

EXPLORING AGE AND MATURITY IN YOUTH JUSTICE

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**A thesis submitted in conformity with the requirements for the Degree of
Doctor of Philosophy**

Centre of Criminology, University of Toronto

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ABSTRACT

This thesis examines the ways in which decisions made about youths in conflict with the law are based upon, or affected by, notions of their chronological age and apparent maturity. An empirical examination of youth court hearings, youth court data, and a survey of the Ontario public was undertaken in order to explore this question. The findings reveal that age and apparent maturity appear not to be related to decisions made about youthful offenders. However, 'youthful' status was recognized in the courts when it came to the level of supervision that was necessary to manage youths.

This study provides a view to understanding the social construction of adolescence and the underlying ambivalence toward youth who come in conflict with the law. The following account of decision-making about young offenders by court practitioners and members of the public reveals the arbitrary nature and fluidity of categories of age, and also allows us to explore how 'youth' plays out in the youth justice system.

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Chapter One

Introduction

This thesis examines the ways in which decisions made about youths in conflict with the law are based upon, or affected by, notions of their chronological age and apparent maturity. To this end the following chapters will provide an empirical examination of various sites -- youth court hearings and a survey of the Ontario public -- in order to explore how constructs of age and maturity affect decisions made about youth who break the law. My hypothesis was that decisions made in court and by the public would be related to age. Specifically, I expected to see differences in the treatment of younger versus older youths. As will become apparent, I found little evidence to substantiate such a claim. As a result the present study seeks not only to understand the factors that are related to decisions made about youth who break the law, but also attempts to understand why age does not appear to relate to decisions made in youth court proceedings, nor to judgements made by the public.

While the purpose of this thesis is quite straightforward, the findings that will be presented have implications beyond a simple examination of the effects of age on decision-making in a criminal justice context. By examining if 'youthfulness', or a young person's state of maturity, factor into decisions made about their criminal responsibility we are in a better position to evaluate the assumptions underlying the regulation of young people in other domains. Understanding decisions made about 'youthfulness' in this study provides insight into the social construction of adolescence more generally, and also provides an understanding into the broader topic of the

adjudication of different populations as morally autonomous. For instance, the way in which criminal responsibility is determined in insanity proceedings or in terms of the use of battered women syndrome as a legal defense sheds light on how notions of mitigated criminal responsibility are constructed and decided upon. While this thesis will not specifically examine the connections between youth in conflict with the law and these other groups, the findings may be of interest to researchers who are concerned with the ways in which mitigated criminal responsibility is defined in other contexts.

An interesting example of how adolescents are regulated differently depending upon the context comes from recent initiatives undertaken by the Federal Minister of Justice, Anne McLellan, to raise the age of sexual consent to sixteen from the age of fourteen where it has been for nearly 120 years.¹ This proposal for change is apparently a response to current concerns over the protection of young people under the age of sixteen from being victimized by adult sexual predators. At the same time, however, the proposed change will have legal consequences for young people under the age of sixteen who are consenting partners engaging in sexual activity. The assumption underlying this proposal is that fourteen and fifteen year olds may not be mature enough to understand decisions made about sexual relations. As stated in the Justice Department's consultation paper;

Raising the age [of sexual consent] would provide children and young people with an additional measure of protection until they reach a higher level of maturity and understanding about the issues involved in engaging in sexual activity. It would be more consistent with the treatment of children in other activities, such as leaving school, driving and even getting married (Department of Justice 1999:8).

¹ Department of Justice, Canada "Child Victims and the Criminal Justice System: A Consultation Paper" (November 1999).

The view that fourteen and fifteen year olds need protection due to their lack of maturity is not necessarily shared in other sectors. In the youth justice system for instance, rather than protection, the focus is on the responsibility of youth for criminal activity. As a result, young people over the age of fourteen are seen as mature enough to be held accountable in the adult justice system under the transfer provisions of the *Young Offenders Act*. Treating fourteen year olds as adults in this context means facing adult penalties (e.g. a sentence of life in prison), and in certain cases, serving the sentence in an adult facility.

Ontario's policies concerning welfare benefits provide another interesting example of the contradictions inherent in governing young people in a manner where the importance of age depends on the circumstances at hand. The *General Welfare Act* also takes a protectionist stance in dealing with youthful applicants, but in this case, the focus is on limiting their autonomy outside of the family unit. First, benefits cannot be given to anyone who is under the age of sixteen except in exceptional circumstances.² If an individual under the age of sixteen applies for assistance, the Children's Aid Society or a foster parent or guardian must be called upon to respond to the financial needs of the young applicant.

In the case of sixteen and seventeen year old applicants, the legislation prohibits the provision of welfare assistance unless it can be shown that there are special circumstances for receiving benefits (such as in cases of abuse, parental withdrawal or a parental inability to support the youth). In such cases, the welfare administrator may require a family assessment and verification from a third party in order to confirm that

² Youths under the age of sixteen *are not eligible* for benefits in their own right, unless they are sole support parents.

special circumstances do in fact exist. Sixteen and seventeen year old applicants must also have appropriate living arrangements and have regular contact with a 'responsible adult' or agency, and they must be registered and attending school or an appropriate training program full time. However, youths who are actively seeking full time work are not considered eligible; they must be in school or a training program. These limitations on assistance apply even for youth who are themselves parents and for youths who apply as a couple (where both are aged sixteen or seventeen and where they can prove to the welfare caseworker that they are genuinely co-habiting as spouses).³

If a young person is successful in receiving welfare assistance, they cannot collect their benefits personally. Rather, "the delivery agent shall only pay assistance to a trustee, guardian or similar party on behalf of a person aged 16 or 17". Thus, these provisions are premised upon protecting sixteen and seventeen year olds by compelling them to remain within the family unit. And even when successful, they are dependent on a responsible adult to give them their cheque.

The social assistance system should strive to protect those youth who are in need while maintaining the integrity of the family unit. It should not contribute to the breakup of the family unit. Neither should the system be perceived as providing an economic incentive to the youth to leave home or to his or her family to support the youth doing so. This means that actions directed towards reconciliation should be considered throughout the assessment process (Ministry of Community and Social Services 1998: 6).

In contrast, the transfer provisions within the *Young Offenders Act* see sixteen and seventeen year olds who commit serious offences as individuals who need to be held fully accountable for their criminal offences. The *YOA* makes specific reference to the fact that sixteen and seventeen year old offenders, who commit a range of serious violent

³ Ministry of Community and Social Services "Ontario Works: Making Welfare Work" Directive #10 Applicants Under Age 18. June 1998.

offences, will presumptively be transferred to adult court and face adult penalties (including life imprisonment), unless they can provide a case for remaining in youth court and benefitting from their 'youthful status'. Moreover, the Ontario conservative government which was responsible for the above noted welfare provisions, specifically prohibiting sixteen and seventeen years old recipients from collecting their welfare cheques personally⁴ has been lobbying the Federal government to lower the maximum age of criminal responsibility so that sixteen and seventeen year olds are dealt with as adult offenders in all cases of law-breaking⁵.

With these contradictions in mind regarding the regulation of young people based upon age, the following study examines decision-making in the context of youth justice. Fundamentally, this study reveals that age and apparent maturity appear not to be related to decisions made about youthful offenders. However, as will become apparent in the following chapters, 'youthful' status was recognized in the courts when it came to the level of supervision that was necessary to manage youths. In cases where the youth was released into the community, there were significant differences in handing down 'curfews' and 'boundary conditions' for younger youths versus their older counterparts. Thus, depending upon the situation, the courts do seem to concern themselves with age, but only in relation to the level of supervision that 'younger' youths need to have available to them.

Therefore, within the youth justice system there are different logics of regulation when dealing with adolescents. While legal controls or prohibitions are placed on orders of release for some young people for their own protection, others in the same age group

⁴ Bill C-142 Social Assistance Reform Act (1997).

⁵ Ontario Crime Control Commission "Report on Youth Crime" (1998).

are constructed as responsible actors, where the emphasis is on their offending behaviour rather than their lack of maturity or state of dependency. It appears that when it comes to young people who, among other situations in their lives have also committed an offence, the message is clear -- childhood ends when you violate the law.⁶

Thus, in seeking to understand the social construction of adolescence in the criminal justice system, my analysis takes the position that there are two irreconcilable principles underlying the way in which young people in conflict with law are regulated. There is a concern for protecting and guiding young offenders due to their age and state of dependency. At the same time, the predominantly adversarial system in which the youth justice system operates is based upon responsibility and accountability for one's actions with a recognition of youths' state of dependency. This underlying tension may account for the fact, as noted by others, that the youth justice system is moving more and more in the direction of the adult criminal court model which cannot accommodate both protection and responsibility (Trépanier 1999, Feld 1997). Particularly serious cases, at times, serve as an impetus for legislative change in the direction of an adult, more punitive, accountability-driven model for young offenders (Trépanier 1999).

The following account of decision-making about young offenders by court practitioners and members of the public reveals the arbitrary nature and fluidity of categories of age, but it also allows us to explore how 'youth' plays out in the youth justice system.

⁶ Hunter Hurst, Director, National Centre for Juvenile Justice (Annual Report 1995 p.3).

Present legal context:

As with most western industrialized countries, the Canadian legal system maintains three discrete age groupings with differing levels of criminal responsibility. Generally, every person who commits a crime in this country falls into one of three groups. There are those offenders whom society sees as having no criminal responsibility (in Canada, children under the age of twelve). Then there are offenders who have mitigated criminal responsibility because of their special status as 'youth' (those between the ages of twelve and eighteen in Canada), and finally there are offenders who are fully responsible for their crimes (adults).

The middle group, represented by the youth justice system, has been characterized as a 'modified justice model' (Corrado 1992) where youth are responsible for their actions, but are not as fully responsible as adults due to their lack of maturity and development and the understanding that adolescence is a period of transition from childhood to adulthood. The governing body of legislation for young offenders, the *Young Offenders Act*, makes explicit reference to both 'chronological age' and 'maturity and dependency' as indicators of unique treatment apart from adults under the law. First, chronological age is referred to within the *YOA* to demarcate differing levels of criminal responsibility at the ages of twelve, fourteen, sixteen and eighteen. For example, the age of twelve is the minimum age in which young people can be held legally responsible under the *YOA*. Only youth who are fourteen and older can be legally transferred to adult court. A youth over sixteen may be presumptively transferred to adult court in serious cases, and at age eighteen, offenders are dealt with as adults in ordinary court. Thus, this series of legal transitions based upon chronological age would appear to see adolescence

as a slow transition or continuum from childhood to adulthood in terms of criminal responsibility.

At the same time, Sections 3(a.1) and S (3.c) of the *YOA*, which are contained within the “Declaration of Principle”, provide guidance to decision-makers in applying the law to all young people between the ages of twelve and eighteen who commit offences. As these two principles put forward, young people who commit offences are accountable, but not to the same degree as adults. Furthermore, young people who break the law require supervision, discipline and control but also, as a result of their state of dependency and maturity, they have special needs and require guidance and assistance. This approach would appear to see adolescence as a homogenous group where mitigated responsibility applies unitarily to all youths under the law.

The question that arises from these differing conceptions of youthful responsibility under the *YOA* relates to the way in which the concept of ‘youthfulness’ practically affects decision-making. Is the period of life between the ages of twelve and eighteen conceived of as a slow developmental transition to adulthood, or is it a unitary transition from adolescence to adulthood where developmental differences are taken into account? The language of the *YOA* does not appear to answer how decision-makers should interpret these questions. As stated above, chronological age is only explicitly referred to in the case of transfer to ordinary court in the present legislation,⁷ while s.3 the Declaration of Principle is meant to apply to all youth. The language in Section 3 changes from a concern with welfare and protection to a discussion on responsibility and accountability throughout the statement. Thus, even from the Declaration of Principle

⁷ Although in the original *YOA*, there was a provision relating to the use of secure custody for those fourteen and under s.24 (3) *YOA*.

which is meant to guide practitioners in applying the Act, we can see that ‘youthfulness’ is not always the critical factor in dealing with young offenders. The language of the *Young Offenders Act* embraces the co-existence of incongruent discourses of protection and responsabilization in order to construct youths as either fully responsible or as misguided children depending upon the circumstance. Part of this may be attributed to the wider social climate of youth justice. Public opinion and policy changes in the youth justice system over the past ten years have focused on holding young offenders more accountable for their actions and moving the system closer and closer in the direction of the adult criminal justice system. At the same time, although to a more limited extent, we find the more welfare-based discourse of ‘misguided youth’ with special needs continues to permeate discussions about the treatment of young offenders.

The purpose of this thesis is to explore this matter by addressing two main questions through empirical analysis. First, what role does chronological age or apparent maturity play in court proceedings for youth and public responses to youth within the ‘transition’ period from childhood to adulthood? And second, how does decision making about youth relate to the principles and the legislative provisions of the *Young Offenders Act*? The implications of the findings will be discussed in the concluding chapter.

Historical context and the process of reform

The idea of differential treatment in law for young offenders is a relatively recent phenomenon. The first criminal law dealing with youth as a separate legal category was the *Juvenile Delinquents Act* in 1908. Prior to this, children of any age were subject to the criminal law (Griffiths and Verdun-Jones 1994) although separate custodial facilities

for neglected and delinquent youth did exist prior to the passing of formal legislation (Trépanier 1999, Splane 1965). There is also evidence that even at a time when youth were not seen as a separate legal category, ‘youthfulness’ was considered to be a mitigating factor in court decision-making in other jurisdictions (Smandych 1995, King 1984).

Despite the use of informal discretion for younger criminals, English common law’s *doli incapax* rule brought forth a more formal recognition of youthful status and was applied to the first Criminal Code in Canada in 1892 (Reid 1986, Dalby 1986). The *doli incapax* rule maintained that persons under seven years⁸ old were deemed to be legally incapable of committing an offence. There was a presumption of *doli incapax* for those aged seven to fourteen years old, but the prosecutor could contest this. Anyone fourteen years and older was fully responsible for their actions.

Changes in the nineteenth century brought on by the industrial revolution resulted in a re-examination of the place that young people held in society (Tanner 1996). Part of this was as a result of the large numbers of youth in the general population. A census taken of Upper Canada in the mid-nineteenth century revealed that over one-half of the population of the province was under sixteen years of age (Splane 1965: 220). In addition, progressive reformers were influential in providing the impetus for welfare institutions, compulsory education, and a multitude of ‘experts’ who defined the category of adolescence as an objective arena for social study (Iacovetta 1996). These changes not only affected the place of the child in society but also those who would care for children. As Rothman (1980) points out, an American psychologist by the name of G. Stanley

⁸ The age of seven was thought to coincide with Roman Law and the presumed onset of puberty. The actual concept of “Infantia” meant “incapacity to speak out”. (Fox 1984, Reid 1986).

Hall, whose interests centred around child development and evolutionary theory, had a large influence on how ‘motherhood’ was to be deployed. Hall put forward the thesis that childhood was composed of very distinct stages that required particular responses by caregivers and, as a result, mothers needed to be trained to be appropriately responsive to the complexity and stages of child development. In addition, a changing perception regarding the causes of delinquency in the late nineteenth century brought forward ideas about protecting society through protecting children. These ideas became central to the debates preceding the passing of the *Juvenile Delinquents Act* (Trépanier 1991). Bad homes, unhealthy child rearing and hereditary influences were all thought to contribute to the general problems facing youth (Iacovetta 1996).

The *Juvenile Delinquents Act* was passed in 1908 with a debate that lasted for about one hour in Parliament (Corrado and Markwart 1992). The new legislation was premised on the idea of treating and protecting children and, thereby, preventing criminality. There was no distinction made between neglected and delinquent children “since the former were but incipient versions of the latter” (Fox 1984: 152). The welfare approach of the *JDA* was premised on the ‘best interests’ of the youth suggesting that the state protected youths in every respect making the need for individual due process rights incidental. State authority represented, as closely as possible, the relationship between parent and child (Rothman 1980, Simon 1995, Chunn 1992) and workers of the court were able to reproduce as closely as possible what they considered to be ‘good parenting’ and a ‘sound’ upbringing.

Despite the benign intentions of the Act, state intervention without due consideration for the rights of young people resulted in challenges to the constitutionality

of this approach in the United States. However, when early attacks were made in this regard against juvenile delinquency statutes in the U.S., the *parens patriae* doctrine was sufficient as a justification for intervention on wider welfare grounds (Fox 1984). As a result, the juvenile court operated for the greater part of the century in Canada and the United States without procedural protections for youth. There were no legislative guidelines governing judicial sentencing, there were few lawyers representing young people at court, the rules and proceedings were relaxed and informal, and judgements were shaped by individual diagnoses often through the taking of statements or ‘confessions’ as integral to the rehabilitative process (Simon 1995, Corrado and Markwart 1992). Moreover, juvenile courts defined and designated other social agencies that previously did not have the power to intervene in young people’s lives to have jurisdiction over a wider range of young people (Simon 1995). Thus, “doing good” took precedence over any interest in legal rights (Chunn 1992), and the ideology of treatment was so powerful that “..there were occasions when guilt seemed to be presumed so that “treatment” would not be delayed by “unnecessary formalities” (Bala 1992: 22). There was, however, skepticism even within the first years of passing the juvenile delinquency legislation concerning the view that legal protections did not need to be extended to youths (Fox 1984). These concerns became more emphatic in the early part of the 1960’s when academics and political commentators voiced concerns that the juvenile court was operating as an ordinary criminal court without the safety of due process protections, nor the security of ‘best interests’ (Bala 1992).

The philosophical tension between state intervention justified on the best interests of youth and the potential extension of political rights to young people began to present a

problem for youth justice legislators and reformers of the system during the 1960's. The political climate at the time was one in which civil rights concerns were at the forefront in both the United States in Canada, and a number of influential U.S court cases⁹ provided fuel for the changing sentiment about the place of legal rights in youth justice. In Canada, juvenile justice reform began through a predominantly bureaucratic initiative.¹⁰ The appointment of an advisory committee by the Department of Justice in 1961 provided the first step in formally rethinking juvenile justice. Recommendations, which came out in 1965, included provisions for respecting the legal rights of young people before the courts as well as providing resources to adequately facilitate rehabilitation. But in order to create a proper 'space' for the extension of legal rights for youth there would have to be a fundamental shift in philosophy away from a *parens patriae* approach. Despite this, while the Department of Justice Committee endorsed respect for the legal rights of youth, they still wanted to maintain the recognition of rights within the overall welfare/treatment model of the *JDA*.

...the Committee seemed to be saying that a Welfare model, circumscribed by a due regard for legal rights, was still the proper course if only the juvenile justice system could be given the resources to implement some of the idealistic goals of rehabilitation. In effect, rehabilitation had not been given a chance (Corrado and Markwart 1992: 148).

Consequently, the ideal of the welfare based juvenile court maintained a strong position even within a changing paradigm that began to recognize the need for extending legal rights to youth.

After a number of draft bills, in 1970, Bill C-192, the *Young Offenders Act* was introduced by the Liberal government. However the position taken in Bill C-192, which

⁹*Kent vs. United States* 383 U.S. 541 (1966). *In re Gault* 387 U.S. 1 (1967).

¹⁰ See Corrado and Markwart 1992 for a detailed explanation of the process of juvenile justice reform in Canada.

tried to mix a welfare approach with a legalistic approach, failed due to a strong opposition by welfare/treatment interest groups who considered the bill to be too legalistic and punitive. But as Corrado and Markwart (1992) point out, only a decade later, in 1982, the philosophy of the welfare approach was almost completely abandoned in favour of the crime control and justice model principles of the *Young Offenders Act*, which was implemented in 1984. The question raised is why welfare interest groups were rendered silent in the following years of debate.

Part of the reason for the abandonment of a welfare based approach for dealing with young offenders was the influence of the *Charter of Rights and Freedoms* enacted in 1982. An extension of the principles of due process, legal rights, and procedural fairness had to be incorporated into new legislation since differential treatment based upon age violated young people's newly defined constitutional rights. As well, skepticism about the true principles of the juvenile court being implemented as promised became a concern in academic and political circles. Social science research had lasting effects on policy. For instance the ideas of labelling theory and 'radical non-intervention' had far-reaching consequences on juvenile justice policy resulting in the endorsement of programs to divert young offenders away from formal court processing.¹¹ At the same time the highly quoted line that 'nothing works'¹² provided the fuel for a scathing critique of the principles of rehabilitation in the justice system and provided a reason to re-think the fundamental objectives of penal policy.

In 1973 another committee was established by the Solicitor General to further investigate how to approach juvenile justice policy, and in 1975, a report called *Young*

¹¹ E. Schur 1973, E. LeMert 1972

¹² Robert Martinson 1974, J. Shamsie 1981

Persons in Conflict with the Law (YPICL) which contained new draft legislation was the result. This report put forth a legal rights orientation while retaining some aspects of the welfare model in an attempt to arrive at a politically acceptable compromise to accommodate a wide range of interest groups. In addition, the report recommended the raising of the criminal age of responsibility from seven to fourteen years and setting a uniform maximum age at eighteen years across the country, which would have excluded a large number of children from adult criminal control (Fox 1984). When this report was discussed, there were few objections to the philosophical orientation of the document, but rather matters relating to the division of powers between federal and provincial governments and issues relating to the costs of implementation were of concern. Specifically, provinces were opposed to the costs associated with raising the maximum age of criminal responsibility to eighteen years.¹³

A few years after the 'YPICL' report, the Liberals released a document outlining the government's position on young offenders in conflict with the law. With respect to the controversial age boundaries, the Liberals proposed a lower minimum age of criminal responsibility than was proposed in YPICL.

Under the proposed Young Offenders Act the minimum age of criminal responsibility would be twelve years. In setting this age, consideration has been given to the state of development of the child in physiological, mental and emotional terms, particularly as these factors apply to the formulation of a criminal intent. The setting of a precise age is necessarily arbitrary as children vary greatly in their rate of development but it is assumed that deviant behaviour by children under the age of twelve is better and more effectively dealt with under provincial legislation pertaining to child welfare or youth protection (Solicitor General Canada 1977: 5).

¹³ Under the *Juvenile Delinquents Act* the minimum age was 7 years and each province had the discretion over the maximum age of criminal responsibility. Some provinces had a maximum age of 18 years (e.g., Quebec) while others retained a maximum age of 16 years (e.g., Ontario).

A uniform maximum age across the country was also put forward. While the 1977 report recommended that this be eighteen years, the report maintained that the provinces would still have the ability to set the maximum age lower (at age sixteen or seventeen) if they could not all agree on eighteen.

After the Liberal government was defeated in 1979, a newly elected Conservative government put forward their own proposals for new youth justice legislation in response to provincial concerns but kept the general philosophical framework of the Liberal proposals intact. However, it also incorporated the notion of the 'protection of society' as a key consideration. The minimum age jurisdiction in this report was kept at twelve, while the maximum age was lowered from the earlier Liberal report to sixteen. But once again, the Conservative proposals were prepared to consider a uniform maximum age at seventeen or eighteen if there was an agreement among provinces to this effect (Solicitor General Canada 1979:5). When the Liberal government came back into power in 1981 they introduced legislation which was nearly identical to the 1977 proposals. Bill C-61, *The Young Offenders Act* continued to be criticized for, among other things, the mandatory maximum age provisions (Corrado 1992).

The proposed *YOA* was the subject of intensive study and debate in Parliament (Corrado and Markwart 1992). More than 40 interest groups from diverse perspectives made presentations to the parliamentary subcommittee, and after a lengthy process of consultation and debate, Bill C-61 the *Young Offenders Act*, received all party support in 1982 and came into force on April 2, 1984 (Bala 1992). The implementation of the new uniform maximum age came in 1985 in order to accommodate those provinces with a former maximum age of sixteen (Corrado and Markwart 1992). The form that the *YOA*

took was influenced by a climate of general disillusionment with the welfare model that moved the focus towards what the system could actually accomplish. “If the juvenile justice system could not “do good”, it could at least “do justice” (Corrado and Markwart 1992: 155).

The current *Young Offenders Act* still retains the mix of welfare and justice models in attempting to deal with all potential contingencies in dealing with youth criminal behaviour. However, since its inception, three separate sets of amendments to the *YOA*¹⁴ have moved the Act towards a greater crime control orientation. Bill C-106 in 1986 retained the applicable age of transfer to be fourteen years old, which was similar to the original *Young Offenders Act* and the former *Juvenile Delinquents Act*. Thus, even for serious offences, there was a preservation of a homogenized view of the category of ‘youth’. However, only 9 years later, Bill C-37’s presumptive transfer changes specified differences among youth in terms of transfer. Most notably, sixteen and seventeen year old youths who committed specific serious violent offences would be presumptively transferred to adult court. Currently, Bill C-3, the proposed *Youth Criminal Justice Act* which is being put forth to replace the *YOA*, will among other things, lower the age of presumptive adult sentences to fourteen years old for certain serious violent offences similar to the Bill C-37 offences (such as murder, manslaughter, aggravated sexual assault). At the same time however, Bill C-3 encourages the use of a full range of community-based sentences and effective alternatives to the justice system for youth who commit non-violent offences.

¹⁴ Bill C-106 (1986) first session of the thirty-third Parliament, Bill C-12 (1991) third session of the thirty-fourth Parliament, Bill C-37 (1994) first session of the thirty-fifth Parliament.

As stated in the Department of Justice news release:

The Youth Criminal Justice Act is based on an accountability framework that promotes consequences for crime that are proportionate to the seriousness of the offence. More serious offenders could receive adult sentences or sentences of custody. Less serious offenders will be dealt with through measures outside the court process or be subject to constructive community-based sentences or alternatives. The Act emphasizes that, in all cases, youth should face consequences that promote responsibility and accountability to the victim and the community and teach good values by helping the young person understand the effect of his or her actions.

Thus, it appears that the new legislation is moving in a direction which more explicitly promotes proportionality in sentencing based upon the offence. Very serious offenders may receive more adult-like treatment, but measures outside of the formal court process are reserved for less serious young offenders.

Developmental Research

While changes have occurred and are still occurring in youth justice legislation towards a crime control orientation, the view of adolescents as having mitigated responsibility for their criminal activities has not been set aside. As stated earlier, the current legislation is explicit in referring to both 'chronological age' and 'maturity and dependency' as indicators of unique treatment apart from adults under the law. Chronological age is referred to within the *YOA* to demarcate differing levels of criminal responsibility at different ages. The age of twelve, fourteen, sixteen, and eighteen are all points of transition in terms of criminal responsibility, and these gradations in chronological age appear to reflect a view of adolescence as a slow transition from childhood to adulthood. There is a fair amount of research to draw upon which supports this conception of adolescence as a slow transitional period.

For example, recent research in developmental psychology has pointed out that there are significant differences between younger and older adolescents in their understanding of the legal process. A review of this research by Scott and Grisso (1997) has revealed that youths under the age of fourteen differ (and are at a disadvantage) compared to their older counterparts in terms of their ability to competently participate in their own legal defense, and in their understanding of the legal process and its basic purposes. The authors also point out that youths between ten and thirteen years of age were significantly less likely to think “strategically” about pleading decisions and appeared to be less capable of imagining risky consequences during hypothetical problem solving situations. Younger children were also likely to have considered a more constricted number and range of consequences (Scott and Grisso 1997: 170-171).

Canadian research on youths’ understanding of the legal process has found similar differences across age groups. For instance a study by Abramovitch, Higgins-Biss and Biss (1993) found significant differences among youth in different age groups in terms of their ability to understand basic legal rights on questioning, the right to counsel and the right to be provided a lawyer free of charge. Fewer of the ‘younger youth’ (ages 10.50 years to 12.92 years) comprehended these rights as compared to those in the older range of (16.58 to 19.92 years). Peterson-Badali and Koegl (1999) also found significant differences among age groups in terms of general knowledge of the *YOA*. Younger youths were different from older youths in that they were less accurate in their knowledge of various aspects of the youth justice system such as minimum and maximum ages, minimum ages for transfer to adult court and the use of pre-trial detention.

Bartusch, Lynam, Moffitt and Silva's (1997) examination of developmental theory in explaining different kinds of antisocial behaviour, found that the causes for identical types of antisocial behaviour differed at childhood (ages 5, 7, 9, 11)¹⁵ as compared to adolescence (ages 13, 15). Their analysis showed that childhood antisocial behaviour was related more strongly than adolescent antisocial behaviour to low verbal activity, hyperactivity, and a negative/impulsive personality whereas; adolescent antisocial behaviour was associated with peer delinquency. As well, childhood antisocial behaviour was more strongly associated with convictions for violence while adolescent antisocial behaviour was more strongly related with convictions for non-violent offences (Bartusch, Lynam, Moffitt and Silva 1997).

Tonry (1999) points out that there are also differences in the nature of offending depending on the age of the youth. The prevalence of offending peaks in the mid-teens for property offending, and in the late teens for violent offences. Moyer (1996) also found evidence to support differences among youth in the nature of offending. Using the revised uniform crime report data for selected jurisdictions in Canada in 1992-93, Moyer found that police suspects who were twelve and thirteen years old were more likely to be apprehended for minor property offences, such as theft under and mischief or vandalism, than were any other age group (Moyer 1996: 36). In relation to the victim-suspect relationship, the older the suspect, the greater was the likelihood that the victim of an offence was a stranger. Of those suspects who were twelve and thirteen years old, 80% of victims were either friends or family. For sixteen and seventeen year olds 65% of victims were friends or family of the suspect (Moyer 1996: 44). There were also differences in the use of 'weapons' based upon age. Moyer found that the use of physical

¹⁵ Although youth in this age group do not fall within the jurisdiction of the *YOA*

force decreases with age and the use of 'other' weapons increases with age. As well, major injuries increase by age of the suspect although these percentages were quite small in every age category (Moyer 1996: 45-48).

It is also important to point out that the intersection of age and gender are significant factors in understanding differences in youthful offending. For example, the participation of male youths in criminal activity appears to increase with age, whereas for females there is a decrease in involvement in criminal activity at about the age of sixteen (*The Daily*, Canadian Centre for Justice Statistics 1998). Furthermore, in an examination of violent youth crime statistics across Canada in 1998, it was found that female youths charged with violent crime tended to be younger than their male counterparts. Among male youths, the violent crime rate increased gradually with age, with the highest rate being among 17-year-olds. Among females, the rate peaked at the ages of 14 and 15 (*Juristat* 1999).

Thus, this body of research suggests that there are important differences among youthful offenders in terms of age and criminal activity. These differences do not support a view of youth as a homogenous group, rather, they provide support for the contention that youth is a slow transition from childhood to adulthood, and consequently, one would expect to see differences in the processing of 'younger' youths (closer to the minimum age of responsibility) and 'older' youths who are closer to adulthood.

The following chapters will attempt to investigate how chronological age and apparent maturity relate to decisions made about young people in conflict with the law. Chapters 2 and 3 will provide an empirical examination of the ways in which the principles of the *YOA* and the apparent maturity of a youth affect decisions made in bail

and sentencing cases. Chapter 4 explores public responses to a young offender constructed on varying dimensions of 'maturity' and how this affects sentencing preferences and offender ratings. Chapter 5 presents a summary of key findings and will explore in more detail the implications of these findings for the treatment of youths in the youth justice system as well as how these finding may provide us more insight in understanding the contradictions in how adolescence is constructed depending upon the context.

Chapter Two – Bail hearings

Introduction

The purpose of this chapter is to present findings on the way in which youths charged with offences under the *Young Offenders Act* are constructed at their bail hearings. Bail (or pre-trial detention) hearings are one of the ‘sites’ in which there is a process of describing young people accused of offences in a particular way by Crown and defense attorneys, in order to make a case for further detention or for release. As such, examining the information presented in bail hearings can provide us with some insight into this process of describing young persons accused of offences, and what this means for how a youth comes to be understood in court. Integral to this analysis is the construct of age as a factor in decision-making in youth court bail hearings. Thus, both contextual information relating to age, and the actual chronological age of youths in this sample of cases, will be examined in order to determine the effect of age on decision-making.

There is a paucity of research on pre-trial detention hearings for youth and even less information on how youth are described during their bail hearings. We know very little about the kinds of information about youth that are seen as relevant to the hearing, nor the effect that these kinds of information have on the outcome of the hearing. Some of what we know comes from media sources, but these descriptions often describe youth in detention as taking pride in their delinquent image. As one article put it “..[youth in court] have developed a tough veneer. For them, being detained is a kind of warped rite of passage...(h)andcuffs are a badge of honour.”¹

¹ Black, Debra “A Court Just for Youths” *The Toronto Star* April 5th, 1998.

This chapter will examine how youth are constructed in their bail hearings by exploring the effect of legal variables, factors related to the support available to a youth, and variables relating to how the youth ‘appeared’ in court. More specifically this chapter will present findings on how the ‘youthfulness’ of an accused, captured by information observed in court, and the youth’s chronological age, related to the decision-making process in bail hearings.

Legal Context

The legal framework for youth bail hearings consists of four principal bodies of legislation. The main law, which governs bail hearings, is the Canadian *Criminal Code* section 515, which provides the rules for judicial interim release for *all* offenders –adult and youth. Thus, section 515 is written without specific reference or rules for young people who commit offences.

Generally after a decision is made by a police officer to detain a youth after an arrest (governed by section 495 of the *CCC*), the law holds that criminal justice agents have 24 hours, or as soon as is practicable, to place the accused in front of a justice of the peace or judge for a bail hearing. At the bail hearing, there are three² grounds for which bail can be denied. The first is to ensure the attendance of the accused person for trial, and the second is that detention is necessary for the protection of the public. The third, recently added tertiary ground, justifies detention if it can be demonstrated that granting release would erode public confidence and bring the administration of justice into disrepute. Before the tertiary ground was added to the *Criminal Code*, the grounds for detention were to be considered in order. However, research suggests that even when

judges or justices were to consider these grounds in order, they did not always do so, but rather sometimes went directly to the condition that justified detention (Gandy 1992).

There are a number of different ways that an offender can be released on bail. The accused can give an undertaking to the justice that he/she will show up for trial and this undertaking can be placed on the offender with or without conditions. The offender can also be released on his/her own recognizance with or without sureties or monetary deposit and with the possibility of conditions being placed on release. If released the kinds of conditions that can be placed on an accused are set out in section 515(4) of the *Criminal Code*:

- to report to a peace officer or designated person at certain times.
- to remain within a certain jurisdiction.
- to notify a peace officer of a change in address or employment.
- to abstain from communicating with any witnesses and refrain from going to any place expressly named in the order.
- to deposit one's passport.
- and to comply with any other reasonable conditions that the justice considers desirable.

For youths, some of the conditions placed on them fall into the last category – ‘other reasonable conditions that the justice considers desirable.’ While not made explicit in the legislation, these conditions are sometimes specific to age, and appear to relate to the availability of informal structure and supervision. For example, having a curfew, obeying house rules, and attending school are all conditions that are routinely placed upon accused youth as part of their orders for release. (A further examination of the implications of this will be discussed later in the chapter).

The second main body of legislation that influences youth bail hearings is the *Young Offenders Act*. While the *YOA* does not have its own set of rules governing

² A tertiary ground for detention was legislated part way through the collection of these data.

judicial interim release, there are a few sections which are to be considered only in *youth* pre-trial detention hearings. First is section 7.1 of the *YOA* -the placement of the youth into the care of a responsible person. This section states that if, at the outcome of a pre-trial detention hearing it is deemed that the young person warrants an order of detention and there is a 'responsible person' willing and able to take care of and exercise control over the young person, and the youth is willing the justice can order the youth to be placed in the care of this responsible person who takes a written undertaking to comply with this arrangement.³ In practice, the 'responsible person' provision is almost never used (Federal-Provincial-Territorial task force report 1996; Gandy 1992).⁴ This finding is consistent with my observation-- this provision was never raised in court in any of the 118 cases observed as part of this study.

The other aspect of the *YOA* that should be considered in youth bail hearings is Section 3 of the *YOA* - the Declaration of Principle. The Declaration sets out the framework for understanding and dealing with young people who come in contact with the law, and attempts to provide guidance to criminal justice agents in dealing with youth who commit offences. There are four main themes found in the Declaration of Principle: prevention, legal rights of youth, mitigated responsibility & special needs of youth, and the protection of the public. The results from this study showed that reference to the *YOA* principles in bail court was a rarity. In only 3 cases out of the 118 observed, was any

³ If a responsible person does come forward to supervise the youth and willfully does not fulfill this responsibility, the 'responsible person' can be found guilty of an offence punishable on summary conviction.(S 7.2 *Young Offenders Act*).

⁴ the newly proposed Bill C-3 the *Youth Criminal Justice Act* has amended this section so that the responsible person provision specific to youths might be used more often. Section 31(2) states that "If a young person would, in the absence of a responsible person, be detained in custody, the youth justice court or the justice shall inquire as to the availability of a responsible person and whether or not the young person is willing to be placed in that person's care."

reference made by anyone (accused's counsel, Crown or justice) to the principles of the *YOA*.

Third, the *Charter of Rights and Freedoms* is also relevant to youth bail hearings.

Among other rights, accused persons in bail hearings have:

- the right not to be arbitrarily detained or imprisoned,
- the right to be presumed innocent until proven guilty according to law in a fair and public hearing and by an independent and impartial tribunal,
- the right not to be denied reasonable bail without just cause,
- and the right to equal protection and equal benefit of the law without discrimination and in particular without discrimination based upon...age.

Finally, the fourth major piece of legislation pertaining to youth court bail hearings in Ontario is the *Child and Family Services Act*. Each province has its own child welfare legislation which governs the administration of justice for young people. Section 93 of the Ontario *Child and Family Services Act* sets out that factors to be considered in determining the level of temporary detention upon being arrested by a police officer.

