

## Juristat Article

# Remand in adult corrections and sentencing patterns



by Rebecca Kong and Valerie Peters

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## Symbols

- . not available for any reference period
- .. not available for a specific reference period
- ... not applicable
- 0 true zero or a value rounded to zero
- 0<sup>s</sup> value rounded to 0 (zero) where there is a meaningful distinction between true zero and the value that was rounded
- <sup>p</sup> preliminary
- <sup>r</sup> revised
- x suppressed to meet the confidentiality requirements of the *Statistics Act*
- <sup>E</sup> use with caution
- F too unreliable to be published

## Remand in adult corrections and sentencing patterns: Highlights

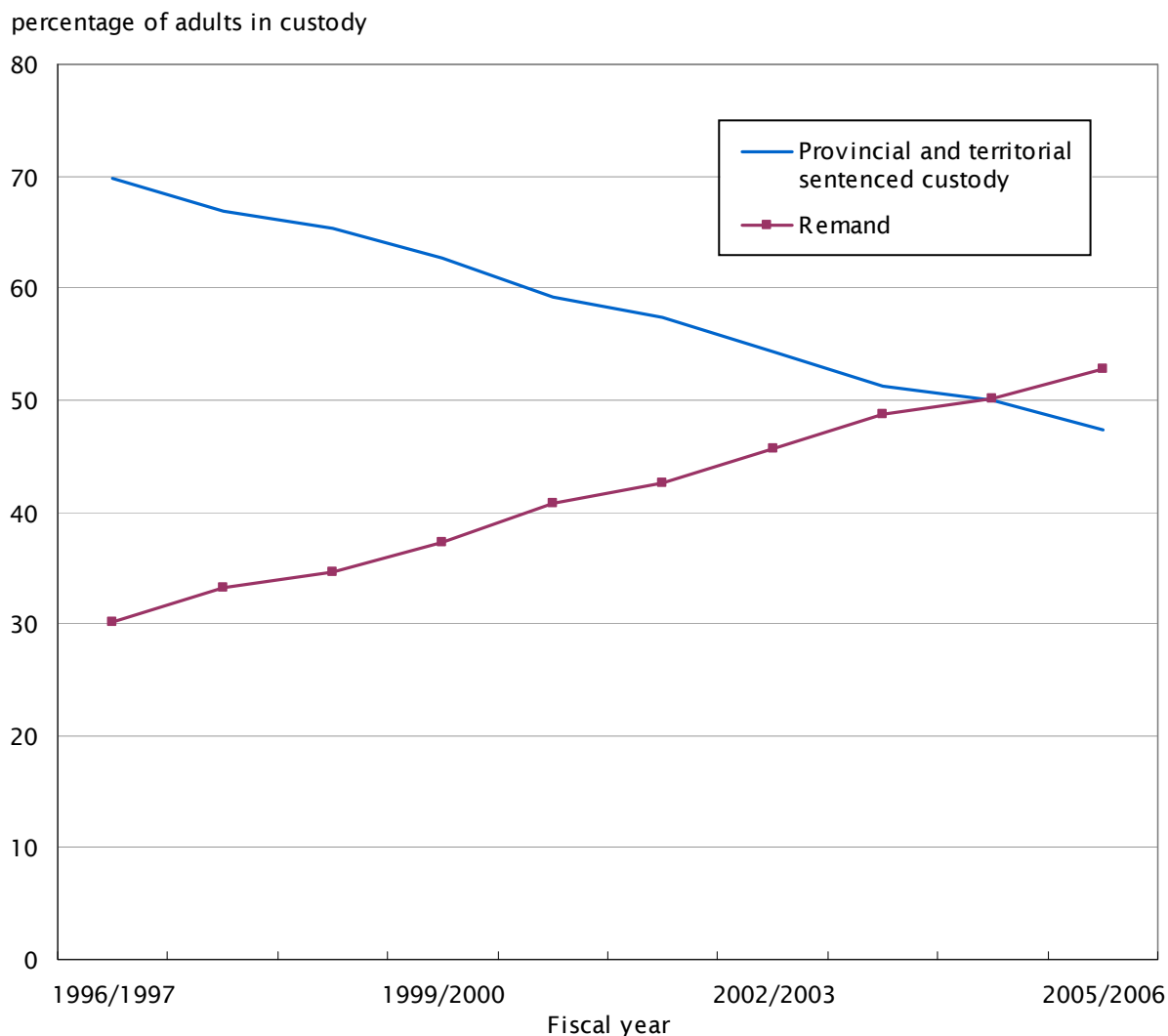
- During the ten-year period beginning in 1996/1997, the number of adults held in remand (pre-trial detention) grew, and by the end of the period there were more adults being held in remand than in provincial/territorial sentenced custody.
- The length of time individuals spent in remand increased during this period as the proportion of adults who spent a week or less in remand declined from 62% of all remanded adults in 1996/1997 to 54% in 2005/2006.
- In 1996/1997, shorter sentences of 1 month or less accounted for about the same proportion (46%) of all custodial sentences as did longer sentences of more than 1 month up to 12 months. A decade later, the proportion of sentences which were shorter had risen to 55% while the proportion which were longer had declined to 37%.
- The shift toward sentences of one month or less has been witnessed in all crime categories, except impaired driving. The greatest shifts have been seen in sentences to custody for property crimes.
- The use of sentences to custody for terms of more than 12 months remained stable from 1996/1997 to 2006/2007.

