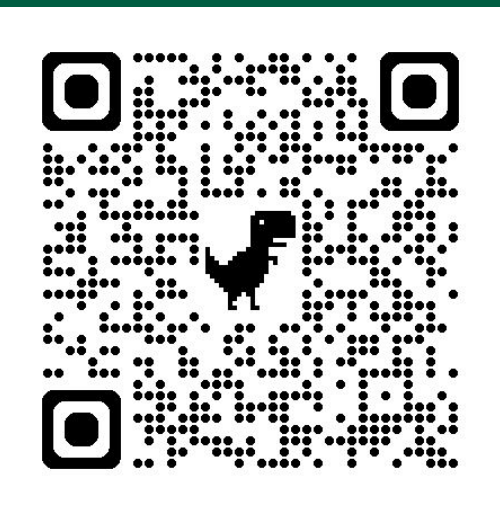


Incarcerated Youths in Canada and the United States

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References



Background

- U.S. and Canada historically had similar juvenile justice systems. Over time, the U.S. adopted a punitive model, while Canada chose a rehabilitative one.
- Both countries are U.N. members; the U.N. created the Convention on the Rights of the Child (CRC).
- The CRC defines children’s basic human rights. The U.S. is the only U.N. member (of 196) that has not ratified the CRC.
- This article compares juvenile sentencing and incarceration laws in Canada and the U.S.
- Research questions: (1) Does incarceration in adult facilities affect youth well-being? (2) Does the U.S. juvenile system ensure adequate protection and care for youth? (3) Does the Canadian juvenile system ensure protection and care for youth? (4) If youth well-being is widely recognized as a human right, why does the U.S. maintain harmful incarceration practices?

Convention on the Rights of the Child, Article 3: (1) In all actions concerning children [...], the best interests of the child shall be a primary consideration. (2) States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being [...], and [...] shall take all appropriate legislative and administrative measures. (3) States Parties shall ensure that [...] institutions, services and facilities responsible for the care or protection of children [...] conform with the standards established by competent authorities [...].

Methodology

- Uses human rights as a comparative framework, guided by Article 3 of the U.N. Convention on the Rights of the Child. Based on P. Ishwara Bhat’s idea that thematic paradigms like human rights offer analytical cohesion and evaluative clarity to comparative legal research.
- Applies Edward J. Eberle’s structured comparative law method: (1) understanding the legal philosophy behind a law through historical analysis; (2) examining external law, the law as written in statutes, in both countries; (3) evaluating internal law, or “law in action,” in both countries, here through human rights outcomes; (4) drawing comparative conclusions.
- Incorporates Mark Van Hoecke’s comparative law “toolbox”: (1) functional method—viewing laws as addressing a shared societal problem, human rights in the juvenile justice system); (2) historical method, tracing the development of U.S. and Canadian laws; (3) law-in-context method, comparing the social impact of laws, here through human rights outcomes.
- Uses human rights reports as empirical evidence to demonstrate the internal law of both juvenile justice systems, using the law-in-context method.

Results

United States External Law:

Juvenile Justice and Delinquency Prevention Act (JJDPA): An optional funding program for states meeting four juvenile justice mandates: (1) Prohibits detaining youth for status offenses, (2) requires youth be kept separate from adult inmates, (3) bans juvenile detention in adult jails, with limited exceptions, (4) requires efforts to reduce minority overrepresentation in the system.

Violent Crime Control and Law Enforcement Act (Crime Bill): Children over 12 can be tried as adults for murder or possessing a firearm during a violent felony, especially if involved in a gang.

Prison Rape Elimination Act (PREA): Funding incentive to separate youth inmates from adult prisoners.

State laws: Transfer laws allow children to be tried in adult criminal court, via three mechanisms: (1) judicial waivers (judge individually transfers a child to criminal court), (2) prosecutorial discretion (prosecutor has full discretion to choose whether to file a case in adult or juvenile court), and (3) statutory exclusions (legislation excluding juvenile court jurisdiction based on age, crime, or prior record). Variations of these transfer laws exist in every U.S. state. .

State laws: Only one-fourth of U.S. states restrict placing most children in adult facilities.

Canada External Law:

Youth Criminal Justice Act (YCJA) Section 38(1): Juvenile court sentencing aims to hold young people accountable with fair sanctions that support rehabilitation and reintegration.

YCJA Section 4: Promotes diverting cases from juvenile court through "extrajudicial measures" (including warnings and referrals) and "extrajudicial sanctions" (community-based programs like restitution or family conferencing). It aims to reduce court appearances, especially for first-time or minor offenders, if they are sufficient to hold a juvenile accountable for their actions.

YCJA Section 38(2)(d, e): All reasonable alternatives to custody must be considered, and all sentences to be the least restrictive, proportional to the offense, and capable of achieving sentencing goals.

YCJA Section 64 (1): A child aged 14 or older is eligible for an adult sentence if found guilty of an offense punishable by more than 2 years in adult court. However, the case will still be held in juvenile court.

YCJA Section 76: Children given adult sentences are typically placed in youth custody, but can be sent to adult facilities if needed for safety or in their best interest. Life sentences allow earlier parole than for adults.

Canadian Criminal Code Section 718: Sentencing goals are to denounce crime, deter offenders, protect society, rehabilitate, provide reparations, and promote offender responsibility.