The common presumption behind all of these pieces of legislation is that in all possible cases, the *least intrusive measure* should be taken. For example, at the first stage of proceedings, there is a duty on the police officer not to arrest, if a release by way of summons or appearance notice is sufficient. Similarly, at the bail hearing, a justice or judge has a duty to release without conditions unless a case can be made for doing otherwise. The Ontario *Child and Family Services Act* maintains that open custody should be presumptively used for temporary detention, unless it is necessary to ensure the youth attends court or there is a threat to public safety. Finally, the Declaration of Principle in the *YOA* states that young offenders have the right to the least possible interference with their freedom that is consistent with the protection and safety of the public.

The Decision-Makers:

The cases that were observed in this study were the product of a ‘filtering process’ of decisions made by various criminal justice personnel. Of primary importance is the fact that these are cases where an offender was apprehended by police. But one must keep in mind that a large amount of criminal activity goes unreported (Doob *et al* 1995; Griffiths & Verdun-Jones 1994). Second, these are cases where the decision to arrest was made and a decision to detain was seen as being in the public interest by both the arresting officer and the officer in charge (Sec.498 CCC). Thus, what comes into court is highly dependent upon a series of discretionary decisions made by the police. And as other research suggests, police decision-making at arrest is significantly related to both legal factors (number of previous contacts with police, seriousness of the offence, prior record of the accused) and non-legal factors (race, gender, socio-economic status, situational factors) (Wortley & Kellough 1998, Sealock & Simpson 1998, Wordes, Bynum & Corley 1994, Doob & Chan 1982, Carrington, Moyer & Kopelman 1988).

The next phase of the ‘filtering’ process is the decision made by the Crown attorney. After reviewing the case, the Crown may seek to contest bail release or may consent to the release of the youth, with or without conditions. This decision, as we shall see, is pivotal to the outcome of the case (Wortley & Kellough 1998; Hucklesby 1998).

Finally, the justice of the peace or judge listens to evidence presented at the bail hearing. Based on the testimony of sureties, parents, and at times the accused youth, a decision is made either to detain the youth, or release the accused with or without conditions. Thus, this last phase of the process—the bail hearing—is highly dependent upon earlier decisions made which brings the case to court.

Research Methods

From June to the end of August 1997, a research assistant and I observed bail hearings at 4 different youth courts in the Toronto area.⁵ The majority of cases (61.9%) were observed in Canada's largest youth court, which deals only with young offender cases, and also hears all of the city's drug cases involving youth.

The data collection form⁶ used to collect information in court included those factors thought to be associated with youth detention in previous research (see Carrington *et al* 1988 for a review). As well, other more subtle pieces of information about the way the youth may have been perceived in court were also recorded. For each case, therefore, we recorded demographic information (age, gender); legal factors (current charge, prior record); social factors (living arrangements, school involvement) and personal characteristics (how the young person was dressed, how the youth acted in court) in the bail hearings. I was interested in examining the impact of the information which was available in the courtroom to various criminal justice personnel, in particular the judge or justice, who would be making the final decision. In total, 118 cases were observed which resulted in bail being either granted or denied.

The theory behind collecting data by courtroom observation to examine bail decision-making is that the information presented in the courtroom is almost as complete as the information that the presiding justice of the peace or judge has in making the bail decision. Generally, the information that justices or judges have before them is the youth's prior record information, outstanding charges, and the current charges before the court. In most cases, we had the court dockets which contained the information on current

⁵ See Appendix B for inter-rater reliability

⁶ See Appendix A

charges. And, in many cases, the Crown read out prior record information in court. Consequently through court observation, we were able, as nearly as possible, to 'see what the decision makers saw'.

Given the limited amount of written information that a judge or justice relies on to make bail decisions, the information presented and seen in court is quite important in how the youth is constructed in the bail hearing and is thus likely to affect the decision-making process. Conversely, what is *not mentioned* is equally important in how the youth is understood in court during the bail hearing. I was interested in examining what this means for the ways in which youth are constructed in court, and more specifically, how the category of 'age' fared in the decision-making equation.

While this method of data collection allowed me to obtain a close proxy of judicial decision-making, there were some difficulties in interpreting this information. Due to the consensual nature of the court proceedings, there was not as much information brought out in court as was expected and this had implications for the analysis. As will become apparent in the following chapter (as well as Chapter 3 on sentencing hearings), there were two different ways in which 'missing data' were treated. First, there were data that were actually missing and thus were excluded from statistical analysis since they were not coded by the research assistant or me. Therefore the total number of cases in the following tables may vary due to the exclusion of missing data. The other kind of 'missing data' was information that was 'not mentioned' in the court proceeding. I was interested in exploring how the lack of information in a case might construct it differently. Thus, when information was 'not mentioned' it was also included in the analysis. However, in all

cases, statistics are provided which include cases where information is ‘not mentioned’ as well as statistics excluding the ‘not mentioned’ cases.

This chapter will be divided into 4 sections. The first will present findings on factors related to the Crown’s decision to contest or consent to release. The second section will examine only those cases where the Crown contested release in order to explore decision-making in the bail hearing above and beyond the Crown decision. The third section will look at the overall detention decision by the court which is presumably a combination of the first two decisions. The final section will provide an analysis of bail conditions placed on cases that were released by the court, in order to understand how these conditions may relate to the youth’s age and maturity.

The Sample of Observed Cases

Almost one-third (29.7%) of the accused youths whose hearings were observed in this study were denied bail. Just over half of these young people (50.8%) had as their principal charge⁷ either a violent offence or a charge of break and enter—two offence categories which are likely to be considered to be the most serious by the public and the judiciary. Over half (58.5%) of the sample was 16 years of age or over. The majority of the youths in these bail hearings were male. Females comprised only 17.8% of the cases.

⁷ The principal charge was computed by coding the first four charges in a case into 6 categories of offences; violence, drugs, break and enter, other property, other *Criminal Code* and *YOA* offences (in many observed cases though, there were fewer than four charges). Then, the principal charge was calculated by using the order of categories of offence (consistent with Canadian Centre for Justice Statistics-as above) where the ‘most serious’ category trumped all other charge categories.

Table 1: Comparison of the Sample of Youth Bail Cases observed between June and August 1997 to Cases Heard in Ontario Youth Courts (1997-1998) by Principal Charge, Age & Sex

	Bail Sample	Ontario
Most Serious Charge		
Violence	34.7%	24.5%
Drug Offences	13.6%	4.3%
Break & Enter	16.1%	10.6%
Other Property	20.3%	34.7%
Other Criminal Code ⁸	11.0%	16.8%
YOA offences ⁹	4.2%	9%
Age		
12-15 years old (all offences)	41.5%	51.6%
16+ years old (all offences)	58.5%	48.3%
Sex		
Male	82.2%	78.1%
Female	17.8%	21.9%

Looking at how this sample of cases compares to Ontario youth court cases (Table 1), reveals that the bail sample includes more offences falling into the categories of violence and drug offences than Ontario cases, and a higher proportion of males, and youths 16 years of age or older. This is not surprising since these are youths who were subject to an earlier decision by police to be detained based upon the criteria set out in section 495 of the *Criminal Code*.

Almost all of the youth in the observed sample came into court in handcuffs and in police custody since they had been held in secure detention before their bail hearing (89.8%). Only in 11 cases out of the 118 (9.3%), were the youths placed into an open detention facility before their bail hearing.

⁸ such as fail to comply with a disposition, fail to comply with an undertaking (this includes all cases except for YOA offences, drug offence and other federal offences)

⁹ such as escape custody, unlawfully at large, fail to comply with a probation order

The factors that are to be considered in determining the level of custody for temporary detention in Ontario are set out in section 93 of the *Child and Family Services Act*.¹⁰ It is stated that a young person who is detained in a place of temporary detention *shall be detained in a place of open custody* unless a provincial director determines that it is necessary to detain the young person in a place of secure detention to ensure the young person's attendance in court, or to protect the public interest or safety. Given that the nature of the alleged charges in over 20% of the cases were minor property offences, and that there is a presumption that the least intrusive option -- open custody -- should be used for temporary detention, it is surprising to see how many youth were held in secure detention pending their bail hearing. This however, may be related more to the availability of space rather than criteria set out in the *Act*.

While almost all (89.8%) of the youth in this sample spent some time in secure detention before their bail hearing, most of these youth (70.3%) were subsequently granted bail. The question raised, then, is why are so many accused offenders spending any time locked up before their bail hearing if they are ultimately to be released (also see Gandy 1992)? The negative effects of entering the court in custody or being held in pre-trial detention in relation to the outcome of the case have been well documented. Most studies have concluded that accused persons stand a greater chance of being convicted and receiving a harsher sentence if they enter the court in custody (Friedland 1965, Koza & Doob 1975, Goldkamp 1983, McCarthy 1987, Fagan & Guggenheim 1996).¹¹ In fact, as Chapter 3 will show, young persons who were held in pre-trial detention were more likely to receive a custodial disposition than those who were not detained before trial.

¹⁰ *Child and Family Services Act* chap. C.11, part IV - 1990-91

Results - The Crown

In understanding the factors related to bail decision-making in youth courts, the data clearly show that the main decision-maker in youth bail court is the Crown Attorney (Table 2). If the Crown Attorney did not contest release, the youth was certain to be granted bail. However, when the Crown contested the release of the youth, almost 3 out of 4 youths (72.9%) were detained. Although there has been very little information written on the impact of Crown decision-making in youth court bail hearings, these findings are consistent with a study on adult bail hearings which found that the Crown consented to release the accused in 78.4% of cases, and that the Crown's particular form of release was followed by the judge in 95.4% of the cases where a release order was sought by the Crown (Koza & Doob 1975). Some have argued that this kind of highly autonomous prosecutorial decision-making allows for temporal efficiency and convenience in the courtroom for dealing with overburdened court dockets (Koza & Doob 1975, Klein 1998 in relation to transfer hearings).

Table 2

Relationship between Crown decision to contest release and overall decision to grant bail

		was bail granted?		Total
		no	yes	
does Crown contest release?	no	.00	69	69
			100.0%	100.0%
	yes	35	13	48
		72.9%	27.1%	100.0%
Total		35	82	117
		29.9%	70.1%	100.0%

NOTE: Fisher's exact test $p < .001$.

¹¹ Frazier & Bishop (1985) found that detention status had no effect on the severity of judicial dispositions

These results reveal the powerful influence of the Crown Attorney and raise questions about the accountability of decision-making in the bail hearing, since a substantial amount of the decision-making control appears to be carried out independently of the information provided at the bail hearing (Hucklesby 1997). In this sense, attempting to look for ‘youth’ in youth court bail hearings may be futile, since contextual information about the youth only occurs within the hearing itself. And as these data show, the Crown is making decisions about release independent of the actual bail hearing.

Section I - Legal Factors relating to the Crown Decision

Given the high degree of influence the Crown has in the decision-making process of youth court bail hearings, the first section of this chapter will explore the factors associated with the Crown’s decision to contest or consent to release on bail.¹²

In order to see if various factors grouped together made a difference in the detention decision, indices were created based upon 3 categories, ‘legal factors’, ‘child vs. adult’, and ‘support factors’ (see Appendix C for a breakdown of the variables included). Each of the variables, if mentioned or observed in the bail hearing, either counted as a ‘point’ toward the overall index category, or if it was a factor which detracted from the overall category - it counted as a negative. Thus, to create the index, the variables were added together and the negative points were subtracted.

Legal Index:

Having a case with a large number of factors of ‘legal seriousness’ was related to the Crown decision to contest bail. As Table 3 shows, as factors of legal serious in a

¹² Research suggests that the Crown’s decision is highly influenced by the police ‘show cause’ report and recommendations to the Crown (see Wortley & Kellough 1998). Given that this study focused in on *court* as a site of constructing youth, this information was not accessible.

youth's case increased, so too did the likelihood that the Crown would contest bail release.

Table 3

Relationship between the index of 'legal seriousness' and the Crown decision to contest bail

		does Crown contest release?		Total
		no	yes	
Factors of legal seriousness	0 through 2 serious	25 89.3%	3 10.7%	28 100.0%
	3 serious	24 72.7%	9 27.3%	33 100.0%
	4 thru 5 serious	15 48.4%	16 51.6%	31 100.0%
	6 or more serious	5 20.0%	20 80.0%	25 100.0%
Total		69 59.0%	48 41.0%	117 100.0%

NOTE: Chi-square=30.344, $df=3$, $p < .001$.

It is interesting to note that the Crown was almost 3 times more likely to contest bail when an accused youth had 3 factors of legal seriousness versus those youth that had 0 through 2 factors. Just over half (51.6%) of the youth who had 4 or 5 factors of legal seriousness had their bail contested, and the majority (80%) of youth with 6 or more factors also had their bail contested.

Legal Factors:

Principal Charge

Various individual components of the legal index were examined in relation to the Crown decision. Some of these factors were significant while others were not. For example, these data reveal that the principal charge before the court was not related to the Crown's decision to contest bail (Table 4).

Table 4

**Relationship between the principal charge before the court and
the Crown decision to contest release of the accused**

		does Crown contest release?		Total
		no	yes	
principal charge	violence	18	22	40
		45.0%	55.0%	100.0%
	drugs	11	5	16
		68.8%	31.3%	100.0%
	b&e	11	8	19
		57.9%	42.1%	100.0%
	prop&yoa&ccc	29	13	42
		69.0%	31.0%	100.0%
Total		69	48	117
		59.0%	41.0%	100.0%

NOTE: Chi-Square = 5.631, $df=3$, not significant.
(Violence, drugs, b&e) pooled vs. (prop, yoa, 'other cc'), not significant.

It must be pointed out however, that the principal charge is not an adequate proxy for understanding the 'seriousness' of an offence. There is a great deal of variation within each of these categories in terms of the actual nature of the offence. For example, within the category of violence is the charge of 'assault'—which can take the form of a shoving match—or at the other end—an assault with a weapon. Thus the lack of a relationship here between the Crown decision and the charge category may simply be due to the actual nature of the offence—not the category it falls within.

Prior Record

While it appears that information about the current charges before the court did not influence the Crown decision, various kinds of legal information about the youth's past, such as prior record, did seem to be related to the Crown's decision to contest bail.

Table 5 shows the Crown's decision to contest bail in relation to whether the accused youth had a prior record.

Table 5

Relationship between the accused youth having a prior record and the Crown contesting release

		does Crown contest release?		Total
		no	yes	
is there a prior record?	no	22 55.0%	18 45.0%	40 100.0%
	yes	13 31.0%	29 69.0%	42 100.0%
	not mentioned	30 96.8%	1 3.2%	31 100.0%
Total		65 57.5%	48 42.5%	113 100.0%

NOTE: Fisher Exact test (2-tail) $p=.044$ (no vs. yes) ;
Chi-square = 31.786, $df=2$, $p < .001$ (overall -incl not mentioned's)¹³

If an accused youth did not have a prior record, the Crown contested release in less than half (45%) of the cases. However, for those accused youths who did have a record, more than two-thirds (69%) had their bail contested by the Crown. Having a prior record then, seems to be one of the legal variables which influences the Crown's decision to contest bail, and as already seen in Table 2, the Crown's decision has a high degree of influence on the overall outcome of the case.

¹³ In certain cases (see Tables 5 & 7) there were instances when information on the case was 'not mentioned' in court. These were generally matters where the Crown did not contest bail for the youth. For prior record, in 30 out of 31 cases (97%) where information was 'not mentioned', the Crown consented to release the youth. This was also true for the youth having a history of bail abuse, 55/73 cases (75.3%), and previous pre-trial detention, 57/81 cases (70.4%). In all likelihood, the cases where information was 'not mentioned' are cases where the Crown has decided not to 'show cause' for detention, and in the interests of efficiency, not all details are read out loud about the case in court.

Looking more closely at the effects of prior record reveals that youth who had a prior record, which included offences that were related to the current charge before the court, were more likely to have their cases contested by the Crown (Table 6).

Table 6 - Percentage of cases contested by the Crown as a function of the relationship between prior record and current charges¹⁴

Relationship between the current charge and the nature of the prior record				
				sig.
are priors related?	unrelated	unrelated	related	
	37.5%(8)	50.0%(12)	90.9%(22)	$p=.005^*$
are priors recent?	unrelated	not recent (over 1 year)	recent (within 1 year)	
	44.4%(9)	62.5%(8)	80%(25)	n.s.
do priors include violence?	unrelated	does not include violence	does include violence	
	71.4%(14)	58.3%(12)	75%(16)	n.s.

* Fisher's exact test (2-tailed) related vs. unrelated $p=.013$

A youth with unrelated prior charges had a 50-50 chance of having their bail contested, but when it was mentioned that the youth's prior offences were related to the current allegation before the court, a very high proportion (90.9%) of these cases were contested by the Crown. This may result from the Crown perceiving the youth to be more likely to engage in a pattern of offending behaviour specific to the allegation(s) before the court, which may, in the Crown's view, heighten the possibility that the accused youth would not remain crime free before the trial date.

Thus, prior charges that were related to the current offence may have been seen as being related to the secondary ground - the protection of the public. However, whether

¹⁴ This title (and the titles of subsequent tables in this thesis) does not intend to imply causality.

the prior offences were recent (within the last year), or included violence did not relate to the Crown's decision (Table 6).

Bail Abuse & Previous Pre-trial Detention

In most of the cases observed, (73/102 or 72%), information on the youth's history of bail abuse was not mentioned in the courtroom. As can be seen in Table 7, the Crown contested release in almost 90% of the cases (26/29) where the issue of bail abuse was raised, indicating that the Crown only presents this information in court when there is an intention to contest bail release.

Table 7 - Percentage of cases contested by the Crown as a function of information on bail abuse or pre-trial detention

	yes	No	not mentioned in court	sig.
does accused have history of bail abuse?	100%(10)	84.2%(19)	24.7%(73)	-no vs. yes - n.s. -overall including not mentioned's $p < .001^*$
Has youth previously been in pre-trial detention?	86.7%(15)	100%(7)	29.6%(81)	-no vs. yes - n.s. -overall including not mentioned's $p < .001^{**}$

NOTE: If the minimum expected count is less than 5, this information will be noted from here on. The lowest expected value is indicated in parentheses below.

*1 expected value less than 5(4.31)

**2 expected values less than 5 (2.99)

The same can be seen in relation to previous pre-trial detention where the Crown contested over 90% of the cases (20/22) when this information was mentioned.

Reverse Onus

Having a reverse onus on a case means that the accused must "show cause" why he or she should not be detained pending trial, whereas normally the onus is on the Crown to show cause for detention. A reverse onus condition is created in four kinds of

circumstances as set out in section 515(6) of the *Criminal Code* and applies to both youth and adults. These are:

- where the accused person is charged with committing an indictable offence while awaiting trial on another indictable offence,
- if the accused is charged with non-compliance with the conditions of her/his previous release while awaiting trial on any other charge.
- if the accused is charged with an indictable offence and is not normally a resident of Canada
- if the accused is charged with certain offences under the *Controlled Drugs and Substances Act*.¹⁵

These data show that most of the youths (78/112 or almost 70%) in this sample had to 'show cause' why they should *not* be detained, and as Table 8 shows, having a reverse onus was not significantly related to the Crown's decision to contest bail release (using the traditional ".05" standard of statistical significance).

Table 8

Relationship between the onus in the case and the Crown decision to contest release

		does Crown contest release?		Total
		no	yes	
Who has the onus?	reverse	39	39	78
		50.0%	50.0%	100.0%
	Crown onus or not mentioned	25	9	34
		73.5%	26.5%	100.0%
Total		64	48	112
		57.1%	42.9%	100.0%

NOTE: Fisher's exact test (2-tail) $p = .056$

While only approaching the level of significance, the trend that appears to emerge from this table is that when there was a clear reverse onus situation the Crown appeared to be

equally likely to contest or consent to bail, but in other circumstances, such as when the onus was on the Crown, or when this information was not mentioned in court, the Crown seemed to be more likely to consent to the release of the youth in this sample of cases (73.5%). It appears then, that to an extent, the reverse onus condition may serve to 'flag' the case to the Crown as one deserving attention and, often, detention.

In cases where it was mentioned, the most common reason for having a reverse onus was that the youth was charged with committing an indictable offence while awaiting trial on another indictable offence (Table 9).¹⁶

Table 9

Relationship between the reason for reverse onus (when mentioned) and the Crown decision to contest release

		does Crown contest release?		Total
		no	yes	
if reverse onus, why?	commit offence while awaiting trial	22 47.8%	24 52.2%	46 100.0%
	breach probation	5 45.5%	6 54.5%	11 100.0%
	offence under Controlled Drugs & Substances Act	5 83.3%	1 16.7%	6 100.0%
Total		32 50.8%	31 49.2%	63 100.0%

NOTE: Chi-square=2.829, *df*=2, not significant.

Given the large effect that prior record had on the Crown's decision to contest release (Table 2), it is important to explore the relationship between the onus in a case and

¹⁵ for example, simple possession does not warrant a reverse onus, but trafficking constitutes a reverse onus situation.

¹⁶ Any violation of a condition of release is considered to be an indictable offence. Previous research suggests that breaches of release conditions account for the majority of reverse onus cases (Gandy 1992). In this study though, the specific offences leading up to the indictable offence charge were not specified in court, so all of this was captured under the category of 'indictable offences'.

the Crown's decision, controlling for prior record. Table 10 shows that when the accused youth did not have a prior record, the Crown contested release in a higher proportion of cases when it was a reverse onus condition.

Table 10 - Percentage of cases contested by the Crown as a function of prior record by onus

	reverse onus	Crown onus or not mentioned	sig.
prior record	72.4%(29)	66.7%(12)	n.s.
no prior record	63%(27)	10%(10)	$p=.008^*$

*Fisher's exact test

However, there was not a significant relationship between the Crown decision to contest and the onus in the case when the accused youth did have a prior record.

It appears that either having the case identified legally as a reverse onus case or identifying the case as one where the accused has a record, appears to flag the case as one worthy of being contested. Having both characteristics does not appear to increase the likelihood of its being contested over having just one.

Co-accused in the present offence

Looking at the cases where information about a co-accused(s) was mentioned, shows that in these cases the Crown was equally likely to contest, or consent to bail release. However, if the youth had a co-accused and the co-accused was present in court, this was related to the Crown decision to contest bail (Table 11).

Table 11 -Percentage of cases contested by the Crown as a function of information about a co-accused(s) in the case

	yes	no	not mentioned	sig.
does one+ charges include one+ co-accused(s)?	46.3%(54)	52.5%(40)	9.5%(21)	-no vs. yes - n.s. -overall including not mentioned's $p=.003$
are one or more co-accused(s) present?	30.3%(33)	72.2%(18)	n/a	* $p=.007$
is one+ co-accused(s) an adult?	50%(8)	40.6%(32)	50%(10)	n.s.

*Fisher's exact test

If a co-accused was in court for the bail hearing, the Crown was *less likely* to contest release than if a co-accused was not present. The Crown may see the likelihood of the accused committing further offences as less probable if a co-accused is either in detention, and thus incapacitated, or 'responsible' enough to be present in the body of the court. This relates, then, to both the primary and secondary grounds for detention-- that the accused is responsible enough to show up for the trial, and that further offences are unlikely to be committed if the accused is released since the co-accused is present. Identifying a co-accused as an adult however was not significantly related to the Crown decision.

Discussion of Legal Factors:

We know that the Crown's interpretation of a case is very important in the overall detention decision. As suggested in this section, legal variables seem to influence the Crown's decision -- specifically, having a prior record, and having a prior record which includes offences related to the current offence before the court. Having a co-accused present for the hearing makes the Crown less likely to contest the release of the accused youth.

'Child-like' vs. 'Adult-like' Index

I created another index which included variables such as the youth's age as well as their perceived age¹⁷, if they regularly attended school or worked full-time, whether they lived with parent(s) or if they lived on their own, among other factors (see Appendix C). My hypothesis was that the Crown might be affected by a youth who 'looked' or had circumstances that made them more 'child-like', and vice-versa. The data showed that there was no such relationship -- as there were no significant differences in the Crown decision between youth who exhibited 'adult-like qualities' or 'child-like qualities' and the rest of the youth in the sample. Again, this may be due to the fact that Crown decision-making is occurring outside of the actual bail hearing.

Table 12

**Relationship between whether the youth had 'adult' or 'child-like' qualities
and the Crown decision to contest release**

		does Crown contest release?		Total
		no	yes	
How many factors are associated with being a child or adult?	adult or no child-like	10	5	15
		66.7%	33.3%	100.0%
	1 child-like	17	13	30
		56.7%	43.3%	100.0%
	2 child-like	27	12	39
		69.2%	30.8%	100.0%
	3 or more child-like	15	18	33
		45.5%	54.5%	100.0%
Total		69	48	117
		59.0%	41.0%	100.0%

NOTE: Chi-square = 4.622, *df* = 3, not significant.

Analyses on the individual factors that are contained in this index also showed no significant effects.

Demographic Factors in the Bail Decision

Age

There has been very little research on the effect of age as a factor in decision-making in youth courts, and what research has been done shows mixed results (Wordes, Bynum & Corley 1994, Carrington, Moyer and Kopelman 1988, Bookin-Weiner 1984, Frazier & Bishop 1985). As mentioned before, there was an expectation that the courts would be inclined towards treating 'younger' youths less harshly than their older counterparts (Kowalski & Caputo 1999). If this were to be the case, it would be consistent with recent research in developmental psychology which has pointed out that younger teens differ substantially from older teens and adults in their cognitive capacity, attitudes and perceptions of risk (Scott & Grisso 1997).

Looking at the question of age in relation to Crown decision-making for bail hearings shows that there were no differences in the decision of the Crown based upon which age group the accused youth was in (12-13, 14-15 or 16 & older) (Table 13).

Table 13

**Relationship between age group and the Crown decision to
contest release**

		does Crown contest release?		Total
		no	yes	
age group	12&13	6	5	11
		54.5%	45.5%	100.0%
	14&15	20	14	34
		58.8%	41.2%	100.0%
	16+	37	29	66
		56.1%	43.9%	100.0%
Total		63	48	111
		56.8%	43.2%	100.0%

NOTE: Chi-Square = .094, *df*=2, not significant

¹⁷ As assessed by the researchers in court

A number of other demographic variables, and factors relating to how the youth 'appeared' in court were recorded. The results of this analysis show that none of these details about the youth were related to the Crown decision to contest bail (Table 14).

Table 14 - Percentage of cases where the Crown contested bail release as a function of demographic and appearance-related factors

			sig.
gender	male	female	
	43.8%(96)	28.6%(21)	n.s.
perceived ethnicity?	black	other*	
	51.3%(39)	35.1%(27)	n.s.
are there 'adult-like' signs?	yes	no	
	60.0%(5)	40.2%(112)	n.s.
are there 'child-like' signs?	no	yes	
	40.4%(109)	50.0%(8)	n.s.
how is youth dressed for court?	Not dressed up	dressed up	
	42.0%(100)	35.3%(17)	n.s.
does youth have facial hair? (males only)	yes	no	
	38.1%(21)	42.7%(82)	n.s.
is youth interested in proceedings?	not interested	very/moderately interested	
	56.7%(39)	35.7%(84)	p=.054** (n.s.)

*the category 'other' includes, caucasian, south asian, aboriginal, hispanic or other.

**Fisher's exact test

Gender:

There was a very small proportion of accused female youths in this sample. These data do not reveal significant differences in the Crown decision to contest bail based upon the gender of the accused. And in addition these results show that the perceived ethnicity

of the accused youth by the researchers was not related to the Crown decision to detain (Table 14).

How the youth 'appeared in court'

Factors relating to how the youth appeared in court,¹⁸ which were subjectively assessed by the researchers, were not related to the Crown decision (Table 14).

Obviously, one explanation for this is that the majority of decisions made by the Crown are formulated outside of the bail hearing. Alternatively, they may simply be irrelevant to the Crown in deciding whether to contest release, or, the youth in these bail hearings did not stand out remarkably from one another in terms of how they looked, how interested they were in court, or if they exhibited 'child-like' or 'adult-like' qualities. Generally, these youths were quiet in court, and the majority of the accused youths (72%) were observed by the researchers to be 'very' or 'moderately' interested in the court proceedings. As well, most of the youth in court (85.6%) were perceived by the researchers to be 'dressed-down' in court —meaning they were wearing clothes that teenagers generally wear —jeans, t-shirts, running shoes --as opposed to the remainder (14.4%) that were dressed in a 'neat-middle-class' way or were 'dressed-up' for court.

The fact that most of the youth observed in the bail hearings were not 'dressed up' for court may be accounted for by the fact that most of these youth (89.8%) were detained in secure detention after being arrested. The only way for an accused person to change their clothes for court from what they were wearing when arrested would be if a family

¹⁸ such as how was the youth dressed for court; was the youth interested in the proceedings; how old did the youth look to the researchers, etc.

member or other supportive person was able to bring a change of clothes to them at their place of detention.

Adult or Child-like signs:

As also seen in Table 14, in only 5 cases did we find something noteworthy about the youth as being ‘adult-like’, and in 3 of these 5 cases, the Crown contested release. Similarly, in only 8 cases did we notice that the accused before the court exhibited characteristics that might be perceived to be ‘child-like’. Here, the Crown contested half of these cases.

For the males in these cases, having facial hair was quite rare. In only 21 cases (18%) did the youth have any kind of facial hair. Of these cases, 8 (or 38%) were contested by the Crown. Again, the hypothesis was that more ‘adult-like’ characteristics (having facial hair) might be related to the decision to detain. Clearly this was not the case.

Discussion of Demographic and ‘Child-like’ vs. ‘Adult-like’ factors:

The youth’s appearance in court had little to do with the decisions the Crown was making. Thus, the Crown’s approach to a case was related more to factors surrounding the youth’s legal history than present appearances in the bail hearing. In addition, these data reveal that for the most part the accused youths in this sample were a remarkably homogeneous group, and thus, even if the Crown was ‘looking’ at these youths in terms of decision-making, there was little variation which would have made particular youths stand apart.

Support Index

In trying to determine how much of a risk an accused youth might pose if released on bail, the Crown may be likely to assess the youth's network of support. Such factors as having a parent or guardian present at the court hearing, having knowledge that the parent is involved in the youth's life and is able to supervise, and having a defense lawyer who provides a case plan for the youth upon release, all speak to the degree to which others in the youth's life are able and willing to provide support. The data in this sample show that there was no significant relationship between the amount of support they had and the Crown decision to contest release (Table 15).

Table 15

Relationship between the number of factors related to support and the Crown decision to contest release

		does Crown contest release?		Total
		no	yes	
How many factors are associated with support for this youth?	0 support	18	7	25
		72.0%	28.0%	100.0%
	1-2 support	21	18	39
		53.8%	46.2%	100.0%
	3 or more support	30	23	53
		56.6%	43.4%	100.0%
Total		69	48	117
		59.0%	41.0%	100.0%

NOTE: Chi-square = 2.300, $df = 2$, not significant.

Family & School

In the cases observed in this study, at least one parent or parent figure was present for the bail hearing the majority of the time (72%). However, having a parent present in court was not significantly related to the Crown decision to contest release (Table 16).

Table 16 - Percentage of cases where Crown contests bail as a function of parental presence in court, involvement in youths' life and supervision

	yes	no	sig.
parent(s) present?	43.9%(82)	37.5%(32)	n.s.
does court hear that parent(s) is involved in youth's life?	44.3%(79)	72.7%(11)	n.s.
does court hear that parent(s) able to supervise youth?	42.9%(56)	70.0%(20)	$p=.067^*$ n.s.

* Fisher's exact test

Living Arrangements

However, living at home was a significant factor in the Crown's decision to contest bail. As Table 17 shows, over two-thirds (69.6%) of youths who did not live at home had their bail contested by the Crown, while a smaller proportion (37.5%) of youth who lived at home had their bail contested. This is consistent with previous research which has shown that youth who were detained were less likely to reside with two parents (Wordes, Bynum & Corley 1994, Schutt & Dannefer 1988).

Table 17

Relationship between the youth living with their parent(s)/guardian(s) and the Crown decision to contest release

		does Crown contest release?		Total
		no	yes	
Does the youth live with their parent(s)/guardian(s)?	no	7 30.4%	16 69.6%	23 100.0%
	yes	50 62.5%	30 37.5%	80 100.0%
	not mentioned	11 84.6%	2 15.4%	13 100.0%
Total		68 58.6%	48 41.4%	116 100.0%

NOTE: Fisher exact test (2-tail) $p=.009$ (no vs.yes).

Chi-square = 11.651, $df=2$, $p=.003$ (overall including not mentioned's).

Clearly, whether or not an accused youth lives with a parent is highly related to the Crown's decision on whether or not to contest bail. It directly relates to the primary ground for bail detention, which is to secure the youth's attendance for trial. Thus, an accused youth who lives with a parent would be seen to have support sufficient to ensure attendance at trial. However, this finding raises issues relating to the treatment of accused youths who *do not* have the ability to live at home for various reasons—and the possibility that detention is being used more frequently for youth who do not live with their parents. The fundamental problem for researchers on this issue is that the primary ground for detention—the likelihood of attending trial—directs the court's attention to the home situation of the young person (Moyer 1996). But, the use of detention for child welfare reasons needs to be disentangled from the use of detention to ensure that the youth shows up for trial—otherwise detention is unjustified (Nasmith 1990, Gandy 1992, Guggenheim 1977).

School attendance

School attendance was also related to the Crown's decision in the bail hearings observed.¹⁹ Table 18 shows that the Crown contested *all* of the cases where the youth was not in school, whereas if a youth attended school regularly, just over two-thirds (69.4%) had their case contested.

Table 18

Relationship between the youth attending school and the Crown decision to contest bail

		does Crown contest release?		Total
		no	yes	
Is the youth in school?	no	.00	16	16
			100.0%	100.0%
	yes	11	25	36
		30.6%	69.4%	100.0%
	not mentioned	57	7	64
		89.1%	10.9%	100.0%
Total		68	48	116
		58.6%	41.4%	100.0%

NOTE: Fisher's exact test (2 -tail) $p = .012$. (no vs. yes).

Chi-square = 58.807, $df=2$, $p < .001$ (overall - incl. not mentioned's).

School attendance, however, was also related to another factor which appears to relate to the Crown decision – prior record (see Table 5). As Table 19 reveals, there was a substantial relationship between not attending school regularly, and having a prior record. A very high proportion (87.5%) of those youth who were not attending school, had a prior record, whereas, the majority (60%) of youths who were attending school regularly, did not have a prior record.

¹⁹ The variable for the youth being in school was pooled where 'yes' included that the youth was in school 'most of the time', in 'summer school' or 'yes, was in school'. And 'no' included 'no, not in school', in school 'once in a while', 'not registered', 'kicked out' or 'suspended'.

Table 19

**Relationship between youth attending school and whether or not
youth had a prior record**

		is there a prior record?		
		no	yes	Total
Is the youth in school?	no	2 12.5%	14 87.5%	16 100.0%
	yes	18 60.0%	12 40.0%	30 100.0%
Total		20 43.5%	26 56.5%	46 100.0%

Fisher's Exact test (2 - tail) $p = .002$.

However, the relationship between the youth being in school and the Crown decision to contest release was not significant when controlling for prior record (Table 20). For both groups -- those youth with and those without a prior record -- the relationship was not significant, in large part because of the lack of variation in school attendance for those without a record and in the Crown's decision for those with a record.

**Table 20 - Percentage of cases contested by the Crown as a function of prior record
by youth attending school**

	youth attends school	youth does not attend school	sig.
prior record	91.7%(12)	100%(14)	n.s.
no prior record	77.8%(18)	100%(2)	n.s.

Discussion of Support Factors:

In trying to understand how factors of support relate to the Crown decision, these data seem to suggest that exhibiting 'ties to the community' in the form of attending school, and 'ties to the family' by living with one's parents are factors that are relevant for the Crown in determining the risk at youth poses if released. Both address the amount of supervision a youth has which may mean there is less opportunity to engage in further offences pending trial. Interestingly, on the issue of support, having a parent present in court did not impact on the Crown decision--again possibly owing to the fact that the Crown may be making the decision outside of the bail hearing.

Which factors overall predict the Crown decision on bail release?

To conclude this section, it is important to understand which (if any) of these factors may provide more predictive ability for the Crown decision than the others. Table 21 provides an ordinary least squares regression²⁰ of the significant factors that related to the Crown's decision.

²⁰ A logistic regression analysis might have been seen as being the most appropriate test for the predictability of these variables since the dependent variable (does the Crown contest?) is binary. However, the sample size is too small for logistic regression and thus, ordinary least squares regression analysis was performed in order to analyze estimated effects of the independent variables. This is also the case for all regression analyses in this chapter.

Table 21

Ordinary Least Squares Regression analysis representing estimated effects of independent variables on the Crown's decision to contest release^a

		unstandardized coefficients		standardized coefficients	t	Sig.
		B	Std. Error	Beta		
Independent Variables	(Constant)	2.170	.351		6.186	.000
	prior record	.263	.093	.256	2.812	.006
	does youth live with parent(s)?	-.134	.105	-.110	-1.273	.206
	in school?	-.462	.130	-.328	-3.553	.001

^a. Dependent Variable: does Crown contest release?

NOTE: dependent variable: 'Crown contest' (1=no 2=yes)
independent variables: 'prior record (1=no/ not mentioned 2=yes)
'live with parent' (1=no 2=yes or not mentioned)
'in school?' (1=no 2= yes or not mentioned)

Of all the factors which were significantly related to the Crown's decision, both having a prior record and the youth being in school have independent effects on the likelihood of the Crown contesting release. If there was a prior record, the Crown was more likely to contest bail release, and if the youth was said not to be in school, the Crown was also more likely to contest bail. However, whether a youth lived with parent(s) or not did not have independent effects on the predictability of the Crown's decision.