## Remand in adult corrections and sentencing patterns

by Rebecca Kong and Valerie Peters

On any given day in Canada, there are more adults in custody awaiting trial or sentencing in provincial/territorial facilities than there are adults serving a sentence (Chart 1). The number of adults admitted to remand custody, which means that they are held in custody while awaiting trial or sentencing, has grown steadily over the last decade and a half while the number admitted to sentenced custody has decreased (Landry and Sinha, 2008). At the same time, the length of time adults spend in remand has also increased. In contrast, time being spent in sentenced custody has decreased.<sup>1</sup>

**Chart 1 Adults in remand account for most adults in provincial or territorial custody**



**Notes:** Due to missing data for some years, Prince Edward Island, Northwest Territories and Nunavut have been excluded. 'Other temporary detention' has been excluded. In 2005/2006, it accounted for 229 individuals in custody. This chart excludes federal custody.

**Source:** Statistics Canada, Canadian Centre for Justice Statistics, Adult Key Indicators Report.

1. Possible reasons for the increase in remand have been explored in other analysis (Johnson, 2003; Landry and Sinha, 2008).

The *Criminal Code Section 515 (10)* specifies the circumstances under which a person can be arrested, the procedures that need to be followed when an arrest occurs, as well as the factors to be considered when judges are deciding if a person accused of a crime should be detained or released prior to the resolution of their case in court.

A person charged with a crime can be remanded to custody prior to their case being heard by the court for several reasons: if it is shown there is a risk they will not appear for their court date, if they are deemed to pose a danger to themselves or to others, or if detention is necessary in order to maintain confidence in the administration of justice (for example if the person charged is considered at risk to re-offend).

The increasing size of the remand population, and turnover within this population can have several effects on the operations of correctional services: overcrowding and increased safety risks for both staff and inmates; higher transportation costs as more prisoners make court appearances, and, increased staff costs as more prisoners need to be supervised (Johnson, 2003).

