



Credit for Pre-Sentencing Custody: Data from Five Canadian Courts

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Highlights

- 41.3% of the offenders in this study were sentenced to a time served sentence and 34.3% of the offenders in this study were sentenced to between two days and one month of additional time in custody
- Just over one-third (34.2%) of the offenders spent less than one week in pre-sentencing custody; almost 72% spent less than one month in remand
- Very few offenders (6.6%) were in pre-sentencing custody for more than three months
- A higher proportion of males spent over three months in remand compared to females
- Offenders in Toronto spent a significantly shorter period of time in remand compared to the other sites
- Those who were convicted of a person-related offence as the most serious offence in their case spent the longest amount of time in pre-sentencing custody and were sentenced to the longest amount of additional time in custody
- Those convicted of an administration of justice offence as the most serious offence in their case spent the shortest amount of time in pre-sentencing custody and were sentenced to the least amount of additional time in custody
- There was a significant positive correlation between time in remand and length of the custodial sentence; as the length of the pre-sentencing custody increased so did the length of the custodial sentence
- Overall, credits were awarded in 95.3% of the cases; the majority of the time the credit ratio was 2:1
- In Whitehorse, the most frequent credit ratio awarded was 1.5:1
- In approximately two-thirds of the cases (64.3%), the credit was stated in open court
- Credits were stated in a higher proportion of cases in Ottawa compared to all other locations
- Overall, reasons for the credit given generally were not provided; when they were provided they were related to remand conditions or the general convention of providing a credit for time in pre-sentencing custody
- In approximately two-thirds of the cases (64.2%), the defence requested a credit for the offender; defence in Toronto were the least likely to request a credit, while those in Ottawa were the most likely to request a credit
- Credits were more likely to be requested when the offender was male, had spent more than three months in remand and was sentenced to between three months and two years less a day additional time in custody

Executive Summary

This report provides data on the use of pre-sentencing custody credits in five locations across Canada.

While this study has some limitations, it is the first of its kind in Canada, and provides a baseline picture of the state of pre-sentencing custody credits prior to any changes made by legislation.

Currently, there is very little research on the use of pre-sentencing custody credits in the Canadian criminal justice system. According to subsection 719(3) of the *Criminal Code*, the court may take into account any time an offender spent in pre-sentencing custody when determining the sentence to be imposed, thus allowing for a 'credit' for any time served prior to sentencing. Credits were given at a 2:1 ratio due to the harsh conditions in remand facilities and because accused persons did not accumulate credit for remission while in pre-sentencing custody.

The purpose of the present report is to provide empirical data on the nature and extent of pre-sentencing custody credits in Canadian adult criminal courts and the factors that may be related to the awarding of these credits. Additionally, this research provides baseline data, which could be used to assess the impact of any changes in the legislation governing pre-sentencing custody credits (i.e., Bill C-25).

Data were collected prospectively at sentencing hearings for a sample of 994 cases where an adult offender spent time in pre-sentencing custody. The study was conducted in five Canadian courts (College Park Toronto, Vancouver, Ottawa, Halifax and Whitehorse) between June 2008 and November 2009.

The majority of the sample was male, with an average age of 36 years. In just over half the cases (51.2%), the offender had been convicted of a property offence as the most serious offence in their case. This was followed by administration of justice offences (27.9%) and person-related offences (17.6%). In over half the cases (58.4%), offenders were sentenced to an additional two to 30 days in custody. Very few offenders were given a federal term of imprisonment of two years or more. Overall, offenders in Toronto were given significantly shorter custodial sentences, and offenders in Halifax were given significantly longer sentences.

Overall, in this sample, 71.8% of the offenders spent one month or less in remand, with one-third of this group spending one week or less in pre-sentencing custody. Compared to the other cities, a higher proportion of offenders in Toronto and Vancouver spent one week or less in remand. In Whitehorse¹ half (50.0%) of the offenders were in remand for between 31 and 90 days. Very few offenders were in pre-sentencing custody for more than three months in any of the five cities. Differences were also noted for gender, with a higher proportion of males spending more than three months in remand compared to females. Offenders whose most serious offence was an administration of justice offence spent a significantly shorter period of time in remand compared to those whose most serious offence was a property, motor vehicle or offence against the person. Those who were convicted of a person-related

¹ Note the sample size was small and therefore should be interpreted with caution.

offence spent the longest period of time in pre-sentencing custody. Analyses revealed a positive correlation between time in remand and the length of the custodial term. As time in remand increased, so did the offenders' custodial term.

Overall, in 95% of the known cases a credit was awarded to the offender for time spent in remand (either for a ratio of 1:1 or higher). Variation existed across the five cities in terms of the extent that pre-sentencing custody credits were awarded. In over 90% of the total cases, offenders who spent time in remand received credit for that time; however, in Halifax, the proportion that received a credit was 75%. No differences in whether or not a credit was awarded were found for the gender of the offender, the most serious offence in the case and whether or not the offender spent a longer (91+ days) versus a shorter (less than 90 days) period of time in remand. All of those who were in remand for more than three months were awarded a credit. These results suggest that those sentenced to between two and 90 days were the least likely to be awarded a credit, and those sentenced to time served were the most likely to receive credit. The differences, however, were minimal.

Overall the credit ratio was stated in open court for just under two-thirds of the cases. Differences were noted across the court locations. The credit was stated in open court in over 80% of cases in Ottawa and just under two-thirds of cases in Toronto. In Vancouver, Whitehorse, and Halifax the credit was stated in approximately half of the cases. No differences were found in whether or not the credit was stated in open court by a short (less than 90 days) versus a long (more than 90 days) stay in remand. Differences, however, were found for the most serious offence (MSO) in the case and the length of the custodial term received. The credit was most often stated in cases where a person-related offence was the most serious offence compared to administration of justice and property offences. Credits were stated in a higher proportion of the cases where the offender received a provincial custody term over three months and it was least likely to be stated when the offender received a time served sentence.

In the majority of the cases (86%) a 2:1 credit ratio was awarded. In Whitehorse, a credit ratio of 1.5:1 was applied most frequently (80%). While a 1:1 ratio was applied in about 20% of the cases in Ottawa and Halifax, the 2:1 ratio was used almost exclusively in Toronto and Vancouver. There were no cases where a 3:1 credit ratio was applied. No differences were found with respect to gender, the MSO in the case, a short versus long remand time, the custodial sentence or the time spent in remand.

In almost two-thirds of the cases, defence counsel requested a credit be awarded to the offender. Defence counsel in Toronto were the least likely to request a credit, while defence counsel in Ottawa were the most likely to request a credit. A credit was more likely to be requested if the offender was male and spent more than three months in pre-sentencing custody. Credits were requested in a higher proportion of cases where the additional custodial time was between three months and two years less a day. They were least likely to be requested when the sentence was over two years. No differences were noted with respect to the MSO in the case.

1. Introduction

Pre-sentencing custody, or remand, refers to any time a person spends in remanded custody prior to being sentenced. Accused persons could be held in remand for a variety of reasons, including they are awaiting a decision on bail or they have not been awarded bail. In Canada, the use of pre-sentencing custody has increased dramatically in the last decade both in terms of the number of individuals admitted to remand and the length of time they spent in custody (Calverley, 2010).

Pursuant to subsection 719(3) of the *Criminal Code*:

In determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence.

A judge may take time spent in pre-sentencing custody into consideration to impose a shorter sentence than would otherwise be appropriate. In some cases, no additional imprisonment is handed down and the time already spent in remand is considered to be a sufficient sentence.

1.1 History of the Credit

Professor Allan Manson (2004) reported that the legislative history of the pre-sentencing custody issue is “long and, at times, discontinuous” (2004, p. 297). According to Manson, the origin of the current *Criminal Code* provisions can be traced back to the *Bail Reform Act 1970-1971- 1972*. The changes created by this legislation were largely motivated by academic (Friedland, 1965) and governmental reports, including the Report of the Canadian Committee on Corrections (the Ouimet Report) in 1969 and the Royal Commission Inquiry into Civil Rights (the McRuer Report) in 1968.

In the Ouimet Report, the Canadian Committee on Corrections (1969) reported that many Canadian remand facilities were old and poorly equipped, the sanitation and living conditions were primitive, segregation of varying types of offenders was difficult and few programs² were available. Martin Friedland (1965) expressed similar concerns about the conditions of custody for those awaiting court appearances at the Don Jail in Toronto and argued that “custody is prejudicial to the outcome of the case” (Friedland, 1965, p. 124). He found that those who spent time in pre-sentencing custody were more likely to be convicted of an offence, sentenced to imprisonment and obtain longer sentences than those who did not spend time in pre-sentencing custody. As a result of these findings, it was recommended that the use of pre-sentencing custody be reduced (Canadian Committee on Corrections, 1969; McRuer, 1968) and that accused persons be credited for the time they spent in custody prior to being sentenced (Friedland, 1965). It was argued that since time in remand acts as punishment, it “should be taken into account by the magistrate if the accused is convicted” (Friedland, 1965, p. 108).

² The Canadian Committee on Corrections states that “little is available in the way of program” (1969, 101) in institutions used to house those awaiting trial. The authors do not specify which types of programs (e.g., rehabilitative, educational, recreational) are lacking.

Following the *Bail Reform Act* 1970-1971-1972, statutory provisions allowed the courts to take pre-sentencing custody into account at sentencing. At this time, however, there were no guidelines that specified how or to what extent pre-sentencing custody was to be considered. As a result, a considerable amount of discretion was left in the hands of judges. Although it was not required that a credit be awarded, the courts established that it should generally be given unless there was good reason to deny it (*R. v. Rezaie*, 1996). Any attempt to use a mechanical formula to determine the credit ratio has been generally rejected by the courts (Manson, 2004; *R. v. Meilleur*, 1981; *R. v. Wust*, 2000). In the Supreme Court of Canada case of *R. v. Wust* (2000) Arbour J. saw “no advantage in detracting from the well-entrenched judicial discretion provided in s. 719(3) by endorsing a mechanical formula for crediting pre-sentencing custody” (para. 44).

Although the courts continued to support the use of discretion on a case-by-case basis, credit was generally awarded on a two-for-one basis (Kong & Peters, 2008; Manson, 2004; *R. v. Wust*, 2000; Roberts, 2005; Weinrath, 2009). For example, for every month the offender spent in remand, two months were subtracted from his or her intended sentence.

The 2000 Supreme Court case of *R. v. Wust* set out two reasons where the two-for-one credit was considered to be appropriate. Although these justifications had been cited before (*R. v. Rezaie*, 1996), it was not until this case that they were given Supreme Court authority, becoming the basis for future decisions dealing with the pre-sentencing custody credit issue. Arbour J. stated the following in her ruling:

In the past, many judges have given more or less two months’ credit for each month spent in pre-sentencing detention. This ratio reflects not only the harshness of detention owing to the absence of programs, but also the fact that none of the remission mechanisms apply to that period of detention. The credit cannot and need not be determined by a rigid formula that is thus best left to the sentencing judge (para 45).

