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Personal class notes:

Youth sentencing

- **Youth sentencing:** the area with the biggest disparity between youth and adult offenders
 - entirely separate sentencing regime
 - some argue “youth laws invite crime because they are so lenient”
 - they are to be rehabilitative- recognize that some children are placed at higher risk than others
- Sentencing under the YCJA: the declaration of principle 3 under the YCJA- the policy for respect to young persons- guides a judge in fashioning an appropriate sentence
- s. 38 & s.39: **Purpose and principles of sentencing**
 - 38(1) Ultimate objective of sentencing is to protect the public- by imposing just/fair sanctions that amount to meaningful consequences that promote rehabilitation/reintegration
 - 38(2) Principles that youth court judges are to apply when imposing a sentence:
 - a. Young person *shouldn't get a longer sentence than an adult* when the circumstances are similar
 - b. *Consistency* in sentencing- parity- predictability
 - b. *Proportionate*- there is no one size fits all sentence- circumstances of the offence and the offender- judges tailor-make sentences
 - D. *Consideration of Aboriginal decent*
 - E. Sentences to be *least restrictive* that is capable of achieving purpose of rehabilitation and reintegration; the one most likely to rehabilitate/ reintegrate youth back into society; promote the youth to accept responsibility and harm done to victim and community- hope sentence will resonate with the youth
- R. v. BWP; R. v. BVN: **General and specific deterrence** in youth sentencing
 - 2 entirely separate cases argued at the same time in the SCC
 - Is general deterrence a factor to be considered in youth sentencing?
 - Deterrence- R. v. M. (1993, SCC): general deterrence plays a lesser role in sentencing under the YOA- the youth are not to be made an example out of to prevent other youth from committing similar crimes
 - *The sentencing provisions in the Criminal Code don't apply in youth cases- YOA and YCJA create their own entirely separate sentencing regimes*
 - The statute suggests that parliament deliberately excluded general deterrence as a factor of youth sentencing
 - Specific deterrence is also excluded
- **Bill C-10:** The addition of denunciation and specific deterrence
 - To denounce unlawful conduct and deter the young person (specific deterrence)
 - Denunciation: court speaking for the community saying behaviour is wrongful- *denunciatory sentences are tougher- specific deterrence by tougher sentence*
 - Rare for judges to use unless on very serious crimes or by hardened offenders
- S. 38 (3): **Factors in determining youth sentence;** what the YJC shall take into account
 - A. The *degree of participation* by the young person
 - B. The *harm done* to victims and whether or not it was intentional or reasonably foreseeable

- C. Any *reparations* made by the young person to the victim or community
- D. *Time spent in detention by young person* as a result of the offence (see R. v. Thomas B. (2006, Ont. C.A)- the credit to be given for 1 month in custody prior to sentencing is 1.5 months- reason for this is that youth sentences of jail are structured so that 2/3 of sentence is served in jail and 1/3 is in the community- that's why youth jail sentences are called '*custody and supervision sentence*'
- E. Previous findings of guilt- does the youth have a *previous record*
- F. Any *other aggravating or mitigating circumstances*
 - Custody and community supervision: 1/3 of the custodial sentence is to be served by the youth offender in the community
- S. 39: Committal to custody- **the 4 'gateways' to custody**
 - 39(1) A YCA court shall not commit a young person to custody unless:
 - a) The young person has *committed a violent offence*
 - b) The young person has *failed to comply with non-custodial sentences* they continue to offend
 - c) The young person has *committed an indictable offence* for which an adult would be liable to a term of imprisonment greater than 2 years and has a *history indicating a pattern of guilty findings* under this act or the YOA
 - d) In exceptional cases where the young person has committed an indictable offence, the aggravating circumstances of the offence are such that the imposition of a *non-custodial sentence would be inconsistent* with the purpose and principles set out in section 38.
- s. 39(1)(a): What is a **violent offence**
 - R. v. C.D.; R. v. C.D.K (2005, SCC);
 - 2 separate cases- 1 arson, the other dangerous driving (nobody injured in either case)
 - There is a risk of violence in both cases because someone could have been serious injured or killed- therefore, are these considered violent offences-therefore, making them custodial eligible
 - Violent offences are not defined in the YCJA- serious violent offences are:
 - S. 2(1) "**Serious violent offences**" the attempt to cause serious bodily harm- bodily harm defined by the Criminal Code as hurt or injury to a person that interferes with their health or comfort and that is more than transient or trifling in nature- R. v. McGraw (1991) includes psychological harm
 - These offences, in both cases were not serious violent offences and given that the overall thrust of YCJA is to restrict the use of custody, the term violent offence should be interpreted narrowly (dont include offences that are dangerous but unintentionally and only potentially violent)
 - 'Violent offence' must refer to the victim as a person (not property offences)
 - Definitions of "violence" can be divided into 2 categories:
 1. Force based definitions
 2. Harm based definitions- focuses on the harm caused (or intended to cause)
 - Conclusion: harm- based definition makes more sense and should be used
 - Definition of "violent offence": an offence in the commission of which a young person causes, attempts to cause, or threatens to cause bodily harm
 - this is broader than the definition of "serious violent offence" (which does not include threats)
 - Differences between violent offence and serious violent offence:

- Violent offences don't have to be serious
- Violent offences include threats to cause bodily harm
- Crown's proposed definition: the SCC rejected the crown's interpretation that dangerous offences should be included in violent offences and said that a violent offence can't include behaviour dangerous but unintentionally dangerous
- SCC gave us a definition of violent offence because they are custody eligible
- As a result of this decision, dangerous offences, are not automatically custody eligible, but does not exempt them from custody (a prior history of non-compliance while on parole could result in a custodial sentence)
- **Bill C-10** addressed this issue as well- there has been a lot of back and forth between parliament and courts
- Violent offences are now defined in the YCJA by Bill- C10 as an offence committed by a young person that includes as an element the causing of bodily harm, an attempt or threat to commit an offence that causes bodily harm, or an offence in the commission in which a young person endangers the life and or safety of another person by creating a substantial likelihood of causing bodily harm (dangerous behaviour now defined as violent because parliament passed a bill)
- What is an **exceptional case**- example: R. v. W. (R.E) (2006, OCA)
 - The young accused was living with older man who killed someone and had the accused help cut the body into pieces and scatter them (accused was not involved in the killing)
 - Desecrating a dead body is not a custody eligible offence, therefore, the only way it is custodial is if it is deemed an exceptional case
 - What should be meant by 'exceptional case'?
 - Determined that it should be given a narrow definition
 - Giving it a broad definition would frustrate Parliament's intention to reduce the over-reliance on custodial sentences.
 - Summary 39(1)(d) (custody for exceptional cases) can be invoked only because of the circumstances of the offence, not the circumstances of the offender or their history.
 - Exceptional cases are those where any order other than custody would undermine the purpose and principles of sentencing set out in s. 38. In other words, s. 39(1)(d) is intended to describe the rare non-violent cases where applying the general rule against a custodial disposition would undermine the purpose of the YCJA.
 - Exceptional cases are limited to the clearest of cases where custody is obviously the only justifiable option.
 - An exceptional case is one where the circumstances are so shocking as to threaten widely shared community values.
- S. 39(2): **Alternatives to custody**
 - If any paragraphs (1)(a) to(c) apply, a YJC shall not impose a custodial sentence unless under s. 42 (youth sentences) unless the court has considered all alternatives to custody raised at the sentencing hearing that are reasonable in the circumstances, and determined that there is not a reasonable alternative, or combination or alternatives, that is in accordance with the purpose and principles set out in section 38.

