

**CHANGES IN CUSTODY FOLLOWING THE
ENACTMENT OF THE YOUTH CRIMINAL JUSTICE ACT**

by

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B.A., Mount Royal College, 2001

THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF ARTS

In the
School
of
Criminology

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SIMON FRASER UNIVERSITY

Fall, 2005

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ABSTRACT

This study explores the sentencing impact of the Youth Criminal Justice Act (YCJA), in contrast to the Young Offenders Act (YOA), using data from the largest custodial facility in British Columbia, Canada. Findings indicate that the number of youth in custody decreased an atypical amount under the YCJA despite an increase in the overall number of charges in the same timeframe. In addition, though all custodial sentences are now followed with a community-based component, the average length of the community segment decreased significantly under the new Act. Furthermore, offence seriousness appears to align more closely with custody length under the YCJA, indicating an increased adherence to the principle of proportionality when sentencing. Finally, under the YCJA, factors aside from offence seriousness, including gender and number of prior convictions, are less likely to influence the length of custody than they were under the YOA.

Keywords

Custody – Canada, Juvenile delinquency – Canada, Juvenile justice, Administration of – Canada, Young Offenders Act, Youth Criminal Justice Act

DEDICATION

With lots of love; for Michelle and my parents.

ACKNOWLEDGEMENTS

I wish to thank my thesis supervisor, Dr. Raymond Corrado, and my secondary supervisor, Dr. William Glackman, for their generous time and help. I am also indebted to Michelle, my parents, and my friends who have been a great help; thanks for listening. Finally, Dr. John Winterdyk, always supportive, provided countless invaluable comments.

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1 INTRODUCTION

The media's portrayal of youth violence throughout the 1980s and 90s facilitated the belief that, generally, the Young Offenders Act (YOA)¹ was too lenient on young offenders. The Taber school shooting, Barb Danelsko who was stabbed by three teenagers, and the Reena Virk drowning, among others, attracted widespread media coverage often sparking rallies and lobbyist demands to "get tough" on youth crime (John Howard Society of Alberta, 1998; Winterdyk, 2005). The result was that the public seriously questioned the capacity of the YOA to deal effectively with young offenders (Corrado, Bala, Linden and Le Blanc, 1992; John Howard Society of Alberta, 1998; Sprott, 1996). The public's reservations, though based on the minority of cases actually handled under the YOA, tainted confidence in the youth justice system as a whole (Anand, 2003). For instance, studies conducted in the mid 1990s found that over 75% of respondents viewed youth court sentences as too lenient under the Act. (Anand, 2003; Sprott, 1996). Further, a 1994 Angus Reid poll found that 92% of respondents were in favour of amending the YOA so that youth could be tried more easily in adult court (Angus Reid, 1994).

In contrast to the public view, many academics studying youth crime, and the response of the youth justice system, presented the YOA as particularly punitive (Anand, 2003; Bala, 2003; Barnhorst, 2004; Doob and Cesaroni, 2004). Academics argued that youth crime was not out of control; this was a misperception among the public fostered,

¹ R.S. 1985, c. Y-1 [*YOA, or Act*]

for the most part, by media misrepresentation and sensationalism. While there was an intense debate about the apparent dramatic increase of serious youth crime between 1986 and the early 1990s under the YOA, the more recent trends indicated a levelling off since 1992 and substantial drop in the last several years (Carrington, 1995; Markwart and Corrado, 1995). In addition, under the YOA, Canada's youth incarceration rate had risen to twice that of the United States, and ten to fifteen times higher than many European countries, New Zealand and Australia (Department of Justice Canada, 2005a). Though the academic debates were mainly theoretical, and the public concerns were about a sense of justice, both questioned the ability of the YOA to respond to youth crime, and by the mid 1990s the YOA had become the subject of considerable media and political controversy (Department of Justice, 2005d).

In 1995, the Commons' Standing Committee on Justice and Legal Affairs undertook a comprehensive, two-year review of the youth justice system under the YOA (The Standing Committee on Justice and Legal Affairs, 1997). The Committee's report, issued in April 1997, included fourteen recommendations for refining the scope and focus of youth justice, the application of resources, the treatment of offenders and the role of their families and communities (The Standing Committee on Justice and Legal Affairs, 1997). Soon after, on May 12, 1998, the Government responded to the Standing Committee's report with a strategy to reduce youth crime through prevention, meaningful consequences, and improved rehabilitation and reintegration of young offenders (Department of Justice Canada, 2005a). The Department of Youth Justice would replace

the existing Young Offenders Act with new legislation, The Youth Criminal Justice Act (YCJA)².

The principles set out in A Strategy for the Renewal of Youth Justice aimed to address both academic and public concerns, and formed the basis for many of the changes introduced in the Youth Criminal Justice Act. To placate public concerns about the YOA's leniency, the YCJA included changes on how the youth criminal justice system would respond to the most serious offenders. Most importantly, presumptive offences, those for which an adult sanction would be appropriate included murder, attempted murder, manslaughter and aggravated sexual assault. In addition, under the YCJA, less serious violent offences could also be considered for adult-length sentences if Crown Counsel asserted that the pattern of such offences represented a serious violent young offender³. The minimum age at which a youth could be considered for an adult sentence was lowered from 16 under the YOA to 14 under the YCJA⁴. Further, transfer hearings from the youth court to adult court were abolished; instead, adult sentences could now be imposed directly by the youth court⁵. Equally important in terms of the public, the names of serious young offenders could be published after conviction if the crime was initially subject to an adult sentence, whether or not an adult sentence was imposed⁶. Finally, steps were taken to facilitate the inclusion of voluntary statements made by alleged young offenders during court hearings⁷.

² S.C. 2002, c.1 [*YCJA, or Act*]

³ *YCJA, supra* note 2, s. 2, "presumptive offence" (b)

⁴ *YCJA, supra* note 2, s. 61

⁵ *YCJA, supra* note 2, s. 64 (2)

⁶ *YCJA, supra* note 2, s. 110 (a)(b)

⁷ *YCJA, supra* note 2, s. 146

Many academic concerns were also addressed under the YCJA, particularly the high custody rate. A substantial body of literature attributed Canada's high rate of youth incarceration to the wide discretion afforded judges under the Young Offenders Act (Doob, 2001; Doob & Beaulieu, 1992; Carrington and Schulenberg, 2004; Department of Justice Canada, 2004a; Corrado and Markwart, 1992). Specifically, that the YOA's drafters had failed to provide guidance to judges for implementing the often-conflicting principles of the YOA. The lack of guidance in implementing these models resulted in judges incarcerating youth for both minor and first time offending (Doob and Cesaroni, 2004). Judges used custody either to protect youth, to rehabilitate them, to protect society through incapacitation, or to deter and denounce criminal behaviour (Corrado et al., 1992; Doob, 2001; Doob and Cesaroni, 2004). In effect, judges could choose from a wide variety of sentencing principles to justify disparate sentences for the same offence. The YCJA was enacted, therefore, in part, to reduce the over-reliance on custody for less serious cases. The Act provides explicit conditions outlining its limited applicability and provides a greater range of non-custodial options including rehabilitative, reintegrative and community-based sentences (Barnhorst, 2004; Department of Justice Canada, 2005b).

It has been just over three years since the enactment of the YCJA and at present, there are few studies exploring its impact on the sentencing of young offenders (Moyer, 2005). This thesis focuses specifically on quantitative changes in the characteristics of the cases resulting in custody in British Columbia's main youth detention centre following the YCJA's enactment while specifically controlling for demographic, prior record and charge data. Several hypotheses were empirically assessed that gauge the anticipated custodial sentencing outcomes under the YCJA in contrast to the YOA.

This thesis is structured as follows. Chapter 2 discusses the traditional models of youth justice that underlie both the YOA and YCJA which include Justice, Welfare, Corporatist and Crime Control. Additionally, the Modified Justice Model is also reviewed. It is important to discuss these models, since the principles and procedures for processing young offenders under the YOA and YCJA depend on which ones have sentencing priority. The chapter also discusses the extent to which the Modified Justice Model orientation of the YOA facilitated excessive judicial discretion, and why this judicial discretion resulted in Canada's overuse of incarceration for many less-serious cases. Chapter 3 outlines the fundamental youth justice policy changes brought about by the YCJA. Particular attention is paid to how the changes are expected to alter the imposition of custodial sentenced under the new youth justice legislation. Chapter 4 presents the specific research questions this thesis addresses with a focus on the extent that the YCJA has achieved its custodial objectives. The Chapter also examines factors, such as prior record, gender, and offence seriousness, which have been found to influence the imposition of custody in the past. Examining these factors provides a clearer understanding of how they are likely to play a part under the YOA and YCJA. Chapter 5 outlines the research methodology following in this study. Chapter 6 provides the results of analyzing the custodial sentences received under the last year of the YOA and the first year of the YCJA at the Burnaby Youth Detention Centre. Chapter 7 discusses and explains these findings in terms of recent research that has explored the influence of the YCJA on the use of custody and provides a conclusion.

2 CUSTODY UNDER THE YOA

2.1 Introduction

As mentioned in the previous chapter, in 1998, the Standing Committee of Justice and Legal Affairs in conjunction with the Federal-Provincial-Territorial Task Force completed a research-oriented review of the YOA and its application. Their report was titled “A Strategy for the Renewal of Youth Justice”; several of its recommendations were the result of past public, political and academic debates focusing on the YOA (Department of Justice Canada, 2005a). In the report, a number of problems with the Act were described, a major concern was that, under the YOA, Canada had the highest youth incarceration rate of any other Western nation, including the United States (Department of Justice Canada, 2005c). Other issues linked to Canada’s high youth custody rate included an inadequate range of alternative sanctions for judges to avoid using custody, as well as judges denouncing and deterring less serious offending through “short, sharp, shock” type custodial sentences, and disproportionately sentencing youth to custody based on a multitude of factors in addition to the seriousness of the offence (Department of Justice Canada, 2005a). It is important, therefore, to discuss how the YOA facilitated excessive judicial discretion and why this resulted in Canada’s overuse of incarceration. However, first it is necessary to utilize an analytical model review of the YOA.

2.2 Models of Youth Justice

A variety of models for how the youth criminal justice system should and does operate have been identified by criminologists (Corrado et al., 1992; King, 1981; Pratt,

1989; Reid and Reitsma-Street, 1984). Modelling allows one to understand and classify complex juvenile justice systems as well as make comparisons by reducing and simplifying the legislation and the diverse youth justice agencies, into essential sets of goal and process characteristics (Corrado et al., 1992). The YOA was comprised of principles, in varying degrees, from Justice, Welfare, Corporatist and Crime Control correctional models (Corrado et al., 1992; Pratt, 1989; Reid and Reitsma-Street, 1984). The mixture of principles, and specific policies associated with these models, made it difficult to categorize the YOA according to any single justice model or theory. Accordingly, Corrado (1992) characterized the YOA as a Modified Justice Model.

Before discussing the Modified Justice Model in detail, it is necessary to first review the traditional models of youth justice and their underlying theories.

Understanding the models, which constitute laws such as the YOA and YCJA, is important, since components of the criminal justice system like law enforcement, the courts and custody are affected by the model that has priority (King, 1981). Each model is comprised of principles derived from criminological theories focusing on why youth commit crime. As well, each model derives principles from theories that stipulate how to react to youth crime. In effect, implicit in criminological theories are the appropriate principles for establishing each of the criminal justice models. In turn, these models facilitate an understanding of the complex laws abided by to process and prevent youth crime.

The Justice Model is based on the neo-classical theory of youth crime; its proponents believe that youth wilfully engage in criminal behaviour, and should be held partly responsible and accountable for their actions (Einstadter and Henry, 1995). A

central component of the neo-classical approach is the idea of youth acting rationally, accordingly most youth in society, typically, would act to maximize the benefits of their behaviour by obeying the law and thereby minimizing punishment (Einstadter and Henry, 1995; Goff, 1999). A youth justice system based solely on the Justice Model would emphasize deterrence and be organized similarly to the existing Canadian adult criminal justice system focusing on criminal offences, procedural fairness, and determinate sentencing based on the severity of the offence and the prior record of the offender (Corrado et al., 1992). A neo-classical approach sets the youth justice system apart from a strictly classical based system. Youth are held less accountable for their behaviour than they would be under a similarly oriented adult criminal justice system based on classicism. Ideally, a strictly classical approach would posit that offenders act completely rationally. However, neo-classicists argue that rationality is moderated, to some extent, by the age of an offender (Doob and Cesaroni, 2004).

The Welfare Model follows a positivist perspective centred on social and biological causes of youth criminality (Carrigan, 1998). This model, therefore, focuses on social and emotional problem areas in a youth's life involving health, family, peers, education and social economic status (Einstadter and Henry, 1995). The Welfare Model is primarily concerned with the rehabilitation and the successful social reintegration of offenders into society (Einstadter and Henry, 1995). A positivistic perspective stands in direct opposition to the classical school. Positivism sees the existence of rational choice and free will as myths because most human behaviour is largely predetermined by factors such as culture, family, class and peer relations (Carrigan, 1998).

The Corporatist Model is based on community-based reintegration theories of crime and youth justice emphasizing the diversion of young offenders from the formalized criminal justice court systems (Pratt, 1989). A theory based on this model, Restorative Justice, focuses on reconciliation, restitution and repairing the harm caused by crime through involving the victim, offender, and the community in the healing process (Bazemore and Umbreit, 1995). A strictly restorative process avoids the adversarial approach taken in criminal court. In addition, incarceration would be used as a last resort in extreme cases where community-based approaches to repairing the harm are seen as inappropriate for both the youth and the community (Bazemore and Umbreit, 1995). For example, in cases where both would continue to experience harm if the youth was not formally processed by the justice system.

The Crime Control Model gained much of its popularity following the “nothing works” philosophy that emerged in the 1970s, which argued that rehabilitation was largely ineffective, and emphasized punishment and the incapacitation of particularly repetitive and violent offenders with the objective of societal protection (Pertsilia, 2004). It is important not to confuse the Crime Control Model with techniques of crime control. The Crime Control Model argues that a small group of offenders will commit a large number of crimes over a given period if they are not incarcerated. A strict crime control approach is most often associated with punishment and incapacitation aimed at limiting the amount and extent of crime (Einstadter and Henry, 1995). In contrast, techniques of crime control include strategies, not only punitive, such as rehabilitation which aim to limit the amount and extent of crime.

Finally, the Modified Justice Model, arguably, best explains the complex nature of the principles and legal structure of both the YOA and YCJA. While evident that the intent of these laws was to protect society, yet minimize the amount of interference in the lives of young people and their parents, the laws also sought to ensure that due process was observed. Additionally, that measures other than judicial proceedings were and are considered appropriate in some cases. For example, the use of intrusive custodial responses were available for those cases where the offence or prior record dictated their use (John Howard Society of Alberta, 19999). In addition, placement in a treatment facility was available when youth consented to such placement (Reitsma-Street, 1993). Finally, both laws provided options to utilize community-based alternatives if this was the most appropriate response for dealing with the young offender.

As Table 2-1 shows, the Modified Justice Model, associated with the YOA and YCJA, is located at the centre of the youth justice framework spectrum, which spans from welfare-based principles through to crime control-based principles. Table 2.1 illustrates how the features and characteristics that are emphasized by a criminal justice system can change in respect to the specific model of youth justice. The complexity of the Modified Justice Model, in contrast to some of the more traditional models of youth justice is also evident. No single theory dominates the principles and processes of the Modified Justice Model; it consists of an amalgamation of theoretical propositions from virtually all of the other models (Corrado et al., 1992).

Table 2-1 Models of youth justice

Focus on Offender		Focus on Protection of Society			
Characteristics	Welfare (2,3)	Corporatism (2)	Modified Justice (1)	Justice (2)	Crime Control (3)
General Features	<ul style="list-style-type: none"> • Informality • Generic referrals • Individualistic sentencing • Indeterminate sentencing 	<ul style="list-style-type: none"> • Administrative decision making • Diversion from court/custody • Alternative to care/custody 	<ul style="list-style-type: none"> • Due process informality • Criminal offences • Bifurcation: soft offenders diverted, hard offenders punished • Determinate Sentences 	<ul style="list-style-type: none"> • Due process • Criminal offences • Determinate sentences 	<ul style="list-style-type: none"> • Due process/discretion • Offending/status offences • Punishment • Determinate Sentences
Key Personnel	Childcare experts	Juvenile justice specialists	Lawyers/childcare experts	Lawyers	Lawyers/criminal justice actors
Key Agency	Social work	Interagency structure	Law/social work	Law	Law
Tasks	Diagnosis	Systems intervention	Diagnosis/punishment	Punishment	Incarceration/punishment
Understanding of Client Behaviour	Pathology/environmentally determined	Un-socialized	Diminished individual responsibility	Individual responsibility	Responsibility/accountability
Purpose of Intervention	Provide treatment	Retrain	Sanction behaviour/provide treatment	Sanction behaviour	Protection of society/retribution /deterrence
Objectives	Respond to individual needs/rehabilitation	Implementation of policy	Respect individual rights/respond to "special" needs	Respect individual rights/punish	Order maintenance

1. Adapted from Corrado, "Juvenile Justice in Canada" (1992) Toronto: Butterworths. pp. 4.
2. Reid and Reitsma-Street, "Assumptions and Implications of New Canadian Legislation for Young Offenders" (1984) 17(1) C.C.F. pp.334-52.
3. Pratt, "Corporatism: The Third Model of Juvenile Justice (1989) 29(3) Br. J.C. pp. 236-53.

