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CUSTODIAL REMAND IN CANADA, 1986/87 TO 2000/01

by Sara Johnson

Highlights

- In fiscal year 2000/01, there was a combined total of 199,500 remand and sentenced adult admissions to provincial/territorial custody. Of these, approximately 59% (118,600) were remand and 41% (80,900) were sentenced.
- Adult remand admissions almost doubled from approximately 68,000 in 1986/87 to over 110,000 in 1991/92 and have remained relatively constant thereafter. Since 1986/87, the proportion of admissions to provincial/territorial custody that were remands has been steadily increasing from 38% to almost 60% in 2000/01. In contrast, sentenced custody admissions reached a peak of over 120,000 in 1992/93 and have steadily decreased since then to just under 81,000 in 2000/01, partially due to the introduction of conditional sentences in 1996.
- The number of remand admissions has remained stable since 1991/92 while the number of persons charged has decreased since 1986/87. As a result, since 1991/92 the remand rate of admissions per 10,000 adults charged has increased from approximately 1,720 to 2,300 in 2000/01, an increase of 33%.
- On an average day in 2000/01, there were approximately 18,400 adults held in provincial/territorial custody, of which 40% (7,400) were held in remand and 60% (10,950) were in sentenced custody.
- The average daily count of adults remanded to custody in 2000/01 was over 7,400, approximately double the 1986/87 levels. In comparison, the average daily count of offenders in sentenced custody was steady from 1986/87 to 1989/90, increased from 1989/90 (13,000) to a peak of over 14,300 in 1994/95 then declined steadily to almost 11,000 in 2000/01.
- The proportion of remanded adults among all adults in provincial/territorial custody on an average day ranged from 23% to 30% until 1996/97, increasing steadily thereafter to 40% in 2000/01.
- The remand incarceration rate increased from 19 adults per 100,000 adults in 1986/87 to 31 in 2000/01, an increase of 63%. In contrast, the provincial/territorial sentenced incarceration rate decreased 30% from 66 per 100,000 adults in 1991/92 to 46 in 2000/01.
- In 2000/01, a total of approximately 25,000¹ young offenders were admitted to custody, of which more than 15,000 (60%) were held in pre-trial detention.
- In 2000/01, on any given day there was an average of approximately 440 youths held in pre-trial detention, an increase of 25% from 1991/92 (350), down 8% from the peak of 480 in 1997/98.
- In 2000/01 the sentenced youth incarceration rate was 135 per 100,000 youth population, a decrease (33%) from the peak of 202 in 1994/95. Conversely, the remand rate has fluctuated between 1991/92 and 2000/01, ranging from 38 to 49 over this time period, with a remand rate of 45 in 2000/01.
- One of the main factors influencing remand trends appears to be violent crime trends which follow the same patterns as adult remand admissions. A number of other factors influencing remand trends include the use of time served sentences, increasing duration of remand and implementation of conditional sentences (and conditional sentence breaches).

¹ Excludes data from Saskatchewan and Ontario youths aged 12-15 years.



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INTRODUCTION

Custodial remand, a provincial/territorial responsibility also referred to as ‘pre-trial detention’, occurs when a person is ordered by the court to be held in custody while awaiting a further court appearance. Application of the provision is clearly articulated in the Criminal Code, the former Young Offenders Act, the Youth Criminal Justice Act, the Canadian Charter of Rights and Freedoms, as well as United Nations principles on human rights. In Canada, the Charter guarantees the right to liberty and to not be deprived thereof except in accordance with the principles of fundamental justice (s. 7). Similarly, the United Nations Standard Minimum Rules for non-custodial measures (The Tokyo Rules) state that “Pre-trial detentions shall be used as a means of last resort in criminal proceedings with due regard for the investigation of the alleged offence and for the protection of society and the victim” (rule 6.1). The Charter, as well as applicable youth legislation, provides additional constraints and guidelines with respect to the use of remand.

While rates of crime and sentenced custody have been generally decreasing, admissions to custodial remand have been increasing steadily such that remands have been progressively comprising a larger share of the incarcerated population. Further, remand tends to require higher levels of security and more intensive supervision which is typically more costly. As a result, the increasing use of remand has been identified as an important operational concern among the agencies responsible for the administration of provincial and territorial correctional services. This *Juristat* profiles custodial remand in Canada and examines some of the factors that may be influencing these trends in its use. Note that due to gaps in coverage for youth corrections data in several jurisdictions, this *Juristat* focuses primarily on adult corrections.

Text Box 1 – Legal Framework

- **Canadian Charter of Rights and Freedoms.** Sections 8 through 14 of the Charter specify the circumstances under which the deprivation of life, liberty and security of the person violate the principles of fundamental justice and in turn are in violation of the Charter. Notably, with respect to remands the Charter specifies that everyone has the right not to be arbitrarily detained or imprisoned (s. 9). Everyone has the right on arrest or detention to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful (s. 10 (c)). Any person charged with an offence has the right to be presumed innocent until proven guilty and to not be denied reasonable bail without just cause (s. 11 (e)).

- **Criminal Code.** The Criminal Code provides guidance with respect to the circumstances and procedures surrounding the arrest of a person and the decisions relating to judicial interim release and remand to custody.

Section 503(1) – This section stipulates that unless released by the police, an arrested person who is to be detained in custody must be brought before a justice of the peace without unreasonable delay, when one is available, within a period of 24 hours. Where a justice of the peace is not available within 24 hours, the person is to be taken before the justice of the peace as soon as possible.

Section 515 – This section provides the reasons for which custodial remand is justified. It stipulates that the prosecutor must *show cause*, in respect of the offence, why the detention of the accused in custody is justified. In the case of certain specified offences such as murder (*subsection 6*), the onus is on the accused to show cause as to why he or she should not be detained in custody. The detention of an accused is justified on the following grounds (*subsection 10*):

- a) to ensure his or her attendance in court;
- b) for the protection or the safety of the public;
- c) on any other just cause being shown and where the detention is necessary in order to maintain confidence in the administration of justice.

Note that, on application made by the prosecutor or the accused, the order for remand may be made before or at any time during the course of the proceedings under section 515 (see section 516).

- **Youth Criminal Justice Act.** Effective April 1, 2003 the Youth Criminal Justice Act (YCJA) came into effect, replacing the Young Offenders Act (YOA). Under the YOA, (s. 7.1 (5)) young persons were dealt with according to the Judicial Interim Release provisions (s. 515 (10)) of the Criminal Code. Similarly, the Judicial Interim Release provisions of the Criminal Code apply to the detention and release of young persons under the YCJA (s. 28). Two noteworthy guidelines have been added to the YCJA. A young person shall not be detained in custody prior to sentencing as a social measure (e.g., child protection, mental health) (s. 29 (1)). As well, a youth justice shall not presume that detention is necessary if, after considering detention for the purpose of public safety/protection (s. 515 (10)(b)) of the Criminal Code, the young person could not be committed to custody if found guilty.

Alternatives to Pre-trial Detention

Canadian law permits several alternatives to pre-trial detention (see Figure 1). Subject to certain exceptions such as for specific serious offences, the arresting police officer may release the person with a notice to appear in court or with the intention for him or her to be summoned later. The Officer in Charge (commanding officer) may additionally enter into a recognizance² with the accused, with or without sureties (deposit of money or valuable security) or enter into an undertaking³ with conditions (such as to abstain from alcohol, or report to a peace officer). Should the accused be taken into custody ('lock-up') and not be released by the police⁴, he or she must be brought before a justice of the peace without reasonable delay where the Crown must "show cause" as to why the accused should be remanded. At this point, the justice of the peace may release the accused on an undertaking with or without conditions or, after entering into a recognizance, with or without sureties. If the accused is remanded to custody, pre-trial detention is reviewed by the court every 30 days for summary offences, and every 90 days of indictable offences. To further encourage the use of pre-trial release eight jurisdictions also operate bail supervision programs whereby the accused is supervised by a probation officer and the conditions of the recognizance are monitored (see Text Box 2).

Text Box 2 – Bail Supervision

Bail supervision, also referred to as pretrial supervision, is a supervised recognizance order that provides an alternative to custodial remand for offenders awaiting trial. This is an option that incorporates supervision of the accused in the community (e.g., reporting to a probation officer, respecting curfew hours, etc.) as part of an interim release. Currently, eight jurisdictions (Newfoundland and Labrador, Québec, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia and Yukon) operate bail supervision programs for accused adults and/or youth. The following table presents admission and average daily count statistics among jurisdictions able to provide this information for fiscal year 2001/02.

Operational Challenges

Within the Canadian correctional system, the administration of remanded inmates is a provincial/territorial responsibility. The use of remand poses case management and operational challenges for the provincial/territorial correctional system. Remanded persons are under considerable stress and are in a situation of uncertainty, not knowing if or when they may be convicted of the offence for which they have been charged. The personal circumstances which may have precipitated their criminal incident, such as mental illness or drug/alcohol abuse may not be resolved. Further, under the judicial interim release provisions of the Criminal Code, the accused may have already been deemed to be at risk to the public or of absconding. Traditional rewards for good behaviour such as remission and the granting of temporary absence passes, which are used to help control the behaviour of short term inmates, are not applicable to remands. Because of these factors, persons on remand are generally considered high risk and are usually held in maximum security settings. Maximum security bed space is comparably expensive to build and maintain and its availability is limited. Furthermore, since remanded persons are awaiting trial and require regular transportation to and from court, remand bed spaces need to be in close proximity to courts. Due to the frequent travel to and from court, the opportunity to bring drugs into correctional institutions may increase.

- ² A recognizance is an obligation entered into before a court or magistrate whereby the accused person acknowledges that he or she will do some act required by law that has been specified.
- ³ An undertaking is a promise given in the course of legal proceedings by a party or his or her counsel, generally as a condition to obtaining some concession from the court or the opposite party.
- ⁴ Police custody is commonly referred to as 'lock-up'. Depending on a number of factors such as availability of space, existence of facilities, agreements and policies between police and corrections authorities, individuals may be placed in a remand facility for lock-up reasons, pending a bail hearing. If being housed in remand facilities, they may be counted as remands.

Text Table 1



Bail Supervision Admissions and Average Count - Selected Jurisdictions, 2001/2002, 2003

Jurisdiction	Admissions		Average Count
Québec (adult)	22	(average daily count)	7.4
Saskatchewan (adult)	769	(average daily count)	337
Manitoba (adult)	1,555	(caseload ¹ January 23, 2003)	890
Alberta (adult)	3,133	(caseload March, 2002)	1,166
Alberta (youth) ²	568	(caseload March, 2002)	192
British Columbia (adult)	12,210	(average daily caseload)	5,225
Yukon (adult)	191	(caseload March 31, 2002)	58

¹ Caseload includes offenders under bail supervision as of the specified date.

