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SENTENCING OF YOUNG OFFENDERS IN CANADA, 1998/99

by Trevor Sanders

HIGHLIGHTS

- A relatively small number of offences represented a large proportion of convicted youth cases. The ten most commonly sentenced offences¹ accounted for 79% of the sentencing caseload. Two administrative offences, failure to appear and failure to comply with a disposition, accounted for one-quarter of cases with guilty findings.
- A term of probation was the most serious disposition imposed in 48% of youth cases.
- Thirty-five percent of cases with guilty findings in 1998/99 resulted in custody as the most serious disposition (18% open custody and 17% closed custody).
- The number of youth receiving custody dispositions in Canada has varied little since 1992/93.
- Repeat offenders, offenders convicted on multiple charges and offenders with previous custody dispositions were more likely to receive a term of custody.
- On an offence by offence basis, controlling for prior convictions, males were more likely than females to receive a custody sanction.
- The majority of custody terms were for three months or less. Fully 92% of secure custody orders and 94% of open custody orders were for terms of six months or less.
- A majority of repeat offenders (60%) committed a new offence within six months of completing their previous disposition.
- In general, repeat offenders were sentenced more harshly than first-time offenders.
- Young offenders were less likely than adult offenders to receive a term of custody as the most serious disposition for the ten most common offences (except failure to comply with a disposition which was excluded from the analysis). The differences in custody rates varied by offence.
- Young offenders were more likely to be sentenced to longer terms of custody than adults for the same offence. For eight of the nine common offences examined, youths were more likely than adults to get a custody sentence of greater than one month. Only for robbery were youths more likely than adults to receive a term of custody of one month or less.

¹ The ten most commonly sentenced offences in youth court in 1998/99 were: failure to comply with a disposition (YOA), theft under \$5000, break and enter, failure to appear, minor assault, possession of stolen property, mischief/property damage, assault with a weapon, possession (drug), and robbery.



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INTRODUCTION

The sentencing of young offenders is often a subject of public critique, with the *Young Offenders Act* (YOA) frequently denounced by opponents as being too lenient on young persons convicted of criminal offences. In fact, a 1998 survey² conducted for Justice Canada reported that over six in ten Canadians are not confident in the YOA.

With the recent introduction of Bill C-3, the *Youth Criminal Justice Act* (YCJA), fundamental changes to the nature of sentencing of young offenders were proposed. The YCJA promises that “[e]ffective alternative and community-based sentences would be emphasized for lower risk, non-violent offenders, while firm measures such as adult sentencing would be applied to protect the public from violent and repeat young offenders”³.

This Juristat seeks to improve understanding of youth sentencing activity in provincial and territorial youth courts in 1998/99 and to provide baseline statistical data to the youth justice community. Comparisons of youth receiving various dispositions are made on the basis of age, sex, nature of charge, number of charges, and prior convictions. Additionally, comparisons between the sentencing of adult and young offenders are made, taking note of the stipulation that a youth should not receive a harsher sentence than an adult for a comparable crime. Information is presented on the characteristics of those sentenced, the nature of dispositions, trends in sentencing and related issues. The sentencing of repeat offenders or ‘recidivists’ is also explored. In particular, the impact of prior convictions and the nature of prior dispositions on the current disposition are examined. Also, where appropriate, trend data⁴ are presented.

Within the realm of youth sentencing, several issues are examined based on information collected in the Youth Court Survey (YCS). Among these questions are:

- What changes have occurred in the sentencing of young offenders in Canada over the past seven years?
- What kinds of sanctions are associated with particular offences? How is the seriousness of the offence reflected in the severity of the punishment?
- How do the sentences for young offenders compare to the sentences that adults receive for the same crimes?
- What factors lead to a judge imposing a custody disposition on a youth?

Youth Sentencing Process

Offenders whose youth court cases end with a finding of guilt (plead guilty or found guilty) are the focus of this Juristat. After a finding of guilt is entered, the court must decide on an appropriate sentence, a very public and often criticized component of the criminal justice process.

The sentencing process for young offenders is very similar to that for adults. The declaration of principle in the YOA (Section 3) identifies several priorities in dealing with young persons. These include the protection of society, rehabilitation of the youth, and preventing criminal conduct. The principles also state that young persons have “a right to the least possible interference with freedom that is consistent with the protection of society”. Youth court judges must bear these principles in mind when making sentencing decisions.

² Angus Reid Group. *Canadians' Attitudes toward the Young Offenders Act*. Prepared for Justice Canada, February 1998.

³ Department of Justice Canada. *Canada's Youth Justice Renewal Strategy*. 1998.

⁴ The first year for which full national data were available from the Youth Courts Survey was 1992/93, thus becoming the base year for trend comparisons.

Overview of Youth Crime and Court Caseloads in 1998/99

Youth court caseloads reflect police charging. That is, the composition and distribution of offences is largely determined by the incidents that come to the attention of the police and result in formal charges. In 1999, police charged 111,474 youths with federal offences. Youth represented 21% of all persons charged in Canada in 1999. The rate of youths charged with *Criminal Code* offences has declined 31% from 1992 to 1999.⁵

Youth courts in Canada heard 106,665 cases in 1998/99. This figure is down from the previous year, following the general trend of decreases since 1992/93. These cases comprised 203,229 charges against 63,426 persons.

The rate of cases per 10,000 youth has been declining steadily with year over year decreases since 1992/93. In 1998/99 there were 435 cases per 10,000 youth in Canada, down 12% from 497 seven years earlier.

Forty-three percent of all cases involved property crime offences. Most common in this category of offences were theft under \$5,000 and break and enter. Violent offences accounted for 22% of the 1998/99 youth court caseload. The most common violent offences were minor assault and assault with a weapon. Other Criminal Code offences and violations of the Young Offenders Act accounted for 18% and 12% of the caseload, respectively.

