

# The Global Youth Justice Movement: Harnessing the Power of Positive Peer Pressure

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*What was begun as a 'made in America Global Goal' by social entrepreneur Scott Peterson in 1993, peer court volunteer-driven youth justice diversion programs (aka youth/teen/student court diversion program, youth jury and peer jury diversion programs, etc.) have mushroomed from 78 community-based programs in 1994 to over 1,700 programs around the world on four continents (i.e., North America, Europe, Africa, and Asia) as of 2017, and there's no sign that this local volunteer-driven approach to Youth Justice and Juvenile Justice will slow down anytime soon. Yet, there is no such formalized program in Canada! To this end, Winterdyk and Peterson take a ground-breaking look at how such (youth) diversion programs readily align with the Extrajudicial Measures set forth in Canada's Youth Criminal Justice Act (2013), Section 4. Extrajudicial means outside the court, and the measures aim at avoiding the formal court process (and criminal records) for youth when accountability and rehabilitation can be obtained through alternative means.*

## **Youth/Peer Courts in the US: History and Rational at a Glance**

Although the legacy of the youth justice movement dates to the 1950's in the State of Maine, when a judge wrote about such a concept in a local newspaper, there is no formal record of what transpired. It has never been determined if such a program was implemented. Nevertheless, in the 1970s—coinciding with major juvenile justice reforms and support for diversion programs for young offenders—a few of the mostly northern States implemented what are now known as youth/teen/Student/peer court and peer jury youth diversion programs (hereafter referred to as peer court).

By the early 1990's, however, the peer court concept began to take hold in local communities in the US and to evolve thanks in large part to the efforts of those who believed that young offenders—especially first-time offenders and/or youth having committed minor offenses—should be diverted from youth justice and juvenile justice systems, yet still be held accountable for their actions (e.g., Section 3 ACJS). It was not until 1997, when the United States Department of Justice launched the first federal effort within its Office of Juvenile

Justice and Delinquency and Prevention (OJJDP) to actively undertake a wide range of federally funded projects, utilizing millions of tax-payer dollars for the specific purpose of proliferating peer court diversion programs throughout the country. This federal funding was greatly reduced within a decade, and OJJDP subsequently eliminated its research and training division. Nonetheless, by 2008, the number of peer court diversion programs in the USA had surpassed a staggering 1,200+ communities.

## **Overview of 'Peer' Courts**

It is important to note that peer courts are not a formal court or a specialized court, they are diversion programs. During the 1970's and 80's, most of the then 20 or so peer court diversion programs did not expand to neighboring communities, due to social and political change and reforms throughout the country in response to high rates of juvenile crime, growing concerns over the rise of youth gangs, and a gradual shift towards more punitive measures such as incarceration (see, generally, McCord et al., 2000). Peer courts are youth-driven and function with a jury comprised of the youth's peers.

In this way, peer court diversion programs also benefit past youth offenders and youth in general by engaging them as volunteers in peer court, which increases their knowledge of the criminal and juvenile justice system. It also facilitates development of important skills relating to the analysis of information, determination of its relevance and importance, and in articulating and advocating positions. It also supplies the programs with peer role models. Youth volunteers typically serve in the roles of judge, prosecutor, defender, clerk/bailiff, and jury foreperson and are required to successfully complete a multi-week, law-related educational program. Volunteer youth jurors often consist of any youth who wishes to participate and this system thus promotes awareness of the rule of law and the functioning of the legal system among all young people. It has a unique potential to reach a very broad spectrum of young people, from youth who have committed an offense, to non-offending youth who wish to invest a small amount of their time as jurors and those who wish to invest substantial time and effort in the program.

In addition to peer courts being called different names (e.g., peer court, student court, youth court, peer jury, youth justice program, etc.), they have been established and administered in a variety of ways. Most of the programs are used as an alternative sentencing option for (largely) first time offenders having committed non-serious/non-violent crimes. The volunteer youth and youthful offenders are both usually between the ages of 10 to 18, and in most of the programs the defendant's parent or guardian must agree to the youth offender's participation. As with other diversion-type programs used in Canada, the youth must admit to wrongdoing (i.e., guilt) and accept the peer court option over the traditional and formal trajectory of the youth justice process.