Wust affirmed that the two widely accepted justifications for awarding the two-for-one credit were:

- (1) the harsh conditions in pre-sentencing custody, and
- (2) accused persons do not accumulate credit for remission when they are in pre-sentencing custody.

While the two-for-one credit ratio was generally considered to be standard, ultimately, it was within the judge’s discretion to give more or less credit for time already served (Manson, 2004). The term ‘enhanced credit’ is often used to describe “credit for PSC [pre-sentencing custody] at more than the two-for-one rate” (Manson 2004, p. 316). Since the two-for-one convention was fairly well established, any attempt to award more credit than this warranted justification in the courts. This issue arose in a “small but expanding number of cases” (Manson 2004). It usually refers to credit at a three-to-one rate,

but has reached four-to-one in some cases. An analysis of the case history led Manson (2004) to the conclusion that two-for-one credit was appropriate to compensate for lost remission and a lack of programs, but that enhanced credit was warranted under more unique, adverse circumstances. He proposed that “situations of deprivation, lack of hygiene, and other potential examples of harshness or inordinately severe personal effects would exacerbate the conditions of PSC [pre-sentencing custody] beyond this [the two-for-one] norm” (p. 316).

Prior to 2010, Parliament had not legislated standards for awarding pre-sentencing custody credits. Bill C-25: *Truth in Sentencing Act* came into force on February 22, 2010, limiting the credit for the time spent in pre-sentencing custody. The new legislation indicates that credit is generally to be awarded at a ratio of 1:1. It also provides for more credit, up to a maximum of one and one-half days for each day spent in custody, if the circumstances justify it. Although it is still within the discretion of the courts to award a pre-sentencing custody credit, these amendments have established guidelines that indicate how the credit should be calculated.

1.2 The Impact of Pre-Sentencing Custody Credits

Not only does the use of pre-sentencing custody credits have an impact on individual sentencing decisions, it also has broader implications for different sections of the criminal justice system.

Research suggests that both the courts and the correctional system have been affected by the two-for-one sentencing convention (Kong & Peters, 2008; Weinrath, 2009).

1.2.1 Court Efficiency

Criminal justice officials have expressed concern that the granting of pre-sentencing custody credits creates an incentive for accused persons to purposely extend their time in remand in order to get double-time benefits at sentencing. This strategy could have serious implications for the court system since proceedings would be delayed while accused persons remained in remand accumulating credit. Michael Weinrath (2009) examined this theory by surveying provincial inmates. He surveyed a total of 226 remanded and sentenced persons at a Canadian Prairie correctional facility using open ended questions. When asked for their views on why remand rates have increased, the two-for-one practice was the second most cited factor. However, this only accounted for 11.8% of responses (22/226) as no one response was overwhelmingly reported. Additionally, the author did not address the two-for-one issue directly; instead he asked broad questions about the increased use of remand. Given the limited amount of research investigating this issue, it is currently unclear whether this was a widespread practice.

1.2.2 Sentencing Patterns and Impact of the Remand Population

Over the last decade, the profile of adults entering provincial and territorial custody has drastically changed (Kong & Peters, 2008). The number of adults admitted to remand has been steadily increasing since the mid-1990s. In the fiscal year 2006/2007, provincial and territorial facilities saw 3% more adults admitted to remand than the previous year and 26% more than a decade earlier (Babooram, 2008). In addition, there has been a general trend towards longer periods of remanded custody. The proportion of remanded adults who spent less than a week in remand declined from 62% to 54% between 1996/1997 and 2005/2006 (Kong & Peters, 2008). The growth in the remand population has coincided

with a decline in the number of admissions to sentenced custody (Babooram, 2008) and a shift toward shorter sentences (Kong & Peters, 2008). There are currently more adults in remand than there are adults serving a sentence in provincial and territorial custody (Calverley, 2010).

Canadian sentencing patterns have changed as remand rates have grown (Kong & Peters, 2008). During the last decade, the number of adults admitted to remand and the length of time they spend in custody awaiting trial or sentencing has increased and the number of adults admitted to sentenced custody and length of custodial sentences has decreased. Since an accused person who spends time in remand would receive a credit towards his or her final sentence (or in some cases would be sentenced to “time served” and spend no additional time in custody), pre-sentencing custody credits could be contributing to this trend. However, there is currently no empirical research that indicates how judges were applying credit for time served to their sentencing decisions before the coming into force of Bill C-25. Kong and Peters (2008) assert that further analysis is required to understand the connection between pre-sentencing custody credits, rising remand rates and changing sentencing patterns.

The growth of Canada’s remand population has individual consequences for inmates in remand, as well as broader implications for criminal justice institutions. In addition to living in onerous conditions, accused persons awaiting trial or a sentencing decision must also make considerable personal sacrifices. They are separated from their family and friends and risk the loss of employment while in custody (Manns, 2005; National Council of Welfare, 2000; Trotter, 1999). Awaiting trial or sentencing in remand may also negatively impact the accused’s ability to defend him or herself and could be prejudicial to the outcome of the case (Friedland, 1965; Hagan & Morden, 1981; Manns, 2005; National Council of Welfare, 2000). It is considerably more difficult for accused persons who are detained to find and communicate with a lawyer and it is nearly impossible for them to contact witnesses or uncover evidence (Friedland, 1965; Hagan & Morden, 1981; National Council of Welfare, 2000; Trotter, 1999). Remanded accused cannot enhance their credibility by engaging in activities that may mitigate their sentence such as finding a job, compensating victims, or involving themselves in the community (Friedland, 1965; Manns, 2005; National Council of Welfare, 2000).

The impact of the increased remand population also extends to institutions within the criminal justice system. Both the police and the correctional system must deal with the economic costs and the strain on resources created by this growth. The police must transport defendants to their court appearances, detain them at the courthouse and testify at bail hearings (Office of the Auditor General, 2008b). Correctional staff must accommodate a greater number of daily admissions and discharges from remand facilities and pay to house, feed and guard the inmates while they await a trial or sentencing decision (Office of the Auditor General, 2008a). This population can be particularly difficult to manage due to unpredictability in terms of their length of stay and the need to separate them from sentenced offenders (Webster, 2009).

In order to develop a thorough understanding of how the two-for-one convention has impacted the criminal justice system, additional information about the use of pre-sentencing custody credits is required. Prior to the coming into force of Bill C-25, pre-sentencing custody credit ratios were determined on a case-by-case basis. Since this information was not systematically recorded, very little is known about how pre-sentencing custody credits were awarded before the amendments. This report

provides empirical data on the nature and extent of pre-sentencing custody credits before the legislative changes.

2. Purpose of the Present Study

This purpose of the present study is to provide empirical data on the nature and extent of pre-sentencing custody credits in Canadian adult criminal courts and the factors that may be related to the awarding of these credits. Additionally, this research provides baseline data, which could be used to assess the impact of any changes in the legislation governing pre-sentencing custody credits (i.e., Bill C-25).

3. Research Questions

This study set out to answer the following research questions:

- To what extent are pre-sentencing custody credits awarded?
- What ratios are used when awarding pre-sentencing custody credits?
- Are reasons provided for the credit? If so, what are the reasons?
- What are the differences (e.g., offender characteristics, ratio of credit, etc.) between those who were remanded for a short period of time compared to those who were remanded for a longer period of time?

4. Methodology

4.1 Site Selection

Cities were selected based on two factors. Using the Adult Correctional Survey from the Canadian Centre for Justice Statistics, those provinces and territories that demonstrated the highest proportion of remanded inmates within their custodial population over a five year period (2001/2002 to 2004/05) were selected to be included in the study. This resulted in four provinces and one territory: Ontario, Manitoba, Quebec, British Columbia and Yukon. Additionally, it was felt that it was important to have a representative sample from each Canadian region; therefore Nova Scotia was added as it had the highest proportion of remanded inmates in the Atlantic region. A list of Census Metropolitan Areas was

used to choose those sites where courthouses would be approached for participation in the study. The resulting sites were Halifax, Nova Scotia; Ottawa, Ontario; Toronto, Ontario; Winnipeg, Manitoba; Vancouver, British Columbia; and Whitehorse, Yukon.

Following data collection and analysis a decision was made to exclude the data from Winnipeg. Issues with respect to data reliability and comparability arose. It is anticipated that the data collected in Winnipeg will be verified to ensure accuracy and that they may be reported in a future study.

The ratio of pre-sentencing custody credit (i.e., 1:1, 2:1, 3:1) awarded by the courts is not systematically recorded. As such, it was necessary to collect data prospectively. All relevant information that was stated in open court was to be recorded on the data coding sheet. The paper file could be used in certain circumstances to complete missing data. Court clerks in each court site were asked to assign court personnel to fill out a one-page coding form over a three-month period for offenders who spent time in remand and who were subsequently convicted and sentenced.

The method for data collection varied slightly by site. In Toronto at the College Park court,³ an independent coder who did not work for the courts was contracted by the Department of Justice. In all other jurisdictions court personnel collected the data as part of their regular duties. In Whitehorse, court record information was sent to the Department of Justice, Research and Statistics Division (RSD), and RSD staff completed the data coding sheet.

The data coding sheet included the following variables:

- Gender;
- Date of birth;
- Date of sentencing;
- City;
- Remand facility;
- Time spent in remand;
- Type of offence (*Criminal Code* or *Controlled Drugs and Substances Act*); Sentence Information (including length of custodial or time served sentence and other types of sentence);
- Whether a credit was awarded and if so, the ratio of the credit;
- If the defence requested the credit;
- Whether the credit was stated in open court; and
- Recorded reasons for the credit given.

Data coding sheets were the same in each jurisdiction. All sites were subject to the same variable definitions. Some minor editorial changes were made to the variable names in some court locations, however, in order to reflect the terminology used by the court personnel.

Each data coding form was completed using information obtained at the sentencing hearing. Cases in Whitehorse had sentencing dates between June 4, 2008 and August 25, 2008. Cases in Toronto had

³ Note that the location in Toronto was the College Park court location. Toronto has five adult criminal courts and the results from the College Park court location may not be representative of the other court locations in Toronto. Hereinafter referred to as the Toronto location.

sentencing dates between May 19, 2009 and August 21, 2009. Cases in Vancouver had sentencing dates between June 10, 2009 and September 25, 2009. Cases in Ottawa had sentencing dates between July 18, 2009 and November 12, 2009. Cases in Halifax had sentencing dates between August 31, 2009 and November 13, 2009.