⁵ *Uniform Crime Reporting Survey, 1999, Canadian Centre for Justice Statistics, Statistics Canada*

Although the crime for which the offender has been convicted is the principal factor, it is not the only factor that must be considered in passing sentence. Particular details of the offence such as the amount of harm and the circumstances of the offence (mitigating or aggravating) must be taken into consideration. For offenders with previous convictions, prior dispositions are also determinants of the current sentence. Additionally the offender's age and personal situation are factored into the decision.

Sentences Available in Youth Court

Youth court judges have many options available when sentencing a young offender. These options include custody, probation, fine, community service, restitution or a conditional or absolute discharge for example.

Custody is the most serious sentence that may be used against young offenders in Canada. Custody may be either secure or open. Secure custody refers to facilities designated for secure restraint. Open custody refers to facilities such as residential centres or group homes. Terms of custody for young offenders are limited to a maximum of two years for convictions for which the adult maximum is not life imprisonment. For crimes punishable by life or where multiple offences are involved, the maximum is three years, and for first degree murder a young offender may be sentenced in youth court for up to ten years: six years in custody followed by four years of conditional supervision.

Probation involves placing a number of conditions on the offender for a specified period of time—up to two years. Probation orders include a number of mandatory conditions and may include other optional conditions. The mandatory

conditions require the offender to keep the peace, be of good behaviour, and appear before the court as required. Optional conditions may include a curfew, reporting to a probation officer, and attending school. Probation is often used in combination with other sanctions.

A fine involves an amount of money that the offender must pay to the government through the court. Fines for a young offender may not exceed \$1,000.

A community service order is a disposition where a young person is ordered to perform unpaid work for the community. The maximum length of a community service order is 240 hours with a maximum term of completion of twelve months.

Other available sanctions include restitution, compensation, prohibition or a conditional or absolute discharge.

Overview of Youth Sentencing

This Juristat examines young offenders who have been convicted of a federal statute offence. In 1998/99, 67% of all youth court cases (71,961 of 106,665 cases heard) ended with a finding of guilt. This proportion has varied little over the past seven years, ranging from a low of 66% in 1995/96 to a high of 68% in 1996/97. Cases involving multiple charges had a higher conviction rate (78%) than cases involving only a single charge (60%).

Across the country, the proportion of convictions varied significantly, from a high of 87% in New Brunswick to a low of 58% in Manitoba. Procedural differences in the use of stays, withdrawals and whether alternative measures are applied pre- or post-charge will impact on these jurisdictional variations. Police and prosecutorial charging practices will also lead to variation. The conviction rate in Manitoba may be particularly affected by the use of alternative measures at the post-charge stage.

Nationally, in 1998/99, there were 294 cases with at least one conviction per 10,000 youth. As Table 1 illustrates,

Table 1

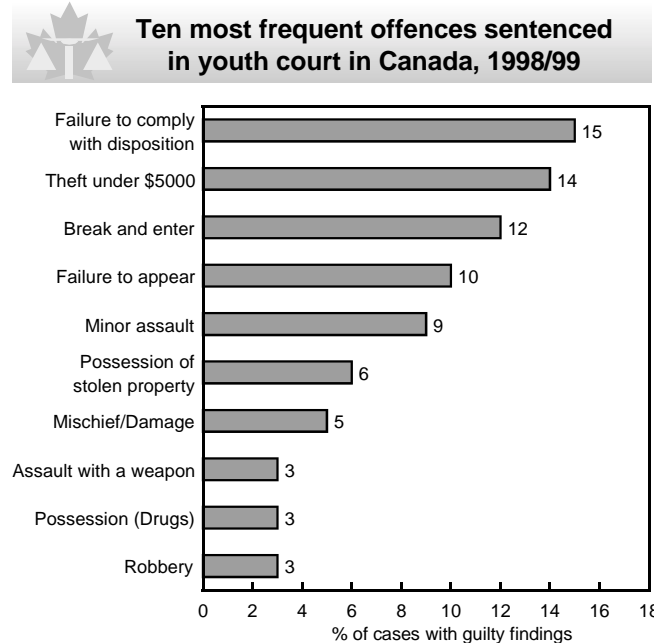
Youth court guilty rates and youth population, 1998/99			
	% of youth population	% of cases with convictions in youth court	Conviction rates per 10,000 youth
Canada	100	100	294
Newfoundland	2	2	350
Prince Edward Island	<1	<1	220
Nova Scotia	3	3	284
New Brunswick	3	2	281
Quebec	23	13	162
Ontario	37	34	269
Manitoba	4	7	504
Saskatchewan	4	9	690
Alberta	11	17	457
British Columbia	13	12	260

Source: *Youth Court Survey, Canadian Centre for Justice Statistics, Annual Demographic Statistics, 1999.*

Quebec produced the fewest number of convictions per 10,000 youth at 162. Saskatchewan (690 cases with convictions per 10,000 youth), had a rate of convicted youth over four times the rate noted in Quebec. Manitoba (504 per 10,000) and Alberta (457 per 10,000) also had proportionally more cases with convictions than the national rate.

As Figure 1 illustrates, a relatively small number of offences represent a large proportion of cases with guilty findings. As noted earlier, this offence distribution is largely dependent on police charging practices. One notable difference between police charging and convictions in youth court is the large number of administrative offences generated after charges have been laid by the police. In fact, one-quarter of convicted cases in youth court were for failure to comply with a disposition (YOA) (15%) and failure to appear (10%).

Figure 1



Source: Youth Court Survey, Canadian Centre for Justice Statistics.