2.3 Issues with the Young Offenders Act

Conceiving the YOA as a Modified Justice Model makes it easier to understand why, from its inception, a number of academics and justice professionals pointed to it as likely to become problematic unless clearer guidance was provided to judges (Bala, 2003; Corrado et al. 1992; Reid and Reitsma-Street, 1984, Trépanier, 1989). Under the Act it was difficult to understand how to sentence youth when justice, welfare, corporatist, and crime control principles taken independently would result in vastly different dispositions (Doob and Cesaroni, 2004). For instance, judges differed in deciding when welfare principles should be circumvented in order to include crime control principles, or more generally, when to focus on characteristics periphery to the seriousness of the offence (Doob, 2001). Furthermore, the sheer number of possible combinations afforded to judges under the Modified Justice Model was daunting.

Studies by both Doob and Beaulieu in 1992, and a second study by Doob in 2001, illustrate the enormous amount judges were trying to achieve when sentencing under the YOA. In both studies, judges from across Canada were given specific hypothetical court cases and asked to indicate what they felt was the most appropriate sentencing objective. In a single typical case 12% of the judges indicated that punishment was most important, 43% thought that rehabilitation was the most important, 38% listed individual deterrence as the primary purpose and 7% gave the highest priority to general deterrence (Doob and Beaulieu, 1992). Further, judges indicated that making an offender accountable, showing an offender that such activity would not be tolerated, protecting society and providing help were all important objectives (Doob and Beaulieu, 1992; Doob, 2001). Finally, to accomplish these objectives judges emphasized different lengths and types of dispositions

(Doob and Beaulieu, 1992; Doob, 2001). Though these studies are occasionally cited as provincially biased, they serve to underscore the diversity in decision making of Canadian youth court judges that was legitimated under the Modified Justice Model orientation of the YOA (Winterdyk, 2005).

Difficulties implementing the principles of the YOA were compounded further by the fact that specific sections of the Act were ambiguous. For instance, section 3(c.1) of the YOA provided that the protection of society is best served by rehabilitation as long as the rehabilitation is not inconsistent with protecting society⁸. Though this section made rehabilitation a primary objective ‘wherever possible’, no guidance was offered as to when protection should be made paramount; as well, judges could only infer as to why the two sentencing objectives were set in opposition in the first place (Bala, 2003). A similar difficulty was found in section 24(1.1)(b) which stated that, in cases not involving serious personal injury, youth should be held accountable with non-custodial dispositions; however, this section was also limited by the statement that non-custodial sentences should only be used ‘whenever appropriate’ (Doob and Cesaroni, 2004)⁹. In the same way, section 24(1.1)(c) of the YOA required that custody be imposed only when all other alternatives were considered¹⁰. This section was also limited in that the alternatives had to be ‘reasonable in the circumstances’; however little guidance was afforded to judges in regard to what constituted reasonable or unreasonable circumstances.

Finally, The Court of Appeal, which normally aids in interpreting legislation, did not appear to be providing much guidance to judges under the YOA (Doob and Cesaroni,

⁸ *YOA*, *supra* note 1, s. 3 (c.1)

⁹ *YOA*, *supra* note 1, s. 24 (1.1)(b)

¹⁰ *YOA*, *supra* note 1, s. 24 (1.1)(c)

2004). In a study in 2001, aside from Quebec, one-third of judges in every jurisdiction indicated that The Court of Appeal was 'rarely or never helpful' in their sentencing decisions; only 20.8% of Quebec judges indicated that The Court of Appeal was 'rarely or never helpful', while 53% of youth court judges in the rest of Canada held this view (Doob, 2001).

Before discussing how the lack of guidance under the YOA led to the overuse of custody the following paragraphs explore the extent that the increase in custody may have been a result of increases in the rate of youth crime. Clearly, the use of custody did increase under the YOA. In 1986-87, 8% of young offenders received an open custody sentence while in 1997-98, the figure was 18%, and it dropped to 13% in 2002-03 (Canadian Centre for Justice Statistics, 1986-2003). Further, in 1986-87, just over 6% all of young offenders were placed in secure custody while in 1997-98 the proportion had jumped to 16 % with a slight drop to 14% in 2002-03 after various provisions were made to the YOA to promote the greater use of alternative measures (Canadian Centre for Justice Statistics, 1986-2003). Table 2-2 shows the results of an analysis of Youth Court Survey data for the fiscal years 1984-85 through 1989-90. Seven provinces had substantial increases in the proportion of cases resulting in custody since the YOA's enactment. British Columbia shows the largest increase of 109% in the proportion of youths who were sent to custody.

Table 2-2 Percentage of cases with findings of guilt committed to custody and increase in use of custody in eight provinces for the fiscal years 1984/85 and 1989/90, controlling for uniform maximum age.

Province	1984/85	1989-90	% Increase
British Columbia	11.2	23.4	109.0
Alberta	10.3	18.9	83.0
Manitoba	13.9	25.2	81.0
Nova Scotia	12.7	22.7	79.0
Newfoundland	14.4	24.1	67.0
New Brunswick	20.8	31.3	50.0
Québec	28.9	32.1	11.0
Saskatchewan	25.2	25.7	2.0

Source: Youth Court Survey, 1984/85 and 1989/90, CCJS, adapted by Markwart, in Corrado et al., (1992)

As the 1990's drew to a close Canada had an incarceration rate of roughly 1,046 per 100,000 youth age 12 to 17 while the US had an incarceration rate of roughly 775 for the same demographic (Sprott, 2001). Under the YOA, Canada ended up with one of the highest rates in the world of per capita use of courts and custody for adolescent offenders (Roberts and Bala, 2003).

It appears, however, that the escalation in the use of custody was not consistent with equally as pronounced increases in the youth crime rate. Though most research appears to show an increase in youth crime from 1986/87 to 1992/93 it is important to note that the increase matches with a simultaneous increase in Canada's youth population (John Howard Society of Alberta, 1998). In addition, 81% of the charges that comprise the 27% increase were "administrative offences," a by-product of the YOA, which included failure to appear in court, comply with terms of probation, or complete community service orders in the time allotted (John Howard Society of Alberta, 1998). Further, there appears to be a consensus that the majority of crimes committed by young offenders were non-violent and administrative; also, of those crimes of violence almost half were minor assaults (Corrado and Markwart, 1994). As well, Carrington (1995) has

warned that 1986/87 statistics should be approached carefully when contrasted to later statistics because the YOA came into effect in 1984. The statistics immediately following the YOA's enactment might not be reliable, considering the inclusion of 16 and 17-year-old youths who typically commit more crimes than younger offenders, age 12-15. Finally, since 1991 the overall youth crime rate began to decline until late in the 1990s when it increased slightly—only to decline by 2% in 2002 (Canadian Centre for Justice Statistics, 1986-2003). From this perspective, it appears that most of the increases in youth crime under the YOA were either a by-product of the Act itself, or non-serious offences. Any remaining increases were most certainly not substantial enough to warrant the dramatic increase in the use of custody that occurred across Canada.

Corrado and Markwart (1992) offer an alternate explanation for the increasing use of custody. They looked at the influence of the YOA in contrast to the Juvenile Delinquents Act (JDA). The JDA was Canada's first juvenile justice legislation and was based on the Welfare Model which focused on social and emotional problem areas in a youth's life involving health, family, peers, education and social economic status. The legislation was primarily concerned with the rehabilitation and the successful social reintegration of offenders into society (Einstadter and Henry, 1995). A central concept of the JDA's philosophy was *parens patriæ*, which placed a moral obligation on the state to act as a surrogate parent when a child is neglected or misguided (John Howard Society of Alberta, 1999). When Corrado and Markwart contrasted the roles of the police, crown and defence counsels, probations officers, and the judiciary under the YOA and JDA they came to two conclusions. First, they concluded that initially child welfare, correctional, and probation authorities, who were responsible for implementing the JDA's Welfare

Model, had had their roles reduced significantly under the YOA (Corrado et al., 1992). When the youth justice and child welfare systems were separated with the enactment of the YOA a dilemma arose for youth court judges. Neglected and abused children without home lives could no longer be committed to the Director of Child Welfare, but it was imperative that these children be removed from their homes or 'saved' from the streets (John Howard Society of Alberta, 1999). In part, the solution to this dilemma increasingly became custody (Doob and Cesaroni, 2004). A study of the Alberta youth court during the first year of the YOA by Gabor, Greene, and McCormick (1986) asked family and youth division judges if they equated open custody dispositions with committals to the Director of Child Welfare. Many of the judges surveyed, responded that they saw similarities between the dispositions, pointing to the rehabilitative nature of an open custodial disposition (Gabor, Greene, and McCormick, 1986). Further, Justice Cory of the Supreme Court of Canada wrote, in reference to custody, that "the situation in the home of a young offender should neither be ignored nor made the predominant factor in sentencing. Nonetheless, it is a factor that can properly be taken into account in fashioning the sentence."¹¹

The second conclusion reached by Corrado and Markwart when contrasting the YOA and JDA was that the enactment of the YOA had led various criminal justice administrators to interpret and apply the legislation in a manner keeping with the increased prominence of deterrence and denunciation as expected under the YOA (Corrado et al., 1992). Under the JDA, deterrence was not considered to be in the 'best interest' of a youth (Corrado et al., 1992). As mentioned, the JDA was primarily

¹¹ *R. v. M. (J.J.)*, [1993] 2 S.C.R. 421.

concerned with social and emotional problems in a youth's life as well as the rehabilitation and the successful social reintegration of offenders into society (Einstadter and Henry, 1995) However, under the YOA, judges in their decisions cited sociological evidence of the prevalence of groups, or gangs, in youth crime and argued that sending one member of the group to custody would likely deter other members of the same social group from committing similar acts¹². Furthermore, denunciation was also a consideration under the YOA; under the JDA, the court did not utilize custody to denounce criminality, instead reformatories acted as a mechanism to train and treat youth. However, under the YOA denunciation was held by many judges to be an important consideration when sentencing young offenders (Marinos, 1998). Judges often employed "short sharp shock" type dispositions to denounce and deter criminality; some claimed that "short sharp shock" custodial sentences were a better way than probation to hold a youth accountable, and short enough not to allow the youth to acclimatize to the institutional settings (Doob, 2001). Across Canada in 1999-2000, on average 33.8% of the secure and open custody dispositions were for less than one month; in additional 43.5% of the secure and open custody dispositions were for a period of one month up to and including 3 months (Doob and Cesaroni, 2004).

Focusing on crime control oriented principles, like deterrence and denunciation, was likely provoked further by the media's portrayal throughout the 1980s and 1990s of high profile cases. As mentioned in the introduction some academics argued that the sensationalism of youth violence created a moral panic in Canada (Corrado et al., 1992). Some of the stories included: the escape of a dangerous young offender in Ontario which

¹² *R. v. M. (J.J.)*, [1993] 2 S.C.R. 421.

caused alarm as the YOA's publication restriction disallowed any warning after the fact; a 14 year-old Ontario youth who murdered three members of his family and received the maximum 3 year sentence; and the brutal murder of a foster family by two adolescents in a Vancouver suburb (Corrado et al., 1992). Stories such as these fostered an impression among the public, and likely some justice professionals, that violent and serious crime was increasing. The yearly Macleans/CTV polls showed a consistently high and increasing number of Canadians claiming that youth behaviour in their neighbourhoods had been deteriorating: from 47% in 1990 to 79% in 1994 (Chisholm, 1993). A separate poll also revealed that 76% of Canadians, up from 64% in 1992, felt that the behaviour of youth was "now worse or much worse" than it was a decade earlier (Gates, 1997). More recently, school shootings, gang violence, and concerns surrounding drug use have attracted widespread media coverage sparking rallies and lobbyist demands to get tougher on youth criminals (Winterdyk, 2005).

The growing negative public sentiment towards young offenders likely played a part in the political plat-forming that backed the utilization of various crime control initiatives (Corrado et al., 1992; John Howard Society of Alberta, 1997). Three rounds of crime control oriented amendments were passed throughout the 1980s and 1990s. These acted as catalysts and only served to further increase public fears. Not only were Canadians fearful about crime as a result of the media, but as a result of the amendments they were now also becoming increasingly suspicious of the YOA. (Department of Justice Canada, 2005a; Bala, 2003). Whether judges were influenced by the negative social context surrounding youth and the law is debatable. Some research has shown that judges take their beliefs about the prevalence of crime into account at sentencing and are also

likely to indicate that they consider their decisions in light not only of what is happening in the court in front of them, but also in regard to public opinion (Doob and Cesaroni, 2004).

With the negative context surrounding youth crime, it was not surprising that there was an increase in the number of less-serious offenders receiving custodial sentences under the YOA. First, judges could legitimately use custody to protect and rehabilitate youth; second, they could use it to deter and denounce criminality. For instance, in Ontario and Quebec approximately 7% of offenders received custody for first time minor thefts under the YOA (Department of Justice Canada, 2004b). Further, in 1998/9 theft under \$5000 accounted for roughly 9% of all cases receiving custody; adding possession of stolen property, failure to appear in court, and failure to comply with a disposition accounted for approximately 48% of all cases receiving custody (Canadian Centre for Justice Statistics, 2000). Of these less serious offences, administrative charges accounted for the largest portion resulting in custody; a trend especially pervasive in cases involving female offenders (Corrado, Odgers and Cohen, 2000). When mischief and/or damage to property, breaking and entering, and minor assaults are added, these eight sets of offences accounted for approximately three-quarters of all the cases that ended up in custody (Canadian Centre for Justice Statistics, 2000). This proportion varied slightly from jurisdiction to jurisdiction and over time but it is safe to suggest that somewhere between one-third and one-half of the cases that ended up in custody in any province in any year had their most serious charge under the YOA as one of these eight offences (Doob and Cesaroni, 2004).

2.4 Conclusion

The over-reliance on custody for less serious offending may have partly been a function of the apparent increase in youth crime that occurred in the mid 1980s and early 1990s. However, much of the over-reliance on custody can also be attributed to the divergent judicial sentencing practices that were facilitated by the Modified Justice Model structure of the YOA. In particular, the move away from the JDA's paternalistic and welfare approach in favour of increasingly punitive responses to youth crime, as well as the notion that custody could fill the void left by the JDA and still serve as a means to protect and rehabilitate youth. However, ultimately, increasing custody rates do not seem to be an inevitable consequence of the Modified Justice Model approach. For example, though the utilization of Modified Justice Model legislation has been associated with rising incarceration rates in several American states, evidence from Britain shows that this is not an inevitable consequence of this particular approach (Corrado et al., 1992). The adaptable nature, which is intrinsic to the Modified Justice Model, may not be flawed; instead, it seems that the policies needed to effectively implement the diverse principles that constitute such an approach are often lacking. The YCJA was enacted, in part, to ameliorate many of the policy difficulties that were associated with the YOA. The following chapter discusses the YCJA in detail.

3 CUSTODY UNDER THE YCJA

On February 4, 2002, the House of Commons passed Bill C-7, the YCJA¹³. The new law replaced the YOA, and was enacted as of April 1, 2003 with the expectation that it could remedy many of the problems experienced under the YOA involving the use of custody in Canada, and is intended to provide the legislative framework for a fairer and more effective youth justice system (Department of Justice Canada, 2005d). While the new Act retains the age parameters of the YOA as twelve and eighteen, as well as the maximum youth sentence of the YOA, being three years for the most serious offences except murder at ten years, the YCJA represents a significant departure from the YOA (Roberts and Bala, 2003). The YCJA offers a more principled, codified, and uniform approach to sentencing youth than was found under the YOA.

In particular, the Act includes a Declaration of Principle, just as the YOA did. However, it now also includes a Preamble, setting out the context within which Parliament intended to legislate. Additionally, it includes a statement of purpose and principles focusing on sentencing, which comprises specific sentencing principles, and a list of limitations on the use of custody. Finally, the YCJA includes a number of new sentences (Department of Justice Canada, 2005b). The current chapter examines these additions, paying particular attention to the specific sections that are expected to alter the imposition of youth custody in contrast to the approach previously taken under the YOA.

¹³ For further information on the YCJA, consult Justice Canada's "YCJA Explained" website at <http://canada.justice.gc.ca/en/ps/yj/>.

The chapter then concludes with a discussion about some of the implementation concerns involving the YCJA.