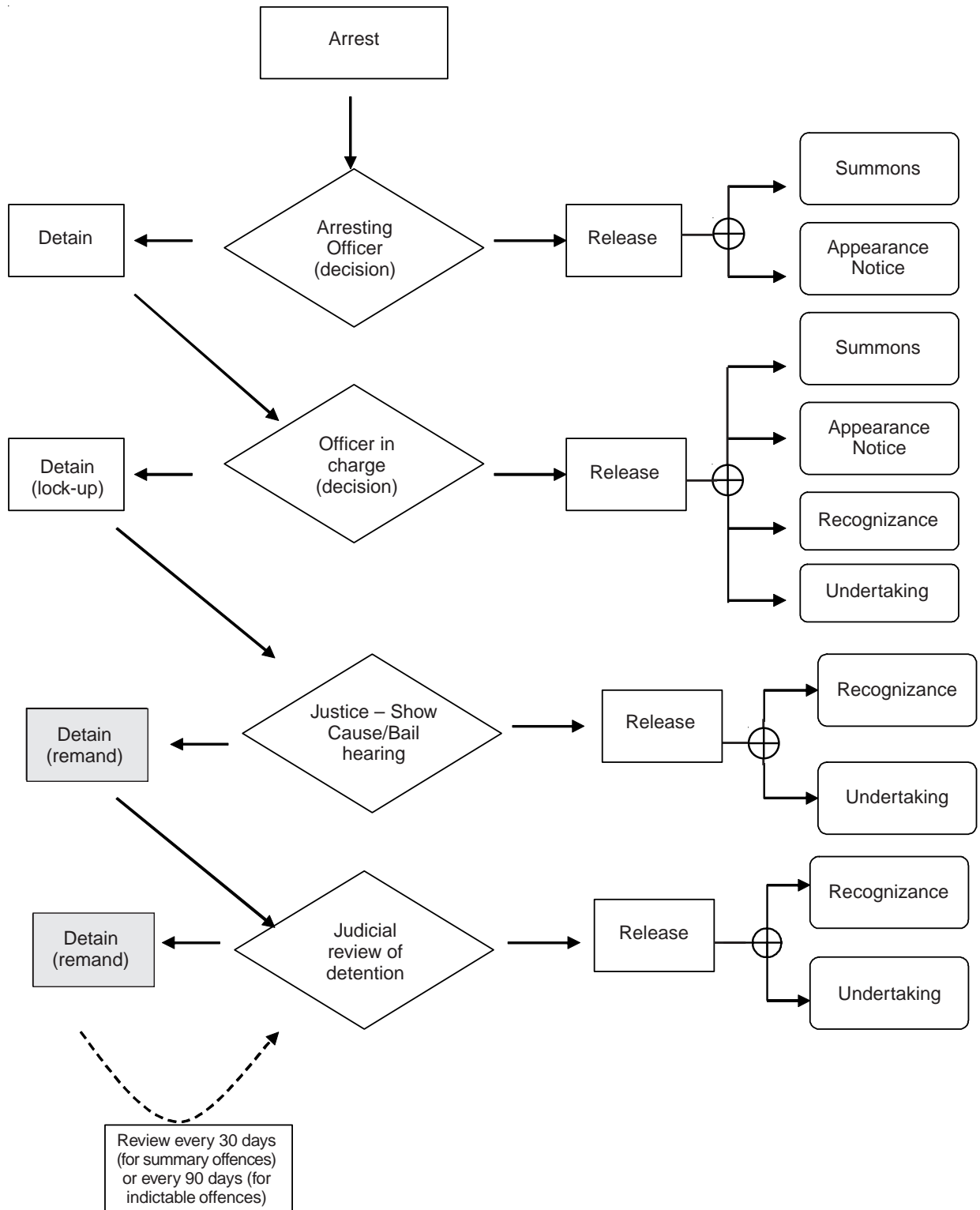
² Note: Alberta youth statistics include bail supervision and peace bonds. However, the number of peace bonds for young offenders is very low, estimated at about six per year.

Source: Jurisdictions were contacted during the preparation of this Juristat regarding the most recent bail supervision caseload information available.

Figure 1



Remand in the Criminal Justice Process



Text Box 3 - Video Remand/ Video Conferencing

Hundreds of thousands of inmate trips are made to and from court each year. In order to address some of the issues related to proximity, transportation and security, the use of video conferencing for routine bail and remand hearings has been introduced in some jurisdictions. The defendant in the detention facility, appears in court on closed-circuit TV, and talks to the defense lawyer on a private phone line. This process eliminates the need to transport prisoners to and from court each day. Video conferencing has been used in a number of jurisdictions including Québec, Ontario, Manitoba, Alberta, and British Columbia.

Impact on the accused

Another consideration with respect to pre-trial detention is the impact of custodial remand on the accused. Time on remand is commonly referred to as 'dead time', where the inmate may have little or no access to activities such as recreation, work and rehabilitative programs and services (The John Howard Society of Ontario, 2002). Provincial correctional facilities are designed and programmed primarily for inmates serving short sentences, such as 50 to 100 days, but not long-term remands. Structured programming (e.g., substance abuse treatment, anger management, etc.) usually requires a minimum time commitment whereas time on remand is indeterminate and frequently short in duration⁵. In some instances the inmate may avoid programming so as not to jeopardize his or her case in court. For example, a remanded person charged with impaired driving may choose not to become involved in alcohol abuse treatment in order to avoid the appearance of acknowledging an alcohol abuse problem. The concept of 'dead time' also reflects situations where the accused is spending time in prison without being sentenced, and where this period of time is not put toward (credited to) a sentence of incarceration. This situation can have some unintended negative consequences for the accused. Kellough and Wortley (2002) note that:

Thus, since accused persons held in pre-trial detention often have to spend a considerable amount of time in prison before their case will be heard, they may feel pressured to plead guilty to the original charge (or to a lesser charge) for a variety of reasons including the fact that: (1) the sentence for the crime they plead guilty to may not involve incarceration and they will ultimately be released from prison; (2) they do not want to do 'dead time' (i.e. time in prison without being sentenced); (3) they may receive 'time served' if they plead guilty and thus be immediately released from jail; or (4) pleading guilty would mean being moved from an overcrowded, pre-trial detention facility to a more pleasant correctional institution with better facilities and programmes. (p. 190)

In fact, several studies have found that those detained in pre-trial custody were more likely to plead guilty, less likely to have their charges withdrawn and were more likely to receive harsher sentences than those who were not detained, even when controlling for relevant factors such as offence type and criminal history (Koza and Doob, 1975; Kellough and Wortley, 2002).

Furthermore, persons held in remand for lengthy periods of time may receive 'time served' sentences⁶ (i.e., released at court), or have a short period of incarceration to serve once sentenced. This could potentially decrease their chances of being provided rehabilitative programs and services that they would have had access to if they had not been remanded for a

lengthy period of time, but had rather spent the remanded time under a custodial sentence.

Text Box 4 - Measures of Correctional Activity: Inmate Counts and Admissions

This report makes use of two different indicators that describe the use of adult and youth correctional services: (i) the average number or person count on any given day; and (ii) the number of annual admissions to correctional facilities or to community supervision programs.

Average counts of inmates in custody at a given point in time provide a snapshot of the daily correctional population and are used to calculate an annual average count. Managers in correctional services use average counts as an operational measure, and also as formal indicators of the utilization of bed space in institutions. Typically, correctional officials perform daily counts of inmates in their facility and monthly counts of offenders under community supervision. Average daily counts in facilities are used to produce incarceration rates per 100,000 population.

Admissions data are collected when a person enters the institution or community supervision program. While admission data describe and measure the changing case-flow of correctional agencies over time, they do not indicate the number of unique individuals in the correctional system. The same person could be included several times in the admission counts where the individual moves from one type of correctional service program to another (e.g. from remand to sentenced custody) or re-enters the system in the same year. Admission counts are used to produce an admission rate per 10,000 persons charged.

An admission to custody on remand may be the first of many admissions. For example, a person could be remanded to custody pending trial, go to trial and then receive several possible sentences: (1) incarceration for less than two years (provincial/territorial sentenced custody), (2) incarceration for two years or more (federal custody), (3) time served (released at court), or (4) non-custodial sentence (i.e., probation, fine, community service, conditional sentence, etc.). In addition, individuals may be remanded for other reasons. For example, persons already in custody may be remanded while additional charges are adjudicated. Furthermore, individuals may be remanded after having breached conditions of their conditional release.

Daily population counts are affected by length of time in custody, such that offenders with longer sentences are over-represented. Unless otherwise stated, all data are reported on a fiscal year basis, April 1 to March 31.

Statistical Overview – Adult Correctional Services

In examining adult correctional trends, it is important to acknowledge the difference between admissions and average daily count data. In general, average daily counts reflect a snapshot of the daily correctional population and provide an operational measure of caseload, while admissions data describe the changing case-flow of correctional agencies over time (see Text Box 4). Please note that the analysis of non-sentenced custody is limited to remand; other temporary detention, such as 'immigration holds' is excluded.

On an average day in 2000/01, there were 18,381 adults held in provincial/territorial custody, of which 40% (7,428) were on remand and 60% (10,953) were sentenced.

Focusing on all admissions in 2000/01, there was a total of just under 200,000 remand and sentenced admissions to provincial/territorial correctional services. Of these,

⁵ Fifty-three percent of releases from remand in 2000/01 served one week or less.

⁶ Time served sentences are described more completely later in this Juristat.

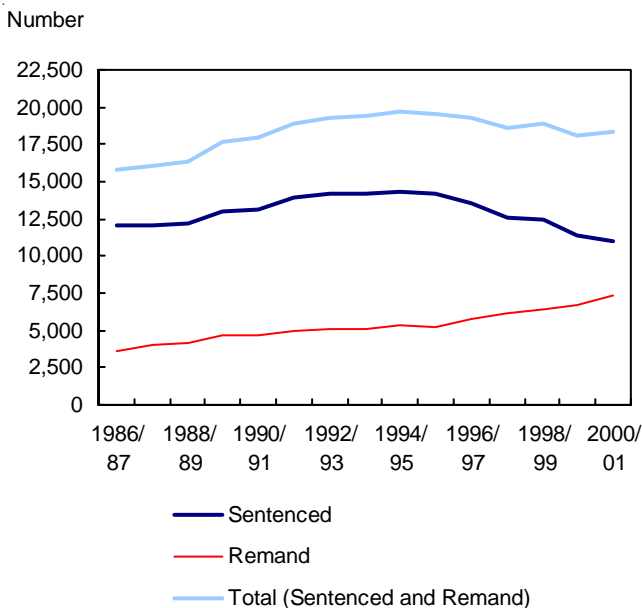
approximately 118,600 (59%) were remand whereas 80,900 (41%) were sentenced.