Majority of sentenced youth are male

The proportion of males and females sentenced reflects the distribution of those charged by police. For example, 77% of youths charged by police were male while 80% of those convicted in youth court were male. However, the proportion of females convicted has been increasing over time. In 1992/93, females represented 16% of cases with guilty findings, a figure that has steadily increased to the current 20%. Several offence categories contain a higher proportion of sentenced females; these include minor (level 1) assault (32%) and fraud (30%). The proportion of cases resulting in a conviction for females (64%) was lower than the proportion for males (68%).

Across jurisdictions, the proportion of females sentenced varied substantially. Females represented 27% of cases with convictions in the Northwest Territories compared to 9% in Quebec.

In 1998/99, one-half (51%) of convicted youths were aged 16 or 17 even though these two ages represented only one-third of the youth population. Male offenders, on average, tended to be older than female offenders. Fifty-three percent of male offenders were aged 16 or 17 while the comparable figure for females was 41%.

Custody and probation most commonly used sanctions

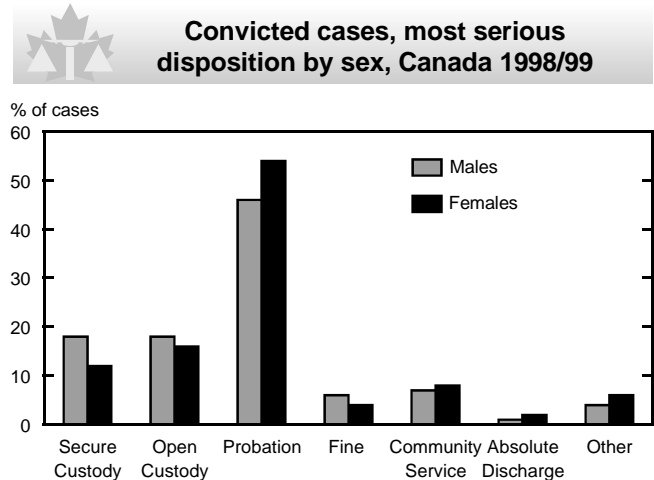
For cases with a finding of guilt, probation accounted for the most significant disposition in nearly half (48%) of all cases, followed by terms of custody (35%). Custody sentences were almost evenly split between open (18%) and secure (17%). Community service orders were the most significant disposition in 7% of cases, while fines accounted for 6%. Variations in the use of sanctions across the provinces and territories, as seen in Table 2, will be explored later in this Juristat.

Females more likely than males to receive a community based disposition

Figure 2 demonstrates the slightly different patterns of sentencing of males and females. Seventy-two percent of cases involving females resulted in a community based sanction compared to 64% for males. Males were more likely than females to receive a custody sanction or a fine. Thirty-seven percent of males received custody as the most serious disposition compared to 28% of females.

On an offence by offence basis males are sentenced more severely than females. For example, 27% of males convicted of theft under \$5,000 received custody as the most serious disposition and 53% received probation. For females, 17% received custody and 60% received probation. Further, these sentencing differences hold true regardless of the number of charges in the case or the criminal history of the offender.

Figure 2



Source: Youth Court Survey, Canadian Centre for Justice Statistics, Statistics Canada

Table 2

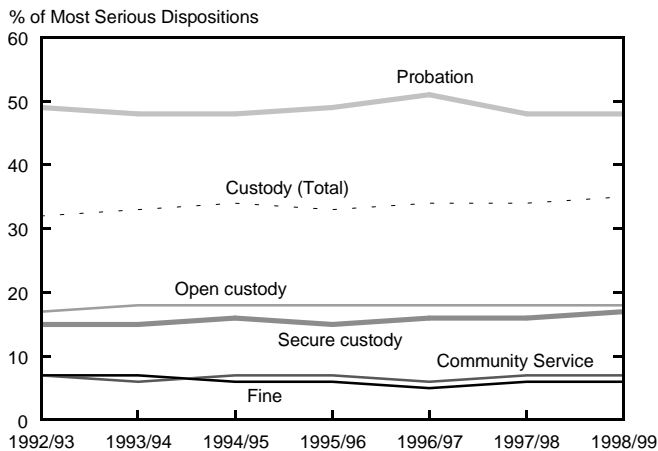
Dispositions Imposed by Youth Courts in Canada, 1998/99

Jurisdiction	Total	Most Significant Disposition						
		Secure Custody	Open Custody	Custody Total	Probation	Fine	Community Service Order	Other ¹
%								
Canada	71,961	17	18	35	48	6	7	5
Newfoundland	1,748	22	21	43	50	3	1	4
Prince Edward Island	271	26	19	45	46	4	4	1
Nova Scotia	2,152	2	33	35	52	6	5	1
New Brunswick	1,741	19	13	32	60	5	1	2
Quebec	9,099	16	14	30	55	3	8	4
Ontario	24,308	20	21	42	46	3	5	5
Manitoba	4,904	16	16	32	47	6	7	7
Saskatchewan	6,683	19	16	35	48	4	12	2
Alberta	11,909	16	10	26	40	15	13	5
British Columbia	8,276	12	22	33	56	4	2	4
Yukon	260	35	7	42	40	4	-	14
Northwest Territories	610	14	23	38	39	3	2	19

¹ Other includes compensation, pay purchaser, compensation in kind, restitution, prohibition, seizure, forfeiture, and conditional or absolute discharge.
 Source: Youth Court Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Figure 3

**Most Significant Disposition, Canada
1992/93 - 1998/99**



Source: Youth Court Survey, Canadian Centre for Justice Statistics, Statistics Canada

Use of Custody

Custody was used as the most significant disposition in 35% of cases with guilty findings. Secure custody (17%) was used almost as often as open custody (18%). Twelve percent of all secure custody orders also had terms of open custody attached to them.

