

# Juvenile custody in Canada: Legal policy and current context

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**At the turn of the 20th century, Canada has been criticised for its high youth incarceration rates. These criticisms appeared in several reports, in particular those of the United Nations Committee on the Rights of the Child. Since the Youth Criminal Justice Act (YCJA) came into effect in 2003 and following the implementation of extrajudicial measures and other alternative measures, the rates of youth incarceration have dropped significantly. However, this does not mean that juvenile delinquency and custody impacts are no longer a major concern within the Canadian society. In this article, we examine the consequences of legal policy, more specifically the impacts of the YCJA on the reduction of youth incarceration rates in Canada, to then provide a picture of the current context by analysing official statistics on youth incarceration and discussing what has and has not yet been achieved under the YCJA.**

## Introduction

Three youth justice statutes or Acts have shaped the evolution of juvenile justice in Canada, namely the Juvenile Delinquents Act (1908), the Young Offenders Act (1984), and the Youth Criminal Justice Act (2003). Each of these Acts reflect the dominant penal thinking of their time. These changes have spurred considerable advancements in the juvenile justice system. However, this system still faces several significant challenges, such as those related to the issue of criminal responsibility (the question of minimum age), the best criminal

responses to young people who have committed crime,<sup>1</sup> as well as the persistent inequities that result in overincarceration among Indigenous and other ethnic minority youths. The first Canadian Act on juvenile justice, the **Juvenile Delinquents Act (JDA)**, adopted in 1908, established for the first time in Canada a special court for young people charged with committing crime.<sup>2</sup> The minimum age for criminal responsibility under this Act was seven years old. The JDA had a protective orientation and was inspired by criminological positivist theories and social defence movements that were dominant at the time. The JDA emphasised treatment more as a welfare exercise than as a legal process.<sup>3</sup> This Act is more youth-focused than offence-focused and aimed to consider criminally-involved young people differently from adults.<sup>4</sup> According to the JDA, the juvenile offender is viewed as a misguided child in need of help, encouragement, and support. Consequently, the choice of sentencing must be based on the needs of the juvenile rather than on the seriousness of their offence.<sup>5</sup>

The JDA was in effect until the **Young Offenders Act (YOA)** was adopted in 1982 and enforced in 1984. The YOA granted juveniles the same fundamental rights and freedoms as adults and emphasised the principle of rehabilitation in the juvenile justice system.<sup>6</sup> <sup>7</sup> Under the YOA, the Canadian provinces and territories were allowed to set up 'alternative measures programmes' to judicialisation and promote the extrajudicial treatment of certain situations involving young people who had committed crime. In sentencing, the Supreme Court of Canada (SCC) emphasises that it is not only the principle of

1. Menon, S. E., & McCarter, S. A. (2021). Make juvenile justice more just: Raise-the-age to 20 years old. *Journal of Policy Practice and Research*, 2, 119-139.
2. Trépanier, J. (1999). Juvenile delinquency and youth protection: The historical foundations of the Canadian Juvenile Delinquents Act of 1908. *European Journal of Crime, Criminal Law and Criminal Justice*, 7(1), 41-62.
3. Trépanier, J. (2015). La loi canadienne sur les jeunes délinquants de 1908 : une loi sous influence américaine? *Revue d'histoire de l'enfance « irrégulière »*, 17, 119-136.
4. Bala, N., & Roberts, J. V. (2008). Canada's juvenile justice system: Promoting community-based responses to youth crime. In J. Junger-Tas & S. H. Decker (Eds.), *International handbook of juvenile justice*. Berlin: Springer (pp. 37-63).
5. Davis-Barron, S. (2015). *Youth and criminal law in Canada*. 2nd Ed. Montréal: LexisNexis.
6. Campbell, K. M. (2005). *Understanding youth justice in Canada*. Toronto: Prentice Hall.
7. Article 3(c) of the Young Offenders Act.

proportionality, i.e., the seriousness of the offence that should be considered, but also the personal characteristics of the youth, their maturity, their vulnerability, their needs as well as their familial situation. As stated by the SCC, 'The home situation should always be taken into account because it is relevant in complying with the Act's requirement that an assessment must be made of the special needs and requirements for guidance of the young offender'.<sup>8</sup>

At the end of the 1990s, it became apparent that Canada displayed a relatively high rate of young people in custody. In fact, Canada was among the Western countries with the most frequent use of youth incarceration, with rates about twice as high as the United States.<sup>9</sup> The current Act, the **Youth Criminal Justice Act** (YCJA), adopted in 2002, came in effect in 2003. According to Trépanier, this Act is the result of a politicisation of juvenile delinquency.<sup>10</sup> A strong emphasis is placed on 'individual responsibility'.<sup>11</sup> Specifically, the YCJA emphasises the 'responsibility' of the whole 'community', on one hand, and the 'responsibility' of the 'adolescent delinquent', on the other hand, by prescribing important measures relative to each level of responsibility. This Act is largely inspired by neoliberal thinking, which dominated the discourse of criminal policy at the time.<sup>12</sup> As Garland shows in his book, neoliberalism, or what he calls 'late modernity', has brought about several changes in the criminal justice system,<sup>13</sup> including the ideas that rehabilitation of the offender is no longer the main objective of criminal justice, that criminal policy emphasises fear of crime, that the victim and their interests are at the centre of criminal policy, that protection of the public is the dominant theme, that

expert advice is abandoned in favour of politicians', and that probation and parole are more oriented towards risk management.<sup>14</sup> Notwithstanding these influences from neoliberal thinking, the YCJA has had an appreciable influence on reducing the rate of young people in custody in Canada,<sup>15</sup> as will be discussed next.