5 Results

5.1 Sample Demographics

The sample was comprised of 994 cases where an adult offender spent time in remand and was then convicted and sentenced. Of these cases, 41.1% (n=409) were from Toronto, 31.2% (n=310) were from Vancouver, 20.8% (n=207) were from Ottawa, 4.0% (n=40) were from Halifax and 2.8% (n=28) were from Whitehorse. The average age of the offenders was 36.4 years.⁴ The median age was 35.4 years, with the youngest offender being 18 years old and the oldest offender being 67 years old. The majority of the offenders were male (n=764; 77.4%).

There were significant differences, however, with respect to gender distributions.⁵ There was a higher proportion of female offenders (35.0%; n=143) in Toronto, compared to all the other locations (which ranged from 7.5% in Halifax to 17.9% in Whitehorse). Results should be interpreted with this in mind.

Offences for which the offender was convicted were ranked using the Canadian Centre for Justice Statistics' Seriousness Index. In 40.4% of the cases, offenders were convicted of 2 or more offences. When there were multiple convictions, the most serious offence (MSO) was chosen using the Seriousness Index. The MSOs were then amalgamated into the following overarching offence groups: person (e.g. assault, robbery, sexual assault, and firearm offences), property (e.g., theft, drug offences), administration of justice (e.g., fail to appear, breach of conditions) and motor vehicle (e.g., driving while impaired, dangerous operation). Table 1 provides a breakdown of these categories by court location. As can be seen, the majority of the convictions were for property (51.2%), administration of justice (25.9%) and person (21.4%) offences. There were very few motor vehicle offences (1.5%; n=15) in this sample. Given the number of motor vehicle offences, results for this group will be presented only where appropriate and of interest. In Toronto, Vancouver, and Ottawa the most common conviction was for a property offence. In Whitehorse, administration of justice offences were the most common conviction. In Halifax, there were convictions for equivalent proportions of property and administration of justice offences.

⁴ SD=10.45.

⁵ $\chi^2(4, N=987) = 62.59, p < .0001$.

Table 1: Most Serious Conviction by City

City	Most Serious Offence Conviction				
	Person	Property	Administration of Justice	Motor Vehicle	Total
	<i>n</i> (%)	<i>n</i> (%)	<i>n</i> (%)	<i>n</i> (%)	<i>n</i>
Whitehorse	8 (29.6%)	3 (11.1%)	15 (55.6%)	1 (3.7%)	27
Toronto	100 (24.5%)	207 (51.2%)	95 (23.3%)	4 (1.0%)	408
Vancouver	56 (18.2%)	173 (56.2%)	76 (24.7%)	3 (1.0%)	308
Ottawa	36 (17.6%)	105 (51.5%)	57 (27.9%)	6 (2.9%)	204
Halifax	11 (27.5%)	15 (37.5%)	13 (32.5%)	1 (2.5%)	40
<i>Total</i>	211 (21.4%)	505 (51.2%)	256 (25.9%)	15 (1.5%)	987 ⁶

Offences for which the offender was convicted were further categorized to determine whether or not the offender was convicted of an administration of justice offence, either on its own, or in conjunction with other convictions. In 49.1% of the cases, the offender was convicted of at least one administration of justice offence, on its own or in conjunction with another offence. The proportion of offenders with an administration of justice conviction varied somewhat across the court locations. In Whitehorse, 71.4% of the cases contained an administration of justice conviction. This proportion was 70.0% in Halifax, 58.9% in Ottawa, 49.9% in Toronto and 36.8% in Vancouver.

5.1.1 Sentences Handed Down by the Court

For the purposes of the following analysis, the custody sentence was defined as any additional time the offender would have to spend in jail. Analyses of the length of sentence do not include time served sentences, as the offender was deemed to have already spent an appropriate amount of time in pre-sentencing custody, and would not have to spend any extra time in sentenced custody. Of those who were given a custodial sentence, 376 offenders (41.3%) were given a time served sentence of either zero or one day, while the remaining 534 offenders (58.7%) were sentenced to additional time in custody. The proportion of offenders who received a time served sentence varied significantly across the five cities.⁷ Time served sentences were handed down in over three-quarters (78.6%; n=22) of the cases in Whitehorse and about half of the cases in Vancouver (56.1%; n=170) and Halifax (50.0%; n=19). One-

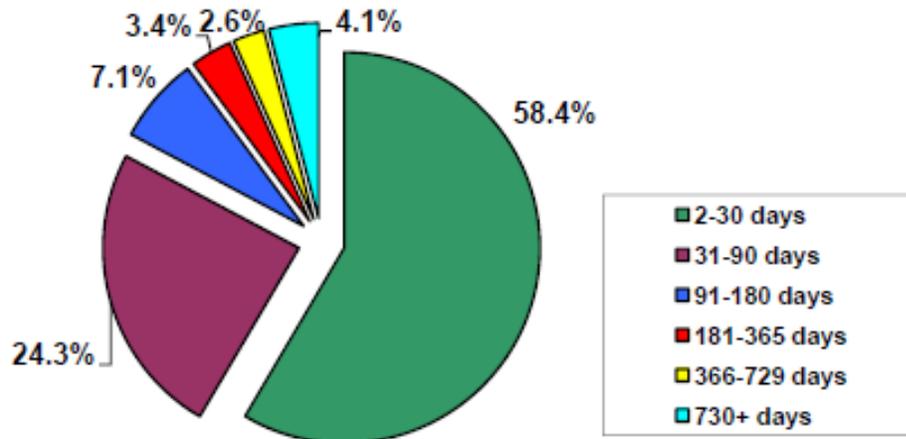
⁶ Data on the *Criminal Code of Canada* or *Controlled Drugs and Substances Act* conviction section was unknown or missing in 7 (0.7%) cases.

⁷ $\chi^2 (4, N=910) = 73.58, p < .0001$.

third (33.1%; n=117) of offenders who were sentenced to custody were given a time served sentence in Toronto and one-quarter (25.5%; n=48) received a time served sentence in Ottawa.

For those sentenced to additional time in custody, in this sample, offenders were sentenced to an average of approximately three months in custody (n=534; M=99.72 days),⁸ after excluding their time in remand, and any credit they received for time spent in remand. Sentences ranged from 2 to 1,620 days, with a median of 30 days. Figure 1 below highlights the distribution of the time offenders were sentenced to custody⁹ across the overall sample.¹⁰ Over half of the offenders (58.4%; n=312) were sentenced to an additional one month or less in custody. One-quarter of the offenders (24.3%; n=130) were sentenced to between one and three months. Thirteen percent were sentenced to a provincial sentence of between three months and two years less a day (n=70). Only 4.1% of the offenders (n=22) received a federal sentence of two years or more.

Figure 1: Sentence Length¹¹



As can be seen in Figure 2, approximately half of those in Whitehorse (50.0%; n=3),¹² Vancouver (54.1%; n=72) and Ottawa (50.7%; n=71) were given sentences of one month or less. The proportion was larger

⁸ SD=222.67.

⁹ After taking into account their credited time.

¹⁰ Due to the wide variability in the length of the custodial sentences they were divided into categories.

¹¹ After taking into account their credited time.

¹² There were only 6 cases in Whitehorse that were sentenced to two days or more in custody; therefore, the results in Whitehorse should be interpreted with caution and no generalizations may be made with respect to Whitehorse.

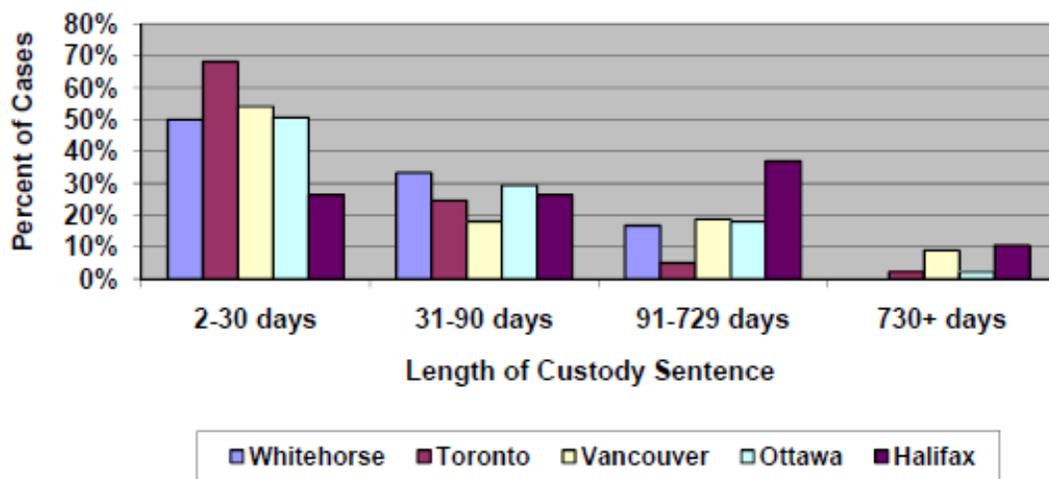
in Toronto, with 68.2% (n=161) of those who received additional custody receiving a sentence of 30 days or less. In Halifax,¹³ just over one-quarter (26.3%; n=5) were sentenced to between two and 30 days.

Between 16.7% and 18.8% of offenders in Whitehorse, Vancouver and Ottawa were given sentences of between three months and two years less a day. In Toronto, this proportion was 5.1% (n=12) and in Halifax this proportion was 36.8% (n=7).

As stated earlier, very few offenders (4.1%; n=22) were given a federal sentence. In all locations, less than 10% of offenders were sentenced to more than two years. The highest proportion of federal sentences were handed down in Vancouver (9.0%; n=12) and Halifax (10.5%; n=2). This only represented two persons in Halifax. No offenders in Whitehorse were given a federal sentence.

Overall, Toronto was found to be significantly different from all other locations; in that offenders were given shorter custodial sentences. Additionally, Halifax was found to have significantly longer sentences than the other locations.¹⁴ The sample size in Whitehorse was too small to allow any comparison to other locations in terms of sentence lengths.¹⁵ These results, however, must be taken with caution as they do not take into account the nature of the offence, the number of convictions, or other factors that may play into the sentencing decision.

Figure 2. Custodial Sentence Length by City¹⁶



There was a relationship between the most serious offence for which the offender was convicted and the length of the custodial sentence. Figure 3 displays the custodial sentences by the most serious

¹³ There were only 19 cases in Halifax that were sentenced to two days or more in custody; therefore, the results in Halifax should be interpreted with caution and no generalizations should be made.

¹⁴ Independent samples Mann-Whitney test at p<.05. Note that sample size in Halifax was small.

¹⁵ Statistically significant differences could not be tested due to cell sizes of less than 5.