United States Internal Law:

The JJDPA and PREA fail—incarcerated children are not separated from adult prisoners.

Adult legal proceedings are traumatic, confusing, and overly punitive for children

Children in adult prisons face extreme safety risks.

Children’s mental health deteriorates in adult prisons

Rehabilitation is undermined, encouraging recidivism

Children tried as adults are not protected by the JJDPA, since it is only applicable to the juvenile justice system. PREA only grants financial incentives—only 12 states in PREA compliance, and 4 states outright refuse to comply.

Since the adult criminal justice system views children on trial as adults, they are not allowed to see their parents or social workers. Adult courts impose significantly harsher sentences than juvenile courts (79% vs. 44% incarceration rate).

5× more likely to be sexually abused or raped; 2× more likely to be beaten by staff; 50% more likely to be attacked with weapons.

Suicide is their leading cause of death in adult prisons (75% of adolescent deaths). Children in adult prisons are 36× more likely to die by suicide than in juvenile facilities.

Lack of educational resources and rehabilitative programs in adult prisons hinders reintegration into society. Children’s records aren’t sealed in adult court systems, preventing future access to jobs, education, and housing.

Canada Internal Law:

Restorative justice is a valued alternative to formal proceedings.

Community programs are well-funded by the government.

Children can stay with their families, avoiding traumatic separations.

Children’s mental health is treated by medical professionals

Rehabilitation is prioritized over punishing children via incarceration.

Restorative justice methods (e.g., victim-offender conciliation, family group counseling) allow children to avoid criminal charges in the first place.

Government-funded community programs, run by the Royal Canadian Mounted Police, address youth offenses outside of court.

Community-based alternatives like Deferred Custody and Supervision Orders (DCSO) allow juvenile offenders to stay with their families while under house arrest.

Intensive Rehabilitative Custody and Supervision Orders (IRCS) place youth with psychological disorders in mental health facilities instead of prisons.

Incarceration is a last resort, even in formal sentencing—custodial sentences are viewed as harmful, hindering social development and rehabilitation. Community programs avoid the trauma and recidivism risks associated with incarceration.

	Canada	United States
(1) In all actions concerning children [...], the best interests of the child shall be a primary consideration.	YCJA prioritizes rehabilitation	Laws prioritize tough-on-crime punishments
(2) States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being [...], and [...] shall take all appropriate legislative and administrative measures.	Community-based alternatives avoid carceral trauma	Children incarcerated in adult prisons are endangered by violence, sexual abuse, suicide
States Parties shall ensure that [...] institutions, services and facilities responsible for the care or protection of children [...] conform with the standards established by competent authorities [...].	Incarceration is a last resort; DSCO keeps families together; IRCS treats mental illness	Children can be transferred to the adult criminal justice system, which is not built to care or protect children

Research Limitations

- Both the United States and Canada suffer from a severe lack of reportage on children’s carceral conditions.
- There is no requirement for either State to report on the situation of incarcerated juvenile offenders. It is challenging to compare quantitative data between the countries because data is incomplete or absent.
- I was unable to find any information about Canadian children incarcerated in adult facilities.

Conclusions

- The U.S. practice of incarcerating children in adult facilities significantly harms their well-being.
- Children in U.S. adult prisons face higher rates of sexual assault, physical violence, and suicide, a clear violation of Article 3 of the CRC. Children tried as adults in the United States are deprived of their human right to protection and care from the State.
- The U.S. juvenile justice system fails to care and protect children. The JJDPA and PREA are inadequate protections.
- Canada protects and cares for juvenile offenders by emphasizing rehabilitation, restorative justice, and using community-based alternatives to incarceration.
- Despite widespread recognition of youth well-being as a human right, the U.S. continues to maintain harmful incarceration practices due to its long-held punitive approach to juvenile justice.

Timeline

Political reformers in both countries create juvenile justice systems separate from the adult criminal justice systems. “In parens patriae” juvenile justice— welfare models meant to rehabilitate wayward children, rather than strict legal systems. Informal proceedings without due process.



1960s–1980

Both Canada and the United States experience a massive wave of juvenile crime. U.S. states and the federal government pass laws to make it easier to transfer children to adult criminal courts, in order to issue harsher sentences than the juvenile system. Canadian Parliament passes the Young Offenders Act (YOA), encouraging harsher juvenile carceral sentences.



Modern Day

19th century, early 20th century



1981–2000

A series of Supreme Court decisions grant children due process in the U.S., and the JJDPA is passed, a law meant to support juvenile rehabilitation. Meanwhile, the Canadian Mennonite Church and Canadian Aboriginals begin the restorative justice movement.

only victim in this case is dead? Mourning for 5-year-old Eric
B I T E
Superpredators' Arrive
ould we cage the new breed of vicious kids?

PETER ANNIS
N. OCT. 15, 1994, 5-YEAR-OLD ERIC Morris and his 8-year-old brother, Derrick, ran into two of the toughest bullies their South Side Chicago

where is the state supposed to put these two killers? A judge is scheduled to rule in the case next week. Around the country, other states are watching. They have their own predators to worry about.

The United States maintains its tough-on-crime juvenile system up until today. Canada reverses course in 2003 with the Youth Criminal Justice Act (YCJA), calling for a reduction in the use of incarceration, and increased rehabilitative/restorative justice programs.