### 1. YCJA and its impact on youth incarceration

One of the important reasons that led to the development and adoption of the YCJA in 2002 was the high rate of incarcerated youths in Canada.<sup>16</sup> In its 2003 concluding observations on Canada's second report on the implementation of the International Convention on the Rights of the Child (CRC), the United Nations Committee on the Rights of the Child expressed concern about the rate of incarcerated youth in Canada.<sup>17</sup> While the Committee welcomed the enactment of YCJA, it also listed concerns such as the expanded use of adult sentences for children as young as 14, the detention of juveniles and adults together in the same facilities as well as the public's access to juvenile records. The Committee raised its concern about the fact that 'the number of youths in custody is among the highest in the industrialized world'<sup>18</sup> and urged Canada to implement 'the necessary measures [...] to reduce considerably the number of children in detention and ensure that detention is only used as a measure of last resort and for the shortest possible period of time [...]'.<sup>19</sup> The measures proposed by the Committee included non-custodial alternatives as well as conditional release.

The concern relative to the high incarceration rate of youth is no longer present in the Committee's

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8. R. v. M. (J.J.), [1993] 2 S.C.R. 421.

9. Bala, N., & Anand, S. (2012). *Youth criminal justice law*. 3rd Ed. Toronto: Irwin Law.

10. Trépanier, J. (2012). Les transformations du régime canadien relatif aux mineurs délinquants : un regard sur le droit et les pratiques. *Revue de science criminelle et de droit pénal comparé*, 4, 819-855.

11. Desrosiers, J., & Grégoire, J. (2017). *Loi sur le système de justice pénale pour les adolescents*. Montréal : LexisNexis.

12. Bell, E. (2011). *Criminal justice and neoliberalism*. London: Palgrave Macmillan.

13. Garland, D. (2001). *The culture of control: Crime and social order in contemporary society*. Chicago: University of Chicago Press.

14. Roberts, J. V. (2003). Sentencing juvenile offenders in Canada. An analysis of recent reform legislation. *Journal of Contemporary Criminal Justice*, 19, 413-434.

15. Doob, A. N., & Cesaroni, C. (2004). *Responding to youth crime in Canada*. Toronto: University of Toronto Press.

16. Spott, J. B. (1996). Understanding public views of youth crime and the youth justice system. *Canadian Journal of Criminology*, 38(3), 271-290.

17. Committee on the Rights of the Child (2003). Concluding observations on Canada's second report, CRC/C/15/Add.215, UN, 27 October 2003.

18. *Ibid.*, paragraph 56.

19. *Ibid.*, paragraph 57(d).

concluding observations on Canada's third and fourth periodic reports (2012).<sup>20</sup> However, the Committee raised important concerns about incarcerated youth, especially girls and Indigenous and African Canadian youths. First, the Committee noted that '[...] Aboriginal and African Canadian children and youth are overrepresented in detention with statistics, showing for example, that Aboriginal youth are more likely to be involved in the criminal justice system than to graduate from high school [...]'.<sup>21</sup> Secondly, it warned that girls in custody are at risk to be exposed to sexual harassment and sexual assault when they are 'placed in mixed-gender youth prisons with cross-gender monitoring by guards [...]'.<sup>22</sup> In its most recent observations (2022), the Committee reiterated its recommendation to '[d]evelop an effective action plan towards eliminating the disparity in the rates of sentencing and incarceration of indigenous children and adolescents and Canadian children and adolescents of African descent [...]'.<sup>23</sup> These consecutive observations from 2003 to 2022 show that since the implementation of the YCJA, the concerns of the Committee on the Rights of the Child have shifted from high incarceration rates of young people in Canada to disproportionately high rates affecting children from certain racialised groups and the high risk of assault faced by girls in the detention system.

Restricting the recourse to incarceration is an important objective of the YCJA, which justifies the use of extrajudicial measures. According to the YCJA, extrajudicial measures refer to 'measures other than judicial proceedings under this Act used to deal with a

young person alleged to have committed an offence and includes extrajudicial sanctions'.<sup>24</sup> These measures are defined as opposed to judicial measures and they make it possible, in principle at least, to respond officially to the commission of an offence without going through the court.<sup>25</sup> Under the YCJA, rehabilitation is no longer the primary goal of juvenile criminal policy. Moreover, this Act is centred on the interests of the victim, and the protection of the public becomes the main element of this dominant criminal policy. The YCJA is based on one hand on the responsibility of young people convicted of crime and, on the other hand, on their social reintegration.<sup>26</sup> It also emphasises the need to limit repressive measures and, above all, to reduce the use of incarceration.<sup>27</sup> In effect, the YCJA seeks to diversify the responses to juvenile crime by introducing new sanctions and improving the reintegration of young people into the community.