- S. 39 (4): Imposition of same sentence (**not just one chance**)
 - The previous imposition of a non-custodial sentence on a young person does not preclude a YJC from imposing the same or any other non-custodial sentence for any other offence.
 - Young people can get sequential probation opportunities

- S. 39 (5) **Custody as a social measure** is prohibited
 - (5) A youth justice court shall not use custody as a substitute for appropriate child protection, mental health or other social measures
 - Previously, judges felt jail would be a more stable environment for young offenders in some cases
 - Parliament has now made it clear that courts shall not use custody as a substitute for appropriate child protection, mental health or other social measures.

- S. 39 (6,7): **Pre-sentence reports**
 - (6) Before imposing a custodial sentence... YJC has to request a pre-sentence report and any sentencing proposal made by the young person on his or her counsel
 - Pre-sentence report: Gives court all relevant info about youth- family, leisure, work/school, associates, substance abuse and enables the probation officer before sentencing to make recommendations to the court and take a proactive approach dealing with the youth and planning for their sentence (despite being required by law to complete- they are often not ordered)
 - (7) A YJC may, with the consent of the prosecutor and young person on his or her counsel, dispense with a pre-sentence report if the court is satisfied that the report is not necessary
 - The report is intended to tell the judge as much as possible about the offender in terms of background, current circumstances, future plans- probation officer recommends whether or not they think the young person can successfully serve their sentence in the community. The parole officer may say the offender needs a “highly structured” environment for rehabilitation (probation officer is not supposed to explicitly recommend jail)

- S. 39 (8): Length of custody (**early release can not be taken into factor**)
 - In determining the length of a youth sentence that includes a custodial portion, a YJC shall be guided by the purposes and principles set out in s. 38, and shall not take into consideration the fact that supervision portion of the sentence may not be served in custody and that the sentence may be reviewed by the court under section 94.
 - In other words the judge is not supposed to reason by saying, “he deserves 12 months but if that’s all I give him I know he’ll only serve 8. So ill give him 18 months so that he’ll do 12.”

Youth sentences

- S. 41: **Recommendation of conference**
 - 41. When a youth justice court finds a young person guilty of an offence, the court may convene or cause to be convened a conference under section 19 for recommendations to the court on an appropriate youth sentence.
 - Probation officer- social worker- community- other members involved
 - Formal off the record hearing w/ the judge talk about the best way to rehabilitate young offender

- Not seen outside in the adult context (unless Aboriginal)
- S. 42(1): **Considerations as to youth sentence**
 - (1) A youth justice court shall, before imposing a youth sentence, consider any recommendations submitted under section 41, any pre-sentence report, any representations made by the parties to the proceedings or their counsel or agents and by the parents of the young person, and any other relevant information before the court.
 - May be letters of support/ psychological reports etc. that need to be taken into consideration
- S. 42(2): **Youth sentences**
 - A youth justice court shall, before imposing a youth sentence, consider any recommendations submitted under section 41, any pre-sentence report, any representations made by the parties to the proceedings or their counsel or agents and by the parents of the young person, and any other relevant information before the court.
 - (2) When a youth justice court finds a young person guilty of an offence and is imposing a youth sentence, the court shall, subject to this section, impose any one of the following sanctions or any number of them that are not inconsistent with each other and, if the offence is first degree murder or second degree murder within the meaning of section 231 of the Criminal Code, the court shall impose a sanction set out in paragraph (q) or subparagraph (r)(ii) or (iii) and may impose any other of the sanctions set out in this subsection that the court considers appropriate:
 - Normally just 1 imposed, but there are times where more than 1 sanction is appropriate
 - Other provisions apply w/ murder
 - Least to most onerous **sanctions are as follows**;
 - (a) **Reprimand** the young person (not available to adults);
 - (b) By order direct that the young person be **discharged absolutely** (no strings attached), if the court considers it to be in the best interests of the young person and not contrary to the public interest;
 - (c) By order direct that the young person be **discharged on conditions** (equivalent of conditional discharge for adults- you're on probation) that the court considers appropriate and may require the young person to report to and be supervised by the provincial director;
 - (d) Impose on the young person a **fine** not exceeding \$1,000 (\$5,000 to adults) to be paid at the time and on the terms that the court may fix (relatively rare to impose financial penalties on children- the parents will get stuck paying it- probation more appropriate);
 - (e) Order the young person to pay to any other person at the times and on the terms that the court may fix an amount by way of **compensation for loss** of or damage to property or for loss of income or support, or an amount for, in the Province of Quebec, pre-trial pecuniary loss or, in any other province, special damages, for personal injury arising from the commission of the offence if the value is readily ascertainable, but no order shall be made for other damages in the Province of Quebec or for general damages in any other province;
 - (f) Order the young person to make **restitution** to any other person of any property obtained by the young person as a result of the commission of the offence within the time that the court may fix, if the property is owned by the other person or was, at the

time of the offence, in his or her lawful possession (stealing property- selling it to someone and cops find it- restitution may be paid to person who made the bad purchase;

(g) If property obtained as a result of the commission of the offence has been sold to an innocent purchaser, where restitution of the property to its owner or any other person has been made or ordered, order the young person to pay the purchaser, at the time and on the terms that the court may fix, an amount not exceeding the amount paid by the purchaser for the property;

(h) Subject to section 54, order the young person to compensate any person in kind or by way of **personal services** at the time and on the terms that the court may fix for any loss, damage or injury suffered by that person in respect of which an order may be made under paragraph (e) or (g) (compensation by services- judge orders the youth to cut the victim's lawn for example);

(i) Subject to section 54, order the young person to perform a **community service** at the time and on the terms that the court may fix, and to report to and be supervised by the provincial director or a person designated by the youth justice court;