As the cases of remanded adults move through the justice system, time spent in remand can affect the type and length of sentences received when someone is found guilty, because, as outlined in *Section 719 (3)* of the *Criminal Code*, time spent in remand custody can be a factor when sentences are determined by judges. While the legislation itself does not provide a mechanical formula for crediting pre-trial custody, case law has established that a credit of two months for each month spent in pre-trial custody is appropriate (and common), but can be adjusted depending on the circumstances of pre-trial custody (Martin's *Criminal Code*, 2009). The credit of two-for-one is considered appropriate "to reflect the harshness of remand" (R. v. Wust, R. v. Arrance, R. v. Arthurs). Pre-trial detention facilities can be subject to over-crowding, are usually high security and typically do not offer programming to those being detained. Case law also states that there must be a justification in principle for not providing credit for time served (R. v. Rezaie, R. v. Mills, R. v. Doiron).

This article discusses changes in sentencing patterns which have occurred while the number of adults held in remand and the length of remand stays have increased. Presently, there are no data on how judges are applying credit for time served to their sentencing decisions. However, data indicate that sentencing patterns have changed as the use of remand has grown. The analysis uses data from the adult criminal court system for the period of 1996/1997 to 2006/2007 and the adult correctional system for the period of 1996/1997 to 2005/2006.