According to the YCJA, incarceration can only be pronounced against a young offender if one of the situations described in this Act are met. Firstly, incarceration can be imposed if the young person has committed a violent offence.<sup>28</sup> The term 'violent offence', which was not defined in the initial version of the Act, was defined in its 2012 amendment as an offense that could endanger the life or safety of another person by creating a substantial likelihood

of causing bodily harm.<sup>29</sup> In the second situation, the young person has not complied with a sentence not involving custody that was previously imposed on them.<sup>30</sup> Third, the juvenile has committed a criminal act for which an adult would be liable to imprisonment for

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20. Committee on the Rights of the Child (2012). Concluding observations on Canada's third and fourth periodic reports, CRC/C/CAN/CO/3-4, UN, 6 December 2012.

21. *Ibid.*, paragraph 85(e).

22. *Ibid.*, paragraph 85(f).

23. Committee on the Rights of the Child (2022). Concluding observations on Canada's fifth and sixth periodic reports, CRC/C/CAN/CO/5-6, UN, 23 June 2022, paragraph 45(b).

24. Article 2 of the YCJA.

25. Hartnagel, T. F. (2004). The rhetoric of youth justice in Canada. *Criminal Justice*, 4(4), 355-374.

26. Trépanier, J. (2012). *Op. cit.*

27. Bala, N., & Roberts, J. V. (2008). *Op. cit.*

28. Article 39(1)(a) of the YCJA.

29. Article 2 of the YCJA defines a violent offence as: "(a) an offence committed by a young person that includes as an element the causing of bodily harm; (b) an attempt or a threat to commit an offence referred to in paragraph (a); or (c) an offence in the commission of which a young person endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm". See also *R. v. C.D.*; *R. v. C.D.K.*, [2005] 3 S.C.R. 668, 2005 SCC 78. The terms "serious offense" and "serious violent offence" are also used in the YCJA and defined in Article 2.

30. According to Article 39(1)(b) of the YCJA: "the young person has previously been found guilty of an offence under section 137 in relation to more than one sentence and, if the court is imposing a sentence for an offence under subsections 145(2) to (5) of the Criminal Code or section 137, the young person caused harm, or a risk of harm, to the safety of the public in committing that offence".

more than two years, after having been the subject of several extrajudicial sanctions or after a declaration of guilt.<sup>31,32</sup> The last situation is one where the aggravating circumstances of the offence are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles of sentencing.<sup>33</sup> Thus, youth detention should only be prescribed in limited situations. The restricted entry of young people into prisons, due to the provisions of the YCJA, has had a notable impact on the decrease in the numbers of incarcerated young people according to official data. Other factors such as the gradual reduction in juvenile delinquency over time also came into play, as discussed in section 2. There is however no direct relationship between the implementation of the YCJA and the larger phenomenon of youth crime in the country.

While some have argued that the YCJA has benefited all youths more equally than the previous acts,<sup>34</sup> it is undeniable that important disparities and issues still persist. With respect to admission rates, official statistics show that 20 per cent of youth admissions to custody in 2020/2021 were from population groups designated as visible minorities.<sup>35</sup> Shockingly, Indigenous youth accounted for 50 per cent of youth admissions to custody in 2020/2021, despite representing merely 8 per cent of the youth population, while Indigenous youth girls represented 62 per cent of the youth female admissions to custody,<sup>36</sup> supporting the view that Indigenous youth remain less likely to be diverted from the criminal justice process than non-Indigenous youth<sup>37</sup>. Clearly, the current youth justice system, the decarceration trend in particular, has not benefited all youth groups equally, which could be traced back to several factors, including discrimination and prejudices.

In Canada, the legislated act of juvenile justice, the YCJA, is federal law. However, this Act is implemented

independently by each province and territory (PT) according to their own realities and chosen strategies and policies for handling the cases related to juvenile delinquency. PT also have some latitude in how they implement the federal measures applicable to young people involved in crime. Although article 38(2)(b) specifies that 'the sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances', there are hardly any data available showing that the Act is being applied uniformly across different jurisdictions. However, conspicuous disparities have emerged in the resources available in each PT to implement their youth justice system,<sup>38</sup> which could affect the experience and outcomes for young people, for example when adequate, culturally sensitive and well-resourced rehabilitation programmes and opportunities are lacking. In a comprehensive review of the YCJA, 'all PT identified a lack of sustainable resources to implement the programmes and services necessary to fully embrace the YCJA'.<sup>39</sup> Aside from adequate funding, there is a need for formal evaluations of the programmes and services available in the youth justice system across every jurisdiction to ensure that resources are being allocated in efficient ways and that all youths are receiving the

maximum benefits.