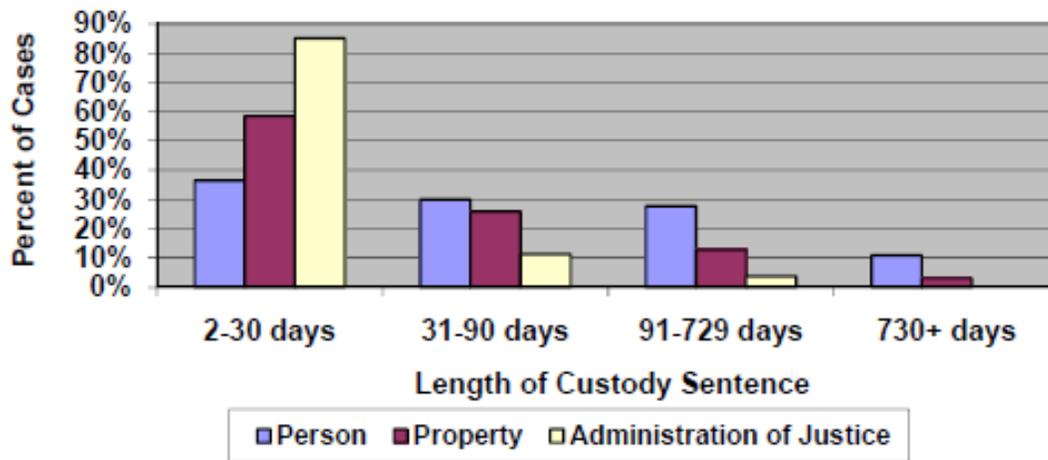
¹⁶ Whitehorse n=6; Toronto n=236; Vancouver n=133; Ottawa n=140; Halifax n=19

offence (MSO) category. The majority (85.0%; n=91) of those convicted of an administration of justice offence and 58.4% (n=174) of those convicted of a property offence were sentenced to an additional month or less in custody. These proportions were less than half for motor vehicle (42.9%; n=6) and person offences (36.4%; n=40).

Just under one-quarter (22.7%; n=25) of those convicted of a person related offence were sentenced to between three months and two years less a day, compared to less than 15% of those convicted of offences in the other three categories. Eleven percent (n=12) of those convicted of a person offence and 3.0% (n=9) of those convicted of a property offence were sentenced to a federal term. While the proportion was 7.0% for motor vehicle offences, it only represents one person. No offenders whose MSO was an administration of justice offence were given a federal sentence.

Overall, those convicted of an administration of justice offence as their MSO were sentenced to the least amount of time compared to all the other conviction groups. Those convicted of person offences were sentenced to spend significantly more time in custody compared to those convicted of property offences.¹⁷

Figure 3. Custodial Sentence Length by Most Serious Offence¹⁸



5.1.2 Other Types of Sentences or Orders Imposed by the Court

The vast majority (91.5%; n=910) of the offenders in this sample were sentenced to either time served or additional time in custody. Along with that sentence, offenders were also given other types of sentences. These are highlighted in Table 2.

¹⁷ Independent samples Mann-Whitney test at p<.05.

¹⁸ Person n=110; Property n=298; Administration of Justice n=107.

Just under half of all offenders were sentenced to a term of probation. The highest proportion was imposed in Vancouver (47.1%), with the lowest proportion found in Whitehorse (35.7%). No significant differences were found between the court locations.

Very few offenders were required to pay a fine or restitution as part of their sentence (2.0%). In all locations, with the exception of Halifax at approximately 13%, less than 10% of offenders were fined.¹⁹

Overall, about 20% of offenders were required to submit a DNA sample as part of their sentence. The proportions ranged from 18.3% in Toronto to 23.2% in Ottawa. In Whitehorse, only 3.6% of the sample (one offender) was required to submit a DNA sample. There were no significant differences found between court locations.²⁰

Fewer than 20% percent of offenders were given a weapons prohibition order as part of their sentence. The highest proportion of offenders given such an order was in Ottawa (23.3%), with the lowest found in Whitehorse (7.1%). In Whitehorse, this represents two persons.²¹

Table 2. Other Sentences²² by City

City	Type of Sentence or Order				
	Probation	Fine	DNA	Weapons Prohibition	Total
	<i>n</i> (%)	<i>n</i> (%)	<i>n</i> (%)	<i>n</i> (%)	<i>n</i>
Whitehorse	10 (35.7%)	2 (7.1%)	1 (3.6%)	2 (7.1%)	28
Toronto	169 (41.3%)	8 (2.0%)	75 (18.3%)	68 (16.6%)	409
Vancouver	146 (47.1%)	1 (0.3%)	61 (19.7%)	45 (14.5%)	310
Ottawa	84 (40.6%)	4 (1.9%)	48 (23.2%)	48 (23.3%)	207
Halifax	15 (38.5%)	5 (12.8%)	8 (20.5%)	6 (15.4%)	39
<i>Total</i>	424 (42.7%)	20 (2.0%)	193 (19.4%)	169 (17.0%)	993

¹⁹ Statistically significant differences could not be tested due to cell sizes of less than 5.

²⁰ Whitehorse was excluded due to the small sample size.

²¹ Statistically significant differences could not be tested due to cell sizes of less than 5.

²² 91.5% of the sample were sentenced to time served or additional time in custody, therefore in the majority of the cases, the 'other sentences' will be in addition to that sentence.

5.2 Time Spent in Pre-Sentencing Custody

5.2.1 Length of Time in Remand

In this sample, there was wide variability in the time offenders spend in remand. On average, offenders spent approximately one month in pre-sentencing custody (n=955; M=30.58 days).²³ The range of days across the sample was from 1 to 548 days, with a median length of 13 days. In order to examine a variety of factors that may influence the period of time an individual spends in pre-sentencing custody (e.g., the court location, the most serious offence, the length of the custodial sentence), it was decided that categorizing individuals based on the amount of time they spent in pre-sentencing custody would be beneficial. Two strategies were employed. In the first, the amount of time in pre-sentencing custody was divided into five different categories.

They were: less than one week, one to two weeks, two weeks to one month, one to three months and more than three months. In this fashion, we were able to provide the reader with concrete information on individuals who spent these varied periods of time in remand. The second approach was to divide the individuals into two groups, those who spent three months or less in remand (short stay) and those who spent over three months in remand (long stay).²⁴ This allowed for direct statistical comparisons of those who spent a short period versus those who spent a long period of time in pre-sentencing custody.

Figure 4 below highlights the distribution of time spent in remand across the overall sample. As can be seen, just over one-third (34.2%; n=327) of the offenders were in remand for one week or less. There was an equivalent distribution between those who spent one to two weeks (19.0%; n=181), two weeks to one month (18.6%; n=178), and one to three months (21.6%; n=206) in pre-sentencing custody. Very few offenders were in remand for more than 91 days, or over 3 months (6.6%; n=63).

Compiled differently, almost 72% of the offenders spent less than one month in pre-sentencing custody, 21.6% were in remand for one to three months and the remaining 6.6% were in remand for over three months. No differences were found between those who spent less than three months and those who spent over three months in remand with respect to the court location or the age of the offender.

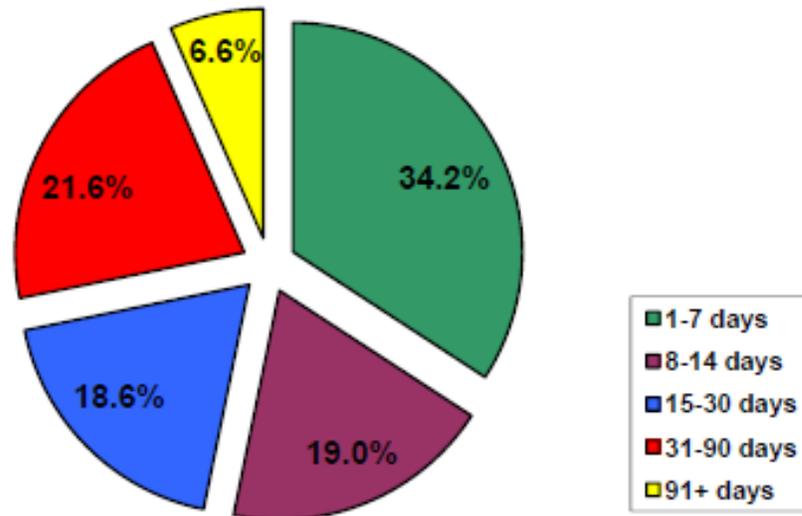
Differences were found between males and females according to the length of time they spent in pre-sentencing custody. A significantly higher proportion of males²⁵ (7.8%; n=57) spent over 91 days in remand compared to females (2.3%; n=5).

²³ SD=48.50.

²⁴ If a shorter stay in remand was defined as one month or less in pre-sentencing custody, with a longer stay defined as over three months, the same statistical differences emerged; therefore the decision was made to define the shorter stay as less than three months.

²⁵ $\chi^2(1, N=948) = 8.17, p < .01$.

Figure 4. Remand Length



Significant differences²⁶ were found for the five categories of time in remand and court location (see Figure 5). When looking at the specific sites almost half (44.6%; n=178) of the offenders in Toronto and approximately one-third (32.6%; n=99) of those in Vancouver spent less than 7 days in remand. This is compared to 14.3% (n=2) of those in Whitehorse.

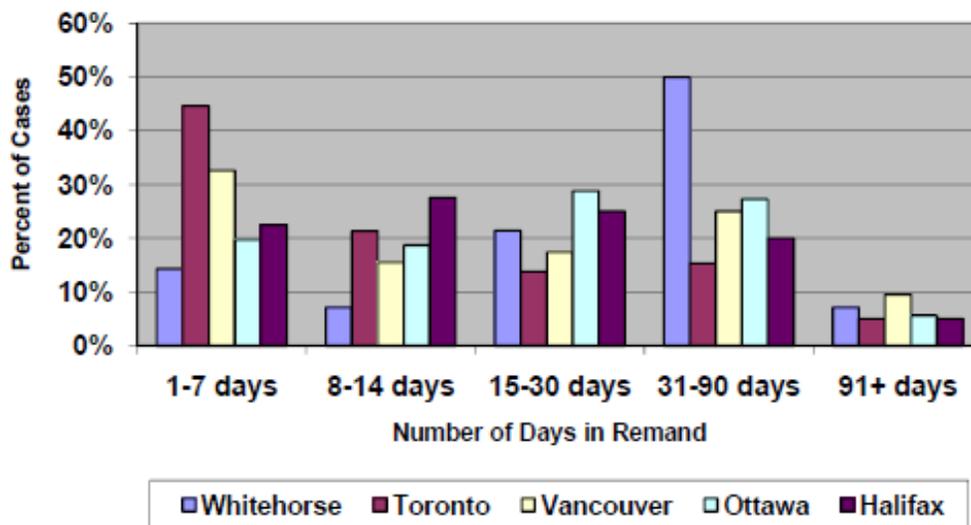
Half of the offenders in Whitehorse²⁷ (n=7) spent between 31 and 90 days in remand, compared to smaller proportions in all the other court locations. Less than 10% of all offenders, in each site, spent over 91 days in remand. Overall, Toronto was found to be significantly different from all other sites, with offenders spending a shorter amount of time in pre-trial custody.²⁸

²⁶ $\chi^2 (12, N=941) = 66.25, p < .001$; Whitehorse was excluded from the analysis due to cell sizes less than 5.