## Adults accused of crimes are spending more time in remand custody

Over the past decade, there has been a general trend towards longer periods in remand custody, as the proportion of remanded adults who spent no more than a week in remand declined from 62% to 54% between 1996/1997 and 2005/2006. During this period, the proportion that spent three or more months in remand increased from 4% to 7% and the median time spent in remand also increased in most provinces and territories (Landry and Sinha, 2008). This shift mainly impacts provincial and territorial correctional services, which have responsibility for people in remand custody.

## Terms of one month or less now account for a greater proportion of custodial sentences awarded by judges

During the same ten year period, the length of custodial sentences being served by adults has declined. Sentences of less than eight days accounted for 27% of all sentences in 2005/2006, compared to 14% in 1996/1997.

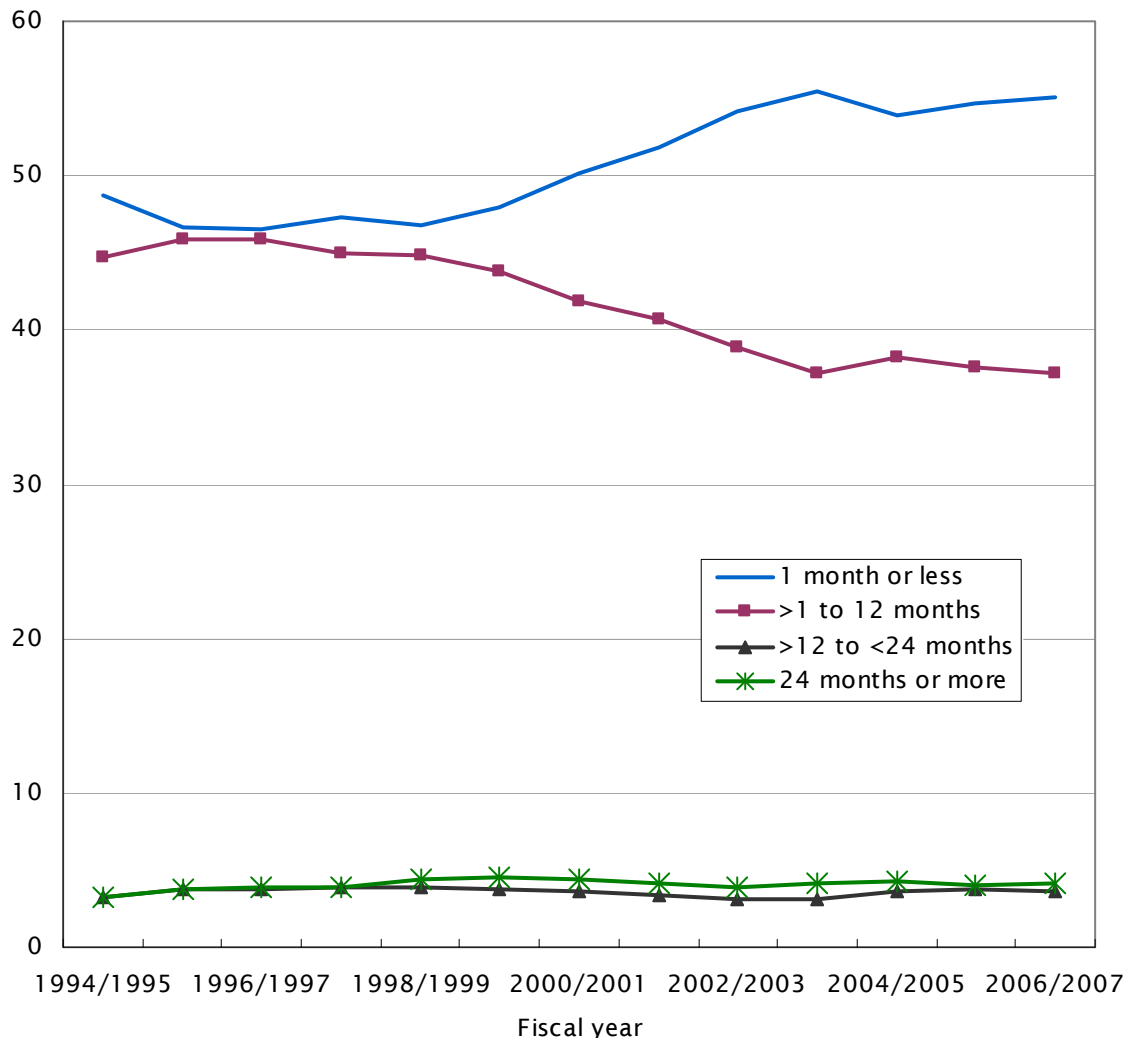
Among sentences of one year or less, data from adult courts in 8 jurisdictions indicate that there has been a shift from longer (more than 1 month and up to 12 months) to shorter (1 month or less) sentences. In 1996/1997 both shorter and longer custodial sentences accounted for about 46% of all sentences.<sup>2</sup>

