent crime, rehabilitate young persons, ensure meaningful consequences) which all work together to "promote the long-term protection of the public", the proposed amendment places "protecting the public" at the beginning, and qualifies all that follows. As well as the significant loss of "long-term" protection, it may limit the role of "the parents, extended family, the community and social or other agencies" as set out in Section 3(1)(c)(iii).

Section 3(1)(b): Diminished moral blameworthiness

The inclusion of this concept is an important improvement in Section 3(1)(b), resonating well with the *Convention on the Rights of the Child* and also recognizing the science of adolescent brain development. While I applaud the inclusion of the words, it appears that the important implications of this concept have not been recognized and embedded in the rest of the *Act.* I will make reference to several incongruent proposals in later sections of this submission.

Section 29(2): Pre-trial detention

The amendments bring much needed clarity to this section, inasmuch as they create a "self-contained" detention section in which all the relevant rules can be located. The combination of the amended Pre-trial Detention section with the proposed new definitions of "serious" and "violent" offences does cause some concern however, as it will widen the net of pre-trial detention to an extent not required to remedy the defects noted by Mr. Justice Nunn.

In my submission on the previous Bill C-4, I pointed out that while the amendments sought, on one hand, to widen the net of pre-trial detention, on the other hand, they would quite surprisingly tighten the net. There was no provision for a judge to detain a youth for breach of a court order. The violation of some conditions of court orders represents a real risk to vulnerable people, and this omission would have prevented the court from acting to protect them. Protective conditions, such as those prohibiting contact with victims, should be subject to robust enforcement.

Bill C-10 contains a remedy to this, but unfortunately, the remedy goes well beyond the problem it needs to correct. Bill C-10 would permit detention of a youth with a "history that indicates a pattern of either outstanding charges or findings of guilt." This is a very broad broom and may sweep many youth into custody where there is absolutely no risk of bodily harm to anyone.

As Representative for Children and Youth, I have expressed concern about at-risk youth who are living in the care of the government, or in the home of a relative, who plunge deeper into the justice system, not on the basis of any substantive offence, but solely because they lack the personal strengths and social supports to comply with court orders. These are often highly vulnerable youth with tenuous connections to caregivers, a great deal of anger, and poor problem-solving skills. They frequently break foster home rules, run away when encountering adversity, or fail to attend school or probation appointments. Our report, *Kids, Crime and Care*, documents that children in care constituted nearly half the youth charged with administration of justice offences in British Columbia.

To preclude the potentially damaging effects of pre-trial detention where there is no violence intended or likely, the words "history that indicates a pattern of either outstanding charges or findings of guilt" should be qualified with words such as "related to offences which endanger life or safety."

Section 38(2): Sentencing principles

This section adds the objectives "to denounce unlawful conduct" and "to deter the young person" to an already satisfactory statement of principle about sentencing. These apparently minor changes may have limited impact in most cases, but could "tip the balance" in marginal cases, leading to custodial sentences where they might not otherwise have been imposed, or to longer custodial sentences. Research on judicial behaviour indicates that the language employed in the *YCJ Act* does make a difference in the sentencing process (Cesaroni and Bala 2008).

The concept of denunciation is an unhelpful import from the adult criminal justice system, from which the youth system takes pains to separate itself in Section 3(1)(b). It would also be largely redundant if the reference to "meaningful consequences" currently in Section 3(1)(a) were retained. While conveying roughly the same intent, "meaningful consequences" uses more appropriate language for young people, and is congruent with the new "presumption of diminished moral blameworthiness" which will be adopted in Section 3(1)(b).

Other commentators have already noted that the concept of specific deterrence is not supported in the research literature, and this additional import from the adult system is particularly unsuited to impulsive youth who have underdeveloped executive functions (judgement) and a heightened sensitivity to the often-miscalculated rewards of bad conduct (Steinberg 2010).

Section 39(1)(c): Extra-judicial sanctions and Section 115: Police record keeping

The proposed amendments are a matter of concern in terms of potential impact on the administration of justice. They may place youth at greater risk of custodial sentences because in the past they accepted responsibility for an act and were subject to extra-judicial sanctions. This is highly problematic because there has been no judicial finding of guilt, and the acceptance of responsibility was likely made in the absence of legal advice. In fact, the Ontario court of Appeal in *R. v. S. (LO(2006)215 C.C.C.(3d) 246, 218) O.A.C. 49 (C.A.)* specifically denied youth counsel where extra-judicial sanctions were being contemplated by the Crown.