The use of secure custody has increased slightly over the past seven years while the use of open custody has remained relatively stable. The 17% percent of youth receiving secure custody in 1998/99 was up slightly from 15% in 1992/93. Over

the same period, a slight change was noted in the use of secure custody for property offences. In 1998/99, 15% of property offence cases resulted in a term of secure custody, up from 12% in 1992/93.

The relative stability in the use of custody across offence categories tends to veil changes within specific offences. Minor assaults have increasingly been receiving terms of secure custody, rising from 8% in 1992/93 to 12% in 1998/99. For robbery, the use of secure custody peaked in 1993/94 at 38% and has been declining since. In 1998/99, 27% of robbery cases received secure custody as the most significant disposition. The use of secure custody for Theft under \$5,000 has been increasing. In 1992/93, 5% of these cases resulted in secure custody, a proportion that doubled to 10% by 1998/99.

Custody orders were almost evenly split between 16 and 17 year-olds and 12 to 15 year-olds. Just over one-half (53%) of all custody orders went to 16 and 17 year olds.

The majority of custody orders are for less than three months

In the majority of cases custody orders were short. Seventy-seven percent of both open and secure custody orders were for three months or less. Fully ninety-two percent of secure custody orders and ninety-four percent of open custody orders were for terms of six months or less. Only two percent of secure and one percent of open custody orders were for periods of longer than one year.

Over time the number of very short custody terms (less than one month) has been increasing. In 1998/99, thirty-five percent of secure custody orders were for terms of one month or less, up from 28% in 1992/93. A similar increase was noted for open custody orders.

The median length of open custody orders was longer than the median length of secure custody orders (43 days compared to 30 days). Males tended to be sentenced to longer terms of custody than females. For males the median term of open custody was 45 days compared to 30 days for females. Secure custody orders were much closer in median length; the term for males (31 days) was only marginally higher than the term for females (30 days).

The median length of both open and secure terms of custody has decreased over the past seven years. In 1992/93, the median length of both secure and open custody orders was sixty days. These figures dropped to 30 days for secure and 43 days for open by 1998/99. This change can be contributed to two main factors. One factor is a decrease in the median length of custody orders for violent offences. Median sentences for violent offences declined from 90 days in 1992/93 to 60 days in 1998/99. A second important factor in the decline of median sentence lengths was the dramatic increase in custody orders for violations of the YOA, where the number of cases ending in custody more than doubled from 1992/93 to 1998/99. Although the median length of sentences for YOA violations remained stable at 30 days, the increased number of these short sentences contributed to the overall decline in median sentence lengths.

Custody for violent and non-violent offences

Youths convicted of violent offences were only slightly more likely than youths convicted of property offences to receive a term of secure or open custody (32% compared to 31%). Although this may give the impression that violent offenders are not being dealt with more severely, nearly half (48%) of all violent offence convictions were for minor (Level I) assaults which had a custody rate of 25%. Excluding these minor assaults, the proportion of violent offenders receiving custody increases to 39%. For the most serious violent offences, (murder, attempted murder, manslaughter and aggravated sexual assault), the proportion of offenders receiving custody was 96%.

Another factor that may contribute to the similar incarceration rate for violent offenders and property offenders is the greater number of youths convicted of property offences who have prior criminal convictions. Forty-five percent of property offenders compared to 37% of violent offenders had prior convictions. The incarceration rate for repeat offenders, as will be discussed later, is significantly higher than for youths with no previous convictions.

Close to half (48%) of all youths convicted of offences against the YOA were sentenced to terms of custody. Nearly all (98%) of these convictions were for failure to comply with a disposition. The high incarceration rate for this offence indicates that youth courts take a dim view of offenders who do not respect court orders.

Youths convicted for drug offences were unlikely to receive terms of custody. Less than one in five convicted youth (18%) received custody terms for drug offences.

Offenders with past custody dispositions likely to receive custody again

Young offenders who have served a custody disposition in the past⁶ faced a substantially increased chance of receiving another custody disposition. Analysis reveals that the disposition that an offender received in the past has a strong influence on current sentencing. For repeat offenders, across all offences, the current sentence varied dramatically based on previous sentencing decisions. A repeat offender who had received a custody disposition in the past was more likely to receive custody again. In fact, 70% of repeat offenders with a history of custody received custody again as the most serious disposition. In contrast, only 32% of repeat offenders with no history of custody received custody as their most serious sentence.

This sentencing trend held true regardless of the offence. For example, 60% of repeat offenders with a past custodial sanction received custody as the most significant disposition for theft under \$5,000 compared to 20% of repeat offenders whose prior conviction resulted in a non-custodial disposition. These figures are contrasted to the 7% of first-time offenders sentenced to custody for theft under \$5,000 in 1998/99.

Jurisdictional use of custody varied considerably

As Table 2 indicates, Prince Edward Island employed custody at the greatest rate, where it accounted for the most serious disposition in 45% of cases with guilty findings. Newfoundland (43%), Ontario (42%) and the Yukon Territory (42%) also applied custody at a rate notably higher than the national average. Alberta, on the other hand, used custody the least frequently employing this sanction in 26% of cases. Quebec (30%) also demonstrated a use of custody at a rate below the national average.

In Nova Scotia secure custody was ordered in only 2% of cases, with the bulk of orders consisting of open custody. Conversely, the Yukon Territory used open custody in only 7% of cases with the majority of custody terms being secure. Variations in the use of open and secure custody across the jurisdictions, to some degree, reflect the availability of facilities, and how the levels of custody are determined in each jurisdiction. Northwest Territories for example, used open custody more frequently than most jurisdictions due to their “on-the-land” programs.