Adult Remand Daily Counts Doubled since 1986/87

In total, since 1986/87⁷, the average number of adults in provincial/territorial custody, on remand or sentenced custody, on any one day has increased 17%, from approximately 15,800 to 18,400, although there have been fluctuations during this time period (see Figure 2). While there has been some variability, remand counts doubled from just under 3,700 in 1986/87 to over 7,400 in 2000/01. In comparison, the average number of adults in sentenced custody increased from approximately 12,000 in 1986/87, peaked at more than 14,300 from 1992/93 to 1995/96, then declined steadily thereafter to less than 11,000 in 2000/01. The proportion of remanded offenders ranged from 23% to 30% until 1996/97, but increased steadily to 40% in 2000/01.

Figure 2

Trends in Provincial/Territorial Adult Average Daily Count, 1986/87 to 2000/01



Note: British Columbia changed its reporting practices in 1999/00 to include other/temporary detention in remand. New Brunswick data for 2000/01 are extracted from a new operational system, therefore caution is recommended when making comparisons over time.

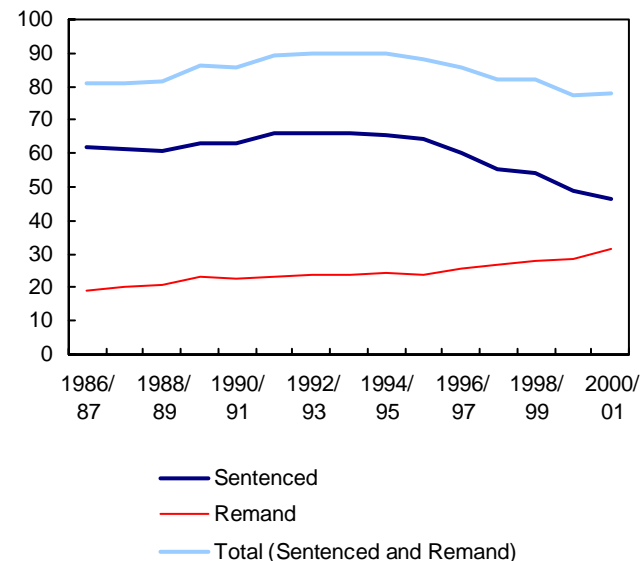
Source: Adult Correctional Services Survey, Canadian Centre for Justice Statistics, Statistics Canada.

In total there were an average of 78 persons (46 sentenced, 31 remand) per 100,000 adult population in provincial/territorial custody in 2000/01. While the overall provincial/territorial incarceration rate⁸ is relatively consistent with that of 1986/87, there has been substantial variation over this period (see Figure 3). The rate's peak (90) was recorded in 1992/93 and has been generally declining since. While the rate for sentenced custody follows the same overall trend, the remand rate has been increasing steadily – the rate of 31 in 2000/01 represents an increase of 66% from 1986/87 (19).

Figure 3

Trends in Provincial/Territorial Incarceration Rates¹ per 100,000 Adults, 1986/87 to 2000/01

Incarceration rate per 100,000 adults



¹ Incarceration rates are based on the average daily count of adults in provincial/territorial custody (excluding non-remand temporary detention such as immigration detainees and police lock-ups) per 100,000 adult population.

Source: Adult Correctional Services Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Adult Admissions to Remand Increased 75% since 1986/87

Since 1986/87, not only has the number of admissions to custody on remand increased, the proportion of provincial admissions due to remands, has greatly increased (see Figure 4). For example, since 1986/87, the proportion of admissions due to remands has steadily increased from 37% to almost 60% in 2000/01. Remand admissions increased while sentenced admissions dropped. The number of sentenced admissions reached a peak of nearly 122,000 in 1992/93, and has steadily decreased since then to just under 81,000 in 2000/01⁹. In contrast, remand admissions increased 75% from almost 68,000 in 1986/87 to over 114,000 in 1991/92 and have remained relatively consistent since.

Admission rate per 10,000 adults charged allows an examination of change in admissions taking into account changes in the crime rate. In 2000/01 there were almost 3,900 adults

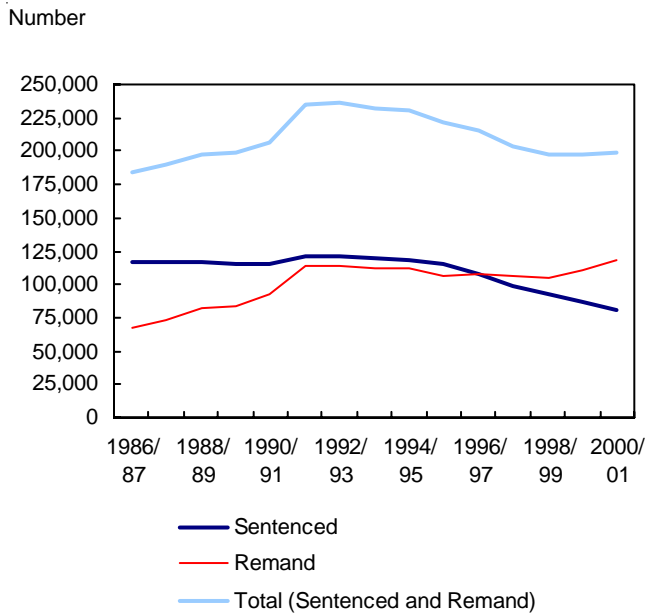
⁷ Prior to 1986/87, age requirements were not uniform across jurisdictions, and therefore analysis of trends prior to 1986/87 has not been performed.

⁸ Incarceration rates are based on the average daily counts of provincial/territorial custody per 100,000 population. 'Other temporary detention', such as immigration holds and police lock-ups, are excluded from the overall rate.

⁹ A recent important development influencing sentencing trends has been the implementation of conditional sentences, which has had the effect of reducing the sentenced custody population. This is discussed more thoroughly later in this Juristat.

Figure 4

Trends in Adult Admissions to Provincial/Territorial Correctional Institutions, 1986/87 to 2000/01



Note: British Columbia changed its reporting practices to include other/temporary detentions in 1999/00. New Brunswick admissions are excluded from sentenced custody, remand and other temporary detention in 2000/01. Also, all New Brunswick data in 2000/01 and Manitoba custody data for 1999/00 and 2000/01 are extracted from new operational systems, therefore caution is recommended when making comparisons over time.

Source: Adult Correctional Services Survey, Canadian Centre for Justice Statistics, Statistics Canada.

admitted to provincial/territorial custody per 10,000 adults charged. Of these, approximately 1,570 were sentenced and 2,300 were remands. While the combined provincial/territorial admission rate per 10,000 adults charged has remained relatively stable since 1994/95, the sentenced rate has decreased in recent years. In contrast, the remand admission rate has been increasing steadily since 1986/87 and has been higher than the sentenced admission rate per 10,000 adults charged since 1997/98, the first full year in which the conditional sentencing option was available to courts (see Figure 5). Since 1990/91 the remand rate has increased from almost 1,490 to 2,300 in 2000/01, an increase of 55%. Sentenced admission rates were relatively stable between 1986/87 and 1995/96. Since this time, however, rates have dropped considerably, declining 25% between 1995/96 and 2000/01.

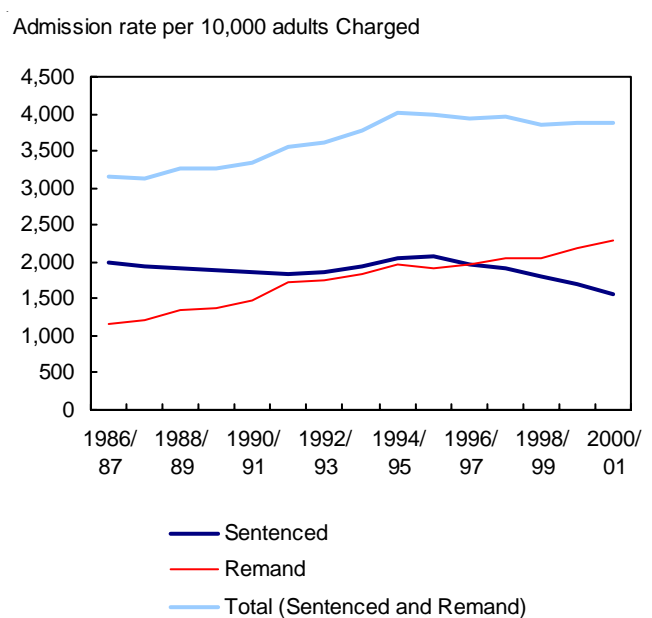
Adult Jurisdictional Profile

Admissions to Remand Increased in Eight Jurisdictions

In all jurisdictions, admissions to sentenced custody decreased from 1991/92 to 2000/01¹⁰ (see Text Table 2). In contrast, in most jurisdictions (Newfoundland and Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Ontario, Saskatchewan, British Columbia, Yukon) admissions to remand increased

Figure 5

Trends in Provincial/Territorial Admission Rates per 10,000 Charged, 1986/87 to 2000/01



Source: Adult Correctional Services Survey and Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics, Statistics Canada.

during the same time period. Large percentage increases in the number of offenders admitted to custody on remand were found in Prince Edward Island (96%), Saskatchewan (69%) and British Columbia (111%). However, two jurisdictions (Québec and Alberta) experienced declines of approximately 30% in the number of admissions to remand from 1991/92 to 2000/01.

Remand, as a proportion of all admissions, has been generally increasing, although there has been some variability in most jurisdictions. In 1991/92, remand accounted for roughly half of the admissions only in Québec, Ontario, and Manitoba. In comparison, in 2000/01, remand accounted for half or more of admissions in Nova Scotia, Québec, Ontario, Manitoba¹¹, Saskatchewan, British Columbia, Yukon and Nunavut.

Remand Daily Count Doubled since 1991/92 in Four Jurisdictions

Average daily count statistics provide a slightly different view of the remand trends over time. In 2000/01, there were over 7,400 adults remanded to custody in Canada on any one day, approximately half of which were being held in Ontario (3,700). Between 1991/92 and 2000/01, increases were recorded in all jurisdictions except for Prince Edward Island and Québec,

¹⁰ Due to gaps in data, the admission trends of Northwest Territories were not examined. Given major system development work in Manitoba, there are some comparability issues with respect to data for 1999/00 against earlier years and, therefore, trends only up until 1998/99 were examined in this section.

¹¹ Refers to 1998/99 value.