²⁷ Note that the sample size in Whitehorse was small; therefore, results should be interpreted with caution.

²⁸ Independent samples Mann-Whitney test at $p < .05$.

Figure 5. Remand Length by City²⁹



It should be noted, however, that the time spent in remand as described above does not take into account factors that may contribute to a longer stay. Such factors may include, but are not limited to the complexity of the case, the number of appearances, whether the location is remote, etc.

5.2.2 Offence Severity

Two proxies to examine offence severity were utilized in this study. The first was the most serious offence category (MSO). As described earlier, the MSO was designated to represent the case. A person-related offence (21.4%) was deemed to be more serious than a property offence (51.2%), which was deemed more serious than an administration of justice offence (25.9%).

While motor vehicle offences (1.5%) were separated from the other offences, there were very few of these; therefore, they will only be mentioned where appropriate. Using this severity index, a person-related offence is the most severe and therefore 21.4% of this sample was sentenced for more severe offences.³⁰

The second severity proxy is the custodial sentence the offender received. Of the 910 offenders who were sentenced to a custodial sentence, 41.3% (n=376) were sentenced to a time served sentence (zero or one day). When taking into account those sentenced to time served, just under half (48.6%) were sentenced to between two and 90 days, 7.7% were sentenced to between three months and two years less a day, and 2.4% were sentenced to a federal sentence over two years.

²⁹ Whitehorse n=14; Toronto n=399; Vancouver n=304; Ottawa n=198; Halifax n=40.

³⁰ Note that this includes persons convicted of simple assault.

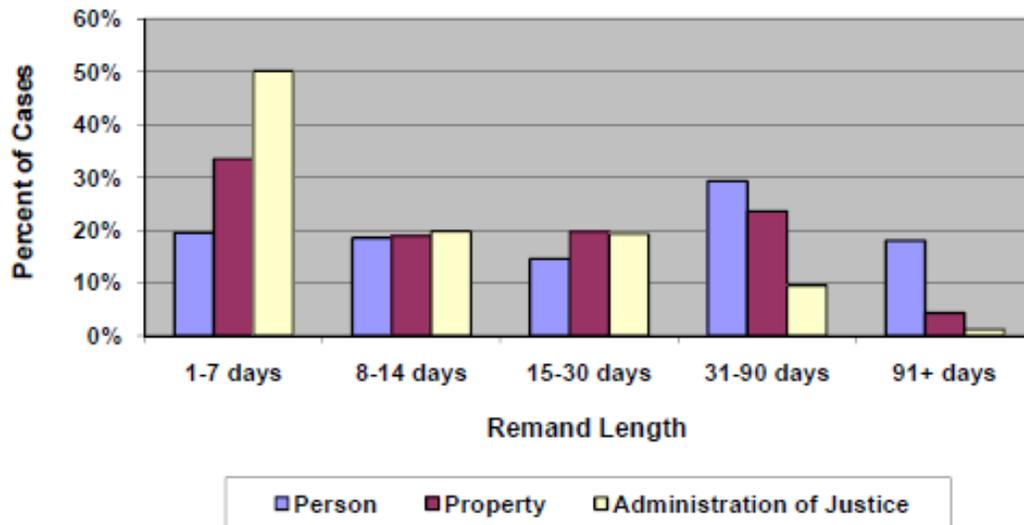
Using this severity index those sentenced to over three months would be considered more severe and therefore 10.1% of the sample was sentenced for more severe offences.

5.2.3 Length of Time in Remand by Most Serious Offence

Differences with respect to time spent in remand by MSO category were found, as can be seen in Figure 6. Those who were charged with a person-related offence spent the longest amount of time in pre-sentencing custody. Half (50.2%) of those who had an administration of justice charge as their MSO and one third (33.5%) of those with a property offence as their MSO spent less than one week in remand. In comparison, 19.5% of offenders charged with a person-related MSO and seven percent of offenders charged with a motor vehicle MSO³¹ were in remand for less than one week. About one-third (35.7%) of the offenders charged with a motor vehicle MSO and approximately 20% of all other offenders spent between two weeks and one month in remand. Very few (10.7%) offenders who were charged with an administration of justice offence spent greater than one month in pre-sentencing custody.³²

Overall, those charged with administration of justice offences spent a significantly shorter period of time in remand compared to all the other MSO groups. Additionally, those charged with property offences spent significantly less time in pre-sentencing custody compared to those charged with person offences.³³

Figure 6: Remand Length by Most Serious Offence³⁴



³¹ Note that the sample size for motor vehicle MSO is small and therefore results should be interpreted with caution.

³² Chi-square statistical significance could not be tested due to cell sizes of less than 5.

³³ Independent samples Mann-Whitney test at $p < .05$.

³⁴ Person $n=205$; Property $n=487$; Administration of Justice $n=243$.

Longer stays in remand were related to the type of offence for which the offender was convicted. When examining short versus long periods of time in remand, significant differences³⁵ were found for remand time by the most serious offence category (see Table 3). The types of crimes for which offenders spend shorter or longer periods of time in remand differ. Overall, very few (6.5%) offenders spent more than 91 days in remand. However, 18.0% of offenders with person- related offences spent more than 91 days in pre-sentencing custody. This is significantly higher than persons who were convicted of a property (4.3%) or administration of justice offence (1.2%).

Table 3. Remand Length by most Serious Offence

Most Serious Offence	Time in Remand		
	Less than 90 Days	More than 91 Days	Total
	<i>n</i> (%)	<i>n</i> (%)	<i>n</i>
Person	168 (82.0%)	37 (18.0%)	205
Property	466 (95.7%)	21 (4.3%)	487
Admin of Justice	240 (98.8%)	3 (1.2%)	243
Motor Vehicle	13 (92.9%)	1 (7.1%)	14
Total	887 (93.5%)	62 (6.5%)	949

5.2.4 Length of Time in Remand by Custodial Sentence

There was a significant positive correlation between time in remand and the length of the custodial sentence,³⁶ indicating that as the length of time in pre-sentencing custody increased, so did the length of the custodial sentence. Figure 7 displays the length of time spent in remand by the length of the custody sentence. Note that the custody sentence is defined as any additional time the offender was required to spend in jail and does not include any credit awarded for, or time already spent, in remand. Sentences of zero or one day were deemed to be time served sentences and were not included in this analysis. There were minimal differences in the distribution of the remand categories of one to seven days and eight to 14 days; therefore, for the purposes of this analysis these two categories were aggregated together.

Those who spent less time in remand were more likely to receive a shorter custodial sentence. As the time in remand increased, so did the additional time that the offender was sentenced to custody. Three-quarters (74.8%) of those who spent two weeks or less in remand were sentenced to between two and 30 days, compared to 17.1% of those who spent over three months in remand.

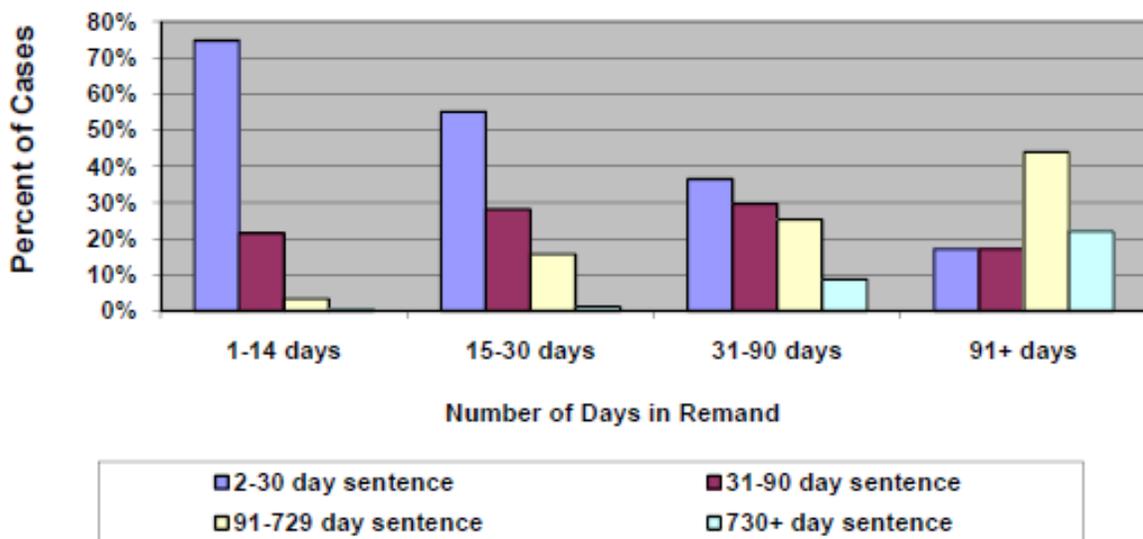
³⁵ $\chi^2 (3, N=949) = 59.63, p < .001.$

³⁶ $r = .504, p < .01.$

Three percent (3.3%) of those who spent two weeks or less in remand, compared to 43.9% of those who spent over 3 months in remand, were sentenced to between three months and two years less a day in custody.

While there were a smaller number of offenders sentenced to a federal sentence, the trend holds, with 22.0% of those who spent over three months in remand being sentenced to a federal term compared to 1.5% of those who were in remand for less than 30 days.