Conclusions: The decision-making process of the Crown:

Clearly, the Crown decision to contest bail in youth court is highly influential in the overall bail decision (Table 2). It appears from these data then, that the Crown decision is based on legal factors relating to the youth's history in the criminal justice system - specifically - prior record. However, also related to the Crown decision are variables which speak to the 'ties' to the community -- does the youth live with parent(s)/or guardian(s)? Is the youth attending school regularly? Although, as the regression analysis

in Table 21 reveals, only the variable of 'school attendance' adds significantly to the predictability of the Crown decision. It could be argued that rather than being strictly looked at as a tie to the community, school attendance is a variable which relates to the youthfulness of the offender -- issues of supervision are more important for the younger offender. This piece of information about the youth's circumstances would also be known to the Crown prior to the hearing. The other in-court factors that were tested, however, (e.g. youth's demeanour in court) are not related to the Crown decision. One possible explanation is that Crown decision-making occurs outside of the bail hearing, and since legal factors are of primary importance, the Crown may not be able to even assess these in-court factors.

Thus, in bail decision-making for youth, the first critical point seems to lie with the Crown attorney. When the Crown consents to release or opts not to 'show cause', all accused youths are released, but in the cases where the Crown contests release, it is up to the justice or judge to determine whether to grant bail or not. It is an examination of the factors that the justice or judge is responding to that we will turn to next.

Section II - Factors affecting the decision to grant bail when the Crown contests release

Legal Index:

There were 48 cases out of 118 (40.6%) where the Crown contested the release of the youth. Because the sample size is so small, many of the analyses should be considered to be suggestive only. An effect would have to be quite large (e.g. seriousness of the charge) in order to be statistically significant (or even appropriate for the use of inferential statistics). This is due in part to the fact that some of the events being observed for this

study occurred quite infrequently. As such, this section examines these relationships, but as will become apparent, many of these relationships are not statistically significant.

An analysis of the index of legal factors shows that there was not a significant relationship between legal seriousness and the decision to grant bail for these contested cases (Table 22).

Table 22

Relationship between the index of 'legal seriousness' and the overall detention decision for only those cases where the Crown contested release

		was bail granted?		Total
		no	yes	
Factors of legal seriousness	0 through 2 serious	1 33.3%	2 66.7%	3 100.0%
	3 serious	5 55.6%	4 44.4%	9 100.0%
	4 thru 5 serious	12 75.0%	4 25.0%	16 100.0%
	6 or more serious	17 85.0%	3 15.0%	20 100.0%
Total		35 72.9%	13 27.1%	48 100.0%

Chi-square=5.268, $df=3$, not significant.

However, while the relationship was not statistically significant, it appears that the tendency is still in the same direction as seen in Section I with the Crown. With more factors of legal seriousness, there appeared to be a greater likelihood that an accused youth would be denied bail.

Legal Factors

Principal Charge

Table 23 shows the relationship between categories of the principal charge and the decision to grant bail for the 48 contested cases. This table suggests that there was a relationship between the allegations before the court in the cases that the Crown was contesting and the outcome. It must again be noted however, that the principal charge is not an adequate proxy for the actual seriousness of the charge. However, by grouping the category of these offences in order to get some insight into how charges may affect decision-making shows that bail was more likely to be denied in cases that included violence, drugs or break & enter even though at the time of the bail hearing these are *allegations* before the court. The large majority (82.9%) of cases, which included potentially more serious kinds of offences, were not granted bail.

Table 23

**Relationship between the principal charge before the court and
the decision to grant bail as a function of those cases where the
Crown contested release**

		was bail granted?		Total
		no	yes	
principal charge	violence	19	3	22
		86.4%	13.6%	100.0%
	drugs	4	1	5
		80.0%	20.0%	100.0%
	b&e	6	2	8
		75.0%	25.0%	100.0%
	prop&yoa&ccc	6	7	13
		46.2%	53.8%	100.0%
Total		35	13	48
		72.9%	27.1%	100.0%

Chi-square=6.874, $df=3$, n.s. (overall)

Statistics for categories of charges pooled 'violence, drugs, b&e' vs. 'property, yoa & 'other cc'; Fisher's exact test (2-tail) $p=.024$

One might expect that the cases with more serious charges may also be cases where the youth has prior convictions. When controlling for the effects of prior record, Table 24 shows that when a youth did not have a prior record, they were still more likely to be detained if the offence they committed was of a serious nature. The same relationship did not hold for those youth with a prior record, though it was in the same direction.

Table 24 - Percentage of cases denied bail as a function of prior record by the category of principal charge(s) before the court for cases where the Crown contested bail

	'less serious' charges property, YOA, other CC	'more serious' charges violence, drugs, b&c	sig.
prior record	62.5%(8)	85.7%(21)	n.s.
no prior record	20.0%(5)	76.9%(13)	$p=.047^*$

*Fisher's exact test

Prior Record

While prior record was highly influential in predicting Crown decision-making, it was not related significantly to the decision to grant bail in the cases where the Crown contested release. However the direction in Table 25 suggests that a youth with a prior record may have a higher likelihood of being denied bail than a youth with no prior record.

Table 25 - Percentage of cases where bail was denied as function of prior record information for only those cases where the Crown contested release

				sig.
does youth have a prior record?	unstated	no	yes	
	n/a	61.1%(18)	79.3%(29)	n.s.
are priors related?	unstated	unrelated	related	
	66.7%(3)	66.7%(4)	85.0%(20)	n.s.
are priors recent?	unstated	not recent (over 1 year)	recent (within 1 year)	
	75.0%(4)	60.0%(5)	85.0%(20)	n.s.
do priors include violence?	unstated	does not include violence	does include violence	
	60.0%(10)	100%(7)	83.3%(12)	n.s.

There were also no significant relationships between information about the nature of the prior record and the overall bail decision. However, in a similar pattern to the Crown's decision-making seen in Section I, there seems to have been a higher likelihood of having bail denied when the prior record had offences that were related to the current charge or that were recent. However, having prior offences that included violence was not in the same direction as with the Crown.

History of bail abuse & previous pre-trial detention

While not statistically significant, the trend that appears to emerge from Table 26 is that the courts were slightly more inclined to deny bail in cases where information on bail abuse or previous pre-trial detention was raised in court versus it not being raised –or where the court heard that the youth was not in either of these conditions previously. This is consistent with recommendations of the Crown – who only raised these issues in the cases where release was contested.

Table 26 - Percentage of cases denied bail as a function of information on bail abuse or pre-trial detention for only those cases where the Crown contested release

	Yes	no	not mentioned in court	sig.
does accused have history of bail abuse?	90.0%(10)	68.8%(16)	66.7%(18)	n.s.
has youth previously been in pre-trial detention?	84.6%(13)	71.4%(7)	66.7%(24)	n.s.

Reverse Onus

The relationship between the onus in the case and the decision to grant bail for the cases where the Crown contested was not statistically significant (Table 27).

Table 27

Relationship between the onus in the case and the decision to grant bail for only those cases where the Crown contested release

		was bail granted?		
		no	yes	Total
Who has the onus?	reverse	27	12	39
		69.2%	30.8%	100.0%
	Crown onus or not mentioned	8	1	9
		88.9%	11.1%	100.0%
Total		35	13	48
		72.9%	27.1%	100.0%

Chi-square (corrected)=.609, $df=1$, not significant.

Co-accused in the present offence

Having a co-accused was also not a significant factor in the court's overall decision, nor was the relationship between a co-accused being present in the courtroom and the court's decision on bail in cases contested by the Crown. Even having an adult co-accused appeared not to impact decisions in contested cases (Table 28).

Table 28 -Percentage of cases denied bail as a function of information about a co-accused(s) in the case for only those cases where the Crown contested release

	yes	no	not mentioned	sig.
does one+ charges include one+ co-accused(s)?	80.0%(25)	66.7%(21)	n/a	n.s.
are one or more co-accused(s) present?	90.0%(10)	76.9%(13)	n/a	n.s.
is one+ co-accused(s) an adult?	100%(4)	84.6%(13)	40.0%(5)	n.s.

'Child-like' vs. 'Adult-like' Index

There was no relationship between the index of 'child-like' or 'adult-like' factors and the court's decision on bail for the cases where the Crown had already contested release perhaps because these factors occurred too infrequently.

Table 29 – Relationship between youth having 'adult' or 'child-like' qualities and the decision to grant bail for only those cases where the Crown contested bail

		was bail granted?		
		no	yes	total
How many factors are associated with being a child or adult?	adult or 0 child	4 80.0%	1 20.0%	5 100.0%
	1 child-like	9 69.2%	4 30.8%	13 100.0%
	2 child-like	8 66.7%	4 33.3%	12 100.0%
	3+ child-like	14 77.8%	4 22.2%	18 100.0%
Total		35 72.9%	13 27.1%	48 100.0%

Chi-square=.669, $df=3$, not significant.

Demographic Factors in the Bail Decision

Age

The courts did not appear to be influenced by the age group that the youth was in when making a determination about bail release. Similar to the Crown, each age group appeared to be equally likely to be granted or denied bail.

Table 30

Relationship between the age group of the accused youth and the decision to grant bail for only those cases where the Crown contested release

		was bail granted?		Total
		no	yes	
age group	12&13	3	2	5
		60.0%	40.0%	100.0%
	14&15	11	3	14
		78.6%	21.4%	100.0%
	16+	21	8	29
		72.4%	27.6%	100.0%
Total		35	13	48
		72.9%	27.1%	100.0%

NOTE: Chi-square=.653, df=2, not significant.

Other Demographic & Appearance Related Factors:

Table 31 - Percentage of cases where bail was denied as a function of demographic and appearance-related factors for only cases where the Crown contested release

			sig.
gender	male	female	
	73.8%(42)	66.7%(6)	n.s.
perceived ethnicity?	black	other	
	75.0%(20)	70.4%(27)	n.s.
'adult-like' signs?	yes	no	
	66.7%(3)	73.3%(45)	n.s.
'child-like' signs?	no	yes	
	79.5%(44)	0%(4)	$p = .004^*$
how is youth dressed for court?	not dressed up	dressed up	
	76.2%(42)	50.0%(6)	n.s.
does youth have facial hair? (males only)	yes	no	
	75.0%(8)	74.3%(35)	n.s.
is youth interested in proceedings?	not interested	very/moderately interested	
	76.5%(17)	70.0%(30)	n.s.

*Fisher's exact test

With the exception of clearly exhibiting child-like characteristics in court, all of these demographic and 'appearance related' factors are statistically non significant. What seems to be the case is that if the Crown has contested release -- as in all of these cases -- the majority are denied bail by the court as well.

In terms of the effects of 'youthfulness' in court, as Table 31 suggests, in only 3 of the 48 contested cases did the youth exhibit 'adult-like' signs. Hence, no inferences can be made about possible effects. Interestingly though, there was a significant relationship

between the youth exhibiting 'child-like' signs and the court decision in the 48 contested cases. In all 4 cases where the youth exhibited 'child-like' signs, bail was granted.²¹

Support Index

There was not a significant relationship between the number of factors associated with support that a youth had and the court's decision to grant bail but the trend was in the direction of bail being more likely granted in cases with a higher number of factors indicating support.

Table 32

Relationship between the number of factors related to support and the decision to grant bail for only those cases where the Crown contested release				
		was bail granted?		
		no	yes	Total
How many factors of support are associated with this youth?	0 support	7	.00	7
		100.0%		100.0%
	1-2 support	14	4	18
		77.8%	22.2%	100.0%
	3 or more support	14	9	23
		60.9%	39.1%	100.0%
Total		35	13	48
		72.9%	27.1%	100.0%

Chi-square=4.506, *df*=2, not sig.

²¹ The 4 child-like signs were (1) the youth looked very young to the researcher (2) the youth raised his hand in court to speak (3) the youth was crying and telling his mother he wouldn't make her come back to court for him again (4) the youth was crying during the hearing.

Parental support

While not statistically significant, it appears that the courts were more likely to deny bail when a parent/guardian was not present in court (Table 33). This same pattern was true for the Crown decision to contest release (see Table 16).

Table 33 - Percentage of cases where bail was denied as a function of parental presence in court & supervision for only cases where the Crown contested release

	yes	no	sig
parent(s) present?	69.4%(36)	83.3%(12)	n.s.
does court hear that parent(s) is involved in youth's life?	68.6%(35)	75.0%(8)	n.s.
does court hear that parent(s) able to supervise youth?	66.6%(24)	78.6%(14)	n.s.

Living arrangements & School

Living with a parent was significantly related to the Crown decision to contest. As shown in Section I, the Crown was more likely to contest release if the youth was not living with their parent or guardian. While not significant in these 48 contested cases, the same kind of trend emerges as with the Crown decision. As seen in Table 34, in 14 out of 16 (87.5%) cases where the youth did not live with their parent or guardian, the justice or judge denied bail.

Table 34 - Percentage of cases where bail was denied as a function of living arrangements & school for cases where the Crown contested release

	yes	no	not mentioned	sig.
does this youth live with parent(s)/guardian(s)?	66.7%(30)	87.5%(16)	50.0%(2)	n.s.
is this youth in school?	64.0%(25)	81.3%(16)	85.7%(7)	n.s.

Similarly, attending school was related to the decision to contest bail. The Crown contested all of the youth who were not attending school. Of those cases where the youth was not in school, most (81.3%) were denied bail. While not statistically significant, it appears that the courts may also be looking at school attendance in determining bail release decisions for the 48 cases contested by the Crown.

Discussion

With the exception of the category of the ‘seriousness’ of the charge and ‘child-like’ factors, all of the relationships in this section were not significantly related to the decision to grant bail for cases that were contested by the Crown. However, for the most part, the trends were in the same direction as the Crown in Section I. This suggests that after the Crown filters out cases by consenting to their release, the courts decide on the contested cases by looking at many of the same factors as the Crown did in determining bail. However, beyond these factors, the courts seem to be influenced by the category of the charge --even when the youth does not have a prior record.

As well, the courts may be somewhat influenced by youth that exhibit ‘child-like’ characteristics in the courtroom, perhaps responding to the youthfulness of an accused youth at the time of their hearing. However, only in these very rare situations were the courts responding to ‘child-like’ factors.

Given that 'child-like' factors and the principal charge are significantly related to the bail decision in contested cases, it is useful to determine which of these factors results in a higher level of predictability for the decision to grant bail after the Crown has contested.

Table 35

Ordinary Least Squares Regression analysis representing estimated effects of independent variables on decision to grant bail in Crown contested cases

		unstandardized coefficients		standardized coefficients	t	Sig.
		B	Std. Error	Beta		
Independent Variables	(Constant)	1.004	.330		3.040	.004
	principal charge	-.297	.123	-.297	-2.409	.020
	'child-like' signs in court	.721	.198	.449	3.634	.001

a. Dependent Variable: was bail granted?

NOTE: dependent variable 'was bail granted' (1=no 2=yes)

Indep. variables: 'princ, charge' (1=not serious-property, yoa, other cc 2=serious-violence, drugs, b&e)

'child-like' signs (1=no 2=yes-child-like characteristics)

Table 35 suggests that both the seriousness of the principal charge before the court and the presence of 'child-like' signs in the court hearing independently predict the likelihood of being granted bail in cases which were contested by the Crown attorney. If the charge was less serious, the courts were more likely to grant bail, and in the very few cases in which the youth exhibited signs that appeared to be 'child-like' the courts allowed the youth to be released before trial.

Section III - The overall detention decision

Legal Index:

Turning now to the overall detention decision which is presumably a combination of the Crown's decision and the court's decision on contested cases, it appears that the

presence of factors of 'legal seriousness' as defined in Appendix C were related significantly to the overall decision to grant bail.

Table 36

Relationship between the index of 'legal seriousness' and the decision to grant bail

		was bail granted?		
		no	yes	Total
Factors of legal seriousness	0 through 2 serious	1 3.4%	28 96.6%	29 100.0%
	3 serious	5 15.2%	28 84.8%	33 100.0%
	4 thru 5 serious	12 38.7%	19 61.3%	31 100.0%
	6 or more serious	17 68.0%	8 32.0%	25 100.0%
Total		35 29.7%	83 70.3%	118 100.0%

NOTE: Chi-square=31.711, $df=3$, $p<.001$

As factors of legal seriousness increased, so too did the probability that the accused would be denied bail. As Table 36 shows, almost all (96.6%) of the youth with between 0 and 2 factors of legal seriousness were granted bail. As factors of legal seriousness increase, there is a dramatic decline in the probability of being granted bail—where youth who had 6 or more factors of legal seriousness were granted bail in only about one-third (32%) of the cases.

Principal Charge

The overall detention decision was related to the principal charge (Table 37).

Table 37

Relationship between the principal charge before the court and the overall decision to grant bail

		was bail granted?		Total
		no	yes	
principal charge	violence	19	22	41
		46.3%	53.7%	100.0%
	drugs	4	12	16
		25.0%	75.0%	100.0%
b&e		6	13	19
		31.6%	68.4%	100.0%
prop&yoa&ccc		6	36	42
		14.3%	85.7%	100.0%
Total		35	83	118
		29.7%	70.3%	100.0%

NOTE: Chi-square=10.427, $df=3$, $p=.015$, 1 minimum expected value less than 5(4.75). Pooling 'serious' cases (violence, drugs, b&e) vs. 'less serious' cases (property, yoa, other cc); Fisher's exact test $p=.007$

Keeping in mind that the principal charge serves as only a broad index in understanding the 'seriousness of the charge', Table 37 shows that a higher proportion (46.3%) of those alleged to have committed offences that included violence were detained. It appears that the courts are also detaining almost one-third (31.6%) of those youths accused to have committed the offence of break and enter, whereas few of those charged with a drug offence (25%) or other property offence (14.3%) were denied bail.

Prior Record

Consistent with previous research (Gandy 1992; Carrington *et al* 1988; Bookin-Weiner 1984)²², this study also found a significant relationship between prior record and the overall decision to detain.

Table 38 - Percentage of cases where bail was denied as a function of the relationship between prior record and current charges

				sig.
is there a prior record?	not mentioned	no	yes	
	3.2%(31)	27.5%(40)	54.8%(42)	$p=.015^*$ (no vs. y) $p<.001$ (overall including not mentioned's)**
are priors related?	unrelated	unrelated	related	
	25.0%(8)	33.3%(12)	77.3%(22)	$p=.025^*$ (related vs. unrelated) $p=.008$ (overall)***
are priors recent?	unrelated	not recent (over 1 year)	recent (within 1 year)	
	33.3%(9)	37.5%(8)	68.0%(25)	n.s.
do priors include violence?	unrelated	does not include violence	does include violence	
	42.9%(14)	58.3%(12)	62.5%(16)	n.s.

*Fisher's exact test

** 2 expected values less than 5(1.48)

***2 expected values less than 5(3.62)

Table 38 shows that youth with a prior record were more likely to be denied bail than those without. As well, having a prior record which included offences related to the current charges before the court was also related to the overall bail decision.

If the prior record was identified as being related to the current charge(s) before the court, in most cases (77.3%), bail was denied. However, if this information was not stated in

court or if it came out in court that the prior record was not related to the current charge(s), there was a greater likelihood that bail would be granted.

Bail Abuse & Previous Pre-trial Detention:

As mentioned in Section I, in most (72%) of the cases observed, information about the youth's history of bail abuse was not mentioned. However, the Crown contested most (90%) of the cases where information on bail abuse was mentioned. As Table 39 shows, when the issue of bail abuse was raised, the youth was detained in 20 of the 29 cases (69%), irrespective if the information indicated that the youth *did not* have a history of bail abuse. This finding of course is solely a reflection of whether the Crown contested release. When the Crown did not contest release, information was typically 'not mentioned'.

Table 39 - Percentage of cases where bail was denied as a function of information on bail abuse or pre-trial detention

	yes	no	not mentioned in court	sig.
does accused have history of bail abuse?	90.0%(10)	57.9%(19)	16.4%(73)	-no vs. yes - n.s. -overall including not mentioned's $p<.001^*$
has youth previously been in pre-trial detention?	73.3%(15)	71.4%(7)	19.8%(81)	-no vs. yes - n.s. -overall including not mentioned's $p<.001^{**}$

* 1 expected value less than 5(3.14)

** 3 expected values less than 5(2.17)

The same situation is true for information about previous pre-trial detention. Out of the 22 cases where the Crown mentioned information on the youth's record of previous pre-trial detention, the large majority (73.3%) of these were denied bail.

²² Frazier & Bishop (1985) did not find prior record to be related to the detention decision

Reverse Onus

As reported in Section I, the relationship between the onus in the case and the Crown decision was approaching significance. For the Crown - it appeared that where there was clear reverse onus in a case, the Crown was equally likely to contest or consent to bail release. But, if the case was a Crown onus or when information about the onus was not mentioned in court, the Crown seemed more likely to consent to release the youth. For the overall decision to grant bail, there was no relationship between the onus and the decision to grant bail (Table 40).

Table 40

Relationship between the onus in the case and the decision to grant bail				
		was bail granted?		Total
		no	yes	
Who has the onus?	reverse	27	51	78
		34.6%	65.4%	100.0%
	Crown onus or not mentioned	8	26	34
		23.5%	76.5%	100.0%
Total		35	77	112
		31.3%	68.8%	100.0%

NOTE: Chi-square(corrected)=.888, $df=1$, not significant.

Co-accused(s)

When the issue of having a co-accused(s) was raised in the bail hearing, it did not seem to influence the decision to grant bail. As Table 41 shows, a youth with or without a co-accused was equally likely to have their bail granted or denied. As well, the presence or absence of a co-accused in the courtroom for the bail hearing was not related to the court's decision, nor was the information that a co-accused(s) was an adult.

Table 41 -Percentage of cases where bail was denied as a function of information about a co-accused(s) in the case

	yes	no	not mentioned	sig.
does one+ charges include one+ co-accused(s)?	37.0%(54)	35.0%(40)	4.8%(21)	no vs. yes (n.s.) $p=.018$ (overall including not mentioned's)
are one or more co-accused(s) present?	27.3%(33)	55.6%(18)	n/a	n.s.
is one+ co-accused(s) an adult?	50.0%(8)	34.4%(32)	20.0%(10)	n.s.

'Child-like' vs. 'Adult-like' Index

The index created to look at 'child' and 'adult' like factors (see Appendix B), did not show a significant relationship with the final bail decision.

Table 42

Relationship between whether the youth had 'adult' or 'child-like' qualities and the decision to grant bail

		was bail granted?		Total
		no	yes	
How many factors are associated with being a child or adult?	adult or no child-like	4 25.0%	12 75.0%	16 100.0%
	1 child-like	9 30.0%	21 70.0%	30 100.0%
	2 child-like	8 20.5%	31 79.5%	39 100.0%
	3 or more child-like	14 42.4%	19 57.6%	33 100.0%
	Total	35 29.7%	83 70.3%	118 100.0%

NOTE: Chi-square=4.309, $df=3$, not significant.

As Section I showed there was also no relationship between the Crown decision to contest bail and the presence of 'child' or 'adult-like' factors. It was hypothesized that one of the reasons that these factors did not influence the Crown is because much of Crown decision-making occurs outside of the actual bail hearing. However, the justice of the peace or

judge *does see* the young person before the court in the bail hearing, and as Section II showed, there was a relationship between being ‘child-like’ in court and the detention decision—where all youth deemed to be ‘child-like’ were released in the cases contested by the Crown. However, the infrequency of the occurrence of these signs may account for their lack of an overall impact.

Demographic Factors in the Bail Decision:

Age

As with the Crown’s decision, there were no differences in the detention decision based upon which age group the accused youth was in. This finding is consistent with previous research (Carrington, Moyer and Kopelman 1988; Bookin-Weiner 1984; Frazier & Bishop 1985).²³

Table 43

Relationship between age group and the decision to grant bail				
		was bail granted?		
		no	yes	Total
age group	12&13	3	8	11
		27.3%	72.7%	100.0%
	14&15	11	23	34
		32.4%	67.6%	100.0%
	16+	21	46	67
		31.3%	68.7%	100.0%
Total		35	77	112
		31.3%	68.8%	100.0%

NOTE: Chi-square = .101 *df*=2, not significant.

Other demographic and 'appearance related' factors

Table 44 - Percentage of cases where bail was denied as a function of demographic and appearance-related factors

			sig.
gender	male	female	
	32.0%(97)	19.0%(21)	n.s.
perceived ethnicity?	black	other	
	38.5%(39)	24.4%(78)	n.s.
are there 'adult-like' signs?	yes	no	
	40.0%(5)	29.2%(113)	n.s.
are there 'child-like' signs?	no	yes	
	31.8%(110)	0%(8)	n.s.
how is youth dressed for court?	not dressed up	dressed up	
	31.7%(101)	17.6%(17)	n.s.
Does youth have facial hair? (males only)	yes	no	
	27.3%(22)	31.7%(82)	n.s.
is youth interested in proceedings?	not interested	very/moderately interested	
	43.3%(30)	24.7%(85)	$p=.065^*$ (n.s.)

*Fisher's exact test

None of these demographic and appearance related factors actually related to the outcome of the case. Some of this is likely because there was so little variation on some of these factors.

All of the 8 youths who exhibited 'child-like' signs were granted bail but this was not statistically significant. Most (86%) of the youths in this sample were not dressed up for court. However, this did not significantly impact the detention decision.

²³ Wordes, Bynum & Corley (1994) found a relationship between age and the detention decision

There was a small proportion (21% or 22/104) of youths in the sample that had facial hair. However, this characteristic did not significantly relate to the detention decision.

Discussion of Demographic and 'Child-like' vs. 'Adult-like' factors

Again, given that differences among youth appearing at bail hearings were so small, the influence of the 'appearance' of the youth was not statistically relevant in the overall detention decision. Thus, there was very little in the way of 'constructing' the youth in the bail hearing –most of the information presented was in relation to strictly legal factors.

Support Index

The index which examined factors associated with support (Appendix B), was not significantly related to the detention decision.

Table 45

Relationship between the number of factors related to support and the decision to grant bail

		was bail granted?		Total
		no	yes	
How many factors are associated with support for this youth?	0 support	7	18	25
		28.0%	72.0%	100.0%
	1-2 support	14	26	40
		35.0%	65.0%	100.0%
	3 or more support	14	39	53
		26.4%	73.6%	100.0%
Total		35	83	118
		29.7%	70.3%	100.0%

NOTE: Chi-square = .847, $df=2$, not significant.

Parental support

The presence of a parent in court was not related to the overall bail decision.

Table 46 - Percentage of cases where bail was denied as a function of parental presence in court & supervision

	yes	no	sig
parent(s) present?	30.1%(83)	31.3%(32)	n.s.
does court hear that parent(s) is involved in youth's life?	30.0%(80)	54.5%(11)	n.s.
does court hear that parent(s) able to supervise youth?	28.6%(56)	55.0%(2)	$p=.055^*$ (n.s.)

*Fisher's exact test

Living Arrangements & School

However, Table 47 shows that living at home was a factor taken into account in deciding whether or not to detain the accused youth, a finding similar to that presented in Section I with respect to the Crown's decision.

Table 47

Relationship between the youth living with their parent(s)/guardian(s) and the decision to grant bail

		was bail granted?		
		no	yes	Total
Does this youth live with their parent(s)/guardian(s)?	no	14	9	23
		60.9%	39.1%	100.0%
	yes	20	61	81
		24.7%	75.3%	100.0%
	not mentioned	1	12	13
		7.7%	92.3%	100.0%
Total		35	82	117
		29.9%	70.1%	100.0%

NOTE: Fisher's exact test (2-tail) $p=.002$ (no vs. yes).

Chi-square=14.628, $df=2$, $p=.001$ (overall including not mentioned's);
1 expected value less than 5 (3.89).

A very large proportion (75.3%) of youths who lived with their parent(s) were granted bail release, while just over one-third (39.1%) of youths who did not live with their parents were released on bail.

School attendance

Being in school was also related to the detention decision. For those accused youths who attended school regularly, just over half (55.6%) were granted bail. However, not being in school meant that detention was almost certain, with only 18.8% of youth being released.

Table 48

Relationship between the youth attending school and the decision to grant bail

		was bail granted?		Total
		no	yes	
Is the youth in school?	no	13 81.3%	3 18.8%	16 100.0%
	yes	16 44.4%	20 55.6%	36 100.0%
	not mentioned	6 9.2%	59 90.8%	65 100.0%
Total		35 29.9%	82 70.1%	117 100.0%

NOTE: Fisher's exact test (2-tail) $p=.017$ (no vs. yes).
Chi-square=37.000, $df=2$, $p>.001$ (overall including not mentioned's);
1 expected count less than 5(4.79).

Similar to the Crown decision then, the overall detention decision was related to factors which were connected to the ties in the community for the youth—living at home and attending school.

Conclusions Section III:

The overall bail decision, then, is one which encapsulates both the Crown decision and the court's decision on contested cases. In order to see which of the variables significantly predicts this decision, Table 49 presents an ordinary least squares regression analysis.

Table 49

Ordinary Least Squares Regression analysis representing estimated effects of independent variables on the likelihood of bail being granted ^a

		unstandardized coefficients		standardized coefficients	t	Sig.
		B	Std. Error	Beta		
Independent Variables	(Constant)	2.587	.286		9.046	.000
	principal charge	-.155	.058	-.158	-2.692	.008
	prior record	-6.641E-02	.065	-.069	-1.026	.307
	does youth live with parent(s)?	.134	.071	.117	1.890	.061
	in school?	5.961E-02	.092	.045	.649	.518
	does Crown contest release?	-.632	.065	-.674	-9.716	.000

^a Dependent Variable: was bail granted?

NOTE: dependent variable 'bail granted' (1=no 2=yes)
independent variables:
'principal charge' (1='not-serious' -property, yoa, other cc 2='serious' -violence, drugs, b&e)
'prior record' (1=no or not mentioned 2=yes)
'does youth live with parent(s)' (1= no 2=yes or not mentioned)
'is youth in school' (1=no 2=yes or not mentioned)
'does Crown contest?' (1=no 2=yes)

**cases where information was 'not mentioned' appeared to be associated with cases in which the Crown was not contesting release, and therefore where the information was not read aloud in court.

Looking at Table 49 shows that, not surprisingly, the Crown's decision is strongly and independently related to the decision to grant bail. If the Crown did not contest, bail was likely to be granted. The seriousness of the principal charge before the court also had independent effects on the overall bail decision. If the charge was not as serious (minor property offences, 'other *Criminal Code*' & *YOA* offences), the courts were more likely to

release the youth. The variable describing if the youth lived with parent(s) was approaching significance ($p=.061$).

Thus, to summarize the variables relating to bail decision-making in youth court, it appears that the Crown's decision (which was independently predicted by the youth having a prior record and regularly attending school) was most influential on the outcome of the case. If the Crown consented to release, all youths were released on bail. In those cases where the Crown contested release ($n=48$), the variables that predicted the court's decision were the seriousness of the charge and the presence of 'child-like' factors (in a small number of cases, $n=4$). The end result of these decisions was the overall bail decision, which was independently predicted by the Crown's decision (based on prior record and school) and the seriousness of the principal charge before the court. In addition, living at home appears to be positively associated with being granted bail.

Thus, key court decision makers (Crown attorney, Justice of the Peace or Judge) are factoring in a number of different issues in determining bail eligibility, which relate to the youth's criminal past and their present social circumstances. These are; legal variables (principal charge and prior record) which relate to the secondary ground for bail detention (protection of society); and variables which may show ties to the community (being in school and living with parents) which presumably relate to the primary ground for detention (attending trial). Attending school and living with parents may also be interpreted as 'youthful' characteristics, which are associated with a conventional upbringing. In addition to these variables, rare cases of 'child-like' behaviour in court had independent effects on the court's decision for cases contested by the Crown.

Section IV: Conditions of Release

While being ‘youthful’ does not seem to benefit an accused, except in a small number of cases where the youth acts ‘child-like’ in court, it appears that age does come into play in the kinds of conditions that are placed upon youth who are *released* on bail. Many of the conditions placed on these individuals appear to be connected to their age.

In this sample, 81 (68.6%) youths were released on bail. Out of 81, all were given conditions of release. In examining whether there was a connection between the age of the youth and the kind of condition placed on the bail release order, these data show that ‘younger’ youths (those aged 12-15) were more likely to be given conditions such as a curfew order, or an order to reside with a particular person.

Table 50

Relationship between the age group of the youth and the likelihood of having a curfew as part of a bail release condition

		curfew		Total
		no	yes	
age group	12-15	11	16	27
		40.7%	59.3%	100.0%
	16+	30	15	45
		66.7%	33.3%	100.0%
Total		41	31	72
		56.9%	43.1%	100.0%

Note: Fisher’s exact test (2-tail) $p=.049$

When controlling for the youth’s prior record, for those youth without a prior record, there were significant differences between groups, where higher proportions of the younger group were given curfew conditions (Table 51).

Table 51 - Percentage of cases given curfew as a bail condition as a function of prior record by age group

	age group		sig.
	12-15 years	16+	
prior record	66.7%(3)	38.5%(13)	n.s.
no prior record or not mentioned	58.3%(24)	29.6%(27)	$p=.051^*$ (n.s.)

*Fisher's exact test

For the few youth who were granted bail and who did have a prior record, there were no significant differences between age groups in the likelihood of being given a curfew or not. This may be partially explained by the low numbers of youth who fell into this category.

The other condition of bail that seemed to be related to the youth's age is the order to 'reside' with a particular person until the trial.

Table 52

Relationship between the age group of the youth and the likelihood of being given a reside order as part of a release condition

		reside order given?		Total
		no	yes	
age group	12-15	4	23	27
		14.8%	85.2%	100.0%
	16+	22	23	45
		48.9%	51.1%	100.0%
Total		26	46	72
		36.1%	63.9%	100.0%

NOTE: Fisher's exact test (2-tail) $p=.005$

As Table 52 reveals, the majority (85.2%) of the younger age group who were released were given reside orders, compared to just over half (51.1%) of the older group.

Controlling for prior record, Table 53 shows that even for those youth without a prior record, the younger group was still more likely to receive a reside order as part of their release conditions. However, for youth with a prior record, there were no significant differences between groups, but again, the number of youth with a prior record that fell into this category was quite small (n=21).

Table 53 - Percentage of cases given a reside order as a bail condition as a function of prior record by age group

	age group		sig.
	12-15 years	16+	
prior record	100%(3)	69.2%(13)	n.s.
no prior record or not mentioned	83.3%(24)	48.1%(27)	p=.018*

*Fisher's exact test

The potential for supervision, by way of curfews or reside orders, seems to be more of a concern for 'younger' youths. Therefore, it seems that rather than age being a construct of leniency or harshness by the courts, the court's concern themselves with age in relation to the level of supervision that 'younger' youths have available to them.

What kinds of conditions were generally placed on the youth in this sample?

Table 54- The most frequently placed conditions on the 81 youth granted bail

Bail condition	number /81	%
reside with...surety, parent, etc..	51	62.9%
obey house rules	46	56.7%
no keeping company of...co-accused, victims, etc..	46	56.0%
curfew	34	41.9%
not in possession of....weapons.. non-medically prescribed drugs	29	35.8%
boundary restrictions	26	32.0%
attend school	18	22.2%
house arrest	15	18.5%
obtain counselling	10	12.3%

Of these conditions, some were distinctly related to issues of the control and supervision of the youth. For example, 'obeying the rules of the house' was given in the majority (56.7%) of the cases. The courts are presumably attempting to empower parent(s) or parent-figure(s) to be able to control youths at home, thereby assuring that there is some form of supervision on them until the trial date. Similarly, reside orders fulfill the court's concern that the youth is accounted for by a parent or someone in authority until the next court appearance. As well, the condition of attending school everyday may satisfy the court that the youth is under the supervision of school officials, however, one of the issues that may arise from this kind of condition is the potential that the influence of peers or other circumstances at school may have lead to the alleged charges in the first place.

Conclusions:

Bail hearings have been characterized as the "...undeveloped third world of criminal law" (Nasmith 1990). Each detention decision exposes deep conflicts between a deliberate system of justice, and the pressure to respond immediately to threats to the social order (Miller & Guggenheim 1990).

The detention of *youths* accused of offences even further exacerbates the seriousness of this stage in the criminal process. Statistics from 1993-94 show that on average, in the majority of the provinces of Canada, at least one in five young persons held in custody on any given day are in detention, not serving a court-imposed sentence (Moyer 1996). Clearly, many young people are unable to convince the courts that they should be released on bail. This is not surprising since the grounds for detention put young people at a severe disadvantage compared with adults, since they are dependent *on others* to prove to the court that they will attend trial and not commit further offences. As stated by Bookin-Weiner "...most juveniles must rely on their parents for food and shelter. They have neither the financial or legal ability to guarantee their own appearance..juveniles dependence on their families is a key element of their social and legal lives" (Bookin-Weiner 1984).

However, the *Young Offenders Act* guarantees that the special needs of youth will be upheld in the criminal process because of their age. Despite this recognition, this study has highlighted the fact that the special status afforded to young people under the *Young Offenders Act* does not play into the decisions made in youth court bail hearings. Indeed, provisions of the *Young Offenders Act* which have been written to protect young people in pre-trial detention hearings (such as the 'Responsible Person' provision S. 7.1) are not

even *raised* in court. Instead, legal variables account for much of the decision-making in youth court bail hearings (such as prior record and the ‘seriousness’ of the offence as examined through the principal charge). To a lesser extent other variables which assume ‘ties to the community’ for young people—attending school and living at home—are the other relevant pieces of information about a youth’s history that relate to detention decisions. While these variables do speak to the ties to the community an accused youth has, they are also intertwined into a social construction of the ‘youth’ which assumes parental supervision at home and a structured and supervised life outside of the home and in school. Beyond these constructions of the youth in bail hearings, very little discussion occurs in these hearings about the principles of the *Young Offenders Act* and how the special needs or special status of youth may reflect upon the case at hand.

Moreover, the bail hearing itself is presumed to be the venue where information about the youth’s case is to come out in front of the justice of the peace or judge so that an impartial decision can be made about the detention or release of the young person. However, consistent with previous research, this study suggests that this process is supplanted by the decision of the Crown attorney, who accounts for the large part of decision-making in bail hearings. As stated earlier, research suggests that the Crown recommendation is heavily influenced by the police recommendation in the show cause report (Wortley & Kellough 1998; Hucklesby 1998). This calls into question the accountability of decision-making which is in large part based upon the construction of the accused youth by other criminal justice agents, most notably the police, and the probability that decisions are being made executively rather than judicially (Hucklesby 1998).