3.1 Preamble

Though the YOA did not include a Preamble, it has become more common in criminal legislation (Bala, 2003). The Preamble of the YCJA consists of general policy statements about young offending and the youth criminal justice system. However, it is not likely that the Preamble will directly influence the implementation of youth custody in light of the detailed sentencing principles and custodial limitations that are now included in the YCJA (Roberts and Bala, 2003). Furthermore, many of the principles that are emphasized in the Preamble are similar to sections found in the YCJA's Declaration, such as those focusing on the protection of society, ensuring accountability through meaningful consequences, and emphasizing the use of rehabilitative and reintegrative sentences. Consequently, discussing these similarities is left until the next section which focuses on the Declaration. Regardless, the Preamble sets the tone for the remainder of the legislation by placing a considerable amount of emphasis on restraint when imposing custody. It states that the youth justice system should reserve its most serious interventions for the most serious crimes and should reduce its over-reliance on custody for non-violent youth.¹⁴ The fact that this statement is emphasized as an overall policy objective, in combination with other similar statements throughout the Act focusing on the overuse of custody, sends a strong Parliamentary message that judges should attempt to reduce their over-reliance on custody.

¹⁴ *YCJA*, *supra* note 2, Preamble

3.2 Declaration of Principle

The Declaration of Principle in the YCJA is considerably different from the one that appeared in the YOA. It sets a uniform policy framework to interpret the Act by setting a specific goal for the youth justice system and then identifying a number of steps that should be abided by to achieve this goal (Roberts and Bala, 2003). In particular, the YCJA provides that long-term public protection is its primary objective through crime prevention, meaningful consequences, rehabilitation, and reintegration.¹⁵ Additionally, public protection is to be accomplished within the constraints of fair and proportionate accountability¹⁶. The following examines each of the components of this approach.

To begin, the inclusion of the phrase “long term” with regard to public protection is quite a departure from Section 3(c.1) of the YOA, which offered that in certain circumstances rehabilitation may not be conducive to protecting society, and that a youth’s needs may have to be circumvented in favour of incapacitation¹⁷. Now, the phrase “long term”, when accompanied by crime prevention, meaningful consequences, rehabilitation, and reintegration suggests utilizing remedies that affect substantial change in the young offender and his or her relations with the community rather than those that simply isolate the offender for a short term (Roberts and Bala, 2003). Arguably, in the past, custody was occasionally used as a way of incapacitating the offender to protect society; however, the result was only short-term protection (Doob, 2001). Rehabilitation is now directly linked to “long-term” public protection, regardless of the severity of the offence, and must be considered when fashioning all youth sentences.

¹⁵ *YCJA*, *supra* note 2, s. 3 (a)(i)(ii)(iii)

¹⁶ *YCJA*, *supra* note 2, s. 3 (1)(b)(ii)

¹⁷ *YOJA*, *supra* note 1, s. 3 (c.1)

The YOA, as does the YCJA, emphasized crime prevention as a means to protect society; little appears to have changed in this regard¹⁸. Differently, however, the YCJA's Declaration now refers to "meaningful consequences" for societal protection¹⁹. What is meant by "meaningful" is not entirely clear. Section 3(c)(i) of the Declaration provides some clarification stating that, "measures taken should reinforce respect for societal values."²⁰ The focus on respecting societal values could be construed as placing some emphases on elements of deterrence. Encouraging respect in a criminal justice system is often accomplished through the fear of punishment. Though the term "deterrence" has disappeared from the statute, some academics feel that the concept of deterring young offenders may likely continue to underlie some of the sentences that judges impose (Bala, 2003). Alternatively, Sections 3(c) (ii) and (iii) emphasize that "meaningful consequences" are also meant to "encourage the reparation of harm done to victims and the community...and respond to the needs of young persons"²¹ Here, "meaningful consequences" directly emphasize elements of Restorative Justice and a needs-based approach to responding to youth crime. In contrast to community-based sanctions, custody is not commonly acknowledged as being exceedingly restorative or need-based in its approach (Department of Justice Canada, 2005b). From this alternate perspective, it does not seem as likely that Parliament intended meaningful consequences to refer to custodial sentences; however, it remains to be seen how judges will interpret this phrase.

¹⁸ YOA, *supra* note 1, s. 3 (1)(a)

¹⁹ YCJA, *supra* note 2, s. 3 (1)(a)(iii)

²⁰ YCJA, *supra* note 2, s. 3 (c)(i)

²¹ YCJA, *supra* note 2, s. 3 (c)(ii)(iii)

The YOA, same as the YCJA, was also clear to emphasize the importance of rehabilitating youth to promote the protection of society²². However, the mention of reintegrating youth into society is new in the Declaration. This statement is accompanied with new sanctions in the YCJA that also emphasize reintegration through custodial sentences that contain a community component. A significant weakness of the YOA was that it failed to ensure effective reintegration of a young person after release from custody (Department of Justice Canada, 2005f). Underpinning the new legislation is the belief that young people can be rehabilitated and successfully reintegrated into the community, and that the focus of every custodial sentence must be on measures aimed at assisting the young person not to re-offend (Department of Justice Canada, 2005b). The sections and sentences emphasizing reintegration may serve to decrease the average length of custody under the YCJA in contrast to the YOA. As many as a third of all custodial sentences under the YOA were not followed by a community-based component (Doob and Cesaroni, 2004). If judges, under the YOA, took the absence of a community-based component into account as reason for lengthening custody, one would expect to see a decrease in the average length of custody under the YCJA since all custodial sentences must now include a community component.

Perhaps the most significant change made in the YCJA is the introduction of the principle of proportionality, appearing in other sections as well. Unlike the YOA, The Declaration emphasizes that all sentences must promote public protection through crime prevention, rehabilitation, and reintegration within the constraints of “fair and proportionate accountability that is consistent with the greater dependency of youth and

²² *YOA*, *supra* note 1, s. 3 (1)(c.1)

their reduced level of maturity.”²³ The reference to proportionate accountability in the Declaration likely refers to the idea that young offenders should be held responsible for offending behaviour in proportion to the seriousness of the offence, yet that the greater dependency and reduced level of maturity of youth are justification for imposing mitigated sentences (Roberta and Bala, 2003). This distinction made surrounding the principle of proportionality separates the youth justice system from the approach taken under the adult system (Roberts and Bala, 2003). Though proportionality is now clearly an important consideration under the YCJA it will not carry the same weight or play the same “fundamental” role in sentencing youth and adults alike (Roberts and Bala, 2003). However, in contrast to the YOA, proportionality is now likely to play a greater role since this principle was absent from the YOA.

Under the YOA, the Declaration of Principle was the primary source to guide decision-making. It contained broad statements that reflected various themes, including the importance of accountability, the protection of society, the special needs of young persons, and the rights of young persons (Department of Justice Canada, 2005c). However, the principles did not provide sufficient guidance to decision-makers because they lacked coherence, were conflicting, and were not ranked in terms of priority (Doob and Cesaroni, 2004). Importantly, the YCJA’s Declaration of Principle sets out the policy framework for the interpretation of the legislation and provides explicit guidance on the priority that is to be given to each principle. Consequently, some rationales for using custody that were permitted under the YOA are not likely to be utilized under the YCJA in regards to protecting society. For instance, it would be difficult to justify implementing

²³ *YCJA*, *supra* note 2, s. 3 (b)(ii)

or lengthening custodial sentences in order to protect and rehabilitate a youth if there were proportional community-based alternatives that were suitable for the situation. Furthermore, the Declaration now appears to directly preclude use of short custodial sentences in less serious cases to denounce and deter offending, unless judges could provide a rationale for why such sentences were the most likely to promote the long term protection of society.

3.3 Sentencing Principles

The YJCA also introduces specific sentencing principles that were not found under the YOA. The following examines each of them in terms of how they are expected to alter the use of custody. To begin, section 38 (b) provides that a sentence should be no more onerous than the average sentence received by an adult in similar circumstances.²⁴ This is a subtle difference from the YOA, which only prevented a youth sentence from exceeding the maximum punishment applicable to an adult.²⁵ This difference may serve to reduce the severity of some custodial sentences given to youth under the YCJA. However, research comparing adult and youth custodial sentences is not definitive (John Howard Society of Alberta, 1999). For example, The Youth Court Survey data showed that in the fiscal year, 1997/98, almost one-third (31%) of youth cases included a custodial sentence of less than one month for the most serious offence (Canadian Centre for Justice Statistics, 1999). According to the Adult Criminal Court Survey data for the same fiscal year, 50% of prison sentences given to adults were for less than one month for the most serious charge in each case (Canadian Centre for Justice Statistics, 1998). Yet, in the two previous fiscal years, the percentages were similar for both adult and young

²⁴ *YCJA*, *supra* note 2, s. 38 (b)

²⁵ *YOJA*, *supra* note 1, s. 20 (7)

offenders. Consequently, it is difficult to know if this section will have a significant effect on the length of custodial sentences.

Section 38(2)(c) states that, “the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence.”²⁶ As mentioned previously, this basic principle of fairness was not included in the YOA and the Supreme Court had ruled that the YOA could authorize disproportionate sentences.²⁷ Under the YOA, the severity of some sentences exceeded the seriousness of the offence and the degree of responsibility of the young person (Doob and Cesaroni, 2004). This is no longer permitted under the YCJA and it is likely that the references to proportionality will reduce the use of custody in a number of less-serious cases.

Section 38(1)(e)(ii) provides that sentences should be the “most likely to rehabilitate the young person”, yet this is “subject to” the proportionality principle of Section 38(1)(c).²⁸ These sections encourage the use of non-custodial sentences. The Department of Justice Canada (2005b) states that the general conclusion from a large body of research is that community-based, non-custodial interventions are more effective than custody in reducing recidivism among young offenders. In light of this research, it would be difficult to demonstrate to the court that a custodial sentence meets this requirement in cases where there are credible non-custodial alternatives that are proportionate to the seriousness of the case. Consequently, the sections focusing on proportional rehabilitation are likely to result in an increase in non-custodial sentences.

²⁶ *YCJA*, *supra* note 2, s. 38 (2)(c)

²⁷ *R. v. M. (J.J.)*, [1993] 2 S.C.R. 421.

²⁸ *YCJA*, *supra* note 2, s. 38 (1)(e)(c)

Finally, Section 38(2)(d) of the YCJA states that “all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to Aboriginal young persons.”²⁹ In addition, the Declaration contributes to this section stating that measures taken against youth should “respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young person and of young persons with special requirements.”³⁰ Taken together, these sections focusing on Aboriginal circumstances seem to indicate specific direction to youth court judges to use less severe custodial sentences for Aboriginal young people, except in cases where the youth presents too great a risk of non-compliance with community-based sentences or is too much of a danger to the public (Anand, 2004).

Ultimately, the sentencing principles offer judges considerably more guidance for sentencing than existed under the YOA and should result in fairer and more appropriate sentences. The federal government and many academics were aware that the absence of this section resulted in wide disparities between the sentences that young persons received in different provinces for the same offences, and in significant disparity between sentences imposed by different judges in the same community (Doob, 1992; Department of Justice Canada, 2005d). Also, in some jurisdictions, this lack of parity at sentencing likely facilitated the overuse of custody in a number of less serious cases. (Department of Justice Canada, 2005d). Interestingly, however, the YCJA appears to have failed to address inter-provincial sentencing disparity. One of the most well-documented findings under the YOA was the wide variety of sentences between different provinces, and one of

²⁹ YCJA, *supra* note 2, s. 38 (2)(d)

³⁰ YCJA, *supra* note 2, s. 3 (c)(iv)

the government's objectives in enacting the YCJA was to reduce these differences (Department of Justice Canada, 2005c; Sprott and Doob, 1998; Doob and Beaulieu, 1992). Roberts and Bala (2003) note that while it is possible that s. 38(2)(b) may reduce disparities intra-provincially, this provision may ultimately come to be viewed as justification for across province differences.

3.4 Custodial Limitations

Probably the most significant introduction in the YJCA, which is likely to have the most direct impact on the amount and type of offenders in custody, is the specific limitations surrounding the use of custody. The YOA contained no specific limitations involving the use of custody except that it should not be used as a substitute for appropriate child protection, health and other social measures³¹. The YOA did contain factors to be considered when imposing custody; however, as discussed in Chapter 2, most were ambivalent.³² Now custody can only be imposed if one or more of four specific conditions are met; the following examines these conditions in turn.

*1. The offence is violent.*³³

The YCJA does not define "violent offence"; however, a "serious violent offence" is defined as when a young person causes or attempts to cause serious bodily harm³⁴. Likely "violent offence" will be defined as some courts already have, as an offence where a young person causes or attempts to cause bodily harm (Bala, 2003). "Bodily harm" as defined in the Criminal Code, is any attempt to hurt or injure a person that interferes with

³¹ YOA, *supra* note 1, s. 24 (1.1) (a)

³² YOA, *supra* note 1, s. 3 (c.1), s. 24 (1.1)(b)(c)

³³ YCJA, *supra* note 2, s. 39 (1)(a)

³⁴ YCJA, *supra* note 2, s. 2 "Serious Violent Offence"

the health or comfort of the person and that is more than merely transient or trifling in nature³⁵. Under this definition many minor assault charges such as schoolyard fights, will not likely be considered violent under the YCJA.

However, physical injury is not likely to be the only prerequisite for an offence to be considered violent. Recently, the Alberta Court of Appeal broadened the definition given to the term ‘violent offence’. The Alberta Court gave examples of what other Courts have concluded were violent offences without there being actual physical harm in concluding that violence can occur where the risk of harm to persons is reasonably foreseeable.³⁶ The examples given were where the threat of violence was an ingredient in the offence;³⁷ where there was a forcible interference with personal freedom;³⁸ where a psychological injury could interfere with the integrity, health or wellbeing of a victim;³⁹ and where the courts ruled that sexual offences were violent offences despite a lack of physical injury.⁴⁰ From this perspective, it remains to be seen how the term “violent offence” will be interpreted under the YCJA; if liberally a number of less-serious, or indirectly violent offences may still result in custody.

*2. The youth failed to comply with previous non-custodial sentences.*⁴¹

This statement requires that non-custodial sentencing options have failed in the past, suggesting that alternatives to custody may not be successful in dealing with the current offence. The YCJA explanation module offers examples of the types of cases that

³⁵ R.S. 1985, c. C-46 [*Criminal Code*], s. 2 “Bodily Harm”.

³⁶ *R. v. C.D.* [2004] 184 C.C.C. (3d) 160 (Alta. C.A.)

³⁷ *R. v. Trudel* [1984] C.C.C. (3d) 205 (Que. C.A.)

³⁸ *R. v. Lenton* [1947] 88 C.C.C. 1 (Ont. C.A.)

³⁹ *R. v. McGraw* (1991) 3 S.C.R. 72

⁴⁰ *R. v. Savard* [1979] 55 C.C.C. (2d) 286 (Que. C.A.)

⁴¹ *YCJA*, *supra* note 2, s. 39 (1)(b)

would not receive custody under this stipulation: non-violent repeat offenders who have failed to comply with only one community-based sentence; and offenders who have been found guilty of an administrative offence but have not previously failed to comply with a non-custodial sentence (Department of Justice Canada, 2005b). The stipulation allows offenders two instances of non-compliance before custody becomes a sentencing option. Under the YOA, breaching sentencing conditions were particularly common (Sprott and Doob, 2002). In 2002/03, failure to comply with a YOA disposition accounted for 12% of the entire youth caseload (Canadian Centre for Justice Statistics, 2004). Consequently, it is likely that under the YCJA a significant number of youth will still be considered for custody under this criterion.

*3. The youth has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of findings of guilt.*⁴²

This condition would require an offender to commit a relatively serious offence in a series of offences whose findings of guilt indicate a pattern. Interestingly, the Criminal Code provides, with one minor exception, five maximum lengths of imprisonment for certain offence categories: 6 months; 2 years; 5 years; 14 years; and life (Department of Justice Canada, 2005b). Therefore, this stipulation essentially requires that the young person commit an indictable offence for which an adult would be liable to imprisonment for 5 years or more, and clearly precludes the implementation of custody for less serious cases.

Another key issue is what constitutes a pattern of offending (Barnhorst, 2004). Arguably, a pattern would require at least three prior indictable offences, as well as a

⁴² YCJA, *supra* note 2, s. 39 (1)(c)

similarity in the types of prior offences committed (Barnhorst, 2004). Research has found that repeat offenders represent a substantial proportion of the youth court caseload (Kowalski and Caputo, 1999). For instance, a study by Kowalski and Caputo (1999) found that 40% of the cases they examined had prior convictions; however, of this 40%, only 10% had three or more prior convictions. The number of offenders committing indictable offences of a similar type that would constitute a pattern was even smaller than 10% (Kowalski and Caputo, 1999). From this perspective, only a select few offenders will be targeted for custody based on this criterion. However, Chaiken and Chaiken (1982) focused on the offending of these small groups of very active offenders and found that they commit hundreds of crimes per year and are responsible for the majority of crimes ascribed to by many study populations. Consequently, this small group of offenders, when incarcerated, may account for a substantial reduction in the number of crimes committed.

4. In exceptional cases where the young person has committed an indictable offence, the aggravating circumstances of the offence are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38.⁴³

This statement recognizes the possibility of cases that are excluded by the first three criteria but are still of such aggravating circumstances that it would be impossible to impose a non-custodial sentence that would be consistent with the purpose and principles in section 38 (Department of Justice Canada, 2005b). If the court relies on this case criterion, it is required to provide a detailed explanation of why the case is exceptional.⁴⁴ This reinforces that Parliament did not expect this criterion to be used very often

⁴³ *YCJA*, *supra* note 2, s. 39 (1)(d)

⁴⁴ *YCJA*, *supra* note 2, s. 39 (9)

(Barnhorst, 2004). It is not very likely that this criterion will have an impact on the use of custody in many cases.