Figure 7. Remand Length by Custodial Sentence Length

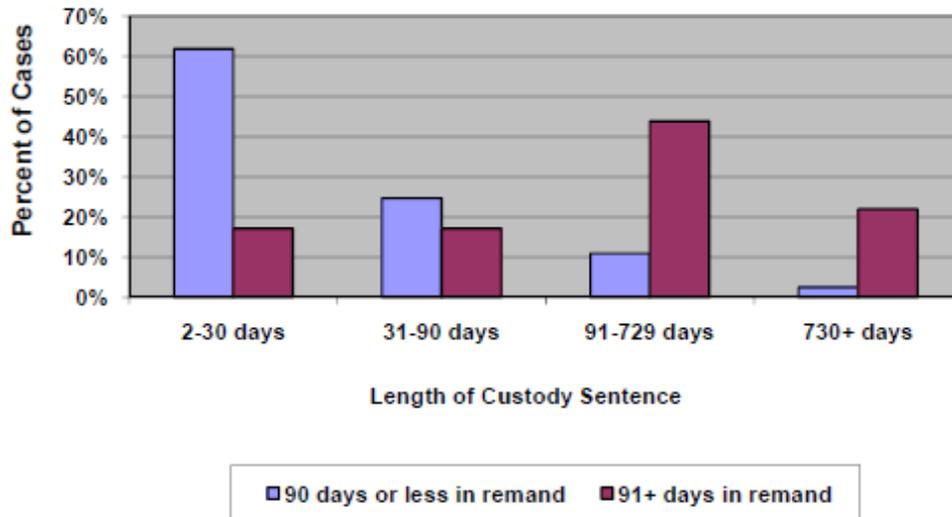


Those who spent 90 days or less in remand were considered to have spent a short period of time in remand, while those who spent 91 days or more were considered to have spent a longer period of time in remand. Significant differences³⁷ were also found between those who spent a shorter period of time in remand and those who spent a longer period of time in remand with respect to any additional time in sentenced custody³⁸ (see Figure 8). Of those who were in remand for less than three months, 61.9% were sentenced to additional custody of two to 30 days, 24.7% were sentenced to one to three months, 10.9% were sentenced to a provincial custody term over three months and 2.5% were sentenced to federal custody (over two years). Comparatively, for those who were remanded for more than three months, 17.1% were sentenced to between two and 30 days, an additional 17.1% were sentenced to between one and three months, 43.9% were sentenced to a provincial sentence between three months and two years less a day and 22.0% were sentenced to a federal term over two years.

³⁷ $\chi^2(3, N=519) = 79.72, p < .001$.

³⁸ Recall this does not include those offenders who were sentenced to time served of zero or one day.

Figure 8. Custodial Sentence by Short or Long Stay in Remand



5.3 Pre-Sentencing Custody credits

5.3.1 The Awarding of Pre-Sentencing Custody Credits

A credit was defined as receiving any compensation for time spent in pre-sentencing custody, which included any credit greater than, and including, one-for-one. No differences were found for the awarding of a credit in the various cities. Table 4 indicates that pre-sentencing custody credits were awarded in the vast majority of known cases.³⁹ Across all jurisdictions, credits were awarded 95.3% of the time. In all court locations, with the exception of Halifax, credits were awarded in over 90% of the known cases. In Whitehorse, 100% of cases were awarded a credit. In Halifax, credits were awarded 75% of the time, with 25% of the offenders receiving no credit for the time they spent in remand.⁴⁰

³⁹ Data on whether or not a credit was awarded was unknown in 64 (4.9%) cases.

⁴⁰ Statistically significant differences could not be tested due to cell sizes of less than 5.

Table 4. Presence of a Pre-Sentencing Custody Credit by City

City	Was a credit awarded?		
	Yes	No	Total
	<i>n</i> (%)	<i>n</i> (%)	<i>n</i>
Whitehorse	27 (100%)	0 (0%)	27
Toronto	321 (91.5%)	30 (8.5%)	351
Vancouver	307 (99.4%)	2 (0.6%)	309
Ottawa	204 (98.6%)	3 (1.4%)	207
Halifax	27 (75.0%)	9 (25.0%)	36
Total	886 (95.3%)	44 (4.7%)	930

These proportions do not take into account other factors which may affect the decision to award a credit, such as the conditions of the remand facility or the availability of programming.

Given the high proportion of persons who were awarded credits, the following analyses with respect to the awarding of credits should be noted with caution. The analyses, however, suggest that there were no differences between cases where a credit was awarded and those where a credit was not awarded in terms of the gender of the accused, the most serious offence in the case, and whether or not the offender spent a short versus a long period of time in remand. It is interesting to note that if an offender spent over 91 days in remand, in 100% of all cases they were awarded a credit for their pre-sentencing custody time. While not conclusive, analysis of the custodial sentence suggests that those persons who were given a custodial sentence of between two and 90 days were least likely to be awarded a credit (92.2%) compared to those who were sentenced to time served (97.5%), those who were sentenced to 91 to 729 days (95.7%) and those who were given a federal sentence (95.5%). The differences, however, were minimal.

5.3.2 Stating Pre-Sentencing Custody Credits in Open Court

There was considerable variation in whether the credit awarded was stated by the judge in open court across court locations. Overall, the credit was stated in just under two-thirds of known⁴¹ cases (see Table 5). Significant differences⁴² on whether or not the credit was stated in open court were found with respect to city. In Ottawa, the credit was stated in open court 84.2% of the time. In Toronto and Whitehorse, the credit was stated in approximately 60% of the cases. In Vancouver and Halifax, however, the credit was stated in about half the cases. Overall, credits were stated in open court in a

⁴¹ Data was unknown or missing for 4 (0.4%) cases.

⁴² $\chi^2(4, N=882) = 55.19, p < .0001$.

significantly higher proportion of cases in Ottawa compared to the other four locations. Additionally, the credit was stated in a higher proportion of cases in Toronto compared to Vancouver.⁴³

Table 5. Frequency Credit Stated in Open Court by City

City	Was a credit stated?		
	Yes	No	Total
	<i>n</i> (%)	<i>n</i> (%)	<i>N</i>
Whitehorse	15 (57.7%)	11 (42.3%)	26
Toronto	207 (64.9%)	112 (35.1%)	319
Vancouver	163 (53.8%)	140 (46.2%)	303
Ottawa	165 (84.2%)	31 (15.8%)	196
Halifax	17 (44.7%)	21 (55.3%)	38
Total	567 (64.3%)	315 (35.7%)	882

Offenders spending a short versus a long period of time in pre-sentencing custody did not differ in terms of whether or not the credit was stated in open court. Significant differences,⁴⁴ however, were noted based on the MSO category and the length of the custodial sentence the offender received.⁴⁵ The credit was more often stated in cases where a person offence was the MSO (73.1%; n=136) compared to when the MSO was an administration of justice offence (65.2%; n=150) or a property offence (60.4%; n=269). The credit was more likely to be stated in open court when the custodial term was a provincial sentence of between three months and two years less a day (80.3%; n=53). The credit was stated in 70.5% (n=256) of the cases where the offender was sentenced to between two and 90 days, in 59.1% (n=13) of the cases where a federal sentence was given and in 56.3% (n=197) of the cases where the offender was sentenced to time served.

5.3.3 Pre-Sentencing Custody Credit Ratios

Over 80% of the total sample received a credit ratio of 2:1 for their time spent in pre-sentencing custody. This was the most frequently awarded credit in all court locations, with the exception of Whitehorse, where a credit ratio of 1.5:1 was awarded in 80% of the cases. In Vancouver and Toronto, a 2:1 credit was awarded over 95% of the time. Three to one credits were not awarded in any of the court locations and 1:1 credits were awarded in 8.8% of the cases (see Table 6).⁴⁶ In just under one-quarter of the cases in Ottawa (21.5%; n=34) a credit of 1:1 was awarded.

⁴³ Chi-square test at p<.05.

⁴⁴ χ^2 (2, N=861) = 9.27, p < .01.

⁴⁵ χ^2 (3, N=801) = 23.60, p < .0001.

⁴⁶ Statistically significant differences could not be tested due to cell sizes of less than 5.

Although they were awarded infrequently in the other cities, there were a few cases in the other sites where the offender was awarded a 1:1 credit.⁴⁷

In 3.8% of the cases in Ottawa, the ratio was mixed. In these instances a 1:1 ratio was applied to one period of time, while a 2:1 ratio was applied to another. Based on information provided by the courts, these cases involved multiple offences, where at least one offence appeared to be an administration of justice offence. This may suggest that it was felt the time spent in remand for an administration of justice charge did not warrant a 2:1 credit. In other words, an individual could spend time in remand for a substantive charge, and then be released on bail. They could then be remanded again for an administration of justice offence. The time spent in remand for the substantive charge would receive a 2:1 credit, while the second stay in pre-sentencing custody for the administration of justice charge would receive a 1:1 credit.

Table 6. Credit Ratios Awarded by City

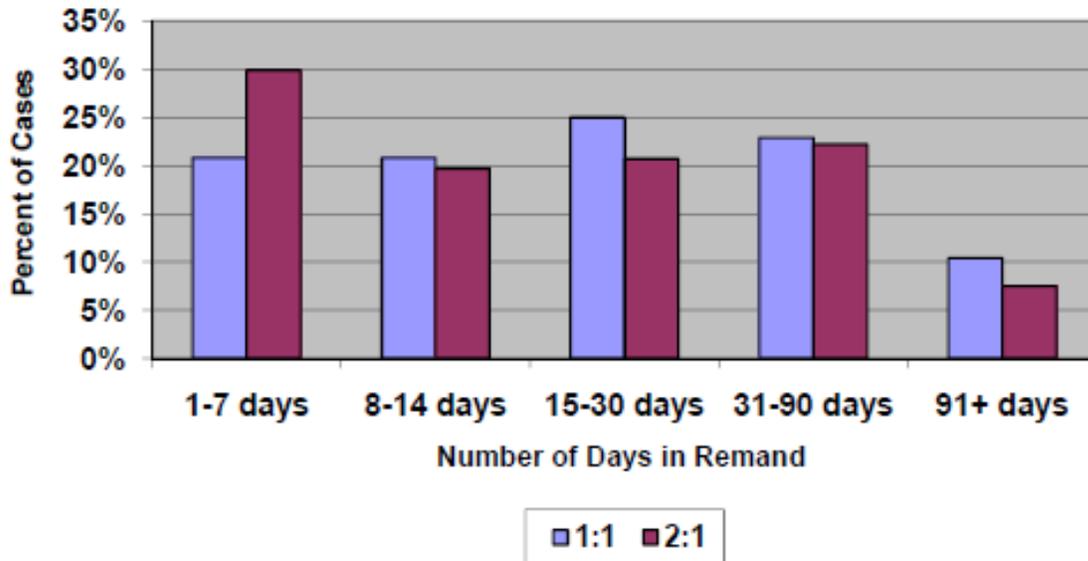
City	Ratio n (%)				
	1:1	1.5:1	2:1	Mixed	Total
Whitehorse	2 (13.3%)	12 (80.0%)	1 (6.7%)	0 (0%)	15
Toronto	9 (4.3%)	1 (0.5%)	197 (95.2%)	0 (0%)	207
Vancouver	1 (0.6%)	2 (1.2%)	161 (98.2%)	0 (0%)	164
Ottawa	34 (21.5%)	8 (5.1%)	110 (69.6%)	6 (3.8%)	158
Halifax	3 (18.8%)	0 (0%)	13 (81.3%)	0 (0%)	16
Total	49 (8.8%)	23 (4.1%)	482 (86.1%)	6 (1.1%)	560

Given the high proportion of persons who were given a 2:1 credit, the following analyses with respect to the ratio of credits should be noted with caution. There were no differences in the credit ratio awarded in terms of the gender of the offender, the MSO in the case, whether the offender spent a short versus a long period of time in remand or the custodial sentence received.