What is also important to note is that there is very little evidence of the legislative provisions of the *Young Offenders Act* as influential in pre-trial detention hearings. Given that youth are generally dependent upon a responsible adult to be released, it is surprising to find that the 'responsible person' provision (s.7.1 of the *YOA*) was never raised in these hearings. There was also little evidence that the 'youthfulness' of these accused persons was being discussed at bail hearings. In the cases where the Crown had contested release and the youth showed distinctly 'child-like' factors, the judge or justice may have been affected by the accused's youthfulness. But only in these rare examples did the 'youth' make a difference in court.

How is the youth constructed and by whom?

Clearly, the Crown constructs the case in a particular way when the case is being contested. The Crown only presents information about factors of legal seriousness (e.g. history of bail abuse) when a case is being made to contest release. There seems to be very little in court to counter the Crown's recommendation. This study shows that defense counsel rarely presents a 'case plan' for the youth to the judge. In only 6 cases in this study was there a concrete case plan presented.

Overall, there are two separate occasions in court when a youth can be released on bail. The Crown may decide not to 'show cause' to the justice or judge, and subsequently all these youth are released. As this study has shown, the Crown opted not to show cause in almost 60% of the cases that came to court. In the remaining 40% of cases, the justice or judge may let the youth out on bail. Although, in only a minority of these remaining cases (just under 30%) did the justice or judge release the youth. Legal variables were the

main factors that were associated with these decisions, but factors relating to the accused's 'youthfulness' appeared not to have any substantial impact on decisions made in these bail hearings.

Appendix A - bail coding sheet used in court observation

(a) location & time

address _____

courtroom# _____

date _____

☐ am ☐ pm _____

☐ justice ☐ judge _____

bail hearing bail review _____

(b) case information

docket/file# _____

name _____

age _____ perceptual age _____

d.o.b. _____ (dd/mm/yy)

sex: ☐ m ☐ f

phaseI ☐ phaseII ☐ not clear ☐ n/a

in custody? ☐ y ☐ n

☐ S/C ☐ O/C

ethnicity:

☐ caucasian

☐ black

☐ asian/oriental

☐ south asian

☐ aboriginal

☐ hispanic

☐ other

☐ unknown

name of Crown _____ ☐ provincial ☐ federal

(c) lawyer:

lawyer's name: _____

is present with youth?

☐ yes

☐ no

who represents youth @ hearing?

☐ duty counsel

☐ privately retained name? _____

☐ student-at-law (if different from above)

☐ unclear

☐ nobody

(d) current charge?

what are the current allegations?

(e) prior record?:

☐ y ☐ n

of charges read in: _____

☐ none

☐ not mentioned

if yes, is one or more of priors...

☐ related to current charge

☐ unrelated to current

☐ unstated

☐ recent (within the last year)

☐ not recent (over one year ago)

☐ unstated

☐ includes violence

☐ does not include violence

☐ unstated

(f) co-accused

do one or more charges involve at least one other offender?

☐ no

☐ yes

☐ not mentioned

if yes: is co-accused(s) present?

☐ no

☐ yes ☐ yes: in custody

☐ unclear

is one or more co-accused an adult?

no yes no mention

what role does the v.o. being heard today allegedly have in the offence?

- ☐ equal to other offender(s)
- ☐ greater than other offender(s)
- ☐ less than other offender(s)
- ☐ not mentioned

(g) family:

are parent(s) guardian(s) present in court?

- ☐ yes mother father guardian/foster
- ☐ no
- ☐ apparently
- ☐ not obvious/unclear
- ☐ parent(s) not waiting for case in courtroom

if no: why?

- ☐ parent(s) at work
- ☐ in hospital
- ☐ didn't want to come
- ☐ no contact with v.o.
- ☐ deceased

☐ not mentioned

parent(s) involved in v.o.'s life?

- ☐ yes yes: surety
- ☐ no
- ☐ not mentioned
- ☐ unlikely

do they wish to be involved in helping youth with offence?

- ☐ yes yes: surety
- ☐ no
- ☐ not mentioned
- ☐ unlikely

are others present in court?

- ☐ yes
- ☐ no
- ☐ unclear

if yes, who?

- ☐ sibling(s) _____
- ☐ grandparent(s) _____
- ☐ other family _____
- ☐ other _____
- ☐ C.A.S. _____
- ☐ friend(s) _____

are parents/guardians able to supervise v.o.?

(ie. work FT)

- ☐ yes
- ☐ no
- ☐ not mentioned
- ☐ unlikely

is parent/guardian(s) occupation mentioned?

☐ no

☐ yes: _____

is parent(s) on government assistance?

Yes Family Benefits(Mother's Allow)
Disability(Workman's Comp)
Social Assistance(Welfare)
☐ U.I.C.

no

not mentioned

(h) living arrangements:

does youth normally live w/parent(s)?

- ☐ yes
- ☐ no
- ☐ no mention

if no: where does youth live?

- ☐ with other relative
- ☐ at friend's house
- ☐ on the street
- ☐ ward of children's aid/ch.welfare agency

☐ with girlfriend/boyfriend c/law

(i) youth's appearance:

how is youth dressed for court?

'dressed up' - (suit, dress pants, dress shirt)

☐ 'neat' middle class (jeans, dress shirt...)

☐ dressed down (jeans, t-shirt, sweatshirt)

☐ other

are there 'non-child' or 'child' signs about the youth?

☐ no

☐ yes: piercings _____
goatee
moustache
peach fuzz
youth is a parent

other: _____

are there any signs about youth that show disinterest/disrespect in proceedings?

☐ no

☐ yes: _____

how interested is youth in proceedings? (can mark more than one)

☐ very interested

☐ moderately interested

☐ disinterested/looking around court

☐ defiant looking

☐ laughing (w/ friends)/aloof

(j) school:

in school?

☐ no

☐ yes name of school _____
last grade completed _____

☐ not mentioned

☐ most of the time

☐ sometimes

☐ once in a while

☐ is a student - but not presently registered

☐ unable to determine

☐ kicked out of school

how well is y.o. doing in school?

☐ excellent marks

☐ very good

☐ good in Special Ed.

☐ average

☐ passing all courses

☐ failing

☐ not mentioned

is youth involved in extra-curricular activities?

☐ yes

☐ no

☐ not mentioned

☐ likely not

if yes: what?

is there other info. presented from school?

☐ yes

☐ no

if yes: what

(ie. comments from teacher/principal/counsellor)

Does y.o. have a learning disability?

yes no no mention

is y.o. on/or ever been on welfare?

☐ yes ☐ presently ☐ in the past

☐ no

☐ not mentioned

does youth work?

☐ yes : where? _____

☐ no

☐ not mentioned

(k) bail hearing:

how long has youth been held?

F/T P/T

Since: _____
 ☐ day(s) ☐ week(s) ☐ month(s)

☐ reverse onus?

☐ crown onus?

☐ unclear

☐ not mentioned

if reverse onus, why?

☐ committed indictable offence awaiting trial on another offence

☐ breach of condition(s) of previous probation

☐ offence under *Narcotics Control Act*

☐ not a Canadian resident

does Crown contest the release of youth?

☐ y yes: on what grounds?

☐ primary (show up for court)

☐ secondary (protect public)

☐ n no: what are the conditions for release?

 surety\$ _____

 house arrest

 obey rules of house

 not in poss. of non-med pres. Narc

 no keeping company of

 co-accused(s)

 victim(s)

anyone known to have a criminal record

☐ reside _____

☐ attend school everyday _____

☐ notify of change of address _____

final submissions

Crown:

Defense:

other comments (i.e. gendered information)

(J,D,C,I,S, or initials of witness etc. = info, presented/interpreted by...)

witness #1

Defense: Examination:

surety? ☐ yes ☐ no ☐ unclear

release on youth's own recognizance?

yes no ☐ n/a

name _____

relationship to accused?

☐ mother

 father

 stepmother/stepfather

☐ relative _____

☐ friend _____

☐ other _____

☐ n/a

has known accused for how long? _____

☐ all his/her life

☐ more than 5 years

☐ less than 5 years

☐ n/a

what does witness do?

not mentioned

unemployed

on government assistance:

 Family Benefits Allowance

 Disability

 Welfare

 Unemployment Insurance

unskilled _____

skilled _____

managerial _____

professional _____

is employed (no mention of where)

who else lives with witness?

not mentioned
sibling(s) of this accused
other parent
other guardian
other _____

plan of supervision

☐ no mention ☐ n/a

has witness ever signed bail before?

☐ y ☐ n ☐ no mention

circumstances: _____

does youth have a history of bail abuse?

☐ yes
☐ no
☐ not mentioned
☐ likely not

has y.o. been in pre-trial detention before?

☐ yes
☐ no
☐ not mentioned

does witness add conditions to bail?

☐ y ☐ n

what? _____

Cross-Examination - Crown

Judge/Justice - decision:

☐ bail granted
☐ bail denied

If granted: conditions:

surety amt \$ _____
on house arrest
obey rules of house
☐ carry bail papers @ all times
☐ curfew: _____ to _____
not in possession of any non-med
pres. Narcotic
no keeping the company of
co-accused(s)
victim(s)
anyone to known to
have crim. record
☐ reside _____
☐ attend school everyday _____
☐ notify change of address _____

If denied: on grounds:

☐ primary (show up for court)
☐ secondary (protect public)
☐ tertiary grounds
☐ not specified

comments - judge:

Appendix B- inter-rater reliability

level of discrepancy on observation between raters	#	%
total number of observations made together	569	100%
total agreement between raters	508	89.3%
slight differences between raters (e.g. not clear vs. yes, not mentioned vs. yes, perceived age within 2 years)	53	9.3%
total disagreement between raters (perceived age more than 2 years etc.)	7	1.2%

Appendix C - Breakdown of Indices

Index Name	Variables Included
Legal	<ul style="list-style-type: none"> -youth placed in secure detention before trial (+) -most serious charge is either 'violence' or 'drugs'(+) -youth has a prior record (+) -3 or more charges read into court record with respect to current allegations (+) -prior record has offences that are related to current offence (+) -prior record has offences that are recent (committed within the last year) (+) -prior offences include violence (+) -there is a co-accused in the current allegation(s) before court (+) -the co-accused is present in court on day of bail hearing -or also in custody (+) -the role of the youth in this offence is alleged to be greater than or equal to co-accuseds (+) -there is a reverse onus in the case (+) -the youth has a history of bail abuse (+) -the youth has previously been in pre-trial detention (+)
Child vs. Adult	<ul style="list-style-type: none"> -the real age of the youth is 12 through 15 years (+) -the perceived age of the youth is 15 years or less (+) -the youth lives with their parent (+) -the youth is in school (+) -the youth is involved in extra-curricular activities (+) -the youth exhibits other 'child-like' signs (ie. is crying on the stand) (+) -there is a co-accused who is in adult in the case (-) -the youth has facial hair (males only) (-) -the youth has been or is presently on welfare (-) -the youth exhibits one+ adult-like signs (ie. is a parent) (-) -the youth is employed full-time(-)
Support	<ul style="list-style-type: none"> -a parent/guardian is present at court, or the court hears why the parent/guardian could not come, and this is for legitimate reasons (ie. at work) (+) -the parent/guardian is said to be involved in youth's life (+) -the parent/guardian is able to supervise this youth (+) -there are others present in court for this youth (+) -the defence lawyer provides a case plan for this youth (+)

+ means that this factor counted *towards* the overall index

- denotes that this factor *detracted* from the overall index

Chapter Three – Sentencing hearings

Introduction

Section 3(c) of the *YOA* states that “young persons who commit offences require supervision, discipline and control but because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance.” Based on this principle, one would expect that decisions made in youth court cases would relate to factors such as the offender’s age, maturity and development. There is evidence that, to some extent, this *should* be the case. As stated earlier in this thesis, research in developmental psychology has pointed out differences between ‘younger’ and ‘older’ adolescents in terms of their ability to participate in criminal justice proceedings. Younger youth are at a disadvantage in their understanding of the juvenile justice process (Scott and Grisso 1997). This is consistent with Canadian research on youths’ understanding of the legal process which has found younger youth at a significant disadvantage in terms of their ability to understand basic legal rights and in terms of general knowledge of the *YOA* (Abramovitch, Higgins-Biss and Biss 1993, Peterson-Badali and Koegl 1999).

Youth justice legislation has also provided legal demarcations relating to age. For instance, the former *Juvenile Delinquents Act* made distinctions based upon age in terms of incapacitation. Section 25 of the *JDA* stated that children under the age of 12 were not to be committed to an industrial school unless attempts were made to reform the youth in his home, a foster home, or a child welfare agency. Section 13(4) made it possible to put a youth over the age of 14 in pre-trial detention within the same facility as an adult at the discretion of key justice officials.

Even the current legislation, the *YOA*, divides young people up by age in certain circumstances. Based upon the most recent changes to the *Young Offenders Act*¹, 16 and 17 year old youths who commit serious offences (murder, manslaughter, aggravated sexual assault), are to be presumptively transferred to adult court unless they can make a case to remain within the jurisdiction of youth court. Youths who are 14 and older, can also be transferred to adult court but the onus is on the Crown attorney to have them transferred to adult court. Finally, 12 and 13 year olds cannot, even for the most serious crimes, be transferred to adult court.

These legislative differences based upon age, coupled with the research on developmental differences among young people, suggests that there are important differences among youthful offenders in terms of age and responsibility. Young offenders are not a homogeneous group. The challenge is to understand how the differences among youth are accounted for in the youth justice process. As stated by Young (1989) “..[t]he special needs of young people are constantly alluded to, but the courts appear uncertain as to what exactly these special needs are and how it is that these special needs can be translated into a distinct penal philosophy” (Young 1989: 104). Therefore, the purpose of this chapter is to examine the role of age and ‘youthfulness’ as constructs in relation to the outcome of sentencing cases. As in Chapter 2 on bail hearings, this chapter will present findings on many of the same variables as they relate to the outcome of sentencing cases.

Legal Context

Dispositions under the *Young Offenders Act* attempt to strike a balance among the nature of the offence, the needs of the youth, and the interests of society (Beaulieu 1989).

¹ Bill C-37 (1995) ; *Young Offenders Act* S.16

The Declaration of Principle (Section 3 of the *YOA*) sets out the guidelines for interpreting the *Act* and Section 20 (1) of the *YOA* provides a number of different sentencing options to judges when determining a sentence. These can range from an absolute discharge to a custodial sentence. However, when actually deciding upon youth court cases, the *Young Offenders Act* offers little guidance for judicial decision-making (Doob and Beaulieu 1992; Trépanier 1989; Young 1989). What the *Act* does provide decision makers, however, is a *framework* for formulating dispositions such as specifying the conditions that can be placed on probation orders, or setting out the circumstances which warrant the use of custody. Section 24 of the *Act*, which provides guidelines for the use of custody, is written with the intent of limiting the use of custody if possible. Thus, judges deciding cases under the *Young Offenders Act* are expected to use the conditions in Section 24, as well as the set of principles as outlined in Section 3 of the *YOA* when deciding on a sentence.

Research Methods:

Similar methods of data collection were used in determining sentencing outcomes as were outlined in Chapter 2 on bail hearings. From June to the end of August 1997, a research assistant and I observed sentencing hearings in various Toronto youth courts –the majority of observations being at Canada’s largest youth court in a downtown location of Toronto, Ontario. The data collection form² used to gather information in court included demographic information (age, gender); legal factors (current offence(s), prior record); social factors (living arrangements, school involvement); personal characteristics (how the youth was dressed, how the youth acted in court); and information on representation in

court and the participation of offenders in their hearings (was there a joint submission? did the youth make a statement before sentencing?). Again, the focus of the research was the effect of age and apparent maturity on decision-making but in this case with respect to sentencing hearings. My expectation was that if a young person was described in more 'youthful' terms at the sentencing hearing (and within the pre-disposition report if used in a case), that he or she would be treated differently (more leniently) than would youths who were constructed in the hearing to be more 'adult-like' or mature. In all, 84 cases with a sentencing outcome were recorded.³ In addition, there were 17 cases in which a pre-disposition report was used in the observed sentencing hearing. Of these I was able to access 13 of the pre-disposition reports.

This chapter will be divided into four sections of analysis. The first will present findings on the factors relating to sentencing decisions based upon all of the variables recorded in the sample of observed youth court sentencing hearings. Section II will provide an analysis of references to the principles of sentencing in the *YOA* and the guidelines for the use of custody under S.24 of the *YOA*. Section III will examine the kinds of probation conditions placed on young offenders with a focus on the relationship between age and the nature of probation conditions. And Section IV will present an examination of predisposition reports with an analysis of how the information contained within them may relate to the youth's age.

² See Appendix A

The Sample of Observed Cases:

Just over one-quarter (27%) of the sample of observed cases received custody as the most significant disposition.⁴ This proportion of cases going to custody is consistent with Kowalski and Caputo's (1999) study which found that 25% of cases across Canada received a custodial sentence in 1995-96 and Moyer (1996) who found that 29% of cases received custody in 1993-94.⁵ In this sample, the majority of committals were open custody (17%) and the remainder were secure custody (11%) or a combination of both open and secure. Most (83%) of the custodial committals in this sample of observed cases were for 90 days or less which is consistent with custodial lengths reported elsewhere. For example, youth court statistics data for 1997-98 shows that 82.7% of cases heard in Ontario youth courts were for 90 days or less (Canadian Centre for Justice Statistics 1997).

Probation as a disposition was used alone or in combination with other sentencing options in the majority (74%) of cases. In over one quarter of these cases (27%) probation was the only disposition handed down.

More than half (53.5%) of the cases in this sample had as their principal charge, a minor property offence, offence under the *Young Offenders Act*⁶, or 'other *Criminal*

³ 2 other cases had all the court information as well, but one had as its disposition 'time served' and thus was not counted as a sentence, one other was missing only the final sentence and was not counted.

⁴ The most significant disposition was coded as 'custody' (secure and open custody) over 'other' sanctions (community service orders, probation, fine, other intermediate sanctions, conditional discharges and absolute discharges).

⁵ The figures presented in this analysis (as well as the Kowalski and Caputo research (1999) and Moyer's research (1996)) differ from the figures presented in the youth court survey published by the Canadian Centre for Justice Statistics. The youth court survey defines a 'case' as charges that have the same date of first appearance in youth court. However, a set of charges presented on the same date in youth court does not always end up as the charges dealt with at disposition since some of the charges may have been withdrawn or stayed prior to disposition. The definition of a 'case' in this court observation research, Moyer (1996) and Kowalski and Caputo (1999) defines a case as those charges dealt with at the date of disposition. Therefore the total number of cases is smaller using this definition.

⁶ such as escape custody, unlawfully at large, fail to comply with a probation order

*Code' charge*⁷. Just under one-third (30.2%) had as their principal charge an offence that included violence.

The majority of these cases (61%) dealt with youth who were 16 years of age or older, and most (86%) cases observed involved male offenders.

Table 1 - Comparison of sample of youth sentencing cases observed between June and August 1997 to cases heard in Ontario youth courts (1997-1998) by principal charge, most significant disposition, age and sex

	Sentencing Sample	Ontario
Principal Charge		
Violence	30.2%	24.5%
drug offences	9.3%	4.3%
break & enter	7.0%	10.6%
other property	38.4%	34.7%
other Criminal Code	8.1%	16.8%
YOA offences	7.0%	9.0%
Most Significant Disposition		
Custody	27.3%	40.7%
Other	73.8%	59.3%
Age		
12-15 years old	38.8%	51.6%
16+ years old	60.2%	48.3%
Sex		
Male	86.0%	78.1%
Female	14.0%	21.9%

It appears from Table 1 that the sample of sentencing cases examined in this study are relatively comparable to data from Ontario from around the same time period. However, the sentencing sample involved more offences where the principal charge was violence or drugs.⁸ Custody was used in a smaller percentage of cases in the sentencing sample, which may be a result of the jurisdiction in which these data were collected. Given that the city of Toronto is a large metropolitan area, it is possible that there are more options

⁷ such as fail to comply with a disposition, fail to comply with an undertaking (this includes all cases except for YOA offences, drug offence and other federal offences).

⁸ the court in which the majority of cases were observed deals with all of the drug cases in the area, which may in part explain why there is a higher percentage of drug cases in the sentencing sample.

or alternatives to custody available to judges than in other areas of the province. It is possible that, in having other options, judges in Toronto order custody in fewer youth court cases than do judges elsewhere.

Section I - Results:⁹

In order to see if various factors grouped together made a difference in the sentencing decision, indices were created based upon 3 categories, 'legal factors', 'child vs. adult', and 'support factors' (see Appendix C for a breakdown of the variables included in each index). Each of the variables, if mentioned or observed in the sentencing hearing, counted as a 'point' toward the overall index. In the case of the 'child vs. adult' index 'child-like' factors counted positively towards the overall index, while any factors which constructed the youth in more 'adult-like' terms were subtracted from this index.

Legal Index:

First, Table 2 shows that there is a significant relationship between the index of legal factors and the resulting sentence.

⁹ For the analyses that follow, any cases with 'missing information' were deleted from the analysis.

Table 2

**Relationship between factors of legal seriousness and the outcome of the case
(custody or other)**

		disposition		Total
		custody	other	
number of variables related to legal seriousness	0-1 legal	3	27	30
		10.0%	90.0%	100.0%
	2 legal	9	14	23
		39.1%	60.9%	100.0%
	3+ legal	11	20	31
		35.5%	64.5%	100.0%
Total		23	61	84
		27.4%	72.6%	100.0%

Chi-square=7.178, df=2, $p=.028$

The cases with 0 or 1 factors related to legal seriousness were less likely to be given a custodial sentence than were cases with 2 or more factors of seriousness. In fact, the courts were at least 3 times more likely to hand down a sentence of custody in cases where the young offender had 2 or more factors of legal seriousness over having only one or none at all.

Breakdown of Legal Factors:

Pre-trial detention:

An examination of each of the components of the legal index shows that certain individual legal variables were also related to the likelihood of receiving custody. For instance, being held in pre-trial detention had serious consequences for young people accused of offences in terms of their final sentence. As Table 3 shows, the large majority (87.8%) of youths who were not detained before trial did not end up receiving a custodial sentence, whereas just over half (51.4%) of those that were detained received a sentence

other than custody. This finding is consistent with previous research on adults and youths (Fagan and Guggenheim 1996; McCarthy 1987; Koza and Doob 1975; Friedland 1965 and see Chapter 2).

Table 3

Relationship between the youth being held in pre-trial detention and the outcome of the case (custody or other)

		Disposition		
		custody	other	Total
held in pre-trial detention?	not detained	6	43	49
		12.2%	87.8%	100.0%
	detained	17	18	35
		48.6%	51.4%	100.0%
Total		23	61	84
		27.4%	72.6%	100.0%

Fisher's exact test $p < .001$

(NOTE: For all 2x2 tables in this analysis, Fisher's exact test (2-sided) will be the reported statistic).

Table 4 below reveals that even when controlling for the possible influence of the principal charge, the relationship between pre-trial detention and custody still remains consistent in direction, but in most cases is not significant due in part to low numbers of cases.

Table 4: Percentage of young offenders receiving custody as a function of being held in pre-trial detention by principal charge

Principal Charge	Detained?		sig
	yes	no	
violence	50.0%(8)	17.6%(17)	n.s.
drugs	66.7%(3)	20.0%(5)	n.s.
break & enter	50.0%(4)	0%(2)	n.s.
property, YOA or other Other CC	45.0%(20)	8.0%(25)	Fisher's exact test $p = .006$

Principal charge:

Another important factor in sentencing a case to custody over an alternative sanction is likely to be the seriousness of the charge before the court. The *Young Offenders Act* is written in a way that implicitly highlights proportionality in sentencing – based upon the seriousness of the offence, the context of the offence, and the circumstances of the young person. As stated in section 24(1) of the *Young Offenders Act*;

...the youth court shall not commit a young person to custody unless the court considers a committal to custody to be necessary for the protection of society having regard to the seriousness of the offence and the circumstances in which it was committed and having regard to the needs and circumstances of the young person.

Research on the effects of the seriousness of the offence on the outcome of youth sentencing cases has shown mixed results. There is evidence that the seriousness of the offence is related to the outcome of the case but is not generally the primary factor that accounts for sentencing decisions. The effects of most serious charge occur in combination with other legal variables (prior record, number of charges at sentencing) and/or extra-legal variables (race, gender and age) (Kowalski and Caputo 1999; Staffensmeier, Ulmer and Kramer 1998; Lee 1995; Schissel 1994; Carrington and Moyer 1995; Doob and Meen 1993).

In this sample of cases, the principal charge¹⁰ before the court was not correlated with the youth receiving a sentence of custody. As Table 5 indicates, roughly equal proportions of young offenders received custody for different categories of offences.¹¹

¹⁰ The principal charge was computed by coding the first four charges in a case into 6 categories of offences; violence, drugs, break and enter, other property, other *Criminal Code* and *YOA* offences (in many observed cases though, there were fewer than four charges). Then, the principal charge was calculated by using the order of offences (consistent with Canadian Centre for Justice Statistics) where the 'most serious' charge trumped all other charges and was the unit counted.

Table 5

Relationship between the principal charge in the case and the outcome of the case (custody or other)

		disposition		Total
		custody	other	
principal charge	violence	7 28.0%	18 72.0%	25 100.0%
	drugs	3 37.5%	5 62.5%	8 100.0%
	b&e	2 33.3%	4 66.7%	6 100.0%
	prop&yoc&ccc	11 24.4%	34 75.6%	45 100.0%
Total		23 27.4%	61 72.6%	84 100.0%

Chi-square=.719, df=3, not significant.

It should be pointed out however that these offence categories may not be adequate proxies for understanding the 'seriousness' of a particular offence. Each offence category contains a broad range of offences that vary considerably in their 'seriousness'. For example, within the offence of 'assault' which is included in the 'violence' category are 3 levels of assault. The 'seriousness' could range then from a common assault which could be one person shoving another around --- to an aggravated assault. Thus, within each category of charge there could be a large degree of variation among actual offending behaviour, which may explain why there appears to be no effect of the principal charge on the use of custody in this sample of cases.

Prior Record:

There was, however, a significant relationship between a youth having a prior record and the likelihood of receiving a custodial disposition. The large majority (88.1%)

¹¹ Break and enter was separated out from other property offences since it is one of the more typical offences committed by youth and is generally seen as serious by the public and judiciary (see Moyer 1996, Gandy 1992).

of youths without prior records received sentences other than custody. However those with prior records had an almost equal chance of being placed in custody or not.

Table 6

Relationship between the court hearing about the youth's prior record and the outcome of the case (custody or other)

		disposition		
		custody	other	Total
is there a prior record?	no	5 11.9%	37 88.1%	42 100.0%
	yes	18 47.4%	20 52.6%	38 100.0%
Total		23 28.8%	57 71.3%	80 100.0%

Fisher's exact test $p=.001$;

The 4 cases where information on prior record was 'not mentioned' have been deleted from this analysis.

This relationship may be expected, since as was shown in Chapter 2, youths with prior records were more likely to be detained before trial. It is not surprising, therefore, to find that in this sentencing sample there was a relationship between being held pre-trial and having a prior record (see Table 7).

Table 7

Relationship between being held in pre-trial detention and having a record

		is there a prior record?		
		no	yes	Total
pre-trial detention?	not detained	32 71.1%	13 28.9%	45 100.0%
	detained	10 27.0%	27 73.0%	37 100.0%
Total		42 51.2%	40 48.8%	82 100.0%

Fisher's exact test $p<.001$

As Table 7 shows, the large majority (73%) of those who were detained also had prior records in their cases.

There also appears to be a relationship between the outcome of a case and being held in pre-trial detention for those cases where a youth did have a record.¹² As Table 8 reveals, looking only at youths who had prior records shows a greater likelihood of custody if they had been detained before trial (60%).

Table 8

Relationship between being held in pre-trial detention and the outcome of the case for only those cases where the youth did have a prior record

		disposition		
		custody	other	Total
pre-trial detention?	not detained	3	10	13
		23.1%	76.9%	100.0%
	detained	15	10	25
		60.0%	40.0%	100.0%
Total		18	20	38
		47.4%	52.6%	100.0%

Fisher's exact test $p=.043$

The relationship between prior record and custody was not significant for the most part when controlling for the type of the offence, but again, this was likely due to low numbers. As shown in Table 9 the relationship was still in the same direction; those with a prior record were more likely to be given a sentence of custody.

¹² Note: for youth who did not have a record, the relationship was not significant due to low expected values but was in the same direction.

Table 9: Percentage of young offenders receiving custody as a function of prior record by principal charge

	prior record?		
	Yes	No	sig.
violence	50.0%(12)	8.3%(12)	n.s. (Fisher's exact $p=.069$).
drugs	50.0%(4)	25.0%(4)	n.s.
break & enter	40.0%(5)	*	*
property, YOA or OTHER CC	47.1%(17)	11.5%(26)	$p=.014$

* there were no young offenders whose principal charge was break & enter who did not have a prior record

Despite the fact that prior record appeared to be related to the outcome of the case, having offences within the prior record which were identified in the sentencing hearing to be related to the current charges did not relate to the likelihood of being sent to custody. However, there appeared to be a significant relationship between a youth having a prior record which was recent or which included violence and receiving a custodial disposition.

Table 10: Percentage of young offenders receiving custody as a function of information on the nature of the prior record

Relationship between the current charge and the nature of the prior record				
	unrelated	related		sig.
are priors related?	52.4%(21)	16.7%(6)	45.5%(11)	n.s.(overall) n.s. (related vs. unrelated)
are priors recent?	52.4%(21)	not recent (over 1 year) 0%(5)	recent (within 1 year) 50.0%(12)	n.s. (overall) Fisher's exact test; $p=.044$ (recent vs. not recent)
do priors include violence?	48.0%(25)	does not include violence 12.5%(8)	does include violence 80.0%(5)	$p=.044$ *(overall) Fisher's exact test; $p=.032$ (does not include vs. includes violence)

* The estimate of the statistical significance is likely to be exaggerated because there were 4 expected values less than 5 (2.24). If the minimum expected count is less than 5, this information will be noted from here on. The lowest expected value is indicated in parentheses.

There were few cases in which information on the relationship of the prior record to the current charges was stated. However, in the few cases where it came out that the prior record was recent or was one that included violence, there was a greater likelihood of the youth receiving a sentence of custody.

Co-accused in case:

One might expect that sentencing courts would deal with youth who commit crimes with others in a harsher manner for the purposes of general deterrence. The Supreme Court of Canada has suggested that a more punitive sentence may send a message to anyone else involved in the commission of an offence (*R v. M.(J.J.)*1993). In this sample of cases, half (50%) of the young offenders committed their crimes with one or more co-accused(s). Moyer's analysis of revised UCR data showed that 45% of all occurrences involving youth reported by police involved more than one suspect in 1992-93 (Moyer 1996: 53). In this sample of court observed cases, despite this information being mentioned in court, having a co-accused in the commission of the offence was not significantly related to the outcome of the case. In fact, equal proportions of those who committed offences with others and those who committed offences alone received custody (see Table 11). An analysis of the effects of having the co-accused present within the courtroom yielded similar results –there was no significant relationship between the court's knowledge of the co-accused being present in court, and the outcome of the case.

There was however, one piece of information about a co-accused that appeared to be related to judicial decision-making. Having a co-accused identified as an adult in the case was significantly related to the outcome of the case. While the number of times this

information was explicitly stated in court was low, it did seem to relate to the likelihood of a youth receiving a custody committal.

Table 11: Percentage of young offenders receiving custody as a function of information about a co-accused in the case

	percentage of cases receiving custody		
	Yes	no	Sig
does one+ charges include one+ other offenders?	28.6%(42)	25%(40)	n.s.
are one+ co-accused(s) present?	22.2%(9)	23.1%(26)	n.s.
is one+ co-accused(s) adult?	62.5%(8)	0%(10)	$p=.007^*$

*Fisher's exact test (2-tailed)

NOTE: Out of the 42 cases where it was mentioned that there was a co-accused(s) in the case, in only 18 cases was it explicitly mentioned whether the co-accused was an adult or young offender.

As Table 11 suggests, if it was mentioned in court that a co-accused in the case was not an adult, all cases received a disposition other than custody. However, in cases where a co-accused(s) was identified as an adult, almost two-thirds (62.5%) of cases ended up in a custodial disposition. While the number of cases in which an adult was involved is low, it nevertheless appears to be consequential in the case. This may be a result of the perception that more serious kinds of offences are being committed with adult co-accused(s) or that the potential for further offending is more serious. Of the 8 cases which involved adults in this sample, 4 involved violence, 2 involved break and enters, and 2 involved minor property or administrative offences.

Role of youth in offence

When offences were committed with other young offenders, information about the role of the youth would sometimes be discussed at the sentencing hearing. One might presume that a greater level of involvement of the youth during the commission of an

offence will have some bearing on the severity of the disposition handed down. However, the results indicate that this information, when mentioned, was not related strongly or consistently to the likelihood of judges' use of custody.

Table 12

Relationship between the role of the youth in the offence compared to co-accused(s) and the outcome of the case (custody or other)

		disposition		Total
		custody	other	
what is the role of the y.o. in this offence?	less than others	4 30.8%	9 69.2%	13 100.0%
	equal to others	.00	2 100.0%	2 100.0%
	greater than others	2 40.0%	3 60.0%	5 100.0%
	not mentioned	5 25.0%	15 75.0%	20 100.0%
Total		11 27.5%	29 72.5%	40 100.0%

*Not tested since expected values too small.

Age and demographic factors:

Child-like/Adult-like Index:

The central focus of this research was an examination of the effects of more 'youthful' or more 'adult-like' constructions of the young offender in court in relation to the outcome of the case. While part of the philosophy of the *Young Offenders Act* is based upon recognizing differing levels of maturity and dependency for young offenders, there was no indication in this sample of cases that there were differences in the use of custody based upon an index of age related variables. This index included variables such as the youth's chronological age, perceived age¹³, if they regularly attended school or

¹³ As assessed by the researchers in court

worked full-time, whether they lived with parent(s) or parent(s)-figures, among other factors (see Appendix C).

Table 13

Relationship between the index of 'child-like' or 'adult-like' factors and the outcome of the case (custody or other)

		disposition		Total
		custody	other	
number of factors relating to being 'child-like' or 'adult-like'	adult or 0 child-like	8 42.1%	11 57.9%	19 100.0%
	1 child-like	4 26.7%	11 73.3%	15 100.0%
	2 child-like	5 29.4%	12 70.6%	17 100.0%
	3 or more child-like	6 18.2%	27 81.8%	33 100.0%
	Total	23 27.4%	61 72.6%	84 100.0%

Chi-square=3.515, df=3, not significant.

Table 13 shows that there were no significant differences in the use of custody between groups who appeared to be more 'adult-like' or mature and those who appeared to have more 'child-like' factors.

The same holds true regarding the youth's chronological age group. Table 14 shows that there were no statistically significant differences in the use of custody based upon the young person's age group.

Table 14

Relationship between age group (12&13) (14&15) (16+) and the outcome of the case (custody or other)

		disposition		
		custody	other	Total
age group	12&13	.00	6	6
			100.0%	100.0%
	14&15	7	19	26
		26.9%	73.1%	100.0%
	16+	16	35	51
		31.4%	68.6%	100.0%
Total		23	60	83
		27.7%	72.3%	100.0%

Chi-square=2.649, df=2, not significant.

While chronological age does not appear to be related to the use of custody in these cases, a plausible explanation for this may be that age is accounted for in earlier decisions in the criminal justice process. For example Lee (1995) found that probation officers' decisions (in a U.S. jurisdiction) to refer cases into the formal court process or divert them informally were related both to legal variables (prior record, prior informal dispositions etc.) and the juvenile's age controlling for other factors. Lee found that older youths (14-17) were more likely than younger accused persons to be referred into formal court processing. Similarly, Doob and Chan (1982) found that police decisions were related to legal variables (such as previous police contacts), the juvenile's actions, and also the juvenile's age; older youths (14-16) were more likely to be charged by police. Although, as the authors suggest, age is correlated with other factors such as the number of previous contacts with police (older offenders by virtue of being older are likely to have more previous contacts) and thus age may be subsumed within these other variables. For the

purposes of this study, it is possible then that age may come into the equation in decisions made *before* a case is brought to court.

When a case *does* come to court—at the sentencing hearing—other research has also found that age does not appear to relate to the outcome of the case. Moyer (1996), in her examination of Youth Court Survey data from 1993-94 found that use of custodial dispositions increases with age but that the differences are not as large as may be expected. However, as Moyer states, this analysis did not control for other factors such as prior record or the type of offence, which are themselves associated with demographic characteristics of the offender (Moyer 1996: 123-124). Kowalski and Caputo's (1999) more recent analysis of youth court survey data for 1995-96 found that differences between age groups on the use of custody almost entirely disappeared when the number of prior convictions and the seriousness of the offence were controlled.

Age groups and custody across Canada:

The analysis presented thus far has presented data on age and the use of custody for the sample of observed cases in court (n=84). This sample provides an extensive amount of qualitative information on both chronological age and factors related to age as captured in the 'child vs. adult' index. But, in order to understand on a broader scale, how age might relate to the use of custodial dispositions, an analysis was undertaken of a sample of 43 936 youth court cases from 1996-97 compiled by Statistics Canada. This data set has information on the youth's age, previous record history, offence and most serious disposition for the majority of the provinces in Canada.¹⁴ The following series of

¹⁴ It should be noted once again that these data do not correspond to the figures presented in the youth court surveys publications from the Canadian Centre for Justice Statistics. The youth court survey defines

tables (Table 15 through Table 20) provide an analysis of the relationship between the chronological age group of this sample of young offender cases heard in Canadian youth courts and the likelihood of receiving custody as a function of the presence or absence of a prior record and controlling for 12 categories of offences. Tables 15, 16 and 17 present these data for the three provinces in Canada with the largest youth populations; Ontario, Quebec and British Columbia. Tables 18, 19, 20 provide the same information for cases across Canada.

