Reducing Bail Related Administration of Justice Offences for Youth: An Analysis of Key 2019 *Youth Criminal Justice Act* Amendments

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INTRODUCTION:

The *Youth Criminal Justice Act* ("*YCJA*") governs the youth criminal justice system ("CJS") in Canada for individuals aged 12-18. While the *YCJA* is considered successful in many respects, one issue is the high incidence of administration of justice offences under the *YCJA*. Administration of justice offences "are offences committed against the integrity of the [CJS]" (Department of Justice Canada) and include failing to comply with bail conditions. Charges for failing to comply with bail conditions are a matter of public concern because individuals charged with violating these conditions have not actually been convicted of any crime, and the charges often stem from traditionally non-criminal acts, such as violating curfew. Reasonable bail is also enshrined in s. 11(d) of the *Charter*, and numerous and onerous conditions on bail are arguably not reasonable. Finally, these charges also perpetuate other issues within the CJS, such as the overrepresentation and criminalization of Indigenous youth. Accordingly, amendments to the *YCJA* were required, and Parliament made such amendments in 2019 in an attempt to reduce these kinds of administration of justice charges and youth incarceration.

RESEARCH QUESTION:

How is the judiciary likely to interpret and apply the new provisions of the *YCJA* and is it likely that these amendments will lead to reduced bail related administration of justice charges for Canadian youth?

HISTORY OF THE *YCJA*:

The *YCJA* was implemented in 2003 after extensive debate and revision based on concerns with its predecessor, the *Young Offenders Act* ("*YOA*"). Paramount among these concerns was the high incarceration rate of youth in Canada, which at one point was higher than that of the United States. Scholars and commentators attributed this high rate of incarceration of youth under the *YOA* to failing to comply charges, which were introduced in 1986, including failing to comply with bail conditions. These types of charges are viewed by some as a continuation of what was known under the *YOA*'s predecessor, the *Juvenile Delinquents Act* ("*JDA*"), as "status offences". Status offences under the *JDA* were used to criminalize non-criminal behaviour by youth, and included the criminalization of things such as "truancy" and "incorrigibility". Despite extensive reforms that were made when the *YCJA* was introduced, failing to comply charges were not reformed and continued at high rates, often leading to custodial sentences for youth. Accordingly, the youth CJS was creating the same cycle of problems for youth for well over a century and significant reform was needed to rectify the issue, particularly in relation to bail. Additionally, amendments were, in part, necessary following the 2017 decision of the Supreme Court of Canada in *R v Antic*, which stipulated that bail conditions must be reasonable and necessary.

ANALYSIS:

Section 29(1): Youth Bail Conditions:

The 2019 amendments introduced s. 29(1), which provides three specific parameters within which conditions on a youth's bail can be ordered. First, the condition must be necessary, either for the purpose of ensuring the youth attends court, or to protect the public. Second, the condition must be reasonable within the context and circumstances of the offence. Finally, the condition must also be reasonable in that the youth has the ability to reasonably comply with the condition. While s. 29(1) still leaves room for judicial discretion, the jurisprudence is directive on what reasonable bail conditions are for youth. This jurisprudence, combined with the more rigid definition of what constitutes necessary bail conditions in accordance with the requirements of s. 29(1)(a), provide a solid framework for the judiciary to impose appropriate bail conditions.

Section 24.1: Review of Charges:

This section creates an important safeguard in that it requires the Attorney General to review a charge for failing to comply with a condition of bail if the youth's original charge is dismissed, withdrawn, stayed, or acquitted, thus attempting to sever the cycle of bail related administration of justice charges leading to convictions and incarceration. Interpreted in light of the purpose, scheme, and object of the *YCJA,* s. 24.1 appears to create a strong presumption that bail related administration of justice charges, reviewed in light of a dismissal, withdrawal, staying, or acquittal of the original charge, should not proceed.

Section 4.1: Extrajudicial Measures:

With this section, Parliament intended to highlight that extrajudicial measures ("EM") must be considered in relation to bail related administration of justice charges, and that EM are presumed to be adequate, unless the youth's failure to comply caused harm. While the interpretation of "adequate" and "harm" leave much room for the exercise of judicial discretion, s. 4.1 adds in another important safeguard for youth charged with breaching a bail condition.

Summary:

Overall, these amendments, given jurisprudential interpretation and principles, provide opportunities for the judiciary to reduce youth bail related administrative offences and incarceration.

CONCLUSION:

Based on the existing jurisprudence and applicable legal principles, the 2019 amendments to the *YCJA*, particularly sections 29(1), 24.1, and 4.1, provide opportunities to reduce the high incidence of bail related administration of justice offences and incarceration in the Canadian youth CJS. Preliminary findings appear to indicate that these amendments have likely resulted in fewer bail related administration of justice charges and reduced youth remand rates.

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