Finally, the limitations surrounding the use of custody are followed by a section stating that meeting one of the criteria in s. 39(1) is not sufficient for automatically justifying a custodial sentence (Barnhorst, 2004).⁴⁵ If the court finds that one of the threshold criteria are met, the court must still explore reasonable alternatives to custody.⁴⁶ This final emphasis reinforces Parliament's preference for judges to consider alternatives to custody in all youth cases.

The limitations surrounding the use of custody offer judges considerably more guidance than was afforded under the YOA, and were clearly intended to reduce the use of imprisonment for youth convicted of less serious offences. Yet, at the same time, the limitations clearly provide more exceptions for youth to avoid custody. This dilemma is expressed in Matza's (1964) notion that the law contains the seeds of its own neutralization, whereby the more precisely the law specifies the conditions of its applicability, the more available become the ways to evade conforming to the law. There was some concern under the YOA that sections permitted offenders to avoid punishment; particularly rules of due process, and those involving adult sentencing. It will be interesting to see if the specific YCJA criteria result in a similar response.

3.5 New YJCA Sentences

There have also been a number of new sentences introduced in the YCJA. A number of which were designed to provide options for judges to avoid the use of custody.

⁴⁵ *YCJA*, *supra* note 2, s. 39 (1)(a-d)

⁴⁶ *YCJA*, *supra* note 2, s. 38 (2)(d)

The first is an “Attendance Order”,⁴⁷ which requires youth to attend a program at specified times based on conditions set by a judge. It can be crafted to address the particular circumstances of a young person; for example, the times and days when the youth is unsupervised and most likely violate the law. This order may prove useful in those cases where youth were being sentenced to custody for administrative offences or treatment under the YOA. A second new sentence is the “Deferred Custody and Supervision Order” that allows a young person, who would otherwise be sentenced to custody, to serve their sentence in the community under certain conditions.⁴⁸ If the conditions are violated, the young person can be placed in custody. This sentence holds the youth accountable while still realizing the benefits of community-based approaches. The third sentencing option is the “Intensive Support and Supervision Order” that provides closer supervision and more intensive support and rehabilitation than a traditional probation order.⁴⁹ This is an intensive form of probation whereby case management officers deal with smaller caseloads of higher risk offenders. The Canadian Department of Justice believes this sentence will be particularly well suited for those offenders who under the YOA would have previously been sentenced to a “short sharp shock” type of custodial sentence (Department of Justice Canada, 2005b). Since 34% of all custodial dispositions in 2000-2001 were for less than one month and 44% were from one month to three months, it is expected that this sentence will be a likely alternative under the new Act (Bala, 2003).

Some of the other new YJCA sentences attempt to amalgamate rehabilitation and reintegration with custody. For instance, the “Custody and Community Supervision

⁴⁷ *YCJA, supra* note 2, s. 42 (1)(m)

⁴⁸ *YCJA, supra* note 2, s. 42 (1)(p)

⁴⁹ *YCJA, supra* note 2, s. 42 (1)(l)

Order”, stipulates that two-thirds of the sentence be spent in custody and one-third of the sentence be served in the community under supervision.⁵⁰ Under the YCJA all custodial sentences must now be followed with a period of community supervision to aid in reintegrating and rehabilitating youth. Finally, for more serious cases, the YCJA offers an “Intensive Rehabilitative Custody and Supervision Order.”⁵¹ An order the court can make if a young person has been found guilty of murder, attempted murder, manslaughter, aggravated sexual assault or demonstrates a pattern of repeated, serious violent offences; or if the young person is suffering from a mental, psychological or emotional disturbance or disorder. In such cases an individualized treatment plan is developed for the offender; and the youth is placed in a program tailored to their needs (Department of Justice Canada, 2005b).

3.6 Implementation Concerns under the YCJA

Finally, there are some implementation concerns under the YCJA. What Parliament has written into the Act is not necessarily what youth criminal justice system administrators will try to accomplish. To this end, justice system decisions are still based on political decision-making that involves such things as the development of coalitions, trade-offs with interest groups, and public appeasement (Palys, 2003). For instance, at present Quebec appears to be interpreting the YCJA differently than other provinces. Under the YCJA, with the increased emphasis placed on proportionality, one would expect that a youth should be sentenced based on the offence and not on individual needs. When a youth’s needs cannot be met within the limits of proportionality then Parliament offers that aid should be sought outside of the youth justice system through referral, under

⁵⁰ YCJA, *supra* note 2, s. 42 (1)(n)

⁵¹ YCJA, *supra* note 2, s. 42 (1)(q)(B)(r)

s. 35, to the appropriate welfare agency.⁵² However, the Quebec Court of Appeal recently concluded that under the YCJA sentences should be proportionate to both the seriousness of the offence and the needs of the youth. The court stated that proportionality is one of several key principles that are to be balanced.⁵³ Once again, this has the potential of allowing judges to implement, or lengthen youth custodial sentences for protective and rehabilitative reasons.

A separate issue involves judges inadvertently referring to deterrence when sentencing under the YCJA. Some academics argue that the failure to mention deterrence in the YCJA does not mean that it cannot be inferred to some extent under the Act. In particular, general deterrence, which is concerned with deterring the offending behaviour of society by setting an example through sentencing a specific case more harshly (Goff, 1999). The YCJA may have a general deterrent value, in that the offending behaviour of the juvenile population may be deterred through specific or individual cases. It is important to appreciate that by holding a youth "accountable" and imposing a sentence that is proportionate to the circumstances of the offender and harm done to a victim, principles of sentencing that are explicitly recognized in section 3 and 38 of the YCJA, the youth justice system will have a deterrent effect on the behaviour of young persons (Bala and Anand, 2004).⁵⁴ Bala and Anand (2004) clarify the subtle difference, stating that the prevalence of an offence in a particular community cannot be an aggravating factor at sentencing; nonetheless, the court can consider the harm suffered by the victim in the case before the court. This approach was used by Judge Whelan when she

⁵² YCJA, *supra* note 2, s. 35

⁵³ (Ministrie de la Justice) v Canada (Ministre de la Justice) (2003), 10 C.R. (5th) 281, [2003] Q.J. 2850 (C.A.).

⁵⁴ YCJA, *supra* note 2, s. 38 (1)(c)

sentenced a youth for participation in a robbery and breach of probation; in imposing a lengthy custodial sentence upon the youth, she indicated that:

I have been asked by the Crown to consider that this store clerk was twice before the victim of a robbery in this location. It is important not to use this information to inadvertently apply the principle of deterrence, which is significantly absent from the Youth Criminal Justice Act. Having said that, this store clerk was a vulnerable victim among a group of vulnerable victims, i.e. convenience store employees working alone and at night and this is a relevant fact...⁵⁵

There is also some concern with how “meaningful consequences” in combination with many of the custodial limitations will be interpreted. It is reasonable to assume that under the YOA a number of judges felt that custody was a meaningful consequence for many less serious cases. Now, under the YCJA, in a jurisdiction with no suitable community-based options, a youth who has failed to comply with one community-based sentence or has committed a minor assault could quite easily end up in custody. By fiscal year 1999/2000, cases in which the most serious charge was an offence against the administration of justice accounted for 27% of all youth court cases in Canada (Canadian Centre for Justice Statistics, 2001). In addition, violent crimes represent one in five of youth court cases; of those, about half are minor assaults (John Howard Society of Alberta, 1998).

Finally, there is some concern about the new deferred custody order under the YCJA. The primary objective of this sentence is to provide an intermediary alternative to using custody in the first place. Yet, a major problem encountered under the YOA was imposing custody in cases that failed to comply with a disposition. Under the YCJA if

⁵⁵ *R. v. B.R.S.*, [2003] S.J. No. 357 (QL)

judges utilize deferred custody, in place of, or in addition to traditional probation orders, they will once again have no choice but to impose custody in cases of failing to comply.

A second challenge surrounding the use of deferred custody is evident in how conditional sentencing (the adult counterpart to deferred custody) is being utilized in the adult system. Violent, non-sexual offences accounted for almost 24% of conditional sentences given since the introduction of Bill C-41 (La Prairie, 1999). At present, young offenders cannot receive a deferred custody order for a violent offence under the YCJA. This dilemma was recently brought before the Provincial Court of British Columbia. The court ruled that the restrictions concerning violent offences placed on a Deferred Custody and Supervision Order offend the Charter.⁵⁶ Overall, it seems that the utility of deferred custody has yet to be decided.

3.7 Conclusion

To date, no other country that has placed the principles of sentencing in a statute has utilized such directive language to alter how custody is implemented (Roberts and Bala, 2003). The Act still adheres to the adaptive approach of the Modified Justice Model, as did the YOA, yet there has been a concerted effort by legislators to provide explicit prioritized policies. Some academics have called the YCJA, in itself, a revolutionary piece of juvenile justice legislation (Carrington and Schulenberg, 2004). What seems most certain is that the YCJA provides judges with guidance involving the use of custody; however, justice professionals will continue to exercise considerable discretion when responding to youth crime in other domains. In particular, provincial correctional authorities have discretion with respect to the diversion of cases from youth

⁵⁶ *R. v. D.G. and J.S.M.*, [2004] BCPC 370

court, and many of the community-based sentencing options that they will make available, as well as the acceptance of variation in youth court sentences based on “regional differences” (Roberts and Bala, 2003). From this perspective, the implementation of the YCJA is still largely a matter of interpretation and ultimately remains in the hands of justice system professionals.

4 RESEARCH QUESTIONS AND FACTORS INFLUENCING THE IMPLEMENTATION OF CUSTODY

4.1 Research Questions

The general research hypothesis addressed by this thesis is whether custody is dependent on the legislation under which a youth has been sentenced. Below, this question is broken down into a number of more specific hypotheses statements, all of which are based on previous concerns involving specific outcomes of the YOA. Ultimately, the research questions gauge the extent that the YCJA is addressing the problems that were associated with the YOA.

1. CUSTODY RATE - As previously discussed, the youth custody rate in Canada was higher under the YOA than the adult rate and that of many other developed western countries (as cited in Bala, 2003; Department of Justice Canada, 2005d; Roberts and Bala, 2003). This research explores whether the youth custody rate, at the Burnaby Youth Detention Centre, shows signs of an atypical rate decrease under the YCJA.
2. RANGE OF SANCTIONS - Many judges, particularly those outside of Quebec, indicated that there was an inadequate range of sanctions available to them (Doob, 2001). This research explores whether the new custodial sanctions offered under the YCJA are being utilized by judges.
3. REINTEGRATION - The YOA did not provide sufficient provisions for safe, graduated reintegration into the community (Department of Justice Canada, 2005d). The YCJA includes provisions to aid in a young person's reintegration into the

community, which protects the public by guarding against further crime. The Act provides that custody must be followed by a period of supervision in the community through a custody and supervision order. This research examines differences in the proportions of reintegrative sentences implemented under the YOA and YCJA. It also explores any differences in the lengths of community-based reintegrative sentences following custody in each period.

4. **TYPES OF OFFENDERS RECEIVING CUSTODY** - The YCJA is expected to reserve custody for only the most serious offenders. Under the YOA this was not the case, and as much as 80% of offenders were receiving custody for non-violent offences (Doob and Cesaroni, 2004). This research contrasts the crimes of those offenders being sentenced to custody under the YOA and YCJA. In addition, it also examines the average number of charges each case received under both periods. Finally, it looks at whether average custodial sentence lengths have increased since hypothetically the custodial population under the YCJA should only be comprised of the most serious offenders.
5. **SHORT SHARP SHOCK** - A trend in Canada has been to employ “short sharp shock” type sentences under the YOA (Doob, 2001). Correctional workers expressed concern about these sentences, in part, because they were seen as being long enough to disrupt a youth's life, but too short to provide any meaningful programming in the institution (Doob, 2001). This research examines if the proportion of “short sharp shock” type sentences have changed under the YCJA.
6. **PROPORTIONATE SENTENCES** - Experience under the YOA has shown that the severity of some sentences has exceeded the seriousness of the offence and the degree

of responsibility of the young person (Doob and Cesaroni, 2004). The YCJA is clear that such sentences are not permitted because of the limits set by the principle of proportionality.⁵⁷ In brief, this basic principle of fairness means that less serious cases should result in less severe sentences, and cases that are more serious should result in more severe sentences. This research explores changes in the relationship between offence seriousness and custody length between the YOA and YCJA.

7. FOCUS OF PROPORTIONALITY - Similarly, the principle of proportionality states that a sentence should be based on the seriousness of the offence and the level of responsibility of the offenders.⁵⁸ Under the YOA it has been shown that factors aside from offence seriousness such as age, gender and prior offences affect the implementation and length of custody (Doob and Meen, 1993). This research explores how offence seriousness, prior offending, ethnicity and gender influence the implementation and length of custody under the YCJA in contrast to the YOA.

4.2 Factors Influencing the Implementation of Custody

As discussed previously, the YCJA explicitly recognizes the importance of sentencing proportionally to the severity of the offence presently under consideration and requires that four specific criteria surrounding custody be met before a custodial sentence can be imposed; three of which are also directly related to the severity of the offence at hand.⁵⁹ Under the YOA, research pointed to a variety of factors in addition to the seriousness of the present offence; in particular, age, ethnicity, gender and prior record have been found to affect the length and likelihood of receiving a custodial sentence. The

⁵⁷ YCJA, *supra* note 2, s. 38 (2)(c)

⁵⁸ YCJA, *supra* note 2, s. 38 (2)(c)

⁵⁹ YCJA, *supra* note 2, s. 38 (2)(c); s. 39 (1)(a-d)

following discusses how these factors are likely to affect sentencing under the YCJA in contrast to how they previously influenced sentencing under the YOA.

4.2.1 Age

Most studies reported mixed conclusions regarding the impact of age at sentencing under the YOA (Kueneman and Linden, 1983; Doherty and deSouza, 1996). Some observers argued that since younger offenders were more amenable to treatment than adults that the courts might respond more vigorously to these individuals (Kueneman and Linden, 1983). However, research has also found that differences in the actual proportions of custodial dispositions between younger and older offenders almost entirely disappear when the number of prior convictions and seriousness of the offence were controlled for (Kowalski and Caputo, 1999). This finding suggests that actual differences by age are not due to the differing treatment of younger and older offenders, but rather to a tendency for older offenders to have committed a greater number of more serious offences. Consequently, it is important to pay particular attention to changes in the overall seriousness and numbers of crimes committed in the YOA and YCJA periods, and focus less on the influence of age on sentencing.

4.2.2 Ethnicity

Ethnicity research in Canada primarily focuses on Aboriginals, since they are considerably over-represented in the youth justice system, and more specifically in the youth custody population (Goff, 1999). Recent research contrasting the sentencing of Aboriginal and Non-Aboriginal youth under the YOA using youth court data from five major cities in Canada examined three separate sentencing decisions: the imposition of a

custodial sentence versus a non-custodial sentence; the use of secure custody versus open custody; and the length of custodial sentence (Latimer & Foss, 2005). No evidence was found that Aboriginal youth are more likely than non-Aboriginal youth to receive a custodial sentence; in addition, there was no convincing evidence that Aboriginal youth are more likely than non-Aboriginal youth to receive a secure custodial sentence (Latimer & Foss, 2005). However, there was support that Aboriginal youth are likely to receive longer custodial sentences than non-Aboriginal youth, regardless of standard aggravating factors such as criminal history and offence severity (Latimer & Foss, 2005). The YCJA instructs judges to recognize Aboriginal circumstances when sentencing; this requirement may serve to reduce disparities in custody length that were previously occurring under the YOA between Aboriginal and Non-Aboriginal offenders.

4.2.3 Gender

Most research shows differences in the treatment of males and females under the YOA. Reitsma-Street (1993) examined court responses to female offending from 1974 until 1991, and found that the gender inequity in custodial sentences had increased, not because the custody rates went down for females, but because more male young offenders were being sent to custody than females. Prior to the YOA's enactment in 1984 one in five females received custody for every five to seven males; by 1990, with regard to male young offenders, that ratio had increased to one in eight to twelve (Reitsma-Street, 1993). Reitsma-Street (1993) also found disproportionate increases in non-compliance with administrative offences; by 1991, one in four charges laid against young females were against the administration of justice; the rate was one in six for males. Corrado, Odgers and Cohen (2000) found similar disparities; most of the offences that young women were

...serving time for were administrative; moreover, the primary rationale for implementing and lengthening custodial sentences was protective in nature, and based on the testimony of both the young women and key criminal justice decision makers. The primary concern in "breaching" female offenders was most often directly tied to the safety of the young women (Corrado et al., 2000). The contention was that the paucity of non-custodial treatment alternatives often resulted in administrative-based incarceration because of the resistance that many young women have towards any attempt to prevent them from returning to their street lives (Corrado et al., 2000). To this end, under the YCJA, it is likely that females may still be disproportionately overrepresented in less serious offence categories; however, the gender discrepancies should be minimized through the emphasis placed on proportional sentencing and reserving custody for serious offenders.