If enacted, this provision will trigger changes in the practice of extra-judicial sanctions. Youth will need to be cautioned in every instance about the potential use of the sanction in future sentencing hearings. This in turn could have a "chilling" effect on the use of these sanctions. This would be most unfortunate, as the growth in successful pre-court diversion has been one of the important achievements of the *YCJ Act*.

In terms of police record keeping, it may well be good practice for police agencies to keep records and determine if an extra-judicial measure has been previously employed with a particular youth. But the leap from good practice to statutory requirement must spring from some compelling argument, which appears absent in this case. The risk that some undeserving minor offender may inadvertently be afforded a second or third chance may occasion some moral indignation, but there is hardly a major threat to public safety. In fact, a second or third chance may well be appropriate for a youth with developmental disabilities or other challenges. As well, this provision may require the creation of complex and costly systems.

Taken together, the proposed 39(1)(c) and 115 blur the distinction between diversion and court proceedings. They create what is tantamount to an "enhanced" youth court record, thus damaging a highly successful scheme of alternatives to court, and potentially increasing the youth court workload.

Section 42(2)(p): Deferred custody and supervision orders

Deferred Custody and Supervision Orders, an innovation of the *YCJ Act*, have proven very effective in the community supervision of youth who might otherwise be incarcerated. If the proposed amendment to the definition of "serious violent offence" were to be enacted, it would make the Deferred Custody and Supervision Order available to a greater range of offences. However, it would be appropriate to raise the current six month limit on these orders to two years less a day.

Sections 64(1) and (2) and Section 72(1)(a): Application of adult sentences

While it was necessary to amend this section to comply with the Supreme Court of Canada decision in *R. v. D.B.,* the status quo, where Crown brings an application for an adult sentence, at their discretion, is perfectly workable and appropriate. The proposed amendment is unfortunate on two fronts: it places an unnecessary emphasis on adult sentencing; and it places an unprecedented obligation on the prosecution to tell the court they have considered the application and decided not to pursue it. As the Canadian Bar Association has noted, "this suggests a basic mistrust of Crown Counsel and their ability to properly use prosecutorial discretion." (Canadian Bar Association 2010)

The proposed requirement to rebut the presumption of diminished moral blameworthiness in Section 72(1)(a) is a potentially helpful measure. It could help prevent the imposition of adult sentences on young people who may actually suffer from a developmental disability or whose limited insight and faulty judgement may simply be commensurate with their age.

However, based on my experience on the bench, I expressed concern in my submission on the previous Bill C-4 about the evidentiary requirements to rebut the presumption. Bill C-10 attempts to remedy the problem by removing the words "beyond a reasonable doubt." While this changes the test for a successful rebuttal, it fails to speak to the kind of evidence pertinent to the question of diminished blameworthiness. The section would be strengthened by a requirement for psychiatric or psychological assessment specifically addressing cognitive functioning, insight and decision-making.

Section 75: Lifting ban on publication

The proposed amendments represent an unnecessary and onerous burden on the court. If a "violent offence" is redefined as proposed, hearings on the lifting of the publication ban will be required in a very large number of cases, including every case of common assault. Furthermore, the threshold for lifting the ban appears to be both very low and rather ambiguous. Again, lengthy hearings to try to determine if lifting a publication ban would enhance public safety can be anticipated.

Publication is already permitted in specified circumstances – the imposition of an adult sentence, and the escape from custody of a dangerous youth. More frequently employed, and more effective, are the provisions in Section 119 and in 125 (6) which permit targeted information sharing with victims, those involved in the supervision of the youth and specified professionals, such as school authorities. This

allows sharing with the people who are potentially most impacted by the risk, or who are best situated to help manage the youth's risk as part of the supervision "team".

This pro-active and targeted information sharing by the youth justice system may atrophy if broad publication of names of violent youth offenders becomes commonplace. This would be unfortunate, and even dangerous, because there is no evidence that general publication of names brings any greater protection to the public. Names and particulars of adult offenders are routinely published. Does anyone clip these items from the newspaper or keep a list on their refrigerator, and then take some course of action to guard against these individuals?

