

Issues in youth offending sentencing



**ASSIGN
BUSTER**

Part B Fundamental principles/ important sentencing Instructions

We are uncertain whether to treat young offenders as children requiring help and guidance or as morally responsible agents who deserve to be punished (Smith, 2005). Finding the balance between the two may be the answer.

Many different jurisdictions have different procedure for dealing with juveniles then adults. These typically include diverting some young offenders from criminal justice process, a juvenile or youth court, and scope for this court to prescribe training, education, counselling, supervision, medication, and restoration, either instead of punishment or in addition to it (Smith, 2005). The governing principle for sentencing will be (rehabilitation). This means every possible avenue will be explored before giving a young person a custodial sentence. In ensuring this remains at the forefront of sentencing judges should use this outline when sentencing a young person. Although Rehabilitation is the main focus of this youth justice system, accountability, (Add something more here) are also important factors in sentencing. In accordance with the suggestions from Smith (2005) this outline of sentencing principles and instructions set out for police officers, prosecutors and courts for sentencing youth in accordance with the Rehabilitation main principle.

Mental health and victim impact statements

In all cases involving youth a mental health assessment must be made because youth in the juvenile justice system experience substantially higher rates of mental health disorders than youth in the general population; a high percentage of youth in the juvenile justice system have a diagnosable

mental health disorder; it is safe to estimate that at least one out of every five youth in the juvenile justice system has serious mental health problems; and many of the youth in the juvenile justice system with mental illness also have a co-occurring substance abuse disorder. (Cocozza & Skowrya, 2000). This comes about after the Ashley Smith case, a teenage girl who killed herself while in custody while guards watched (Advocate, 2008). Also a victim impact statement, if provided will be looked at and considered when sentencing a youth

Reduce the use of custody

Reduce the number of custodial sentences. The youth justice system should reserve its most serious interventions for the most serious crimes (Barnhorst, 2004). Canadian laws have always allowed, or encouraged, discretion in responses by police and other to offending (Doob & Spratt, 2004). This being said police officers and judges, and prosecutors will have the discretion to divert a young person out of the system and use an informal way. Police and prosecutors will have the following options when dealing with a young person: Taking no further action, informal warnings, cautions, and referrals to a community program or agency, and extrajudicial sanctions (Barnhorst, 2004). Extra judicial measures should be used if they are adequate to hold the youth accountable for his/her offending behaviour and may be used if a youth has previously been dealt with by extra judicial measure or has previously been found guilty of an offence (Barnhorst, 2004). First time non-violent offenders should be held accountable outside of the youth court. (Barnhorst, 2004).

Accountability

Hold the youth accountable for their actions. A sentence should hold the youth accountable for their actions in the least invasive way possible (Smith, 2005). In England there has been a shift over the past 15 years towards a new emphasis on an efficient and prompt response to youth offending (Smith, 2005). Youth should have their hearing/trial/sentences done within a reasonable amount of time in order to hold them accountable for their actions (Smith, 2005). To hold a youth accountable in a fair way for the offence he/she committed, courts should impose just sanctions that will hold the youth accountable and have meaningful consequences and measures that will promote the rehabilitation and reintegration of the youth into society (Barnhorst, 2004).

Sentencing

For many sentences we suggest that Restorative type programs be used instead of incarceration. The programs found to be most successful are those that directly address behaviour problems, using social learning approaches, teaching social and interpersonal skills as well as helping young people to perceive and think about their own and other people's behaviour in a different way (Smith, 2005). Interventions with offenders in the community tend to have greater effects than those with offenders in institutions; these findings firmly establish that working with young people, especially using cognitive behavioural approaches based on social learning theory, can change their behaviour (Smith, 2005). There is a program in Lanark County in which youth who are facing barriers to employment can participate in this

6 month program that's runs 5 days a week from 9 a. m. to 5 p. m. This program called Skills Link sets youth in the community offering training in many different areas of employment barriers, they youth are giving employable skills and are also given an allowance equal to the province minimum wage when they participate (Falls, 2014). A program such as this could help a youth who has committed a crime because of not being able to provide for themselves or their family and resort to theft or some kind of measure like that.