4.2.4 Repeat Offending/Prior Record

Kueneman and Linden (1983) conducted a study that looked at the influence of prior offending at sentencing; they found that under the JDA prior offending was a consistent predictor for the type of disposition and noted that a history of repeat offending often resulted in more severe dispositions. Under the YOA Beaumont and LeBlanc (1986) discovered similar patterns, finding that a previous record tripled the likelihood of receiving a custodial disposition. Prior custodial sentences were found to be an important factor in determining the present sentence in a study undertaken by Hoge, Andrews, and Leschied (1993). Prior offending, along with the seriousness of the current offence, appeared to be an important factor in predicting whether a custodial disposition was imposed. Moyer (1992) found that, in every jurisdiction for which recidivism data are available, the greater the number of prior convictions, the less likely that the young

offender will receive a non-custodial disposition. In addition, Carrington and Moyer (1995) found that young offenders with a prior record were much more likely to receive custodial dispositions than first-time offenders regardless of the nature of the current offence. Ultimately, research exploring the influence of past offending consistently show a positive relationship between prior offences and sanction severity. The YCJA disallows the use of custody until a youth fails to comply with two non-custodial sentencing options or displays a pattern of serious offending.⁶⁰ Additionally, the principle of proportionality emphasizes focusing on the seriousness of the offence at hand when sanctioning a youth.⁶¹ Accordingly, the number of prior offences committed by a youth should have less of an effect under the YCJA than they did previously under the YOA.

4.2.5 Offence Seriousness

Youth are more likely to receive a custodial disposition for violent crimes followed by property crimes, and then other major offence categories; suggesting that the seriousness of the offence is related to the type of dispositions received (Kowalski and Caputo, 1999). However, the extent that offence seriousness plays a part in sentencing is open to question. Research by Carrington and Moyer in 1995 found relatively weak and secondary relationships between indicators of offence seriousness and the likelihood of a custodial disposition; instead prior record was a dominant sentencing factor. More favourably, Kowalski and Caputo (1999) found that both first-time and repeat offenders received a larger proportion of custodial dispositions suggesting that judges take both offence seriousness and previous offences into consideration when sentencing. A study by Doob (2001) provides stronger evidence for the importance of offence seriousness at

⁶⁰ *YCJA*, *supra* note 2, s. 39 (1)(b)(c)

⁶¹ *YCJA*, *supra* note 2, s. 38 (2)(c)

sentencing where judges rated this factor as the highest for placing a youth in custody. The YCJA emphasizes proportionality at sentencing; this means that less serious cases should result in less severe sentences, and cases that are more serious should result in more severe sentences. The YOA however, did not consider this factor; accordingly, sentencing severity should now align more closely with offence seriousness under the YCJA.

Ultimately, most research has found that offence seriousness is related to the severity of disposition that a judge decides to impose; youth are more likely to receive a custodial disposition for more serious crimes (Kowalski and Caputo, 1999). Yet, of all the standard aggravating factors found to influence sentencing, most research consistently demonstrates that judges sentence repeat offenders under the YOA more harshly than they do first-time offenders charged with the same offence. In particular, the prior record of the offender has been found to have an effect regardless of the offender's age, gender, or the seriousness of the current offence (Carrington and Moyer, 1995). Consequently, in this study, it is likely that prior record will play a primary role in disposition severity under the YOA, while offence seriousness, gender, and ethnicity may be less influential. Alternatively, under the YCJA period, the emphasis placed on proportionality and Aboriginal circumstances may serve to moderate the influence of prior offending, gender and ethnicity.

5 METHODOLOGY

5.1 Sampling

In March of 2004 the Burnaby Youth Custody Centre granted access to Impacting Research and Potus Consulting to code the files of all the young offenders, both males and females, age 12 to 17, sentenced to custody during the final year of the YOA (April 1st, 2002 – March 31st, 2003) and the first year of the YCJA (April 1st, 2003 – March 31st, 2004). Though individual youth were sampled, it is important to note, that in this study the unit of analysis is each case, which is defined as a sentence resulting in post-conviction custody. To clarify, many of the youth were sentenced to custody multiple times across the YOA and YCJA periods, therefore, it was not possible to compare individual youth who were sentenced under one law or the other. Consequently, instead of comparing youth, this thesis specifically compares cases resulting in custody under either the YOA or YCJA.

The decision to examine the final year of the YOA, as opposed to earlier years, was based on the assumption that the government's intention to introduce the YCJA as a method to decrease Canada's over-reliance on custody was already showing up to some extent in practice. Literature outlining many of the proposed changes that were to be introduced in the YCJA was widely available. It was felt that examining the final year of the YOA represented a truer test of the impact of the YCJA since a longer interim between the sampling periods would have allowed for a greater number of intervening

factors. For example, factors such as the influence of media coverage could have intervened and distorted the impact of the new legislation.

Since the YOA and YCJA periods were continuous, 42 of the 164 youth sampled received a custodial sentence under both laws. This may have had a positive effect since a portion of the YOA and YCJA youth were partially matched. Though having some matched pairs clearly did not eliminate differences between the cases, it may have reduced those differences, thereby increasing the likelihood that any findings uncovered are a result of changes in the law as opposed to changes in the composition of the youth in each sample.

Finally, though unavoidable, it is also important to mention that sampling cases sentenced under the first year of the YCJA meant that many parts of the youth justice system were still likely to be adjusting to the new legislation; delays in processing, uncertainty about new provisions, and other factors may have affected the data.

When gathering the data, each file's cover sheet provided general demographics such as age, gender and ethnicity; however, of specific interest were the Cornet files. Cornet is British Columbia's integrated offender management information system, which keeps an exhaustive list of youth and adult offending. Coding of both the coversheets and the Cornet files was completed by trained undergraduate and graduate students from Simon Fraser University at the Burnaby Youth Detention Centre. Data were collected for the following variables:

Cover Sheet

- Subject Number
- Ethnicity

- Gender
- Date of Birth

Cornet File

- Sentencing date (YOA or YCJA)
- Offence type
- Total number of charges under consideration at sentencing
- Number of prior convictions
- Custody length
- Custody and Community Supervision length
- Custody and Conditional Supervision length
- Deferred Custody and Conditional Supervision Order length
- Intensive Support and Supervision Order length + Probation length
- Probation length

5.2 Dataset

A number of variables not shown in the previous list were irrelevant to this study and were deleted from the original dataset; also, a number of errors were found and corrected. For instance, though the dataset contained the total number and type of charges that were considered when sentencing each case, the ratio of charges could not be discerned. As an example, in a typical case, the researchers could only discern that a youth was charged 5 times for theft under \$5000, and common assault; however, it was impossible to tell how many theft charges there were and how many assault charges there were. This meant returning to the original Cornet files in order to count the exact number of charges at each sentencing period. In addition, initially it was impossible to determine the number of prior convictions for each youth. The remedy involved counting the number of convictions for each youth and respectively entering this information into the dataset. During these processes, some inter-rater reliability issues and oversights were

discovered. For example, one of the original coders had coded duplicate charges as a single charge; their respective files were corrected. Another coder had failed to code Custody and Community Supervision as a custodial sentence; their respective files were also pulled and corrected. In addition, some sentencing periods were entered inaccurately due to the new sentence acronyms under the YCJA and had to be double-checked and corrected. In the end, all Cornet files were cross-referenced with the dataset for accuracy.

The original dataset contained the entire criminal history for each youth; consequently, a number of sentencing periods fell outside the YOA/YJCA timeframe, as well a number of sentences resulted in non-custodial dispositions. To control for this, two new variables were created. One measured for the presence of custody, the other measured for all dates within the YOA/YCJA one year time periods. The remaining cases were removed.

Additionally, for this study, a number of variables were created in the original dataset. The creation of the ordinal scale of charge seriousness was completed based on the Seriousness Index used by the Canadian Centre for Justice Statistics (See Appendix 9-1). The seriousness of each offence was ranked according to offence type and the potential impact on the victim. This scale was also used to decide which charge would be used to represent those cases where a judge considered more than one charge at sentencing. The final aggregated categories included serious violent, less serious violent, serious sexual, less serious sexual, serious property, less serious property, administrative, driving and other offences. For some statistical procedures, these categories were collapsed further due to sample size considerations into violent, property, administrative and other categories. However, in most cases the serious/non-serious distinction was used

when analyzing the data because it allowed for greater detail when comparing between the YOA and YCJA. For example, it seemed misleading to group common assault and manslaughter under the single category of violent offending.

The weakness of this categorization scheme is that by selecting a “most serious charge” any remaining charges are no longer represented in the analysis. Further, the most serious charge in each case is only a crude representation of the rich information available to a judge at sentencing. There may be a number of mitigating and aggravating circumstances surrounding each offence that are not captured by the offence seriousness scale. Importantly, failure to find significant relationships between case characteristics (i.e., age, charges) and custody is likely the result of weak indicators. Alternatively, positive findings are likely an under-representation.

The total custody length variable did not need to be created under the YOA period; each case was simply sentenced to a Custody Order of a specific length. Creating the total custody length variable under the YCJA involved calculating the custody portions of the new community/custody sentences. This included two-thirds of the Custody and Community Supervision variable, as well as the Cornet indicated proportions of the Custody and Conditional Supervision Variable, and the Deferred Custody Order variable. Alternatively, creating the total community sentence variable involved the same process; first deriving the community portion of the aforementioned dual component sentences and then including Probation Orders and Intensive Support and Supervision Orders.

5.3 Procedures

The data were analyzed using the Statistical Package for Social Sciences, version 13.0. Cramer's V, a Chi-square based test measuring associations between variables, and Chi-square, a test measuring the significance of associations between variables were used extensively throughout this study since most comparisons involved cross-tabulating dichotomous nominal variables, such as the YOA/YCJA variable, with ordinal and ratio variables such as ethnicity or sentence length. These particular tests work well for analyzing associations between variables at different levels of measurement with varying marginal totals; this was the case for many of the variables in this study. To compare the means of continuous variables (such as custody length) based on dichotomous independent categorical variables (such as gender), Independent Sample T-tests were implemented; Levene's Test for Equality of Variances was also utilized to test if the samples had similar variances.

A multiple regression was also employed; the approach was adapted from a study completed by Doob and Meen (1993) that explored changes in the length and type of dispositions implemented before and after the enactment of the YOA. The rationale for using a regression in this study was to understand more about the relationship between several independent or predictor variables and a dependent variable. In this case, prior offences, number of charges, offence seriousness, gender, and ethnicity were examined in relation to custody length. Custody length was used as an indicator of disposition seriousness. Ethnicity and gender were recoded into dummy variables in order to use them as predictors.

Multicollinearity was taken under consideration before proceeding with the regression equation in this study; this is where two predictor variables are redundant. For example, an initial regression uncovered a relatively strong positive correlation between age and custody length under the YCJA. This finding appears to suggest that custody length is influenced by age; however, most research shows that differences by age are not due to judges treating younger or older offenders differently, but rather resultant of older offenders committing a greater number of more serious offences (Kowalski and Caputo, 1999). Consequently, bivariate correlations were completed comparing all the predictor variables to look for redundant variables. The decision was made to remove predictors that were defined as weakly or moderately inter-correlated ($r = .30, p < .05$) (Babbie, Halley, and Zaino, 2003). In the end, age was the only factor found to violate this criterion; consequently, it was no longer used in the regression.

6 ANALYSIS

The following chapter provides the results of analyzing all cases that resulted in custody during the final year of the YOA (April 1st, 2002 – March 31st, 2003) and the first year of the YCJA (April 1st, 2003 – March 31st, 2004) at the Burnaby Youth Detention Centre. It is important to reiterate that the primary unit of analysis is each case, defined as one or more charges against a young person disposed of during a single sentencing period resulting in a sentence of custody.

6.1 Changes in the Mix of Cases

In order to examine differences in the use of custody under the YOA and YCJA periods, it is first necessary to take differences in the mix of custodial cases between the two samples into account. The following section examines differences in demographics, prior offences, number of charges and charge seriousness between the two samples.

Beginning with gender, male cases accounted for 70.4% of the entire offenders sentenced to custody under the YOA period, and 85.2% of the offenders sentenced to custody under the YCJA period. Inversely, the percentage of custodial sentences given to female offenders fell 14.3% under the YJCA period ($X^2(1) = 9.56, p < .01$; *Cramer's V* = .164).

There were non-significant differences in the ages of youth cases between the two periods. Overall sixteen- and seventeen-year-olds were sentenced to custody more often

than younger accused.⁶² The average age that a youth case received a custodial sentence changed slightly from 16.43 years-old under the YOA to 16.63 under the YCJA (n.s.).

Caucasian representation was almost identical under the YOA and YCJA periods at 53.6% and 53.4%. There were, however, what at first appeared to be significantly fewer aboriginals sentenced to custody under the YJCA at 25.0% versus 37.1% under the YOA ($X^2(4) = 13.99, p < .01$; *Cramer's V* = .203). Yet, this change was a result of more youth identifying themselves as Métis under the YCJA period. When the Aboriginal and Métis categories were aggregated any statistically significant differences across ethnic categories disappeared. The proportion of Asiatic youth sentenced to custody remained almost identical at 2.7% under the YOA, and 2.5% under the YCJA. In addition, the percentage of youth in the 'other' ethnicity category increased non-significantly, to 5.9% under the YCJA. This category included Black, Mulatto, Latin American, East Indian, Hispanic and an 'unknown category'.

The total youth cases from both samples involved 1376 charges that resulted in custody; 666 under the YOA period and 710 under the YCJA period. The most common charge was administrative in nature, accounting for approximately half of all the charges in both periods, while property charges accounted for approximately 25% of the charges. The remaining proportion of charges fell respectively in crimes against persons, driving offences and the "other category". Sexual and drug offences accounted for only four of the 1376 charges laid in total.

Table 6-1 shows that, overall, the substantive severity of the charges resulting in custody were almost identical between the two periods. An exception was found in the

⁶² Age represents the offender's age in years on the day the offender was sentenced to custody.

YOA period, which contained a small group of very serious charges including second-degree murder, criminal negligence causing death, and armed robbery, all of which received custodial sentences greater than a year in length. Serious charges, of a similar nature, were not found under the YCJA period with the exception of one charge of manslaughter where the youth was sentenced to one year in custody.

Table 6-1 Total offences resulting in custodial disposition under the YOA and YCJA

Offence Type	YOA 2002/04/01- 2003/03/31		YCJA 2003/04/01-2004/03/31		Epsilon
Serious Violent	58	8.71%	61	8.59%	-0.12%
Less Serious Violent	48	7.21%	33	4.65%	-2.56%
Serious Sexual	2	0.30%	0	0%	-0.30%
Less Serious Sexual	0	0%	0	0%	0%
Serious Property	43	6.46%	42	5.91%	-0.54%
Less Serious Property	131	19.67%	135	19.01%	-0.65%
Serious Drug	0	0%	0	0%	0%
Less Serious Drug	2	0.30%	0	0%	-0.30%
All Administrative	340	51.05%	382	53.80%	2.75%
All Driving	17	2.55%	28	3.94%	1.39%
Other	25	3.75%	29	4.08%	0.33%
Totals	666	100%	710	100%	

(n.s.)

Though the findings in Table 6-1 are not significant it is important to take note that there were a similar number of charges found in each period, even though there were 111 less sentencing periods resulting in custody under the YCJA timeframe. The average number of charges under the YOA period was 2.86 in comparison to 5.82 under the YCJA ($t(163) = -6.63, p < .001$, Equality of Variances not Assumed). These results should be interpreted cautiously, the majority of cases under the YOA had only two or three charges while there were 5 or 6 under the YCJA; consequently the variances of the distributions were significantly different when measured with Levene's Test.

The total number of prior offences committed under the YOA sample was 1475 in contrast to 760 under the YCJA. To determine if the prior records of the youth cases sampled were significantly different in the two periods, Table 6-2 shows the average number of prior offences resulting in custody. The results were not significantly different in either of the periods.

Table 6-2 Number of prior offences resulting in a sentence of custody under the YOA and YCJA

Prior Convictions	YOA 2002/04/01- 2003/03/31		YCJA 2003/04/01-2004/03/31	
	0	11	4.7%	1
1-2	57	24.5%	6	21.3%
3-4	40	17.2%	30	24.6%
5-8	75	32.2%	46	37.7%
9-18	50	21.5%	19	15.6%
Totals	233	100%	122	100%

(n.s.)

In conclusion, the mix of cases between the YOA and YCJA did not change significantly with regard to age, ethnicity, offence seriousness or number of prior offences. There were, however, a significantly greater number of males found under the YCJA period. Additionally, the average number of charges resulting in custody also increased under the YCJA. The following section examines the specific research questions that were proposed previously in Chapter 4.

6.2 Research Questions

6.2.1 Custody Rate

As discussed previously, the youth custody rate in Canada was higher under the YOA than the adult rate and that of many other developed western countries (as cited in Bala, 2003; Department of Justice Canada, 2005d; Roberts and Bala, 2003). At the

Burnaby Youth Detention Centre, the total number of youth cases resulting in custody fell by 111 youth, from 233 under the YOA to 122 under the YCJA.