Police advice about securing one's home against break-ins, or avoiding particular fraud schemes may well be helpful, but this advice does not need to have offender names attached in order to be effective.

If publication is intended to have some kind of specific deterrence effect, this again is without empirical evidence, and experience with youth offenders suggests there is a risk of the opposite impact. Some youth, sadly, seek notoriety.

What is clear to all who work with youth offenders is the potential damage to "the rehabilitation and reintegration of young people", words retained in the amendments proposed for the Declaration of Principle. It is difficult to conceive how the publication of a youth's identity will assist parents, caregivers and professionals in normalizing the youth's life and engaging them in the pro-social activities associated with reduced offending. Furthermore, there will be "collateral damage" to the youth's siblings and others in the family circle. Youths and their family members could be devastated for years by the stigma, exacerbating the social exclusion and rejection many already endure.

Finally, these proposed amendments do not reflect the concerns expressed in the Quebec Court of Appeal's Reference re: Bill C-7, (2003) Q.J. No. 2850, paragraph 278.

In summary, the amendments regarding publication are particularly unhelpful, and without legal or social science backing. One is left to speculate whether the impetus to reveal offenders' names is rooted in retribution rather than justice or public safety. And it difficult to fathom the logic of introducing the "presumption of diminished moral blameworthiness" in the Principles section and then several pages later, seemingly in direct contrast to that concept, proposing a retributive measure such as lifting the ban on the publication of a youth's name.

Section 76(2): Place of detention

This prohibition on placing a youth under 18 years of age in an adult facility is a commendable change. It has not been the practice in British Columbia to place anyone under 18 in an adult facility, and it is appropriate that this becomes a national practice.

Other Issues

Youth with Developmental Disabilities

The experience of both adults and youth with developmental disabilities, such as Fetal Alcohol Spectrum Disorders (FASD), neurodevelopmental disorders, and autism in the criminal justice system has been a subject of increasing concern in recent years. "Developmental disabilities" are defined here as severe, chronic intellectual or cognitive disabilities that manifest at birth or during childhood, are expect to continue indefinitely and substantially restrict the individual's functioning.

The Public Health Agency of Canada hosted a National Roundtable on FASD for youth justice officials and service providers in Vancouver in 2008. There was also a conference in Whitehorse in 2008 which produced *The Path to Justice: Access to Justice for Individuals with FASD (*Fraser 2008). This national event gathered justice officials, experts and community representatives and concluded that much more work was required on the criminal law to appropriately reflect the circumstances of victims and offenders with FASD. This past August the Canadian Bar Association passed a resolution entitled *Fetal Alcohol Spectrum Disorder in the Criminal Justice System.* In a October 15, 2010 News Release, the Federal/Provincial/ Territorial Ministers Responsible for Justice recognized that FASD affects many offenders and victims, committed to making this a priority item, and promised to engage with the CBA about FASD as an "access to justice issue". There are, of course, many other advocates, health professionals and service providers who should also be consulted.

FASD is only one of a number of impairments which would not generally achieve the threshold for a finding of 'not criminally responsible on account of mental disorder', but which may limit the ability of an adult or youth to participate meaningfully in a criminal justice proceeding, and to respond appropriately to any resulting decision or sentence. The inability to accurately document the prevalence of FASD and other developmental disabilities among the youth justice population is embarrassing. Incomplete data and inconsistent approaches to charging, diversion, fitness to stand trial and sentencing, all contribute to this. However, there is little doubt that our youth custody centres are coping with large numbers of disabled and special needs youth, who with proper diagnosis and intervention might have avoided the behaviour which propelled them into custody, or who might be more productively and safely supported in other environments.

At the time of writing I am grappling with advocacy for a young man with several disabilities who has been held for seven months in a youth custody centre in British Columbia only because the community supports he needs are not available. John (not his real name) was seventeen when he was charged. He was found guilty but has never been sentenced because neither the justice system nor the community had an appropriate response to address John's actions given his needs. Among John's diagnoses are Mental Retardation, Tourette's Syndrome, Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder and Bi-polar Affective Disorder. He has been assessed for fitness on two occasions and each time has been found fit, a compelling example of just how low the fitness bar is in Canada for special needs youth.