Text Table 2



Adult Remand Admission as a Proportion of Total¹ Provincial/Territorial Custodial Admissions, 1991/92 and 2000/01

Jurisdiction	Remand Admissions					
	1991/92		2000/01		1991/92 to 2000/01	
	% of Total Admissions	No.	% of Total Admissions	No.	% Difference	No. Difference
Newfoundland and Labrador	9.77	264	29.13	388	46.97	124
Prince Edward Island	5.98	90	23.10	176	95.56	86
Nova Scotia	43.12	1,622	51.98	1,758	8.38	136
New Brunswick ²	17.89	878	37.40	1,301	48.23	423
Quebec	64.41	37,246	63.55	26,063	-30.02	-11,183
Ontario	49.76	44,479	62.73	52,179	17.31	7,700
Manitoba ³	61.66	5,946	70.57	6,955	..	..
Saskatchewan	43.20	5,664	74.79	9,548	68.57	3,884
Alberta	33.37	11,340	35.50	8,179	-27.87	-3,161
British Columbia	36.24	5,760	56.14	12,185	111.55	6,425
Yukon	41.50	210	50.67	302	43.81	92
Northwest Territories ⁴	24.34	315	43.89	628	..	..
Nunavut	..	..	47.24	205	..	..
Total⁵	48.53	113,814	59.43	118,566	4.18	4,752

Note: The method of calculation of admission to custody can be different from one province to another. Thus, inter-jurisdictional comparisons should be made with caution. Remand admissions for Nova Scotia and Saskatchewan exclude offenders admitted on remand and who were later sentenced, and therefore underestimates the number of person admitted on remand.

.. not available for a specific reference period.

¹ Total includes admissions to remand and to provincial/territorial sentenced custody.

² New Brunswick - The distribution by status for 'sentenced admissions', 'remand' and 'other temporary detention' data, is unavailable for 2000/01. New Brunswick figures for 2000/01 were unavailable, therefore 1999/00 figures were used.

³ Manitoba - Given major system development work leading to a change in the source of these data, there are some comparability issues with respect to Manitoba data from 1999/00 against earlier years. Accordingly, comparisons using these data are strongly cautioned.

⁴ Northwest Territories - Large decreases are due to the creation of Nunavut Territory April 1, 1999. Accordingly, comparisons using these data are strongly cautioned.

⁵ Total values for 2000/01 do not include New Brunswick.

Source: Adult Correctional Services Survey, Canadian Centre for Justice Statistics, Statistics Canada.

which decreased slightly (see Text Table 3). In contrast, all jurisdictions had decreases in the number of sentenced offenders in custody from 1991/92 to 2000/01. Nationally, the number of sentenced offenders in custody decreased by 21% over this time period while the number of remanded adults in custody increased by 50%.

The largest percentage increases from 1991/92 to 2000/01 in average daily remand counts were in Nova Scotia, New Brunswick, Manitoba and British Columbia, where the average number of adults in custody on remand approximately doubled. However, in Ontario, remands increased by more than 1,400 over this period, approximately 63% higher. This increase accounted for more than half of the total national increase in remands from 1991/92 to 2000/01.

Expressed as a proportion of the total custodial caseload, approximately 40% of the average daily inmate population in 2000/01 was on remand. This is an increase from 26% in 1991/92. This proportion increased in all jurisdictions except for Prince Edward Island, where a small decrease occurred. For example, the proportion of persons on remand increased from 25% to 47% in Manitoba, from 14% to 33% in Nova Scotia, and from 31% to 50% in Ontario. On average, in 2000/01 almost half of all adults in custody in Ontario and Manitoba

were on remand, while approximately one-third were on remand in Nova Scotia, Québec, Alberta, British Columbia, Yukon and Nunavut.

Factors Contributing to Remand Trends

Although the law governing pre-trial detention is uniform across Canada, its application takes place within various local administrative contexts across jurisdictions. Administrative practices will vary across jurisdictions and over time. Furthermore, the legislation governing remand is subject to revision and to interpretative change as a function of evolving case law. As such, statistics reflecting the prevalence of remands will not only be influenced by the crime rate, but also by changes in administrative factors and changes in the laws governing remand and/or their interpretation.

The issue of the increasing use of custodial remand affects the administration of both adult and youth corrections. However, the capacity to analyze this issue as it pertains to youth corrections is very limited due primarily to gaps in data availability. The analysis in this Juristat focuses primarily on adult remand in the context of such factors as crime trends, court processing trends, the use of "time served" sentences, duration of remand, and legislative changes.

Text Table 3



Adult Remand Daily Count¹ as a Proportion of Total² Provincial/Territorial Custodial Average Daily Count, 1991/92 and 2000/01

Jurisdiction	Remand					
	1991/92		2000/01		1991/92 to 2000/01	
	% of Total Count	No.	% of Total Count	No.	% Difference	No. Difference
Newfoundland and Labrador	8.76	31	19.40	54	74.42	23
Prince Edward Island	14.81	16	11.67	10	-39.81	-6
Nova Scotia ³	14.14	56	32.93	109	94.64	53
New Brunswick ⁴	8.85	36	25.82	71	97.22	35
Quebec	37.23	1,245	37.30	1,197	-3.90	-49
Ontario	31.00	2,270	49.75	3,700	63.00	1,430
Manitoba ⁵	24.82	238	46.59	520	118.49	282
Saskatchewan	13.61	179	26.90	304	69.83	125
Alberta ⁶	19.64	477	30.48	580	21.59	103
British Columbia	25.70	367	35.46	811	120.98	444
Yukon	16.67	14	34.34	18	30.21	4
Northwest Territories	6.95	18	14.66	28	55.56	10
Nunavut	..	..	29.29	26	..	..
Total	26.21	4,947	40.41	7,428	50.14	2,481

Note: Totals may not add due to rounding.

.. not available for a specific reference period

¹ Counts are reported as average daily counts unless otherwise noted.

² Total includes remand and provincial/territorial sentenced custody counts.

³ Nova Scotia - The average for month-end counts was used.

⁴ 'On-register counts' for 1999/00 include provincial inmates (73) transferred to federal institutions through the New Brunswick/Canada Initiative, effective April 1, 1998. 'On-register counts' for 2000/01 include provincial inmates (75) transferred to federal institutions through the New Brunswick/Canada Initiative.

⁵ Sentenced counts include parole suspensions. Also note that due to system problems Manitoba was unable to break down the counts of Remand and Other/temporary detention for 1999/00. The total has been put under remand since in the past Other/temporary detention only accounted for roughly 1% of the total.

⁶ The average number of inmates over 262 days was used.

Source: Adult Correctional Services Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Text Box 5 - Youth Correctional Services

Statistical Overview

Data on youth between the ages of 12 and 17 who are sentenced to a period of open or secure custody, remanded to custody awaiting trial, or under another temporary detention are included in this section. It is important to note that gaps in the data limit the ability to perform time series analysis and do not provide a complete national picture.

In 2000/01, a total of approximately 25,000¹² young offenders were admitted to custody, of which over 15,000 (60%) were on remand and almost 10,000 youths were admitted to sentenced custody. Due to missing data¹³, a national average daily count of youth in custody is not available. However, in 2000/01, remands accounted for an average of 23% to 40% of youths in custody in Saskatchewan, Manitoba, Alberta, British Columbia, Yukon and Nunavut, approximately 15% to 20% in Newfoundland and Labrador, Prince Edward Island, and Nova Scotia; and 10% or less in the Northwest Territories and New Brunswick.

Historical Trends

Among those jurisdictions where average counts data are consistently available, the proportion of remanded youth among all youth in custody has increased since the early 1990's, from 18% in 1991/92 to 25% in 2000/01 (see Text Table 4). However, while the average daily count of remanded youth increased in the years 1991/92 (350) to 1997/98 (480), it has since decreased slightly. It is important to note that these data exclude Québec, and 12 to 15 year olds in Ontario.

The totals and proportions of youth on remand have also varied across jurisdictions and over time. For example, in Manitoba and Saskatchewan, both the total number of remanded youth and their overall proportion of all persons in custody have increased. In Manitoba, the average count of remands increased from 77 in 1991/92 to 104 in 2000/01, and proportionally from 27% to 38%. In Saskatchewan average counts increased from 51 in 1991/92 to 79 in 2000/01 and proportionally from 16% to 23%. In Alberta and British Columbia, counts of remanded youths decreased; however, their relative proportion actually increased – from 26% in 1991/92 to 31% in 2000/01 in Alberta, and from 16% in 1991/92 to approximately 28% from 1997/98 onward in British Columbia.

In 2000/01, the youth incarceration rate was 180 youth per 100,000 youth population, an overall decrease of 19% from 1991/92 (excludes Québec and Ontario). In general, the sentenced youth incarceration rate has been decreasing since the peak of 202 in 1994/95 to 135 in 2000/01 (see Text Table 4). In 2000/01 the remand incarceration rate was 45 per 100,000 youths, having ranged from 38 to 49 over the ten-year time period.

Data for youth custodial admissions¹⁴ indicate that admissions overall have been decreasing, although to a lesser extent for remand than for sentenced custody (see Text Table 5). From 1997/98 to 2000/01¹⁵, admissions to remand decreased by 8% whereas admissions to sentenced custody decreased by 18%. While remand admissions continue to account for more than half of all youth admissions to custody, their relative proportion has increased only slightly. In 2000/01, 60% of youths admitted to custody were admitted to remand, up from 57% in 1997/98.

In 2000/01, the proportion of admissions to remand exceeded 50% in Ontario¹⁶, Manitoba, Alberta, British Columbia and Yukon (see Text Table 6). The rate of remand per 10,000 youth charged ranged from approximately 630 in New Brunswick to approximately 2,500 in Manitoba and Nunavut in 2000/01. Consistent with adult trends, the overall remand rate exceeded the sentenced custody rate in 2000/01. However, this trend held true for only five jurisdictions: Ontario, Manitoba, Alberta, British Columbia, and Yukon, whereas the sentenced custody rate exceeded the remand rate in Newfoundland and Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Northwest Territories and Nunavut, while the sentenced and remand rates were approximately equal in Québec.

¹² All youth admissions data exclude Ontario 12-15 year olds and Saskatchewan.


¹³ Ontario remand/temporary detention data for 12-15 year olds are not available while sentenced open and secure custody data for 12-15 year olds are not available from January 1995. Therefore, Ontario data are excluded from all calculations. Québec data are not available from 1995/96 forward and therefore, all Québec data are excluded.

¹⁴ Due to gaps, youth data for Ontario 12-15 year olds and Saskatchewan are excluded from all calculations.

¹⁵ Youth admissions data only available from 1997/98 onwards.

¹⁶ Due to data gaps, excludes 12 to 15 year olds.