Furthermore, in addition to representing an alternative to conventional youth justice measures and promoting civic engagement, the Peer Court Model differs in that it does not rely on young volunteers to pass judgement on the offender's sanction. Typically, the sanctions range from a combination of community service, conflict resolution training, restitution, jury duty, and/or educational workshops. Depending on the model used, the youth serving as court officials may serve as jurors, prosecuting attorneys, defense council, clerks, and even as judges. Peer court sentencing never results in a criminal record.

### **Peer courts are established within and by local communities**

What is further unique about the model, and which would work well in a Canadian context, is that

peer courts are established within and by local communities. Hence, they are adaptable to the social, cultural, ethnic, and other possible key factors that can accommodate different community needs. Among the programs currently operating elsewhere in the world, for example, the administering agencies operating the programs include such organizations as police, probation, juvenile court, public defender offices, schools, agencies serving youth, community service organizations, and a wide range of nonprofit organizations.

The success of peer court is contingent upon local support and involvement of community members from diverse sectors. It is essential to recognize that the peer court model cannot operate without the coordinated collaboration of local agencies and community efforts, which in turn ensures the sustainability of the program beyond economic and/or political agendas.

### **Peer Court Models**

As noted above, peer courts are characterized not only by different names, but also by different operational models that can be helpful to describe them. For discussion purposes, there are four main program models having dozens of programmatic, operational, and administrative practices, which, again, give local communities considerable options to operate a peer court that works best for them.

The primary four models are:

- 1. Adult Judge Model**—relies on an adult judge (usually voluntary) to preside over the courtroom procedure and ensure legal protocols are properly followed. However, youth volunteers are typically between the ages of 14-18 and serve as defender, prosecutor, clerk/bailiff, and jurors.
- 2. Youth Judge Model**—is like the Adult Judge Model except that a youth volunteer serves as judge. In some program models, the youth judge has first served as a volunteer in peer court in the other roles for a given period.
- 3. Peer Jury Model**—draws on the peer model, in that the model uses a panel of youth jurors who question the offender directly. Under this model there is no one defender, prosecutor, or judge. With this model, the judge is often an adult volunteer who has essential knowledge of the legal system and due process.
- 4. Youth Tribunal Model**—parallels the adult system in that there is no peer jury. Instead, youth typically serve as judge, prosecutor and defender, and present cases to an adult judge who then determines the appropriate sanction.

Regardless of which model a community selects, most peer courts are situated either in a youth

justice system, in schools, or within a community nonprofit setting. Typically, most peer court models call for hearings 2-3 times per month. However, some communities hold peer court hearings weekly, once a month, and even twice a week. Other modes of delivery range from local governments, the administrative office of the courts, and/or certain other formal organizations such as a bar association or district attorney office. Various US-based studies have shown that the success rate (i.e., completion of the program and not re-offending) of the peer court programs run as high as 88% compared to only around 15% who do not reoffend after being referred to probation or some other conventional sanction for a subsequent offense (Peterson, 2009).

Irrespective of the Peer Court Model, all models strive to attain a “constructive disposition” (i.e., accountability) for the defendant that is seen to have a restorative and/or rehabilitative component to it. Hence, the main sentencing outcomes involve some form of community service or participation in an educational-type program. However, other options can and have been used. In more than 50% of all peer court diversion programs in the US, peer court hearings are held in the evening in available adult criminal justice courtrooms. About 30% of peer court hearings take place in school, with the remaining 20% being held in various locations such as a government building, youth bureau or law enforcement settings.

All peer court models create a positive and educational alternative to an already overburdened youth justice system. Yet, a typical response can be found in the comments of Margaret Waddell, who wrote in 2012 that the four best ways to address an overburdened judicial system (in Ontario) was to: 1) hire more clerks for the judges, 2) create an online reservation system for motion scheduling, 3) Abolish automatic dismissals, and 4) establish a province-wide online database of current court cases. And while she acknowledges that such changes would come with an additional price tag, she suggests the result would not only help streamline the system but also make it more efficient. Yet, a fundamental detail overlooked in her argument is that the accused would still be subjected to the stigma of having a criminal record and thus essentially undermines the underlying objective of the YCJA. Therefore, what is the potential for a Peer Court Model in Canada?