Cases involving multiple charges are more likely to receive custody

In cases involving multiple charges, offenders were much more likely to receive a custody disposition. Single charge cases with guilty findings had secure custody as the most significant disposition 13% of the time and open custody 14%. In multiple charge cases secure and open custody were each used in 21% of cases. This pattern was most pronounced in cases involving six or more charges where 31% of offenders

⁶ Refers only to the most recent prior disposition.

received secure custody and 29% open custody. These results suggest that youth courts are sentencing more severely those offenders involved in more serious criminal incidents or displaying patterns of criminal behavior.

Rate of custody relatively stable

In 1998/99, as Table 3 shows, custody was used in 103 cases per 10,000 youths. This overall rate of custody use has varied little although there have been changes in the distribution of terms between open and secure custody. The rate for secure custody has been rising while the rate for open custody has been declining. For secure custody the 1998/99 rate was 50 cases per 10,000 youth, while for open custody the rate was 52. The rate for open custody is at its lowest point in the seven years for which full data are available. The rate for open custody peaked in 1993/94 at 60 cases per 10,000 youth. The rate for secure custody has been rising since 1995/96 when the rate was 45 cases per 10,000 youth.

Use of Probation

Probation continues to be the most common disposition in youth court. In 1998/99, nearly half of all convictions resulted in probation as the most significant disposition. However, probation was often combined with terms of custody—64% percent of all dispositions included a period of probation. As Figure 3 indicates, the use of probation has varied little, ranging from 48% to 51% of most serious dispositions over the past seven years.

The majority (77%) of probation orders were for terms of greater than six months. Terms of probation of three months or less were rare, accounting for only three percent of orders. The median length of probation orders was 360 days. This figure has remained stable over the seven-year tracking period, matching the figure recorded in 1992/93 and every year since. Probation orders for males and females both had median lengths of 360 days in 1998/99.

Probation dispositions used as often for property as violent offences

Fifty-four percent of offenders convicted of crimes against property received probation as the most significant disposition compared to 58% of offenders convicted of violent offences. The proportion for violent offences was bolstered by the fact that minor assaults, which account for 48% of all violent crime, had probation as the most significant disposition 62% of the time. Excluding minor assaults, probation was the most significant disposition in 53% of violent cases.

Offenders facing multiple charges and offenders with prior convictions were less likely to receive probation as the most significant disposition. (Note that re-offences for administrative offences are not included in these figures). For youths with three or more prior convictions, 23% received probation as the most serious sentence. In contrast, two-thirds of young offenders with no prior convictions received probation as the most significant disposition. One-half of youths facing a single charge received probation as the most significant disposition compared to 42% of youths facing three or more charges.

The use of probation varied significantly by region. New Brunswick (60%) and Quebec (55%) were the most likely to use probation as the most significant disposition. Alberta (40%) and the territories (Yukon 40% and Northwest Territories 39%) were the least likely to employ this sanction.

Use of fines

A fine was the most significant disposition in 6% of cases in 1998/99. The bulk (87%) of fines ranged from \$50 to \$500. Forty-two percent of fines ranged from \$50 to \$100 dollars while forty-five percent were between \$101 and \$500.

Table 3

	1992/93	1993/94	1994/95	1995/96	1996/97	1997/98	1998/99	% change from 1992/93 to 1998/99
Youth custody rate (per 10,000) in Canada, 1992/93 to 1998/99								
Youth Population	2,305,122	2,330,863	2,359,075	2,386,304	2,417,604	2,439,839	2,451,946	6.4
Total Youth Custody	24,454	25,945	25,212	24,312	25,278	25,669	25,169	
Custody Rate	106	111	107	102	105	105	103	-3.2
% change in rate	...	4.9	-4.0	-4.7	2.6	0.6	-2.4	
Secure Custody	11,301	11,874	11,616	10,850	11,772	12,199	12,312	
Secure Custody Rate	49	51	49	45	49	50	50	2.4
% change in rate	...	3.9	-3.3	-7.7	7.1	2.7	0.4	
Open Custody	13,153	14,071	13,596	13,462	13,506	13,470	12,857	
Open Custody Rate	57	60	58	56	56	55	52	-8.1
% change in rate	...	5.8	-4.5	-2.1	-1.0	-1.2	-5.0	

* refers to the previous year.

... not applicable.

Source: Youth Court Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Impaired operation was the offence most likely to result in a fine (59%) as the most serious disposition. This is not surprising as the offence carries a minimum fine of \$300 for first time adult offenders.

A notable change occurred in the use of fines for other federal statute offences over the past seven years. While fines were the most significant disposition in 56% of crimes in this category in 1992/93, the proportion rose to 71% in the reference year.

Community service orders

Although community service orders were the most serious disposition in only 7% of cases, they were often combined with other, more serious dispositions. Fully 29% of all sentences passed in youth court contained community service orders. As the most significant disposition, community service orders were employed to the greatest extent for offences against the YOA (11%).

Recidivism and sentencing

A major concern for youth courts and policy makers are youths who continue to commit offences after being convicted and sentenced.

Defining Recidivism

The definition of a recidivist in this report is a young person who was found guilty of at least one federal statute offence during 1998/99 and had been previously convicted in a youth court of at least one other federal statute offence since 1990. However, conviction for a violation of the Young Offenders Act and post-disposition administrative offences in the Criminal Code are excluded from this analysis. The majority of Young Offenders Act violations are failure to comply with a disposition, and Criminal Code post-disposition administrative offences such as failure to comply with a probation order, escaping from custody, and being unlawfully at large. Also, offence data from Nova Scotia are excluded from the analysis.

Forty-two percent of youth had prior convictions

Overall, 42% of youths sentenced in 1998/99 were considered recidivists and conversely 58% of youths sentenced in the same year received their first conviction. Aside from first time offenders, the largest portion of sentenced young offenders (20%) had only one previous conviction. Twelve percent of youth could be considered persistent offenders, having amassed three or more previous convictions prior to their current sentencing. Two percent of youths had six or more previous convictions before their current sentencing appearance.