Text Table 4



Average Count of Young Offenders in Custody, 1991/92 to 2000/01

	Secure Custody	Open Custody	Remand/Temp Detention	Total In-count	% Remand of Total Count	Incarceration rate per 100,000 youth		
						Remand	Sentenced	Total (Sentenced and Remand)
1991/92	717	907	354	1,976	17.91	39.75	182.36	222.11
1992/93	768	885	347	1,996	17.38	38.50	183.42	221.92
1993/94	850	964	396	2,207	17.94	43.36	198.64	242.00
1994/95	848	1,024	436	2,309	18.88	47.01	201.82	248.83
1995/96	776	1,025	449	2,249	19.96	47.60	190.91	238.51
1996/97	776	1,020	467	2,264	20.63	48.56	186.76	235.33
1997/98	735	886	481	2,103	22.87	49.34	166.29	215.64
1998/99	706	841	464	2,012	23.06	47.28	157.64	204.93
1999/00 ¹	638	813	437	1,884	23.20	44.51	147.69	192.20
2000/01 ²	570	757	444	1,766	25.14	45.26	135.26	180.52


Note: All values exclude Ontario and Quebec. Due to rounding, figures may not add to totals.

¹ Includes Manitoba estimates.

² New Brunswick secure custody counts are daily counts while open custody counts are weekly counts.

Source: Corrections Key Indicator Report for Adults and Young Offenders and Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Text Table 5



Youth Admissions to Correctional Services, 1997/98 to 2000/01


Jurisdiction	Year	Total Custody	Custody Type		% of total admissions which are due to remand
			Remand	Sentenced Custody ¹	
Total admissions	1997/98	28,510	16,326	12,184	57.26
	1998/99	25,992	15,278	10,714	58.78
	1999/00	25,577	14,860	10,717	58.10
	2000/01	25,033	15,055	9,978	60.14

Note: Ontario 12-15 year olds and Saskatchewan excluded from all calculations.

¹ Includes open and secure custody.

Source: Youth Custody and Community Services Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Text Table 6



Youth Admissions to Correctional Services per Jurisdiction, 2000/01

Jurisdiction	Sentenced ¹ No.	Remand No.	% Remand of Total Admissions	Rates per 10,000 Youth Charged	
				Sentenced	Remand
Newfoundland and Labrador	329	211	39.07	1,578.69	1,012.48
Prince Edward Island	54	47	46.53	1,692.79	1,473.35
Nova Scotia	369	303	45.09	1,117.84	917.90
New Brunswick ²	411	194	32.07	1,338.33	631.72
Quebec	2,044	2,021	49.72	1,663.01	1,644.29
Ontario ³	3,301	5,693	63.30	1,412.82	2,436.59
Manitoba	478	2,077	81.29	592.68	2,575.33
Saskatchewan	..	..	..	..	..
Alberta	1,429	2,406	62.74	954.58	1,607.21
British Columbia	1,209	1,946	61.68	930.07	1,497.04
Yukon	53	63	54.31	1,280.19	1,521.74
Northwest Territories	206	39	15.92	4,478.26	847.83
Nunavut	95	55	36.67	4,418.60	2,558.14
Total⁴	9,978	15,055	60.14	1,151.72	1,614.86

Note: Due to rounding, figures may not add to totals.

.. not available for a specific reference period

¹ Includes open and secure custody.

² New Brunswick: Secure custody counts are daily counts; open custody counts are weekly counts.

³ Ontario: Remand/Temporary detention data for 12-15 year olds are not available. Remand, sentenced admissions and admission rates per 10,000 charged are for 16-17 year olds only. Youth (16-17 year olds only) charges estimate based upon UCR2 data.

⁴ Excludes Ontario 12-15 year olds and Saskatchewan.

Source: Youth Custody and Community Services Survey and Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Crime Trends

Crime rates have generally been dropping over the last decade (Savoie, 2002). For example, the adult charge rate in 2001 was approximately 2,240, a decrease of 27% since 1992 (3,060). Given this trend, it is no surprise that the number of offenders admitted to custody between 1992/93 and 1998/99 steadily decreased, primarily driven by annual decreases in sentenced custody. In spite of this trend, frequencies in the number of offenders admitted to remand have been increasing, especially since 1998/99 (+13% over this time period). While there have been fluctuations since 1990/91, total admissions to remand increased by 29%, from 92,102 to 118,566 while sentenced custody decreased by roughly the same amount, from 114,869 to 80,928. Note however that recent large decreases in sentenced custody admissions coincide with the implementation in September 1996 of the conditional sentence option¹⁷; an alternative to sentenced custody (see Key Legislative changes section that follows).

Admission frequencies are often expressed as a rate based on the number of persons charged in order to take into account changing crime rates. For example, the rate of admissions to remand per 10,000 adults charged has been generally increasing steadily since 1986/87, reaching its peak of approximately 2,300 in 2000/01 (see Figure 5). However, the rate for sentenced custody remained relatively stable between 1986/87 and 1995/96 and has been decreasing steadily since 1995/96, to its low of approximately 1,570 in 2000/01. In fact, after 1996/97, the remand rate actually began to exceed that of sentenced custody. It should be noted that although some of the decrease in sentenced custody is due to the implementation of conditional sentencing, the combined rate for conditional sentencing and sentenced custody was still less than that of remand in 1999/00 (2,005) and 2000/01 (1,900) (see Table 2).

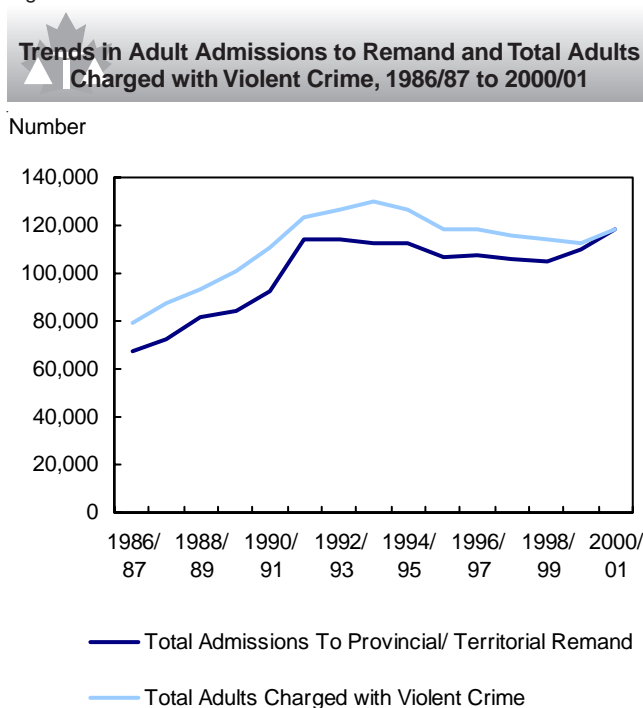
Remand and Violent Crime

A closer examination of the nature of the change in the crime rate provides some insight into why remand rates may be increasing in spite of a decrease in crime. Persons on remand are more likely to have been incarcerated for crimes against the person, or especially violent offences, than sentenced offenders (43% vs. 31%) (Gilmour, 1999). One explanation for the diverging trends and the increase in remands despite the crime rate decrease may relate to the fact that the declining crime rate has occurred disproportionately in the area of property crime. Between 1992 and 2001, the violent crime rate declined by 9%, while the property crime rate declined by 32% from 1992 to 2001, and the rate for 'Other Criminal Code' offences decreased by 18% between 1992 and 1999 with slight increases in 2000 and 2001. As a result, while crime has generally been decreasing, overall trends in the use of remand may be driven in part by a relative increase in the overall proportion of criminal activity that is violent¹⁸. For example, when comparing trends in remand admissions with those of adults charged with violent crime, similar patterns emerge (see Figure 6).

Court Processing

Recent reports¹⁹ have indicated that the number of days required to process court cases has been increasing, affecting remand length of stay and, by extension, average daily remand counts. Between 1996/97 and 2000/01, the overall median

Figure 6



Source: Adult Correctional Services Survey and Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics, Statistics Canada.

elapsed time from first to last appearance increased 9% from 80 to 87 days. Further, violent crime is more often the most serious offence type for remands compared to sentenced offenders. This is important since violent crime takes longer to process than non-violent crime and the overall levels of violent crime have not been decreasing as quickly as non-violent crime. In 2000/01, the median elapsed time to process cases of violent crime was 126 days, an increase of 7% from 1996/97. In comparison, the median elapsed time to process cases for property-related crime was 84 days in 2000/01.

For youth cases, no clear pattern over time in median elapsed court processing time to process youth has been observed. However, similar to the adult court findings, violent crime takes longer to process in youth court (104 days) than non-violent offences, such as property crime (64 days).

Another factor that can extend the length of stay is the possibility of being remanded prior to the initial court appearance. This

¹⁷ See Hendrick, D., Martin, M., & Greenberg, P. (2003). *Conditional Sentencing in Canada: A Statistical Profile 1997-2001*. Catalogue no. 85-560-XIE. Ottawa, Statistics Canada, Canadian Centre for Justice Statistics.

¹⁸ It should be noted that, while the remand trend tends to follow closely the trend for violent crime, approximately 60% of adults charged with violent crime in 2001 were charged with assault level 1, generally deemed to be the least serious of the violent offence types.

¹⁹ Pereira, J. and Craig Grimes 2002. "Case Processing in Criminal Courts, 1999/00". *Juristat*, Catalogue no. 85-002-XIE Vol. 22, No. 1. Ottawa, Statistics Canada, Canadian Centre for Justice; Thomas, M. 2002. "Adult Court Statistics, 2000/01". *Juristat*, Catalogue no. 85-002-XIE Vol. 22, No. 2. Ottawa, Statistics Canada, Canadian Centre for Justice Statistics.

situation may arise because the justice of the peace, required to adjudicate the bail hearing, may not be available thereby resulting in delays and prolonging the time in custody. In addition, the unavailability of a justice of the peace could also increase the likelihood of being remanded to custody. That is, if a justice of the peace is unavailable, accused persons may automatically be detained pending their initial court appearance. While certain jurisdictions have identified this as an issue, there are no available data that can address the extent to which delays in bail hearings have affected lengths of stay in pre-trial detention.

Use of 'Time Served' Sentences

During sentencing, a court may take into account 'time served', that is, any time spent in custody while awaiting completion of the case (Criminal Code of Canada, Section 719(3)). While there is no mechanical formula for crediting pre-sentence custody, in general, two month's credit for each month spent in pre-sentence custody is often considered appropriate due to the harshness of pre-trial custody (Martin's Criminal Code, 2003). However, decisions as to the actual amount of credited time remain within the discretion of the sentencing judges. A sentence of 'time served' may be given during final sentencing when it is determined that the individual has served a sufficient amount of time in custody for his/her convicted offences and therefore is released at court.

