



Child and Youth Officer

f o r B r i t i s h C o l u m b i a

ISSUE PAPER 5

Aboriginal Youth and the Youth Criminal Justice System

Issue

The *Youth Criminal Justice Act* replaced the *Young Offenders Act* in 2003. One of the objectives of the new act is to reduce the over-reliance on incarceration in the youth criminal justice system.

British Columbia has experienced considerable success in meeting this objective, having reduced the number of youth in custody from 400 in 1996/97 to 134 in 2005/06.ⁱ However, Aboriginal youth are increasingly over-represented in youth custody centres in British Columbia. How can this over-representation be addressed?

Background

- While the number of Aboriginal youth in custody has declined from an average of 83 in 1996/97 to 53 in 2005/06, the proportion of Aboriginal youth among the population of incarcerated youth in British Columbia has increased significantly. In 1996/97, Aboriginal youth in British Columbia were three times more likely to be incarcerated than non-Aboriginal youth. In 2004/05, a year after the *Youth Criminal Justice Act* came into force, Aboriginal youth were five times more likely to be incarcerated. Statistics for 2005/06 show that Aboriginal youth are now almost seven times more likely to be incarcerated than their non-Aboriginal counterparts.ⁱⁱ
- A 2004 survey of youth in custody in British Columbia by the McCreary Centre Society found that 47% identified themselves as Aboriginal. Three quarters of those youth reported that they had been in government care at some point in their lives.ⁱⁱⁱ
- A high proportion of Aboriginal youth involved with the youth justice system suffer from serious physical and mental health conditions and disabilities. In the McCreary survey, 69% of Aboriginal youth in custody reported having been told by a health professional that they had one or more health conditions or disabilities, such as chronic anxiety, depression, addictions, and Attention Deficit/Hyperactivity Disorder (ADHD) and other learning disabilities, including those associated with Fetal Alcohol Spectrum Disorder (FASD).^{iv v}
- Ninety-six percent of female youth in custody in British Columbia, a disproportionate number of which are Aboriginal, report having previously experienced physical and/or sexual abuse; 63% of these youth report experiencing sexual abuse specifically. These youth are at high risk for continuing to be victims of physical and sexual abuse after their release from custody.



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- The preamble to the *Youth Criminal Justice Act* states that society has a responsibility to address the developmental challenges and needs of young persons. The Declaration of Principle in the act states that interventions should respond to the needs of Aboriginal young persons and young persons with special requirements. The Declaration of Principle also emphasizes the importance of respect for cultural differences.
 - The *Youth Criminal Justice Act* envisions an increased role in the youth criminal justice system for communities, in partnership with families, in:
 - preventing youth crime “by addressing its underlying causes, responding to the needs of young persons and providing guidance and support” (Preamble, *Youth Criminal Justice Act*)
 - providing alternatives to incarceration, and
 - assisting in the rehabilitation and reintegration into society of youth on probation and after their release from custody.
 - The *Youth Criminal Justice Act* includes criteria intended to limit the use of custody for all young persons. In addition, the act requires that all available options other than custody be considered during sentencing, “with particular attention to the circumstances of aboriginal young persons.”

Observations

- As the guardian, past or present, of a high proportion of Aboriginal youth in custody, the government has a particular responsibility for supporting those youth in their reintegration into the community. It is also responsible for finding ways to prevent the Aboriginal youth in its care from coming into conflict with the criminal justice system.
- Understanding the profile of incarcerated Aboriginal youth is an important first step in developing strategies for reducing their numbers through prevention, alternatives to custody, and successful rehabilitation and reintegration into society.
- In particular, understanding and addressing the challenges facing youth with FASD and other disabilities and mental conditions prevalent among Aboriginal youth in custody will generate effective strategies for reducing the involvement of these youth in the criminal justice system, as well as reducing recidivism and the use of incarceration.
- Police, judges, probation officers and others working in the youth criminal justice system are becoming increasingly aware of the effects of these disabilities and conditions on the youth with whom they interact. For example, at the request of the Vancouver Police Department, the Pacific Community Resources Society has begun training police officers in how to identify and work more effectively with youth who have or are suspected of having FASD, and the Ministry of Children and Family Development has funded a specialized youth justice program through the Asante Centre for Fetal Alcohol Syndrome and the PLEA Community Services Society of



BC. However, lack of understanding of these conditions continues to be an obstacle to providing appropriate responses to these youth.

