

**Public Senate Hearings**  
**Ottawa, February 22<sup>nd</sup>, 2012**  
**Bill C-10: 9 Amendments to the Youth Criminal Justice Act**  
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The Canadian government's proposed Omnibus Crime Bill specifies the implementation of mandatory minimum sentences for a series of criminal offences, e.g., sexual offences involving children and serious drug offences and greater use of custodial sentences for young offenders and longer periods in custody for serious, violent young offenders (SVOs). The criteria for SVOs also are to be expanded. Our main concern is that these proposed changes to the Youth Criminal Justice Act (YCJA) will increase the number of young offenders sentenced to longer custody sentences without considering several critical issues identified in Canadian research and research in other countries concerning several negative impacts that custody can have on incarcerated young offenders. Most importantly, this research generally describes incarcerated young offenders as having an extensive range of risk factors for serious and violent offending that inhibit their ability to respond to criminal justice sanctions with the desired remorse for their victims and the avoidance of future serious offending. This research also reveals that identifying the complete profile of risk and protective factors for each individual incarcerated young offender, and providing an intensive and complete treatment plan starting in custody and continuing in the community upon release can reduce the likelihood of serious reoffending except for a very small number of these youth. Understandably, the public anger and fear of violent young offenders has contributed partly to the proposed Bill C-10: 9 Amendments. However, most incarcerated young offenders have tragic risk profiles typically focused on events they had no control over involving family and neighbourhood from pre-birth to adolescence. To expect these young offenders to respond positively to custody experiences requires the latter to include individualized case planning based on complete diagnostic assessments of risk and protective factors and the provision of related treatment programs. Again, there are a few young offenders who likely would not respond positively, yet it is necessary to distinguish them from the vast majority of incarcerated young offenders who have the strong potential to respond positively. The proposed amendments to the YCJA does not allow for this critical distinction and, further, they does not address the need for the necessary diagnostic and treatment resources provincially funded, for the most part, and administered.

To review some of the risk factors which are conflicting young offenders in Canada, we draw on results from Corrado's SSHRC funded *Incarcerated Serious and Violent Young Offenders Project*. The data presented is from 477 interviews and file reviews that were carried out on incarcerated young offenders in Burnaby and Victoria, British Columbia (B.C.) from 2005 to 2010. This data provides some basic figures from young offenders' self-reporting related to their most recent offending, family profiles, school profiles, mental health profiles, and custodial program participation and its impact. To gain a sense of the nature of offending that results in youth custodial sentences in British Columbia, young offenders in this sample were currently incarcerated for an average of just over 3 current charges (with a range of 1-9). To further examine these numbers, the most common charge was administrative (63.9%), which includes most often probation condition violations; this was followed by violent offence charges (56.2%). Within this number, a very limited number of youth were currently incarcerated for a murder or sexual assault, and violent offences are predominantly assaultive or assault-related crimes.

Property offences followed these, with 41.5% of youth, and finally 8.6% of the youth were in custody for drug-related charges.

In reference to the youth's family profiles, 60.1% of the incarcerated young offenders had been or are in the foster care system, with an average entrance age of 9.2 years old. To focus on the living situation more generally, a vast majority of youth have run away from home for a period of more than 24 hours (87.8%), and almost two-thirds of incarcerated youth have been kicked out of their home before (61.6%). Furthermore, these youth come from families with a host of added problems including familial drinking problems (64.1%), a family member(s) with a criminal record (74.3%), and a family member(s) who has experienced physical abuse (47.7%).<sup>1</sup>

The multitude of problems among serious young offenders extends to the school realm as well. The mean age of youth in the incarcerated sample was 16, while the last grade that was completed on average was grade 8 (mean 8.8). Almost half of all youth (49.6%) have dropped out of school at some point in their educational history, and on average, youth have experienced a range of behavioural problems in school (a mean of 9.5 problems in total ranging from skipping classes, bullying, talking back to teachers, and hitting another student or a teacher).

The mental health profiles of these youth also speak to the complexity of managing young offenders. Based on the self-reports of a sub-sample of 176 youth in custody during the data collection time period, 35.8% have AHDD, 19.9% have addiction problems, 15.9% have depression and learning disabilities, and 10.8% have anxiety.

To address the many needs of these young people, custodial institutions in B.C. offer a number of program options, e.g., psychological and psychiatric assessments, educational programs and life skills training, substance abuse programs, religious services and culturally sensitive programs, violent offender treatment and counselling, and post-release planning. The number of youth who answered the program related questions was smaller than the original sample (N=128), due to the fact that this series of questions is asked to those young offenders who have been incarcerated for a period of 30 days or more. Of these youth, 96% of youth participated in an educational and life skills program, with 87% finding it helpful. Substance-abuse programs were accessed by 74% of young offenders with 55% finding them helpful. Eighty-one percent (81%) of youth utilized the health services provided in custody which may include seeing a psychiatrist. Of these youth, 81% also found it to be helpful. Religious services and culturally-based programs were accessed by 73% and 45% of youth respectively. The religious services were found to be helpful by 71% of those youth, and 17% found the cultural programs to be helpful. A much smaller number of youth from this sample accessed a violence, anger, or empathy related program (19%; 56% found it helpful); and finally 70% of youth took part in release-planning (50% found this process helpful).