2. It is worth noting that among cases receiving a sentence of greater than 1 month and up to 12 months, about half have typically been sentenced to anywhere from more than 1 month up to 3 months.

A decade later, the proportion of sentences which were shorter had risen to 55% while the proportion which were longer had declined to 37% (Chart 2).

**Chart 2 A growing proportion of all cases ending in custody result in sentences of 1 month or less, eight jurisdictions, 1994/1995 to 2006/2007**

percentage of cases with custody



**Notes:** Includes data from Newfoundland and Labrador, Prince Edward Island, Nova Scotia, Quebec, Ontario, Saskatchewan, Alberta and Yukon. Excludes cases where the length of custody was not known. Less than 1% of cases had unknown sentence lengths in 2006/2007 and this percentage was as high as 6% in 2001/2002.

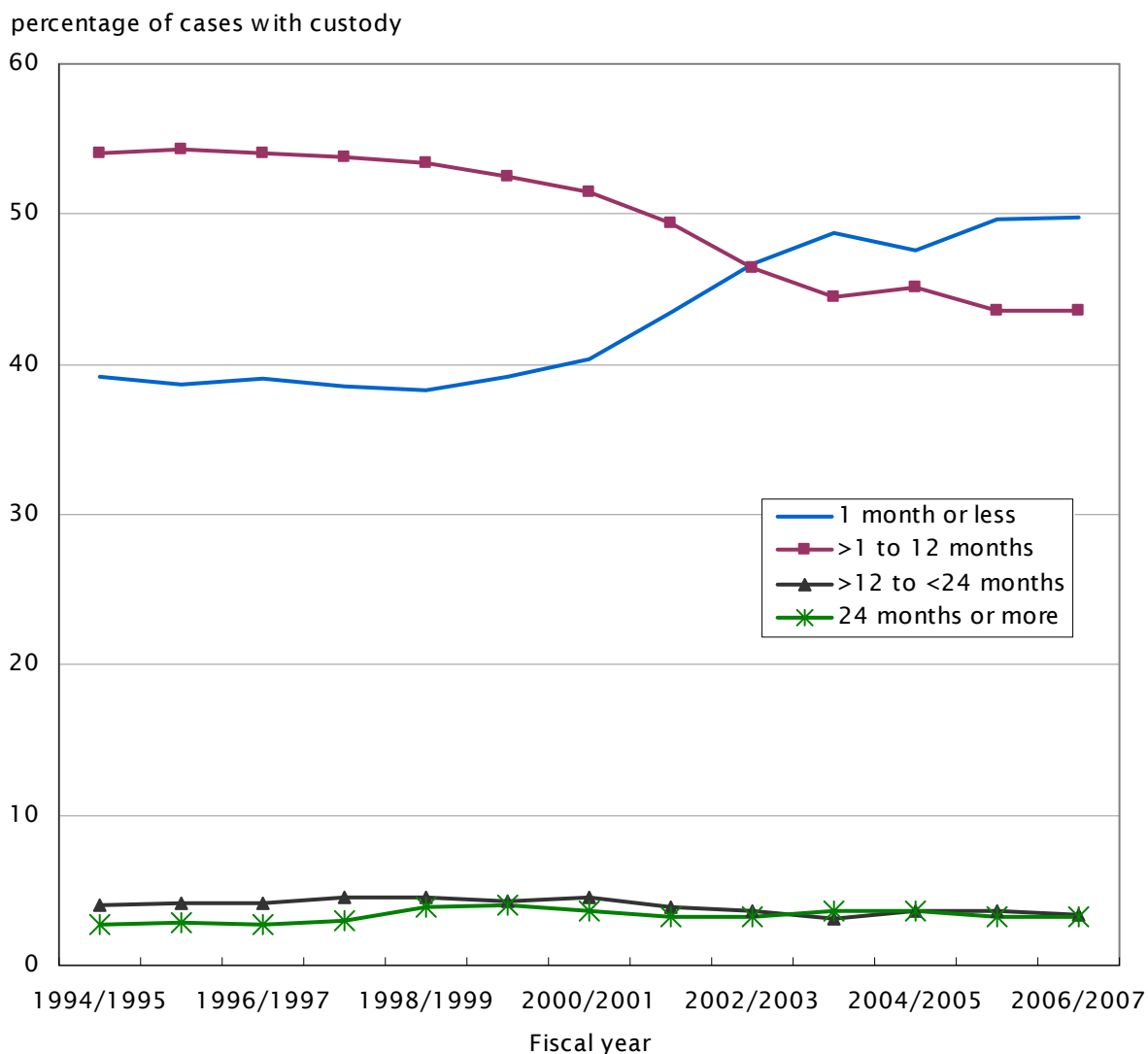
**Source:** Statistics Canada, Canadian Centre for Justice Statistics, Adult Criminal Court Survey.

Data suggest that the shift toward shorter sentences has been driven by changes in the sentencing patterns for property crimes as these have experienced the largest change in sentence lengths and account for a large proportion of cases (28% of all cases with custody in 2006/2007).



In 1996/1997, the longer sentence lengths accounted for the majority (54%) of property crime cases where a custodial sentence was handed down compared to 39% for shorter sentences (Chart 3). However, the proportion of cases receiving the shorter sentence length has grown over time and has been higher than the proportion receiving the longer sentence since 2002/2003.