- Culturally appropriate counselling and support services for female Aboriginal youth in custody who have been abused and are at risk of continuing to be victims of physical and sexual abuse, including services that can continue when they are released from custody, are not readily available.
- Aboriginal community-based organizations are particularly well suited to provide the support envisioned by the *Youth Criminal Justice Act* because they are able to provide culturally appropriate support and to increase the sense of belonging of Aboriginal youth.
- A number of programs designed specifically to support Aboriginal youth in relation to the youth justice system already exist. A common approach among these programs is to enhance the inherent strength of youth. Many incorporate in their work the Circle of Courage approach, which encompasses four core values: belonging, mastery, independence, and generosity.^{vi vii} (For an expanded discussion of this approach and its links to research and the rights of children and youth, please see *Issue Paper 4: Towards a Strengths-Based Approach to Government Policy and Services for Children and Youth in British Columbia*, on the Child and Youth Officer's website.)
- There are also a number of restorative justice programs in First Nations communities designed specifically to support Aboriginal youth,^{viii} as well as violence prevention programs adapted to the needs of Aboriginal youth.^{ix} Many of these programs report that they are not receiving referrals from the youth justice system, which in turn is affecting their sustainability.
- Aboriginal youth who are connected with their cultural traditions and are able to practise them by attending traditional ceremonies are less likely to come into conflict with the criminal justice system.^x

Advice

- Develop and maintain a profile of incarcerated Aboriginal youth as a first step in creating strategies for addressing the over-representation of Aboriginal youth in the youth custody centres in British Columbia.
- Determine and fund best practices aimed at youth with FASD and other disabilities and mental conditions prevalent among youth in custody, including Aboriginal youth, to support them in living in the community.
- Educate police officers, judges, probation officers and others in the youth justice system about:
 - the growing disparity between the incarceration rates of Aboriginal and non-Aboriginal youth
 - the effects of FASD and other disabilities and mental health conditions prevalent among Aboriginal youth who come into contact with the justice system, and



- the implications of these disabilities and conditions for the work done by these professionals aimed at achieving the *Youth Criminal Justice Act's* objective of reducing the reliance on incarceration.
- Increase access to community-based counselling and support services for female Aboriginal youth in custody who have been victims of physical and sexual abuse, and provide continued access to these services after their release from custody.
- Develop and enhance existing community-based First Nations programs that use strengths-based or asset-building approaches with Aboriginal youth.
- Identify existing barriers to the provision of referrals by the youth justice system to these community-based programs, and work to remove them.

For more information about the Child and Youth Officer for British Columbia, please go to our website at www.gov.bc.ca/cyo.

ⁱ British Columbia Ministry of Children and Family Development.

ⁱⁱ British Columbia Ministry of Children and Family Development.

ⁱⁱⁱ Murphy, A., Chittenden, M., & The McCreary Centre Society. (2005). *Time out II: A profile of BC youth in custody*. Vancouver, BC: The McCreary Centre Society.

^{iv} Murphy, A., Chittenden, M., & The McCreary Centre Society. (2005). *Time out II: A profile of BC youth in custody*. Vancouver, BC: The McCreary Centre Society.

^v Fetal Alcohol Spectrum Disorder (FASD) is an umbrella term for a number of disabilities associated with prenatal exposure to alcohol. FASD has been increasingly recognized as a disorder affecting Aboriginal youth. The neurological damage and cognitive impairment connected with FASD seriously undermines the ability of youth with the disorder to function in the community without support.

^{vi} Brendtro, L., Brokenleg, M., & Van Bockern, S. (2002). *Reclaiming youth at risk: Our hope for the future*. (Rev. ed.). Bloomington, IN: National Educational Service.

^{vii} Programs offered by the Broadway Youth Resource Centre (www.pcrs.ca) and Urban Native Youth Association (www.unya.bc.ca) in Vancouver take this approach and have won awards for their work.

^{viii} Examples of this type of program are the Yuuhlemkeskw Restorative Justice Program of the Nisga'a Nation; the Haida Gwaii Restorative Justice Program; and the Prince George Aboriginal Justice Society.

^{ix} Examples of this type of program are the Warriors Against Violence youth program at Kiwassa Neighbourhood House in Vancouver, and Leave Out Violence, a national program with an office in Vancouver.

^x Dooley, S., Floyd, R., Welsh, A., & MacDonald, S. (2005). *Taking steps forward: Development of an Aboriginal youth justice programme*. (Report to Vancouver Police Department). Vancouver, BC: Youth Services Section: Vancouver Police Department.