

# Youth in Conflict with the Law

Fourth Edition

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**INSTRUCTOR'S MANUAL**

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Instructor's Manual**

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Sample

## NOTES TO INSTRUCTORS:

- **Bolded questions** are not found in the “Test Your Knowledge” section at the end of each chapter in the textbook, *Youth in Conflict with the Law*, Fourth Edition, and are an additional source of questions that could be used for tests/exams by instructors.
- Following the test questions for all the chapters, you will find supplementary materials in the form of abbreviated court cases that highlight points of law that could be used for class discussion.

Sample

## CHAPTER 1

# OFFENDING BY YOUNG PEOPLE IN HISTORICAL PERSPECTIVE

### DEFINITIONS

1. *Actus reus*: The physical action of committing an offense (from Latin).
2. *Mens rea*: A guilty mind; a legal concept used to denote criminal intent (from Latin).
3. Houses of refuge: An institutional response to the problem of juvenile crime that grew out of the juvenile sections of the English workhouses of the 16th and 17th centuries. Their principal features were that they kept youths separate from adults and focused on hard work and discipline.
4. *Parens patriae*: A Latin term meaning “parent of the country” used to denote the role of the state as guardians of underage and disabled persons. Under this doctrine, the jurisdiction of the Chancery Court could be invoked to intercede on behalf of children when their parents or guardians were neglecting or mistreating them.

### TRUE/FALSE

1. T F Mental incompetence and the lack of intention are no excuse for the commission of a crime. (F)
2. T F Central to what constitutes a crime is the fact that the behaviour must be formally forbidden and punished by the state. (T)
3. T F Historically, there has been consistency in the age limit that separates adults from youth. (F)
4. T F It is fair to say that the pattern of youth crime in Canada changed little from pioneer times until the early 20th century. (T)
5. T F It is only in recent times that many gangs were identified with particular ethnic groups. (F)
6. T F **Age is important within the criminal law because it provides an indicator of “mental capacity.” (T)**
7. T F **The development of significant urban youth crime and gang behaviour came relatively late to Canada in comparison with Britain and the United States. (T)**
8. T F **Legislation relating to juvenile criminality has always taken the concerns for the social welfare of children into consideration. (F)**

9. **T F Juvenile crime in the early part of the 20th century decreased substantially. (F)**
10. **T F The main reason mandatory public schooling was introduced was to deal with increases in urban crime rates. (F)**
11. T F Historically, the punishment for a young offender was generally the same as that for adults. (T)
12. T F Canada has led the world in developing institutional responses to crime such as training schools and penitentiaries. (F)
13. T F Incarceration or imprisonment was not a major way of dealing with youthful crime until the turn of the 20th century. (F)
14. T F Most institutions in Canada and especially in Ontario were run by religious orders. (F)
15. T F The primary role of the juvenile court judge was not simply to adjudicate guilt or innocence but also to provide guidance and assistance to the young accused. (T)
16. **T F Military service was often a way for young offenders to avoid civil punishment. (T)**
17. **T F In the past 100 years, Canada has looked primarily to Britain for examples of how to handle young offenders. (F)**
18. T F Reformatories were designed specifically to handle young offenders. (T)
19. T F Those social reformers interested in “child-saving” focused their attention primarily on the children of the middle class. (F)
20. **T F The juvenile court was invented in Toronto in 1899. (F)**

### MULTIPLE CHOICE

1. A primary factor that separates youthful from adult offenders is the notion that
  - a. young people are less intelligent than adults
  - b. young people are less able to form criminal intent than adults \*
  - c. young people are incapable of distinguishing between right and wrong
  - d. young people are generally smaller than adults and are consequently less capable of creating “harm”
  
2. The importance of age in making legal distinctions between adults and youth is
  - a. age is a good indicator of physical size
  - b. age is a good indicator of how much harm a person can commit
  - c. age is a main indicator of intellectual development \*
  - d. age is used as an indicator of experience