**Chart 3 For property crimes, sentences of 1 month or less have come to exceed those greater than 1 month up to 12 months, eight jurisdictions, 1994/1995 to 2006/2007**

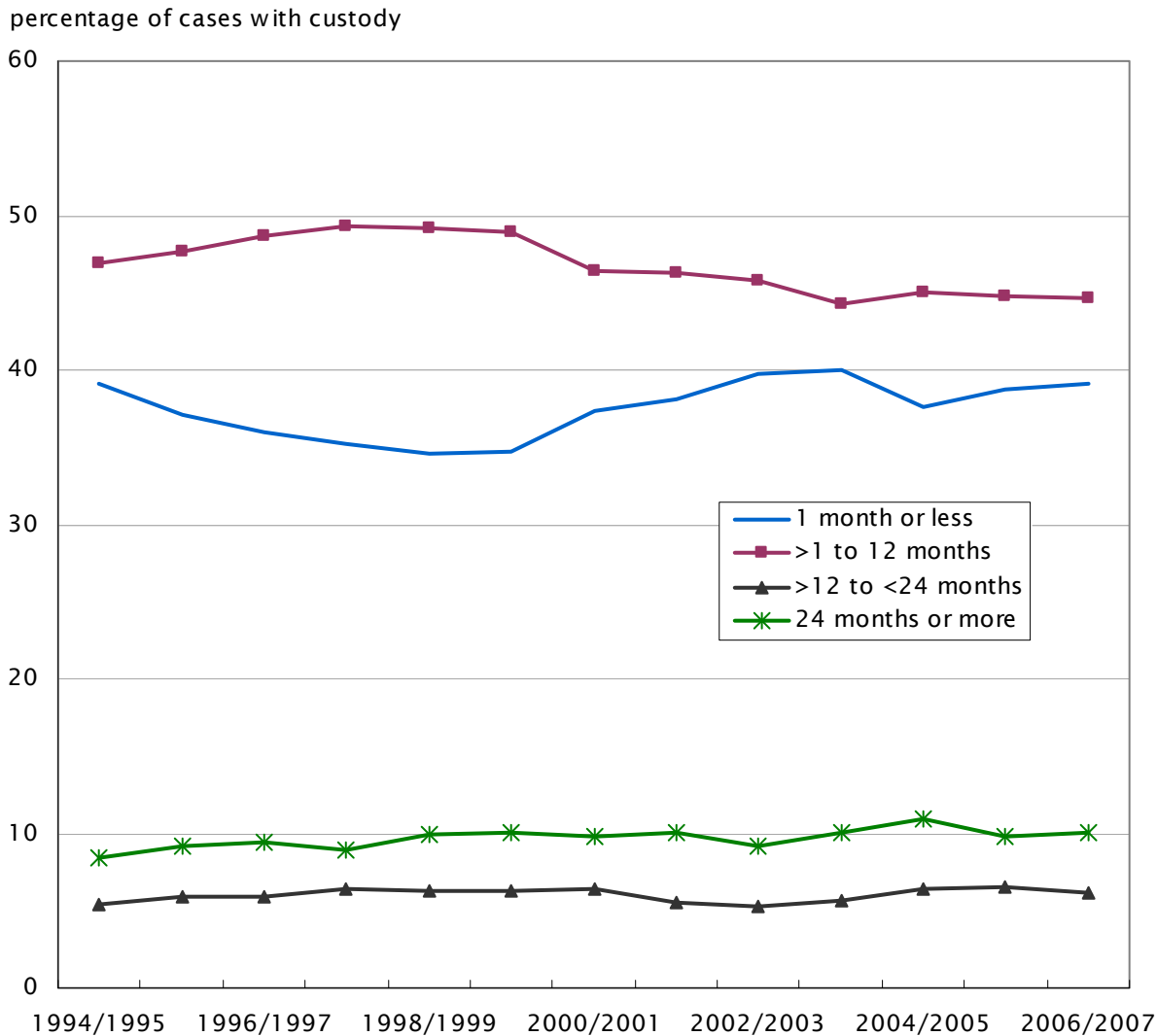


**Notes:** Includes data from Newfoundland and Labrador, Prince Edward Island, Nova Scotia, Quebec, Ontario, Saskatchewan, Alberta and Yukon. Excludes cases where the length of custody was not known. Less than 1% of cases had unknown sentence lengths in 2006/2007 and this percentage was as high as 5% in 2001/2002.

