

Rethinking the Constitutionality of Life Sentences for Youth

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Criminal Scholars Series: CDAS and Courthouse Libraries of BC

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Overview

- Life sentences for youth* as a global human rights issue
- Adult sentences for youth in Canadian law
- The case of murder and the mandatory life sentence
- Observations from the sentencing cases
- Pathologies of life sentence magnified for youth
- Constitutional questions
- Caveats

“The accused has been living on his own for approximately the last 3 years, having pushed his family and their values aside to live a gang member lifestyle. As one member of the ... assessment team put it “he is 17 going on 23”. In the result, there is nothing to suggest there is a lack of maturity or diminished maturity on the part of the accused. On the contrary, the evidence points to a maturity and sophistication beyond the accused’s chronological age.”

R. v. D.E., 2008 ABPC 231.

Debra Parkes, “‘17 Going on 23’: Sentencing Young People to Life in Canada,” (2025) 48:1 *Dalhousie Law Journal* 403-434.

Life sentences for youth: a global human rights issue



- Available punishment in 63 countries, including Canada, Ireland, UK, USA
- Extreme punishment with many documented harms
- Prohibited by international human rights law

Adult sentences for youth

- Compromise at heart of the *Youth Criminal Justice Act* (2003)
- *R v D.B.* (2008): constitutional presumption of diminished responsibility
- *R v I.M.* (2025): presumption must be rebutted beyond a reasonable doubt

For adult sentence post-*D.B.* and *I.M.*, the Crown must:

1. rebut the presumption of diminished moral responsibility BRD; and
2. prove youth sentence would not be long enough to hold the young person accountable.

The case of murder

Maximum youth sentence = 10 yrs for 1st degree, 7 yrs for 2nd degree

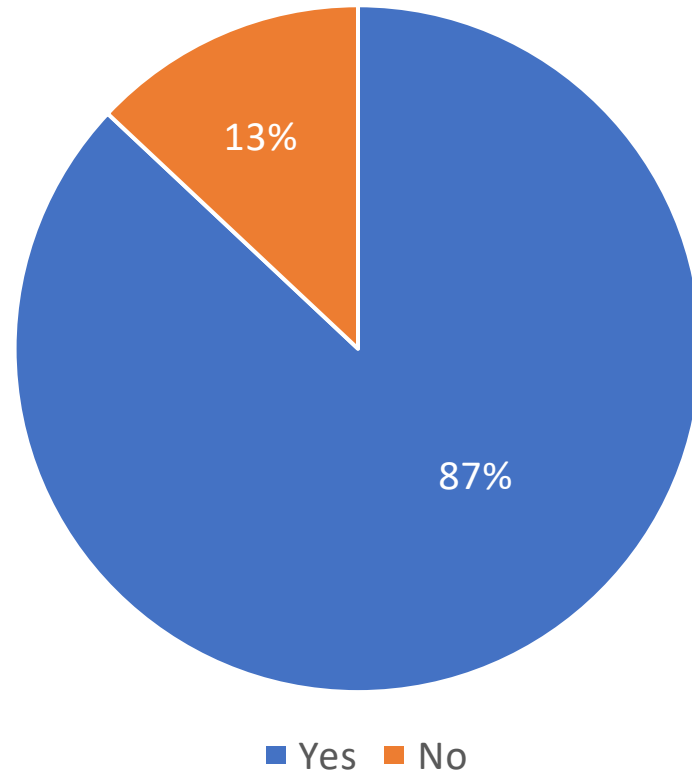
Minimum (only) adult sentence = life

*Not inevitable or necessary to mandate a life sentence for murder.

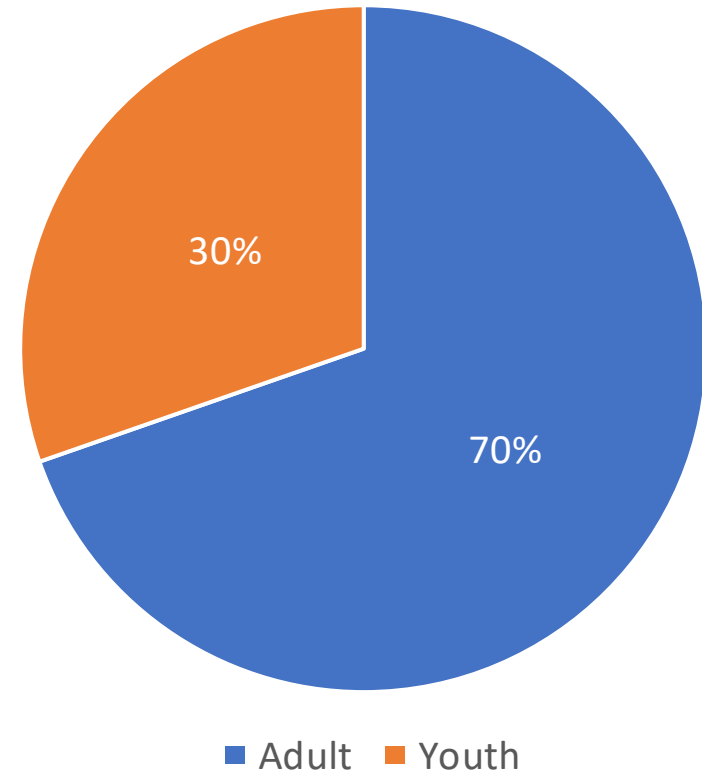
*Life means life.

Reported youth murder sentencing decisions 2008-2022

Crown Decision to Seek Adult (n=102)



Sentence Where Crown Sought Adult (n=89)



Observations from the cases

- Constitutional presumption of diminished responsibility unenforced: but see *R v I.M.* confirming BRD standard
- Seriousness of offence of murder overwhelms the analysis
- Mind the gap: between max youth and min adult sentence
- The invisible life sentence: normalized, misunderstood

Pathologies of life sentences magnified for youth

- Mandatory
- No mechanism for review for release
- Lifelong surveillance, if released
- Extraordinary discretion of parole officials
- No mechanism for discharge

Constitutional questions

- Section 7: fundamental justice and the arbitrary gap between a youth and adult sentence for murder
- Section 12: life sentences for youth are cruel and unusual punishment
 - Severity: grossly disproportionate
 - Method: intrinsically incompatible with human dignity
- Section 15: substantive equality for youth violated by imposition of adult life sentence

Caveats

- Adult sentences for youth beyond murder
- Life sentences for adults
- Emerging/young adults (18-25)
- Relative lack of data/transparency

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Journal of Prisoners on Prisons

James Ruston, “Evolution of a
Life Sentence,” (2022) 30:1
*Journal of Prisoners on
Prisons* 64-76.

Compelling first-hand account of
someone navigating a life
sentence imposed as a youth.