### **Potential for Peer Court Models Within the Canadian Youth Justice System**

According to 2014/2015 Youth Court Statistics in Canada, there were 32,835 completed cases including 120,907 charges. Of those cases, some 57% pleaded guilty, or were found guilty. The most common disposition used by the programs

involves some type of community-based services. The dispositions account for approximately 25% of all the completed cases. Other than “Other” outcomes, conditional discharge accounted for only 15% of the dispositions. Furthermore, based on official data the number of cases completed in youth court was declining steadily from 1991 (almost 100,000 cases) through to 2014/2015 (Miladinovic, 2016).

In addition to the goal of more youth being deferred out of the youth court process. Section 5 of the YCJA—enacted in 2003—notes that Extrajudicial Measures models should be designed to encompass the following, among other:

1. Provide an effective and timely response to offending behaviour outside the bounds of judicial measures.
2. Respect the rights and freedoms of young persons and be proportionate to the seriousness of the offence.
3. Encourage young offenders to acknowledge and repair the harm caused to the victim and the community (Green, 2016, p. 65).

Also, in accordance with Section 69 of the YCJA, the youth justice system allows for the creation of community-based justice committees which according to Bala et al. (1994, p. 36) had been in limited use across the country but “provide an excellent vehicle for communities to exercise greater authority and control in juvenile justice matters”. Furthermore, and consistent with how the peer model operates in the States, Section 10 of the YCJA stipulates that extrajudicial sanction may only be used if the young offender “accepts responsibility” for their alleged offence.

The point is that although fewer cases are being processed through the formal Youth Court, the youth justice system does not appear to be optimizing the use of alternative measures or alternative sanctions as readily as it could or to the extent intended by the YCJA. For example, in their assessment of the YCJA, Bala et al. (2009, p. 159) concluded that there continues to be significant regional variation in rates of use of traditional youth courts and custody—and therefore considerable room for additional community-based/alternative options, which can be created in accordance with the Act.

Aside from offering a viable alternative to existing extrajudicial programs within the youth justice system, the highly successful and affordable Peer Court Model would appear to offer the Canadian youth justice system several instrumental and functional benefits.

Although this article did not address some of the more pragmatic issues—such as how to recruit

and train both youth and adult volunteers, types of referral sources and the referral process, the broader implications of deferring young offenders into such programs, or how best to standardize the establishment of peer court models—it nonetheless achieved its goal, which was simply to introduce the concept, stimulate interest in the concept, and ideally generate an initiative to explore and pilot test the model within a Canadian context on a local level. ■

## POTENTIAL BENEFITS OF PEER COURTS FOR CANADA

- ▶ Civic engagement of young offenders and youth in general.

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- ▶ Nurturing partnerships between youth and adults that are continual rather than episodic.

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- ▶ Reductions in reoffending rates show peer/youth court diversion programs to be effective and among the least expensive compared to other youth justice programs (see Peterson, 2009).

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- ▶ Guidance and a ‘second chance’ for the youth (age 10-18) involved in such programs.

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- ▶ Rehabilitation and reintegration of young offenders, a key objective of the YCJA.

The list goes on...

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D'abord présenté comme un « objectif global pour l'USA » par l'entrepreneur social Scott Peterson, en 1993, les programmes de déjudiciarisation pour adolescents menés par des pairs (tels des programmes de déjudiciarisation menés par des jeunes/adolescents/étudiants, les programmes de déjudiciarisation faisant appel à des jurys de jeunes ou de pairs) ont foisonné, passant de 78 programmes communautaires en 1994 à plus de 1700 en 2017. On les retrouve sur quatre continents (l'Amérique du Nord, l'Europe, l'Afrique et l'Asie) et rien ne laisse présager que cette approche locale et bénévole de la justice pour adolescents réduira en importance à court terme. Il n'existe pas de programme aussi formalisé au Canada. C'est ce qui a amené Winterdyk et Peterson à procéder à un examen novateur de tels programmes de déjudiciarisation pour les jeunes et de la façon dont ils s'harmoniseraient avec les mesures extrajudiciaires prévues à l'article 4 de *Loi sur le système de justice pénale pour les adolescents de 2013*. Extrajudiciaire veut dire à l'extérieur des tribunaux et ces mesures visent à éviter que des jeunes soient astreints à la procédure formelle du tribunal (incluant un casier judiciaire), lorsque des approches de rechange peuvent assurer qu'ils soient tenus responsables et réadaptés à implanter un message d'espoir et d'inspiration dans leur esprit et dans leur cœur. Il les met au défi d'effectuer des changements en eux-mêmes et dans leur entourage.