Youth custody in Canada is divided into secure (or closed) custody and open custody. According to the YCJA, secure and open custody should only be used as a last resort and only in specific situations, as prescribed under the Act. Open custody is still considered imprisonment, but with fewer restrictions and with measures more conducive to social rehabilitation. In fact, it should promote the development and social reintegration of young people with as few obstacles as possible. Except during exceptional situations such as

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31. Since 2012, extrajudicial sanctions may be pronounced at the same time as a declaration of guilt.

32. Article 39(1)(c) of the YCJA & R. v. S.A.C., [2008] 2 S.C.R. 675, 2008 SCC 47.

33. This situation is considered as exceptional by the YCJA, Article 39(1)(d).

34. Tustin, L., & Lutes, R. E. (2022). *A guide to the Youth Criminal Justice Act*. Toronto: LexisNexis.

35. Statistics Canada (2022). *Adult and youth correctional statistics, 2020/2021*. <https://www150.statcan.gc.ca/n1/en/daily-quotidien/220420/dq220420c-eng.pdf?st=YxjALS5G>. Retrieved February 9, 2023.

36. *Ibid.*

37. Ho, I. (2019). The misinformed versus the misunderstood: Continued overincarceration of indigenous youth under the YCJA. *Western Journal of Legal Studies*, 9, 1-22.

38. Reid, S. (2016). Youth justice in New Brunswick. In M. Alain, R. R. Corrado & S. Reid (Eds.), *Implementing and working with the Youth Criminal Justice Act across Canada*. Toronto: University of Toronto Press (pp. 125-157).

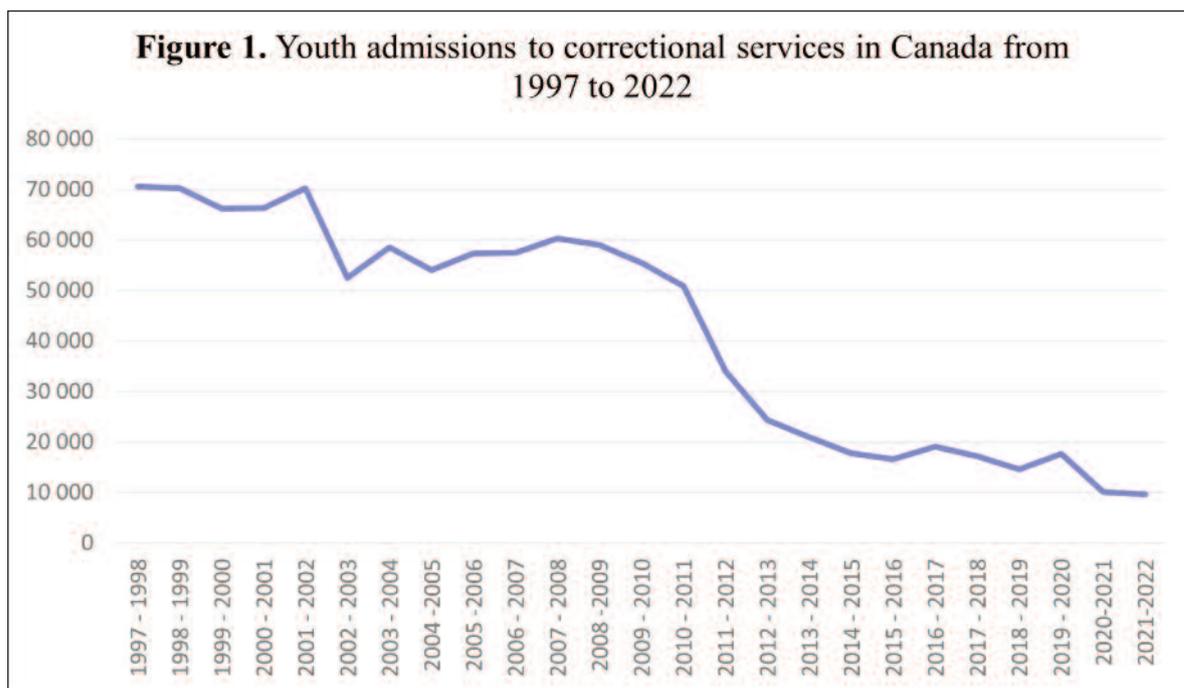
39. *Ibid.*

the early COVID-19 pandemic,<sup>40</sup> young people held in open custody have more contacts with the community. They can go to school in the community and engage in other extramural activities. By contrast, secure custody corresponds more closely to the traditional prison environment with strong restrictions on the contacts that youths can have.