Some have suggested that the use of and length of 'time served' sentences may be affecting trends in sentenced admissions to custody. In order to address this hypothesis, adult court data for the fiscal years 1998/99 to 2000/01 were examined in three jurisdictions where time served data were available: Newfoundland and Labrador, Ontario and Alberta. Among these three jurisdictions in 2000/01, the percentage of sentences that were 'time served' ranged from approximately 2% (236 in Alberta) to approximately 6% (2,708 in Ontario). From 1998/99 to 2000/01 the number of time served sentences appear to have increased in all three jurisdictions.

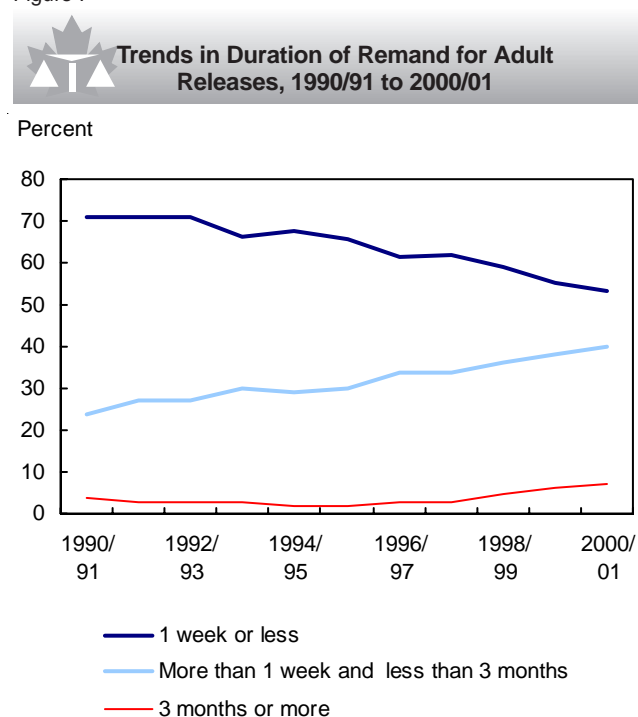
Since offenders receiving 'time served' sentences are released at court and do not return to custody they therefore do not become part of the sentenced custody caseload of the corrections system. Instead, the concluding status of these offenders would remain remand. Increases in the prevalence of 'time served' sentences will therefore contribute to a decrease in the sentenced custody caseload numbers relative to the remand caseload. The slight increase in 'time served'

sentences shown in the court data suggests that this factor may be contributing to the decrease in the proportion of the corrections population that are sentenced.

Time Spent on Remand Increasing

As indicated, the amount of time spent while on remand affects the average daily count statistics. From 1990/91 to 2000/01, the percentage of adult remand releases who had spent one week or less decreased while those spending more than one week increased (see Figure 7). For youth cases, the proportion of youth releases spending more than one week in custody has slightly increased since 1997/98 (see Text Table 7). These results are consistent with recent statistics on case processing time.

Figure 7



Source: Adult Correctional Services Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Text Table 7

Jurisdiction	Year	1 week or less		1 week to 6 months		Greater than 6 months		Unknown
		No.	%	No.	%	No.	%	
Total Releases	1997/98	7,851	55.8	6,108	43.4	109	0.8	3
	1998/99	6,761	52.5	5,998	46.6	111	0.9	0
	1999/00	5,401	50.5	4,956	46.3	65	0.6	277
	2000/01	7,069	52.4	6,291	46.7	119	0.9	1

Source: Youth Custody and Community Services Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Text Box 6 - “Deinstitutionalization” and Displacement of Mental Health Cases to the Criminal Justice System

Deinstitutionalization of mental health cases from psychiatric and general hospitals in Canada has been occurring since the 1980s (Randhawa and Riley, 1996). Deinstitutionalization refers to a concerted effort by the mental health system to find community-based alternatives to psychiatric hospitalization. Some hypothesize that one of the side effects of this deinstitutionalization is an increase in persons with mental illness coming into contact with the criminal justice system (Arboleda-Florez, Holley and Crisanti, 1996). Furthermore, a significant relationship has been found between homelessness and severe mental disorder (Zapf, Roesch and Hart, 1996). The severely disordered are more likely to be homeless than others who may have less severe disorders and are better able to care for themselves. Since homeless individuals are more visible to police officers, they may be more likely to come to the attention of the criminal justice system. Kellough and Wortley (2002) found that persons without a permanent home address that came into contact with the law were more likely to be denied bail than those with a permanent home, indicating that homeless individuals would be more likely to be remanded to custody.

Studies of the inmate population have indicated that offenders with mental health disorders appear frequently. For example, Corrado and colleagues (2000) found that among 790 men incarcerated in the Vancouver Pretrial Services Centre in August 1989 to July 1990, 16% had a major mental disorder

(cognitive impairment, schizophrenic disorder, major mood [affective] disorder), 86% had a substance abuse disorder, 88% had other mental disorders (anxiety disorders, minor mood [affective] disorders, psycho-somatic [somatization] disorders, eating disorders, sexual disorders, antisocial personality disorder). Text Table 8 presents the prevalence of selected mental disorders of the general Canadian population and two groups of incarcerated offenders in Canada. In general, mental disorders were more prevalent among the correctional samples²⁰. In addition, although comparable Canadian population prevalence rates were not available, antisocial personality disorder and substance abuse disorders were very common for these two correctional samples, consistent with prevalence rates in American correctional samples (Corrado et al., 2000).

Nonetheless, there is a high prevalence of mental illness among incarcerated populations in Canada that may be accounted for in a number of specific ways. According to Arboleda-Florez, Holley and Crisanti (1996), mentally disordered offenders may be arrested at a disproportionately higher rate compared to non-mentally disordered offenders, perhaps due to their greater visibility to police officers, especially if they are homeless. Further, once arrested, mentally ill persons may be more likely to be remanded to custody and/or plead guilty because of an inability to pay for bail or legal representation, or an inability to understand legal representation (Davis, 1992).

²⁰ 1989/90 represents the most recent mental disorder prevalence data that were available for Canadian correctional populations.

Text Table 8



Prevalence of Mental Disorders, Non-correctional and Correctional Populations

Mental Disorder	Estimates of One-Year Prevalence – Canada ¹	Lifetime Prevalence of DIS/DSM Diagnoses Vancouver Pretrial, 1989/90 ²	Lifetime Prevalence of DIS Diagnoses Edmonton Remand Centre 1986/87 ³
	%	%	%
Mood Disorders			
Major (Unipolar) depression	4.1 – 4.6	6.0	16.7
Bipolar disorder	0.2 – 0.6	4.1	4.4 ^a
Dysthymia	0.8 – 3.1	7.2	10.6
Schizophrenia	0.3	4.5	2.2
Anxiety Disorders	12.2	41.1 ^c	15.6 ^b
Antisocial Personality Disorder	N/A	64.3	56.7
Substance Abuse Disorders			
Alcohol use disorders	N/A	77.6	78.9
Drug use disorders		63.7	50.6

DIS - Diagnostic Interview Schedule (a structured psychodiagnostic interview)

DSM - Diagnostic and Statistical Manual of Mental Disorders

a Manic Episode

b Anxiety/somatiform disorders – includes panic disorder and phobia (agoraphobia, social phobia, simple phobia)

c Includes obsessive-compulsive disorder, agoraphobia, social phobia, simple phobia, panic disorder, post traumatic stress disorder, generalized anxiety disorder.

¹ Estimated percentage of the population who have the disorder during any one year period. Source: Health Canada (2002). *A Report on Mental Illnesses in Canada*. Ottawa, Canada.

² Source: R. R. Corrado, I. Cohen, S. Hart, and R. Roesch (2000). *Comparative Examination of the Prevalence of Mental Disorders Among Jailed Inmates in Canada and the United States*. *International Journal of Law and Psychiatry*, Vol. 23, No. 5-6, pp. 633-64

³ Source: R. Bland, S. Newman, R. Dyck and H. Orn (1990). *Prevalence of psychiatric disorders and suicide attempts in a prison population*. *Canadian Journal of Psychiatry*, 35, pp. 407-413.

Effects due to Key Legislative Changes

An important consideration in examining trends in pre-trial detention is whether or not there have been legislative changes that would affect its use. In 1996 and 1997, two important changes were made to the Criminal Code that had the potential to influence remand trends. First, Bill C-41, enacted in

September 1996, introduced ‘conditional sentencing’ as an alternative to incarceration. Second, Bill C-17, passed in 1997, provided additional discretion with respect to justification for denial of bail – adding a third justification for detaining a person in custody.

Conditional Sentencing

Conditional sentencing was introduced as Section 742 of the Criminal Code, which was part of the enactment of the Sentencing Reform Bill (C-41) in September 1996. Under this new sanction, an offender sentenced to a term of imprisonment of less than two years could be ordered to serve the sentence in the community, subject to the offender's complying with the conditions of the conditional sentence order. The conditions imposed for conditional sentences should be more punitive in the restrictions on liberty (e.g., house arrest) and more onerous than those normally imposed under probation. If a condition of the conditional sentence is violated, a warrant of arrest may be issued and the offender will appear in court. If the court is satisfied that the offender has violated conditions without reasonable excuse, the court may take one of the following actions: (1) take no action; (2) change the optional conditions; (3) suspend the conditional sentence and have the offender serve a portion of the unexpired sentence in custody with the conditional sentence order resuming upon release; or (4) terminate the conditional sentence order and commit to custody until the expiration of the sentence.

Conditional sentences were enacted to respond to concerns over high levels of incarceration in Canada, primarily with respect to sentenced custody and less so for remand. To this end, it would be expected that increased admissions to conditional sentences would coincide with decreased sentenced admissions to provincial/territorial custody (i.e., custodial sentences of less than two years in length). While sentenced custody levels have decreased by 33% since 1991/92, the bulk of the decrease (70%) has occurred after the implementation of conditional sentences (also see Roberts and Gabor, 2003; Hendrick, Martin and Greenberg, 2003). It is interesting to note that remand admissions have generally fluctuated during the 1990's until 1998/99, after which remand admissions increased each year thereafter (a total of 13%). Further, the proportion of custodial admissions represented by remand has increased from 48% in 1991/92 to 59% in 2000/01. However, due to the limitations of aggregate data, it is unclear whether the implementation of conditional sentences has had a direct effect on recent increases in the use of custodial remand.