These numbers concerning program participation in custody and its utility are promising; however, one concern that arises here is related to custodial stays. Youth in Canada are in custody for very short sentences; in 2008/09 in British Columbia, 49% of youth sentenced to custody received a sentence of one month or less, and 40% were sentenced to more than one month, but less than six months. Overall across the country, 43 % of youth sentenced to custody received a sentence of one month or less, and 47 % were sentenced to more than one month, but

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<sup>1</sup> at least one member of the youth's extended family has the identified problem.

less than six months. In reflecting upon this numbers, it is evident that youth have a very limited time frame to access suitable rehabilitative services while serving their custodial sentence. For this reason, it is important to implement intake diagnostic screening and assessment using multi-domain risk assessment tools, for example the Cracow, to determine the risk trajectory or pathway of the young offenders, and the corresponding rehabilitative program approach for each youth (see Corrado & Freedman, 2011). In continuation of this, post-release planning can be instrumental in connecting youth to the same or similar services in the community that can also target their identified needs; this is particular important for young offenders with diagnosed mental illness, such as fetal alcohol spectrum disorder (FASD). It is future investment – monetary, time, and consideration – in the areas of program development that requires the most attention among political and community leaders. The series of problems that present in custody are only magnified in the community upon which the youth returns to their chaotic family/living environment, criminally and/or substance abusing friends, difficulties in school, and so forth. These youth necessitate ongoing support and encouragement so that the number of youth participating and successfully completing programs in the community can be ameliorated.

This may lead to the notion that an effective solution would be longer custodial sentences; yet while custody may be the best, or only, option for some youth offending patterns, research has shown that the majority of youth will find more success in a community setting with community-based programming and support (Henggeler & Schoenwald, 2011; Hoge, 2009; Loeber & Farrington, 1998a; Loeber & Farrington, 1998b; Lipsey, Wilson, & Cothorn, 2000; Tate & Redding, 2005). Additional research that has recently emerged from Corrado's *Incarcerated Serious and Violent Young Offenders Project* has revealed that incarcerated young offenders, while some of them do express feelings of remorse, do not have a lesser likelihood of reoffending or becoming a chronic offender based on the presence of this feeling. This is an important consideration as one of the major objectives of Bill C-10 under the young offender section is to further evoke such a response from young offenders through longer custodial stays. "Under the current Youth Criminal Justice Act, the courts cannot include deterrence and denunciation as factors in sentencing. This hampers a court's ability to establish an appropriate sentence in some cases, e.g. for repeat offenders or for offenders who demonstrate a lack of remorse or empathy for their victims. 'Specific deterrence and denunciation' would allow the courts to impose sanctions designed to discourage the particular offender from committing further offences, when the circumstances of the individual case indicate that this is necessary" (Department of Justice Canada, 2011).

Utilizing data obtained between 1998 and 2001 and a sample of 447 incarcerated young offenders in B.C., the study identified a remorse construct, based on existing empirical research and results from principle components analysis. A logistic regression analysis was then employed to determine the effect of remorse on chronic offending among the sample of young offenders. A weak, but significant correlation (.10,  $p < .001$ ) was evident between remorsefulness and chronic offending; however, the regression analysis which incorporated remorse and several identified risk variables for chronic offending (age, gender, living situation, school problems, substance use and victimization) found that remorsefulness was not significant once these other factors were added. By far the strongest significant relationship with chronic offending involved the living arrangement at the time of incarceration. Youth who were living in single-parent households had a 2.1 times higher probability of being a chronic offender than

youth living with both their natural parents [ $G^2 = 3.758 (1), p < .10$ ]. Gender and age were also significant predictors of chronic offending in this sample.

Despite the ideological policy goal of Bill C-10 – arguably that custody will serve as an opportunity to increase remorsefulness through reflection, our research has shown that remorse is not a significant variable related to chronic offending or reoffending when a series of other risk factors are taken into account. Instead, stability in youth's living arrangement may be one of the strongest predictors of repeat offending among incarcerated youth, and potential programming addressing in this area should be addressed. Regarding the potential impact of longer sentences for young offenders to increase feelings of remorse (a major component of Bill C-10), this research highlights potential limitations in this rationale, and that it may not be promising without addressing these far more critically important risk factors, and particularly the absence of early protective factors. Other research has also shown that young offenders do not necessarily conform to a logical, rational choice model, thinking process (Corrado, Gronsdahl, MacAlister, & Cohen, 2007).