## 2. Youth custody in the Canadian context

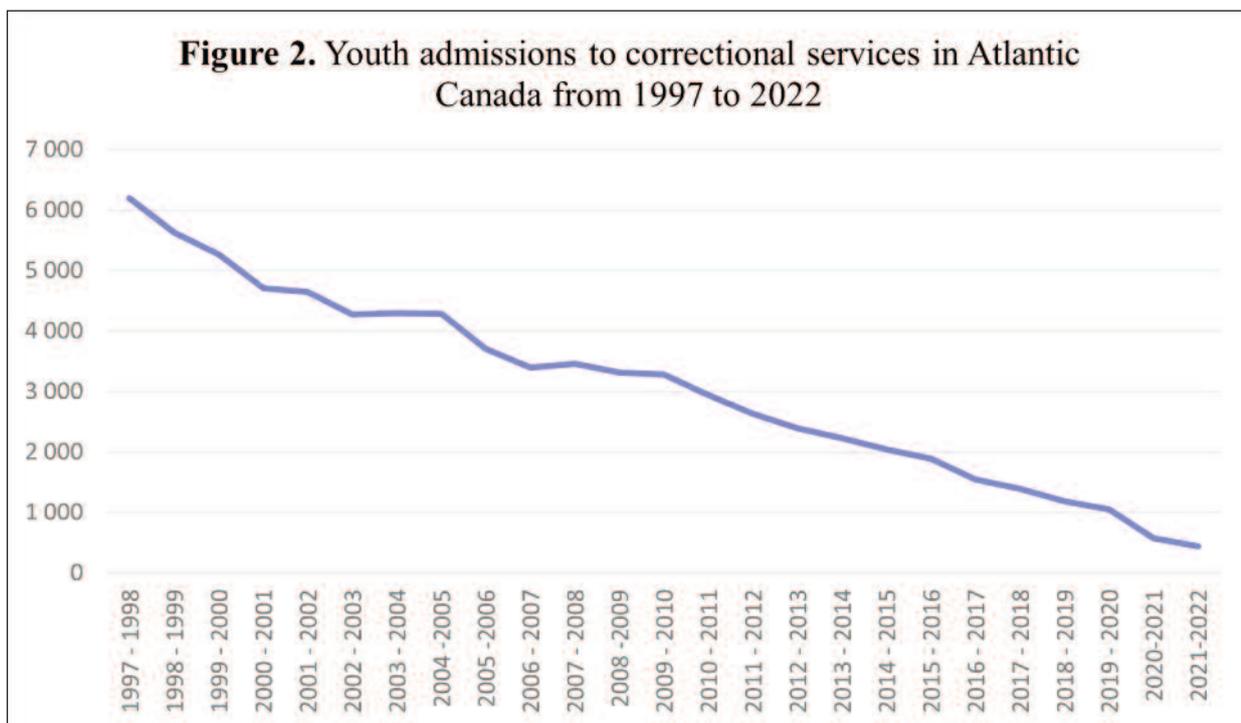
A critical examination of the official statistics of youth incarceration is helpful to better understand the current context of youth detention in Canada. While statistics do not capture the complex reality of the phenomenon,<sup>41</sup> they help grasp an overall picture of the subject and appreciate the impact that the YCJA had over the years. As shown in **Figure 1**, based on data from Statistics Canada,<sup>42</sup> the total number of youth admissions to correctional services in 2021-2022, about two decades after the enactment of the YCJA, was about seven times lower than in 1997-1998 when the YOA was in place. Over this period, the admission

numbers dropped from 70,542 to 9,651 nationally. This does not mean that juvenile delinquency has declined to the same extent, but rather that the change in legislative policy, i.e., the provisions of the YCJA and the extrajudicial measures introduced in this Act, have been pivotal in reducing youth detention rates. This impact was observed across the provinces and territories. In Atlantic Canada,<sup>43</sup> for instance, a fourteenfold fall in youth admissions to correctional services was recorded between 1997-1998 and 2021-2022, from 6,203 to 441 (**Figure 2**).<sup>44</sup> Importantly, the lower incarceration rates did not necessarily lead to reduced workload or responsibilities for the staff working with these youths. In fact, with the changes introduced by the YCJA, minors in custody now have more complex profiles with high risk factors,<sup>45</sup> including behavioural problems, mental health issues and/or substance use, that require specific training and skills as well as targeted and well-resourced extrajudicial measures. This type of indirect consequences of the YCJA requires more consideration and research.



40. Esfahani, H. S., & Tranchant, C. C. (2022). Impacts de la pandémie sur les conditions de détention et répercussions possibles sur la santé mentale des mineurs incarcérés : Étude exploratoire au Canada. *Revue internationale de criminologie et de police technique et scientifique*, LXXVIII(4), 432-443.
41. Walker, J. T., & Maddan, S. (2012). *Understanding statistics for the social sciences, criminal justice, and criminology*. Burlington: Jones & Bartlett Learning.
42. Data from Statistics Canada (2023). Youth admissions to correctional services. Table 35-10-0005-01. <https://doi.org/10.25318/3510000501-eng>. Retrieved February 27, 2023.
43. Atlantic Canada refers to the four provinces of New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island and has a population of over 2.3 million people (National Resources Canada, Government of Canada, 2019). <https://www.nrcan.gc.ca/environment/resources/publications/impacts-adaptation/reports/assessments/2008/ch4/10339>. Retrieved July 29, 2022.
44. Data from Statistics Canada (2023). Youth admissions to correctional services. Table 35-10-0005-01. <https://doi.org/10.25318/3510000501-eng>. Retrieved February 27, 2023.
45. Murray, J., & Farrington, D. P. (2010). Risk factors for conduct disorder and delinquency: Key findings from longitudinal studies. *Canadian Journal of Psychiatry*, 55(10), 633-642.