* s. 54 places limits on community service

(8) Personal or community service states the personal or community service has limits (no more than 240 hrs. and has to be completed within 12 months of the date ordered)

(9) No order be made unless (a) the community services is to be performed is part of a program approved by the provincial director; or (b) the YJC is satisfied that the victim whom the service is to be performed has agreed

(j) Subject to section 51 (mandatory **prohibition order**), make any order of prohibition, seizure or forfeiture that may be imposed under any Act of Parliament or any regulation made under it if an accused is found guilty or convicted of that offence, other than an order under section 161 of the Criminal Code (may be prohibited from driving or possessing weapons) (community services is in the context of a probation order- "you are on probation for 12 months and during that time you have to do blank amount of hours);

(k) Place the young person on **probation** in accordance with sections 55 and 56 (conditions and other matters related to probation orders) for a specified period not exceeding two years (should fall between discharges and fines- it does for adults- suspended sentences is considered to be lower than a fine in the hierarchy of sentences- no suspended sentence for a youth, only probation- max probation is 2 years- 3 years max for adult indictable offences);

(l) Subject to subsection (3) (agreement of provincial director), order the young person into an **intensive support and supervision program** approved by the provincial director;

(m) Subject to subsection (3) (agreement of provincial director) and section 54, order the young person to attend a **non-residential program** approved by the provincial director, at the times and on the terms that the court may fix, for a maximum of two hundred and forty hours, over a period not exceeding six months;

(n) Make a **custody and supervision order** with respect to the young person, ordering that a period be served in custody and that a second period — which is one half as long as the first — be served, subject to sections 97 (conditions to be included)

and 98 (continuation of custody), under supervision in the community subject to conditions, the total of the periods not to exceed two years from the date of the coming into force of the order or, if the young person is found guilty of an offence for which the punishment provided by the Criminal Code or any other Act of Parliament is imprisonment for life, three years from the date of coming into force of the order;

- Summary of 42(2)(n): custody and supervision

- Maximum of 2 years custody and supervision

- Custody is twice as long as supervision

- Therefore 2/3 custody; 1/3 supervision

- If an adult can get life, then max. is 3 years for a youth (does not apply to serious violent offences- murder, attempted murder, aggravated sexual assault)

(o) (current) in the case of an offence set out in section 239 (attempt to commit murder), 232, 234 or 236 (manslaughter) or 273 (aggravated sexual assault) of the Criminal Code, make a custody and supervision order in respect of the young person for a specified period not exceeding three years from the date of committal that orders the young person to be committed into a continuous period of custody for the first portion of the sentence and, subject to subsection 104(1) (continuation of custody), to serve the remainder of the sentence under conditional supervision in the community in accordance with section 105;

(o)(this is the one talked about in class) “**Presumptive offences**” make a custody and supervision order in respect of the young person for a specified period not exceeding 3 years from the date of committal that orders the young person to be committed into a continuous period of custody for the first portion of the sentence and, to serve the remainder of the sentence under conditional supervision in the community in accordance with section 105 (nothing that says the time is to be split)

- They used to be in the YCJA but were removed in 2012 with Bill C-10

- They classified the most serious types of offences (murder, aggravated assault, etc.) for offenders over the age of 14

- There were two categories of presumptive offence:

(1) murder, attempted murder, manslaughter, or aggravated assault

(2) serious violent offence (see CD, CDK) and adult charged with the same offence could get 2+ years, and the accused has at least 2 previous convictions for serious violent offences (defined in s. 2)

- Two presumptions attached to these offences:

(1) that the accused will receive an adult sentence “onus provisions”

(2) the accused can be identified “privacy provisions”

- **R. v. B. (D.) considered the constitutionality of presumptive offences**

- Is it constitutional to have the accused have to rebut whether he should receive an adult sentence/have the **youths name published**- The Supreme Court ruled that it is unconstitutional to put the burden on the accused to show that he should not be identified- the burden should be on the crown instead- The Supreme Court also ruled that the requirement for the accused **youth to be given an adult sentence** unless they prove otherwise should not be

- It's a principle of fundamental justice that youth have a diminished culpability- therefore they should be sentenced different than adults to reflect this diminished responsibility- therefore it's wrongful to put on the burden of the accused proving they should be sentenced as a youth- both stuck down as

unconstitutional, Bill C-10 had to deal with this so 1 thing it did was repeal presumptive offences

- Bill C-10

- s. 175: Repeals the presumption, **no more presumptive offences**

- s. 176: Crown must determine whether application should be filed, and must inform the court if Crown decides not to file the application, where accused was 14 and committed a serious violent offence

- 1 out of 1000s of cases that crown seeks adult sentence

- s. 167 **redefines "serious violent offence" as** murder, attempted murder, manslaughter, aggravated sexual assault, i.e what are now considered category 1 presumptive offences

- s. 183: Crown has the burden of proving that the **presumption of deminished moral blameworthiness** or culpability of the young offender is rebutted AND that a youth sentence wouldn't be a sufficient length to hold the young offender accountable for his offending behaviour

(p) **Deferred custody and supervision:** subject to subsection (5), make a deferred custody and supervision order that is for a specified period not exceeding six months, subject to the conditions set out in subsection 105(2), and to any conditions set out in subsection 105(3) that the court considers appropriate (equivalent of an adult conditional sentence- a jail sentence served at home with either lax or tight restrictions);

(q) order the young person to serve a sentence not to exceed

(i) in the case of first degree murder, ten years comprised of

(a) a committal to custody, to be served continuously, for a period that must not, subject to subsection 104(1) (continuation of custody), exceed six years from the date of committal, and

(b) a placement under conditional supervision to be served in the community in accordance with section 105, and

(ii) in the case of second degree murder, seven years comprised of

(a) a committal to custody, to be served continuously, for a period that must not, subject to subsection 104(1) (continuation of custody), exceed four years from the date of committal, and

(b) a placement under conditional supervision to be served in the community in accordance with section 105;

- (5) The court may make a **deferred custody and supervision order** under paragraph (2)(p) if;

(a) the young person is found guilty of an offence other than one in the commission of an offence that is not a serious violent offence, and;

(b) it is consistent with the purpose and principles set out in section 38 and the restrictions on custody set out in section 39.