6.2.2 Range of Sanctions

Many judges, particularly those outside of Quebec, indicated that there was an inadequate range of sanctions available to them under the YOA (Doob, 2001). The YCJA introduces four new custodial sentences. This research found that under the YOA period there were 233 custody orders, 103 probation orders, 2 community work service orders and 4 restitution orders. Under the YCJA, there were 17 custody orders followed by a period of probation, 99 custody and community supervision orders, 6 custody and conditional supervision orders, 2 deferred custody orders, 4 intensive support and supervision orders, 31 probation orders and 1 community work service order.

6.2.3 Reintegration

The YOA did not provide sufficient provisions for safe, graduated reintegration into the community (Department of Justice Canada, 2005d). The YCJA includes provisions to aid in a young person's reintegration into the community. The Act provides that custody must be followed by a period of supervision in the community through custody and supervision orders.⁶³ At the Burnaby Detention Centre, under the YOA, 55.8% of the cases in this study received only custody, while 41.6% resulted in 2 component sentences (usually custody and probation), and 2.6% resulted in 3 component sentences. Under the YJCA, as legislated, 0% of the cases resulted in a single component sentence, while 83.6% resulted in two separate sentences or a dual component sentence

⁶³ *YCJA*, *supra* note 2, s. 42 (1)(n)

(primarily custody and community supervision), and 16.4% resulted in 3 sentences or some combination therein of dual and single component sentences.

In this study, there were also differences in the lengths of community-based reintegrative sentences following custody in the YOA and YCJA periods. Overall, Table 6-3 shows a substantial decrease in the average length of community-based sentences under the YCJA.

Table 6-3 Average length of community disposition, by those offenders who received custody under the YOA and YCJA

Disposition	YOA 2002/04/01- 2003/03/31	YCJA 2003/04/01- 2004/03/31	Mean Diff.
	Mean (n=103) ²	Mean (n=122)	
Total Community (Months)	12.14	6.10	-6.04¹

1. ($t(223) = 9.86; p < .01$)

2. Note that not all custodial youth cases had to be followed with a community component under the YOA.

Further, Table 6-4 shows that there has been a considerable decrease in the use of longer community-based sentences following custody under the YCJA. Under the YOA, of the 233 custodial sentences only 103 received an additional probation disposition. Of those 103 periods of probation, 70.1% were longer than a year in length. Under the YCJA, 82.0% of the community-based components received following custody were for less than 12 months in length.

Table 6-4 Average length of community-based sentences corresponding to a sentence of custody under the YOA and YCJA

Length	YOA 2002/04/01- 2003/03/31		YCJA 2003/04/01-2004/03/31	
1 to 15 days	0	0%	47	38.5%
16 to 30 days	0	0%	14	11.5%
1.01 months to 3 months	7	6.8%	19	15.6%
3.01 months to 6 months	12	11.7%	12	9.8%
6.01 months to 1 year	58	56.3%	16	13.1%
1.01 years to 2 years	26	25.2%	12	9.8%
2.01 years or more	0	0%	2	1.6%
Totals	103	100%	122	100%

($X^2(6) = 96.62, p < .001$; Cramer's $V = .655$)

6.2.4 Types of Offenders Receiving Custody

The YCJA was expected to reserve custody for the most serious offenders. Under the YOA this was not the case, and as many as 80% of offenders were receiving custody for non-violent offences (Doob and Cesaroni, 2004). Table 6-5 compares the most serious charge considered in formulating each custodial disposition during both the YOA and YCJA periods to explore if there has been a change in which sentences are responded to with custody. All changes found were non-significant.

Table 6-5 Most serious charge formulating the basis of the custodial disposition under the YOA and YCJA

Most Serious	YOA 2002/04/01- 2003/03/31		YCJA 2003/04/01-2004/03/31		Epsilon
Serious Violent	28	12.0%	19	15.6%	4.2%
Less Serious Violent	13	5.6%	8	6.6%	1.1%
Serious Sexual	1	0.4%	0	0%	-0.4%
Less Serious Sexual	0	0%	0	0%	0%
Serious Property	21	9.0%	17	13.9%	4.2%
Less Serious Property	45	19.3%	27	22.1%	3.1%
All Administrative	122	52.4%	50	41.0%	-11.8%
All Driving	0	0%	1	0.8%	0.8%
Other	3	1.3%	0	0%	-1.3%
Totals	233	100%	122	100%	

(n.s.)

A different way to examine if more serious offenders are now being targeted for custody is to look at the average number of charges for each youth case in the YOA and YCJA periods. Table 6-6 shows a significant increase in the proportion of youth cases with more charges that resulted in a sentence of custody under the YCJA period.

Table 6-6 Proportion of cases, by number of charges under consideration, resulting in a custodial disposition under the YOA and YCJA

Number of Charges	YOA 2002/04/01- 2003/03/31		YCJA 2003/04/01-2004/03/31	
	1-2	156	67.0%	25
3-4	37	15.9%	44	36.1%
5-10	34	14.6%	35	28.7%
11+	6	2.6%	18	14.8%
Totals	233	100%	122	100%

($X^2(3) = 77.96, p < .001$; *Cramer's V* = .456)

A final question, involving offence seriousness, examines whether the average sentence lengths have increased under the YCJA since, hypothetically the custodial population under the new Act should only comprise more serious repeat and violent offenders. Table 6-7 shows no significant difference in the average lengths of custodial sentences between the YOA and YCJA periods.

Table 6-7 Average length of disposition for those offenders who received custody under the YOA and YCJA

Disposition	YOA 2002/04/01- 2003/03/31	YCJA 2003/04/01- 2004/03/31	Mean Diff.
	Mean (n=233)	Mean (n=122)	
Total Custody (Days)	58.07	54.57	-5.30

(n.s.)

6.2.5 Short Sharp Shock Sentences

The trend in Canada, under the YOA, has been “short sharp shock” type sentences (Doob, 2001). This research examines if the proportion of short custodial sentences have decreased under the YCJA since short custodial sentences were likely a by-product of the large number of less serious offenders being sentenced to custody (Department of Justice Canada, 2005b). Table 6-8 provides no support for a significant reduction in the proportion of short sentences under the YCJA.

Table 6-8 Average length of custodial disposition under the YOA and YCJA

Length in days	YOA 2002/04/01- 2003/03/31		YCJA 2003/04/01-2004/03/31	
1-15	105	45.1%	39	32.0%
16-30	53	22.7%	30	24.6%
31-90	46	19.7%	31	25.4%
91 or >	29	12.4%	22	18.0%
Totals	233	100%	122	100%

(n.s.)

6.2.6 Proportional Sentencing

Experience under the YOA has shown that the severity of some sentences has exceeded the seriousness of the offence and the degree of responsibility of the young person (Doob and Cesaroni, 2004). The YCJA is clear that such sentences are not permitted because of the limits set by the principle of proportionality.⁶⁴ In part, this basic principle of fairness stresses that less serious cases should result in less severe sentences and more serious cases should result in more severe sentences. To examine if the YCJA appears to be more “proportionate” than the YOA, Table 6-9 compares the most serious charge considered and the length of custodial disposition received under the YCJA in

⁶⁴ YCJA, *supra* note 2, s. 38 (2)(c)

contrast to the YOA. Perhaps the most substantial change is seen in the 33% increase, under the YCJA period, in the proportion of dispositions that were 91 days or greater which were allotted for violent offences. Interestingly, the value of Cramer's V seems to indicate that the positive relationship between most serious charge considered and the length of custodial disposition implemented is stronger under the YCJA period than it was previously under the YOA period.

Table 6-9 Change in proportion, between most serious offence considered and length of custodial disposition under the YCJA¹ and YOA²

Length in days	Percentage Change Under the YCJA in Comparison to YOA		
	Admin. justice, etc.	Property ³	Violent
1-15	-9.8%	-9.0%	-10.1%
16-30	+8.6%	-1.7%	-0.8%
31-90	+2.1%	+22.7%	-22.2%
91 or >	+0.4%	-12.1%	+33.1%

1. ($X^2(6) = 55.84, p < .001$; Cramer's $V = .478$)

2. ($X^2(6) = 45.47, p < .001$; Cramer's $V = .312$)

3. Pooling property and 'other' because of low frequency in other category.

6.2.7 Factors Influencing Proportionality

The principle of proportionality in the YCJA states that a youth sentence should be based on offence seriousness and the level of offender responsibility.⁶⁵ Under the YOA, as discussed in Chapter 4, it was shown that factors aside from offence seriousness, such as ethnicity, gender and prior record influence the imposition and length of a custodial disposition (Carrington and Moyer, 1995; Corrado et al., 2000; Doherty and deSouza, 1996; Kowalski and Caputo, 1999; Latimer and Foss, 2005). The following explores these factors in turn.

Ethnicity

⁶⁵ YCJA, *supra* note 2, s. 38 (2)(c)

Some academics predicted that many Aboriginals youth would be sentenced more leniently than Non-Aboriginals under the YCJA (Anand, 2003). This contention seems reasonable in light of past research under the YOA showing support that Aboriginal youth were receiving longer custodial sentences than Non-Aboriginal youth, regardless of standard aggravating factors such as criminal history and offence severity (Latimer and Foss, 2005). However, Table 6-10 shows minimal support for any difference in the proportion of custodial sentence lengths between Aboriginal and Non-Aboriginals youth in the YOA and YCJA periods at the Burnaby Youth Detention Centre.

Table 6-10 Relationship between Aboriginal status and custody length under the YOA and YCJA

Custody Length	YOA 2002/04/01- 2003/03/31		YCJA 2003/04/01-2004/03/31	
	Non-Aboriginal	Aboriginal	Non-Aboriginal	Aboriginal
1 to 15 days	42.7	49.4	30.1	37.9
16 to 30 days	24.7	19.3	23.7	27.6
31 to 90 days	20.0	19.3	25.8	24.1
91 or >	12.7	12.0	20.4	10.3

(n.s.)

Gender

Most research under the YOA revealed disparate treatment based on gender with regard to the use of custody (Corrado et al., 2000; Reitsma-Street, 1993). Table 6-11 reveals that gender played less of a role in the relationship between the most serious charge under consideration and legislation type at the Burnaby Youth Detention Centre. Under the YCJA there was a decrease in the proportion of females serving out custodial sentences for administrative offences in comparison to the YOA period. Further, there was a significant increase in the proportion of females serving custodial sentences for property offences under the YCJA period. Finally, the value of Cramer's V shows that

gender does not appear to be as strongly associated with offence seriousness under the YCJA as it previously was under the YOA period.

Table 6-11 Relationship between gender and most serious offence resulting in custody under the YOA and YCJA

Most Serious ²	YOA ¹ 2002/04/01- 2003/03/31		YCJA ² 2003/04/01-2004/03/31	
	Males	Females	Males	Females
Administrative	39.6%	82.6%	36.5%	66.7%
Property ³	38.4%	8.7%	38.5%	27.8%
Violent	22.0%	8.7%	25.0%	5.6%
Totals	100%	100%	100%	100%

1. ($\chi^2(2) = 36.35, p < .001$; Cramer's $V = .395$)

2. ($\chi^2(2) = 6.5, p < .05$; Cramer's $V = .231$)

3. Pooling property and 'other' because of low frequency in other category.

Though females, in contrast to males, still appear on average under the YCJA to receive shorter custodial sentences, as well as shorter community-based sentences that follow custody; Table 6-12 indicates that the gender disparities in average sentence lengths have been greatly reduced under the YCJA. Under the YOA females were disproportionately represented with regard to custody length in comparison to males, generally for less-serious and administrative offences (Corrado et al., 2000; Reitsma-Street, 1993). Now, overall, it appears that females at the Burnaby Youth Detention Centre are being sentenced more proportionally to males under the YCJA.

Table 6-12 Average length of custody and corresponding community-based sentence by gender under the YOA and YCJA

Disposition	YOA 2002/04/01- 2003/03/31		YCJA 2003/04/01-2004/03/31	
	Males	Females	Males	Females
Custody (Days)	57.29 ¹	30.23 ¹	54.85 ³	52.99 ³
Community (Months)	13.14 ²	8.83 ²	4.30 ³	4.24 ³

1. ($t(168) = 2.43, p < .05$, equality of variances not assumed)

2. ($t(101) = 3.59, p < .01$)

3. Mean difference is not significant.

Number of Prior Offences

Under the YOA most research consistently found that the number of prior offences committed was related to the likelihood of receiving a custodial sentence (Carrington and Moyer; 1995; Beaumont and LeBlanc, 1986; Doherty and deSouza, 1996; Kueneman and Linden, 1983). However, under the YCJA, it is expected that the emphasis placed on the principle of proportionality should lessen the influence of prior offending on the likelihood of receiving a custodial sentence. To examine if this is the case, Table 6-13 compares all the cases sentenced to custody under the YOA and YCJA periods by the proportion of the prior offences each youth case committed. Under both periods, the majority of custodial youth cases committed at least three prior offences; however, there were no significant difference between the YOA and YCJA periods regarding the influence of the number of prior offences committed.

Table 6-13 Number of offences considered for custodial disposition under the YOA and YCJA time periods

Sentence Number	YOA 2002/04/01- 2003/03/31		YCJA 2003/04/01-2004/03/31	
	1 st	11	4.7%	1
2 nd – 3 rd	57	24.5%	26	21.3%
4 th – 5 th	40	17.2%	30	24.6%
6 th – 9 th	75	32.2%	46	37.7%
10 th – 19 th	50	21.5%	19	15.6%
Total	233	100%	122	100%

(n.s.)

Another way to examine the extent that various factors, including prior offending, influence the use of custody is through a multiple regression equation. Prior record has been found to have an affect on disposition severity regardless of an offender's age, gender, or the seriousness of the current offence (Hoge et al., 1993; Kueneman and

Linden, 1983). Table 6-14 examines the influence of a number of factors simultaneously on the length of custody implemented under both the YOA and YCJA periods. The table indicates that the factors predicting the length of a custodial sanction appear to have changed under the YCJA at the Burnaby Youth Detention Centre. Under the YOA period the most serious offence committed, as well as the number of prior convictions, were significant predictors of custody length. Under the YCJA period, only the most serious offence committed was a significant predictor of custody length. This implies that under the YCJA prior offence may have less of an influence for judges when deciding on the length of custodial sentence to implement.

Table 6-14 Linear predictors of length of custody under the YOA and YCJA

Predictors Entered	YOA 2002/04/01- 2003/03/31		YCJA 2003/04/01-2004/03/31	
	Beta	T	Beta	T
Sex ¹	.018	n.s.	-.103	n.s.
Ethnicity ²	-.003	n.s.	.106	n.s.
Most Serious Offence ³	.380	5.33*	.581	6.96*
Total Charges at Sentencing	.073	n.s.	-.046	n.s.
Sentence Number (Priors)	.212	3.34*	.003	n.s.
R ²	.188		.311	
F at p<.001	10.10		9.92	
Df	223		115	

1. Value indicates males were more likely to receive longer sentences

2. Value indicates Caucasians were more likely to receive longer sentences

3. Value generated from offences seriousness scale (see appendix 9-1)

* t-values are significant at p<.005

In conclusion, findings at the Burnaby Youth Detention Centre indicate that the number of youth in custody decreased an atypical amount under the YCJA despite an increase in the overall number of charges in the latter timeframe. In addition, though all custodial sentences are now followed with a community-based component, the average length of the community segment decreased significantly under the new Act.

Furthermore, offence seriousness appears to align more closely with custody length under the YCJA indicating an increased adherence to the principle of proportionality when sentencing. Finally, under the YCJA, factors aside from offence seriousness, such as gender and number of prior convictions are less likely to influence the length of custody as they were under the YOA. The following chapter discusses the implications of these findings.

7 DISCUSSION AND CONCLUSION

In interpreting the results from Chapter 6, it must be kept in mind that they give only a partial picture of what was happening to youth in custody over two years at a single provincial custody facility. Though the data suggest partial support for a number of the research questions proposed it is not possible to comment on the likelihood that data collected from other Canadian youth institutions would be similar. Particularly since the YCJA continues to allow for substantial variation between jurisdictions in terms of policies and resources available to deal with young offenders (Bala and Roberts, 2004). As under the YOA, judges dealing with individual young offenders under the YCJA are still constrained by what resources and programs are available. Moreover, the policy and resource decisions of provincial governments will continue to have a profound effect on Canada's youth justice system, and on how principles are applied in individual cases (Bala and Roberts, 2004). Importantly, however, as the following chapter discusses, the Annual Statement on the YCJA, the 2003/04 Youth Court Survey, and other recent research initiatives have revealed many similar findings to those that are presented in this study. (Canadian Centre for Justice Statistics, 2005; Department of Justice Canada, 2005e).