John has limited insight and self-control – sudden changes or perceived challenges send his anxiety level soaring and he lashes out at those around him. For John, and a number of other young people like him, a poorly equipped justice system becomes, by default, the main service provider. This is simply wrong. There is no criminal justice rationale for John's detention, but rather a gap in services. I fear he will be irrevocably damaged if we cannot resolve this quickly.

Some specific provision in the *YCJ Act* for youth with developmental disabilities would be a strong step in a helpful and just direction, and again, would be congruent with the *Act's* proposed new language about "diminished moral blameworthiness". The blameworthiness of these disabled young people is demonstrably diminished more significantly than for adolescents generally. At minimum, we must consider how these proposed amendments will impact this vulnerable population.

A Plea for Simplicity

Mr. Justice Nunn, in his report, made references to "hasty legislative drafting" and "lack of clarity and undue complexity". He was referring to the pre-trial detention provisions, but the same might be observed about large parts of the *YCJ Act.* While the principles and the innovations in the current *YCJ Act* are commendable, it is largely impenetrable to anyone save experienced youth court judges and counsel, and youth specialists in police and corrections. It is certainly not understandable to young people, their parents, victims, or the general public.

Recent research suggests that while the *YCJ Act* encourages parental involvement, there is no evidence that this aspect has improved since 2003 (Peterson-Badali and Broeking 2010). Many key players cite a lack of understanding of the system as one of the causes of this parental disengagement. This is of great concern to me as the Representative for Children and Youth, because youth particularly need the informed participation of their parents and caregivers when they are going through the tribulations of a court case. We do not even know how often they speak directly to the court. This was a worthy concept to add to the *YCJ Act,* but we know little of its administration at a practical level.

Although it would take a major effort, a thoughtful and skilled attempt to streamline the *YCJ Act* and make it more readily comprehensible to all who are affected by it would yield important rewards in terms of public and family support and engagement. Such an effort may well prove more helpful than many of the even more complex changes currently proposed.

Youth Services in Jeopardy

Even though several Canadian jurisdictions have a youth justice system characterized by well supported, robust community programs, I am worried about the impacts of other parts of Bill C-10 on these achievements. Will the additional resources required for some of the adult provisions of Bill C-10 be found by transferring funds from the youth system? Pressures created by Bill C-10 may affect both provincial and federal levels of government. Could an increased demand for beds in provincial adult facilities tempt some provincial governments to "consolidate" youth in fewer facilities and convert youth

centres to adult prisons? Larger youth facilities, possibly farther from home, will not serve the goals of learning, treatment and preparation for reintegration, which are central to the mission of youth custody.

I also understand that the well established federal/provincial cost-sharing scheme, which funds important and effective youth justice programs, may be in some jeopardy. Although a five year agreement was negotiated prior to the last federal election, the Government is now proposing only a two year agreement, and advises that the scheme will be subject to the Federal Program Review. There are already serious disparities in the level and quality of youth justice programs across the nation. Any reduction in federal support will exacerbate those disparities, and place at risk the entire systemic approach to youth justice which is developing in Canada.

Consultation

I was pleased to participate in Roundtable discussions on the *YCJ Act* with the federal Minister of Justice, provincial Attorneys General, and a range of other officials engaged in the youth justice system. However, I am uncertain as to why the results of this and other roundtables have never been shared with the participants or public. I also recall a commitment to a specific Aboriginal forum on the *YCJ Act,* given the significant and disproportionate impact the legislation has on Aboriginal youth. I do not believe any such forum was held. This was certainly a missed opportunity to hear from an important constituency affected by the system.

Conclusion

I want to emphasize that it is crucial to not just comply with the *United Nations Convention on the Rights of the Child*. It is also crucial to define and measure the outcomes which will tell us how well we are complying. We need national standards for reporting on youth justice and the factors connected to adolescent well-being. Adolescent safety, health, education, peer connections and other outcomes are significantly related to preventing criminal behaviour. Canada needs a rigorous and comprehensive set of measures if we are to promote the best outcomes for our children and youth.

Children and youth who are victims, offenders, witnesses or otherwise involved in the youth criminal justice system in Canada deserve a strong and effective system that responds to their circumstances and recognizes that this response contributes to public safety. British Columbia has witnessed some very encouraging trends under the largely beneficial rule of the current *Youth Criminal Justice Act* and predecessor *Young Offenders Act*.