The maximum sentence that can be imposed for a youth is 3 years. This sentence should be used only in extreme violent cases such as violent assault, sexual assault, murder, homicide etc. No youth should be sentenced as an adult in any circumstance. On top of a custodial sentence a judge may issue a probation period of no longer than 2 years. Should a youth become an adult while in custody the courts should re-visit the case and consider the youth and what he/she has done since being sentenced and determine if the young adult should continue their sentence in a minimum security setting within the adult system.

Overall judges should take into account all factors and have discretion when sentencing youth within the guidelines outlined above.

Part C: Case Studies CASE 2

Peter and John are angry at another student (Todd) for "ratting" on them about smoking weed on school property. They decide to get even with him and wait in a stairwell for him that is adjacent to his locker. When he arrives they punch him several times, when he falls to the ground, Peter kicks Todd

three times in the face, breaking his nose. John steals his iPod which had fallen to the ground during the fight. The principle hears the commotion; the youths are caught and the police called. The boys are 15.

In this case the police should refer Peter and John to a program for drug use, anger management and counselling. Todd should also be giving the option for counselling should this have a large impact on his schooling and/or life. Todd should write a victim impact statement for Peter and John to read and understand how this has affected Todd. John should have to pay/replace/give back the iPod that he stole. Once the boys have completed the programs/referrals the police should drop the charges completely.

Should this be something Peter and John have a history of fighting/stealing more invasive measure should be used. This could include probation for a year with set check in dates and times with a youth counsellor/ probation officer. In this case a mental health assessment would be done and the programs the youth attend would reflect what was found in the mental health assessment (i. e. address underlying issues of their behaviours). This method should only be used if the two boys have a lengthy history of fighting/ stealing.

Case 4

A young male (Bob Webren), 17 years of age, attempts to rob a convenience store with three of his friends. During the robbery, the 50 year-old owner of the store emerges from the storage room with a baseball bat and begins to beat one of Bob's friends. Bob comes to the rescue of his friend and, during a struggle, stabs the owner in the stomach. The four young adults then flee

the scene with \$400.00 in cash. The store owner later dies in hospital from his wounds. Bob is eventually charged with armed robbery and second degree murder. During his trial, it is disclosed that Bob comes from a very poor family and is currently living on social assistance. He has no previous criminal record. School transcripts reveal that he had been doing very well in school until he was kicked out of his mother's home and started to hang out with the "wrong crowd". He argues that he only recently began to engage in robbery in order to provide financial support for his 13 month-old son that he fathered as a result of a common-law relationship. Bob's legal aid attorney ask that these factors be considered during sentencing.

In this case Bob the judge should consider the circumstances that lead Bob to the crime he committed. Also a mental health assessment would be done in order to assess the different areas in which Bob needs help. The store owner's family should write a victim impact statement so Bob understand the extent of the choices he made and how those choices affected others.

The maximum sentence that should be giving is 2 years in jail and 1 year of probation. While in custody Bob should be allowed to see his family and work. A program like Skills Link, mentioned above, would be beneficial to Bob and could lead to a job when he finished his sentence. Other programs may be useful as well and can be decided by court staff at the time of sentencing, based on the mental health assessment, the level of crime and the remorse shown as well as the specific conditions in which Bob finds himself.

If Bob has good behaviour and does the required programs he could serve 9 months – one year and the rest of the time on probation. Counselling should be offered to Bob in order to discuss underlying issues and the outcome of his sentence and/or court procedures. If Bob serves his whole sentence then he will spend 1 year with a youth worker who will check in with him. Unlike probation Bob would not have to follow any specific guidelines, but the worker would be available to work with Bob should he have any issues while transitioning back into the society he committed the crime in. Should after the year/ when Bob becomes an adult, he could be transferred, at his request or by the request of his youth worker get a adult worker or outreach centre he could go should some new issue arise.

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