Figure 9 demonstrates the proportion of persons who were given a credit by the amount of time they spent in remand. No significant differences were found. Of those who received a 1:1 credit, 20.8% spent one to seven days in remand, compared to 29.9% of those who were given a 2:1 credit. Similarly, of those who received a 1:1 credit, 22.9% spent one to three months in remand, compared to 22.2% of those who were given a 2:1 credit. Credit ratios of 1.5:1 were not included in the figure as they represent only 20 cases.

⁴⁷ While 1:1 credits were awarded 18.8% of the time in Halifax, this represents 3 of 16 cases. Similarly, in Whitehorse, 13.3% of the time a 1:1 credit was awarded, representing 2 of 15 cases.

Figure 9. Remand Length by Credit Ratio



5.3.4 Reasons for Pre-Sentencing Custody Credits

Overall, in the majority of the cases, reasons were not provided for the credit given. Reasons were given in approximately one-quarter of the cases in Halifax (26.3%). In Vancouver and Ottawa, however, reasons were provided less than 10% of the time. In Toronto and Whitehorse, they were provided less than 5% of the time (see Table 7).

Table 7. Frequency Reason Provided for the Credit by City

City	Was a reason provided?		
	Yes	No	Total
	<i>n</i> (%)	<i>n</i> (%)	<i>N</i>
Whitehorse	1 (3.6%)	27 (96.4%)	28
Toronto	9 (2.8%)	312 (97.2%)	321
Vancouver	22 (7.1%)	286 (92.9%)	308
Ottawa	16 (7.8%)	190 (92.2%)	206
Halifax	10 (26.3%)	28 (73.7%)	38
Total	58 (6.4%)	843 (93.6%)	901

Although reasons were only provided in a limited number of cases, similarities were observed among them. Some judges awarded a credit as a result of the offender's experience in pre-sentencing custody. For example, the accused was late for his or her court appearance due to being brought in late for his or her appearance from the detention centre or was given very limited time outside his other cell. More general explanations regarding pre-sentencing custody, such as the lack of programs or the harsh

conditions in the remand facility, were also provided. Judges stated that a 2:1 credit was provided in some cases because it was the convention at the time. Previous court decisions were noted in a few of these cases. The 2:1 convention was also addressed in several cases where a reason was provided for not awarding a credit. In most of these cases the judges did not offer a 2:1 credit because the offender was in custody as a result of breaching a condition of his or her release.

5.3.5 Defence Request

Significant differences⁴⁸ were found with respect to whether the defence requested a pre-sentencing custody credit on behalf of the offender by court locations. Overall, in 64.2% of the known⁴⁹ cases, the defence made such a request. In approximately 90% of the cases in Whitehorse⁵⁰ and Ottawa, a credit was requested by the defence (see Table 8). In Toronto, a credit was requested by the defence in less than half the cases. Both the sample sizes in Whitehorse and Halifax were small and therefore results in these locations should be interpreted with caution. Overall, defence in Toronto requested a credit at a significantly lower rate than in any of the other sites. Additionally, defence in Ottawa requested a credit at a higher rate than all other locations.⁵¹

Table 8. Frequency Credit Requested by Defence by City

City	Did the defence request a credit?		
	Yes	No	Total
	<i>n</i> (%)	<i>n</i> (%)	<i>n</i>
Whitehorse	12 (92.3%)	1 (7.7%)	13
Toronto	171 (42.3%)	233 (57.7%)	404
Vancouver	220 (77.7%)	63 (22.3%)	283
Ottawa	170 (88.1%)	23 (11.9%)	193
Halifax	20 (66.7%)	10 (33.3%)	30
Total	593 (64.2%)	330 (35.8%)	923

There were no differences on whether the defence requested the credit based on the MSO in the case.

⁴⁸ $\chi^2 (3, N=910) = 153.93, p < .001$.

⁴⁹ Data was unknown or missing for 71 (7.1%) cases.

⁵⁰ Note there were only 13 cases in Whitehorse where information on defence request was available; therefore, results should be interpreted with caution.

⁵¹ Differences with Whitehorse could not be evaluated due to the cell size less than 5.

Differences in whether the defence requested a credit were also found for gender. Defence were significantly⁵² more likely to request a credit when the offender was male (66.2%) compared to when the offender was female (57.4%); however, the difference in proportions is small.

Defence requested a credit in a significantly⁵³ larger proportion of cases when the offender spent more than 91 days in remand (85.2%) compared to when the offender spent less than three months in remand (62.6%).

Significant differences⁵⁴ were found with respect to the custodial sentence the offender was given and whether or not the defence requested a credit. The defence requested a credit in a higher proportion (85.3%) of cases where the offender was sentenced to between three months and two years less a day compared to when the offender was sentenced to time served (67.9%), two to 90 days (60.7%) or a federal sentence of two years or more (55.0%).

6. Discussion

Data were collected prospectively at sentencing hearings for a sample of 994 cases where an adult offender spent time in pre-sentencing custody and was subsequently sentenced in five Canadian courts (Toronto, Vancouver, Ottawa, Halifax and Whitehorse) between June 2008 and November 2009. The majority of the sample was male, with an average age of 36 years. In Toronto, Vancouver and Ottawa, approximately half of the offenders were convicted of a property offence as their most serious offence (MSO). In Whitehorse, just over half of the offenders were convicted of an administration of justice offence as their MSO. In Halifax, there was an equivalent distribution of property, administration of justice and person-related offences.

The Majority of Offenders were Sentenced to an Additional Month or Less in Custody

Overall, 41.3% (n=376) of the offenders in this sample were sentenced to time served, following any time spent in, and any credit received, for remand. Variation in time served sentences was found by location, with over half the offenders in Whitehorse, Vancouver and Halifax receiving such a sentence.

Of the remaining offenders (n=534) who were sentenced to spend additional time in custody, over half (58.4%; n=312) were sentenced to spend an additional 30 days or less in custody. Very few offenders (4.1%; n=22) were sentenced to a federal term of over two years. This is comparable to the national data from 2008/2009, which reports that 53% of offenders received a custodial sentence of one month or less and 2% were given a federal sentence (CCJS, Data Tables 2008/2009). Differences emerged with respect to court location. In Toronto, offenders were given significantly shorter custodial sentences,

⁵² $\chi^2 (1, N=917) = 5.54, p < .05.$

⁵³ $\chi^2 (1, N=893) = 12.65, p < .001.$

⁵⁴ $\chi^2 (3, N=845) = 17.95, p < .001.$

compared to the other locations. In Halifax, custodial sentences were significantly longer than all other locations.⁵⁵

Differences also emerged with respect to the MSO for which the offender was sentenced. Cases where an administration of justice offence was the MSO resulted in shorter sentences than the other offence groups (person, property, motor vehicle). Cases where a person-related offence was the MSO resulted in significantly longer sentences than property offenders. The length of the sentence appears to be in line with the severity of the offence, with those convicted of the least serious offences (administration of justice offences) receiving shorter sentences, and those convicted of an offence which caused harm to another individual (person offences) receiving the longest sentences. It is important to note, however, that these results do not take into account other factors which may play a role in the sentencing decision, such as the number of convictions, the offender's criminal history, Aboriginal status, or the circumstances surrounding the crime.

Analyses revealed a positive correlation between time in remand and the length of the custodial term. Those who spent less time in remand were more likely to receive a shorter custodial sentence. As time in remand increased, so did the offender's custodial term. These results, along with the results on the length of time spent in remand according to the MSO, lend support to the notion that those who spend longer periods of time in remand do so because the crime for which they were charged, and the sentence they were likely to receive, was deemed to be more severe. It is possible that these cases, which may be more severe, may be more complex and therefore require more time to make their way through the criminal justice system.

Almost Three-Quarters of Offenders Spent one Month or Less in Remand

Overall, in this sample, 71.8% of the offenders spent one month or less in remand, with one-third of the sample spending one week or less in pre-sentencing custody. This proportion is in line with data compiled by the Canadian Centre for Justice Statistics, which reports that across Canada in 2008/2009, 77% of accused served less than 31 days in remand (CCJS, Data Tables 2008/2009). Differences emerged between the court locations with respect to the amount of time offenders spent in remand. A higher proportion of offenders in Toronto and Vancouver were spending between one and seven days in remand. In Whitehorse, although the sample size was small, half of the offenders were in remand for between 31 and 90 days. In Ottawa and Halifax, the distributions across the various time periods were roughly equivalent, however, in Ottawa, a slightly higher proportion of the offenders were spending between 15 and 90 days in remand.

Overall, very few offenders were in pre-sentencing custody for more than 91 days. Differences were also noted for gender, with a higher proportion of males spending more than three months in remand compared to females.

⁵⁵ Note that comparisons with Whitehorse could not be made due to the small sample size and cell sizes of less than 5.

Two offence severity proxies were employed in this study, one using the MSO for which the offender was convicted and the other using the custodial sentence length. Significant differences were found for both severity proxies by length of time in pre-sentencing custody. With respect to the MSO, offenders whose MSO was an administration of justice offence spent a significantly shorter period of time in remand compared to those whose MSO was a property, motor vehicle or person offence. Those who were convicted of a person related offence, on the other hand, spent the longest period of time in pre-sentencing custody.

It is likely that those whose MSO was a person-related offence, where there is a victim, are more likely to be denied bail and kept in remand for a longer period of time in order to ensure the safety of the victim(s) or society in general. Those who commit a property or administration of justice offence may initially be remanded by the police, but may only be held for a short period of time as they are likely to be released into the community by a Justice if they do not pose a threat to the safety of the community. It is possible that offenders who commit a person-related offence may also spend a longer period of time in remand because the case is more complicated and more steps are required before a plea is entered or a trial is concluded (e.g., there are additional/longer negotiations with the Crown, it takes longer to resolve the question of bail, more witnesses must be consulted, etc.). Offenders who are not released on bail remain in remand until these steps are completed and the case is resolved. Although those who were convicted of motor vehicle offences were held for a significantly longer period of time, the sample size is relatively small and therefore no generalizations can be made about this group.