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

Prior to 1999/2000, the proportion of custodial sentences for crimes against the person which were of the longer duration always exceeded the proportion which were of the shorter duration (1 month or less). However, starting in 1999/2000, the gap between the two began to narrow (Chart 4).

**Chart 4 For crimes against the person, a growing proportion of cases ending in custody result in sentences of 1 month or less, eight jurisdictions, 1994/1995 to 2006/2007**



**Notes:** Includes data from Newfoundland and Labrador, Prince Edward Island, Nova Scotia, Quebec, Ontario, Saskatchewan, Alberta and Yukon. Excludes cases where the length of custody was not known. Less than 1% of cases had unknown sentence lengths in 2006/07 and this percentage was as high as 6% in 2001/2002.

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

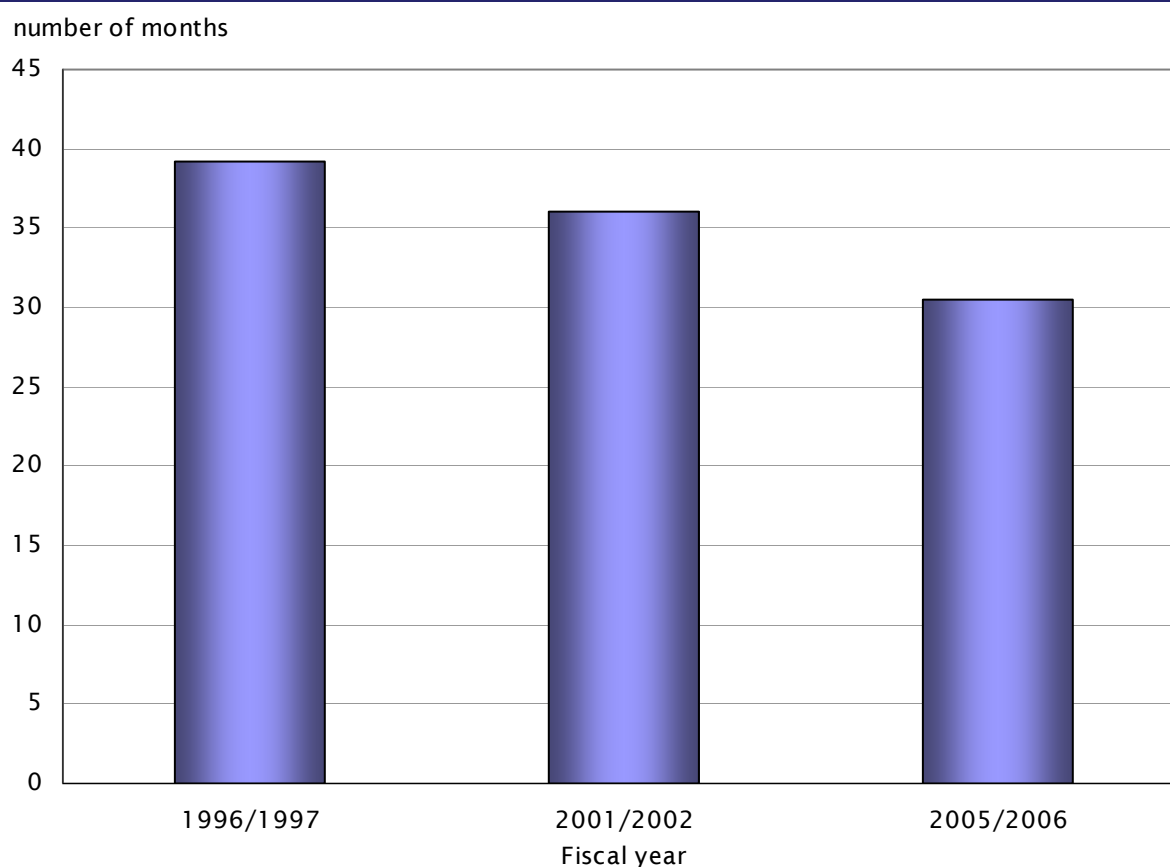
For offences against the administration of justice, 'other *Criminal Code*' offences and 'other federal statute' offences, there has also been a trend of increasingly more sentences of 1 month or less and fewer sentences of more than 1 month up to 12 months. Custodial sentences for *Criminal Code* traffic offences are the only exception to this trend.