A response that may be more appropriate for numerous young offenders is community sentences and mandated programming. An ongoing study being carried out by Corrado and two Simon Fraser University graduate students in the Lower Mainland, British Columbia is examining two specialized youth probation caseloads – one for mentally disordered young offenders and one for violent and gang-involved young offenders. The study is exploring how these newer probation approaches compare to traditional youth probation caseloads in relation to treatment programming access and success. Data is being collected using the youth's full probation case files and available online youth criminal justice information. Preliminary results based on the mentally disordered young offender caseload have revealed interesting facts about rehabilitative treatment participation. Drawing on an initial sample of 44 mentally disordered young offenders, a logistic regression analysis demonstrated that the higher the number of programs that young offenders were referred to, the more likely it was that the youth would recidivate one time (approximately 1.3 times more likely), and also to reoffend multiple times (four or more; 100% more likely to reoffend). Although these results were insignificant (a likely consequence of the thus far small sample), they are still valuable and can be interpreted in two ways. First, this is a clear indication that the more offending by a youth, the more programs to which the young offender is referred. However, it could also suggest that matching youth to appropriate programming based on their individual profile of risk and protective factors is extremely difficult, and that young offenders may be connected to a series of different programs before the probation officer is able to find a program or treatment approach that truly corresponds with the youth's needs and can as a result be effective for this unique offender.

Consistent with the focus on young offender treatment programming for the mentally disordered youth, a second preliminary finding was that, while these young offenders are referred to a number of programs available in the community, many of them abandon their program participation, and therefore fail to complete them. For example, 19 out of 44 (43%) mentally disordered young offenders referred to specialized youth probation in Vancouver were referred to individual counselling. Among these youth, only 5, or 11% of the youth were known to have successfully completed the program (meaning they abided by the program expectations and completed the intended time period in the program). For the employment programs, 7 out of 44 (almost 16%) youth were referred to such a program, yet only 1 youth, was documented as

having completed it. Sixteen (16) of 44 (36%) youth were referred to a substance abuse program, with 2 known completions, and finally 27 out of 44 (a little over 61%) youth were referred to a residential attendance program (RAP), which are typically designed to address substance abuse; 6 youth actually completed the RAP.

The program completion numbers should be interpreted with some caution, as they are based on program reports found in the youth's probation case files. Probation officers nonetheless are expected to include such documentation in the youth's file, and so these numbers are likely accurate and represent an incredibly small number of examples of program success. After talking to some young offenders in custody and reading the probation officer's daily notes on each youth, it appears as though there are many explanations for why this is occurring: first, oftentimes youth are expected to stay away from their families for a period of time, or are inadvertently forced to do so because of the program location, and so they are AWOLing, or discharging themselves altogether; second, many of these young offenders respond well to one-on-one programming; however, they have difficulty working and engaging with other youth; this therefore results in misbehaving and again being discharged from the program, either by the program staff or themselves; three, youth, particularly young offenders with mental health conditions act out and have trouble controlling their outbursts and aggression and so they are asked to leave the program – either after a series of incidents, or after one major, often assaultive (against staff or other youth), incident; four, the youth agrees to attend the program; however, s/he never makes it to the intake meeting, because of their chaotic, unstable lifestyle, inability to get a ride, forgetfulness, or complete disregard; fifth, the program requires weekly individual and/or parent-teen participation and either one or both persons refuse to participate; and finally sixth, in some cases young probationers are referred to a program however after an initial intake meeting, s/he is found to be unsuitable for the program, or the program is unsuitable for the youth and it cannot meet the multitude of the youth's needs, e.g., uncooperative attitude, substance abuse, anger/aggression problems, inattention, lack of willingness, refusal to take prescribed medications, lack of parental/guardian support, and so forth.

Issues in the areas of serious violent and serious mentally disordered young offender treatment programming abound for the above listed reasons, and as well are further complicated by problems such as multiple pathway and offending trajectories, lack of early intervention and identification, comorbid diagnoses and misdiagnoses between severe conditions, and the lack of electronic file sharing among criminal justice and community professionals. Inconsistencies with diagnostics and screening alone can lead to severe consequences including youth being referred to ineffective programming that fails to target their actual needs and risks. For example, among mentally disordered young offenders, there are problems with distinguishing bipolar disorder from schizophrenia/psychosis, and even disorders on the autism spectrum (including pervasive developmental disorder); these problems extend even to comprehensive assessments by forensic psychiatrists and forensic psychiatric nurses. Each diagnosis and risk factor (e.g., pre-natal toxin exposure, extreme temperament, history of abuse/neglect) demands a very distinct treatment model. Not only are young offenders surrounded by environmental turmoil due to their family, school, peers, drug use and experiences of abuse and neglect, but this disorderliness intersects the screening, assessment, and program matching processes as well.

The best response is becoming involved early and following the youth through development, offering support along the way. Without the programming, serious violent and

mentally disordered young offenders will continue to cycle through the youth system and eventually find themselves in the adult system. In light of the presented research and findings, much discretion if needed by the justice system and criminal justice institutions would benefit greatly by working to develop more effective and transferable programs, and more forcefully mandating some degree of program and treatment participation established in the community. IRCS would be a beneficial option that is not being used but should be applied more often.

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