To begin, consistent with other Canadian jurisdictions, this thesis showed a decrease in the use of custody at the Burnaby Youth Detention Centre (Canadian Centre for Justice Statistics, 2005; Department of Justice Canada, 2005e). The total number of youth cases resulting in custody fell by 111; from 233 under the YOA, to 122 under the

YCJA. To put this decrease in perspective, from 1991 to 2002, in British Columbia there was an average of 579 youth in secure custody province wide; this value was comprised of youth from the Burnaby Youth Custody Centre, the Victoria Youth Custody Centre and the Prince George Youth Custody Centre (Statistics Canada, 2003). There were 450 youth at the lowest point in 1991 and 764 youth at the highest point in 1997, which steadily declined to 563 in 2002; the largest provincial-wide decrease for youth incarcerated in one year was 87 youth from 2000 to 2001 (Statistics Canada, 2003). From 1991 to 2002 the yearly change in the number of youth sentenced to custody province-wide varied on average by 68 (Statistics Canada, 2003). From this perspective, the decrease of 111 youth following the enactment of the YCJA appears to be atypical and is likely resultant of the fact that many of the changes made in the YCJA explicitly emphasize the importance of reducing Canada's over-reliance on incarceration.

Interestingly, the rather large decrease in the number of youth cases receiving custody occurred despite no substantial decrease in the overall number of charges resulting in custody between the YOA and YCJA. The average number of charges per custodial youth case increased substantially under the YCJA. This increase is consistent with finding from the Department of Justice and the Juristat (Department of Justice Canada, 2005e; Canadian Centre for Justice Statistics, 2005). Both documents show that cases concluding in custody under the YCJA involved significantly more charges than cases under the YOA. It is likely that part of the increase in the proportion of charges is attributable to diverting many of the less serious cases, comprised of fewer charges, before they reach custody. Overall, the Department of Justice found that there has been a significant reduction in the number of charges laid for less serious offences, but the rate

of this reduction decreases as offences get more serious (Department of Justice Canada, 2005e). This finding, taken together with these results, may also indicate that under the YCJA charging practices may have changed with regard to more serious offenders.

Overall, of those youth in the Burnaby Youth Detention Centre, the average length of custody increased non-significantly under the YCJA. The difference was minimal despite the fact that the YCJA sample comprised a greater proportion of non-aboriginal males, and perhaps more importantly, a greater number of charges per youth. This research, however, did not collect data reflecting time served in remand; recent unpublished research examining remand under the YCJA shows substantial increases in British Columbia (P. L. Brantingham, personal communication, February, 2005). It is possible that with the enactment of the YCJA came delays in court processing, extending the time that some youth spent in remand. Pre-trial time served is given greater weight than normal time served and would have reduced the average custody length under the YCJA (Department of Justice Canada, 2005b). A second possibility is that judges may also be decreasing custody length as a means to avoid the overuse of custody as specified by the YCJA.

Judges also appear to be utilizing many of the new custodial sentences offered under the YCJA at the Burnaby Youth Detention Centre. Out of the 111 custodial sentences received under the Act, 99 of them were Custody and Community Supervision Orders. This was by far the most favoured sentence, which, as mentioned previously, has a legislated length ratio set by Parliament at two-thirds served in custody and one-third served in the community. Interestingly, only six Custody and Conditional Supervision Orders were allotted; this sanction allows a judge to specify the ratio of custody and

community supervision in cases where the two-thirds/one-third ratio set by parliament does not seem suitable. It is unlikely that the Custody and Conditional Supervision Order will be utilized extensively. When Parliament legislated the two-thirds/one-third ratio that accompanies the Custody and Community Supervision Order it seems to have made its preference clear for this sentence in most cases (Bala, 2003). Finally, there were only two Deferred Custody Orders received under the YCJA. As mentioned previously, a challenge surrounding the use of deferred custody is evident in how conditional sentencing, the adult counterpart to deferred custody, is being utilized in the adult system. Violent, non-sexual offences accounted for almost 24% of conditional sentences given in adult court since the introduction of Bill C-41 (La Prairie, 1999). At present, young offenders cannot receive a deferred custody order for a serious violent offence under the YCJA. Since custodial sentences are primarily to be reserved for violent offending it is unlikely that this sentence will be utilized extensively.

Research under the YOA has been mixed with regard to how “offence oriented” the Act was when sentencing (Carrington and Moyer, 1995). This research found that under the YCJA, in contrast to the YOA, offence seriousness aligned more closely with custody length. This finding was expected, and is consistent with sections of the YCJA that place considerable emphasis on adhering to the principle of proportionality when sentencing, and reducing the over-reliance on custody for less serious offenders.⁶⁶ The finding is also consistent with the principles included in the YCJA focusing on sentencing disparity.⁶⁷ The absence of these principles resulted in wide disparities between the sentences that young persons received in different provinces for the same offences, and in

⁶⁶ YCJA, *supra* note 2, s. 3 (b)(ii); s. 38 (2)(c); Preamble

⁶⁷ YCJA, *supra* note 2, s. 38,39

significant disparity between sentences imposed by different judges in the same community (Doob, 1992; Department of Justice Canada, 2005d).

Perhaps the most unanticipated result in this research was the substantial decrease in the average length of community-based sentences following custody. Under the YCJA period, there was an increase in the number of community-based sentences following custody; however, there was a sharp decline in their average length. A partial explanation is found when examining the 2003/04 Juristat statistics, which shows that overall probation is still the most frequently ordered sentence in convicted youth court cases, yet its use has declined from last year (Canadian Centre for Justice Statistics, 2005). The Juristat attributes the decline, in part, to the fact that under the YOA, youth custody sentences were often followed by a period of probation to ensure some form of supervision on reintegration into the community (Canadian Centre for Justice Statistics, 2005). Under the YCJA, however, all youth custody sentences have a mandatory period of supervision built into the sentence. Perhaps judges are now reluctant to sentence a youth to an additional period of probation over and above the reintegrative component of the new Custody and Community sentences. In particular, the Custody and Community Supervision Order, which was implemented extensively by judges in this study and has a predetermined length ratio set at two-thirds of the time served in custody and one-third in the community.

Additionally, this thesis uncovered differences under the YJCA when examining the influence of ethnicity, gender, prior offending, and offence seriousness. To begin, sections of the YCJA require judges to pay particular attention to the circumstances of

Aboriginal offenders;⁶⁸ one expectation was that there would be a decrease in the length of custodial sentences received by Aboriginal offenders under the YCJA in comparison to the YOA. However, the average sentence length received by Aboriginal and Non-Aboriginal youth was not significantly different in either period at the Burnaby Youth Detention Centre.

Findings from the 2003 Aboriginal Snapshot showed sizeable decreases in the absolute number of Aboriginal youth in four major centres across Canada (Latimer and Foss, 2004). In 2000, there were 1,128 Aboriginal youth reported in custody in Canada compared to 720 Aboriginal youth in custody in 2003 - a difference of 408 youth (Latimer and Foss, 2004). This represented a 36% reduction in the number of Aboriginal youth in custody. Findings in this thesis showed a 48.2% decrease in the absolute number of Aboriginals sentenced to custody at the Burnaby Youth Detention Centre under the YCJA. Some of the first reported cases under the YCJA that have dealt with Aboriginal youth have cited section 38(2)(d), as well as other provisions of the Act focusing on the Aboriginal circumstances as justification for imposing community-based sentences that provide a greater prospect for rehabilitation (Roberts and Bala, 2003).⁶⁹ However, the findings in this thesis seem to indicate that the decrease in the number of Aboriginal youth in custody is not a result of the sections that focus on Aboriginal youth's circumstances. Particularly since no differences were discovered in the proportion of Aboriginal and Non-Aboriginal youth in custody between the YOA and YCJA periods. More likely, the overall decrease is resultant of changes made in the YCJA that explicitly

⁶⁸ YCJA, *supra* note 2, s. 38 (2)(d)

⁶⁹ YCJA, *supra* note 2, s. 38 (2)(d)

emphasize the importance of reducing Canada's over-reliance on incarceration.⁷⁰ From this perspective, it is difficult to predict if the focus on Aboriginal circumstances in sections of the YCJA are likely to have much of an impact on youth sanctioning, particularly since in many cases the social and behavioural circumstances of most Aboriginal and Non-Aboriginal offenders in custody are in many ways indistinguishable (Roberts and Melchers, 2003). For example, both Aboriginal and Non-Aboriginal custodial offenders are often subject to similar levels of emotional, physical and substance abuse (Roberts and Melchers, 2003).

When looking at the affects of gender, past research under the YOA found that most young women were incarcerated for administrative offences; moreover, the primary rationale for implementing and lengthening custodial sentences was protective in nature (Corrado et al., 2000). This study found that females at the Burnaby Detention Centre still appear to be sentenced to custody for less serious offences and receive shorter custodial and community sentences under the YCJA than males, yet the divergences in offence severity and average sentence lengths have been greatly reduced under the YCJA. This finding is consistent with sections of the YCJA that place considerable emphasis on adhering to the principle of proportionality when sentencing and reducing the over-reliance on custody for less serious offenders.⁷¹

It was expected that there would be differences between the YOA and YCJA with regard to the influence of prior offending due to the new criterion in the YCJA that does not allow custody unless a youth has two non-compliances with non-custodial sentencing

⁷⁰ YCJA, *supra* note 2, Preamble

⁷¹ YCJA, *supra* note 2, s. 3 (b)(ii); s. 38 (2)(c); Preamble

options.⁷² This criterion would require a youth to have committed at least two prior offences before they could be considered for custody. However, in this study under both the YOA and YCJA periods, there were no significant differences in the relationship between the number of prior offences committed and the likelihood of receiving custody. Additionally, there was only a slight non-significant reduction in the proportion of cases sentenced to custody with one or two prior offences. An explanation is that many of the youth previously in custody under the YOA may have already had two non-compliances with non-custodial sentencing options limiting the affect of this criterion. Findings in this study show a substantial number of administrative offences committed under both the YOA and YCJA periods; however the number that were specifically non-compliances with non-custodial sentences could not be discerned. Still, other research under the YOA has shown that breaching sentencing conditions was particularly common (Sprott and Doob, 2002). In 2002/03, failure to comply with a YOA disposition accounted for 12% of the entire youth caseload (Canadian Centre for Justice Statistics, 2004).

This thesis did find support for the contention that prior offending is related to the length of custodial sentence a judge decides to implement (Kueneman and Linden, 1983). Utilizing a regression equation, this study, examined the influence of a number of factors simultaneously on custody length. Under the YOA period, the most serious offence committed, as well as the number of prior convictions recorded, were both significant predictors of custody length. However, under the YCJA period, only the most serious offence committed was a significant predictor of custody length. This implies that, under the YCJA, prior offences were less likely to influence the length of custodial sentence

⁷² *YCJA*, *supra* note 2, s. 39 (1)(a-d)

implemented. This is consistent with many of sections of the YCJA that focus on sentencing in proportion to the seriousness of the current offence, and is consistent with previous findings in this study showing that offence seriousness aligns more closely with custody length under the YCJA than it did previously under the YOA.⁷³

Overall, the findings in this study seem to indicate that the YCJA may have started to achieve a number of its custodial objectives at the Burnaby Youth Detention Centre. Foremost, the number of youth in custody has decreased. Additionally, it appears that the average number of charges for each custodial case have also increased indicating that the YCJA is now targeting only more serious offenders for incarceration. Furthermore, offence seriousness seems to align more closely with custody length and factors aside from offence seriousness, including gender and number of prior convictions appear less likely to influence the length of custodial sentence imposed. These changes seem to indicate an increased adherence to proportionality when using custody under the YCJA. However, whether the YCJA is more reintegrative than the YOA is open to question. Though all custodial sentences are now followed with a community-based component, the average length of the community segment decreased significantly under the new Act. It will be interesting to see if this change in reintegration will remain in coming years.

7.1 Conclusion

It is important to remember that the law is only part of how a society responds to the problem of youth crime. There are major non-legislative factors that can contribute to reducing and preventing crime such as; significantly increasing federal funding to the

⁷³ YCJA, *supra* note 2, s. 3 (b)(ii); s. 38 (2)(c)

provinces and territories for crime prevention efforts; instituting effective programs; innovative approaches; research; public education partnerships with other sectors such as education, child welfare, and mental health; improvements to aboriginal communities; and appropriate implementation of programs by provinces and territories (Department of Justice Canada, 2005c). Nonetheless, youth legislation also constitutes a large part of how society addresses youth criminality, and though some concerns involving the YOA were based on misperceptions about youth crime, and misunderstandings regarding the limits of what legislation can realistically accomplish, many were directly linked to problems with the Act.

For instance, as discussed in Chapter 1, public opinion surveys, media reports and anecdotal accounts showed widespread negative attitudes toward the YOA and youth courts (John Howard Society of Alberta, 1998; Winterdyk, 2005). Generally, the public believed that youth court judges were too lenient, that youth crime, particularly violent youth crime, was on the increase, and that longer sentences were necessary (John Howard Society of Alberta, 1998). To address these concerns a number of crime control oriented changes were introduced in the YCJA. For instance, many sections emphasize that firm measures will be taken to protect the public from violent and repeat young offenders (Department of Justice Canada, 2005a). In addition, the constraints involving when a judge can punish a youth with an adult sentence have been broadened (Department of Justice Canada, 2005a).

This study can only partially comment on the effect of these changes. None of the youth sampled in the two years were sentenced as an adult. The two periods did include a small group of very serious charges including second-degree murder, manslaughter,

criminal negligence causing death, and armed robbery; all resulting in custodial sentence of a year in length or longer. Yet, the majority of charges resulting in custody were for less serious offences such as theft under \$5000, administrative violations, and minor assaults. Nevertheless, judges under the YCJA do appear to be directly targeting serious offenders for custody. Findings show neither an increase in the number of youth in custody, nor a significant increase in the average length of custody, but there has been an increase in the average number of charges resulting in custody under the YCJA period. This seems to indicate that the YCJA is succeeding in its goal of targeting serious offenders by diverting less serious offenders into custodial alternatives. It also indicates that the YOA was already reserving incarceration for more serious offenders in the majority of cases; however, failing to divert the less serious offenders as the YCJA does.

The YCJA also reflects academic concerns that the YOA was too punitive (Doob and Cesaroni, 2004). In particular, the prioritization of principles, as well as the limits set around the use of custody, and the emphasis placed on implementing sentences that are subject to the principle of proportionality, reflect these concerns. Findings in this study show an atypical reduction in the use of incarceration. In addition, there appears to be an increased adherence to proportionality as indicated through the closer alignment between offence seriousness and custody length. Further, it seems that many less serious cases are being diverted from custody. These changes taken together seem to indicate that some of the YCJA's sentencing guidelines are being adhered to, and that the Act has resulted in a more equitable youth justice system.

Under the YCJA, in contrast to the approach taken under the YOA, the youth justice system may have established a more publicly acceptable policy when it comes to

the use of custody. The Modified Justice Model orientation of the YCJA allows it to utilize justice, welfare, corporatist and crime control principles when sentencing; making it adaptable to a variety of circumstances. While at the same time, there have been policy changes made ensuring that custody is not used in less serious cases; for instance, in cases where a judge hoped to denounce less serious offending behaviour.

Regardless, future problems are likely to arise under the YCJA. Most, importantly few extremely violent youth have received adult sentences. The Supreme Court of Canada, for example, is currently reviewing a Manitoba youth court judges' decision of sentencing a 15-year-old to one day in custody followed by a 15-month conditional sentence after being convicted of manslaughter. The judge in the case stated that the Youth Criminal Justice Act prevented him from taking the deterrence of others into account; and this was the rationale for the particularly lenient sentence (CBC News, 2005). Not surprisingly, this decision has raised public concern about the ability of the YCJA to adequately hold youth accountable. The outcome of the Supreme Court of Canada's review could potentially send the YCJA into a media relations debate.

Whether this problem, and future problems, can be dealt with will depend on the extent that there is a shift in thinking and practice by those involved in the day-to-day operation of the youth justice system. Quebec, unlike other Canadian provinces has responded to youth offending for decades based on a welfare approach. Under the YOA young offenders were being treated in a similar fashion to other youth who were experiencing family, social and emotional difficulties. Youth protection and family supports were soundly integrated with services for young offenders and Quebec managed to prevent a large proportion of its youth from entering the courts and custody (Trépanier,

2004). Quebec's success was apparent when one looked at their charge and crime data, which remained relatively consistent throughout the 1990s. In an average year the Canadian Centre for Justice Statistics reported an annual charge rate of approximately 200 in Quebec per 10,000 youth, compared to a national rate of approximately 400 (Canadian Centre for Justice Statistics, 2000). Additionally, these low charge rates in Quebec were often co-occurring with equally low custody rates, especially in comparison to the rest of Canada (Canadian Centre for Justice Statistics, 2000). Quebec reminds us that a change in thinking is possible without changing legislation. It will be important in the future to carefully monitor how the YCJA is being implemented and encourage ongoing research and discussion to help deal with the problems that are not directly guided by the legislation. If not, it is difficult to imagine how the YCJA can avoid suffering the same fate as the YOA.