## Little fluctuation in sentences longer than one year

Sentences to custody for more than one year but less than two years account for a small proportion (about 3%) of custodial sentences awarded by judges. This proportion changed little between 1996/1997 and 2006/2007. The number of cases receiving this sentence has fluctuated from year to year and has an average of over 2,300 cases annually.

Each year, about 4% of sentences to custody are for two years or more, the term which puts offenders under federal responsibility. While the proportion of sentences which involve a period of federal custody has been stable since 1996/1997, the length of these sentences has declined – decreasing from 39.2 to 30.5 months (Chart 5). Thus, the increase in remand and the use of credit for time served may be having less of an effect on the number of offenders sentenced to federal custody and more of an effect on the length of federal time being ordered by the courts.

**Chart 5 Median federal custody sentence length is decreasing, 1996/1997, 2001/2002 and 2005/2006**



**Note:** Figures exclude those serving indeterminate or life sentences.

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

## Use of custodial sentences for some types of offences has increased

While the median length of custodial sentences has become shorter, adult court data from 8 jurisdictions suggest that frequency with which custodial sentences are imposed has remained relatively stable: for each year between 1996/1997 and 2006/2007, about one in three cases with a finding of guilt resulted in a sentence to custody.<sup>3</sup>

3. Trends in the use of custody should not be examined prior to 1997/1998 as this is the first year when data became available for conditional sentences, a new community sanction that was implemented in 1996/1997. Under a conditional sentence, the offender serves a term of imprisonment in the community under specified conditions. Conditions are normally stricter than probation and if the terms are violated, then the conditional sentence can be revoked and the offender admitted to sentenced custody.

However, underneath this overall stability are some changes at the level of individual offences. For some offences, such as impaired driving, common assault and drug trafficking, the use of custodial sentences has declined slightly over this period. For others, including attempted homicide, weapons offences, theft, possession of stolen property and some sexual offences, the use of custodial sentences has increased.

At present, the data cannot tell us how much the lesser use of custodial sentences for some offences may be due to full credit for time served. However, the consistent and even increased use of custody for some types of offences, including violent offences, suggests that the effect of credit for time served might be a reduction in the length of custody when custody is justified, rather than no custody at all.

## Summary

The increased use of remand and longer stays in remand are issues facing the Canadian justice system on a number of fronts, one of which is the impact that this trend may have on sentencing. Because *Section 719 (3)* of the *Criminal Code* of Canada allows judges to count time spent in remand as time served and adjust their sentences accordingly, the rise in remand and the length of stay has implications for the offender, the community and the performance of the criminal justice system.

During the ten-year period beginning in 1996/1997, the number of adults held in remand custody grew, and by the end of the period, there were more adults being held in remand than in provincial/territorial sentenced custody. The length of time individuals spent in remand also increased during this period.

Over this same period, the proportion of adults sentenced to custody increased for some offences and declined for others, resulting in little change in the overall use of custodial sentences by judges. However, the length of sentences has decreased. At the provincial/territorial level, sentences of 1 month or less accounted for more than half of all custodial sentences in 2006/2007, compared to 47% a decade earlier. In the federal correctional system, which is responsible for offenders sentenced to 24 months or more, the median amount of time served declined.

This article has drawn parallels between trends in remand and sentencing in an effort to contribute to the body of knowledge on the issue of the increased use of remand in Canada. To confirm connections between increases in remand and sentencing patterns, further analysis is required.

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