Table 15 shows the percentage of cases receiving custody as a function of age group and prior record.

a 'case' as a set of charges which enter into the court on the same date. These data look at a 'case' as a set of charges brought before a youth court on the same date of disposition. Thus, these data do not include any charges that have been withdrawn, stayed etc. They also, because they were focusing on the effect of criminal record, exclude *YOA* offences (which necessarily involved only those with records). Data for Nova Scotia are not included in this data set. Cases where the age was 'unknown' were deleted from this analysis.

Table 15 - Table showing percentage of cases receiving custody in 1996-97 as a function of age group by prior record for selected offences (involving violence) for selected major provinces (Ontario, Quebec and British Columbia)

offence	age group	Ontario		Quebec		British Columbia	
		Record	no record	record	no record	record	no record
assault w/weapon	13 & under	47.1%(17)	14.3%(112)	66.7%(3)	13.3%(30)	33.3%(6)	0%(15)
	14&15	59.5%(84)	26.7%(210)	64.3%(14)	11.2%(107)	63.2%(19)	12.5%(48)
	16+	69.9%(143)	30.0%(160)	36.9%(65)	15.2%(125)	67.6%(37)	23.9%(46)
	sig.	p=.081 (n.s.)	p=.009	n.s.	n.s.	n.s.	p=.062 (n.s.)
minor assault	13 & under	56.1%(82)	10.6%(564)	0%(3)	5.8%(52)	37.5%(16)	9.8%(82)
	14&15	54.1%(364)	11.5%(889)	30.2%(53)	9.0%(155)	38.8%(85)	6.4%(204)
	16+	47.0%(455)	11.5%(678)	38.4%(86)	7.6%(185)	37.4%(91)	4.7%(171)
	sig.	p=.077 (n.s.)	n.s.	n.s.	n.s.	n.s.	n.s.
robbery	13 & under	53.3%(15)	30.4%(23)	66.7%(3)	21.1%(19)	50.0%(6)	18.8%(16)
	14 & 15	78.1%(64)	48.1%(79)	55.6%(27)	24.3%(115)	50.0%(28)	23.1%(52)
	16+	89.2%(120)	61.9%(105)	76.6%(64)	40.2%(132)	77.3%(44)	57.8%(45)
	sig.	p=.001	P=.012	n.s.	p=.016	p=.043	p<.001
other violence	13 & under	60.0%(25)	19.3%(171)	50.0%(4)	18.4%(38)	0%(2)	9.5%(42)
	14 & 15	58.1%(105)	24.3%(267)	39.1%(23)	28.3%(92)	63.6%(22)	14.5%(55)
	16+	57.8%(223)	24.0%(242)	54.9%(51)	28.8%(132)	51.0%(51)	15.1%(53)
	sig.	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.

Table 16 - Table showing percentage of cases receiving custody in 1996-97 as a function of age group by prior record for selected offences (property offences) for selected major provinces (Ontario, Quebec and British Columbia)

Offence	age group	Ontario		Quebec		British Columbia	
		Record	no record	Record	no record	record	no record
break & enter	13 & under	68.5%(54)	19.1%(225)	0%(7)	10.5%(57)	15.8%(19)	7.5%(53)
	14 & 15	73.2%(325)	21.6%(593)	42.9%(133)	15.6%(315)	46.3%(108)	10.7%(178)
	16 +	73.0%(549)	23.6%(602)	44.3%(388)	17.0%(471)	56.7%(141)	14.6%(158)
	sig.	n.s.	n.s.	p=.063(n.s.)	n.s.	p=.002	n.s.
theft over	13 & under	42.9%(7)	42.9%(14)	0%(2)	33.3%(3)	100.0%(3)	0%(4)
	14 & 15	66.7%(63)	22.5%(89)	39.1%(23)	6.7%(30)	55.6%(18)	9.1%(22)
	16+	64.6%(82)	16.3%(98)	43.4%(53)	8.1%(74)	58.8%(34)	15.4%(26)
	sig.	n.s.	p=.065 (n.s.)	n.s.	n.s.	n.s.	n.s.
theft under	13 & under	32.6%(86)	5.5%(273)	37.5%(8)	3.8%(52)	16.0%(25)	0.9%(107)
	14 & 15	40.9%(364)	8.8%(741)	21.4%(98)	5.3%(207)	18.1%(149)	4.5%(269)
	16+	38.2%(586)	6.9%(742)	24.7%(263)	8.9%(336)	24.5%(196)	3.9%(285)
	sig.	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.
possess stolen property	13 & under	56.7%(30)	7.1%(84)	0%(2)	0%(4)	0%(5)	9.1%(22)
	14 & 15	58.4%(274)	15.2%(336)	40.0%(20)	8.6%(35)	44.8%(58)	7.5%(80)
	16+	57.3%(459)	15.3%(431)	33.8%(74)	7.1%(70)	48.2%(114)	8.4%(107)
	sig.	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.
mischief/ damage	13 & under	19.4%(36)	10.0%(140)	100.0%(1)	5.3%(19)	14.3%(7)	2.6%(38)
	14 & 15	43.4%(129)	5.9%(236)	15.8%(19)	1.7%(59)	18.5%(27)	2.6%(77)
	16 +	31.9%(135)	5.6%(178)	19.4%(62)	11.3%(80)	30.2%(53)	3.5%(85)
	sig.	p=.015	n.s.	n.s.	p=.087 (n.s.)	n.s.	n.s.
other property	13 & under	45.8%(24)	7.8%(77)	0%(2)	5.6%(18)	25.0%(4)	6.3%(16)
	14 & 15	48.4%(124)	11.9%(226)	37.5%(16)	7.5%(40)	5.9%(17)	4.4%(45)
	16+	40.7%(204)	10.4%(307)	25.8%(66)	9.6%(73)	32.1%(28)	6.1%(49)
	sig.	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.

Table 17 - Table showing percentage of cases receiving custody in 1996-97 as a function of age group by prior record for selected offences (other CC, drugs) for selected major provinces (Ontario, Quebec and British Columbia)

offence	age group	Ontario		Quebec		British Columbia	
		record	no record	record	no record	record	no record
other CC	13 & under	46.7%(45)	12.9%(124)	25.0%(4)	0%(19)	37.5%(8)	20.0%(20)
	14 & 15	55.2%(277)	23.9%(444)	32.6%(43)	10.1%(99)	47.1%(85)	14.5%(76)
	16+	49.1%(538)	19.8%(560)	22.3%(112)	4.9%(283)	37.8%(143)	7.9%(151)
	sig.	n.s.	p=.022	n.s.	p=.093 (n.s.)	n.s.	n.s.
Drug related	13 & under	33.3%(6)	15.2%(33)	0%(4)	10.3%(39)	50.0%(2)	11.1%(9)
	14 & 15	35.3%(68)	6.9%(202)	30.4%(56)	10.0%(331)	33.3%(18)	7.3%(55)
	16+	32.9%(255)	10.2%(508)	30.1%(130)	8.5%(484)	19.4%(67)	7.9%(114)
	sig.	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.

Table 18 - Table showing percentage of cases receiving custody in 1996-97 as a function of age group by prior record for selected offences (involving violence) across Canada

offence	age group	CANADA	
		record	no record
assault w/weapon	13 & under	40.4%(52)	13.7%(226)
	14&15	59.6%(188)	18.9%(487)
	16+	58.8%(388)	22.4%(473)
	Sig.	p=.033	p=.023
minor assault	13 & under	39.0%(182)	8.7%(943)
	14&15	41.2%(779)	8.9%(1684)
	16+	40.3%(977)	7.8%(1418)
	Sig.	n.s.	n.s.
robbery	13 & under	47.1%(34)	21.4%(84)
	14 & 15	67.3%(199)	33.2%(310)
	16+	81.8%(369)	50.3%(352)
	Sig.	p<.001	p<.001
other violence	13 & under	42.9%(49)	16.9%(355)
	14 & 15	53.8%(260)	21.8%(611)
	16+	55.3%(501)	23.1%(584)
	Sig.	n.s.	p=.069 (n.s.)

Table 19 - Table showing percentage of cases receiving custody in 1996-97 as a function of age group by prior record for selected offences (property) across Canada

offence	age group	CANADA	
		record	no record
break & enter	13 & under	48.4%(186)	13.4%(618)
	14 & 15	58.0%(1025)	16.7%(1728)
	16 +	58.8%(1811)	19.1%(1762)
	sig.	p=.024	p=.004
theft over	13 & under	58.3%(24)	23.1%(39)
	14 & 15	60.0%(165)	18.9%(190)
	16+	54.5%(266)	13.5%(260)
	sig.	n.s.	n.s.
theft under	13 & under	23.9%(251)	4.4%(780)
	14 & 15	27.7%(1132)	6.3%(1936)
	16+	28.0%(1772)	6.0%(2126)
	sig.	n.s.	n.s.
possess stolen property	13 & under	42.3%(71)	7.9%(164)
	14 & 15	48.6%(568)	12.3%(625)
	16+	49.1%(1026)	12.8%(843)
	sig.	n.s.	n.s.
mischief/ damage	13 & under	16.0%(81)	5.3%(323)
	14 & 15	30.5%(331)	3.9%(615)
	16 +	26.0%(557)	4.3%(633)
	sig.	p=.026	n.s.
other property	13 & under	33.3%(45)	7.5%(147)
	14 & 15	36.4%(253)	9.0%(456)
	16+	32.3%(514)	8.9%(619)
	sig.	n.s.	n.s.

Table 20 - Table showing percentage of cases receiving custody in 1996-97 as a function of age group by prior record for selected offences (other CCC, drugs) across Canada

offence	age group	CANADA	
		record	no record
other CC	13 & under	38.0%(108)	12.4%(226)
	14 & 15	43.0%(672)	17.4%(867)
	16+	34.4%(1470)	10.9%(1644)
	sig.	p=.001	p<.001
drug related	13 & under	33.3%(15)	10.7%(103)
	14 & 15	31.7%(202)	7.6%(683)
	16+	26.6%(668)	8.4%(1324)
	sig.	n.s.	n.s.

It appears that only for the offence of 'robbery' is there a relatively consistent relationship between age and the likelihood of receiving custody across different jurisdictions¹⁵ regardless of record. As seen in Table 15 and Table 18, as age increased so too did the likelihood of a custodial sanction for the offence of robbery. This may be explained by the large range in the 'seriousness' of offences captured under the offence of 'robbery'. A robbery could feasibly include someone forcefully taking away another person's hat—all the way up to a robbery of a convenience store. Thus, judges may be responding to differences in the offender's age, in part, because of qualitative differences in the seriousness of the offence.

¹⁵ except Quebec where for robbery there were no significant differences in the likelihood of getting custody between age groups if there was a record.

For another relatively serious offence—assault with a weapon or causing bodily harm, older youths in Ontario without a record were dealt with more severely than were younger youth, 13 and under (Table 15). Looking at this same offence for all of Canada (except Nova Scotia) shows that there were also significant differences between age groups in the likelihood of receiving custody. Older youths were more likely to be given custodial sanctions whether they had a prior record or not (Table 18).

Finally there appear to be some differences across jurisdictions in the relationship of age to custody that are associated only with youths who have a prior record. In Ontario (Table 16) for example, youths with a prior record who were convicted of mischief or damage were most likely to receive custody if they were in the middle age group (14–15 years old). The same is true across Canada (Table 19), although this may be a function of Ontario comprising a large portion of all cases. In British Columbia, the likelihood of a custody sentence for the offence of break and enter (Table 16) was higher for older youths who had records. Across Canada, older youths (14 and up) were more likely to be given custody for a break and enter regardless of the presence or absence of a prior record (Table 19).

Thus it appears that only rarely, and only for certain offences (robbery being the most clear example) does the chronological age of a youth appear to be consistently related to the outcome of the case. However, for the most part, there are few substantial differences between age groups for most offences in these 3 provinces and across Canada in terms of the likelihood of receiving a sentence of custody. This finding is quite surprising in light of the developmental differences among youths who are governed by the

YOA. Based on these data, if a 13 year old and a 17 year old both commit a minor assault and neither has a prior record, they appear to be equally likely to be sentenced to custody.

Breakdown of Demographic Factors in youth court sample:

Ethnicity:

Because race/ethnicity statistics are not generally collected in youth court, we have very little data on the relationship of the offender's ethnicity to the outcome of sentencing cases. In order to fill this gap in the research, both court observers assessed the most probable ethnicity of the young offender before the court. The categories were Caucasian, Black, South Asian, Aboriginal, Hispanic or other. Clearly this is not an appropriate measure of the *actual* ethnicity of the youth, but given that the focus of this research was to examine how information (both verbal and non-verbal) in court might affect decision-making, our perceptions of the ethnicity of the youth may have been consistent with the judges' perceptions¹⁶ of the ethnicity of the youth (see Appendix B for inter-rater reliability). For the purposes of statistical analysis, race was coded into 3 major categories of 'Black', 'Caucasian' or 'other'. Given that these were subjective assessments made by the researchers, these broad categories attempted to limit the capacity for error.

Table 21

**Relationship between perceived ethnicity of the youth in court
and the outcome of the case (custody or other)**

		disposition		Total
		custody	other	
perceived ethnicity	caucasian	8 18.6%	35 81.4%	43 100.0%
	black	10 50.0%	10 50.0%	20 100.0%
	other	5 25.0%	15 75.0%	20 100.0%
Total		23 27.7%	60 72.3%	83 100.0%

Chi-square =6.814, $df=2$, $p=.033$

Caucasian/other (pooled) vs. Black; Fisher's exact test $p=.020$

Table 21 suggests that young offenders who were perceived to be black by the researchers were more likely to be given custodial dispositions. This is consistent with other research on the effects of race (Staffensmeier, Ulmer and Kramer 1998; Schissel 1994 with respect to Native youths).

When controlling for prior record, the relationship between perceived ethnicity and the likelihood of receiving custody remains in the same direction but is not significant. It appears that a higher proportion of young offenders with prior records who were perceived to be black were given custodial sanctions. For young offenders without a record, the pattern appears to be in the same direction, with a slightly higher proportion of black youth being given custody (Table 22).

¹⁶ who were all apparently Caucasian

Table 22 - Percentage of youth receiving custody as a function of the perceived ethnicity controlling for prior record

prior record?	perceived ethnicity		sig.
	black	caucasian/other	
yes	69.2%(13)	37.5%(24)	(n.s.) $p=.091^*$
no	16.7%(6)	11.1%(36)	n.s.

*Fisher's exact test

Also, when controlling for the nature of the principal charge, the relationship between perceived ethnicity and the likelihood of custody were not significantly related. However, for each offence type, the direction was the same. Table 23 shows that black youths who were charged with violent offences appeared to be more likely to be sentenced to custody than other youth in this sample of cases.

Table 23 - Percentage of youth receiving custody as a function of the perceived ethnicity controlling for principal charge

principal charge	Black	caucasian/other	Sig.
violence	80.0%(5)	15.8%(19)	$p=.014^*$
drugs	40.0%(5)	33.3%(3)	n.s.
break & enter	50.0%(2)	25.0%(4)	n.s.
property, YOA or OTHER CC	37.5%(8)	21.6%(37)	n.s.

*Fisher's exact test

This may be the case though because there are differences among these groups in terms of such legal factors as being held in pre-trial detention. However, Table 24 reveals that when controlling for the effects of pre-trial detention there are consistent but statistically insignificant differences between groups in terms of their likelihood of receiving custody over other dispositions (Table 24).

Table 24 - Percentage of youth receiving custody as a function of perceived ethnicity holding pre-trial detention status constant

pre-trial detention?	perceived ethnicity		sig
	black	caucasian/other	
detained	66.7%(12)	39.1%(23)	n.s.
not detained	25.0%(8)	10.0%(40)	n.s.

Other demographic factors and appearance related factors:

Other variables which were examined in the court observation, some of which were demographic and others which related to how the youth 'appeared' in the court hearing, yielded no significant relationships when examined in relation to the likelihood of receiving a custodial disposition.

Table 25 - Percentage of cases receiving custody as a function of appearance and demographic variables in court

Percentage of youth receiving custody as a function of demographic and appearance related factors in court			
			sig.
gender	male	female	
	30.1%(73)	9.1%(11)	n.s.
adult-like signs?	yes	no	
	25.0%(4)	27.5%(80)	n.s.
child-like signs?	no	yes	
	26.6%(79)	40.0%(5)	n.s.
how was the youth dressed?	not dressed up	dressed-up	
	26.7%(60)	29.2%(24)	n.s.
does youth have facial hair? (males only)	yes	no	
	44.4%(18)	25.5%(55)	n.s.
how interested is youth in sentencing proceedings?	not very interested	very / moderately interested	
	29.4%(17)	27.3%(66)	n.s.

There was a very small proportion (14%) of cases involving females in this sample. As Table 25 shows, there were no statistically significant differences between males or females in relation to custody. This is consistent with Lee (1995), but other research (Kowalski and Caputo 1999; Staffensmeier, Ulmer and Kramer 1998; Schissel 1994) found gender effects on sentencing decisions. For instance, from their analysis of sentencing outcomes for adults (18 and over) between 1989-1992 in Pennsylvania, Staffensmeier *et al* (1998) found that females were sentenced in a less harsh manner than males. Canadian youth court observational research by Schissel (1993) analyzed sentencing outcomes in Alberta in 1986. Schissel found that for non-serious offences, females were dealt with more harshly than males, but for serious offences the opposite was true. According to youth court statistics in Canada for 1997-98, males were more likely

to be given sentences of custody. Thirty-six percent of cases involving males ended up in a custodial sentence compared to twenty-seven percent for females (Canadian Centre for Justice Statistics 1999: 91).

Beyond demographic variables such as gender, I also sought to measure how the youth appeared in court by recording information on variables such as whether the young offender exhibited 'adult-like' signs, 'child-like' signs, how the youth was dressed for court, whether the youth had facial hair, and whether or not the youth appeared interested in the sentencing hearing. As seen in Table 25 none of these variables yielded statistically significant findings when examined in relation to the likelihood of receiving a sentence of custody.

More importantly, variables where the youth did or had something that distinguished them by age --like exhibiting child-like characteristics (such as crying on the stand, or raising one's hand to ask a question) or having adult-like attributes (such as being a parent, living in a common-law relationship), occurred quite infrequently. Other variables such as how the youth was dressed and whether or not they were interested in the proceedings had no apparent effect on whether the youth received custody. As with the bail sample (from Chapter 2) these young offenders at their sentencing hearings 'appear' to be a rather uniform group. Most (71%) dressed casually at their sentencing hearings --as average teenagers dress, and most (80%) appeared to be either very or moderately interested in the proceedings.

Support Index

I created one final index in order to examine if the level of support the court heard about for a youth might affect the outcome of the sentencing hearing. My hypothesis was that the more support a youth appeared to have from family or other supportive figures, the more likely the youth would be given a disposition other than custody. The variables that created this index included having a parent or parent-figure present at the sentencing hearing, the court hearing explicitly that the parent(s) was able to supervise the youth, the defense lawyer presenting a case plan for the youth, among others (see Appendix C).

Table 26

Relationship between factors related to support for the young person and the outcome of the case (custody or other)

		disposition		
		custody	other	Total
factors relating to support	0 support	9	16	25
		36.0%	64.0%	100.0%
	1-2 support	8	26	34
		23.5%	76.5%	100.0%
	3 or more support	6	19	25
		24.0%	76.0%	100.0%
Total		23	61	84
		27.4%	72.6%	100.0%

Chi-square=1.331, df=2, not significant.

Again, the data in this sample indicate that there were no significant differences among groups in terms of the levels of support a youth had and the likelihood of receiving custody over other dispositions.

Breakdown of support factors

Parents:

The presence of parents at sentencing hearings is said to be an important part of the process for the young offender. As stated in S.3(h) of the *Young Offenders Act*;

...parents have responsibility for the care and supervision of their children, and, for that reason, young persons should be removed from parental supervision either partly or entirely only when measures that provide for continuing parental supervision are inappropriate.

Schissel's court observation research (1994) found that the presence of a parent in court (for Native youths) was critical in the outcome of a youth's case in that not having a parent in court related to a more severe sentence for Native youths. When parents were present for Native youths there was a higher likelihood that the youth would plead not guilty.

In the sentencing cases observed, at least one parent or parent-figure was present in 58% of the cases. The presence of a parent in court, however, did not relate to the likelihood of receiving custody. As Table 27 shows, about a quarter of youth received a custodial disposition regardless of whether or not a parent was present.

In addition, while waiting for their sentencing hearing to be called, both young offenders and their supporters would generally sit in the body of the courtroom. An assessment was made by researchers as to whether or not the youth was sitting beside their parent or parent-figure. These data suggest that in about half of the cases the youth sat beside their parent or parent-figure and in the other half they did not.

Table 27 - Percentage of youth receiving custody as a function of parental presence in court, supervision, and living arrangements

	yes	no	sig
parent(s) present?	27.1%(48)	26.7%(30)	n.s.
is/are parent(s) sitting beside youth before hearing?	18.5%(27)	33.3%(24)	n.s.
does court hear that parent(s) is involved in youth's life?	26.7%(45)	20.0%(5)	n.s.
does court hear that parent(s) able to supervise youth?	24.0%(25)	22.2%(9)	n.s.
does youth live with parent(s)?	27.9%(54)	14.3%(14)	n.s.

The courts may or may not have been aware that the youth was sitting beside their parent or parent-figure. Regardless, as seen in Table 27, youths who were presumably sitting beside their parent(s) –indicating that there was at least some degree of a relationship between parent and youth—were no more likely receive a custodial disposition. The same holds true for the courts hearing that the parent(s) could supervise the youth, this information did not significantly relate to the outcome of the sentencing hearing. These findings are somewhat surprising in light of research which has examined what court personnel *perceive* to be important in considering sentencing youth. Sanborn (1996) found that the most frequently cited factor that ‘should’ be considered at sentencing was the ability of the family to supervise and assist with rehabilitation. The second most frequently cited factor was a delinquent record.

Living Arrangements:

Chapter 2 on bail hearings noted the significant relationship between living at home and being granted bail – youth who lived at home were more likely to be granted bail. In

these sentencing hearings however, there did not appear to be a statistically significant relationship between living at home and receiving a custodial sentence.

Table 28: Percentage of youth receiving custody as a function of information about school, learning and employment status

	yes	no/ not mentioned	sig.
is the young offender in school?	21.4%(56)	38.5%(26)	n.s. n.s. (yes vs. no.)
does the court hear that the youth has a learning disability?	50.0%(6)	22.1%(68)	n.s. n.s. (yes vs. no)
is the young offender employed?	26.3%(19)	24.6%(57)	n.s. n.s. (yes vs. no)

School:

The relationship between being in school and bail being granted was also explored in Chapter 2, where a youth who attended school regularly was more likely to be granted bail. For sentencing hearings, the relationship between being in school and the likelihood of getting a custodial disposition was not a significant one, though the difference was in the same direction (lack of school attendance was associated with receiving a custodial sentence).

Learning Disabilities:

There is a large body of research which focuses on learning disabilities as one of the issues in need of attention in the youth justice system (Bell 1999, Scott and Grisso 1997, Jack and Ogloff 1997, Petersilia 1997, Winters 1997, Jarrelin *et al* 1994, Crealock 1991). The information that a youth had a learning disability or other disorder (such as Attention Deficit Disorder) was rarely mentioned in the sample of court cases, and in the few cases where it was raised, it did not relate to the outcome of the case.

Employment:

In only 28 cases was there explicit information in court about a youth's employment status. Again, there were no significant differences in the likelihood of getting custody for those who were said to be employed or not.

Legal representation

The final area of investigation of these sentencing hearings pertains to legal representation and the participation of youths and parents in court. As Table 29 shows, privately retained lawyers¹⁷ were used quite often at sentencing hearings. Of the privately retained lawyers' cases, almost half were for the categories of minor property, *YOA* offences, or 'other *CCC*' offences. Over one-third were for cases whose principal charge included violence. However, there were no significant relationships between the kind of legal representation in the case and the likelihood of receiving custody (Table 29).

Table 29

Relationship between the type of legal representation and the outcome of the case (custody or other)

		disposition		
		custody	other	Total
who represents youth at hearing?	duty counsel	6	16	22
		27.3%	72.7%	100.0%
	privately retained	17	43	60
		28.3%	71.7%	100.0%
Total		23	59	82
		28.0%	72.0%	100.0%

Chi-square(corrected)=.000, df=1, not significant .

¹⁷ which includes lawyers who were retained on a legal aid certificate

Case plans:

Under the *YOA* young people are afforded a number of due process rights including the right to a lawyer. The right to a lawyer marked a significant shift in philosophy of the *YOA* over its predecessor the *JDA*. While due process rights were legislated to protect youth within the legal system, a great deal of research has called into question whether or not young people can fully exercise their rights. Most studies conclude that young people cannot meaningfully participate in the court process due to their lack of understanding of legal concepts (Peterson-Badali and Koegl 1998; Milner 1995; Abramovitch *et al* 1993; Peterson-Badali and Abramovitch 1992). This body of research highlights the importance of defense counsel's role in defending young offender cases.

For example, studies which have examined the effectiveness of defense counsel in youth court have concluded that youth's needs in court may not be adequately being served. First of all, there appears to be some disparity in the type of representation defense lawyers take on in youth court. Milne, Linden and Kueneman (1992) found that there was a large degree of variation in the roles that lawyers felt were appropriate in defending cases. The researchers found that most lawyers did not 'fit' into consistent roles of either advocate or guardian, but were a mix of these two extremes in defending youth cases.¹⁸ Second, research has pointed out that the type of legal representation a youth has may have consequences for the outcome of the case. Carrington and Moyer's (1992) study of legal representation under the *Juvenile Delinquents Act* found that in one

¹⁸ In reference to the most appropriate role that should be taken by defense lawyers, the Ontario Law Society clearly supports the advocate role as most appropriate (Ontario Law Society 1981).

jurisdiction, the success rates of duty counsel were substantially lower than cases where private counsel was retained. The authors found that retained lawyers were more effective than duty counsel in having all charges terminated pre-plea as a result of negotiations with the prosecutor in the case. Finally, the role of defense counsel can be crucial in providing community alternatives to the court in order to avert custodial sentences. Macallair (1994) found that case 'advocates' in San Francisco (not necessarily defense lawyers) who provided case plans for juvenile cases were linked to a greater degree of deinstitutionalization of youth. By offering alternative information and case plans that were not available otherwise, a more individualized approach to cases resulted, and consequentially, fewer youth were institutionalized (Macallair 1994). Thus, information on alternative sanctions to custody is quite important for the offender's case. Judges also rate the importance of receiving information on community alternatives as very high in deciding cases (Hanscom 1988). Research suggests however that defense lawyers rarely present detailed dispositional plans for their young clients, nor adequate information on community alternatives to decision makers (Hanscom 1988).

In this study, there were only 10 cases out of 44 (23%) where a case plan was produced by defense counsel for the youth (Table 30)¹⁹. In the remaining cases there was a joint submission by Crown and defense in which defense counsel did not present a case plan in the joint submission. Because of the low numbers of cases, it is difficult to assess the effect a case plan had on the likelihood of receiving custody. Nevertheless the

¹⁹ there was one case which had a case plan where the resulting sentence is missing.

direction indicates that there may be an association between case plans and dispositions other than custody.

Table 30
Relationship between defense counsel providing a case plan and the outcome of the case (custody or other)

	Disposition		
		Custody	Other
Does defense provide a case plan?	no	12 36.4%	21 63.6%
	yes – case plan presented	2 22.2%	7 77.8%
	joint submission and no case plan presented	8 19.5%	33 80.5%
Total		22 26.5%	61 73.5%

Chi-square =2.760, df=2, not significant. 'no vs. yes' not significant.

NOTE: The number of cases with a joint submission does not correspond between Table 30 and 31. This is due to the fact that in cases where there was a joint submission for sentencing, defense counsel also put forward a case plan for the youth. Thus, of the 47 joint submission cases, most did not have a case plan from defense but a few of them had a case plan presented in the joint submission.

Joint Submission:

More than half (55%) of cases had a jointly submitted recommendation to the judge for sentencing and the judge agreed with the joint submission presented by Crown and defense in the majority (89%) of cases. This is consistent with Hanscom's (1988) study which found that judges said they accepted joint submissions 'all of the time' or 'usually' (80.8% of cases).

Cases where there was joint submission tended to be less likely to result in custody (Table 31). This may simply be a function of the Crown agreeing to jointly recommend dispositions other than custody in certain non-serious cases.

Table 31

Relationship between there being a joint submission and the outcome of the case (custody or other)

		disposition		
		custody	other	Total
is there a joint submission?	no	14 38.9%	22 61.1%	36 100.0%
	yes	8 17.0%	39 83.0%	47 100.0%
Total		22 26.5%	61 73.5%	83 100.0%

Fisher's exact test (2-sided) $p=.043$

Participation of youth and parent(s) in sentencing hearing:

In just over 40% (34/81) of the cases, the judge asked the youth if s/he wanted to make a statement before sentencing. When asked to do so, the young offender made a statement more than half the time (19/34 cases). Making a statement or being asked to do so however, did not relate to the likelihood of receiving a sentence of custody.

Furthermore, parents made statements before sentencing in only 13 cases. This again however, had no relationship to the likelihood of receiving a sentence of custody.

Table 32 - Percentage of cases receiving a custodial disposition as a function of making a statement before sentencing in court

	yes	no/ or not asked	sig.
does youth make a statement before sentencing?	42.1%(19)	23.8%(63)	n.s.
does parent(s) make a statement before sentencing?	30.8%(13)	28.9%(38)	n.s.

There was a relationship between the youth making a statement before sentencing and the parent(s) doing so also. Of course this may be due to the dynamics of the courtroom,

where certain judges encouraged parties to speak - and thus both young offender and parent(s) made statements prior to sentencing (Table 33).

Table 33

Relationship between youth making a statement before sentencing and parent making a statement before sentencing

		does parent make a statement before sentencing?		Total
		no	yes	
does youth make a statement before sentencing?	no	33 84.6%	6 15.4%	39 100.0%
	yes	5 41.7%	7 58.3%	12 100.0%
Total		38 74.5%	13 25.5%	51 100.0%

Fisher's exact test (2-sided) $p=.006$

Conclusions of Section I

From these data then, it appears that legal variables (pre-trial detention, prior record, co-accused who is an adult) and ethnicity are all related to the likelihood of youths in this sample receiving custody. In order to see if any of these variables significantly predicts the likelihood of custody, Table 34 presents a regression analysis.²⁰

²⁰ a logistic regression analysis might have been seen as being a more appropriate test for the predictability of these variables since the dependent variable 'custody' is binary. However, because the sample size here is too small for logistic regression (under 100 cases), an ordinary least squares regression analysis was performed in order to best estimate the effects of the independent variables on custody.

Table 34

Ordinary Least Squares Regression analysis representing estimated effects of independent variables on the likelihood of receiving a custodial sentence ^a

Independent variables		unstandardized Coefficients		standardized coefficients	t	Sig.
		B	Std. Error	Beta		
Independent variables	(Constant)	2.831	.213		13.261	.000
	held in pre-trial detention	-.206	.099	-.232	-2.078	.041
	prior record	-.202	.099	-.230	-2.037	.045
	adult co-accused	-.233	.147	-.162	-1.585	.117
	perceived ethnicity	-.201	.105	-.194	-1.910	.060

^a Dependent Variable: custody

NOTE: dependent variable: 'custody' coded as (1=custody 2=other)
independent variables: 'held in pre-trial detention' (1=not detained 2=detained)
'prior record' (1=no/ not mentioned 2=yes prior record)
'adult co-accused' (1=no/not mentioned/not applicable 2=yes-adult co-ac)
'perceived ethnicity' (1=caucasian/other 2=black)

Based upon the regression analysis, it appears that legal variables account for much of the predictability in the use of custody. Pre-trial detention and prior record both independently predict the likelihood of a sentence of custody, while the perceived ethnicity of the youth was approaching significance ($p=.060$).

Section II

Principles and goals of sentencing:

Another way in which 'youthfulness' as a factor in sentencing might be brought into sentencing hearings is through references to the principles and goals of sentencing relating to young offenders. An analysis of the cases in this sample shows that there were few cases (19/84 or 23%) in which reference was made to the principles of the *Young Offenders Act* or the general goals of sentencing. As seen in Table 35, an assessment was made of each statement made in court relating to goals and principles of sentencing. I

coded whether or not the principle or goal appeared to be stressed by the criminal justice agent as a 'relevant' factor in the case, 'not a relevant factor' in the case, or whether this could not be determined - 'neutral'. In Table 35 below, for each player in court, the first column shows how many times they made reference to the principle or goal, the next column shows how many of these references were 'neutral', followed by a column which shows how many of these were 'relevant' references, and the last column shows if the reference made appeared to limit the importance of the goal or principle ('not relevant'). The total number of references for each principle or goal is calculated in the second to last column to the far right, and the total number of cases where goals or principles were mentioned is calculated in the far right column (see Appendix D for more detailed breakdown of actual statements).

Table 35 - Frequency of references made to principles and goals of sentencing by key players in the courtroom in the 19 cases where reference was made

Principal / goal of sentencing	References made by whom? (positive/negative or neutral)												total # of ref's	total # of cases
	Defense				Crown				Judge					
	# refs	Neut	Rel	Not rel	# refs	Neut	Rel	Not rel	# refs	Neut	Rel	Not rel		
general deterrence	3	2	0	1	5	2	3	0	5	5	0	0	13	10
specific deterrence	2	1	1	0	2	2	0	0	5	4	1	0	9	8
rehabilitation	3	1	2	0	3	2	1	0	3	3	0	0	9	6
public interest/public policy	1	1	0	0	2	2	0	0	3	3	0	0	6	5
public protection	0	-	-	-	1	0	1	0	4	3	1	0	5	5
general YOA principles	3	0	3	0	0	-	-	-	1	1	0	0	4	4
general sentencing principles	1	1	0	0	2	2	0	0	1	1	0	0	4	2
denunciation	0	-	-	-	2	0	2	0	1	1	0	0	3	3
young person's need to be held responsible for their behaviour	0	-	-	-	0	-	-	-	1	1	0	0	1	1
least restrictive measures (s. 24)	1	0	1	0	0	-	-	-	0	-	-	-	1	1
crime prevention	0	-	-	-	0	-	-	-	1	1	0	0	1	1
totals:	14	6	7	1	17	10	7	0	25	23	2	0	56 refs	out of 84 cases

What is most notable from the above table is that principles that are specific to young offenders (in S.3 of the *YOA*) were rarely raised in these sentencing hearings. In only 7 cases out of the total of 84 cases was there reference made to the principles of the *YOA*; 4 of these references pertained to general *YOA* principles and the remaining 3

references were about the use of least restrictive measures, crime prevention and the need for young persons to be held responsible for their behaviour. Thus, the specific principles that are to apply to young people appeared not to be raised at these sentencing hearings. However, issues regarding the public interest or public protection were raised more often. Out of the 84 cases, 10 cases had reference to public protection or public interest. There were a total of 11 references to these categories and the majority of these were brought up by the judge, followed by the Crown²¹.

What is also quite important to note is that among the references to goals of sentencing, the majority of references that were made had to do with deterrence. Almost 40% (22/56) of references were made regarding either general or specific deterrence. Of these, the judge made the most reference to deterrence followed by the Crown. In addition, deterrence (specific or general) was raised in 12 of the 84 (14.3%) cases, which reveals the importance of deterrence as a factor in these sentencing hearings.

Cases that received custody:

As with the principles and goals of sentencing, another way that the court may be reminded that the offender before the court is a youthful offender is through references to Section 24 of the *YOA* which sets out the guidelines for the use of custody in youth courts. As stated earlier in this chapter, just over one quarter (27%) of these cases ended up in custody. The following legislative guidelines are relevant for decision makers when deciding whether to use custody (S.24 *YOA*):

²¹ In a study by Ouimet and Coyle (1991) which provided hypothetical sentencing case scenarios to prosecutors, judges, defense counsel and probation officers, prosecutors' sentencing preferences were found to be the most punitive of the 4 professional groups. In light of this study, these findings may in part be explained by the prosecutor's concern with public protection.

- custody should not be used unless it is necessary for the protection of the public having regard to the seriousness of the offence and the circumstances in which it was committed and having regard to the needs of the young person
- custody should not be used as a substitute for child welfare measures
- a young person who commits an offence that does not involve serious personal injury should be held accountable to the victim and society by way of non custodial dispositions when appropriate
- custody should only be imposed when all other alternatives to custody that are reasonable have been considered
- the youth court should consider a pre-disposition report unless it is deemed to be unnecessary
- where the youth court makes a custodial disposition they must state the reasons why other dispositions would not have been adequate

It would be fair to assume then, that when custody was being considered in a case, that some mention of the guidelines in Section 24 would come out in court. An analysis of the 25 cases²² where custody was almost certainly being considered suggests otherwise (see Appendix E for more detailed breakdown).

Table 36 - References to S. 24 of the *Young Offenders Act* in cases where custody was being considered

	No	Yes	somewhat	total:
reference to S. 24 in observed court hearing?	19	2	4	25
is there reference to S.24 in the PDR?	13	0	-	13*

* although in 25 cases custody was being considered, I had access to only 13 PDRs.

Of the total 25 cases where custody was being considered, in only six cases was there some degree of reference to the guidelines in Section 24 of the *YOA*. S.24 was very explicitly mentioned in only two cases, in one case, defense counsel stated "...S.24 of the

²² 23/84 cases received custody and 2 other cases had a pre-disposition report but did not end up with a custodial sentence (n=25).

YOA says jail should be used as a last resort...[and the court should use] the least restrictive measures.” In the other case, defense counsel argued that “..any sentencing principles can be met by the maximum hours of community service.” Of these 25 cases, 2 were *not* given a custodial sentence. It appears then from these cases that the guidelines of S.24 are rarely being raised in youth courts when custodial sanctions are being considered.