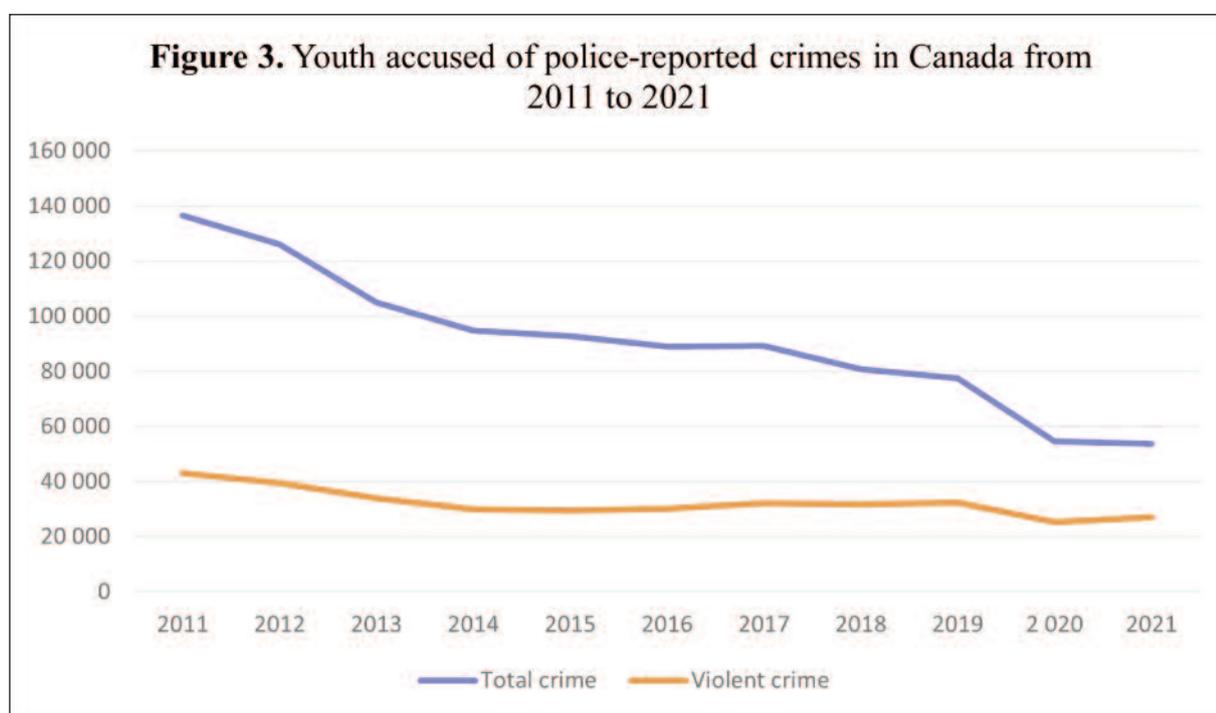
**Figure 2. Youth admissions to correctional services in Atlantic Canada from 1997 to 2022**



The rate of violent crimes committed by youth also decreased over the years, albeit not to the same extent as the incarceration and total crime rates, highlighting the fact that one act of legislation alone cannot prevent or reduce youth crime. As illustrated in **Figure 3**,<sup>46</sup> the number of youths accused of violent crimes fell by 37

per cent between 2011 and 2021 from 43,004 to 26,958, while total crime fell by 60 per cent from 136,494 to 53,688. For violent crimes, this number rose by 6 per cent between 2020 and 2021 in contrast to total crime numbers.