With respect to the second severity proxy (the length of the custodial sentence), as time in remand increased so did the additional time in custody. Significant differences were found for those who spent a shorter versus a longer period of time in pre-sentencing custody. A higher proportion of those remanded for less than three months were sentenced to a shorter amount of additional time in custody. Conversely, a higher proportion of those who spent more than three months in remand were sentenced to a longer period of additional custody. These results suggest that there is a possible link between the amount of time in pre-sentencing custody and the severity of the case.

Pre-Sentencing Custody Credits Awarded the Majority of the Time; the Most Common Ratio was 2:1

Overall, in 95% of the known cases a credit was awarded to the offender for time spent in remand (either for a ratio of 1:1 or higher). This finding suggests that the courts have been following the decision in *R. v. Rezaie* (1996), which states that credit should generally be awarded unless there is good reason to deny it. Variation existed, however, across the five cities in terms of the extent that pre-sentencing custody credits were awarded. In over 90% of the total cases, offenders who spent time in remand received credit for that time, however, in Halifax, 75% received a credit. In other words, credits were not awarded in one-quarter of cases in Halifax. In Halifax, it is possible that judges would deny a credit because the time spent in remand had been taken into account at sentencing for another case involving the same offender. Presumably, offenders in these circumstances would be spending time in remand for more than one case.

While this may occur in other courts or jurisdictions, Halifax was the only location that demonstrated this result. No significant differences in whether or not a credit was awarded were found by the gender of the offender, the most serious offence in the case and whether or not the offender spent a long versus a short period of time in remand. Interestingly, however, is that 100% of those who were in remand for more than three months were awarded a credit. While not conclusive, results suggest that those sentenced to between two and 90 days were the least likely to be awarded a credit, and those sentenced to time served were the most likely to receive credit. The differences, however, were minimal. It is possible that the judge may be more likely to award a credit in time served sentences, as this allows the judge to reduce the sentence so that the offender does not have to spend any extra time in custody.

When a credit was awarded to the offender, overall the credit ratio was stated in just under two-thirds of the cases. Differences were noted across the court locations. The credit was stated in open court in over 80% of cases in Ottawa and just under two-thirds of cases in Toronto. In Vancouver, Whitehorse, and Halifax the credit was stated in approximately half of the cases. No differences in the stating of the credit were noted for a short versus long stay in remand.

Differences, however, were found for the MSO in the case and the length of the custodial term received. The credit was most often stated in cases where a person-related offence was the most serious compared to administration of justice and property offences. Credits were stated in a higher proportion of the cases where the offender received a provincial custody term over three months. The credit was least likely to be stated when the offender received a time served sentence.

In the majority of the cases (86%) a 2:1 credit ratio was awarded. This finding lends empirical support to previous research that found that the 2:1 ratio was widely considered standard (Kong & Peters, 2008; Manson, 2004; Roberts, 2005; Weinrath, 2009). There were some differences, however, with respect to the court location. In Whitehorse, a credit ratio of 1.5:1 was applied most frequently, in 80% of the cases. It appears that awarding a credit of 1.5:1 is convention in the Yukon. While a 1:1 ratio was applied in about 20% of the cases in Ottawa and Halifax, the 2:1 ratio was used almost exclusively in Toronto and Vancouver. There were no cases where a 3:1 or higher credit ratio was applied. There were no differences found with respect to gender, the MSO in the case, a short versus long remand time, the custodial sentence or the time spent in remand.

It appears as though the courts were willing to depart from the 2:1 convention when it was deemed appropriate. Judges commonly exercised the discretion provided in Section 719(3) of the *Criminal Code* and affirmed in *Wust* (2000) to give more or less credit for time spent in remand.

Although previous research has revealed that courts have awarded credit at ratios higher than 2:1 (Manson, 2004; Roberts, 2005), in this sample, it appears as though it is more common for judges to deviate from the norm to award credit at a lower ratio (e.g., 1:1, 1.5:1) than a higher one (e.g., 3:1, 4:1). There was no evidence in this study that an enhanced credit was awarded.

These results suggest that the use of credit ratios higher than the 2:1 rate is extremely rare and as Manson (2004) suggests, it was probably reserved for cases with unique, adverse circumstances.

On the whole, reasons for the credit being awarded to the offender were not provided in open court. Across all sites, reasons were only provided in approximately 6% of the cases. While reasons for the credit were given in a quarter of the cases in Halifax, explanations were provided in less than 10% of cases in Vancouver and Ottawa and less than 5% of cases in Toronto and Whitehorse.

Overall, defence requested a credit on behalf of the offender in two-thirds of the cases. Significant differences were found with respect to location. In about 90% of cases in Ottawa and Whitehorse and approximately 80% of cases in Vancouver, the defence made such a request. In comparison, however, credits were requested in about two thirds of the cases in Halifax and less than half of the cases in Toronto. Defence counsel in Toronto were the least likely to request a credit, while defence counsel in Ottawa were the most likely to request a credit. It could be that defence in Toronto are not likely to request a credit for the offender due to the significantly shorter period of time spent in remand in that location. Of interest is that a smaller proportion of offenders (91.5%) were awarded a credit in Toronto, compared to Ottawa (98.6%). A credit was more likely to be requested if the offender was male and spent more than three months in pre-sentencing custody. If the offender spent a short period of time in remand (for example, a day or two), the defence appeared to be less inclined to request a credit be awarded. If, however, the offender spent over three months in remand, a credit was requested and thus reduced the amount of additional time the offender would spend in custody. While these results suggest that there are gender differences, it should be noted that males were also more likely to spend over three months in pre-sentencing custody. Credits were requested in a higher proportion of cases where the additional custodial time is between three months and two years less a day. They are least likely to be requested when the sentence is over two years. It is possible that because of the small number of offenders sentenced to over two years no trend was identifiable. It is also possible that defence counsel did not request a credit because in cases where the sentence is longer (i.e., over two years), the credit may be negligible to reducing the amount of time the offender would spend in custody. Credits, however, were awarded in 95.5% of the cases where the offender received a federal sentence of more than two years, indicating that perhaps it wasn't always necessary for the defence to request a credit. No differences were noted with respect to the MSO in the case.

Pre-sentencing custody credits were not applied or discussed in a uniform way across these five court locations in Canada. Substantial differences were found in terms of the way that the pre-sentencing custody issue was addressed. These results suggest that Section 719(3) of the *Criminal Code* was being applied based on the norms established in each court, lending support to the idea that cases are processed in accordance with the "local legal culture" in each jurisdiction (Church, 1982; Steelman, 1997). Although local legal culture is generally discussed in terms of the efficiency with which cases are processed through the system, these findings suggest that legislation can be applied according to the informal practices, norms and expectations shared by court practitioners within a specific court.

7. Limitations and Future Research

There is very little research in Canada on the use of pre-sentencing custody credits. Consequently, this report provides valuable information that can be used to gain a better understanding of this issue. Since information regarding pre-sentencing custody credits has not been systematically recorded, this

research was conducted prospectively by collecting data at sentencing hearings as they occurred. This is the first piece of research that investigates the awarding of pre-sentencing custody credits in Canada. It also provides a comparison of those who spent differing amounts of time in remand, with respect to such matters as the MSO for which the offender was convicted, as well as the sentence that was eventually handed down.

While the data collected in this study is not national, it does provide a preliminary picture of the state of pre-sentencing custody credits in Canada. It also provides baseline data from which comparisons with legislative changes can be made.

This study, however, has several limitations. First, the data was collected from only five courthouses across Canada. Having access to additional locations would have provided a larger sample size that would be more generalizable to the country as a whole. The results also suggested that there were some significant differences among the locations, specifically with respect to how each location deals with the factors surrounding pre-sentencing custody (e.g., time spent in remand, awarding of credits, ratio, etc.). Having access to additional sites may have provided for a more thorough assessment of any regional differences, or differences in court culture, that may have been present. Future research might include a wider variety of locations, with some in the same city, and with a larger sample size in each location.

Second, each location collected data for a period of three months and these months were staggered across the locations. It is possible that at different times of the year, remand and sentencing patterns differ, and this may have contributed to some of the results that showed differences among the locations. A longer data collection period may have not only increased sample size, but could have negated any seasonal differences which may have contributed to the results. Additionally, it would have allowed for a larger sample size in the smaller locations (Halifax and Whitehorse). This would have allowed for more certainty with respect to the results from these locations. Additionally, it would have been interesting to explore the differences between those who received a credit for their time in pre-sentencing custody and those who did not. In this study, only 44 individuals were not awarded a credit for their time in remand. A larger sample size may have produced more cases where such a credit was denied, and thus allowed for comparisons.

Finally, the data was collected at the sentencing hearing, primarily in guilty plea court. This limited the representativeness of the data to cases where the accused pleaded guilty, and did not include the potentially longer cases where the accused pleaded not guilty and went to trial.

Additionally, because the data was being collected at the sentencing hearing, it was recognized that only a limited number of variables could be reliably captured. For example, no information was collected on the offender's criminal record, the offender's Aboriginal status, variables surrounding the commission of the offence (e.g., the degree of harm caused to the victim), victim impact statements, or the conditions in the remand facility where the offender was housed.

Additionally, in very few instances were the reasons for the credit stated in open court. It is quite possible, therefore, that there were a variety of other factors that may have contributed to the judge's decision with respect to the credit and the sentence. Unfortunately, due to the unavailability of this information we were unable to assess their impact on either of these aspects.

Future research in this area could address the limitations outlined above and could also include interviews with key players in the criminal justice system, including justices, Crown counsel and defence counsel in order to investigate some of the reasons for the credit ratios that were awarded. While this study provides data with respect to the length of time a person may spend in remand, as well as the credit ratio awarded for that time, it does not provide ample reasons for why such credits are applied. Additionally, it would be of interest to understand why defence counsel, in some cases, are not requesting a credit on behalf of the offender.

A study conducted by Morton Bourgon and Solecki (2010) on bail in Canada with specific groups of offenders found that there were differences with respect to case characteristics and processing for those who were remanded and those who were released on bail. This study only focused on offenders who had spent time in remand. Additional research could compare a random sample of all types of offenders who were held in custody awaiting sentencing and those who were released into the community. Those who did not spend time in remand would act as a control group in order to determine the impact that pre-sentencing custody has on case processing.

Finally, the changes made by Bill C-25: *Truth in Sentencing Act* substantially changed the way that pre-sentencing custody credits are dealt with by the courts. It is anticipated that future research will investigate the state of pre-sentencing custody credits following those amendments, using the data from this study as a baseline for comparison.

The purpose of this study was to gain a better understanding of the use of pre-sentencing custody credits in Canada prior to the amendments made by Bill C-25. This research has provided not only information on the use of such credits, but has also shed light on other factors surrounding credits, such as the time spent in remand by persons convicted of various crimes. This study has also provided a good baseline that can be used as a comparison for future research in this area.

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