It is quite possible that the existence of conditional sentences may be having a more direct impact on the frequency of custodial remand due to the possibility of breaches. While the sanction is intended to be a more punitive community-based option, the response on a breach will be more immediate than other community-based sentences such as probation. If the conditions of the conditional sentence are breached, the offender may be immediately remanded to custody pending determination as to whether to take the matter to court or release the person back to the community²¹. A decision would then be made as to whether the individual would spend all or part of the remainder of the sentence in custody. For example, 11% (477) of the 4,352 conditional sentence orders were terminated in Ontario due to breaches, 33% (193) of the 590 conditional sentence orders were terminated in Manitoba for breaches, and 57% (671 of 1,186) of those in Saskatchewan were terminated due to breaches. Of these breaches, 50% (240) in Ontario, 78% (151) in Manitoba and 38% (256) in Saskatchewan resulted in an admission to custody on a temporary basis, or for the duration of the sentence (see Text Table 9).

Justification for remand

Prior to 1997, section 515 (10) of the Criminal Code identified only two grounds for detention: a) to ensure attendance in court and b) because it is in the public interest or for the protection or safety of the public. In 1992 the Supreme Court of Canada ruled that the public interest component of section 515(10)(b) was unconstitutional under section 11(e) of the Charter because it was vague and imprecise and struck it down (*R. v. Morales, supra*). The component addressing protection or the safety of the public was, however, considered to be just cause for denial of bail. Bill C-17 amended this section of the Criminal Code in 1997. The provisions to ensure attendance in court

²¹ Six jurisdictions (Newfoundland and Labrador, New Brunswick Ontario, Manitoba, Saskatchewan, British Columbia) record admissions to custody due to breaches of conditional sentences as remands prior to a judicial decision. Should the judicial decision result in custody time, they are counted as sentenced inmates. Prince Edward Island and Alberta consider those offenders admitted due to a breach of a conditional sentence to be part of the sentenced population.

Text Table 9

	Conditional Sentence Terminations		Conditional Sentence Breaches		Partial or full remainder of conditional sentence to be served in custody		
	Number		Number	% of Terminations	Number	% of Breaches	% of Terminations
Ontario	4,352		477	11.0	240	50.3	5.5
Manitoba	590		193	32.7	151	78.2	25.6
Saskatchewan	1,186		671	56.6	256	38.2	21.6
Total	6,128		1,341	21.9	647	48.2	10.6

Source: Conditional Sentence Special Study, Canadian Centre for Justice Statistics, Statistics Canada.

(par. a) and for the protection or the safety of the public (par. b) were retained. A new paragraph, (c) was added permitting detention on the grounds of any other just cause and where “the detention is necessary in order to maintain confidence in the administration of justice having regard to all the circumstances”. Thus far, this new paragraph has been determined not to be in violation of the Charter.

The remand admission rate climbed steadily in the early 1990’s. The remand admission rate had already been climbing prior to 1992 and, in spite of these legislative changes, continued to rise in a similar manner afterward.

A small additional change was made to the remand legislation in 1999. This legislation ensures that the safety concerns of victims and witnesses are taken into consideration in judicial interim release determinations and in the imposition of conditions in any undertakings given by the accused for judicial interim release. This change could lead to some increases in the number of accused who would be detained in custody post-1999. However, at this time, it is too early to assess the impact of this change.

Conclusion

In general, the use of custodial remand in Canada has been increasing in adult and youth corrections, in numbers, rates, and proportions of total custodial population, although more so for adults than youth. A variety of factors have been examined in order to explain these trends. Adult remand in Canada appears to follow similar trends as those of violent crime. Accordingly, the use of remand appears, at least partially, to be a function of changes in levels of violent crime relative to non-violent crime. Further, violent crime tends to require longer court processing time.

Other factors such as use of time served sentences, increasing duration of remand, implementation of conditional sentences (and conditional sentence breaches), and other legislative changes may have contributed to the increasing numbers of persons in custody on remand. While it is difficult to assess the direct impact of these factors on each jurisdiction, increasing remand admissions and daily counts have generally occurred in most jurisdictions, and therefore continue to have an impact on their operations.

Methodology

Data from several surveys administered and collected by the Canadian Centre for Justice Statistics were utilized in this Juristat: Adult Correctional Services (ACS) Survey, Youth Custody and Community Services (YCCS) Survey, Key Indicator Report (KIR), Uniform Crime Reporting (UCR) Survey and Adult Criminal Court Survey (ACCS).

Adult Correctional Services Survey (ACS)

The ACS survey collects aggregate caseload and case characteristics information on adult offenders (18 years and over) under provincial/territorial or federal correctional supervision. The data are provided by the various provincial, territorial and federal ministries, departments and agencies that administer correctional services across the country.

Although the ACS survey attempts to standardize the way in which status changes are counted, limitations due to differences among jurisdictions operational systems may restrict uniform application of the definitions in some situations. For this reason, inter-jurisdictional comparisons of the number of admissions should be made with caution. Nevertheless, as a result of consistent counting practices within jurisdictions over time, statements may be made about the trends within each jurisdiction. The ACS survey is conducted annually, on a fiscal-year basis from April 1 to March 31.

Youth Custody and Community Services Survey (YCCS)

The YCCS survey collects both micro and aggregate level data, from provincial and territorial agencies responsible for the delivery of youth corrections and young offender programs. These data are collected annually on a fiscal year basis (April 1 to March 31) since 1997/98. In 2000/01, Newfoundland and Alberta provided case-specific information to the YCCS survey (i.e., micro-level data) that were then used to generate the aggregate level admission counts reported in this Juristat. These respondents represent roughly 13% of the national caseload. The remainder of the reporting jurisdictions provided aggregate counts.

The YCCS survey counts youths admitted to secure custody, open custody, remand, and supervised probation. Admissions are tabulated based on status such that one person commencing remand and then entering sentenced custody followed by probation, will be counted according to each specific status. Admissions are not counted for individuals who are transferred to other facilities without status change. Counting methods may differ across jurisdictions and, as such, inter-jurisdictional comparisons should be made with caution.

Key Indicator Report

Data from the Key Indicator Report measure the average counts of adults and youth in sentenced custody (secure and open custody for youth), custodial remand and probation. The data are collected annually on a fiscal year basis (April 1 to March 31). Jurisdictions submit monthly counts in aggregate format. Average counts include all persons on remand and temporary detention, sentenced offenders, and other offenders who are legally required to be at a facility and are present at the time the count is taken by correctional facility officials.

Adult Criminal Court Survey

The purpose of the Adult Criminal Court Survey (ACCS) is to provide a national database of statistical information on the processing of cases through the adult criminal court system. The survey is designed to collect data on all Criminal Code and other federal statute charges heard in adult criminal courts.

Data suppliers are the provincial and territorial government departments responsible for adult criminal courts. At the time of this report, adult criminal courts in nine provinces and one territory reported to the ACCS. These ten jurisdictions represent approximately 90% of the national adult criminal court caseload.

The primary unit of analysis is the case, which is defined as one or more charges against an individual and disposed of in court on the same day. All case information that is used to define the case is determined by the “most serious offence”. The individuals involved are persons 18 years or older at the time of the offence, companies, as well as youths who have been transferred to adult criminal court. With the exception of Prince Edward Island, New Brunswick, Alberta, British Columbia and the Yukon, no data are provided from superior courts. The absence of data from all but five superior court jurisdictions may result in a slight underestimation of the number of incurred sentences imposed across Canada.

The number of cases with prison sentences (ACCS) and the number of admissions to correctional facilities (ACS) differ because the number of sentenced admissions reported by the Adult Correctional Services survey includes persons sentenced to prison in superior courts as well as admissions resulting from fine defaults. In addition, a sentence of “time served” will be shown as a ‘remand’ in correctional statistics. Note also that correctional service counts are based on aggregate sentences. That is, several court-based sentences may be aggregated into a single admission for sentence administration.

As expected in a census survey, not all data elements are being reported. For this reason, only three jurisdictions to date have provided data on ‘time served’ sentences: Newfoundland and Labrador, Ontario and Alberta.

Uniform Crime Reporting (UCR1 and UCR2) Survey

This survey measures and publishes annual data on the nature and incidence of crime and traffic enforcement in Canada. Aggregate data (UCR1) on police-reported crime have been collected since 1962 through the UCR Survey. The microdata revised UCR Survey (UCR2) began collecting incident-based data in 1988. The revised survey collects much more detailed offence and accused information and collects victim characteristics in cases of violent offences.

As of December 2001, 154 police forces/detachments were providing incident-based crime data, representing approximately 59% of the national volume of crime. Provincial coverage on UCR2 is currently greatest in Quebec (99%), Ontario (73%), Manitoba (56%), Alberta (53%) and Saskatchewan (52%). National coverage is expected to remain around 60% until such time as the RCMP (28% of national volume of crime) are capable of providing data.

In this Juristat, UCR data are used for the examination of crime trends and for the calculation of admission rates per 10,000 adults or youth charged.

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Table 1

	Total In-Count Prov/Terr Sentenced	Total In-Count Prov/Terr Remand (Not sentenced)	Total In-Count Prov/Terr Sentenced and Remand	Incarceration Rate per 100,000 Adult Population		
				Prov/Terr Sentenced	Prov/Terr Remand	Total Prov/Terr (Sentenced and Remand)
1986/87	12,076	3,674	15,750	62.13	18.90	81.04
1987/88	12,071	3,965	16,036	61.10	20.07	81.17
1988/89	12,181	4,202	16,383	60.67	20.93	81.60
1989/90	12,986	4,701	17,687	63.33	22.93	86.26
1990/91	13,170	4,713	17,883	63.22	22.62	85.84
1991/92	13,925	4,947	18,872	66.02	23.45	89.47
1992/93	14,135	5,111	19,246	66.20	23.94	90.14
1993/94	14,251	5,130	19,381	65.91	23.73	89.64
1994/95	14,316	5,327	19,643	65.35	24.32	89.67
1995/96	14,249	5,266	19,515	64.22	23.73	87.95
1996/97	13,522	5,734	19,257	60.19	25.52	85.71
1997/98	12,573	6,109	18,682	55.20	26.82	82.02
1998/99	12,478	6,472	18,949	54.10	28.06	82.16
1999/00 ¹	11,421	6,665	18,086	48.91	28.54	77.44
2000/01 ²	10,953	7,428	18,381	46.30	31.40	77.70

Note: Totals may not add due to rounding.

¹ British Columbia changed its reporting practices to include other/temporary detention in remand.

² New Brunswick data for 2000/01 are extracted from a new operational system, therefore caution is recommended when making comparisons over time.