Recidivists tend to be older and more likely to be male

Table 5 indicates recidivists were concentrated among the oldest young offenders. Approximately one in three 12-15 year olds had been previously convicted while the comparable figure for 16 and 17 year olds was one-half. This difference is

not unexpected, given that older offenders had more time at risk of committing an offence and being caught. For example, a thirteen year-old would have to have a conviction in the past year or so to be considered a recidivist while a seventeen year-old would qualify as a recidivist if convicted anytime in the five previous years.

Male offenders were more likely to have a prior conviction than female offenders. Forty-four percent of male offenders had prior convictions compared to 34% of females.

Table 4

Prior Convictions	Sex		
	Total	Male	Female
Total	44,981	36,326	8,655
		%	%
No Priors	25,865	55	66
1 prior	9,149	21	20
2 priors	4,484	10	8
3 priors	2,411	6	3
4 priors	1,310	3	2
5 priors	784	2	1
6 or more	978	3	1

Source: Youth Court Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Older youths and males also more likely to be persistent offenders

Proportionally twice as many males as females were persistent offenders. Thirteen percent⁷ of males had three or more prior convictions compared to 7% of females. A greater proportion of seventeen year-olds (18%) and sixteen year olds (15%) had at least three prior convictions compared to their younger counterparts.


Some offences have higher rates of recidivism

A majority of youths charged with Failure to Appear are recidivists. Fully 61% of young offenders charged with this offence have prior convictions. Over one-half of offenders convicted of possession of stolen property and theft over \$5,000 (both at 54%) had prior convictions. Convicted youth in cases of assaulting a police officer and forgery (both at 52%) were slightly more likely to be recidivists than first-time offenders.

Several offences involved significantly higher proportions of persistent offenders (three or more previous convictions). Nearly one-quarter of youths convicted of theft over \$5,000 had three or more previous convictions and six percent had six or more. One in five cases of possession of stolen property involved youths with three or more priors.

⁷ Due to rounding in Table 4 figures in the text may not match those in the table.

Table 5



Cases by age of accused and number of prior convictions, Canada 1998/99

Jurisdiction	Age						
	Total	12	13	14	15	16	17
Canada¹	44,981	1,469	3,517	6,707	9,693	11,056	12,061
		%	%	%	%	%	%
No Priors	25,865	84	73	65	58	52	49
1 prior	9,149	13	17	21	21	21	21
2 priors	4,484	2	6	8	10	11	12
3 priors	2,411	1	2	4	5	6	7
4 priors	1,310	--	1	2	3	4	4
5 priors	784	--	--	1	1	2	3
6 or more	978	-	--	1	1	3	4

¹ Row does not sum to total as information on offenders under age 12, over age 17 or where age is unknown are not displayed in this table.

-- amount too small to be expressed.

- nil or zero.

Source: Youth Court Survey, Canadian Centre for Justice Statistics, Statistics Canada.

The majority of youths who re-offended did so within 6 months

Six in ten youths who re-offended in 1998/99 did so within six months of their previous disposition. The number of prior convictions had little impact on the elapsed time before the next offence. Fifty-nine percent of youths with one previous conviction re-offended within six months compared to 62% of youths with 3 or more priors. Nine in ten youths who re-offended in 1998/99 did so within one year.

Sentencing of recidivists

As one would expect sentencing patterns reveal a different picture when examined in the context of first-time and repeat offenders. Recidivists in general tend to be sentenced more harshly than first-time offenders. The number of prior convictions also led to significant differences in sentences. For example, while only 14% of first-time offenders received terms of custody, 81% of those with six or more previous


convictions received a term of custody as the most significant disposition.

The number of prior offences also influenced the length of custody that offenders received. Thirty-two percent of offenders with one prior conviction received a term of custody of less than one month compared to 19% of offenders with 6 or more prior convictions.

Comparison of adult and youth sentencing

The YOA states that a young offender should not receive a harsher sentence than an adult would for the same crime. This leads to the question of whether youths currently receive harsher sentences for some offences. For the most serious criminal offences, such as murder, adults clearly receive harsher penalties. However, offences that carry life sentences represent only a very small fraction of all crimes recorded by

Table 6



Number of Priors by Most Serious Disposition, Canada 1998/99

Most Significant Disposition	Total Custody	Secure Custody	Open	Probation	Fine	Other ¹
Priors		%	%	%	%	%
Total	44,981	14	13	55	5	12
No priors	25,865	6	8	67	5	14
1 prior	9,149	15	18	49	6	12
2 priors	4,484	25	23	38	6	9
3 priors	2,411	35	24	28	6	6
4 priors	1,310	43	23	23	6	6
5 priors	784	49	21	21	4	5
6 or more	978	60	20	11	3	5

¹ Other includes community service, compensation, pay purchaser, compensation in kind, restitution, prohibition, seizure, forfeiture and conditional discharge or absolute discharge.

Source: Youth Court Survey, Canadian Centre for Justice Statistics, Statistics Canada.

the police. This section makes comparisons of the sentencing of adults⁸ and youths for the most common offences.

The sentencing comparisons in this section are based only on cases involving a single charge. Multiple charge cases are excluded from the analysis because only in single charge cases can one directly relate the crime and the punishment to a specific offence. This occurs because the court surveys have no indicator for consecutive or concurrent sentences and thus cannot clearly identify aggregate sentences. For young offenders, terms of open custody and secure custody are combined and reported as custody. The offences selected represent the most commonly sentenced offences in youth court, (see Figure 1) excluding offences against the YOA. These nine most common offences in youth court represent 65% of the year's caseload (the excluded YOA offences represents a further 15% of the caseload). One factor that has a significant impact on the sentence imposed is the prior record of the offender. In this comparison, prior record is not controlled for. Adult offenders may be more likely to have a prior record due to the greater period of time at risk for committing an offence.