As a signatory to the *Convention on the Rights of the Child*, Canada reports on our progress to the United Nations Committee on the Rights of the Child every ten years, not every five years as prescribed. Nonetheless, in our 2009 report, covering the years 1998 to 2007, we highlighted the achievements of the *YCJ Act*, including the reduction in youth incarceration and the reduction in charges against youth. It is perplexing that a nation proud to tell the international community about its achievements in youth justice would place those achievements at risk.

In conclusion it is my respectful observation that the evidence is not clear in support of many of the amendments before you. I recommend that changes be made to make these amendments consistent with the evidence on crime prevention, reduction and improving the lives of Canadian adolescents, especially those from vulnerable populations.

My final suggestion is that efforts be made to consult with Aboriginal representatives on the systemic impact of these proposed changes, and how Aboriginal youth might be effectively protected from potential discrimination or harm.

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Appendix

Figure 1: Percentage of Involvement with the Justice System in B.C.[2]

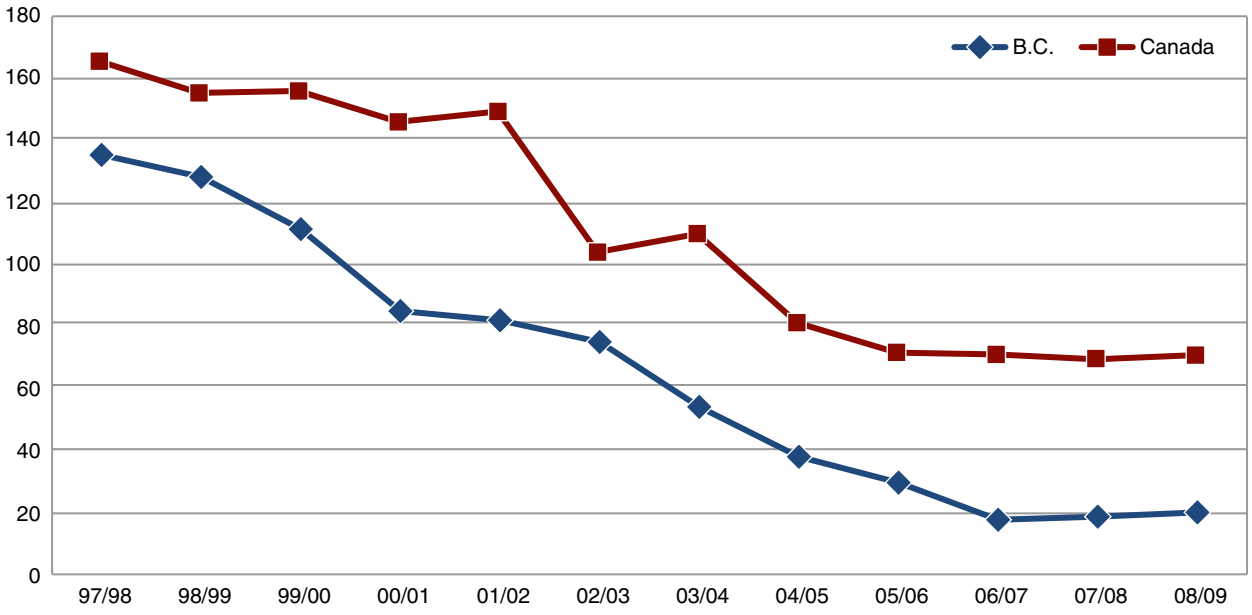
	Total	Youth Justice (age 12–17)	Justice (age 12–21)
Province	50,551	4.4%	6.6%
Male	25,886	5.8%	9.2%
Female	24,665	2.9%	3.9%
Children in Care	1,683	35.5%	40.8%
Male	827	44.1%	51.0%
Female	856	27.2%	30.8%
Continuing Custody	548	39.2%	44.9%
Male	279	47.3%	54.1%
Female	269	30.9%	35.3%
Temporary Care	1,135	33.7%	38.8%
Male	548	42.5%	49.5%
Female	587	25.6%	28.8%
Child in the Home of a Relative	1,177	22.6%	30.6%
Male	568	30.1%	40.1%
Female	609	15.6%	21.7%
Aboriginal	4,947	14.0%	19.5%
Male	2,469	17.4%	24.8%
Female	2,478	10.7%	14.2%

[2] Representative for Children and Youth and Office of the Provincial Health Officer (2009). *Kids, Crime and Care: Health and Well-Being of Children in Care: Youth Justice Experiences and Outcomes.* Victoria: Province of British Columbia , Figure 8, pg 29.