Section III - Probation:

The analysis thus far has focused on the use of custody as the outcome measure in relation to age and the other variables recorded in the court. However, the absence of any relationships between age and custody may mean that there are other ways in which judges are responding to age-related issues when deciding on sentences for youth. Thus, I also analyzed the use of probation in relation to the youth’s age.

Section 23 of the *Young Offenders Act* states that the following conditions shall be included in all probation orders:

- keep the peace and be of good behaviour
- appear before the youth court as required

Judges have the option of placing other conditions on youth probation orders:

- that the youth comply with the probation order and report to the probation officer
- notify of any change of address, employment, education or training
- remain within an area specified by the probation order
- make reasonable efforts to obtain and maintain suitable employment
- attend school or other appropriate training
- reside with a parent or other such adult considered appropriate
- reside in a place specified by the probation order
- comply with any other reasonable conditions set out in the probation order

While probation was used extensively as a disposition either alone or in combination with other dispositions, there was no relationship between having a probation order and the index of child-like or adult-like characteristics.²³

Table 37

Relationship between the presence of child-like factors and the use of probation in the disposition

		probation		Total
		no	yes	
number of child-like factors	adult or 0 child	4 21.1%	15 78.9%	19 100.0%
	1-2 child	9 28.1%	23 71.9%	32 100.0%
	3 or more child	9 26.5%	25 73.5%	34 100.0%
	Total	22 25.9%	63 74.1%	85 100.0%

Not significant.

Probation conditions:

Perhaps then, the use of probation as a disposition is not related to age, but rather the conditions placed within the probation order may relate in some way to age related concerns.

Table 38 shows the different kinds of probation conditions placed on youth in this sample, by the frequency of use of each condition.

²³ Analyses were completed on all of the different combinations of dispositions used : custody only, custody, probation and intermediate sanction in one sentence, custody and probation only, custody and an intermediate sanction only, probation only, probation and intermediate sanction only, intermediate sanction only. None of these combinations related to either the child-like index or the variable on chronological age group.

Table 38 - Probation conditions for young offenders in this sample

Probation Condition	number/64	%
report to probation officer	41	64%
no keeping company of...co-accused....victim(s), etc.	32	50%
not in possession ofweapons... non-medically prescribed drugs	21	33%
obtain counseling	21	33%
attend school/employment	17	27%
boundary restrictions	13	20%
obey written/house rules	12	19%
curfew	9	14%
write a letter	3	5%
victim reconciliation	2	3%

An analysis of these probation conditions in relation to age shows that there are no significant relationships, with the exception of boundary restrictions²⁴.

Table 39

Relationship between child-like factors and the probation condition of 'boundary restrictions'

		boundary restrict		
		no	yes	Total
number of child-like factors	adult or 0 child	14	1	15
		93.3%	6.7%	100.0%
	1-2 child	21	2	23
		91.3%	8.7%	100.0%
	3 or more child	16	10	26
		61.5%	38.5%	100.0%
Total		51	13	64
		79.7%	20.3%	100.0%

Chi-square=8.934, $df=2$, $p=.011$, 2 expected values less than 5(3.05).
0-2 (pooled) vs. 3 or more, Fisher's exact test $p<.05$.

²⁴ Boundary restrictions are orders of the court whereby individuals are barred from entering into a particular geographical area or being within a certain distance of that area in order to avert further potential offending, or to avert contact with victim(s) and/or co-accused(s).

Table 39 shows that boundary conditions are more likely to be placed on youth with more ‘child-like’ characteristics. With up to 2 ‘child-like’ characteristics, few boundary conditions are placed on youth, but with 3 or more ‘child-like’ attributes, youth are at least 4 times more likely than those with up to 2 child-like factors to be given boundary conditions as part of their probation order.

Age group

There was also a relationship between the age group of a young offender and the likelihood of having a boundary condition placed upon their probation order. As Table 40 demonstrates, older youths were less likely to be given a boundary condition.

Table 40

**Relationship between age group and the probation condition of
‘boundary restrictions’**

		boundary restrictions?		Total
		no	yes	
age group	12&13	2	3	5
		40.0%	60.0%	100.0%
	14&15	14	6	20
		70.0%	30.0%	100.0%
	16+	34	4	38
		89.5%	10.5%	100.0%
Total		50	13	63
		79.4%	20.6%	100.0%

Pooling 12-15 year olds vs. 16+, Fisher’s exact test $p=.029$

Thus, ‘younger’ youths may be seen by the court as needing restrictions on the areas in which they can enter in order to avert the potential for further criminality.

Number of conditions placed on youth by age

Finally, an analysis of the number of conditions placed upon youth was conducted to see if more probation conditions were placed upon younger offenders in order to more intensively supervise their behaviour. The results show that neither the presence of child-like or adult-like factors, nor the chronological age group to which the youth belonged were significantly related to the number of probation conditions placed on the order (Tables 41 and 42).

Table 41

Relationship between child-like factors and the number of probation conditions

		number of probation conditions			Total
		0-1 cond	2-3 cond	4+ cond	
number of child-like factors	adult or 0 child	4 26.7%	5 33.3%	6 40.0%	15 100.0%
	1-2 child	6 26.1%	10 43.5%	7 30.4%	23 100.0%
	3 or more child	5 19.2%	9 34.6%	12 46.2%	26 100.0%
	Total	15 23.4%	24 37.5%	25 39.1%	64 100.0%

Not significant.

Table 42

Relationship between age group and the number of probation conditions used

		number of probation conditions			
		0-1 cond	2-3 cond	4+ cond	Total
age group	12&13	1	1	3	5
		20.0%	20.0%	60.0%	100.0%
	14&15	4	8	8	20
		20.0%	40.0%	40.0%	100.0%
	16+	9	15	14	38
		23.7%	39.5%	36.8%	100.0%
Total		14	24	25	63
		22.2%	38.1%	39.7%	100.0%

Not significant.

Section IV- Pre-disposition reports

Pre-disposition reports are used in both youth and adult courts to provide a judge with contextual information about the offender and the circumstances of the offence. Under Section 24(1) of the *YOA*, a pre-disposition report must be ordered if a custodial sentence is being considered unless, with the consent of the prosecutor and the young person or his counsel, it is determined that the report is unnecessary or not in the best interests of the youth to require one (Section 24(3) *YOA*). Generally, the pre-disposition report allows the judge to assess mitigating circumstances as an element of fairness in passing sentence (Sarkesian 1989; Nadin-Davis 1982). Section 14 of the *YOA* sets out the categories of information that a Pre-Disposition Report *shall* include:

- the results of an interview with the young person, if possible their parents, and potentially members of the young person's extended family
- the results of an interview with the victim in the case
- information on the age, maturity and character of the young person and his willingness to make amends
- plans put forward by the young person to change his conduct

- the history of previous findings of delinquency
- the history of the use of alternative measures with the young person
- the availability of appropriate community services
- the relationship between the young person and the young person's parents and the degree of control and influence the family has on the young person
- school attendance and performance and employment record
- any other appropriate information²⁵

There has been a great deal of research which has examined the use of pre-disposition reports in terms of their effects on sentencing outcomes, the general contents and quality of the reports, and the social construction of the offender in the report. It has been shown that judges rely quite heavily on pre-disposition reports when they are available (Hanscom 1988).

Studies show that the pre-sentence investigation is crucial in assessing the juvenile's character for court personnel (Sanborn 1996), that judges are confident with the accuracy of reports (Hanscom 1988), and that judges rate the pre-disposition report as a primary source of information (Holsinger and Latessa 1999, Hanscom 1988). In Hanscom's study, judges felt that pre-disposition reports were not biased in that they did not form the majority of either Crown or Defense counsel's cases (Hanscom 1988). However, whether or not the pre-disposition report benefits or hinders a young offender's case is an area of contention. A study by Milne, Linden and Kueneman (1992) showed that defense lawyers were uncertain as to whether or not the contents of the pre-disposition reports helped or hindered their clients' case. The authors note that certain lawyers expressed concern with the inadmissibility of information contained within pre-disposition reports "...in the form of inflammatory statements and hearsay reflecting the

²⁵ the recently proposed Act to replace the *YOA* called the *Youth Criminal Justice Act* has added two other categories of information that shall be included in a pre-sentence report (1) the recommendations resulting from any conference (2) any information on alternatives to custody (Bill C-3 (1999) Section 39). In

bias of the particular probation officer” (Milne, Linden and Kueneman 1992: 340). Other defense lawyers thought pre-disposition reports to be useful:

...I think that the reports are useful to the defence. The judge gets the idea that he's dealing with a person who is not just a case, but a human being (Milne, Linden and Kueneman 1992: 341).

Despite the likelihood that the pre-disposition reports will facilitate a more individualized approach to sentencing, the potential still remains for an unfair or biased construction of the offender within these reports. In her study of the construction of gender in pre-disposition reports, Sarkesian notes;

...probation officers do engage in defining the lives of male and female offenders on different dimensions. They use selective investigation and reporting strategies which shape images and perceptions of male and female offenders. ...The principle of individualized justice facilitates this subtle and overt form of discrimination by suggesting that the individual differences provide for mitigating circumstances and therefore, make for better judgements. Probation officers and other decision makers must be aware of these very subtle forms of constructing and reproducing further inequalities (Sarkesian 1989: 46,47).

Thus, the contents of Pre-Disposition Reports have important implications for the outcome of the case since, in the majority of cases, judges concur with the recommendations made by probation officers²⁶ (Markwart 1992; Gelsthorpe and Raynor 1995). Moreover, as Hanscom notes, while judges assume that the information in Pre-Disposition Reports is generally accurate, the information in the report is rarely scrutinized. The cross-examination of probation officers on the contents of reports rarely

addition the new Bill states that the contents of the pre-disposition report must be to relevant to the purposes and principles of sentencing as set out in Sections (37) and (38).

²⁶ As of 1995, section 14(d) of the *YOA* explicitly states that the provincial director (probation officer) can include a recommendation for sentence in the pre-disposition report, although the judge is under no obligation to follow this recommendation.

occurs, and the presence of a probation officer at the sentencing hearing is also quite infrequent (Hanscom 1988).

Pre-disposition reports were used in about 21% of the cases in this sample. The results indicate that there were no relationships between the principal charge and the use of a pre-disposition reports in the sentencing hearing (Table 43). This may be explained by the variation in each category of 'principal' charge as to the seriousness of the offence.

Table 43

Relationship between the principal charge and the use of a pre-disposition report in the case

		pre-disposition report used?		Total
		no	yes	
principal charge	violence	20	6	26
		76.9%	23.1%	100.0%
	drugs	5	3	8
		62.5%	37.5%	100.0%
	b&e	3	3	6
		50.0%	50.0%	100.0%
	prop&yoc&ccc	40	6	46
		87.0%	13.0%	100.0%
Total		68	18	86
		79.1%	20.9%	100.0%

Not significant.

There was however, a statistically significant relationship between the use of a pre-disposition report in a case and the young offender having a prior record.

Table 44

**Relationship between a prior record in the case and the case
having a pre-disposition report**

		Is there a PDR in court case?		
		no	yes	Total
is there a prior record?	no	38 90.5%	4 9.5%	42 100.0%
	yes	26 65.0%	14 35.0%	40 100.0%
Total		64 78.0%	18 22.0%	82 100.0%

Fisher's exact test $p=.007$

Youths with a prior record were about 3 times more likely to have a pre-disposition reports in their sentencing hearing. This may, in part, be accounted for by the fact that youths with prior records were more likely to be given a custodial sentence, and that those with prior records are more likely to already have a pre-disposition report previously written on their case history for the use of the court.

Of the 18 cases where a pre-disposition report was used in determining the sentence, I was able to access 13 of these reports. An examination of these reports indicates that the court 'agreed' or 'mostly agreed' with the recommendation of the probation officer in over half (7/13) of the cases. In 2 cases, the court partially followed the recommendation (e.g. used custody but not the length suggested in the report). In 4 cases the recommendation was not followed at all.

Child-like/Adult-like language used in Pre-Disposition Reports:

An assessment was made as to the degree to which pre-disposition reports construct the 'youthfulness' of an offender in these reports and whether or not this relates to the outcome of the case (Table 45).

Table 45 - Sample of Pre-Disposition Reports showing references to age and family situation

Yth-Pos.	Yth-Neg.	Y-Adult	Ad-Adult	Mother - birth information	Parent's marital stability	Father-abandoned y.o./Drinking/Abusive	Limited financial resources	offence	sentence
2	2	2	0	-	Separated	-	-	-assault	23 days s/c; 12 m probat
2	1	2	1	-	brief marriage	father-abusive	-	-poss cocaine	30 days s/c
0	4	0	1	no difficulties w pregnancy & delivery; met all 'milestones'	Married	-	-	-theft under; -traffickin	23 days o/c; 12 m probat
3	1	1	0	youth was result of rape of mother @ 18 yrs old at a drug party	-	no contact	on Mother's Allowance	-robbery -FTC w/ recogniz	30 days o/c; probatio compens
0	1	0	0	-yth born a healthy baby-reached all 'milestones' early	never married biol father	-father left before youth was born/alcoholic/ abusive -step-father also abandoned youth	mother unemployed	-possess under	12 m probat 25 hrs cso
3	1	0	0	-unexpected birth, no complications w/ pregnancy	-current partner - good relationship	-biological father died under 'mysterious circumstances'	-	-theft under -FTC bail -FTA	40 hours cso; 18 mths probat
1	1	0	0	birth & early develop- normal - youth in car accident at 9- suffered head injuries	-	-father never part of family - needs father-figure	-	-break, enter & commit theft	30 days o/c; 18 m probat
3	2	1	0	-	-lives with step-mother; nat-mother whereabouts unknown -father pays support	-	-step-mother - seeking employem w/ no success	-poss over x3 -theft over x3 -danger operatio	56 days o/c; 12 m probat
2	2	0	0	-	-	-	-	-escape custodyx2	1 day s/c
2	0	0	0	-	-never married to father	-father - no contact	mother - unemployed looking for work	trafficking -poss for traffickin -poss of proceeds	2 months s/c; 12 m probat
2	0	0	0	-	-parents - divorced	-father- no contact -family - domestic violence, alcoholism	mother- family benefits	-poss over	-2 weeks o/c
3	4	1	0	-	-parents- separated - mom has new partner	-father - alcoholic -little contact	-	-obstruct peace officer	15 days o/c; 16 m probat
1	1	0	0	-	-'awful marriage' -now separated	-domineering, verbally abusive, abandoned	-	robberyx4 -FTC -danger d weapons d	30 days s/c; 6 m o/c; 18 m probat

NOTE: Youth - positive "youth listens to music" "plays video games" "attends school regularly"
Youth - negative "youth is out of control" "late for school/truant" "goes to parties all night" "talks on phone all night"
Youth/Adult- "youth is influenced/recruited by older peer group" "easily influenced by older friends"
Adult - "was employed F/T as a general labourer" "presents herself as older"

It is difficult to make any generalizations about the severity of sanctions based upon 'child-like' or 'adult-like' constructions of youths in these reports because all cases, except two, received custody. The two cases that received sanctions other than custody do not appear to differ substantially from the rest in terms of the way the youth was described.

What can be said about this small sample of reports is that the qualitative descriptions of these youths vary among reports. In a few of the pre-disposition reports, there is a more consistent characterization of the 'youthfulness' of the offender in either positive or negative terms (eg. attends school regularly, listens to parents, obeys curfew - all constructing 'youthfulness' in positive terms). However, in other reports, descriptions are not limited to constructing 'youthfulness' as a mitigating factor which warrants a less harsh approach, but 'youthfulness' is also constructed as an aggravating factor, or a justification for increased social control. For example, in one report, the probation officer cites the arresting police officer's description of the youth at arrest;

...Constable 'X' followed him into the washroom and reported that the two of them were in the only cubicle, there was heroin on a piece of foil and 'Y' held a cigarette and a rolled up five dollar bill. Both were smoking heroin. As Constable 'X' entered the washroom 'Y' flushed everything down the toilet. 'Y' then started crying and calling for his mother which Constable 'X' explained is 'Y's usual role. He pretends to be innocent and can be a convincing actor but according to Officer 'X' he is not innocent and will reoffend in a way that is more beneficial to him....

In the same report a few paragraphs later, the writer notes that...

"Y" was frequently truant which did lead to his bail being revoked. 'Y' does say that he needs an education to be able to get a job and does like computers, math and design technology. ...'Y' was able to verbalize what he needs to do to stay out of trouble, "get a job, go to school and listen to the rules". ...he enjoys going to Canada's Wonderland, lifting weights and playing soccer and basketball with his cousins.

In this report, as with others, there are constructions of the youth as being on the one hand relatively responsible and being a typical young person (e.g. knowing what it takes to get a job in computers, going to Canada's Wonderland and playing with cousins) and on the other hand, needing supervision (e.g. truant, pretending to be innocent in the officer's description etc.). From this small sample of reports then, it is unclear what the overall construction of the youth is, or how the varied information on youthfulness does or does not impress upon the courts when determining sentencing decisions.

The other interesting point that comes out of these reports does not relate to age, but rather to the family situation. In this sample of reports there were a number of categories or themes devoted to the mother's pregnancy, the parent's marital situation, and a recurring theme of paternal abandonment. Presumably, the reason this kind of information is included is due to underlying 'theories' of why the youth was involved in criminal activity and the amount of supervision the family can provide. For example, in just under half of the reports (5/13), there was information related to early childhood development and even pre-natal information. In one case, as noted in Table 45, the information presented on the youth pertained to the nature of the youth's conception. "...Mrs. 'X' was pregnant with 'Y' when she was about 18 years old. Her pregnancy was a result of a rape that occurred during a drug party that she was attending."

In 10 out of 13 cases, information was presented regarding the marital situation of parents. Of these only 2 of the parental unions were characterized as stable relationships. Finally, in 9 of 13 cases, information on the father was presented in the report. In all of these cases there was a theme of paternal abandonment or absence in the youth's life. In one case the father was said to have died under "mysterious circumstances". In most,

there was no contact from the father, and in many there were characterizations of the father being domineering, abusive, or having a problem with alcohol.

Conclusions

In the context of the *Young Offenders Act* which suggests that age and maturity should be factors which are taken into account in sentencing decisions, this chapter sought out to examine if, and how, age and the ‘youthfulness’ of the offender related to the outcome of a sample of sentencing cases. In addressing this question, this study reveals that there is no substantial relationship between age and the use of custody. The one exception to this is --in the few cases where there was an adult co-accused, the courts were more likely to impose a custodial sanction. However, having a case with an adult co-accused did not independently predict the likelihood of custody. Instead, other legal variables --prior record and pre-trial detention -- were independently related to the likelihood of cases receiving custody. To some extent as well, the perceived ethnicity of the youth predicted the use of custody.

This is consistent with the analysis of data across Canada and in the provinces of Ontario, Quebec and British Columbia. With the exception of robbery, which encompasses a wide range of offences that vary dramatically in their ‘seriousness’, there was no clear relationship between age groups and the use of custody even when controlling for the presence or absence of a previous record.

Moreover, principles of the *Young Offenders Act* and goals of sentencing were rarely raised in the observed court hearings, and when they were raised, they were in reference to public protection and the public interest. In very few cases was there explicit

mention of the principles relating to young people and their special circumstances.

Similarly, in the cases where custody was being considered, there were few cases in which there was mention of the guidelines in Section 24 of the *Young Offenders Act* which sets out when it is appropriate to use a custodial sentence for a young person.

Even the use of probation conditions did not appear to relate to the age group of the youthful offender. Neither the number of conditions nor the kinds of conditions placed on youth related to their age, except for 'boundary conditions.' Boundary conditions appeared more frequently on cases which dealt with younger youth (12 and 13 years old) and youths who had characteristics that made them appear more 'child-like'. Thus, it may be the case that the use of this condition is an attempt to protect the younger age group from going into certain areas and 'getting into more trouble'.

Finally, the analysis of pre-disposition reports in this sample showed that while these youths were described in both 'youthful' and 'adult-like' terms, this small sample of reports did not reveal a pattern one way or another in terms of the likelihood of receiving custody (since all but 2 cases received custody), and in terms of the report consistently characterizing the offender in either 'youthful' terms or 'adult-like' terms. Instead, what this analysis revealed is that constructions of youth based upon age vary from report to report, but that in general, descriptions portray youthfulness as a mitigating factor (attends school) or an aggravating factor (is truant) in the same report. In the final analysis it appears that, as with the chapter on bail hearings, decisions made in youth court sentencing hearings are predominantly governed by legal variables.

Appendix A - Sentencing coding sheet

(a) location & time

address _____

courtroom# _____

date _____

☐ am ☐ pm _____

judge _____

(b) case information

sentencing hearing trial

docket/file# _____

name _____

age _____ perceptual age _____

d.o.b. _____ (dd/mm/yy)

phase I ☐ phase II ☐ not applicable ☐

sex: ☐ m ☐ f

in custody? y n unclear

S/C O/C

ethnicity:

☐ caucasian

☐ black

☐ asian/oriental

 south asian

☐ aboriginal

☐ hispanic

☐ other

☐ unknown

name of Crown _____

☐ provincial ☐ federal

(c) lawyer:

lawyer's name _____

Is present with youth?

☐ yes ☐ no

who represents youth @hearing?

☐ duty counsel

☐ privately retained name? _____

☐ student-at-law (if different from above)

☐ unclear

☐ nobody

(d) current charge?

what is/are the current charge(s)/allegation(s)

(d)prior record:

☐ y ☐ n

of charges read in: _____

☐ none

☐ not mentioned

if yes, is one or more of the priors..

☐ related to current charge

☐ unrelated to current

☐ unstated

☐ recent (within the last year)

☐ not recent (over one year ago)

☐ unstated

☐ includes violence

☐ does not include violence

☐ unstated

(e) co-accused
do one or more offences involve at least one other offender?

☐ no

☐ yes

if yes: is co-accused(s) present?

☐ no

☐ yes ☐ yes: also in custody

☐ unclear

is one or more co-accused an adult?

no yes no mention

what role does the y.o. being sentenced today have in the offence?

☐ equal to other offender(s)

☐ greater than other offender(s)

☐ less than other offender(s)

☐ not mentioned

(f) family:

are parent(s) guardian(s) present in court?

☐ yes mother father guardian/foster

☐ no

☐ apparently (kid sitting w/ adults)

☐ not obvious/unclear

☐ y.o. & parent(s) not waiting in courtroom

plea

charge/allegation(s)

1. g ng

2. g ng

3. g ng

if no: why?

☐ parent(s) at work

☐ in hospital

☐ didn't want to come

☐ no contact with y.o.

☐ not mentioned

is y.o. sitting beside parent(s)?

☐ yes

☐ no ☐ no y.o. is in custody

☐ not obvious

☐ unknown

☐ not applicable

parent(s) involved in y.o.'s life?

☐ yes

☐ no

☐ not mentioned

☐ not applicable

do they wish to be involved in helping youth with offence?

☐ yes

☐ no

☐ not mentioned

☐ not applicable

are others present in court?

☐ yes

☐ no

☐ unclear

if yes: who?

☐ sibling(s) _____

☐ grandparent(s) _____

☐ other family _____

☐ other(s) _____

☐ C.A.S. _____

☐ friend(s) _____

are parents able to supervise y.o. (ie. work FT)

☐ yes

☐ no

☐ not mentioned

☐ unlikely

☐ not applicable

is parent(s)/guardian(s) occupation mentioned?

☐ no

☐ yes: _____

is/are parent(s)/guardian(s) on gov't assistance?

yes Family Benefits(Mother's Allow)

Disability(Workman's Comp)
Social Assistance(Welfare)
☐ U.I.C.

no
not mentioned

(g) living arrangements:

does youth live w/parent(s)/guardian(s)?

- ☐ yes
☐ no
☐ no mention
☐ not applicable

if no: where does youth live?

- ☐ with other relative
☐ at friend's house
☐ on the street
☐ at child welfare agency
☐ with girlfriend/boyfriend/C/Law

(h) youth's appearance:

how is youth dressed for court?

- ☐ 'dressed up' (suit, dress pants, dress shirt)
☐ 'neat' middle class (jeans, dress shirt)
dressed down (jeans, t-shirt, sweatshirt)
other

are there other 'non-child' or 'child' signs about the youth?

- ☐ no
☐ yes: piercings
goatee
moustache
peach fuzz
youth is a parent
other: _____

are there any signs about youth that show disinterest/disrespect in proceedings?

☐ no

☐ yes: _____

result

1. g ng

2. g ng

3. g ng

how interested is youth in proceedings?(mark 1+)

- ☐ very interested
☐ moderately interested
☐ disinterested/looking around court
☐ defiant looking
☐ laughing (w/ friends)/aloof

(i) school:

in school?

- no
☐ yes name of school _____
last grade completed _____

- ☐ not mentioned
☐ most of the time
☐ sometimes
☐ once in a while
is a student - but not presently registered
☐ kicked out

how well is y.o. doing in school?

- ☐ excellent marks
☐ very good in special ed. class
☐ good
☐ average
☐ passing all courses
☐ failing
☐ not mentioned
☐ not applicable

is youth involved in extra-curricular activities?

☐yes
☐no
☐not mentioned
unlikely
if yes: what?

Is there other info. presented from school?

☐yes
☐no

if yes: what?

(ie. comments -teacher/principal/counsellor)

Does youth have a learning disability?

yes no no mention

Is v.o. on/or ever been on welfare?

yes presently on welfare in the past

no

not mentioned

does youth work?

yes :where?

F/T P/T

no

not mentioned

comments:

sentence:

1.

2.

3.

☐ charges withdrawn

(j)sentencing hearing:

is there a PDR in this case?

☐yes
☐no

if yes: is info presented from it?

☐yes
☐no

if yes: what?

Is there a joint submission from Crown and Defense?

☐yes
☐no

if yes: what is it?

if no: what info is presented by Defense?

does Defence give a case plan for v.o?

☐yes
☐no

specify:

it no to joint submission, Crown's position?

does judge ask youth to make any further comments before sentencing?

☐yes
☐no

does youth make any comments before sentencing?

☐yes
☐no

if yes: what?

does parent make any comments before sentencing?

☐yes
☐no

if yes: what?

(k)sentence:

if joint submission, does judge agree?

☐yes
☐no

judge's comments @ sentencing:

final submissions

Crown

Defense

if trial: other information from witnesses

witness #1

witness #2

sentence

- ☐ secure custody _____
- ☐ open custody _____
- ☐ probation _____
- ☐ community service _____
- ☐ compensation _____
- ☐ restitution _____
- ☐ conditional discharge _____
- ☐ absolute discharge _____

conditions:

- ☐ keep peace - be of good behaviour
- ☐ obey rules of house
- ☐ curfew: _____ to _____
- ☐ attend school everyday
- ☐ not in possession of non-medically
pres. Narcotic
- ☐ not in possession of weapon _____
- ☐ no keeping company of :
 - ☐ co-accused(s)
 - ☐ victim(s)
 - ☐ anyone known to have crim rec
- ☐ reside with _____
- ☐ report to prob officer as required _____
- ☐ obtain counselling as specified _____

Appendix B - Inter-rater reliability

level of discrepancy on observation between raters	#	%
total number of observations made together	569	100%
total agreement between raters	508	89.3%
slight differences between raters (e.g. not clear vs. yes, not mentioned vs. yes, perceived age within 2 years)	53	9.3%
total disagreement between raters (perceived age more than 2 years etc.)	7	1.2%

Appendix C - Breakdown of Indices

Index Name	Variables Included
<i>Legal</i>	<ul style="list-style-type: none"> -youth was held in detention before the sentencing hearing(+) -principal charge is either 'violence' or 'drugs'(+) -youth has a prior record (+) -3 ore more charges were read into at hearing (+) -prior record has offences that are related to current offence (+) -prior record has offences that are recent (committed within the last year) (+) -prior offences include violence (+) -there is a co-accused in the case (+) -the co-accused is present in court on day of -or also in custody (+) -the role of the youth in this offence is said to be greater than or equal to co-accuseds (+)
<i>Child-like/Adult-like</i>	<ul style="list-style-type: none"> -the real age of the youth is 12 through 15 years (+) -the perceived age of the youth is 15 years or less (+) -the youth lives with their parent (+) -the youth is in school (+) -the youth is involved in extra-curricular activities (+) -the youth exhibits other 'child-like' signs (ie. is crying on the stand) (+) -there is a co-accused who is in adult in the case (-) -the youth has facial hair (males only) (-) -the youth has been or is presently on welfare (-) -the youth exhibits one+ adult-like signs (ie. is a parent) (-) -the youth is employed full-time(-)
<i>Support</i>	<ul style="list-style-type: none"> -a parent/guardian is present at court, or the court hears why the parent/guardian could not come, and this is for legitimate reasons (ie. at work) (+) -the parent/guardian is said to be involved in youth's life (+) -the parent/guardian is able to supervise this youth (+) -defense provides a concrete case plan for the youth (+)

+ means that this factor counted *towards* the overall index

- denotes that this factor *detracted* from the overall index

Appendix D - Detailed information on cases where reference was made to principles and/or goals of sentencing

<p><u>ID# 2 - Crown - recommends 2 years probation for the purposes of rehabilitation and individual deterrence</u> <u>offence</u> - theft under; obstruct peace officer; carry concealed weapon <u>sentence</u> - 7 days S/C, 24 months probation w/ conditions - rpt in 7 days; no weapons-knives; associations with criminals, obey written rules, school/empl</p>		<p>rehabilitation - C specific deterrence - C</p>
<p><u>ID# 17 - Judge - "this order of disposition has to help you say 'no' to crime" "not an order to punish you" "personal deterrence is important!" "you're not alone-your mother is with you" -but you have committed 3 serious offences—you need an order to think about your choices/friends</u> <u>offence</u>: traffic narcotic; possession for the purposes of trafficking; (crime proceeds -dropped) <u>sentence</u> - s/c -2 months; probation 2 months—attend school, reside where directed, obey written rules of residence and report /2 weeks</p>		<p>specific deterrence - J+</p>
<p><u>ID#19 -Defense - "18 months is unduly harsh and not conducive to the YOA principle of rehabilitation" - "consider general deterrence and specific deterrence"</u> Judge: what about <u>safety of the public</u>? These are the most serious & dangerous offences that young people can commit—he panicked and hit the gas" Defense: "He has learned a very serious lesson" - "suggest a short period of open custody - and consider an extended period of probation if you're concerned with <u>specific deterrence</u>" Crown(cross examination) - <u>rehabilitation</u> is important but <u>social denunciation</u> is just as important in this case <u>offence</u>: dangerous driving; poss over 5000x3; theft over 5000 x3 <u>sentence</u>: 56 days O/C and 12 months probation—report to p. officer, attend program related to driving offences; no b/w driving/learning to drive</p>	<p><u>ID# 19 - Defense (to judge) - "all of his problems occurred in a very short period of time as a result of a breakdown in the family"... "consider the principles of the YOA" "he has already spent 5 months at West Detention Centre" "he panicked when approached by the officers and dove towards the officers by mistake" "this accused came forward and took responsibility for his actions... this accused is more mature than co-accused and is more reflective of family problems"</u></p>	<p>rehabilitation - D+ C+ general deterrence - D specific deterrence - D public protection - J+ denunciation - C+ general YOA principles - D+</p>
<p><u>ID#22 - Crown - "seeking something shorter and sharper" "s3(b) society must be afforded necessary protection (both sp and general)" "general deterrence is a valid principle to apply" - "general deterrence will not be served by probation"</u> <u>offence</u>: trafficking mj (.06 grams) <u>sentence</u>: 23 days o/c; 12 months probation</p>	<p><u>ID#22 Defense - "any sentencing principles can be met by the maximum hours of community service" - "follow YOA principles to balance needs of society with needs of the individual"</u></p>	<p>public protection - C+ general deterrence - C+ general YOA principles - D+</p>
	<p><u>ID#34 - Judge - "this is not against the public interest"</u> <u>offence</u>: theft under 5000; poss under 5000 <u>sentence</u>: absolute discharge</p>	<p>public interest - J</p>
<p><u>ID#39 - Defense - wants o/c - for rehabilitation and s/c for general deterrence - "the more time spent with bad influences the more toxic he becomes - want s/c - short sharp to get message and longer o/c"</u> Judge - "I want a long term s/c -but this is the last chance for <u>rehabilitation</u>" <u>offence</u>: robbery x4; dangerous driving; weapons dang. FTC with bail <u>sentence</u>: 30 days s/c; 6 months o/c 18 months probation</p>	<p><u>ID#39 - Judge - crime prevention - long term protection</u> Judge - can <u>protect society via rehabilitation</u></p>	<p>rehabilitation - D, J general deterrence - D crime prevention - J public protection - J</p>
	<p><u>ID#43 - Crown - wants probation "not in the public interest to let him off-discharge" - "he was supposed to be on house arrest & was out in stolen vehicle" (Defense wants probation via conditional discharge)</u> <u>offence</u>: possession over \$5000; FTC with recognizance <u>sentence</u>: conditional discharge through 6 months probation</p>	<p>public interest - C</p>

<p><u>ID#46 - Crown - "there's a reason that society requires denunciation and general deterrence - because kids under age 14 should not be allowed to consent" "no chance for rehabilitation because of surrounding circumstances"</u> <u>offence:</u> sexual assault <u>sentence:</u> 40 days o/c; probation 12 months (joint sub)</p>		<p>denunciation - C+ general deterrence - C+ rehabilitation - C</p>
	<p><u>ID#47 - Judge - "has spent 7 days pre-trial custody; no prior record; 7 days in pre-trial custody and 1 day o/c additionally will serve gen and spec deterrence, denunciation and protection of society"</u> <u>offence:</u> breach of probation - curfew; fail to comply w/ recog <u>sentence:</u> (7 days ptdetention) 1 day o/c</p>	<p>public protection - J general deterrence - J specific deterrence - J denunciation - J</p>
	<p><u>ID#48 - Judge - "there's very little jurisprudence that gives the court guidance as to when the court can exercise a condinonal discharge" (Judge makes reference to principles relating to adult offenders (wrt to condinonal discharge and probation) "... in youth court, being placed on probation doesn't carry the same stigma as it does in adult court. Parliament has given this new option (of condinonal discharge) to get us more alternatives. Taking into consideration the purposes and principles of the YOA the fact that you failed to attend court because you slept in doesn't give me reasons to use a condinonal discharge - should get probation"</u></p>	<p>general sentencing principles - J C general YOA principles - J</p>
	<p><u>ID#58 - Defense - "consider a discharge - not against the public interest"</u> Judge - "OK absolute discharge, but given prevalence of auto theft - not in <u>public interest</u> to give discharge" "damage etc... undertaking to pay restitution - your dad says boys will be boys - I say grow up" <u>offence:</u> auto theft \$300 damage <u>sentence:</u> \$300 restitution</p>	<p>public interest - D, J</p>
	<p><u>ID#66 - Judge - "I have problems with conditional discharge - 2 violent attacks on mother! No - this is contrary to the public interest"</u> <u>offence:</u> used revoked credit card; assault on mother <u>sentence:</u> 12 months probation</p>	<p>public interest - J</p>
<p><u>ID#70 - Crown - general reference to general deterrence</u> Judge: "Crown wants me to put you in Metro West which is overcrowded and full of y.o.'s with long records. Your lawyers says the agony of you having to come to court 4/5 times over the course of a year is enough to convince you..." "Do I take a chance on X and go with a positive PDR?..." "I think I'll take a chance but there'll still be some payback - I don't want those on the streets of Scarborough to think that the courts don't care re: <u>store owners (general det)</u>. But - I will consider factors that you weren't the main player & the agony that you have gone through where you were told last fall that Crown was seeking 6-8 months S/C & I think what you've achieved this past year has been motivated by this change. Your attendance at school was good. You are now an adult. If your conditions are breached you'll be in adult court and that's a different ball game. Community service is a payback to society to show you're remorseful and an alternative to incarceration. I hope you live with those terms and that we don't see you back here because if we do then you'll be one of the consequences" <u>offence:</u> robbery <u>sentence:</u> 100 hours CSO</p>		<p>general deterrence - C, J</p>

<p>ID# 77 - Judge: - <u>general reference to young person's need to be held responsible for their behaviour; can protect society through rehabilitation</u> offence: theft under; FTC with bail (breached curfew) FTA sentence: (35 days PTD); 18 months probation; 40 hours CSO</p>		<p>y.p.'s need to be held responsible for their behaviour -J public protection -J rehabilitation - J</p>
<p>ID#79 - Crown - "y.o. demonstrated no remorse at time of arrest - fail to appear for initial interview. probation officer said he had difficulty in O/C & his response to S/C was more favourable" <u>"general deterrence is important"</u> Defense - "he's had a taste of the justice system and has stayed out of trouble for over a year now - this is an indication that he's been <u>rehabilitated & general deterrence is a minor principle in this case - the governing principles are specific deterrence and rehabilitation as held in case law (judge said that these are the most important principles)</u> Judge: "you demanded money from a teller and said 'or I'll shoot you'. <u>General deterrence is a principle that must be considered but it's not the most important....</u>" "he's an atypical offender that is seen before the court. The problem of that though is that he's said to be a good, friendly, happy person, however he has accumulated a significant criminal record. I must also take into consideration the date of this offence - 2 factors to consider: (1) the interim time - just because apprehended later doesn't mean they don't suffer the consequences. PDR page 4 says he stopped attending school (despite probation order to attend school) pg.5 PDR says he's been tardy following C.S. orders. Pg6 he failed to attend initial interview - <u>this all indicates a concern with rehabilitation. He has entered a guilty plea and has straightened out other aspects of his life. O/C won't serve general or specific deterrence so need S/C....</u>" <u>offence:</u> robbery <u>sentence:</u> 16 days S/C; 1 year probation</p>	<p>ID#79 - Defense - "<u>s-24 of the YOA says jail as a last resort and use the least restrictive measures</u>"</p>	<p>general deterrence - C+, D-, J rehabilitation - D+, J specific deterrence - D+, J least restrictive measures- D+</p>
<p>ID# 82 Crown - <u>general reference made to specific deterrence and general deterrence</u> <u>offence:</u> weapons dangerous; threaten bodily harm <u>sentence:</u> 8 months probation</p>		<p>general deterrence - C specific deterrence - C</p>
		<p>general principles of sentencing - C, D public policy - C general YOA principles - D+</p>