It is difficult to make direct comparisons between the custodial sentences of young offenders and adults. Unlike youths, the length of time adults spend in custody is governed by the *Corrections and Conditional Release Act*. Most adult offenders, through parole or statutory release, will spend one-third to two-thirds of the court imposed sentence incarcerated, with the remainder of their sentence spent in the community, unless they pose a serious risk to the public. Most youths, on the other hand, must spend their entire sentence in custody. For example, an adult sentenced to six months for an offence would most likely spend two to four months of the sentence incarcerated and the remaining two to four months in the community under supervision. A young offender, on the other hand, sentenced to six months for the same offence would spend the entire six months in custody.

For youths, early release is not common. Mandatory reviews of youth dispositions occur annually for sentences of more than one year (terms of one year or more represent only 1% of all youth custody orders). Custody dispositions may also be reviewed after six months at the request of either the youth or the provincial or territorial Attorney General.

Overall, an equal proportion of youths and adults (35%) received custody as the most serious sentence. Youths were much more likely to receive a term of probation, 48% versus 28% as the most serious sanction. Adults on the other hand received fines at a rate notably higher than youths. One-third of adults received a fine compared to 6% of youth. This difference is understandable. The difference in the use of fines may also be explained by the higher percentage of adult offenders convicted of impaired driving. As well, there is a significant difference in the ability of a youth and an adult to pay a fine. The burden of a fine on a young offender may be passed on to the parents rather than acting as a punishment for the youth.

Given the differences in the use of the various non-custodial sanctions, comparisons between youth and adult offenders will be made on the basis of custodial sentences. Custody is

the most serious sanction that may be imposed by a court in Canada, it thus provides a useful index of how severely various crimes are dealt with.

For some common offences, a greater proportion of adults than youths received sentences of custody⁹, whereas for other offences there was little or no difference. For example, where one quarter of youths were sentenced to custody for break and enter, slightly more than half (51%) of adults were imprisoned for the same crime. The difference was not as pronounced for other common offences. For minor assault, 17% of youth and 19% of adults were sentenced to custody in 1998/99. Similarly, for property damage/mischief near identical proportions of young offenders and adults received custody as the most serious disposition.

Although it may appear from the higher incarceration rates for all the offences examined that adults are punished more severely than youth, a different picture is revealed when the

Table 7

Custody usage for adult and youth offenders, Canada 1998/99

Offence		Single charge cases	
		Number of Single Charge Cases	% Receiving Custody as Most Serious Disposition
Theft Under \$5000	Adult	10,900	27
	Youth	5,103	15
Failure to Appear	Adult	10,433	54
	Youth	4,368	36
Minor Assault	Adult	13,010	19
	Youth	3,788	17
Break and Enter	Adult	3,050	51
	Youth	3,527	25
Property Damage/Mischief	Adult	3,596	17
	Youth	2,002	16
Possession (CDSA)	Adult	6,223	13
	Youth	1,486	9
Assault Weapon/Bodily Harm	Adult	3,259	34
	Youth	1,135	25
Possession of Stolen Property	Adult	3,424	35
	Youth	1,653	27
Robbery	Adult	623	69
	Youth	746	40

Source: Adult Court Survey, Youth Court Survey, Canadian Centre for Justice Statistics, Statistics Canada.

⁸ Note: Coverage of the Adult Criminal court Survey is limited to eight jurisdictions representing approximately 80% of the national adult criminal court caseload. Coverage of the ACCS also excludes data from Superior courts.

⁹ Includes only single charge cases.

same offences are examined in terms of the length of the custody sentence. Youths frequently are sentenced to longer periods of custody. As Table 8 shows, for many common offences, a greater proportion of adults who receive custody are sentenced to a term of one month or less. Even without accounting for the early release provisions for which only adults are eligible, adult custodial sentences are routinely shorter.

In cases of common assault, where the incarceration rates are nearly identical, almost six in ten adults sentenced to custody receive a term of one month or less while for youths only about a third receive a sentence of this length. Common assault is the most frequently occurring violent crime for both young offenders and adults.

In cases of property damage/mischief, where a nearly identical proportion of youths and adults receive sentences of custody, adults were twice as likely to receive a short custody term. Seventy-one percent of adult offenders compared to 37% of young offenders received sentences of 30 days or less.

In fact, of the nine common offences examined, only for robbery were youth more likely to receive a short (one month or less) term of custody. Thirteen percent of youth and 19% of adults were sentenced to a term of one month or less for robbery.

Table 8

Custody length for adult and youth offenders, Canada 1998/99

Offence		Single charge cases	
		1 month or less	Greater than 1 month
Theft Under \$5000	Adult	62	38
	Youth	42	58
Failure to Appear	Adult	78	22
	Youth	48	52
Minor Assault	Adult	57	43
	Youth	35	65
Break and Enter	Adult	20	80
	Youth	17	83
Property Damage/Mischief	Adult	71	29
	Youth	37	63
Possession (CDSA)	Adult	80	20
	Youth	55	45
Assault Weapon/Bodily Harm	Adult	37	63
	Youth	28	72
Possession of Stolen Property	Adult	46	54
	Youth	26	74
Robbery	Adult	14	86
	Youth	19	81

Source: Adult Criminal Court Survey, Youth Court Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Trends in the sentencing of young offenders and adults show some interesting differences. Analysis of adult sentencing patterns reveals that while the proportion of cases sentenced to prison has increased slightly, prison sentence lengths have increased substantially. The median length of prison sentence rose from 30 days in 1994/95 to 45 days in 1998/99. For youths, over the same time period, there was a slight increase in the number of custody dispositions but the length of the custody sentences decreased substantially. In 1994/95 the median length of a youth custody disposition was 45 days, by 1998/99 that figure had dropped to 30 days. If one bears in mind the use of early release for adult offenders the actual median sentence length of youth and adults is quite comparable.