3. The concept of “age of majority” indicates that
  - a. a person has all of the legal rights and responsibilities of an adult \*
  - b. the majority of people in the population are adults
  - c. a person has reached the stage of the majority of their intellectual development
  - d. a person is too old to be held criminally responsible
4. Corporal punishment
  - a. was the only way of dealing with young criminals in 19th-century Canada
  - b. was a form of military punishment inflicted on the civilian population
  - c. was a term used to indicate how young people entering the military (mostly corporals) were punished in pioneer times
  - d. refers to any form of physical punishment \*
5. Many social reformers, both past and present, link a growth in youth crime to
  - a. Canada’s inability to lose its agrarian or agricultural roots
  - b. the need for farm labour
  - c. historical decreases in family size
  - d. the increased urbanization of Canadian society \*
6. Historically, youth crime in Canada was
  - a. generally lower than in the United States or England \*
  - b. about the same as in the rest of the industrialized world
  - c. much higher than in the United States
  - d. lower than in the United States but on par with England
7. Institutional responses to crime (incarceration) has been a major factor
  - a. since the 16th century
  - b. only in the past 50 years
  - c. in about the past 150 years \*
  - d. ever since we started recording observations about youthful criminality
8. One of the most important results of the house of refuge movement was
  - a. its shift away from family-centred discipline \*
  - b. it marked a point where a lack of education was seen as the primary cause of youthful crime
  - c. that it was the first response to juvenile crime that resulted in a lowering of crime rates
  - d. its acknowledgement that the juvenile court system simply did not work
9. A feature that often distinguished industrial schools and other institutions of the latter part of the 19th century from prisons or jails was
  - a. their increased effectiveness at preventing crime
  - b. their ability to create serious youthful offenders out of minor ones
  - c. their ability to target the specific needs of a young person

- d. their broad scope, which meant that neglected young people were often as likely to be incarcerated as were young offenders \*
10. The concept of *parens patriae* was used to
- a. justify removing young people from their families in order to make them wards of the state \*
  - b. arrest and detain parents who abused their children
  - c. recognize that most parents have little control over their children
  - d. enforce parental control over children
11. It is fair to say that many people saw “child saving institutions,” such as training schools, as
- a. an effective means of reducing crime
  - b. a means for addressing the shortage of public schools in most cities
  - c. too often mixing “criminals” with those in dire economic circumstances \*
  - d. being too soft on incorrigible offenders
12. The latter part of the 19th century was a period when
- a. children were seen as indistinguishable from adults
  - b. children were increasingly seen as having different mental capacities than adults \*
  - c. the punishment for child offenders was generally more severe than for adult offenders
  - d. youthful crime was seen as a psychiatric rather than a criminal problem
13. The introduction of juvenile courts led to
- a. the introduction of probation services \*
  - b. the introduction of parole services
  - c. the greater use of executive pardons
  - d. longer prison terms for youthful offenders

## SUPPLEMENTARY CASES FOR CLASS DISCUSSION ISSUES RELATING TO BAIL AND DETENTION

### *R. v. M.S., 2004 ONCJ 135 (CanLII)*

Available from CanLII at

<https://www.canlii.org/en/on/oncj/doc/2004/2004oncj135/2004oncj135.html?autocompleteStr=r.%20v.%20M.%20S.%202004&autocompletePos=1>

Bail is an issue that comes up with respect to young persons as well as adults. The following case illustrates the complexity of decisions involving bail or whether there will be pre-trial detention. The standard for denial of bail under the *YCJA* is high and not easily met. Amendments to the *YCJA* have been suggested so as to make it easier for the courts to deny bail in certain cases involving young persons. This case indicates that it is not only the provisions of the *YCJA* that are at issue. Here is what the courts have to consider as they weave their way through the facts of cases. It is important to consider how different facts can contribute to different decisions about bail. The following is excerpted from the judge's decision.

This is a [case involving] Crown Onus, in which the accused is charged with carrying a concealed weapon in the form of an imitation hand gun, carrying a concealed weapon in the form of an imitation pellet gun, and failing to comply with his Probation Order. There are no outstanding charges.

The accused is a 17-year-old youth who lives with his father, his father's common-law wife and her 2 sons. ... His parents were divorced 2 ½ years ago. He has a part-time job with a moving company and helps with renovations to the family home. He completed grade 11.

M.S. has an extensive criminal record commencing in January 2002. He has numerous convictions including convictions for Criminal Harassment, Uttering Death Threats, Assault, Assault with a weapon and Carrying a concealed weapon, as well as various convictions for Failing to comply with recognizance. In addition, he has 3 convictions for Breach of Probation Orders. ... His sentences, including several in secure custody, reflect the seriousness of his crimes. The accused has spent much of the past 2 ½ years in custody, and was released ... after having served 150 days in custody.

... less than 2 weeks after his release, the police found him drinking beer, and carrying concealed weapons, which he is alleged to have tried to prevent the police from taking. This resulted in his being arrested at gunpoint.