8 APPENDICES

8.1 Most Serious Offence

Offence	Category	Seriousness
1. 2nd Degree Murder	Violent	Serious
2. Manslaughter	Violent	Serious
3. Criminal negligence/death	Violent	Serious
4. Assault causing bodily harm	Violent	Serious
5. Assault w/weapon	Violent	Serious
6. Aggravated Assault	Violent	Serious
7. Wounding	Violent	Serious
8. Armed robbery	Violent	Serious
9. Robbery	Violent	Serious
10. Dangerous use of firearms	Violent	Serious
11. Use of a firearm	Violent	Serious
12. Weapons trafficking	Violent	Serious
13. Assault of P.O.	Violent	Serious
14. Threatening	Violent	Less Serious
15. Criminal Harassment	Violent	Less Serious
16. Assault (Common)	Violent	Less Serious
17. Extortion	Violent	Less Serious
18. Possession of a weapon	Violent	Less Serious
19. Carrying a concealed weapon	Violent	Less Serious
20. Animal Harming	Violent	Less Serious
21. Intimidation	Violent	Less Serious
22. Sexual Assault	Sex	Serious
23. Sexual Interference	Sex	Serious
24. Indecent Exposure	Sex	Less Serious
25. Indecent act	Sex	Less Serious
26. B&E / Intent	Property	Serious
27. Theft over \$5000	Property	Serious
28. Auto theft	Property	Serious
29. Arson	Property	Serious
30. Taking MV w/o consent	Property	Serious
31. Use stolen credit card	Property	Serious
32. Trespassing	Property	Less Serious
33. Theft under \$5000	Property	Less Serious
34. Poss. Housebreaking tools	Property	Less Serious
35. Poss. Stolen Property	Property	Less Serious
36. Poss. obtained by crime	Property	Less Serious
37. Poss. stolen credit card	Property	Less Serious
38. Theft / wrongful possession	Property	Less Serious

Offence	Category	Seriousness
39.Vandalism	Property	Less Serious
40.Mischief/Wilful Damage	Property	Less Serious
41.Destruction/prop.	Property	Less Serious
42.Fraud obtain food/lodge	Property	Less Serious
43.Trafficking narcotics	Drug	Serious
44.Poss. for purpose traffic	Drug	Serious
45.Poss. controlled substance	Drug	Less Serious
46.Possession of narcotics	Drug	Less Serious
47.Other admin. law	Administration	
48.At large / esc lawful	Administration	
49.Escape (prison)	Administration	
50.Failure to appear	Administration	
51.Breach recognizance	Administration	
52.Breach YOA	Administration	
53.Failure to comply w/ probation	Administration	
54.Breach probation	Administration	
55.Susp. of Cond. Super.	Administration	
56.Dangerous driving	Driving	
57.Careless driving	Driving	
58.Driving impaired	Driving	
59.Driving 80mg alcohol	Driving	
60.Failure to stay / accident	Driving	
61.Driving w/o license	Driving	
62.Driving / bodily harm	Driving	
63.Driving / disqualified	Driving	
64.Contempt of court	Other	
65.Causing a disturbance	Other	
66.Disguised w/intent	Other	
67.Public drunkenness	Other	
68.Attempt to com. offence	Other	
69.Public mischief	Other	
70.Vagrancy	Other	
71.Obstruction of Justice	Other	
72.Fabricating Evidence	Other	
73.Fraud	Other	
74.Uttering (forged doc)	Other	
75.Prostitution	Other	
76.Flight from P.O.	Other	
77.Resist/Obstruct P.O.	Other	

1. Adapted from Canadian Centre for Justice Statistics in Latimer, J., & Foss, L. (2004). A One-day Snapshot of Aboriginal Youth in Custody Across Canada: Phase II.

REFERENCE LIST

- Anand, S. (2003). Crafting Youth Sentences: The Roles of Rehabilitation, Proportionality, Restraint, Restorative Justice, and Race under the Youth Criminal Justice Act. *Alberta Law Review*, 40(4), 943-963.
- Angus Reid. (1994). Results from the 1994 Angus Reid Poll. In what are we afraid of? *Saturday Night*, 112, 46-58.
- Babbie, E., Halley, F., & Zaino, J. (2003). *Adventures in Social Research: Data Analysis using SPSS 11.0/11.5 for Window* Thousand Oaks: Sage Publications, Inc.
- Bala, N., & Roberts, J. (2004). Canada's Juvenile Justice System: Increasing Community-Based Responses to Youth Crime. *European Society of Criminology Meeting*, Amsterdam, Aug 25-28.
- Bala, N. (2003). *Youth Criminal Justice Law* Toronto: Irwin Law.
- Bala, N., & Anand, S. (2004). The First Months under the Youth Criminal Justice Act: A Survey and Analysis of Case Law. *Canadian Journal of Criminology & Criminal Justice*, 46(3), 251-271.
- Barnhorst, R. (2004). The Youth Criminal Justice Act: New Directions and Implementation Issues. *Canadian Journal of Criminology & Criminal Justice*, 46(3), 231-250.
- Bazemore, G., & Umbreit, M. (1995). Rethinking the sanctioning function in juvenile court: Retributive or restorative responses to youth crime. *Crime & Delinquency*, 41(3), 296-301.
- Beaumont, H., & LeBlanc, M. (1986). Les decisions des juges d'un tribunal de la jeunesse en milieu urbain. In Kowalski, M. and Caputo, T., Recidivism in youth court: An examination of the impact of age, gender, and prior record. *Canadian Journal of Criminology*, 41(1), 57-84.
- Canadian Center for Justice Statistics. (2000). Youth Court Statistics 1999-2000. Cases to Custody: Canada, Quebec, Ontario, and Saskatchewan. In Doob, A., & Cesaroni, C. (2004). *Responding to Youth Crime in Canada* Toronto: University of Toronto Press.

- Canadian Center for Justice Statistics. (1986-2003). Juristat Service Bulletins. In Winterdyk, J. (2005), *Issues and Perspectives on Young Offenders in Canada* (pp.17). Toronto: Thomson Nelson.
- Canadian Centre for Justice Statistics. (2005). Youth Court Statistics, 2003/04. *Juristat*, 25(4)
- Canadian Centre for Justice Statistics. (2004). Youth Court Statistics, 2002/03. *Juristat*, 24(2)
- Canadian Centre for Justice Statistics. (2001). *Youth Court Data Tables 1999-00* No. (85F0030). Ottawa: Canadian Centre for Justice Statistics, Statistics Canada.
- Canadian Centre for Justice Statistics. (1999). Youth Court Statistics 1997-1998: Highlights. *Juristat*, 19(2)
- Canadian Centre for Justice Statistics. (1998). Adult Criminal Court Statistics, 1997-98. *Juristat*, 18(14)
- Carrigan, D. (1998). *Juvenile Delinquency in Canada: A History* Concord, Ontario: Irwin Publishing.
- Carrington, P. (1995). Has violent youth crime increased? Comment on Corrado and Markwart. *Canadian Journal of Criminology*, 37(1), 61-73.
- Carrington, P., & Moyer, S. (1995). Factors affecting custodial dispositions under the Young Offenders Act. *Canadian Journal of Criminology*, 37(2), 127-162.
- Carrington, P. J., & Schulenberg, J. L. (2004). Introduction: The Youth Criminal Justice Act--A New Era in Canadian Juvenile Justice? *Canadian Journal of Criminology & Criminal Justice*, 46(3), 219-223.
- CBC News. (2005). *Supreme Court to hear appeal of 1-day sentence for 8-ball killing*. 2005 from http://www.cbc.ca/manitoba/story/mb_8ball-appeal-20051027.html
- Chaiken, J., & Chaiken, M. (1982). *Varieties of Criminal Behaviour* No. (R-2814-NIJ). Santa Monica, CA: Rand Corporation.
- Chisholm, P. (1993). The fear index. (Cover story). *Maclean's*, 106(1), 24.
- Corrado, R., Bala, N., Linden, R., & Le Blanc, M. (Eds.). (1992). *Juvenile Justice in Canada: A Theoretical and Analytical Assessment*. Markham: Butterworths.

- Corrado, R., & Markwart, A. (1992). *The Evaluation and Implementation of a New Era of Juvenile Justice in Canada*. In Corrado, R., Bala, N., Linden, R., & Le Blanc, M. (Eds.). (1992). *Juvenile Justice in Canada: A Theoretical and Analytical Assessment*. Markham: Butterworths.
- Corrado, R., & Markwart, A. (1994). The need to reform the YOA in response to violent young offenders: Confusion, reality or myth? *Canadian Journal of Criminology*, 36(3), 343-378.
- Corrado, R., Odgers, C., & Cohen, I. (2000). The incarceration of female young offenders: Protection for whom? *Canadian Journal of Criminology*, 42(2), 189-207.
- Department of Justice Canada. (2005a). *A Strategy for the Renewal of Youth Justice*, 2005 from <http://canada.justice.gc.ca.proxy.lib.sfu.ca/en/ps/yj/aboutus/aboutus.html>
- Department of Justice Canada. (2005b). *YCJA Explained*, 2005 from <http://canada.justice.gc.ca.proxy.lib.sfu.ca/en/ps/yj/repository/>
- Department of Justice Canada. (2005c). *The Youth Criminal Justice Act: Summary and Background*, 2005 from <http://canada.justice.gc.ca.proxy.lib.sfu.ca/en/ps/yj/ycja/ycja.html>
- Department of Justice Canada. (2005d). *Why Did the Government Introduce New Youth Justice Legislation?*, 2005 from <http://canada.justice.gc.ca.proxy.lib.sfu.ca/en/ps/yj/ycja/ycja.html>
- Department of Justice Canada. (2005e). *Youth Criminal Justice Act 2005 Annual Statement Executive Summary*, 2005 from <http://canada.justice.gc.ca.proxy.lib.sfu.ca/en/ps/yj/statement/execsum.html>
- Department of Justice Canada. (2005f). *Myths and Realities about Youth Crime*, 2005 from <http://canada.justice.gc.ca.proxy.lib.sfu.ca/en/ps/yj/information/mythreal.html>
- Doherty, G., & deSouza, P. (1996). Recidivism in Youth Courts 1994-95 Highlights. *Juristat*, 15(16)
- Doob, A., & Meen, J. (1993). An exploration of changes in dispositions for young offenders in Toronto. *Canadian Journal of Criminology*, 35(1), 19-29.
- Doob, A. (2001). *Youth Court Judges' Views of the Youth Justice system: The results of a survey*, 2005 from <http://canada.justice.gc.ca.proxy.lib.sfu.ca/en/ps/yj/research/doob/>. Ottawa: Department of Justice Canada.

- Doob, A., & Cesaroni, C. (2004). *Responding to Youth Crime in Canada* Toronto: University of Toronto Press.
- Doob, A. (1992). Trends in the use of custodial dispositions for young offenders. *Canadian Journal of Criminology*, 34(1), 75.
- Doob, A., & Beaulieu, L. (1992). Variation in the exercise of judicial discretion with young offenders. *Canadian Journal of Criminology*, 34(1), 35.
- Einstadter, W., & Henry, S. (1995). *Criminological Theory: An Analysis of its Underlying Assumptions* Texas: Harcourt Brace College Publishers.
- Gabor, P., Greene, I., & McCormick, P. (1986). The Young Offenders Act: The Alberta youth court experience in the first year. *Canadian Journal of Family Law*, 5, 301-319.
- Gates, R. (1997). Youth crime: are jails and work camps the solution? *Briarpatch*, 26(6), 11-12.
- Goff, C. (1999). *Corrections in Canada* Cincinnati: Anderson Publishing Co.
- Hoge, R., Andrews, D., & Leschied, A. (1993). *An investigation of the factors associated with probation and custody dispositions in a sample of juveniles. In Toward Safer Communities: Violent and Repeat Offending by Young People. London: London Family Court Clinic.*
- John Howard Society of Alberta. (1999). *Harsh Reality of the Young Offenders Act.*, 2005 from <http://www.johnhoward.ab.ca/PUB/C9.htm>
- John Howard Society of Alberta. (1998). *Youth Crime in Canada: Public Perception versus Statistical Information.*, 2005 from <http://www.johnhoward.ab.ca/PUB/C16.htm>
- John Howard Society of Alberta. (1997). *Response to Renewing Youth Justice.*, 2005 from <http://www.johnhoward.ab.ca/PUB/PDF/C12.pdf>
- King, M. (1981). *The Framework of Criminal Justice* London: Croom Helm.
- Kowalski, M., & Caputo, T. (1999). Recidivism in youth court: An examination of the impact of age, gender, and prior record(n1). *Canadian Journal of Criminology*, 41(1), 57-84.
- Kueneman, R., & Linden, R. (1983). *Factors Affecting Dispositions in the Winnipeg Juvenile Court. In Corrado, R., LeBlanc, M., and Trepanier, J. (eds.), Current Issues of Juvenile Justice. Toronto: Butterworths.*

- La Prairie, C. (1999). *Conditional sentence orders by province and territory, September 6, 1996- September 10, 1999*. Ottawa: Department of Justice Canada.
- Latimer, J., & Foss, L. (2004). *A One-day Snapshot of Aboriginal Youth in Custody across Canada: Phase II., 2005 from <http://canada.justice.gc.ca.proxy.lib.sfu.ca/en/ps/rs/rep/2004/snap2/>*. Ottawa: Department of Justice Canada: Research and Statistics Division.
- Latimer, J., & Foss, L. (2005). The Sentencing of Aboriginal and Non-Aboriginal Youth under the Young Offenders Act: A Multivariate Analysis. *Canadian Journal of Criminology & Criminal Justice*, 47(3), 481-500.
- Marinos, V. (1998). What's intermediate about 'intermediate' sanctions?: The case of young offender dispositions in Canada. *Canadian Journal of Criminology*, 40(4), 355-375.
- Markwart, A., & Corrado, R. (1995). A response to Carrington. *Canadian Journal of Criminology*, 37(1), 74-87.
- Matza, D. (1964). *Delinquency and Drift* New York: Wiley.
- Moyer, S. (2005). *A Comparison of Case Processing Under the Young Offenders Act and the First Six Months of the Youth Criminal Justice Act., 2005 from <http://canada.justice.gc.ca.proxy.lib.sfu.ca/en/ps/yj/research/moyer/index.html>*. Ottawa: Department of Justice Canada.
- Moyer, S. (1992). Recidivism in Youth Courts 1990-1991. *Juristat*, 12(2)
- Palys, T. (2003). *Research Decisions: Quantitative and Qualitative Perspectives* (3rd Ed.). Scarborough: Thomson Nelson.
- Petersilia, J. (2004). What Works in Prisoner Re-entry? Reviewing and Questioning the Evidence. *Federal Probation*, 68(2), 4-8.
- Pratt, J. (1989). Corporatism: The Third Model of Juvenile Justice. *British Journal of Criminology*, 29(3), 236-253.
- Reid, S., & Reitsma-Street, M. (1984). Assumptions and Implications of New Canadian Legislation for Young Offenders. *Canadian Criminological Forum*, 7(1), 1-19.
- Reitsma-Street, M. (1993). Canadian youth court charges and dispositions for females before and after implementation of the Young Offenders Act. *Canadian Journal of Criminology*, 35(4), 437-458.

- Roberts, J., & Bala, N. (2003). Understanding Sentencing Under the Youth Criminal Justice Act. *Alberta Law Review*, 41(2), 395-421.
- Roberts, J., & Melchers, R. (2003). The Incarceration of Aboriginal Offenders: Trends from 1978 to 2001. *Canadian Journal of Criminology and Criminal Justice*, April, 211-242.
- Sprott, J. (1996). Understanding public views of youth crime and the youth justice system. *Canadian Journal of Criminology*, 38(3), 271-290.
- Sprott, J. (2001). *Background for the YCJA: Report on data prepared for the Department of Justice Canada.*, 2005 from <http://canada.justice.gc.ca.proxy.lib.sfu.ca/en/ps/yj/research/background/>. Ottawa: Department of Justice Canada.
- Sprott, J., & Doob, A. (2002). Two solitudes or just one? -- Provincial differences in youth court judges and the operation of youth courts. *Canadian Journal of Criminology*, 44(2), 165-180.
- Sprott, J., & Doob, A. (1998). Understanding provincial variation in incarceration rates. *Canadian Journal of Criminology*, 40(3), 305-322.
- Statistics Canada. (2003). *Youth court survey, number of convicted cases by type of sentence, annual, 2003.*, 2005 from <http://estat.statcan.ca.proxy.lib.sfu.ca>
- The Standing Committee on Justice and Legal Affairs. (1997). (1997) *Comprehensive Review of the Young Offenders Act.*, 2005 from <http://sen.parl.gc.ca.proxy.lib.sfu.ca/lpearson/htmlfiles/hill/v13jus-e.htm>
- Trépanier, J. (1989). *Principles and goals guiding the choice of dispositions under the Young Offenders Act.* In L.A. Beaulieu (Ed.), *Young offender dispositions: Perspectives on principles and practice*(pp.27-66). Toronto: Wall and Thompson.
- Trépanier, J. (2004). What Did Quebec Not Want? Opposition to the Adoption of the Youth Criminal Justice Act in Quebec. *Canadian Journal of Criminology & Criminal Justice*, 46(3), 273-299.
- Winterdyk, J. (Ed.). (2005). *Issues and perspectives on young offenders in Canada* (3rd Ed.). Toronto: Nelson.