The comparison of adult and youth offenders reveals that youth are less likely to receive custody dispositions for the nine most common offences. However, for each of the offences examined with the exception of robbery, adults were more likely than youths to receive a short term of custody (less than one month). This result is surprising, as adult offenders due to their additional years at risk are more likely to have lengthier criminal histories that could increase the severity of their punishments. Early release provisions available only to adults must also be considered when interpreting this comparison.

The above comparisons show that although there are differences in how adult and youth offenders are dealt with these differences may not be as large as previously thought. Analysis based on these common offences suggests that while youths may have a lower incarceration rate than adults, they sometimes serve longer terms of imprisonment.

Methodology

The Youth Court Survey (YCS) is a census of Criminal Code and other federal statute offences heard in youth court for youths aged 12 to 17 (up to the 18th birthday) at the time of the offence. Though every effort is made by respondents and the Canadian Centre for Justice Statistics (CCJS) to ensure complete survey coverage, slight under-coverage may occur in some jurisdictions. Refer to the annual publication Youth Court Data Tables 1998/99 for more information on data collection, editing, and compilation.

In this Juristat, the unit of analysis is the case, which is defined by the YCS as one or more charges laid against a young person and presented in a youth court on the same date. Case counts are categorized by the most serious charge, most serious decision and most serious disposition. Consequently, less serious charges, decisions and dispositions are under-represented. The determination of the most serious charge at the beginning of court proceedings is by the ordering of charges from most to least serious. Violent charges are given first priority in the ordering process, followed by drug and narcotic offences, property offences, other Criminal Code offences, offences under the *Young Offenders Act* (YOA), and other federal statute offences. Offences are further ranked within these offence categories. Refer to the annual publication Youth Court Data Tables for more information on the ordering criteria.

Since a case with more than one charge may have more than one type of decision, the “most significant decision” has been selected for analysis on the basis of the following order from most to least serious: transfer to adult court, guilty, other decision (e.g., not fit to stand trial), stay of proceedings, charge withdrawn, or transfer to other jurisdiction, and not guilty or charge dismissed. The case is described by the most serious or “significant” charge in the case, which is associated with the court decision. The most significant disposition is determined by the effect the disposition has on the young person. Dispositions are ordered from most to least serious as follows: secure custody, open custody, probation, fine, compensation, pay purchaser (a dollar amount to innocent purchaser of stolen goods), compensation in kind, community service order, restitution, prohibition/seizure/forfeiture, other disposition, conditional discharge and absolute discharge. The reader is advised that the use of the decisions ‘stay’ and ‘withdrawn’ for administrative purposes (e.g., to reduce charges or to correct details on an information) vary by jurisdiction. To terminate and recommence a case for administrative purposes has been found to inflate the total number of cases reported to the Youth Court Survey. As well, charges are stayed or withdrawn pending the outcome of Alternative measures Programs in post-charge jurisdictions such as Ontario and Manitoba. As much as 30% of the national caseload is stayed or withdrawn and a proportion of these are the result of Alternative Measures or administrative procedures. Ontario, Manitoba, Saskatchewan and British Columbia are most affected by these practices. Consequently the reader is encouraged to analyze cases with guilty findings (convictions) to increase comparability among the jurisdictions, where possible.

Differences in data over time and across jurisdictions result from a number of factors that reflect how the YOA has been implemented. Pre-court screening procedures may affect the

number of youth appearing in court. The Crown Attorney, for example, may decide not to proceed with a charge, or the initial charge may be changed. Pre-charge screening by the Crown is mandatory in New Brunswick, Quebec and British Columbia. A youth may also be diverted from the court process into a program such as Alternative Measures (either before or after police lay charges) or a police diversion program.

Alternative Measures (AM) programs are generally reserved for first-time offenders and are limited to specific types of less serious offences. Except for New Brunswick, Ontario and Yukon, all AM programs are combined pre-and post-charge programs with the preference, and the general practice, to refer youths at the pre-charge stage (i.e. before charges are laid). In New Brunswick, the AM program operates at the pre-charge stage only. In Ontario, youths are only referred to AM programs at the post-charge stage (i.e. after charges are laid). In the Yukon Territory, the general practice is to refer youths to the AM program at the post-charge stage, although, on occasion, they may be referred at the pre-charge stage. AM cases are excluded from the Youth Court Survey data either in the jurisdiction or at the CCJS, if they are identified. Nevertheless, differences in procedures and eligibility requirements of these programs influence the volume and characteristics of cases heard in youth courts.

The Adult Criminal Court Survey (ACCS) follows a similar pattern as the YCS in defining cases. Some limitations on coverage of the survey should be noted. First, three provinces (New Brunswick, Manitoba and British Columbia) are not included in the survey at this time. Second, some court locations in Quebec are not included. Information from Quebec’s 140 municipal courts (which account for approximately 20% of federal statute charges in that province) are not yet collected. Finally, with the exception of Alberta, no data are provided from the superior courts.

Canadian Centre for Justice Statistics

For further information, please contact the Canadian Centre for Justice Statistics, 19th floor, R.H. Coats Building, Ottawa, Ontario K1A 0T6 at (613) 951-9023 or call toll-free 1 800 387-2231. To order a publication, you may telephone (613) 951-7277 or fax (613) 951-1584 or internet: order@statcan.ca. You may also call 1 800 267-6677 (Canada and United States) toll-free. If you order by telephone, written confirmation is not required.

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