	<p>ID#89 - Crown - "as a matter of law he's responsible -and the fact that other courts didn't attribute restitution (to the co-accuseds) doesn't mean that the victim should be out \$2000</p> <p>-it's no consolation to the victim that there should be no restitution - <u>different principles of sentencing should apply to restitution - he has benefitted equally as others</u>"</p> <p>Defense: "he did not benefit equally as others - <u>consistency of sentencing should be maintained</u> - we have a letter of apology to the victim - my client shouldn't be treated differently when those who got the proceeds didn't have to make restitution"</p> <p>Crown: "if he's a party to the offence - he's a party to the loss - if he's a party to the loss then he should have to pay. <u>It would be contrary to public policy for the Crown to abide by some arrangement made by a bunch of criminals</u>." He shouldn't be able to get away with not having to make restitution just because the others didn't have to"</p> <p>Defense: <u>this is a young offender court - he's a young offender not a criminal - that's what the YOA says - we have to show the young offender that their case is dealt with on principles and there must be a principle of consistency</u>"</p> <p>Crown: "this is a restitution issue - <u>not a sentencing issue</u>"</p> <p>offence: break & enter; theft under</p> <p>sentence: 12 months probation; 100 hours CSO</p>	
<p>ID#91 - Judge: general reference by judge to <u>specific and general deterrence</u></p> <p>offence: threatening</p> <p>sentence: conditional discharge - 12 months probation, restitution \$150</p>		<p>general deterrence - J</p> <p>specific deterrence - J</p>
<p>ID#92 - Judge - general reference to <u>general & specific deterrence</u></p> <p>Judge: "Young men don't have the right to carry weapons and wound, harm and possibly kill others. He doesn't express any remorse, takes no responsibility by blaming it on his friend for giving him the knife"</p> <p>offence: carry concealed weapon</p> <p>sentence: 12 months probation, 40 hours CSO with conditions - one of which is to write a 4 page essay which judge itemizes:</p> <p>judge " 4 page essay must be delivered in 15 days:</p> <p>1 page - respect for rights & integrity of others - must realize that no one is to be threatened by others as you are not to be</p> <p>2nd page - dangerousness of gang activity and why it should not be tolerated - have to take this seriously - will not accept it otherwise - if you were attacked by a gang you wouldn't like it</p> <p>3rd page - racial tolerance</p> <p>4th page - my responsibility as a citizen to my fellow citizens</p> <p>"The purpose of this is not to punish you, it's to get you to think about your actions. You're lucky your lawyer kept you out of jail"</p>		<p>general deterrence - J</p> <p>specific deterrence - J</p>

Appendix E - Detailed information on references to S. 24 of the YOA for cases that were considered for custody

ID#	Reference to s.24(1) of the YOA?	PDR in case?	Informat. from PDR presented in court hearing?	Refer to s.24(1) in PDR?	Comments:
cases that received custody:					
1	no	yes	no	no	
2	no	waived	—	—	
6	no	waived	—	—	
14	no	no	—	—	
16	no	yes	yes	no	
17	no	yes	yes	no	defense—"give him 4 months O/C—that's the going rate on a plea"
19	?	yes	yes	no	defense—"consider principles of the YOA - consider extended period of probation if you're concerned with specific deterrence"
20	?	no	—	—	defense - "consider absolute discharge because there is no criminal record"
22	yes	yes	yes	no	defense" any sentencing principles can be met by the maximum hours of community service"
32	no	yes	no	do not have PDR	
33	no	yes	yes	no	
35	no	yes	no	do not have PDR	
36	no	yes	no	no	
39	?	yes	no	no	defense - "has supportive family and resources in the community -letters from different agencies ... I want s/c to send a message of deterrence and o/c to rehabilitate"
40	no	yes	yes	no	
41	no	yes	no	no	
46	no	no	—	—	
47	no	no	—	—	
54	no	no	—	—	
64	no	waived	—	—	
78	no	waived	—	—	
79	yes-explicit	yes	yes	do not have PDR	defense—"s.24 of the YOA says jail should be used as a last resort....should use least restrictive measures"
83	no	yes	no	no	
cases that did not receive custody with a PDR:					
51	no	yes	yes	no	recommend was for custody
77	?	yes	yes	no	recommend was for community disposition judge—"the most compelling factor in this case is your 3 guilty pleas..by recognizing that you've committed a criminal act, you've taken responsibility...I also consider as a mitigating factor, your supportive family; this is a very significant factor as many youths don't have this support"

Appendix F - Detailed analysis on Pre-disposition Reports

TD#	sex (age) (prec) Previous conviction (dispositi ons)	(1) Present charges (2) Previous conviction (dispositi ons)	Sources of Info	Categories & Comments	Overall & Recommendation	Sentence	info? un-court
003	15 m (16)	Peace Officer - Assault (2) - 1 assault	personal interview y o p-1 victim report from custody facility	Young person's info age, d o b address etc present offence & status in custody @ X victim interview staff person @ gp home previous record (see previous column) family & home situation family structure: immediate family and occupation(s) marital family history parents are separated due to religious differences father hoping to reconcile parental response and degree of control: father he's beyond control disregards house rules (Y neg) involved in criminal lifestyle the young person education suspended leisure activities volunteering services - likes to music and plays video games in spare time (Y pos) many friends are older & have had conflict with the law - use not regularly (Y-A) response to offence disagreement on facts regrets actions response to decision positive no behavioural issues attends school regularly and participates in rec. activities (Y pos)	overall ambitious father: says he's out of control (Y neg) y-o recognizes his need for anger management & counselling positive in detention negatively influenced lacks internal and external controls (Y-A) recommendation custody - he needs support & structure	- 12 months probation conditions: report 1/week attend v-o reconcil different by parents vs siblings has anger mgmt probs	- "real father" not in he picture y-o says he's treated differently by parents vs siblings has anger mgmt probs
						- 20 days s/c	

(1) probation recommendation - judge 'mostly agrees'
(2) Y positive - 2 references, Y negative - 2 references, Youth-Adult - 2 references

ID #	Sex	Age (Perceptual age)	(1) Present charge(s) (2) Previous conviction(s) (disposition)	Sources of Info	Categories & Comments	Overall & Recommendation	Sentence	in-court info?
016	M	17 (18+)	<p>(1) possession cocaine</p> <p>(2) -assaultx2 -theft under -FTC recognizance (24 m probation 60 hrs CSO) -trafficking in a narcotic -FTC-dispos -FTA-court (23 days time served & 4 m O/C, 18 m probation, 1 m O/C) -unlawfully at large (5 days S/C) -poss narc (7 days O/C) (latest)</p>	<p>-youth -mother of youth -phase I probation officer -C.P.I.C. - (attempts made to contact arresting officer were unsuccessful)</p>	<p><u>particulars of offence</u> - court record <u>victim comments</u> - n/a <u>C.P.I.C. information</u> - previous convictions and sentences <u>family & personal history</u> -brief marriage bet'n parents -father- physically abusive towards mother -father - little contact with youth -youth: lives in housing complex -home -good - absent of abuse, drugs or alcohol -youth: mom was always there for me mom:youth is disrespectful, non-compliant and physically assaultive (she has never charged him) mom: enrolled him in "martial arts, big brothers & boy scouts" (Ypos) -poor school attendance; has A.D.D. -youth was "recruited" by "older" drug dealers (Y-A) <u>education</u>: -last grade completed - 9 -school record - "chronically truant" (Yneg) mother: stopped school at age 12 employment-employed once as a general labourer - left to return to school(A) <u>prev / present community options</u>: prob officer (ph I) said response to probation supervision - poor - but he is a "nice kid with lots of positive qualities" (Ypos) -other Ph I prob officer: did well in open custody -no CAS involvement <u>character, behaviour, attitude</u> -polite at interview -mother: fed up with son and legal troubles -used to be supportive - now has a 'zero tolerance' stance on this -mom: tough love has made him improve over last 2 months <u>future plans</u>: -wants to complete gr 12 diploma -learn a trade - computer repairs</p>	<p><u>overall</u>: -18 years old @ time of sentencing -raised in a single parent home -home environment appears to be healthy - no substance abuse or abuse -no contact w/ biological father -absence of male role models mother: says non-compliance with house rules began early -mother: youth is easily influenced - negative older peer group is primarily responsible for his behaviour (Y-A) -youth wasn't entirely co-operative in preparation of this report <u>recommendation</u>: should the court deem community supervision an appropriate sanction - the above noted areas of concern need to be addressed</p>	30 days S/C	<p>-has moustache and beard -youth is also a parent of a daughter -before sentencing youth states: "I'm trying to change for myself and daughter" -wants to be a good role model judge: this is 3rd narcotics charge O/C inappropriate - he is too old for a group home</p>

(1) probation recommendation - judge does 'not agree' (2) Ypositive references - 2, Ynegative references - 1, Youth-Adult references - 2, Adult references - 1

I D #	s e x	Age (Percent- age)	(1) Present charge(s) (2) Previous conviction(s) (disposition)	Sources of Info	Categories & Comments	Overall & Recommendation	Sentence	in-court info?
22	f	14 (15)	(1) -theft under -trafficking -narcotic (2) assault with a weapon (12 m probation & 80 hrs.CSO)	-youth - p.l. -parents - p.l. -program co- ordinator of Central To Yth Services -principal of high school -probation records	<u>family background:</u> -family constellation & occupations -family history: mother left school at 17 and worked f/t at current employer for last 28 years -Married & had child with 1 st husband who died -Married current partner - youth's father <u>the young offender -</u> <u>personality, character,</u> <u>development</u> -mother: no difficulties with pregnancy and delivery of youth - and youth met all 'milestones' at an appropriate rate -normal childhood for youth - except night terrors & difficulty w babysitter -defiance: used to be very minor - not picking up after herself -later: more serious - talk back to parents, did not complete school assignments; spent too much time on phone & with friends - whom are older -youth presents as older than thirteen & engages in activities more appropriate to older youth - ie. all night parties but mother says: she was like that too and so was youth's older sister - looked and acted older than age -Mr. X - says youth manipulates her mother - he has history of alcohol abuse and has had treatment -parents have lost trust in daughter: drug/alcohol use, poor school attendance, money missing - home - slow in mornings - late for school -also youth has lost motivation to go to Sex Cadets - usually eager to attend -youth: decent rel'ship w mom & dad -misses her sister - who she confided in - sister recently married <u>Agency involvement</u> -went to a psychiatrist - unfruitful -peer support grp for youth at risk run by CITS	<u>categories/comments conf'd-</u> - "hooked into her peer grp and culture and lacks reinforcement from home" <u>Response to offences:</u> -steals -but has stopped since 1 st arrest - since doesn't want conflict w/ law -not "moral reasons" -admits smoking mj - didn't realize consequences of offending when 1 st caught - now doesn't do this - wants no trouble w/ law -smokes 2 joints daily - doesn't believe she has a drug problem; experimentally uses crystal meth, ecstasy, acid and codeine; goes to all night 'rave' parties; also panhandles or squeezes for extra money to attend raves; -parents don't like her going - but do not prevent her <u>Education:</u> gr 8 :principal: expected her to be a problem student - but -did not occur -she is bright, above-average intelligence -no learning dis's rel'ships with peers teachers -positive: respectful and polite -but staff are aware of her "other life outside of school" :-grades/ attendance- poor -parents need to support more <u>Overall</u> -youth admits to far more criminal activity than record shows -didn't understand legal consequences before - but now does -other issues she needs to address: drug problem, truancy, defiance in home, lack of effective communication w/ parents <u>recommendation:</u> -due to seriousness of offence - O/C -since she was previously on probation and did not respond well - therefore probation alone won't impress upon youth how serious crim activity is - spec. this yth was trafficking in school -parents: youth requires <u>very strict</u> <u>conditions</u> in order to curb risky behaviours parents - she should get O/C and probation with conditions: to attend school curfew (10pm-7 am) - unless parental permission and counselling; parents would participate	23 days O/C 12 months probation conditions: -no possession of drugs -attend counselling	a lot of reference to goals of sentencing: C-general deterrence - society must be afforded protection- and g.d. cannot be served by probation); "I realize that you're a very young girl - but what you did was a very bad thing" "you're lacking some serious moral sense" "going to raves is extremely serious" "today you stop your drug problem"

ID #	sex	Age (Perceptual age)	(1) Present charge(s) (2) Previous conviction(s) (disposition)	Sources of Info	Categories & Comments (2 PDR's - one updated - and attached is the old one)	Overall & Recommendation	Sentence	in-court info?
83	m	17 (18)	(1) robbery FTC - recognizanc e (2) assault X2 theft under (18 m probation) obstruct police officer (12 m probation; 25 hrs CSO) FTA court FTC probation (12 m probation; 75 hrs CSO) (recent)	-youth in custody -mother -aunt -guidance counsellor -correctional officer -Metro West -probation officer (ph 1) -probation records -arresting officer -victims	<u>victim comments</u> -members of community are fearful & have curtailed normal activities <u>history since feb 17, 1995</u> <u>family history:</u> -resides with mother -youth was as a result of a rape when mother was 18 yrs old at a drug party she was attending; therefore no contact w/ biological father <u>home & environment</u> -mother was evicted from home of 3 yrs. Due to illegal act by friend of youth - now mother is housed in motel w/ her 3 children -mother is on 'Mother's allowance and is waiting for Ont. Housing -stepfather - is in Jamaica - he has contact by phone; was deported to Jamaica for drug trafficking-but youth was not exposed to this <u>parental influence & degree of control</u> -mother is supportive -youth gets along with stepfather -co-operative at home for most part mother" "not a bad kid" -has a curfew - calls if he is out later mostly obeys house rules <u>the young person- education</u> -lists subjects & marks) -before-distracted other students -poor attendance offender states he has stopped going to school sometimes to avoid certain students/teachers - has difficulty w/ authority figures -in alternative learning program -suspended twice - although now-described as bright and does well in Math -teachers: "he is wasting his talent" worked p/t as stock clerk and cleaner	<u>categories/comments cont'd -</u> <u>Leisure activities:</u> <u>before</u> - no motivation - watches TV <u>now</u> -recreationally -offender enjoys playing keyboard, watches sports, read, play cards, ride bike -states he drinks alcohol on occasion - admits using mj but not cocaine -has no financial debts -has asthma <u>overall</u> -has not responded well to community supervision in the past -hasn't complied with probation conditions -offender tells writer that in custody -he gets along quite well-and follows the program" re: present offence - was co- operative w/ police -regrets involvement w/ law and accepts responsibility for his actions -admits that he has some older friends who may have influenced him in the sense that they have material goods that he does not have <u>recommendation:</u> probation supervision does not meet the needs of the offender at the present time	30 days O/C (in addition to 54 days PTD) probation- -not in possession of non-med drugs -no keeping company w/ victims reside with.. report to prob officer as rew'd boundary no pager counselling compensation to victim- \$100 - within 12 months	-mother - has been in court on every occasion even though difficult for her to come -family has been expelled out of public housing youth statement: "I made a mistake - do what I have to do to get it over with - don't want to come back to court and wear handcuffs anymore" j: you're mom has enough to deal with - not a good role model for 2 younger sisters

ID #	sex	Age (Perceptual age)	(1) Present charge(s) (2) Previous conviction(s) (disposition)	Sources of Info	Categories & Comments *old PDR - written re. b&c charges	Overall & Recommendation	Sentence	in-court info?
51	m	16 (17)	(1) possession under (2) b & e X 6 and theft over	-youth -mother of youth -social worker at detention centre -counsellor at detention centre -principal at detention centre -vice-principal at business & technical institute -vice-principal of secondary school -victims X4 -police report	<u>victims comments</u> #1 - items stolen reimbursed - insurance - but no compensation for trauma suffered - no longer feels safe in home #2 - stolen articles not recovered but insurance did reimburse -victim & family afraid - can't sleep at night - have installed iron bars on windows and security system #3 - most items were recovered by police & the rest reimbursed -victim & family feel violated & angry at loss of items of #4 - damage to Dodge Caravan which was stolen - tool box in van was not recovered - victim wanted compensation for this of \$300 <u>family background & home situation:</u> -mother is not employed outside of the home; has a younger sister -youth's mother never married his father - natural father left before youth was born -natural father was an alcoholic and was abusive towards mother -mother had a c-1 rel'ship for two years with a man - who youth developed bond - but they separated over 13 years ago -this man re-married and abandoned the youth <u>parental influence & degree of control</u> -mother says youth always struggles with authority -age 6 - described by teachers as disruptive & "out-of-control" -youth & his sister were placed in CAS care for four months <u>character, behaviour & attitude</u> -mother: yth was born a healthy baby - reached developmental milestones relatively early -yth had counselling when young - at the time he was told that step-father wasn't his real father.	<u>categories/comments cont'd</u> -youth: criminal behaviour is due to his frustration with mother's limited financial resources - wanted things -yth knows crimes inappropriate - but doesn't appreciate seriousness -yth doesn't want open custody -yth is finished with crime - wants to change schools get a p/t job -mother - wants curfew -mother: feels that lengthy custody would have a negative effect -some positive school & agency inv. <u>overall:</u> -youth accepts responsibility and despite expressing remorse - yth had difficulty comprehending the seriousness of the violations - lack of concern for victims -anger management needs to be resolved <u>recommendation:</u> considering youth's extensive criminal involvement and escalating seriousness of offences - recommend custody to impress upon youth that there are consequences for this illegal activity -period of probation following custody would ensure youth is held accountable while being given appropriate resources to function within society <u>with conditions:</u> report to probation officer as required attend anger mgmt counselling attend school regularly/or obtain permanent employment live with mother or other approved adult abide by curfew set by court no obtaining of driver's license during probation	12 months probation and 25 hours community service (joint submission)	mother is trying to get youth a 'father-figure' Dr. behaviour has improved since being in custody youth custody has changed him

ID #	sex	Age (Perceptual age)	(1) Present charge(s) (2) Previous conviction(s) (disposition)	Sources of Info	Categories & Comments	Overall & Recommendation	Sentence	in-court info?
77	m	15 (16)	(1) theft under; FTC with bail; FTA in court (2) no previous charges	-grade 8 report cards -metro police synopsis of offence -court intake document -group home report -interview with youth -interview w/ mother	<u>response to present offences:</u> -youth cannot explain his criminal activity - he had no criminal intentions <u>-re: FTC with curfew - he was at a friend's house and lost track of time</u> -theft under \$5000 charge - saw an open door to school kitchen - picked up scratch cards used in school milk contests!!! -FTA in court - forgot the date - when he realized this - he turned himself in <u>victim interview:</u> no one available <u>family structure:</u> mother - homemaker; step-father works in retail; half-sister & 2 half-brothers in all younger <u>family/medical history:</u> gave birth at 18 to youth in Guyana - was unexpected - biological father died under mysterious circumstances. -no complications with pregnancy -Father's brother was a father figure to youth -he lives in Florida & keeps in touch with youth -dated another man in Guyana - who got along with youth - ended though -met current partner in Guyana - moved to Canada -good ref'ship -no direct family members has been involved with drugs or alcohol <u>parental influence & degree of control:</u> -mother: he's obedient & respectful -doesn't always think before he does things -she & partner do not use physical force to discipline their son - takes away privileges -youth is afraid to get in trouble around her - when she does discipline him - he feels remorseful & sometimes cries -mother: wants to take care of youth rather than having him in detention - also wants a probation order	<u>categories/comments conf'd - education/employment:</u> -grade 9; has a "c" average; late for class -youth: easily bored in class - marks have ranged from B's - E's <u>previous/present agency inv.</u> -has spent the last year in and out of detention -group home report - positive -youth: wants out of detention because he misses family & friends - wants to be w/ mom to do chores -dislikes associating with criminals & wants to be with good friends <u>interview w/ young person:</u> - says he feels remorse for his actions -wants to finish school & get a p/t job - wants to work w/ computers -spare time: friends, watching TV, babysitting younger siblings, repairing TV's, VCR's and cars & family outings <u>overall:</u> -first time offender; 15 years old - offences of theft under; FTC and FTA -youth has spent 59 days in detention as a result of previous outstanding charges and current charges -has a supportive extended family -youth says school is important -wants to avoid conflict with the law <u>recommendation:</u> -community disposition - through a period of probation supervised in the community -and community service so that he may give something back to the community <u>conditions:</u> -report to probation officer -attend school everyday on time as required -reside with parents & obey house rules -curfew 9pm-6am Sunday-Thursday & 11pm-6am Friday & Sat unless parental permission given -attend counselling deemed appropriate	-40 hrs of community service work -18 months probation w/ conditions set out in PDR -35 days pre-trial detention to each count (time served)	-Crown: one of the outstanding charges is robbery - set for trial -judge: "most compelling factor in this case is your 3 guilty pleas" -"by recognizing that you've committed a criminal act - you've taken responsibility - also a mitigating factor is your supportive family - this is a significant advantage - many yths don't have this support" -"you're a 1 st time offender - your acts were crimes of opportunity and done of poor judgement - the other two charges were crimes of disrespect of court orders" principles of sentencing mentioned: -y.p.'s need to be held responsible -can protect society via rehab.

ID #	sex	Age (Perceptual age)	(1) Present charge(s) (2) Previous conviction(s) (disposition)	Sources of Info	Categories & Comments	Overall & Recommendation	Sentence	in-court info?
36	m	15 (18)	(1) Break, enter & commit theft (2) robbery (time served - 1.5 months; open custody - 4.5 months; probation - 18 months)	-review of probation file -meeting w/ mother -telephone interview w/ school -meeting w/ youth	<u>response to present & previous dispositions:</u> (nothing written...) <u>victim interview:</u> victim is his maternal aunt -youth had been living w/ her prior to the offence -had been asked to leave since wasn't following rules of the house -entered home with an extra key - liquor was consumed; CD player & tapes were taken; picture was damaged -most of the loss was recovered by insurance -victim is estranged from youth -he has never apologized - she feels he needs help - but wishes no further involvement <u>interviews with parents and/or extended family:</u> -mother - employed at Toronto hotel -father - in Jamaica -half-brother - younger in school <u>marital history:</u> mother & her 2 children came to Canada in 1994 -youth's father never part of the family - but father of half-brother lived with them on & off in Jamaica <u>home & environment:</u> 2 bedroom apartment in Regent Park area <u>parental influence & degree of control:</u> -no problems w/ youth until last year -not listening - would stay out late and sometimes all night -has a temper - has damaged some of her property at home during arguments -has been in detention & custody due to his offences -mother - not adverse to having him at home - but feels unable to deal with disruptive behaviour <u>education/employment:</u> current school vice-principal: attendance and behaviour unacceptable -did better at his other school -in detention-school is a strength	<u>categories/comment/conf'd agencies:</u> parallel assessment being done by Family Court Clinic -seen recently @ hospital for sick children since mom thought he was doing drugs - tests turned out negative -has epilepsy <u>interview with young person:</u> -sensitive youth whose current situation may be partly explained by medical factors -mother: worried about -peer influences - drinking, health concerns & lack of positive male model in life -epileptic - is on medication -birth & early development were normal - but youth was in a car accident at 9 and suffered serious head injuries <u>young offender:</u> says he really didn't break in since he was in possession of the key -would rather live w/ his aunt -doesn't know how court should deal with him -has some interest in sports - but no elaboration on leisure activities -has done well in custodial detention -has made suicidal gestures w/ medications <u>overall:</u> -15 year old second offender - whose situation is being complicated by health and familial issues <u>recommendation:</u> -since an 18 month probation order w/ strict conditions made in June - perhaps an additional short custodial disposition followed by an expectation that youth will perform community service would cover basis - and make him feel more accountable to the community	-30 days open custody -18 months probation w/ conditions: -report as required -attend an assessment by Family Court Clinic	Crown: not opposed to o/c in light of PDR -broke trust of aunt Defense: suggesting O/C -judge: agree with Crown

ID#	sex	Age (Percent age)	(1) Present charge(s) (2) Previous conviction(s) (disposition)	Sources of Info	Categories & Comments	Overall & Recommendation	Sentence	in-court info?
19	m	16(15)	(1) -possession over X3 -theft over X3 -dangerous operation of a vehicle (2) -theft under (12 months probation; 30 hours CSO) -theft under (12 months probation) (most recent)	-step-mother -youth -probation file w/ -ministry of community & social services	<u>response to present & previous dispositions:</u> -difficulty reporting to probation on last order - youth says this was due to lack of understanding the advice of his lawyer when he was on bail for other charges -when he reported - pleasant & co-operative; completed his CSO-he enjoyed reporting since he was able to talk to someone besides family <u>victim interview</u> - unable to contact - youth admits causing \$200 damage to each vehicle <u>interview w/ parents:</u> step-mother separated from youth's natural father in 1992 - whereabouts of natural mother is unknown - youth saw her 10 years ago last step-mother - has cared for youth since he was 3 -natural father - a care-taker pays support and sees them when possible -step-mother - seeking employment w/ no success -at home with step-mother & youth are her other children: sister - expecting a child (older) brother (older) sister (older) brother (younger) -neither parent suffers from substance abuse / neither has a criminal record <u>parental influence & degree of control:</u> -youth good relationship w/ both parents & father's new partner -although - youth used to leave his bedroom at night by a rope ladder step-mother - says youth has assumed responsibility for these offences to protect the 'ring-leader' who is reported to be in a Mexican jail -youth - says he was responsible -youth-for a period of time he was 'angry with everyone' and admitted he was being a little brat	<u>categories/comments</u> <u>conf'd</u> -step-mother wants youth to live w/ her - but yth says he wants to live w/ family friend because of problems he has w/ his older brother <u>education/employment:</u> passed every grade up until 9 w/ average marks -will have to repeat 9; frequently skipped, not employed -step-mother: he has a learning problem - reading <u>previous agency involvement:</u> none except probation <u>interview w/ young person:</u> -attractive & likable young man -when interviewed previously in Metro detention centre - was quite cheerful and optimistic - "it wasn't bad" in the institution -yth enjoys drawing, making crafts & building models -has good health & doesn't use drugs or alcohol - smokes cigarettes -has many friends - some of who have been in trouble w/ the law <u>overall:</u> -youth was on probation when he committed these offences -he was 'angry w/ everything' but is not angry now -has never been a problem at Metro West detention centre -when asked what court will do - youth says he doesn't know - but expects custody -understands the loss he has caused to victims but has no means to make compensation -has been in secure detention for at least 4 months <u>recommendation:</u> -youth has matured over the past few months -would benefit from more probation supervision -if court order custody - recommend that it be short term of open custody which would facilitate his returning to school in the fall	-56 days O/C -12 months probation w/cond: -report to prob officer -attend program related to driving offences -no learning to drive -curfew 11pm-6am (7 days/wk) -after probation - not to obtain a driver's license until course completed -reside at approved address -attend school regularly or seek/maintain employment -don't possess tools for house-breaking	D: -family breakdown issue: <i>likeable young man</i> -minimal priors -5 months s/c - done 'hard time' -18 months is harsh & not in keeping w rehab - consider general & spec deterre judge: what about safety of public? These are most serious / dangerous offences y.p. commit - D: suggest short period of O/C & extend probat if concern with specific deter -he was influenced by an adult who is in jail in Mexico Crown: rehab is important but social denunc- J:-"I'm giving you a chance" "if involved cars again will spend time in jail" -pos rpt from prob officer - says you're matured in custody" -considering served long time in s/c & never served time before" -taken chance on you because you plead guilty to o charges"

I D #	S e x	Age (Per age)	(1) Present charge(s) (2) Previous conviction(s) (disposition)	Sources of Info	Categories & Comments	Overall & Recommendation	Sentence	in-court info?
3 9	m	17 (16)	(1) -robbery X4 -fail to comply -dangerous driving -weapons dangerous (2) -setting fire to other substance -mischievous property (15 months probation) -assault w/ a weapon (30 days O/C + 12 months probation + 75 hours CSO) -theft over -fail to comply w/ probation (10 days S/C + 12 months probation) -most recent	-youth -youth's mother -youth's father -family friend -family friend -family friend -counsellor (A.R.C.) -counsellor (Central Toronto Youth Services) -youth's therapist Jewish family & child service) -phase I probation officer- COMSOC -COMSOC records -Corrections records -Police synopsis -victim's statements	particulars of offence - youth rejects some details in police synopsis - but prepared to assume responsibility -wants court to know he knows right from wrong; feels remorse -states another co-accused (he won't identify) instrumental in the robbery (who wasn't caught) & one of the co-accused's caught - was wrongly attributed with the actions of this other person -says robberies weren't planned & then changed this - says they were -understands how this affected lives of his family - but not victims victim's comments - all adolescents - more fearful than previously - didn't want their names in report for fear of retaliation -3 of 4 victims hoped offender would be enrolled as part of his sentence in a rehabilitative program to prevent further victimization family & personal history - parents had an 'awful marriage' -mother - met husband @ 24- trying to escape from her 'domineering' father -Mr. X was older and stable - had a job as salesman at furniture mfg co. - she worked as secretary - were able to establish an affluent lifestyle in Forest Hill area of Toronto -marriage broke down - father - verbally abusive & demanding -mother - primary parent - but father continued statements of denigration to her and the children -age 3 offender started acting out due to conflict in the home -father ridiculed son (re: something he has talent in - athletics) -age 10 - father left and took up with his current girlfriend - still paid support and tried to control - -at same time as father left - family therapist left practice - theme of abandonment in youth's life -mother had relationship with another man w/ kids who also took off -youth found 'pseudo-family' thru other kids who were macho, defiant and anti- social -parents sent him to private schools in U.S. - where he was introduced to gang culture of Harlem & US cities -moved back to Toronto with a new personna - hip-hop music; street liaisons; speaks w/ accent - black urban street gang -he is a follower - not a leader - -mother: committed to son - will support him -has daughter - going to university education: did well in sports but his behaviour was a concern @ Forest Hill public school -sent off to Private Academy in Georgia - academic setting for kids w/ behavioural problems - then a 6 week wilderness program in Idaho -went to the school in Maine - boarding school w/ therapy -returned & started Alt school - behaviour & academic record improved - then went down again when he entered mainstream school -is 2 years behind peers in school - wants to go to university	(categories & comments - cont'd.) employment - worked p/t odd jobs & for his father's furniture company -has had money he needs - mother unsure why he robbed when he has never lacked for things therapeutic perspective - has now been seeing Dr. X - who says youth is bright, free of mental illness 7 "outrageously omnipotent" in attitude and presentation. -also seeing a therapist from Jewish child & family services Correctional Supervision: COMSOC report - made acceptable progress; 'moderate' ranking on the risk assessment scale Corrections - reporting has been acceptable - but he gives priority to his social engagements and is late -has only completed a small portion of his CSO at a daycare (which was positive when he went) -but relatively compliant w/ other conditions Previous/present community options/alternatives (not filled out) Character, behaviour & attitude - somewhat abrasive & anti-authoritarian - but likeable & good potential for future pro-social endeav's -mother: reasons for disruptive behaviour is due to early family life & abandonment by father, school authorities and therapists. -she remains supportive - & has seen some improvement father: describes son as "the weakest young man I have ever met" - believes his behaviour is a result of psychiatric difficulties -family friends: he's bright; a good person; but is striving to establish meaningful relationships & is mimicking father's behaviour; & is scarred by father's abandonment future plans - university assessment - 17 years old; has pleaded guilty; currently in Metro West detention centre -has problems of impulsivity that impede him from making clear evaluations of his actions & consequences -parents have spared no expense in the past for therapy, private schools etc. but youth has not made these changes -probation officer: "the many ways the offender presents the world with a false self, a caricature of gang life, all puffery & facade. This is suggestive of poor self esteem and underlying vulnerability". Recommendation -therapeutic efforts -but if custody (open or secure) is seen as necessary - then Central Toronto Yth's should be involved with offender -community supervision does not appear to be successful in deterring youth's behaviour -if probation is appropriate for sentence - treatment, education and a restriction on associates should be included as conditions	30 days S/C + 6 months O/C + 18 months probation on w/ conditions: -not in possession of weapons -reside where prob officer specifies -report once/ week -obtain counsel ling from CTYS	-most of the offences occurred in one day judge: "not a serious record" -role of offender - less than others - he didn't brandish the knife Crown: one of the victims is in court watching to see what happens mother: (to judge) our whole family wanted to be here today incl sister defense: gives case plan for accused - letters from people who will support - wants S/C for 'general deterrence' and a short sharp shock + longer O/C for 'rehabilitation' -custody is toxic for youth - he is impressionable. Crown: wants one year in total - leaves S/C O/C split to judge -youth: I'm sorry for what I did - I apologize to victim's mom - won't do it again mother: I'm not going to give up - even father is now committed - needs to be integrated into community... (very articulate!) judge: -has a need to act 'macho' & identify w/ criminal groups -imitating father -prior rec - not that lengthy given family probs -has a lot going for him -I want long term S/C - but this is the last chance for rehabilitation -victims say they are afraid to go out -in one year you'll be out of the youth system and on your own

ID #	sex	Age (Perceptual age)	(1) Present charge(s) (2) Previous conviction(s) (disposition)	Sources of Info	Categories & Comments	Overall & Recommendation	Sentence	in-court info?
40	m	16 (17)	<p>(1) escape lawful custody X2</p> <p>(2) -theft under (8 months probation + 30 hrs CSO)</p> <p>-theft under (fine \$74.95)</p> <p>-possession of stolen property</p> <p>-FTA (12 mths probation on each charge)</p> <p>-B & E; theft over; - fail to stop: Poss under (90 days S/C + 4 months O/C + 18 mths probation cct)</p> <p>-B & E & commit (90 days O/C)</p> <p>-escape O/C - recaptured</p> <p>-theft over</p> <p>-possession under</p> <p>-fail to stop (6 months O/C)</p> <p>-escape O/C recaptured (most recent)</p>	<p>-youth</p> <p>-youth's mother</p> <p>-youth's father</p> <p>-former probation officer (COMSOC)</p> <p>-records from Correctional services</p>	<p><u>victim's comments</u> (in police synopsis)</p> <p><u>family & home situation</u> - mother-employed; father-employed, younger sister</p> <p>- student</p> <p>-family are willing to have offender return home - hoping that his <i>level of maturity & impulse control</i> would have increased by that time</p> <p><u>family background</u>: married since 1981 - 2 kids - four bedroom house</p> <p>-offender upbringing was normal-but due to hyperactivity had difficulties socializing w/ other children</p> <p>-<i>during elementary school participated in Beavers & Cubs and Cadets; played baseball for 6 years</i></p> <p>-mother: never been violent at home, school or community</p> <p>mother: O/C not restrictive enough - because he is impulsive - will escape</p> <p>-needs a strict program to motivate him</p> <p>-offender is a follower; lacks self-confidence</p> <p>-mother wants him to go to school t/t or get employment</p> <p>father: son would be a good candidate for 'boot camp' -because he is non-violent but needs regimentation</p> <p>father: has a disregard for authority; an active liar; father feels no influence over son -has not visited him since he was incarcerated. Youth lacks respect</p> <p>-has A.D.D. & was put on Ritalin at age 7 - but taken off it when he was found giving them to friends</p> <p>-no other evidence of drug/alc abuse</p> <p>-youth - expresses remorse</p> <p><u>education</u> - probs began in kindergarten - concentration was poor - low achievement</p> <p>-disruptive in class in high school - refused to attend classes</p>	<p><u>categories/comments conf'd.</u></p> <p><u>clinical history</u> - active. Family participated in families first program. Intervention involved a case wkr attending family home 3x/week</p> <p>-therapy</p> <p>-CAS - foster care @ request of parents</p> <p><u>employment</u> - operates a newspaper route for the last 2 years - 74 customers</p> <p>-stock boy at department store earning \$6.40/hr - but fired due to absenteeism</p> <p><u>previous/present community options</u></p> <p>-phase I probation officer: youth unable to function normally outside of a non-structured setting</p> <p>-poor candidate for community dsp.</p> <p>-if O/C - he will likely 'bolt' again</p> <p>-advises a Youth camp setting</p> <p><u>open custody behaviour</u> - positive -until incident occurred</p> <p><u>institutional behaviour</u> - satisfactory</p> <p><u>character, behaviour & attitude</u> - youth: were 3 reasons he left O/C:</p> <p>(1) he wasn't allowed to participate in programs his first week there</p> <p>(2) the house was dirty</p> <p>(3) he had difficulty making friends</p> <p><u>future plans</u> - finish school; move in w/ parents; attend counselling & get a p/t job</p> <p><u>overall</u></p> <p>age 16, repeat offender; shows remorse</p> <p>-admits lying, stealing & being disrespectful towards his parents are areas he needs to work on</p> <p>-family is caring & has tried to get counselling & intervention for him</p> <p><u>recommendation</u></p> <p>-if a period of community supervision is seen as appropriate - probation conditions should address regular school attendance: non-association w/ those w/ a criminal record; and counselling as directed</p>	<p>1 day S/C (noting he had been in pre-trial detention for 38 days)</p> <p>-and still has 8 months of open custody to serve</p>	<p>defense - s/c may be risky - may pick up worse traits</p> <p>judge: you still have 8 months o/c - will you run away again?</p>