- max. 6 months (can be followed by probation)

- s. 42(5): not a serious violent offence, and is consistent with the purpose and principles of the YCJA

- R. v. JSM (2005, BCCA): **Probation given on aggravated assault charge**- crown said you cant do that- deferred custody and supervision is not available- defence said nothing that said probation is not available- court of appeal agreed with defence saying that deferred custody and supervision is not available for aa because svo, but that doesn't mean there is a minimum mandatory pen jail- person can get probation for aa- have to into account all factors- if best sentence is probation then so be it- had been argued in this case that it was unconstitutional to not have this type of deferred custody and supervision sentence available for yp who commit serious violent crimes- court said its valid for parliament to not make that sentence available- leads to all or nothing for sentencing judge- stark choice between probation and jail (no middle ground of deferred custody and supervision)
- s. 51: Mandatory prohibition (1) (a)(d)
 - (2) duration of prohibition order
- S. 54: **Fines and other payments**
 - (2) A young person on whom a fine is imposed under paragraph 42(2)(d), including any percentage of a fine imposed under subsection 53(1), or on whom a victim fine surcharge is imposed under subsection 53(2), may discharge the fine or surcharge in whole or in part by earning credits for work performed in a program established for that purpose
 - (a) by the lieutenant governor in council of the province in which the fine or surcharge was imposed; or
 - (b) by the lieutenant governor in council of the province in which the young person resides, if an appropriate agreement is in effect between the government of that province and the government of the province in which the fine or surcharge was imposed.
 - (6) No order may be made under paragraph 42(2)(h) unless the youth justice court has secured the consent of the person to be compensated. (court must be satisfied that young person has means to pay the fine- if they don't pay it they would go to jail by default- they don't want to impose a 'defected jail order')
 - (7) No order may be made under paragraph 42(2)(h), (i) or (m) unless the youth justice court is satisfied that
 - (a) The young person against whom the order is made is a suitable candidate for such an order; and
 - (b) The order does not interfere with the normal hours of work or education of the young person.
- S. 55: **Conditions that must appear in probation orders**
 - (1) The YJC shall prescribe as mandatory conditions of an order, that the young person (a) keep the peace and be of good behaviour and (b) that the youth appear in court when they are required to do so.
 - (2) The YJC may prescribe, as conditions of an order, that the young person do one or more of the following that the YJC considers appropriate in the circumstances (not as punishment but to get the accused offender on the right track/stay out of trouble):
 - (a) Report to and be supervised by the provincial director or a person designated by the youth justice court (for the bad apples- drug addicts;

- (b) Notify the clerk of the youth justice court, the provincial director or the youth worker assigned to the case of any change of address or any change in the young person's place of employment, education or training;
 - (c) Remain within the territorial jurisdiction of one or more courts named in the order;
 - (d) Make reasonable efforts to obtain and maintain suitable employment;
 - (e) Attend school or any other place of learning, training or recreation that is appropriate, if the youth justice court is satisfied that a suitable program for the young person is available there;
 - (f) Reside with a parent, or any other adult that the youth justice court considers appropriate, who is willing to provide for the care and maintenance of the young person;
 - (g) Reside at a place that the provincial director may specify;
 - (h) Comply with any other conditions set out in the order that the youth justice court considers appropriate, including conditions for securing the young person's good conduct and for preventing the young person from repeating the offence or committing other offences (to stay away from certain people or places- the victim or co-accused); and
 - (i) Not own, possess or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, except as authorized by the order.
- **S. 57: Transfer order of youth sentence**
 - (1) When a youth sentence has been imposed under any of paragraphs 42(2)(d) to (i), (k), (l) or (s) in respect of a young person and the young person or a parent with whom the young person resides is or becomes a resident of a territorial division outside the jurisdiction of the youth justice court that imposed the youth sentence, whether in the same or in another province, a youth justice court judge in the territorial division in which the youth sentence was imposed may, on the application of the Attorney General or on the application of the young person or the young person's parent, with the consent of the Attorney General, transfer to a youth justice court in another territorial division the youth sentence and any portion of the record of the case that is appropriate. All subsequent proceedings relating to the case shall then be carried out and enforced by that court.
 - Transfer to another jurisdiction may take place on application of offender or Crown
 - **S. 42(15): Duration of youth sentence for different offences (multiple sentences)**
 - (15)...if more than one youth sentence is imposed under this section in respect of a young person with respect to different offences, the continuous combined duration of those youth sentences shall not exceed three years, except if one of the offences is first degree murder or second degree murder within the meaning of section 231 of the Criminal Code, in which case the continuous combined duration of those youth sentences shall not exceed ten years in the case of first degree murder, or seven years in the case of second degree murder.
 - **S. 42(16):Duration of youth sentence made at different times**
 - (16)If a youth sentence is imposed in respect of an offence committed by a young person after the commencement of, but before the completion of, any youth sentences imposed on the young person

- (b) the sentence may be served consecutively to the sentences imposed in respect of the previous offences; and
- (c) the combined duration of all the sentences may exceed three years
 - This is why it is in the young persons best interest if they have multiple charges to resolve than all at the same time- getting sentenced by 1 judge at the same time- rather than risk getting a sentence added on consecutively by a second judge at a later date
- **S. 47: Continuous vs. intermittent**
 - (1) Subject to subsections (2) and (3), a young person who is sentenced under paragraph 42(2)(n) is deemed to be committed to continuous custody for the custodial portion of the sentence.
 - (2) If the sentence does not exceed ninety days, the youth justice court may order that the custodial portion of the sentence be served intermittently if it is consistent with the purpose and principles set out in section 38.
 - Weekend is equal to 4 days total (going in Friday night counts as a day, Saturday and Sunday each count as a day, Monday morning counts as a day)
 - Young offender serving a 90 day sentence (spends 2/3 or 60 days in jail) translates to 15 weekends- day you're processed also counts as a day
 - Intermittent sentences may be permitted so the offender can work; go to school; attend programming
- **S. 39: The 4 gateways to custody (when custody can be imposed)**

(1): A youth justice court shall not commit a young person to custody under section 42 (youth sentences) unless

 - (a) the young person has committed a violent offence;
 - see R. v. C.D.; R. v. C.D.K (2005 SCC)
 - "violent offence" is the same as "serious violent offence" (s.2) with a few exceptions
 - Unlike a 'serious violent offence', crown does not have to prove that there was serious bodily harm
 - 'Violent offence' includes threats unlike 'serious violent offence'
 - (b) the young person has a history of failure to comply with non-custodial sentences
 - requires that the offender has received at least two separate non-custodial sentences in the past that they have failed to comply with (see R. v. W.S.C., Sask. YJC, 2003, for example)
 - (c) the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of either extrajudicial sanctions or of findings of guilt or of both under this Act or the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985; or
 - (d) in exceptional cases where the young person has committed an indictable offence, the aggravating circumstances of the offence are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38.

(2) When there is no reasonable alternative, or combination of alternatives, that is in accordance with the purpose and principles set out in section 38.