The Crown seeks the detention of the accused on the secondary ground. However, the *Y.C.J.A.* creates a presumption against detention on the secondary ground. The *Act* provides that the presumption against detention on the secondary ground may be rebutted under Section 39(1)(a) or (b) or (c).



I agree with the Crown and Defence Counsel that the offences before the court are not violent offences within the meaning of Section 39(1)(a) of the *YCJA*. However, the accused has 3 convictions for Breach of Probation, and I am satisfied that the presumption is therefore rebutted under Section 39(1)(b), since M.S. has failed to comply with more than one non-custodial sentence. Section 39(1)(c) provides that the presumption may also be rebutted if it is alleged that the youth committed an indictable offence for which, if convicted, an adult could receive a sentence of more than 2 years in jail, and the youth has a history of a pattern of findings of guilt.

Under Section 90 as read with Section 2 of the *Criminal Code*, Carrying a concealed weapon is an indictable offence, which carries a possible prison term of up to 5 years. In *R. v. D.N.* [2003] O.J. No. 3736, the Court held that a pattern requires at least 3 convictions. I am satisfied that the accused does have a 2 ½ year history, which shows a pattern of findings of guilt.

Accordingly, I am persuaded that the presumption against detention on the secondary ground has been rebutted by the Crown. ... However, such a ruling does not create an obligation on the Court to order the detention of the accused.

Having ruled that the presumption against detention on the secondary ground has been rebutted by the Crown, I am now required to undertake a risk assessment in order to decide on whether or not to release the accused on bail.

The accused's father, W.S., was called as a proposed surety and testified that:

- he and his ex-wife, B.P., adopted M.S. in Brazil ... when he was a year old;
- he has been a surety for M.S. previously;
- because M.S. had not complied with his recognizance, he revoked a previous bail;
- he is concerned about some of the friends with whom his son associates, and M.S. has not been willing to refrain from associating with them;
- M.S. has been convicted of threatening and assaulting him;
- M.S. has an alcohol problem, and may be suffering from fetal alcohol disorder;
- although M.S. had some counselling while in custody, M.S. does not think that there is anything wrong with him, and W.S. has been unable to arrange for appropriate assessment and counselling for his son;
- he is willing to have his son continue to live with him and will make every effort to supervise him even though he himself has a full time job;
- W.S.'s 17 year old stepson, who also lives in their home, has convictions for drug offences and Assault.

Although W.S. appeared to be honest and forthright with the Court, the accused has been living with him, and has amassed his criminal record while under his father's care and supervision.

... the Supreme Court of Canada considered the accused's criminal record in relation to risk assessment. The Court noted that an accused's criminal record may, and I believe that M.S.'s criminal record does suggest ... that

- he is not interested in his own obligations;
- he may have an alcohol addiction;
- he may be suffering from mental and/or emotional problems;
- he has not obeyed previous Court Orders.

From the evidence of W.S. I find that the accused's alcohol and emotional problems are not being adequately addressed, and that his behaviour appears to be spiralling out of control.

In *R. v. A.S.D.*, [2003] B.C.J., the Court relied only on the tertiary ground in ordering the detention of the accused. The Court found that if the young person "is unable or unwilling to comply with normal living arrangements in the context of a bail order ... the Court is left with no option but to detain her until there is some sort of behaviour modification which demonstrates that she will react and behave more appropriately in a non-custodial setting."

After M.S. was released from custody on July 18, 2004, he went to live with his father. Less than 2 weeks later he was arrested on serious weapons charges and breaching his Probation Orders.

### **Decision**

I am of the opinion that if M.S. is released, there is a substantial likelihood that he will commit further offences which will endanger the safety and the welfare of the public. I am not satisfied that the proposed plan of supervision is much different from what it has been in the past.

In *R. v. T.E.L.* [2003] B.C.J. ... the Court detained the accused youth on the tertiary ground because "A right-thinking member of the public would say that this young person is not being well-controlled by the criminal justice and interim release system, and his release would cause them to lose confidence in the administration of justice." I am of the view that this dictum accurately describes the situation in which M.S. finds himself at this juncture of his life.

For these reasons I would order the detention of the accused on the secondary and tertiary grounds.

Having made this decision, I am required ... to inquire as to the availability of a responsible person, and whether the accused would be willing to be placed in that person's care.

Note: This matter was held down to enable Defence Counsel to canvass the availability of a suitable responsible person. Subsequently, Defence Counsel informed the Court that he had no one to present to the Court for consideration as such. Consequently, the Court confirmed the Detention.

Ontario Court of Justice, Toronto, Ontario, **Kowarsky J.P.** August 5, 2004.

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