**Figure 3. Youth accused of police-reported crimes in Canada from 2011 to 2021**

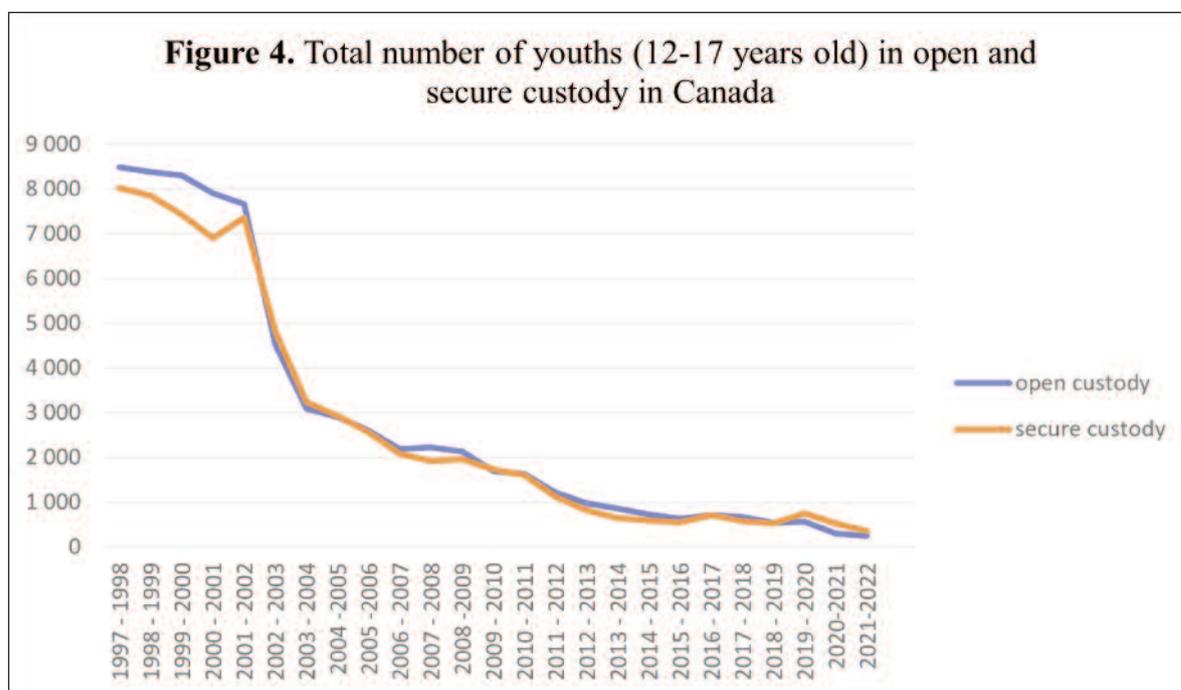


46. Statistics Canada (2022). *Centre for Justice and Community Safety Statistics, Uniform Crime Reporting Survey*. Table 11 Youth accused of police-reported crime, Canada, 2011 to 2021. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2022001/article/00013/tbl/tbl11-eng.htm>. Retrieved February 8, 2023.

The numbers of Canadian youths in open custody have generally exceeded those in secure custody since 1997-1998, as illustrated in **Figure 4**,<sup>47</sup> except in certain fiscal years, such as 2021-2022 when youths in secure custody, i.e., those who are deemed the most serious and problematic, exceeded those in open custody (359 vs. 247). A similar trend was observed elsewhere in the country. In Canada Atlantic, for instance, the numbers of young people in secure custody have been greater than those in open custody since 2017-2018; in 2021-2022, 21 minors were in secure custody, compared to 12 in open custody.<sup>48</sup>

Under the YCJA, the highly restrictive, prison-like conditions of secure custody are limited to more at-risk young people who have either committed serious (i.e., violent) crimes or have been repeatedly convicted of serious crimes. The criminal profiles of these youths are such that closed facilities, which have higher security

measures, are often considered the most secure way to detain them. Unfortunately, young people convicted of crime who have special needs, including unmet mental health care needs, are often found in high proportions both in secure and open custody. This has become a serious concern, especially since data became publicly available on the deaths by suicide or self-harm of inmates in Canadian prisons.<sup>49</sup> Some of these cases can even be considered as major turning points in the evolution of incarceration conditions in Canada. One of the cases that have called for heightened scrutiny of the correctional system, particularly in terms of young people with special needs, is the Ashley Smith case. This case was not isolated but it is one of the most highly profiled cases of inadequate treatment of a youth that should not have been subjected to imprisonment and solitary confinement.



The Ashley Smith case is a major and high profile system failure that has shed disturbing light on the country's correctional policy concerning incarcerated young people.<sup>50</sup> Unfortunately, it is also in many ways 'a case fundamentally like those of many inmates before, and after, hers'.<sup>51</sup> Ashley Smith was a young teenager when she first became involved with the judicial system.

Despite suffering from mental illness, she was repeatedly sentenced to different penalties, including imprisonment and solitary confinement, for the relatively minor offences she had committed, until she died from self-inflicted harm while being under suicide watch. Despite early expert opinions on her mental ill-health, no appropriate action was taken to provide the

47. Data from Statistics Canada (2023). Youth admissions to correctional services. Table 35-10-0005-01. <https://doi.org/10.25318/3510000501-eng>. Retrieved February 27, 2023.

48. *Ibid.*

49. Correctional Service Canada (2019). *Annual Report on Deaths in Custody 2016-2017*. SR-19-01. Government of Canada, Ottawa, ON. <https://www.csc-scc.gc.ca/research/005008-3013-en.shtml>. Retrieved July 29, 2022.