(5) Not to be used as a social measure (cant use custody as a substitute for child protection, mental health, or other social measures- like it used to be under the juvenile delinquents act)

Custody and Supervision

- S. 83(1): **Purpose of custody and supervision**
 - The purpose of the youth custody and supervision system is to **contribute to the protection of society** by
 - (a) carrying out sentences imposed by courts through the safe, fair and humane custody and supervision of young persons; and
 - (b) assisting young persons to be rehabilitated and reintegrated into the community as law-abiding citizens, by providing effective programs to young persons in custody and while under supervision in the community

- S. 83(2): **Principles to be used in custody and supervision**
 - In addition to the principles set out in section 3, the following principles are to be used in achieving that purpose:
 - (a) that the least restrictive measures consistent with the protection of the public, of personnel working with young persons and of young persons be used;
 - (b) that young persons sentenced to custody retain the rights of other young persons, except the rights that are necessarily removed or restricted as a consequence of a sentence under this Act or another Act of Parliament;
 - (c) that the youth custody and supervision system facilitate the involvement of the families of young persons and members of the public;
 - (d) that custody and supervision decisions be made in a forthright, fair and timely manner, and that young persons have access to an effective review procedure; and
 - (e) that placements of young persons where they are treated as adults not disadvantage them with respect to their eligibility for and conditions of release.

- S. 84: Young person to be **separate from adults**
 - Subject to subsection 30(3) (pre-trial detention), paragraphs 76(1)(b) and (c) (placement in adult facilities with adult sentence) and sections 89 to 93 (placement in adult facilities with youth sentence), a young person who is committed to custody shall be held separate and apart from any adult who is detained or held in custody.
 - Used to be when we had phase 1 (12-15 yr. olds) and phase 2 (16-17). The phase 1 were kept at William Hayes Center, and phase 2 were kept at Ottawa Detention Center- separate from adults but in adult condition
 - 2 levels of custody: open-group home-can go to school-curfew time- and closed (secure)-jail- judge decides where the youth goes- once in custody judge doesn't have much of a say- the ministry, jail staff decide which conditions they should be under- can go either way

- S. 85: Provincial Director to specify **custody level**- committal to custody
 - (3) The provincial director shall, when a young person is committed to custody under paragraph 42(2)(n), (o), (q) or (r) or an order is made under subsection 98(3), paragraph 103(2)(b), subsection 104(1) or paragraph 109(2)(b), determine the level of custody appropriate for the young person, after having taken into account the factors set out in subsection (5).
 - Initial decision is made by sentencing judge- its misleading that way
 - (5) The factors referred to in subsections (3) and (4) are
 - (a) that the appropriate level of custody for the young person is the one that is the least restrictive to the young person, having regard to
 - (i) the seriousness of the offence in respect of which the young person was committed to custody and the circumstances in which that offence was committed,
 - (ii) the needs and circumstances of the young person, including proximity to family, school, employment and support services,
 - (iii) the safety of other young persons in custody, and
 - (iv) the interests of society;
 - (b) that the level of custody should allow for the best possible match of programs to the young person's needs and behaviour, having regard to the findings of any assessment in respect of the young person; and
 - (c) the likelihood of escape.
- S. 87 and 88: Review Board or Judge may **review any decision about the level of custody** if the offender thinks they should be in open custody as opposed to closed
- S. 89: Exception is person is 20 yrs. old or older
 - (1) Young person charged as a youth but over the age of 20 by the time he is sentenced is put in an adult jail (provincial jail unless more than 2 years)
 - (2) Penitentiary- 19 who has 6 years left to do in custody must be transferred to an adult jail when he turns 20 (if more than 2 years left you go penitentiary, less you go provincial)
- S. 92, 93: Young **offender turns 18 or 20**
 - (1) Transfer to an adult facility
 - (2) If serving youth sentence in provincial correctional facility
 - There can be some discretion whether or not to transfer to an adult jail for offenders older than 18 but younger than 20
 - If they are making progress in the youth facility- it doesn't make sense to disrupt that progress
 - Should they be transferred to an adult jail, they would become eligible for parole and statutory release the same way an adult would- they would no longer be under under the '2/3 custody & 1/3 supervision'
- S. 94: **Annual and optional review**
 - 94. (1) When a young person is committed to custody pursuant to a youth sentence under paragraph 42(2)(n), (o), (q) or (r) for a period exceeding one year, the provincial director of the province in which the young person is held in custody shall cause the young person to be brought before the youth justice court without delay at the end of one year from the date

of the most recent youth sentence imposed in respect of the offence — and at the end of every subsequent year from that date — and the youth justice court shall review the youth sentence.

- (2) When a young person is committed to custody pursuant to youth sentences imposed under paragraph 42(2)(n), (o), (q) or (r) in respect of more than one offence for a total period exceeding one year, the provincial director of the province in which the young person is held in custody shall cause the young person to be brought before the youth justice court without delay at the end of one year from the date of the earliest youth sentence imposed — and at the end of every subsequent year from that date — and the youth justice court shall review the youth sentences.
- When young offender is committed to custody for a sentence exceeding 1 year, a mandatory review shall be done annually by the provincial director of the province.
- (3) an optional review may occur when a young person is committed to custody pursuant to a youth sentence imposed under paragraph 42(2)(n), (o), (q) or (r) in respect of an offence, the provincial director may, on the provincial director's own initiative, and shall, on the request of the young person, the young person's parent or the Attorney General, on any of the grounds set out in subsection (6), cause the young person to be brought before a youth justice court to review the youth sentence,
 - (a) when the youth sentence is for a period not exceeding one year, once at any time after the expiry of the greater of
 - (i) thirty days after the date of the youth sentence imposed under subsection 42(2) in respect of the offence, and
 - (ii) one third of the period of the youth sentence imposed under subsection 42(2) in respect of the offence (ex: 9 months can be reviewed at 3 months); and
 - (b) when the youth sentence is for a period exceeding one year, at any time after six months after the date of the most recent youth sentence imposed in respect of the offence.
- (4) The young person may be brought before the youth justice court at any other time, with leave of the youth justice court judge
- (6) A youth sentence imposed in respect of a young person may be reviewed under subsection (5)
 - (a) on the ground that the young person has made sufficient progress to justify a change in the youth sentence;
 - (b) on the ground that the circumstances that led to the youth sentence have changed materially (ex: personal or family health problems);
 - (c) on the ground that new services or programs are available that were not available at the time of the youth sentence;
 - (d) on the ground that the opportunities for rehabilitation are now greater in the community; or
 - (e) on any other ground that the youth justice court considers appropriate.