Source: Adult Correctional Services Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Table 2

	Total Admis. to Prov/Terr Sentenced	Total Admis. to Prov/Terr Remand (Not sentenced)	Total Admis. to Conditional Sentences	Rates per 10,000 Adults Charged			
				Prov/Terr Sentenced Admissions	Prov/Terr Remand Admissions	Total Prov/Terr (Sentenced and Remand)	Prov/Terr Sentenced and Cond. Sent. (1997/98 - 2000/01)
1986/87	116,229	67,638	...	2,000.87	1,164.38	3,165.25	...
1987/88	117,325	72,638	...	1,936.79	1,199.10	3,135.90	...
1988/89	116,051	81,847	...	1,916.97	1,351.98	3,268.95	...
1989/90	115,265	84,114	...	1,891.55	1,380.35	3,271.89	...
1990/91	114,869	92,102	...	1,853.72	1,486.33	3,340.05	...
1991/92	120,733	113,814	...	1,826.85	1,722.19	3,549.04	...
1992/93	121,817	114,262	...	1,866.89	1,751.11	3,618.00	...
1993/94	119,789	112,373	...	1,940.19	1,820.50	3,760.69	...
1994/95	117,938	112,671	...	2,047.16	1,955.80	4,002.96	...
1995/96	114,562	106,467	...	2,069.97	1,924.21	3,994.18	...
1996/97	108,003	107,911	...	1,972.18	1,970.50	3,942.68	...
1997/98	98,628	105,698	14,608	1,917.24	2,054.68	3,971.92	2,201.21
1998/99	93,045	104,975	14,236	1,812.15	2,044.49	3,856.64	2,089.41
1999/00 ¹	86,885	111,392	15,792	1,696.43	2,174.95	3,871.37	2,004.77
2000/01 ²	80,928	118,566	17,084	1,569.01	2,298.73	3,867.74	1,900.23

... not available for a specific reference period


... not applicable

¹ British Columbia changed its reporting practices to include other/temporary detentions in remand. Manitoba - Given major system development work leading to a change in the source of these data, there are some comparability issues with respect to Manitoba data for 1999/00 against earlier years. Accordingly, comparisons using these data are strongly cautioned.

² New Brunswick admissions are excluded from sentenced custody, remand and other temporary detention in 2000/01. Also, all New Brunswick data in 2000/01 and Manitoba custody data for 1999/00 and 2000/01 are extracted from new operational systems, therefore caution is recommended when making comparisons over time.

Source: Adult Correctional Services Survey, Conditional Sentence Special Study and Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Table 3

 Total Number of Adult Admissions to Provincial/Territorial Custody, by Inmate Status, 1991/92 to 2000/01										
Jurisdiction	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97 ¹	1997/98	1998/99	1999/00	2000/01
Newfoundland and Labrador²										
Remand	264	304	260	254	254	251	276	306	263	388
Sentenced Custody	2,438	2,666	2,525	2,769	2,386	1,568	1,166	1,199	936	944
Prince Edward Island										
Remand	90	67	54	91	93	128	169	134	191	176
Sentenced Custody	1,416	1,185	1,070	802	993	867	869	803	647	586
Nova Scotia										
Remand	1,622	1,212	1,100	1,054	1,139	1,432	1,532	1,399	1,553	1,758
Sentenced Custody	2,140	2,542	2,743	2,748	2,622	2,113	1,914	1,964	1,825	1,624
New Brunswick³										
Remand	878	910	914	948	988	1,108	1,201	1,101	1,301	..
Sentenced Custody	4,029	4,070	3,702	3,669	3,383	2,919	2,278	2,273	2,179	..
Quebec										
Remand	37,246	36,776	36,314	36,321	34,167	31,325	27,681	25,342	25,814	26,063
Sentenced Custody	20,578	23,306	24,802	25,852	28,075	28,753	26,188	21,735	18,016	14,951
Ontario										
Remand	44,479	47,664	46,161	46,496	43,196	44,829	44,795	45,351	46,637	52,179
Sentenced Custody	44,906	41,934	39,861	38,823	37,110	36,530	33,971	32,815	30,747	30,999
Manitoba⁴										
Remand	5,946	4,958	5,277	4,918	3,600	2,835	2,761	3,182	6,567	6,955
Sentenced Custody	3,697	3,587	3,140	3,036	2,433	2,069	1,439	1,393	3,284	2,901
Saskatchewan										
Remand	5,664	5,149	5,095	5,385	5,623	6,202	6,685	7,175	8,665	9,548
Sentenced Custody	7,448	6,889	7,069	6,728	6,397	4,802	3,894	3,850	3,368	3,219
Alberta										
Remand	11,340	10,601	9,666	8,912	8,618	9,359	8,294	8,298	7,784	8,179
Sentenced Custody	22,646	23,771	22,021	19,764	18,345	16,535	14,467	15,491	14,728	14,859
British Columbia⁵										
Remand	5,760	6,058	6,934	7,653	8,533	10,189	10,897	11,076	11,602	12,185
Sentenced Custody	10,135	10,597	11,536	12,437	12,425	11,537	10,565	9,628	9,739	9,520
Yukon										
Remand	210	215	253	232	256	253	293	318	321	302
Sentenced Custody	296	324	389	368	393	310	304	300	308	294
Northwest Territories⁶										
Remand	315	348	345	407	..	..	1,114	1,293	694	628
Sentenced Custody	1,004	946	931	942	..	..	1,573	1,594	1,108	802
Nunavut										
Remand	.	.	.	.	.	.	..	..	..	205
Sentenced Custody	.	.	.	.	.	.	..	..	..	229
CANADA										
Remand	113,814	114,262	112,373	112,671	106,467	107,911	105,698	104,975	111,392	118,566
Sentenced Custody	120,733	121,817	119,789	117,938	114,562	108,003	98,628	93,045	86,885	80,928

Note: The method of calculation of admission to custody can be different from one province to another. Thus, inter-jurisdictional comparisons should be made with caution. Remand admissions for Nova Scotia and Saskatchewan exclude offenders admitted on remand and who were later sentenced, and therefore underestimates the number of person admitted on remand.

.. not available for any reference period

... not available for a specific reference period

¹ The conditional sentencing legislation came into effect in September 1996.

² Due to Y2K system problems, the admission data for 1999/00 is estimated.

³ Total admission figures for 1998/99 and 1999/00 are reported on a fiscal year basis, while all profile distributions are calculated using admission data for the calendar year. The distribution by status for 'sentenced admissions', 'remand' and 'other temporary detention' data, is unavailable for 2000/01. Data for 2000/01 are from a new operational system, therefore caution is recommended when comparing 2000/01 to previous years.

⁴ Given major system development work leading to a change in the source of these data, there are some comparability issues with respect to Manitoba data for 1999/00 against earlier years. Accordingly, comparisons using these data are strongly cautioned.

⁵ 'Other/temporary detention' denotes pre-court lock-ups in a correctional facility which is a new category that began in 1999/00.

⁶ Large decreases are due to the creation of Nunavut Territory April 1, 1999.

Source: Adult Correctional Services Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Table 4

Adult Average Count¹ of Provincial/Territorial Custody, by Inmate Status, 1991/92 to 2000/01										
Jurisdiction	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97 ²	1997/98	1998/99	1999/00	2000/01
Newfoundland and Labrador										
Remand	31	37	34	39	36	32	40	44	44	54
Sentenced Custody	323	373	346	354	319	275	248	258	222	225
Prince Edward Island										
Remand	16	16	8	11	11	13	9	9	8	10
Sentenced Custody	92	99	88	84	96	71	79	73	71	73
Nova Scotia³										
Remand	56	60	73	66	61	78	90	82	96	109
Sentenced Custody	340	335	363	373	346	318	299	285	247	222
New Brunswick⁴										
Remand	36	42	46	43	48	54	57	47	61	71
Sentenced Custody	371	414	410	376	353	339	319	274	244	204
Quebec										
Remand	1,245	1,287	1,217	1,219	1,167	1,158	1,185	1,219	1,114	1,197
Sentenced Custody	2,099	2,269	2,328	2,334	2,303	2,267	2,117	2,102	1,993	2,011
Ontario										
Remand	2,270	2,381	2,381	2,507	2,465	2,710	2,915	3,032	3,146	3,700
Sentenced Custody	5,052	4,955	4,786	4,619	4,690	4,819	4,631	4,441	4,003	3,737
Manitoba⁵										
Remand	238	239	237	237	272	340	332	450	495	520
Sentenced Custody	721	672	654	703	696	639	570	615	603	596
Saskatchewan										
Remand	179	156	154	164	179	195	219	236	273	304
Sentenced Custody	1,136	1,042	1,060	1,076	1,088	980	958	955	854	826
Alberta⁶										
Remand	477	472	478	497	466	484	494	525	539	580
Sentenced Custody	1,952	2,112	2,240	2,215	2,084	1,825	1,463	1,601	1,430	1,323
British Columbia⁷										
Remand	367	379	449	487	501	623	703	757	821	811
Sentenced Custody	1,528	1,548	1,664	1,874	1,933	1,626	1,525	1,513	1,467	1,476
Yukon										
Remand	14	16	18	15	21	17	18	22	18	18
Sentenced Custody	70	64	55	54	63	53	60	52	43	35
Northwest Territories⁸										
Remand	18	26	35	42	39	30	47	49	29	28
Sentenced Custody	241	252	258	255	278	311	304	309	207	163
Nunavut										
Remand	.	.	.	.	.	.	.	.	20	26
Sentenced Custody	.	.	.	.	.	.	.	.	36	63
CANADA										
Remand	4,947	5,111	5,130	5,327	5,266	5,734	6,109	6,472	6,665	7,428
Sentenced Custody	13,925	14,135	14,251	14,316	14,249	13,522	12,573	12,478	11,421	10,953

Note: Totals may not add due to rounding.

. not available for any reference period

¹ Counts are reported as average daily counts unless otherwise noted.

² The conditional sentencing legislation came into effect in September 1996.

³ The average for month-end counts is used.

⁴ 'On-register counts' for 1999/00 include provincial inmates (73) transferred to federal institutions through the New Brunswick/Canada Initiative, effective April 1, 1998. 'On-register counts' for 2000/01 include provincial inmates (75) transferred to federal institutions through the New Brunswick/Canada Initiative.

⁵ Sentenced counts include parole suspensions. Also note that due to system problems Manitoba was unable to break down the counts of remand and other/temporary detention for 1999/00. The total has been put under remand since in the past other/temporary detention only accounted for roughly 1% of the total.

⁶ The average number of inmates over 262 days was used.

⁷ 'Other/temporary detention' denotes pre-court lock-ups in a correctional facility which is a new category beginning in 1999/00.

⁸ Large decreases are due to the creation of Nunavut Territory April 1, 1999.

Source: Adult Correctional Services Survey, Canadian Centre for Justice Statistics, Statistics Canada.

Canadian Centre for Justice Statistics

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