50. New Brunswick-born Ashley Smith died in October 2007, at the age of 19, while under surveillance at the *Grand Valley Institution for Women* in Ontario. She suffered from mental health disorders that were not adequately taken into account during her involvement with the justice system.

51. Bromwich, R. (2017). Theorizing the official record of inmate Ashley Smith: Necropolitics, exclusions, and multiple agencies. *Manitoba Law Journal*, 40(3), 193-223.

mental health care and support that her condition required. The 2013 Coronary inquest into the cause of her death brought to light the lack of necessary resources to address the psychological needs of people in detention, especially when they suffer from diagnosed mental health disorders or are at risk of developing them.<sup>52</sup> According to the Correctional Investigator's report, there were numerous instances of inhumane treatment of Ashley Smith. Although the Correctional Service of Canada (CSC) was fully aware that she suffered from serious mental illness, this young person was subjected to excessive force and confinement measures that contributed to the tragic outcome of her detention.<sup>53</sup> The CSC was also well aware of the 'systemic issues that existed within the federal correctional system [and] contributed to the environment that permitted the individual failures to manifest themselves — with fatal consequences'.<sup>54</sup>

The Coronary inquest culminated in an unprecedented homicide verdict.<sup>55</sup> However, most of the 104 recommendations made in that inquest were ignored or rejected in the CSC's 2014 response.<sup>56</sup> The recommendations included that indefinite solitary confinement be abolished, that long-term segregation should not exceed 15 days and that restrictions be placed on the number of periods that people in prison can spend segregated. Although the CSC claims to have made 'significant changes to its policies and practices surrounding the use of administrative segregation', the practice of indefinite solitary confinement has not been abolished to this day. According to many observers, including youth advocates, very little systemic changes have occurred since Smith's preventable death. They also fear that the window of opportunity to make systemic change may go unrealised.<sup>57</sup> Clearly, much remains to be done in Canada to improve youth incarceration conditions and adequately meet their needs, which cannot be addressed by legislation alone. It is well established that

a considerable number of young people involved in crime suffer from mental disorders.<sup>58</sup> However, as illustrated by Smith's case, the current correctional system, instead of meeting the specific needs of people with mental health disorders, often contributes to exacerbating symptoms and preventing the social reintegration of juveniles.<sup>59</sup> The lower rates of incarcerated youths in Canada are a good sign, but it remains of high concern that incarcerated youths suffering from mental illness and/or behavioural problems can still be judicialised and incarcerated without adequate services to meet their specific needs.

In this brief analysis, we examined juvenile custody in Canada through the double lens of the three federal Acts that have framed juvenile justice and of official statistics. While the implementation of the current youth justice Act, the YCJA, resulted in an overall decrease in youth incarceration rates over the past two decades, this does not mean that juvenile delinquency has diminished to the same extent, nor that all youths have benefited equally. Enforcement of the YCJA across the country only signals more widespread use of alternative measures other than detention to address juvenile delinquency. One of the indirect consequences of the YCJA is that the minors in custody now have more complex profiles with high risk factors, including behavioural problems and mental health issues that cannot be addressed without targeted and well-resourced extrajudicial measures as well as specialised skill sets. Thus, the demands on the staff working with incarcerated young people probably remain high, despite lower incarceration rates. These youths have either committed violent crimes or have been convicted of reoffending. Their unique characteristics require the implementation of specific and often multifaceted measures that suitably meet their needs and protect their interests both in and outside the judicial system. The allocation of adequate resources remains a critical factor for realising the objectives of the YCJA.

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52. Murray, S. J., Burgess, S., & Holmes, D. (2017). Mort d'Ashley Smith : Entre biopolitique carcérale et souveraineté judiciaire. *Sociétés*, 136(2), 73-90.

53. See Sapers, H. (2008). *A Preventable Death*. Office of the Correctional Investigator, Government of Canada, Ottawa, ON. <https://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20080620-eng.aspx>. Retrieved August 15, 2022.

54. *Ibid.*

55. Bromwich, R. (2017). Op. cit.

56. Correctional Service Canada (2014). *Response to the Coroner's Inquest Touching the Death of Ashley Smith*. <https://www.csc-scc.gc.ca/publications/005007-9011-eng.shtml>. Retrieved February 9, 2023.

57. Onishenko, D., & Erbland, J. (2016). The case of Ashley Smith: Policy window or policy failure. *Canadian Review of Social Policy*, 76, 70-89.

58. Centre for Addiction and Mental Health (2020). *Mental Health and Criminal Justice Policy Framework*. Toronto, ON. <https://www.camh.ca/-/media/files/pdfs---public-policy-submissions/camh-cj-framework-2020-pdf.pdf>. Retrieved August 29, 2022.

59. Morgan, R. D., Van Horn, S. A., MacLean, N., Hunter, J. T., & Bauer, R. L. (2019). The effects of imprisonment. In D. L. Polaschek, A. Day & C. R. Hollin (Eds.), *Wiley international handbook of correctional psychology*. Hoboken: Wiley Blackwell (pp. 63-77).