**Backgrounder: Proposed Amendments to the *Youth Criminal Justice Act***

The proposed amendments are intended to help ensure that violent and repeat young offenders are held accountable through sentences that are proportionate to the severity of their crimes, and that the protection of society is given due consideration in applying the *Youth Criminal Justice Act* (YCJA).

## Proposed Amendments

### Make protection of society a primary goal of the *YCJA*

Currently, the objective of protecting society is not stated strongly enough in the *Act*.

This deficiency was identified by the Honourable D. Merlin Nunn in his report, "Spiralling Out of Control: Lessons From a Boy in Trouble," a comprehensive review of youth justice in Nova Scotia. Among other things, Justice Nunn concluded that highlighting public safety as one of the goals or principles of the *YCJA* was necessary to improve the handling of violent and repeat young offenders.

Highlighting this objective within the principles of the *Act* would give the courts a necessary tool to ensure the protection of society is taken into account in sentencing youth who commit violent and repeat offences.

### Simplify pre-trial detention rules to help ensure that, when necessary, violent and repeat young offenders are kept off the streets while awaiting trial

Some find the current rules on pre-trial detention confusing, and argue that this leads to inconsistent and insufficient application. As a result, often the system is powerless to hold violent and reckless youths in custody, even when they pose a danger to society.

The proposed amendment would simplify the pre-trial detention rules to ensure that a youth can be detained while awaiting trial if he or she is charged with a "serious offence" and there is a substantial likelihood that the youth will commit another serious offence if released.

A "serious offence" would be defined as any indictable offence for which the maximum punishment for an adult is imprisonment for five years or more, including violent offences, property offences (for example, theft over $5,000, which may include car theft), and offences that could endanger the public (for example, public mischief, unauthorized possession of a firearm, possession of a firearm, sexual exploitation, robbery and murder).

### Strengthen sentencing provisions and reduce barriers to custody where appropriate for violent and repeat young offenders

Canadians lose confidence in the justice system when a sentence is insufficient to hold an offender accountable for his or her actions, or insufficient to protect society. This loss of confidence is often most notable in cases of violent and repeat offences and in cases involving young offenders.

The proposed amendments would strengthen sentencing provisions and remove barriers to custody, where appropriate, for violent and repeat young offenders. These changes would give the courts necessary tools to ensure young offenders receive sentences proportionate to the severity of their crimes, and to ensure the protection of society. Specifically, the *Act* would be amended to:

1. ***Add "specific deterrence and denunciation" to the principles of sentencing to discourage a particular offender from committing further offences***

Under the *Act* as it stands, the courts have no way to include deterrence and denunciation in sentencing. This deficiency is notable, for example, in some cases of repeat offenders, and in cases when offenders demonstrate a casual attitude or 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.

2. ***Add to the definition of "violence offence" behaviour that endangers the life or safety of others***

Currently under the *Act*, the general rule is that young persons cannot be sentenced to custody unless certain conditions are met. For example, young persons may not be sentenced to custody unless they have committed a violent offence. The Supreme Court of Canada defined "violent offence" under the *YCJA* as an offence in which the young person causes, attempts to cause or threatens to cause bodily harm.

This definition does not capture situations in which, while no one was injured, reckless behaviour nonetheless posed a risk to others. For example, at the moment, a young offender who leads police on a high-speed chase through a residential neighbourhood could be given a custodial sentence only if someone was injured as a result.

The proposed amendment would expand the definition of "violent offence" to include offences in which the young person endangers the life or safety of others by creating a substantial likelihood of causing bodily harm. This change would give the courts a necessary tool to help ensure accountability and the protection of society, when the circumstances of the offence require it.

### *3. Allow custody to be imposed on youth who have a pattern of findings of guilt or extrajudicial sanctions*

The *YCJA* allows for custodial sentences when a young person has committed an indictable offence for which an adult would by liable to imprisonment for a term of more than two years and when the young person has a history that indicates a pattern of "findings of guilt" under the *Act.* Indictable offences include very significant offences – for example, theft over $5,000 (which may include car theft), assault in certain cases, and home invasions.

The current requirement for establishing a pattern of criminal activity based on findings of guilt has been criticized by some as being too restrictive when a young person may have committed other offences which have not been dealt with through the formal justice system. As a result, in cases in which the offender's history indicates a custodial sentence is necessary to protect society or to hold the offender accountable, it is sometimes impossible to demonstrate that necessity.

For example, a youth facing sentencing for an indictable offence may have no history of findings of guilt, but a long history of extrajudicial sanctions. The offender's full history may indicate an escalation of criminal activity, and that a non-custodial sentence will no longer be effective in the case of that particular offender.

The proposed amendment would give the courts necessary tools to establish a pattern of criminal activity, either through "findings of guilt" or through showing that the young person has a history of extrajudicial sanctions, or through a combination of both. This would allow the courts to take the offender's full history into account, to help determine what sentence is appropriate.

**Ensure adult sentences are considered for youth 14 and older who commit serious violent offences (murder, attempted murder manslaughter and aggravated sexual assault)**

Currently under the *Act*, judges may impose adult sentences on youth 14 years of age and over convicted of serious violence offences, when appropriate. However, the Crown does not always apply for an adult sentence in such cases, and is not required to consider doing so, even in the most serious cases.

The proposed amendment would require the Crown to consider seeking an adult sentence for youth convicted of a "serious violent offence" – that is, murder, attempted murder, manslaughter or aggravated sexual assault. The Crown would also be required to inform the court if they chose not to apply for an adult sentence.

Provinces and territories will still have the discretion to set the age at which this requirement would apply. No province or territory that sets the age at 15 or older or 16 or older would be required to change.

**Require the courts to consider lifting the publication ban on the names of young offenders convicted of "violent offences," when youth sentences are given**

Currently under the *Act*, when an adult sentence is imposed on a youth, the publication ban is automatically lifted. The court can also consider lifting the ban when the Crown applies for it, if the Crown had sought an adult sentence and a youth sentence was imposed instead.

In practice, violent offenders who are given youth sentences are normally released into the community anonymously. The implications for public safety can be significant – for example, parents may have no way of knowing that a sex offender is in the area.

The amendment would require judges to consider lifting the name publication ban for youth convicted of a violent offence and given a youth sentence, when the protection of society requires it.

**Require police to keep records when informal measures are used in order to make it easier to identify patterns of re-offending**

The amendment would require police to keep records when extrajudicial measures are imposed, to make it easier to identify patterns of re-offending.

Typically, such measures could include warnings, cautions or referrals to respond to an alleged offence by a young person.

By requiring that records be kept of these informal measures, police and the courts will be better informed of past incidents so that they can take appropriate action in respect of subsequent offences.

**Ensure that all youth under 18 who are given a custodial sentence will serve it in a youth facility**

The amended *Act* will now make it clear that no young person under 18 will serve their sentence in an adult institution, regardless of whether they were given an adult or youth sentence. As is currently the practice, they could be transferred to an adult institution at age 18, if at that point their sentence has not been fully served.

To learn more about the YCJA, please visit our Web site at www.canada.justice.gc.ca/youth

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