- (19): **Decision of the youth justice court after review-possible results**
- (19) When a youth justice court reviews under this section a youth sentence imposed in respect of a young person, it may, after giving the young person, a parent of the young person, the Attorney General and the provincial director an opportunity to be heard, having regard to the needs of the young person and the interests of society,
 - (a) confirm the youth sentence;
 - (b) release the young person from custody and place the young person under conditional supervision in accordance with the procedure set out in section 105, with any modifications that the circumstances require, for a period not exceeding the remainder of the youth sentence that the young person is then serving; or
 - (c) if the provincial director so recommends, convert a youth sentence under paragraph 42(2)(r) to a youth sentence under paragraph 42(2)(q) if the offence was murder or to a youth sentence under paragraph 42(2)(n) or (o), as the case may be, if the offence was an offence other than murder.

- S. 98(1): **Application for continuation of custody**
- (3) Decision: The youth justice court may, after giving both parties and a parent of the young person an opportunity to be heard, order that a young person remain in custody for a period not exceeding the remainder of the youth sentence, if it is satisfied that there are reasonable grounds to believe that
 - (a) the young person is likely to commit a serious violent offence before the expiry of the youth sentence he or she is then serving; and
 - (b) the conditions that would be imposed on the young person if he or she were to serve a portion of the youth sentence in the community would not be adequate to prevent the commission of the offence.
 - * Only if it is shown that it is likely that the young person will commit another, serious violent offence and/or
 - * It is shown that the offender can't be managed in community

- (4) Factors: For the purpose of determining an application under subsection (1), the youth justice court shall take into consideration **any factor that is relevant to the case** of the young person, including
 - (a) evidence of a pattern of persistent violent behaviour and, in particular,
 - (i) the number of offences committed by the young person that caused physical or psychological harm to any other person,
 - (ii) the young person's difficulties in controlling violent impulses to the point of endangering the safety of any other person,
 - (iii) the use of weapons in the commission of any offence,
 - (iv) explicit threats of violence,
 - (v) behaviour of a brutal nature associated with the commission of any offence,
 - and

(vi) a substantial degree of indifference on the part of the young person as to the reasonably foreseeable consequences, to other persons, of the young person's behaviour;

(b) psychiatric or psychological evidence that a physical or mental illness or disorder of the young person is of such a nature that the young person is likely to commit, before the expiry of the youth sentence the young person is then serving, a serious violent offence;

(c) reliable information that satisfies the youth justice court that the young person is planning to commit, before the expiry of the youth sentence the young person is then serving, a serious violent offence;

(d) the availability of supervision programs in the community that would offer adequate protection to the public from the risk that the young person might otherwise present until the expiry of the youth sentence the young person is then serving;

(e) whether the young person is more likely to reoffend if he or she serves his or her youth sentence entirely in custody without the benefits of serving a portion of the youth sentence in the community under supervision; and

(f) evidence of a pattern of committing violent offences while he or she was serving a portion of a youth sentence in the community under supervision.

- S. 102(1): **Breach of conditions**

- (1) If the provincial director has reasonable grounds to believe that a young person has breached or is about to breach a condition to which he or she is subject under section 97 (conditions to be included in custody and supervision orders), the provincial director may, in writing,

(a) permit the young person to continue to serve a portion of his or her youth sentence in the community, on the same or different conditions; or

(b) if satisfied that the breach is a serious one that increases the risk to public safety, order that the young person be remanded to any youth custody facility that the provincial director considers appropriate until a review is conducted.

-Ex: out on supervision during last 1/3 of sentence and he breaches- much like an adult on parole, you may go back to jail to serve out some or all of sentence- probation is you breach you get charged for probation but doesn't mean you go back to serve rest of sentence

Adult sentences

- Under YOA, presumption of transfer to adult court if...
- 16 or 17 yrs old at time of offence
- Charged with murder, attempted murder, manslaughter, aggravated sexual assault
- Even though presumption- it hardly ever happened- 1 in 1000

- s. 61: Adult sentence

- repealed Bill C-10

- s. 62: Adult sentence
- repealed Bill C-10

s. 63: Application for youth sentence
- repealed Bill C-10

s. 64: Application for adult sentence- what we have now
(1)
(1.1)

- The only mandatory thing now is if a youth who is at least 14 at time of committing a serious violent offence, crown must consider asking for adult sentence, they must submit that before accused enters a plea of guilty or not

(1.2)

(2) (crown having to state intention before youth person enters plea)

s. 64: Application for adult sentence pre Bill- 10 (presumed to be imposed prior to 2012)

(1) offender is at least 14 at the time of the offence, and charged with an offence that an adult could get more than 2 years jail for

(2) offender is at least 14 (but province could raise to 15 or 16) and is guilty of a presumptive offence, ie murder, manslaughter, aggravated sexual assault, third serious violent offence

post Bill C-10 (no more presumption- crown must apply)

(1) offender is at least 14 at the time of the offence, and charged with an offence that an adult could get more than 2 years jail for

(2) offender is at least 14 (but province could raise to 15 or 16) and is guilty of a presumptive offence, ie murder, manslaughter, asa, third serious violent offence

s. 67: Right to jury trial

s. 67: timing of hearing

71. The youth justice court shall, at the commencement of the sentencing hearing, hold a hearing in respect of an application under subsection 64(1) (application for adult sentence), unless the court has received notice that the application is not opposed. Both parties and the parents of the young person shall be given an opportunity to be heard at the hearing.

- under s. 63(1): application for youth sentence was amended in Bill C-10

s. 72: adult sentence pre Bill-10

(1) in making decision, the youth justice court shall consider the seriousness and circumstances of the offence, and the age, maturity, character, background and previous record of the young person and any other factors that the considers relevant

- repealed Bill- C10

s. 72: Adult sentence post Bill C-10

(1) the youth justice court shall order that an adult sentence be imposed if it is satisfied that (a) that the presumption of diminished moral blameworthiness or culpability of the young person is rebutted by the crown and (b) a youth sentence wouldn't be sufficient in length to hold the young person accountable for his or her offending behaviour- if judge is satisfied with both they have to impose adult sentence

s. 72: Adult sentence

(2) onus is on the crown to prove to the court

-amended bill C-10

(2) onus of satisfying the court is on the attorney general

Amy Sturgeon: Youth Intervention and Diversion

- Review every missing and located youth and decide on whether or not to do a follow up- why did they run away- set up a support system
- Group home youth have had experiences with police through family- try and answer questions and develop positive relations
- Youth office strategy:
 - 80% of youths fall under prevention
 - No risk (education/awareness)
 - Low risk (early identification/early intervention)
 - Moderate risk (diversion/sanctions)
 - 20% of youths fall under reactive
 - High risk (enforcement- arresting and charging),
 - Very high risk (suppression/reintegration)
- Youth Advisory Committee (YAC): Acts as a liaison between the youth and the police (gets youth perspective on ways to prevent crime)
- Youth office initiatives
 - Tom Patrick: youth program
 - OPS Youth Ventures
 - Youth in Policing
 - YIPI
 - Tania Paiement: CAS liaison- resource for officers- youth offenders under 12 (who can't be charged)
 - Sanctions: warning, contacting parents, completing programs, children who are over 12 can be charged as a youth offender)
 - Gang siblings project: Works with the families of gang members to reduce the likelihood of younger siblings becoming involved in gangs- parents must agree; it is completely voluntary
 - School Resource Officers: all incidents that happen on the way to, from, or during school
- What are we seeing?
 - Mental health problems
 - Bullying (there is no bullying charge but charges of criminal harassment can be laid)
 - Social media (sexting, cyber-bullying)
- The Youth Mental Health Court

