

Reality Check T

Contributing to the factual knowledge of Canadians about crime and criminal justice.

THE JOHN HOWARD SOCIETY OF CANADA

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“Adult Time for Adult Crimes”

The claim:

Sentences for youth are too lenient. Young people are literally “getting away with murder”. In more cases, young people should be subject to the same penalties as for adults.

The reality:

There is a different penalty structure for adults and for youth for offences defined within the *Criminal Code of Canada*: penalties for those found guilty in adult court are defined within the *Criminal Code* and, for young people (12 to 17 years) found guilty in youth court within the *Young Offenders Act* (which, if passed by Parliament, will be replaced by a new act, the *Youth Criminal Justice Act*).

Under both the *Criminal Code* and the *Young Offenders Act*, a wide range of sentences are available to the judge, including discharge, probation, community service, restitution, fine and incarceration. Young people are much more likely to receive a term of probation than adults (48% vs. 28%). On the other hand, one-third of adults receive fines, compared to 6% of young people (which is reflective of the differences in the ability to pay a fine). Contrary to most people’s perception, an equal proportion of youth and adults (35%) are given a sentence of imprisonment.

Sentence lengths for incarceration are usually defined only by a maximum. For those found guilty in youth court, the maximum term is: two years for most offences not punishable by life under the *Criminal Code*, three years for offences punishable by life, and 10 years and 7 years for first and second degree murder respectively. The judge has discretion to sentence up to the maximum. For those found guilty in adult court, sentences carry a maximum which can be, for a number of offences such as Break and Enter, life. Again, the judge has discretion to sentence up to the maximum but rarely is the maximum given especially when the maximums are high. The sentence for murder for an adult is life and the judge has no discretion and must apply a life sentence.

One might argue that adults clearly receive harsher sentences, especially for the most serious crimes, such as murder. But these crimes represent only a very small fraction of all reported crime. For the more common offences, youth are frequently sentenced to longer terms of custody than adults. This was confirmed in a recent study by Statistics Canada which examined sentences for youth and adults for nine common offences. It was noted that, overall, youths are given terms of custody which are comparable to adults when the provision for early release for adults (but not for youth) is factored in. The median sentence for adults is 45 days which is effectively reduced to 30 days considering early release provisions. The median sentence for youth is 30 days with no similar provision for early release.

Beyond what happens to young people sentenced in youth court, a young person can be transferred to adult court to be subject to adult penalties. In fact, currently, any youth age 14 and above can be transferred to be tried and sentenced in adult court. Any youth 16 and 17, who is charged with murder, attempted murder, manslaughter and aggravated sexual assault will be automatically transferred unless the court decides otherwise. There is provision within the proposed new act to expand the automatic transfer provisions to those age 14 and 15 year and to expand the offence categories.

It would seem that there are already too many possibilities that youth will “do adult time”.

We cannot forget that adult time could also mean serving all or part of the sentence in an adult prison. This is tantamount to abandoning that person entirely to an environment where he/she will almost certainly be the victims of serious physical and mental abuse. A recent study in the U.S. found that youth in adult facilities, compared with youth in juvenile facilities, are eight times more likely to commit suicide, five times more likely to be sexually assaulted and 50 percent more likely to be attacked by a weapon.

This same U.S. study found that youths transferred to adult court re-offended more often and with more serious violations than did those retained under juvenile jurisdiction. Insisting on “adult time for adult crimes” does not make our communities safer.

We have a youth justice system in Canada which is separate from adults because we believe that young people should be dealt with differently - not because their crimes are necessarily less serious. The rationale for a separate system is that young people are less mature and, hopefully, more amenable to rehabilitation than adult offenders. Transferring young people to adult court when their offence is serious is no more rational than transferring adults to youth court when their offence is minor.

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