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INFORMATION PACKAGE
ON FEDERAL PROPOSAL
FOR REFORM OF YOUNG OFFENDERS SYSTEM

On May 12, 1998, Justice Minister Anne McLellan, released the federal government's proposed strategy for youth justice renewal.

The government's strategy responds to recommendations made in April 1997, by the House of Commons Standing Committee following a year-long review of Canada's approach to youth justice. The Committee traveled across Canada hearing from victims' organizations, the law enforcement community, municipal and provincial officials and many others on how Canada's youth justice system could be improved.

The federal strategy is based on three key directions:

- prevention;
- meaningful consequences for youth crime, including targeted measures for violent and repeat offenders; and
- intensified rehabilitation.

Key measure in the proposals include:

- replacing the *Young Offenders Act* with a new youth criminal justice act that aims to put public protection first and to command respect, foster values such as accountability and responsibility, and make it clear that criminal behaviour will lead to meaningful consequences;
- a prevention component linked to other federal government initiatives aimed at children and youth, including the Crime Prevention Initiative, National Children's Agenda, and response to the Royal Commission on Aboriginal Peoples;
- encouraging the development of a full range of community-based sentences and effective alternatives to the justice system for non-violent young offenders that aim to foster respect, emphasize responsibility to the victim and community, help youth understand the impact of their actions, and allow them to see a clear connection between the offence and its consequences;
- expanding the offences for which a young offender would be liable to adult sentences from murder, attempted murder, manslaughter, and aggravated sexual assault to include a pattern of serious violent offences;

- lowering the age limit for young offenders who are presumed to be liable to adult sentences from 16 to 14;
- permitting the publication of the names of all young offenders who have been convicted and qualify for an adult sentence. Publication of the names of 14- and 15-year olds convicted of murder, attempted murder, manslaughter, aggravated sexual assault or who have a pattern of convictions for serious violent offences could also be permitted;
- establishing a special sentencing option for the most violent, high-risk young offenders. The regime would require these offenders to participate in intensive rehabilitation and treatment programs and be subject to extended periods of controlled supervision in the community once released. Few details about this sentencing option have been determined at this point; and
- reducing the legal complexities in determining whether voluntary statements by youth can be admitted as evidence.

The federal government's strategy also proposes provisions that would simplify and streamline procedures to improve efficiency, placing less of a burden on victims and families, and ensuring that young offenders see a clear connection between their offence and the sentence they receive.

Emphasis will also be placed on providing more support to victims, ensuring better victim notification and improving public participation and information in the youth justice system.

Key elements of the new legislation include:

1. *Statement of Principles and Objectives*

The new legislation will include a statement of principles and objectives stating that protecting society is the main goal of criminal law, including youth justice law. The statement will also make clear that prevention, meaningful consequences for crime and rehabilitation are all essential and complementary components of a youth justice system that effectively protects the public.

The statement will underscore that youth must be held accountable for their actions. It will also include the principle that youth should be treated differently from adults and that violent young offenders should be treated differently from non-violent young offenders. The statement will also make clear that victims should be heard and treated with courtesy and respect, and that they should experience the minimum degree of inconvenience as a result of their involvement in the youth justice system.

Principles are to be developed to help the courts impose sentences on youth that are meaningful and reflect both the seriousness of the offence and the circumstances of the young offender.

2. *Violent Young Offenders*

The government is proposing several measures to address the problem of violent young offenders:

- * **Adult sentences:** At present, 16- and 17-year-olds who commit murder, attempted murder, manslaughter or aggravated sexual assault are subject to adult sentences unless they can convince a judge that public protection and rehabilitation can be achieved by youth court sentences. The proposals will expand this group of offenders to include repeat young offenders who have a pattern of convictions for serious violent offences. In addition, the age limit will be lowered to include 14- and 15-year-olds.
- * **Special Sentencing Option:** A special sentence will be available for the most violent, high risk young offenders. This small group of offenders may require a combination of long periods of supervised control and intensive rehabilitation programs to deal with the risk they pose to society. A judge will have the power to impose such a sentence on a young offender found guilty of the most serious violent offences.
- * **Transfer Process:** Unlike the current system, which requires that a transfer hearing take place before the trial, the decision to apply adult sentences to a young offender will be moved to take place after the trial has occurred and a young offender has been found guilty. Under the new process, the Crown will indicate intention to seek adult sentences before the trial begins. The young offender will then elect to be tried in provincial youth court or by a superior court judge or by a superior court sitting with a jury. The court chosen will have access to the full range of adult sentences, following a conviction and when the required criteria are met.

3. *Community-based Sentences*

Most young offenders do not commit serious, violent crimes. Others may have committed more serious offences but are still at a point where custody and close contact with other, more experienced offenders would do more harm than good. Many of these young offenders would benefit from sentences like restitution, community service orders or personal services to their victim.

These kinds of sentences help young offenders understand, in a tangible way, the impact of their crime on others and offer them an opportunity to repair the harm they

have done. Equally important, community-based sentences give victims a chance to express their views and feelings and can also encourage family members and the larger community to take part in resolving conflicts and developing answers to youth crime.

The new youth justice legislation is to put a stronger emphasis on the development of a full range of alternatives to custody for young offenders that emphasize responsibility to the victim and community.

4. *Alternatives to the Courts*

Frequently, young people misbehave because of problems that can be addressed more effectively through other means than the criminal justice system. Alternatives such as police cautioning, diversion programs and family group conferencing can be more effective and efficient responses to some youth crime. These programs can be tailored to meet the individual needs of youths and their communities, and can be adapted to respond to cultural and gender differences. Local communities need to have this flexibility in dealing with minor youth offending.

The federal government is currently consulting with police organizations and others working with youth in the community to ensure that the new youth justice legislation gives them enough flexibility to make use of alternatives to the formal court process when appropriate.

5. *Publication Of Names*

Currently, the courts are open to the public and media may report on what is happening, but cannot publish the names of young offenders except under limited circumstances. This stems from the principle that young people are more likely than adults to be rehabilitated, and publication of their names could seriously harm their eventual reintegration into their communities.

The federal proposal would allow the publication of the names of all young offenders who are found guilty and qualify for an adult sentence. Naming of 14- to 17-year-old young offenders convicted of murder, attempted murder, manslaughter, aggravated sexual assault and repeat, serious violent offences who receive a youth sentence could also be allowed.

6. *The Role of Parents and Victims*

Parents:

Parents have both rights and responsibilities under the current youth law. For example,

they have a right to receive information and notice about the case of their child. At present, a judge can also require a parent to attend court if the judge feels this is necessary. If the parent fails to do so, he or she can be charged with a crime. Under the new youth justice strategy, these measures will be maintained. The new proposals will also require young offenders or their parents to pay for their legal counsel in cases where they are fully capable of paying. Currently, these costs are covered by the provinces in all cases.

Victims:

The role of victims in the youth justice system also needs to be made more clear. The government's strategy recognizes that much more can and should be done to support victims and provide them with more information and a greater role in legal proceedings if they wish. The new youth law will address additional or alternative ways to involve victims in the youth justice system, including providing victims with information about proceedings against young people so that they have an opportunity to participate.

7. *Admission of Statements*

Current youth law is very complicated and describes in great detail when and how voluntary statements by youth can be admitted as evidence in their trials. The required process and procedures are so complex that voluntary statements can sometimes be excluded as evidence for technical reasons alone. It is essential that the rights and protections of young people are respected, but it is also important that justice is done and that the work of police and the courts is not impeded unnecessarily by overly complex procedures.

Under the new law, the legal complexities involved in determining whether voluntary statements made by young offenders can be admitted as evidence will be reduced.