- Defense can make application for youth offenders accompanied with mental health problems (youth must agree to participate)
- **Records on youth offenders** can be kept for...
 - 3 years: youth found guilty of a summary conviction
 - 5 years: youth found guilty of an indictable offence
 - Police records can be kept on file indefinitely- dependent on severity of the crime
 - Court/ community programs may keep records
 - Anyone can apply for pardon through the RCMP
- Youth Resources
 - Youth Services Bureau: a resource for parents and youth- provides community housing, mental health assistance and other parent lifelines (ex- crossroads for children under the age of 12, CAS, Serenity Renewal for Families)
- Youth police are generally more invested in rehabilitation and are given more time and opportunities to do so.

Tom Shulberg

Boys and Girls Club

- Work on RNR (risk, need, responsivity principle)
- Everything is referred to another agency after meeting with Boys and Girls Clubs (case management)
- 60% extrajudicial measures differed from the police, 40% differed from the court
- Don't intervene when they don't need to- don't want to increase risk of criminality
- Wireless CMI: A standardized assessment tool for **risk of reoffending**- non-biased, no guessing, standardized scores
 1. Prior and current offences
 2. Family circumstances- lack of supervision (trying to figure how much the parents know about the youth and what they are up to), abuse (inconsistent abuse worse than abuse every Friday)
 3. Disruptive classroom behaviour, low education, problems with teachers, truancy- kids who skip second half are often getting high
 4. Delinquent acquaintances- can get a lot of knowledge about a kid by asking questions about their friends- more willing to talk about their own friends- some kids may have lots of 'badass' friends but a 'good' close friend who they want to promote- youth usually do well if they have at least 1 'good' adult they can look up to
 5. Substance abuse- daily use- drug use and family problems are correlated- only families are sometimes happy about drug use are the parents of dealers who profit
 6. Impulse control- attention deficit
 7. Inadequate feelings of guilt, not caring for others feelings
 8. Attitudes- procriminal attitudes

Former probation officer Hal Grossner

- Since 2003, youth are completely under the Ministry of Children and Youth Services- a major step to get all of the needed services to kids
- Youth probation officers work for Ministry of Children and Youth Services- adult probation officers work for the Ministry of Community, Safety, and Correctional services
- Have to take into consideration that some individuals have an emotional intelligence of someone who is 10 years younger

- The criminal justice system is made up of **3 separate but interdependent phases (process)**

Police 1 st phase	Court 2 nd phase	Sentence Implementation 3 rd phase
<ul style="list-style-type: none"> - Investigation of whether or not an offence occurred- can result in a charge being laid or extra-judicial measures if there is evidence against accused; - Accused released on a promise to appear vs. detained for court appearance and possible show cause hearing 	<ul style="list-style-type: none"> - Detention initiative if not released at court; - Pre- sentence report preparation if found guilty - Probation officers work at court phase for two separate reasons <ol style="list-style-type: none"> 1. Youth who are detained and waiting for a bail hearing/sentence need assistance making a plan for when they get out (difficult if the youth hasn't admitted guilt- have to maintain presumption of innocence) 2. When there is a guilty finding and the judge orders a pre-sentence report (work, school, family life) 	<ul style="list-style-type: none"> - Judges can impose: <ol style="list-style-type: none"> a) Custodial placement; b) Probation supervision; c) Stand- alone orders (community service or restitution- but does not happen very often)

Youth court judge Jean Legault - personal views of youth justice) 37 mins in

- Trial process:
 - What the judge does:
 - Decides on the issues of law and fact
 - Issues of fact: an assessment of credibility- who (if anybody) is telling the truth- has the crown presented reliable witnesses
 - Credability assessment biggest role as a trial judge- how to decide credibility?
 - Its is difficult- lie detectors are only 50% successful
 - Can assess a persons demeanor- how someone reacts (are they argumentative)
 - Demeanor and credibility are not the only issues- 'the reliability of the evidence' is paramount'
 - There are 2 aspects to credibility: (1) a persons disposition or prudence to tell the truth (is the witness being honest) and; (2) the reliability of their evidence (was it dark out/were they wearing their glasses/ are there any other witnesses to corroborate their story)
 - Reasonable doubt: use common sense- the presumption of innocence is linked to reasonable doubt- high standards to meet requirement for a guilty finding)- reasonable doubt connected to evidence or absense of evidence- 'probability' guilty is not satisfying enough (reasonable doubt varies by judge however)
 - Ex: "In a she said he said (alleged domestic assault without evidence (brusing)- and after considering all evidence I am unable to decide who to believe, reasonable doubt goes to accused
 - * An accused/witness testimony should be the same as their story 8 months ago- the major details shouldn't change- inconsistencies impact assessment on

credibility/reliability (keeping in mind passage of time affects memory)- dealing with inconsistencies in both the accused and complainants stories (exposed through cross examination), it must be explained too accused as to why they or their witnesses testimony was not not credible/why they are found guilty (or else it will be appealed for a new trial)

