

Turning A Youth Record into An Adult Criminal Record – Reasonable or Restrictive?

The *Criminal Code of Canada* though long and at times complex, serves to provide guidance and framework for Canada's judicial system. From what defines an offence, to what sentences judges can issue, this code outlines how part of our society operates with the law. Specifically, section 718 of the *Criminal Code* outlines the purpose of sentencing and act as a guideline for judges when issuing sentences¹. This section outlines six primary purposes that should be considered when issuing a sentence for a crime. Contrasting these purposes to that of the *Youth Criminal Justice Act* (YCJA), there are some interesting differences and small caveats in the YCJA that, if not noticed, could result in more harm than good for both the individual being sentenced and society.

Section 718 of the *Criminal Code* notes that denunciation, deterrence, rehabilitation, protection of the public, reparation, and responsibility, are the primary factors that should be considered when issuing a sentence. Denunciation is ensuring that a sentence sends an appropriate and concise message to the public that the crime committed is unacceptable and will not be tolerated by society. Deterrence is to help prevent the behaviour or criminal conduct from occurring again, as well as dissuading society as a whole from committing criminal acts. Rehabilitation focuses on changing the behavior of the guilty party and working to have them be productive members of society once more. Protection of the public is to ensure the public is not being harmed or will be harmed again by a convicted individual. This can be done through incarceration, restricting the freedoms of the guilty party, probations, and the like. Reparation is compensation for the community or victim that was harmed or suffered a loss. Finally, responsibility is to ensure that the offender understands the harm they caused to the victim or community². These sentencing provisions assist judges in reaching acceptable judicial decisions for offenders.

The YCJA, similar to the *Criminal Code*, outlines the purposes of youth sentencing as to “hold young persons accountable through just sanctions that ensure meaningful consequences for them and promote their rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public”³. The purpose of having a YCJA is to allow youths to be held responsible for their actions without carrying any errors made as a youth into their adult lives.

As long as a youth was tried as a youth and not an adult, and so long as they did not commit a crime such as murder, manslaughter, attempted murder, or aggravated sexual assault, the youth's record will not carry forward to their adult life. Youth criminal records are sealed or destroyed after the access period ends and will not show on an individual's Record of Criminal Conviction. This access period can vary from two months to five years depending on

¹ *Criminal Code*, RSC 1985, c C-46, s 718.

² Justice Education Society “Criminal Law: Sentencing and Alternative Measures” *Principles and Purposes of Sentencing*, at p 1. Online <<https://www.lawlessons.ca/sites/default/files/handouts/Handout-2-2-1.pdf>>.

³ *Youth Criminal Justice Act*, SC 2002, C 1.

the nature of the conviction and age of the youth⁴. Regardless though, convictions as a youth will not become adult “criminal records”. There is, unfortunately, a caveat to that statement.

According to section 119(2)(g) and (h) of the YCJA if a “person is convicted of an offence committed after he or she turns 18, while the access period for their youth offence is still open... [the] record for the youth offence will be treated as an adult record, and the rules applicable to adult records apply”.⁵ While this caveat may be logical if someone commits a more serious offence, it also applies to summary and non-aggravating offences.

To illustrate; suppose “Joe”, a 17-year-old, is convicted of a theft-under \$5,000 charge. He pleads guilty and is sentenced to 25 community service hours, which he has one year to complete. After one year, he has only completed 10 hours with no justification as to why the remaining 15 hours were not completed. He is now facing a breach of his conditions and will be charged with a “failure to comply”. At this point, Joe is 18 and the failure to comply is a new charge that occurs during the ‘access period’ of the first offence. Section 119(2)(h) of the YCJA is triggered and the entire youth record of Joe is now a part of his adult record. Even charges that may date back to when he was 13 would now be crystalized and be a part of his adult criminal record.

An issue that arises with this clause is that unrelated offences will become part of an adult record. Offences that the youth would have served a sentence for and completed the requirements laid out by the judicial system will be crystalized, which will effectively re-punish the individual. The principles of the YCJA are to encourage rehabilitation and reintegration of youths such that when they become adults, they can become contributing members of society. Giving youths the opportunity to have a fresh record upon adulthood and after the access period has ended is part of the reintegration aspect of the YCJA. This clause in many circumstances removes the opportunity for a rehabilitated youth to “start over”.

This raises questions as to what purpose this section of the YCJA serves. If the primary purpose of the section is deterrence for youths, two issues arise. First; this is a clause that seems to be not well known nor well publicized to youth offenders. Second; the proportionality of the offence to the punishment does not seem balanced in any way. Crystalizing an entire record seems counterintuitive to the purposes of having a YCJA. The purpose of the YCJA is to promote rehabilitation and reintegration into society. If this is the purpose, crystalizing dated records will not help meet this goal. If a youth committed an offence and was rehabilitated and not at risk to reoffend, crystalizing it due to an unrelated offence will only hinder the youth’s ability to integrate into society as an adult. This could quite possibly prevent a youth from future jobs, social relationships, housing, and so forth, all due to an unrelated, and quite possibly, minimal breach. The impact that this clause could have on a youth are vast. A breach

⁴ Department of Justice “Youth Records” *Government of Canada*. Online <<https://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/sheets-feuillets/recor-dossi.html>>.

⁵ *Ibid.*

for a summary offence could cause more serious and dated charges to now be on an adult criminal record forever.

Perhaps a re-visitation of this clause and clarifying its purpose is in order.