

## Extrajudicial Measures

When in contact with the law, there are three options available for youth offenders:

- Extrajudicial measures
- Extrajudicial sanctions
- Court

What is an extrajudicial measure?

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An extrajudicial measure (EJM) is a pre-charge diversion system that was introduced with the YCJA (Youth Criminal Justice Act) in 2003, that is a less formal, alternative way of dealing with first time, non-violent young offenders other than going through court and formally charging the youth.<sup>1</sup>

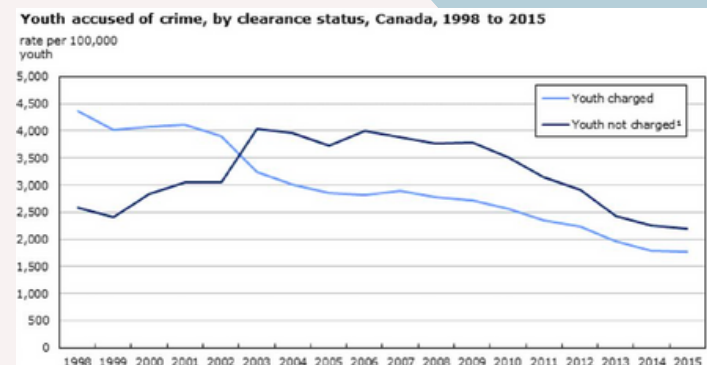
Who are EJMs used for? When are they used?

- Young persons aged 12-17
- Non-violent, first time offenders
- Those who have previously been dealt with by an EJM or have previously been found guilty of an offence
- When it is sufficient enough to hold the young person accountable for their actions.<sup>2</sup>

Examples of EJMs

- There is no action taken against the young person
- A warning
- Police caution – a formal warning
- Referral to a community program or agency with the consent of the young person
- Crown caution – cautions given by a crown prosecutor after a police referral
- Extrajudicial sanctions – more formal and serious EJM that includes working in the community, compensating the victim, and attending specialized programs.<sup>3</sup>

Youth crime, charges, and diversion: 1998-2015<sup>4</sup>



Who administers EJMs?

The police have the power of discretion and are required to consider EJMs for every young person they encounter and consider charging. This gives the power of the courts to police officers who can now decide guilt or innocence.

In 2012 it became mandatory that police record their use of EJMs. This allows them to track patterns of reoffending.<sup>5</sup>

What are the benefits of using EJMs?

- EJMs are an effective and timely method of addressing the youth's offending behaviour, and holding them accountable for these behaviours.
- Going through the more formalized system of the courts can stigmatize young people for petty crimes and once they are stigmatized and labelled as criminals, they will incorporate that into their identity. They will in turn associate with that and potentially become more deviant.
- Prison exposes young people to crime and potentially more serious offenders and cuts them off from positive connections in the community that they may have had.
- EJMs allow for reparation of the harm done to victims and allows the community to play a role in helping young people get back on track.<sup>6</sup>

## What are the downfalls of using EJMs?

- Net widening is the primary downfall of EJMs. Net widening occurs when young people who would otherwise have been let off and not brought into the system at all are diverted through an EJM.
- EJMs put a lot of power in the hands of police officers that would normally be entrusted in the courts.<sup>7</sup>

## How do EJMs affect the incarceration rate?

- The YOA (Young Offenders Act) was in effect from 1984-2003 and marked the highest rate of incarceration of young people in the Western world, and was at a rate even higher than the United States.
- It wasn't until 2003 when the YCJA (Youth Criminal Justice Act) was implemented that EJMs and diversion programs were the primary focus, in order to find better alternatives to the formal system, in the community.
- Under the YCJA, formal charges against youth decreased significantly and police administering diversion programs through EJMs increased.
- Youth cases being sentenced to custody decreased from 22% in 2003/2004 to 15% in 2013/2014.
- After the implementation of the YCJA, custodial sentences dropped.
- In the last decade, cases resulting in guilty outcomes have decreased. 56% of youth court cases resulting in a guilty verdict in 2013/2014, which was the lowest proportion since the 1990's.<sup>8</sup>

## How can the community better serve young offenders?

Programs offered to young offenders in prison are based off the needs of the offender and look to address mental health issues, education, life skills and any criminogenic needs they may have. However, in custody, all of these programs are voluntary. So not only are offenders potentially not getting help, they are also often cut off from all of their financial, educational and familial ties within the community. Prison surrounds them with crime and potentially more serious offenders, which breeds crime in the young person.

<sup>1</sup> Canadian Legal FAQs. (n.d.). Extrajudicial measures and sanctions (YCJA). Retrieved from <http://www.law-faqs.org/national-faqs/youth-and-the-law-national/youth-criminal-justice-act-ycja/ycja-extrajudicial-measures-and-sanctions/>

<sup>2</sup> Canada Department of Justice. (2017, August 8). The youth criminal justice act summary and background. Retrieved from <http://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/back-hist.html>

<sup>3</sup> Canada Department of Justice. (2017, August 8). The youth criminal justice act summary and background. Retrieved from <http://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/back-hist.html>

<sup>4</sup> Office of the Correctional Investigator. (2017, October 3). Missed opportunities: The experiences of young adults incarcerated in federal penitentiaries. Retrieved from <https://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20170831-eng.aspx>

<sup>5</sup> Canada Department of Justice. (2017, August 8). The youth criminal justice act summary and background. Retrieved from <http://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/back-hist.html>

<sup>6</sup> Canada Department of Justice. (2017, August 8). The youth criminal justice act summary and background. Retrieved from <http://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/back-hist.html>

Extrajudicial measures. (n.d.). Retrieved from <https://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/sheets-feuillets/pdf/measur-mesur.pdf>

<sup>7</sup> Pozzula, J., Bennell, C., & Forth, A. (2018) Forensic Psychology (5th ed.). Pearson Canada.

<sup>8</sup> Pozzula, J., Bennell, C., & Forth, A. (2018) Forensic Psychology (5th ed.). Pearson Canada.