- Role as a judge:
 - To ensure that the proceedings of the trial are conducted fairly, properly and according to the law, decide issues of fact and law that are presented by counsel
 - If the accused is found guilty- deciding on proper sentence
 - Be impartial by knowing nothing about the case or parties involved beforehand
- Children can be caught up in parental divorce trials and judge must decide whose story they are really telling- children can be lead to believe things that did or didn't happen by being convinced by their parents
- Principles involving child witnesses:
 - Young witness are being called more often
 - Years ago we treated their inconsistencies as we would an adults- amendments to criminal code set out the tools to deal with credibility, reliability, and honesty of child witnesses for youth court judges
 - Video statement: young persons (witness or victim) videotaped statement following soon after the offence is replay in court (as evidence). The child is then called to the stand and asked if their statement was true (children can be cross examined but it is not expected of a young person to remember events from months ago with much accuracy).
 - Decision in CCF (1997): "it is evident to anyone whose worked closely with young people that they (even more than adults) will have a better recollection of events shortly after they occurred than some time later. The younger the child, the more pronounced this will be. Videotaped statements made within a reasonable time after the offence will almost inevitably reflect a more accurate recollection of events than will testimony given later at trial.
 - Decision in W.R (SCC, 1992): court said with respect to the assessment of a child witnesses, "children experience the world differently than adults (time and place may be missing from their recollection). Use **common sense approach** when assessing young witnesses credibility- don't enact the same standards on them as adults. Contradictions in young witnesses story shouldn't be given the same light as a contradiction in an adults story. Young children cant account precise details but that does not mean they cant account what happened to them and who did it."
 - * Court not telling judges to lessen reasonable doubt criteria- they are asking judges to look at evidence based on common sense- must assess evidence in light of the witnesses ages, mental development, ability to communicate evidence

- What part of the youth population appears in court:
 - Meta-analysis by a psychologist: mental health issues are higher amongst youth in serious trouble with law than the general population (ADHD, substance use disorders, anxiety disorders- PTSD, depression, etc.)
 - By way of example: youth in custody- in custody 31% presented a conduct disorder vs. 4%-8% in general community; in custody- 30% have ADHD vs. 5% general community; higher substance use, depression, and PTSD in custody
 - Mental health makes it more difficult to accept programming
 - Over representation of blacks and indigenous- social problem given structure of YCJA and social supports available- that needs to be addressed

- Deterants: The use of custody to deter youths from committing criminal offences
 - Does it work: amendments to YCJA to allow judges to consider specific deterrents as reason to impose custody or stricter sentence. Social science of deterrence specific to youths- “Deterrents as a principle of youth but a significant effect of judges” - social science research consistently indicates that an increase in the severity of a punishment imposed on youth does not affect crime rate. Youth prone to committing offences do not consider the likelihood or consequences of being apprehended- should I impose a stricter to deter a young person? (Specific deterrence- the level of youth crime has not increased, even though we are now using less jail to deter crimes- custody is expense and my point of view is reserved for most serious offenders/ crimes- I always look to community based sentences in assessing proper sentence to impose- youth in custody may be subject to peer abuse, 10-15% are fearfully of safety and experience depression and anxiety, also an increase in recidivism, negative impact on future employment stability, most can outgrow antisocial behaviour- not a proponent of using ycja as a deterrent (has to be used on the most extreme)

 - Tools available under the YCJA (not available to adults): (1) large portion of adult population cant afford lawyer (make too much money to be considered for legal aid)- youth offenders don't have this problem under ycja- judge can appoint counsel (if youth charge isn't serious enough and family makes too much money for youth to be considered for legal aid, the judge is permitted to appoint counsel upon request, cant force parents to pay (2) bail denovo- new bail hearing for young persons- new kick at the can- brand new hearing from a second judge to decide on custody (or not) (3) option to release young person to release supervision of adult- criminal charge can result from the adults ability to (or not) supervise (4) conference s. 19- can be used at bail stage- meeting with everyone involved with the youth (teacher, CAS, etc.)- draft out a plan to the young person, suggestions from young person- useful before/at trial and sentencing stage as well
 - (5) Medical, psychological assessment at any stage in proceedings, including decision to grant bail at any time. S. 34 useful tool- in custody report from psychiatrist within 30 days (suggest what problems are at what is available to deal w/ their issues) any statements by the youth during this time are inadmissible (are exceptions) youth can speak openly to figure out underlying reasons for offence

The Judge

- Role in sentencing: deterrence not a factor for young people- so what's the purpose of the sentence- what am I trying to achieve- give the person meaningful consequences for their actions by using just sanctions that promote their rehab and reintegration for the long-term protection of society. Quebec has widest range of, and their recidivism is less. It's because of community based on incarceration of young persons. Conditions of probation: many conditions does not serve long term interest of that young person, many unnecessary conditions often lead to more charges- create difficulty for them not to commit an offence because of all the conditions the crown wants them to abide- ability once found guilty to request a pre-sentence report another useful tool- meaningful consequence- look at their role in the commission of the offence, the intention or lack of- look to least restrictive consequence- most likely to rehab and reintegrate- most likely to promote sense of responsibility and ack. Harm done- look to aggravating and mitigating circumstances)moral blameworthiness is less for youth)- look at past time in custody (night in custody for bail hearing might be enough of a consequence)- look to past troubles- reparations (apology, community service)- cant be more severe than what an adult will be given- consider aboriginal background- order the youth to make compensation, community serve, reprimand for minor offences- length of probation order impacts the 'meaningful' consequence- refer youth to child welfare
- Amendment: deterrence and denunciation
 - Specific deterrence and denunciation may be objectives of youth sentences
 - Changes little about 'meaningful' consequences
- The important factors to take away from Jean's presentation: the principles that underlie the youth criminal justice act with respect to sentencing is that community based programs are more effective than custodial programs in reducing recidivism in young people. Custody studies have shown do not decrease recidivism. Short sharp shocks of custody may increase recidivism rates (put in contact with criminal- gravitate towards there influence)
- Issues affecting young people that appear in youth criminal justice system
- Tools that he has at his disposal as a youth court judge that are not available to adults during the process
- His role in sentencing

Guest speaker- racked up 27 charges a youth in '93 under young offenders act

- " How did I get there"- family problems swept under the rug, aggressive and confrontational personality, poor peers, punishment based custody furthered recidivism, drugs alcohol became a problem- more violent,
- Convicted of 12 bank robberies at 18

Jessica Race: John Howard Society

- Adult justice services, child and youth services, employment and training
- Child and youth services: housing, prevention and intervention
- Pre-employment services: social skills, reading, etc...
- Employment training
- Time for change: gang exit program
- JHS: non-custodial sentencing option (identified in YCJA); plan within Youth Justice Division
- Community based interventions to assist youth in their future
- Two locations: Vanier and Kanata
- Goals: to reduce offending behaviour; individualized intervention plans (RNR principle)
- Clients: moderate to high risk youth
- Probation is sole referral source (have to be on conditional discharge)
- Youth assigned to a counselor who works with the throughout their involvement in the program (Referral, approval, assignment, review)
- At intake, an assessment of youth criminogenic risk factors (YouthAssessmentSceningInstrument, static dynamic protective)
- Target specific areas for intervention (most bang for the buck)
- Focus on dynamic factors- knowing the static is important
- Gender specific programming
- Male programming: ABCs of risky thinking, drug and alcohol awareness, social/other skills
- Female programming: listening and being heard, making healthy choices, expressing emotions