Figure 2: Characteristics of Youth Involved with the Youth Justice System in B.C.[3]

	Population		Male		Female	
	n	%	n	%	n	%
Cohort Size	50,551	–	25,886	51%	24,665	49%
Involvement with YJ (12–17)	2,212	4.4%	1508	5.8%	704	2.9%
Aboriginal	694	31.4%	429	28.4%	265	37.6%
Educational Special Needs	1367	61.8%	966	64.1%	401	57.0%
Children in care	598	27.0%	365	24.2%	233	33.1%
CIHR	266	12.0%	171	11.3%	95	13.5%
On income assistance by age 19	1467	66.3%	970	64.3%	497	70.6%
High School Graduation Rate	664	30.0%	435	28.9%	229	32.5%
History of Violence	533	24.1%	431	28.6%	101	14.3%

Figure 3: Youth Court Cases B.C. and Canada[4]

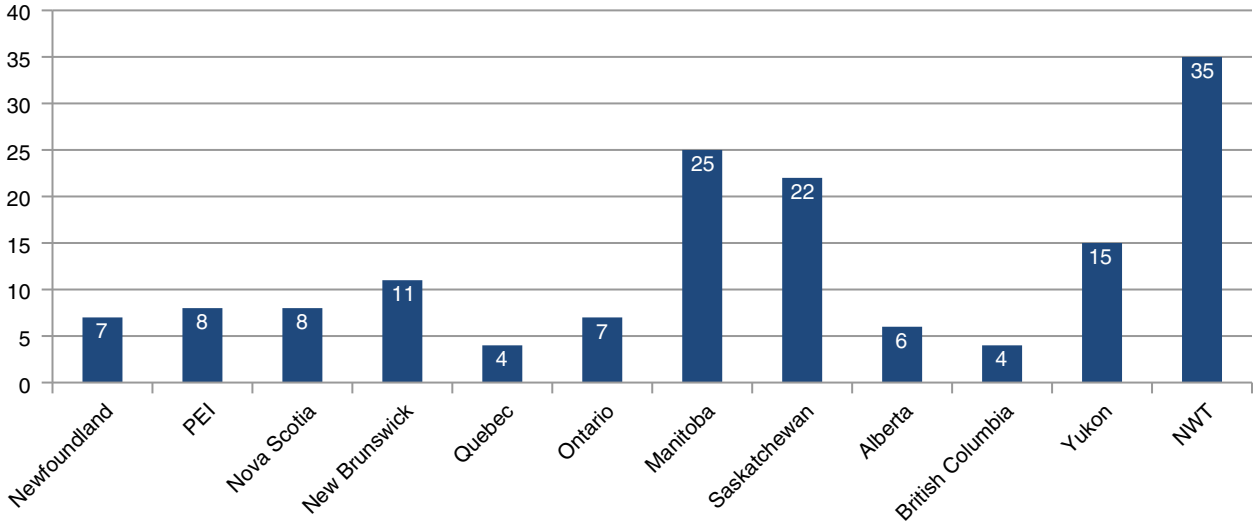


Rate per 10,000 Population

[3] Representative for Children and Youth and Office of the Provincial Health Officer (2009). *Kids, Crime and Care: Health and Well-Being of Children in Care: Youth Justice Experiences and Outcomes* Victoria: Province of British Columbia, Figure 4, pg 25.

[4] Ministry of Children and Family Development, Youth Justice Policy and Program Support (2010). *The Impact of the YCJA* (Powerpoint presentation, based on data from Canadian Centre for Justice Statistics). Victoria: Province of British Columbia.

Figure 4: Per Capita Rates of Youth in Custody by Province (2009/2010)



Rates are calculated per 10,000 youth population (12 to 17 years). Due to system changes in 1999/2000, British Columbia does not have historically comparable data before April 2000.
Source: Statistics Canada, Canadian Centre for Justice Statistics, Corrections Key Indicators Report.