ID #	sex	Age (Percent age)	(1) Present charge(s) (2) Previous conviction(s) (disposition)	Sources of Info	Categories & Comments	Overall & Recommendation	Sentence	in-court info?
17	m	16 (14)	(1) trafficking cocaine -possession for the purposes of trafficking -possession of proceeds (2) (no prior record)	-interview w/ youth -interview w/ mother -interview w/ father -phone call to school	<u>victim interview</u> n/a <u>marital history</u> - mother came to Canada in 1985 -father is in Canada - but they have never lived together as a family unit -father - has no role in youth's life; no contact for over a year - currently court proceedings for child support payments <u>home environment</u> - home atmosphere is congenial - they communicate well <u>parental influences & degree of control</u> - mother: he's never been a problem; surprised by the charges -mother is unemployed currently & looking for work - furthering her computer education in the past year <u>young offender</u> - bright, serious youth - felt life was smooth until wrongfully charged & convicted of this offence -mother: <i>he's a good kid who needs to learn responsibility he being given more</i> -mother acknowledges that he is a bit 'spoiled' as she tried to give him the best as a single parent -was involved in organized sports until recently and is still involved @ school -mother is concerned about some of the company her son keeps <u>offence</u> - mother feels son was in wrong place @ wrong time - both feel this was <u>entrapment</u> <u>education/employment</u> - just completed grade 10 - school is no problem - wants a career in business -vic-principal agrees - getting all his credits; attendance has been good; and behaviour not a problem - although it was noted he has a bit of an 'attitude'	-16 year old first offender - who continues to deny involvement in the offence <u>recommendation</u> - probation order containing fairly strict conditions - alleviate some of mother's concerns & make him accountable to the community	2 months secure custody + 12 months probation w/ conditions: -report every 2 weeks -reside where directed -obey written rules of the house -attend school during term of probation	(looks young) -doing well in school & sports D: father has little contact; contributing factor-mother doing best she can D: scantily written PDR "give him 4 months O/C - the going rate on a plea" -has never been in S/C - give him O/C first; mom is well-spoken educated woman -peer pressure overwhelmed him -kids of that age -he was testing the system Crown - agrees PDR not helpful -seems to be in denial- re-comm 8 months 4 S/c + 4 O/C - specific deterrence J: "you are 16; no record; mom is on PTA at school - can decide to say 'no' - have free choice to withdraw - you're an amateur at this-good-convince me you're not in the habit - order of disposition is there to help you say 'no' to crime - not an order to punish you - you're not alone; mom is w/ you"

I D #	s e x	Age (Percep tual age)	(1) Present charge(s) (2) Previous conviction(s) (disposition)	Sources of Info	Categories & Comments	Overall & Recommendation	Sentence	in-court info?
1	m	16 (17)	(1) -possession over (stolen vehicle) (2) -assault w/ weapon (6 months probation) -theft over (12 months probation) -assault (12 months probation)	-youth -personal interview w/ vice-principal of high school -case summary notes of youth at CAS (1981- 1994) -case file - probation & community services 1994- 1997 -case conference notes - St. John's school	<u>victim interview</u> : this was the 3 rd time their vehicle had been stolen from in front of their home -forgot to install 'the club' that night -doesn't have to pay the deductible - but insurance rates will go up -no longer feels safe in the community- feels that someone had to be watching to know 'the club' not in the car that night -re: sentence - unsure but says "deterrent must be greater than temptation" <u>family background</u> : father - minimal contact resides - Tor mother - collects family benefits half sister - resides in other town sister - older elsewhere w/ 2 children sister - older - resides w/ mother uem youth - resides w/ mother - student <u>family history</u> : attempts at contacting mother and father - unsuccessful -youth states: mother born on Indian reserve - father is German -parents split up when youth was 2 - father has another son w/ current -kids were raised primarily by mother on social assistance (father has given little financial support) <u>agency involvement</u> - CAS says family has had longstanding involvement before youth's birth - due to chronic problems of domestic violence, alcoholism & instability -kids were not abused but they witnessed serious physical abuse to their mother - children were thought to be neglected -youth began to be aggressive w/ siblings & other children -referred to Earls Court - began to demonstrate leadership skills -rel'ship bet'n instability of mother's mental health & childhood problems - when mother fell into crisis - all 3 children were suspended from school simultaneously	<u>categories/comments conf'd</u> <u>the young offender - personality & development</u> - bright & personable. Describes rel'ship w/ mother in positive terms - protective of his mother -resents fathers abuse and neglect - and upset since father is making a greater effort to parent his new son w/ current partner -he is interested in pursuing his native heritage & spirituality -has done well on probation - he is a very "thoughtful & insightful youth w/ a keen awareness of the limitations that his life in relative poverty have brought" -responding well to structure of program @ St. John's school - sister visited - minimal contact from mom <u>education</u> : behavioural problems at school - lack of participation by mother in interventions - obstacle for him to get appropriate programming -absenteeism - vice-principal was aware of youth's aggression but found him to be intelligent & likeable -v.p. doesn't think youth should return to this highschool - he has a bad reputation there - needs a fresh start <u>overall</u> -before the courts for the 4 th time -product of chaotic upbringing - acting out is response to lack of structure and supervision during his upbringing - is intelligent & insightful <u>recommendation</u> : -community supervision alone won't deter the youth -open custody of 4 months - appropriate	2 weeks O/C consecutive to other sentence	-Crown: was in O/C previously for 3 months - this is his 2 nd stolen vehicle - was on bail @ the time - has served 91 days S/C - should do more than this now -Defense: mother wants him to serve O/C up North in a native facility - still will be on probation until 18 years old Judge: has served 91 days - sentence 2 weeks O/C consecutive

ID#	Sex	Age (Perceptual age)	(1) Present charge(s) (2) Previous conviction(s) (disposition)	Sources of Info	Categories & Comments	Overall & Recommendation	Sentence	in-court info?
41	M	14 (14)	(1) obstruct peace officer (2) -theft under X2 (12 months probation)	-mother -youth -probation file (COMSOC) -worker - at early release bail program -police constable	<p><u>police interview</u>: constable states this youth was known to him - this officer and another followed him into a restaurant - youth & companion went into the washroom - police followed them into washroom & reported that they were smoking heroin -youth flushed it down the toilet -he started crying & calling for his mother - which officer explained was his "usual role" - He pretends to be innocent & can be a convincing actor but officer says he is not innocent</p> <p><u>family circumstances</u>: mother moved to Canada in 1980 - Have kids. Mother is separated from father for last 8 years - father drank too much - now has a close friendship w/ another person -youth has lived back & forth bet'n mother & father</p> <p><u>parental influence & degree of control</u>: well behaved as a young child - at 9 - received calls from school saying he was snuffing glue -CAS became involved - was placed in 3 foster homes - ran away from them all -mother: he doesn't listen - stays out late; all night & sometimes out for days -smokes cocaine in the house - has stolen money from her -feels he is addicted to drugs -he has older peers who have a negative influence on him -fearful that he is involved in gangs -when offences occurred - was living w/ father - father has since moved - he doesn't know where - but when youth was at open detention facility - father did visit on a regular basis</p> <p><u>education</u> - frequently truant - but wants to work w/ computers, math & design technology & realizes he needs an education for this</p>	<p><u>categories/comments/conf'd agency involvement</u>: CAS involvement</p> <p><u>interview with young person</u>: was friendly & talkative. Denies police synopsis that he was smoking heroin - says he doesn't do drugs or alcohol. Minimized the offence. Agrees w/ mother that friends are a negative influence on him -He enjoys going to Canada's Wonderland, lifting weights and playing soccer & basketball w/ his cousins</p> <p><u>overall</u> 14 years old - very serious charge -family members & agencies are concerned w/ his drug use & out of control behaviour -youth minimizes this</p> <p><u>recommendation</u>: -seems to do well in a structured setting & has shown that he can follow house rules -would benefit from a structured setting and needs counselling for drug abuse -if custody is considered - a period of open custody would be recommended followed by a lengthy period of probation</p>	-15 days O/C + probation of 16 months w/ conditions: -report to probation officer as req'd -obtain drug counselling	<p>judge: PDR gives no sense that mother or siblings are involved in his life Defense: mother not prepared to have him home - CAS wkr is looking for a placement for him Defense: he has been in pre-trial detention since June 15th (sentencing hearing date July 16) Defense & Crown - "he's out of control" Defense: release him today w/ an order to reside Crown: 60 days O/C minus pre-trial probation judge: has spent 41 days O/C - will give 15 days + probation of 16 months</p>

Chapter Four – Public Perceptions

Introduction

The preceding chapters reveal that neither the ‘youthfulness’ of offenders, nor their chronological age appear to be independently related to the outcome of bail or sentencing hearings. Instead, the two court observation studies showed that legal factors accounted for much of the decision-making occurring in youth court. Moreover, provisions specific to the *Young Offenders Act* were rarely raised in the court hearings (e.g. the ‘responsible person’ provision in bail hearings, S.3 principles of the *YOA*). These findings lead one to question how the principles that have been written specifically for young persons who come in conflict with the law, come into play in the youth justice process.

The premise for having a separate set of principles for dealing with young people is rooted in the assumption that there are differences in the nature of offending based upon age. Consequently, the *Young Offenders Act* and its predecessor the *Juvenile Delinquents Act*, put forth a different set of standards for youthful offenders. Even the recently proposed replacement for the *Young Offenders Act* has reaffirmed that there should be a separate justice system for youths.¹ However, growing public attention to the problem of crime and particularly to serious youth crime has resulted in a shift in political focus. Rather than childhood being considered a factor which mitigates criminal responsibility, the seriousness of the offence and the risk the offender poses to the community appear to be taking precedence over ‘childhood status’. This kind of approach was illustrated recently by a youth court judge in Florida. In a case of first degree murder involving a 15

¹ Bill C-3 (1999) Section 3(b) 1st Session, 36th Parliament, 46-47-48 Elizabeth II, 1997-98-99, The House of Commons Canada

year old offender, the judge, in passing down an adult life sentence indicated to the youth “I do not perceive you to be a child...(y)our monstrous act made you an adult”.²

Moreover, research has shown that members of the public do not see differences in the seriousness of crimes based upon the age of the offender. For example, a study done quite some time ago (Sellin & Wolfgang 1964) provided a series of brief offence descriptions to subjects in an experiment which sought to understand how the public rated the seriousness of various kinds of offences. Respondents were comprised of university students, police officers, members of the public selected for jury duty and juvenile court judges. In addition to the offence descriptions which included variations in the context of offences (such as the presence or absence of bodily injury, whether property was stolen or damaged, or whether intimidation was present etc.), the authors also randomly assigned information on the age of the hypothetical offender to respondents. In all cases the offender was male. In the first condition no other information was given about the offender, and in the other three conditions, respondents were told he was either 27 years of age, 17 years of age, or 13 years of age. The results showed that age did not affect judgments of the seriousness of the crime. As stated by the authors:

The age of the offender does not particularly color a person's judgment about the seriousness of the offence. A pervasive social agreement about what is serious and what is not appears to emerge, and this agreement transcends simple qualitative concordance; it extends to the estimated numerical degree of seriousness of these offences (Sellin & Wolfgang 1967: 268).

Based upon findings such as these, some researchers have concluded that there need not be a separate justice system for youths since “..the likelihood of crime varies continuously

² “15-year-old sentenced to life” *The Toronto Star* August 21st, 1999

with age, but the meaning of criminal acts does not depend on the age of the offender. Distinctions based upon age are thus arbitrary”(Hirschi & Gottfredson 1993).

The purpose of this chapter is to examine if the public makes distinctions among offenders based upon apparent age and maturity. In light of the court observation findings, it is important to understand how the public responds to the question of age given that court practitioners may feel pressured to reflect public sentiment in making courtroom decisions (Ouimet & Coyle 1991).³ I will examine this question by investigating two related issues; first, since the ‘youthfulness’ of an offender was not independently related to court decisions (as seen in the previous chapters), I will examine how information on the youthfulness of a young offender may affect public preferences. Specifically, if a young offender is constructed to be seen in more ‘youthful’ or more ‘adult-like’ terms, does this affect public responses regarding the characteristics of that offender, and the kind of sentence which is seen to be most appropriate in the case?

Second, the court observation studies also revealed that principles and goals of sentencing that were *specific* to young people in conflict with the law were rarely raised in youth courts. Instead, goals such as general and specific deterrence and issues of public protection were more frequently mentioned in sentencing hearings. Consequently, is there reason to believe that the public differentiates goals of sentencing based upon whether the offender is a youth or adult, or are the purposes of sentencing seen as the same regardless of the age of the offender?

³ Ouimet & Coyle (1991) found that court practitioners’ perceptions of the public’s fear of crime had an impact on their own decisions in less serious kinds of cases.

Research Methods

During the summer of 1997, a public attitudes survey was carried out in Ontario.⁴ This project was a result of a cooperative agreement between Operation Springboard⁵ and the Centre of Criminology at the University of Toronto. The actual survey itself was carried out by Goldfarb and Associates in Toronto, Ontario.

Using a random digit dialing technique, 1006 households across Ontario were successfully contacted and one adult within each household was interviewed. Interviews were carried out in English only. Approximately half (n=500) of the respondents were asked questions which dealt largely with adult crime and the criminal justice system. The remainder (n=506) were asked questions about youth crime and their views regarding the youth justice system. In many cases equivalent questions were asked of respondents in the two groups which allowed for comparisons in reaction to youthful and adult offenders and the separate justice systems.⁶

Section I - Examining the effects of information about young offenders - more 'youthful' vs. more 'adult-like'.

Within the youth justice system there is a recognition that age and maturity are factors which need to be evaluated in determining the most appropriate outcome for a case (Section 3(c) *YOA*). While court practitioners may be trying to interpret how this section of the legislation should affect court decisions, presumably they may feel compelled to reflect public sentiment in dealing with cases. Thus, there is an interdependency between

⁴ Funding for the project to Operation Springboard was provided by the Trillium Foundation and Bell Canada. The survey itself was carried out at a reduced cost by Goldfarb consultants.

⁵ Operation Springboard is a non-profit community organization which provides correctional services to both adult and young offenders in Toronto and other areas in Southern Ontario.

⁶ Details can be found in Doob A.N., J.B. Sprott, V. Marinos and K. Varma (1998). *An Exploration of Ontario residents' views of crime and the criminal justice system*. Toronto: Centre of Criminology.

the courts and the public (Kaukinen and Colavecchia 1999). For the purposes of this research then, it is important to find out how the public responds to differing constructions of age and maturity among young offenders.

An experiment was conducted within this survey to assess how information about the 'youthful' or 'adult-like' characteristics of a young offender may affect responses of the public to a case. This experiment was only given to those responding to the youth survey (n=506). The question started out by describing the following scenario:

Imagine the following case. A 17 year old male young offender is found guilty of stealing a car and driving it around for a couple of hours before being involved in a minor accident where nobody was hurt.

There were 5 different conditions in this experiment. Each of 5 different randomly assigned groups were given slightly different pieces of information about the young person. The first condition had no extra information. Each of the other descriptions were designed to portray the youth on a continuum from more 'youthful' all the way up to more 'adult-like' descriptions. My hypothesis was that the public would respond more favourably, and therefore, less punitively to the most 'youthful' characterization of the offender. The 5 conditions were as follows and the variations in description have been italicized:

(1) no additional information

(2) He is about 5 feet 10 inches tall, with dark wavy hair, and is seen as being moderately attractive. He was quiet in court and gave no clear explanation for the offence. *Both of his parents were in court with him but they did not say anything at the court hearing.* The probation officer reported to the court that *he attends school regularly; he is doing average work in school,* and generally that people who know him see him as quite an ordinary person.

(3) He is about 5 feet 10 inches tall, with dark wavy hair, and is seen as being moderately attractive. He was quiet in court and gave no clear explanation for the offence. *He came to court alone; his parents were not apparently with him.* The probation officer reported to the court *that he attends school regularly; he is doing average work in school,* and generally that people who know him see him as quite an ordinary person.

(4) He is about 5 feet 10 inches tall, with dark wavy hair, and is seen as being moderately attractive. He was quiet in court and gave no clear explanation for the offence. *He came to court alone; his parents were not apparently with him. He is receiving welfare and is living alone.* The probation officer reported that generally people who know him see him as quite an ordinary person.

(5) He is about 5 feet 10 inches tall, with dark wavy hair *and a moustache,* and is seen as being moderately attractive. He was quiet in court and gave no clear explanation for the offence. *He is no longer in school; he lives by himself, and is working full-time.* The probation officer reported to the court *that he works regularly; his employer has no problems with him,* and that generally people who know him see him as quite an ordinary person.

When asked which type of sanction they thought would be most appropriate for the young offender in their scenario. They were given the following choices:

- a period of time in custody
- a community service order where he had to work for a certain number of hours without pay for the owner of the car or a community agency
- a fine⁷

Results: Sentencing preferences

The hypothesis that respondent's ratings would vary based upon descriptions of the offender along the dimension of age turned out not to be the case. Instead, the most interesting aspect of these results did not relate to differences in ratings based upon 'youthful' or 'adult-like' characterizations. Rather, respondents differed in how they rated this young offender based upon receiving *any* information about him at all (Table 1).

⁷ For the purposes of statistical analysis, the sentencing options of the community service order (CSO) and fine were combined and examined in contrast to a sentence of imprisonment.

Table 1 - Sentencing preferences for case scenario as a function of various descriptions of the youth

description of youth at sentencing hearing:	type of sentence seen as most appropriate:		totals
	prison	cso/fine	
no extra information	22 (21.4%)	81 (78.6%)	103 (100.0%)
parents in court, attends school	12 (12.4%)	85 (87.6%)	97 (100.0%)
no parents in court, attends school	17 (14.8%)	98 (85.2%)	115 (100.0%)
no parents in court, receives welfare, lives alone	13 (14.3%)	78 (85.7%)	91 (100.0%)
not in school, lives alone, works full-time, moustache	5 (5.2%)	91 (94.8%)	96 (100.0%)

Note: Chi-square=11.219, df=4, $p=.024$

'No extra information' vs. the other categories (pooled): Fisher's exact test $p=.016$

The preference for a sentence of imprisonment for this youth was chosen most frequently when no extra information about the youth was given to respondents. As Table 1 shows one-fifth (21.4%) of respondents chose prison for the 'contextless' young offender. The only other apparent difference in the scenarios also ran counter to my hypothesis.

Surprisingly, the youth who was purposefully constructed to be most 'adult-like' (condition #5) was *least* likely to have prison chosen as the most appropriate sanction.

The preference for prison in the other 3 descriptions only varied slightly.

What this suggests is that the public is influenced by more information given to them about an offender rather than the qualitative details of that information (with the possible exception of the most 'adult-like' youth). It seems that descriptive information which characterizes the 'young offender' as a 'young person who offended' allows members of the public to move beyond more punitive responses, towards

sentencing preferences which may be more meaningful to the actual circumstances of the offender. This general finding is consistent with previous research on the effects of contextual information on public attitudes.

For example, Doob and Roberts (1983) conducted a study in which 116 Ontario residents were asked to evaluate sentences handed down in two separate kinds of cases -- a manslaughter case, and a criminal negligence case. The authors purposefully chose cases that appeared to have been given mild sentences by the trial court judge and were upheld by the Courts of Appeal. Respondents were given either a short description of the case, or a longer version in which a more complete account of the facts of the case were given. The results of this study showed that when given a longer version which provided information about the surrounding circumstances of a case, respondents were significantly less likely to rate the sentence in the case as being 'too lenient' than those who received a short description of the case. Covell and Howe's (1996) study put forward similar results regarding the power of information on punitiveness regarding young offenders. The authors carried out a survey of 247 respondents ranging in age from 15 to 45 years old. The questionnaire examined the respondents' knowledge of the basic provisions of the *Young Offenders Act* as well as provided case scenarios about serious crimes --murder or sexual assault --perpetrated by a male or female offender. The questionnaires were structured so that respondents were organized to randomly assigned to receive either basic information on the offence and verdict, or basic information along with a paragraph of background information on the offender. The gender and offence type were also randomly assigned. The authors found that across all four conditions, the level of information was the most consistent and greatest predictor of attitudes. Respondents who were given

extra background information about the young offender showed significantly less punitive attitudes compared with those who were given only the basic information on the offence and sentence (Covell and Howe 1996).

Another study conducted by Roberts and Doob (1990) found that subjects' ratings of court sentences were also affected by the type of information they received about a sentencing case. The authors found that when subjects were given a summarized version of a sentencing hearing as opposed to a media description of the same sentencing case, a significantly smaller proportion of subjects rated the sentence as being 'too lenient'. In addition, those subjects who were given the summary of court transcripts held less negative views of the offence and the offender than did those who read the media version of the case (Roberts & Doob 1990).

Stalans (1993) also found that subjects' responses were affected by the information they received. Stalans' study revealed that providing a realistic stereotype of an offender as opposed to offender stereotypes which are represented through the media, resulted in lower demands for harsh punishments. In addition, this study showed that unrealistic stereotypes about offenders could be reduced by providing contextually distinct information about crime stories involving minor harm (Stalans 1993).

Finally, Lane's (1997) study on the effects of a correctional course on levels of punitiveness for undergraduate students, reveals that more information about criminal justice appears to be associated with less punitive sentencing preferences. Lane's study, which assessed responses on a number of hypothetical case scenarios, found that by the end of the course on corrections, the preference for prison was reduced in scenarios

involving non violent offenders but there was less of a change in levels of punitiveness for scenarios involving violent offenders (Lane 1997).

In the context of the present study, an obvious question that arises from the finding that more information about a youth reduced respondents' preference for prison, is the possibility that the effects of more information may not be as important for members of the public who hold more punitive attitudes. Extra information about a youth's circumstances may have little influence on respondents who believe that sentences in youth court are too lenient. The following table (Table 2) shows the responses to this experiment by only those who responded that youth court sentences are too lenient.

Table 2 - Sentencing preferences for case scenario as a function of various descriptions of the youth by respondents who perceived youth court sentences to be 'too lenient'

description of youth at sentencing hearing:	youth court sentences are not severe enough	
	prison	csa/fine
no extra information	22 (25.0%)	66 (75.0%)
parents in court, attends school	11 (14.3%)	66 (85.7%)
no parents in court, attends school	15 (16.9%)	74 (83.1%)
no parents in court, receives welfare, lives alone	11 (15.3%)	61 (84.7%)
not in school, lives alone, works full-time, moustache	4 (5.6%)	68 (94.4%)
significance:	Chi-square=11.483, df=4, p=.022	

NOTE: information is not shown for the group of respondents who thought 'youth court sentences are too severe/about right' since 63/65 of these respondents chose a CSA/fine as the preferred sentence.

Once again, the preference for prison decreased when any information was given about the youth, even for those respondents who believed that youth court sentences should be more

severe. This is not surprising since most respondents in this sample believed that youth court sentences are not severe enough and so the sample size in this table is only slightly smaller than the previous one (Table 1). The most 'adult-like' yielded the fewest responses for prison. The preference for prison for this youth was substantially lower than in the other three conditions with varying degrees of descriptive information.

Ratings of the characteristics of this youth:

In order to understand if the "youthfulness" of an offender affected public responses in other ways, another set of questions asked respondents to rate this young offender on a number of different dimensions relating to his character:

- dangerousness 1=not at all dangerous; 10=very dangerous
- honesty 1=dishonest; 10=honest
- maturity 1=he is young and immature; 10=his is mature
- employability 1=not a good candidate for employment; 10=a good candidate for employment
- crime was intentional 1=was not thinking & made a mistake; 10= knew exactly what he was doing
- likelihood of reoffending 1=very unlikely to reoffend in future; 10=very likely to reoffend in future

Each dimension was described in a way where a '1' indicated that the youth was low in the characteristic and a '10' meant that he was high in that particular characteristic.

Table 3 shows the mean ratings of surveyed respondents based upon the 5 randomly assigned conditions.

Table 3 - How the young person was rated as a function of the information that was given about him

Dimension:	Experimental Condition: Description of youth given to respondent					
	no extra information	parents in court, attends school	no parents in court, attends school	no parents in court, receives welfare, lives alone	not in school, lives alone, works 8/1, moustache	sig.
dangerousness	5.58	4.01	4.07	4.12	3.65	F=11.167 p<.001
honesty	4.06	4.04	4.95	4.93	4.47	F=3.236 p=.012
maturity	3.26	3.95	4.55	3.92	3.98	F=4.844 p=.001
employability	3.97	4.87	5.56	4.75	5.83	F=11.702 p<.001
crime was intentional	5.80	5.68	5.20	5.48	5.08	n.s.
likelihood of reoffending	6.16	4.65	4.48	5.18	4.71	F=8.289 p<.001

NOTE: Expressed as a mean score out of 10 for each dimension

There were significant differences in ratings on all of the dimensions except for whether the crime was intentional or not. The 'face-less' young offender was rated as more dangerous, less mature, less employable, and more likely to re-offend than the youth described in the other 4 conditions.⁸ The 'face-less' youth was also rated low on the dimension of honesty - but the offender described in the second condition who had parents in court and was attending school was rated as slightly less honest.

Once again, while there was some variation in ratings within the other descriptive conditions, there appears to be no clear trend in rating the more 'youthfully' constructed offender as being different from the more 'adult-like' offender. Ratings of this young person on different dimensions did not appear to be contingent upon the actual qualitative

⁸ It is quite interesting to note that respondents were willing to assess these characteristics based upon the small amount of information they received. Obviously they were asked to answer the question whether they may have felt comfortable doing so or not. Nevertheless, it reveals that the public will assess cases with very little information (Roberts & Doob 1990) and this may provide some more insight into the way the public forms 'offender stereotypes' from brief sources of information on a case (Stalans 1993).

differences in descriptions. As before, the most consistent effect was the effect of information vs. no information.

The interaction of ratings of the youth and sentencing preferences:

To pursue this question a bit further, an examination was completed in order to understand if there were differences in the ratings of this youth based upon both variations in the information given and by sentencing preferences, (Table 4).

Table 4 - How the young person was rated as a function of the information that was given about him by sentencing preferences

Dimension:	Experimental Condition: Description of youth given to respondent									
	no extra information		parents in court, attends school		no parents in court, attends school		no parents in court, receives welfare, lives alone		not in school, lives alone. works f/t, moustache	
	prison	cso/ fine	prison	cso/ fine	prison	cso/ fine	prison	cso/ fine	prison	cso/fine
Dangerousness	7.77	4.99	5.17	3.86	5.65	3.81	4.31	4.09	6.25	3.54
Honesty	3.09	4.37	3.50	4.13	2.94	5.30	3.25	5.21	4.60	4.48
Maturity	3.64	3.16	5.18	3.81	4.88	4.49	3.46	4.00	3.00	4.04
Employability	3.32	4.16	5.33	4.80	4.29	5.76	3.54	4.96	4.80	5.90
Crime was intentional	6.50	5.60	7.83	5.44	5.94	5.06	7.38	5.15	7.60	4.95
Likelihood of re-offending	7.81	5.71	6.09	4.46	6.19	4.18	7.77	4.73	7.50	4.60

Dimension	main effects (varying information)	main effects (preference for prison vs. cso/fine)	2-way interaction effects (varying information & sentencing preferences)
Dangerousness	F=9.061, $p<.001$	F=38.162, $p<.001$	F=2.675, $p=.031$
Honesty	F=3.154, $p=.014$	F=20.801, $p<.001$	n.s.
Maturity	F=4.943, $p=.001$	n.s.	n.s.
Employability	F=10.286, $p<.001$	F=9.990, $p=.002$	n.s.
Crime was intentional	n.s.	F=16.887, $p<.001$	n.s.
Likelihood of reoffending	F=6.809, $p<.001$	F=54.128, $p<.001$	n.s.

NOTE: 2 way interaction effects occurred for the dimension of 'dangerousness' only. Given that this occurred only for the dimension of 'dangerousness' it is difficult to make any generalizations about the meaning of this effect.

As with the previous analysis, the conditions in which there was an attempt to construct the youth on a continuum of more 'youthful' to more 'adult-like' (conditions 2 through 5), showed no apparent differences in mean ratings, nor any consistent patterns in ratings between those that preferred prison, and those that chose a CSO or fine for this youth.

However, looking again at the condition with 'no information' versus the remaining conditions, shows that there was an effect of information on how respondent's rated the youth in most cases. Looking at the conditions of 'dangerousness', 'honesty', 'employability' and 'likelihood of reoffending' shows that respondents who had no extra information generally appeared to rate this young offender in a more negative way.

Respondents who chose prison as the most appropriate sanction for this offender and did not get extra information also rated him as more dangerous, less employable and more likely to re-offend in the future, than either those respondents who chose prison in the other 4 conditions, or those who chose a CSO or fine and also did not get extra information. What is also quite interesting to note is that those who preferred a CSO or fine for the 'no information' offender, also rated him in a more negative way than those who chose a CSO or fine in the other conditions with descriptive information. Thus, those who preferred a CSO or fine and did not get extra information also rated this youth as more dangerous, less employable and more likely to re-offend in the future compared to those who chose a CSO or fine in the other 4 conditions.

Thus, at least on the ratings of dangerousness, employability and likelihood of re-offending, not only is there an effect where those who chose prison were more likely to see the young offender in more negative terms, but also that those who preferred sanctions other than prison were *also* more likely to see the young offender in a negative way if they

did not have extra information. Extra information had an effect on both groups of respondents –those that preferred prison and even those that preferred a sanction other than imprisonment.

From a policy standpoint, providing more information about young offenders who have broken the law may be important for the public when they are asked to assess the adequacy of youth court sentencing practices. Judges and the public get quite different kinds of information when asked to sentence cases: judges make their decisions from kinds of information as evidenced in the 4 latter conditions of this experiment, while the public are typically asked to make sentencing recommendations from condition 1. Perhaps by being able to ‘put a face on the offender’, they may be in a better position to assess sentencing decisions by having a more complete story. Even certain judges have remarked that when trying to understand what to do in a young offender’s case, they think about their own children of a similar age in attempting to decide on an appropriate sentence.⁹

Section II - Does the public differentiate between youths and adults on the purposes of sentencing?

The second part of this analysis also arises out of the results of the previous chapters. As shown in Chapters 2 and 3, legal factors accounted for most of the decision-making occurring in bail and sentencing hearings. Age and ‘youthfulness’ appeared not to have an independent effect on the outcome of cases. In addition, as Section I of this chapter has shown, even the public does not seem to respond differently to characterizations of youth constructed on a continuum of ‘maturity’. The reasons for the

⁹ From personal conversations with youth court judges

lack of an effect of are puzzling, but may be partly explained by the overall shift that seems to be taking place within youth justice systems in most Western industrialized countries. For instance, recent research has noted that there is a persistent erosion occurring to the separate justice system for youth. The dismantling of the ideals of a separate youth justice system, it appears, are occurring within a climate of immense public support (Sprott 1998). The public is said to be less tolerant of a mitigated approach for young people who break the law which has resulted in numerous 'get tough' policies for young offenders in recent years.

The results from this survey of residents in Ontario are consistent with a harsh approach to dealing with young offenders. As Table 5 shows, the majority of respondents (63.8%) indicated that there should not be a separate system of justice for youths. A similar proportion (65.0%) of respondents thought that if an adult or a youth committed a similar kind of offence, the youth should receive a sentence that is the same as or harsher than the sentence an adult would receive. Finally, the large majority (85.7%) of respondents felt that youth court sentences were not severe enough. The only area in which the majority of those surveyed appeared to make a distinction between adults and youths was regarding separate prisons for youthful offenders. The majority (86.6%) of respondents thought that youth should be kept in separate facilities.

Table 5 - Percentages showing respondents' views of youth and adult justice

	oppose/strongly oppose	favour/strongly favour	TOTAL
separate youth justice system?	63.9%(599)	36.1%(339)	100%(938)
	same prisons	separate prisons	
separate facilities for young offenders?	10.7%(104)	89.3%(868)	100%(972)
	harsher or the same as an adult would receive	less harsh than an adult would receive	
youth sentences—same, harsher or more lenient than adult sentences for a property offence?	65.0%(642)	35.0%(346)	100%(988)
	not severe enough	too severe/about right	
sentences in youth court – severe, about right or not severe enough?	85.7%(800)	14.3%(134)	100%(934)

This indicates that on the surface, the majority of people in Ontario do not appear to support separate justice responses based upon the categorical distinctions of adult or youth - except in the case of prison facilities. All of this leaves one wondering if the public distinguishes between justice responses for different ages of offenders at all.

Comparing youth and adults - goals of sentencing

However, a further examination of these general beliefs reveals that harsh approaches for dealing with young offenders are extensive, but are more complicated than may seem at first glance (Sprott 1998). In actually deciding what is important for different kinds of offenders, it appears that the public does distinguish, to some extent, between youths and adults.

Respondents were asked questions about the purposes of sentencing. Since half of those surveyed were responding to the adult survey and other half were asked to think about youths, this allowed me to make some comparisons. In responding to the importance of the different purposes of sentencing; expressing disapproval, deterring offenders, incapacitation, rehabilitation and providing compensation, the results show that

there were significant differences in ratings of the overall importance of different sentencing purposes. Furthermore, a comparison of ratings between youths and adults (Table 6) shows that the public does rate certain purposes as having more importance for youths than for adults.

Overall respondents rated all of the purposes of sentencing as quite important, however deterrence was rated to be the most important purpose of sentencing overall for both youths and adults (mean scores of 8.18 and 8.12). The fact that deterrence was rated as highest in importance to the public is quite interesting and reaffirms the intuitive appeal of deterrence based approaches to sentencing. Evidence of the importance of deterrence in sentencing hearings was also seen in Chapter 3, in which references to deterrence were the most frequently cited in the observed youth court hearings.

Table 6 - Comparison of public's ratings of the importance of different goals of sentencing as a function of whether the offender is a youth or an adult

Purpose	youth	adult
expressing the community's disapproval of the crime	7.69	7.33
detering the offender and other persons from committing offences	8.18	8.12
separating offenders from society	6.17	6.99
assisting in the rehabilitation of offenders	8.09	7.75
compensating victims or the community	7.57	7.60

Rated on a scale 1=not at all important 10=very important purpose.

Expressed as a mean score out of 10 for each goal of sentencing.

NOTE: main effects 'survey' (youth or adult) ; $F < 1$, $df = 1, 934$, $p = .834$ (n.s.)

main effects 'purposes' (5 purposes) ; $F = 79.32$, $df = 4, 3736$, $p < .001$

interaction effects 'survey' by 'purposes'; $F = 12.75$, $df = 4, 3736$, $p < .001$

As Table 6 shows, expressing disapproval for the crime ($t=-2.138$) and rehabilitating the offender ($t=-2.387$) were rated as having greater importance for youths than for adults. Separating offenders from the rest of society was rated as less important for youths than it was for adults ($t=5.318$). The mean differences in ratings for deterrence and compensating the victim or the community did not vary significantly in ratings for youths or adults.

What this clearly shows then, is that despite the broad beliefs mentioned earlier which suggest that the majority of the public wants a harsh approach to youths which is similar to the approach given to adults (with the exception of separating offenders), that in fact, there are variations in the public's ratings of what sentences should be accomplishing for youthful vs. adult offenders.

Views of the purposes of sentencing by other beliefs about the justice system:

It may be the case, however, that public ratings of the goals of sentencing vary depending upon views of other aspects of the justice system. For instance, it is useful to examine the responses on purposes of sentencing for those that believe there should be a separate system of justice compared to those that wish to abolish a separate youth justice system. Presumably, by stating opposition to a separate youth justice system, respondents are implying that justice responses should not be based on distinctions of age.

Table 7 shows respondents' ratings of the different goals of sentencing by views about a separate justice system.

Table 7 - Ratings of the importance of each of the goals of sentencing by support or opposition to a separate youth justice system as a function of whether the offender is a youth or an adult

purpose	favour/strongly favour separate youth justice system		oppose/strongly oppose a separate youth justice system	
	youth	adult	youth	adult
expressing the community's disapproval of the crime	7.86	7.13	7.63	7.43
detering the offender and other persons from committing offences	8.10	8.07	8.33	8.22
separating offenders from society	5.69	6.22	6.50	7.40
assisting in the rehabilitation of offenders	8.26	7.78	8.05	7.75
compensating victims or the community	7.30	7.15	7.88	7.92

BETWEEN SUBJECTS	Effect	Df	MS	F	sig of F
	Survey	1	2.95	.30	$p=.587$ (n.s.)
	favour/oppose	1	126.66	12.66	$p<.001$
	survey x favour/oppose	1	14.26	1.43	$p=.233$ (n.s.)
	error(between)	870	10.01		

WITHIN SUBJECTS	Effect	Df	MS	F	sig of F
	Purposes	4	355.14	85.15	$p<.001$
	survey by purposes	4	43.52	10.43	$p<.001$
	favour/ oppose x purposes	4	43.96	10.54	$p<.001$
	survey by favour/oppose x purposes	4	2.55	.61	$p=.655$ (n.s.)
	error(within)	3480	4.17		

As noted in the previous set of tables, there was an interaction of the purposes of sentencing based upon whether the offender was said to be a youth or an adult.

It appears to be the case that the two groups (those that favoured and those that opposed a separate justice system) differed from each other in terms of how they rated the various goals of sentencing. This however, is not surprising, since it is quite likely that

these two separate groups simply have different views on the relative importance of different purposes of sentencing. But most interestingly for this analysis, Table 7 also reveals that the differences in ratings on the goals of sentencing did not depend on respondent's favouring or opposing a separate justice system. This finding has important political implications, since, on the face of it, one may be inclined to interpret the public's expressed opposition to a separate youth justice system as evidence that they do not distinguish between offenders based upon age. However this finding suggests, that in fact, even those that expressed opposition to a separate youth justice system still differentiated between youths and adults on the goals of sentencing in the same manner as those that favoured a separate youth justice system.

Views of purposes of sentencing by beliefs about severity in sentencing:

In order to see if the public's ratings on the purposes of sentencing depended on other beliefs about the system, an analysis was completed on the purposes of sentencing by those that felt youth court sentences should be 'harsher/the same as' adults, and those that thought youth court sentences should be 'less harsh than adults.' Again, one would expect that those that expressed that youth court sentences should be 'harsher/the same as' adult sentences for similar kinds of offences, would probably see the purposes of sentencing for adults and youths as the same.

Table 8 - Ratings of the importance of each of the goals of sentencing by responses to whether or not youth court sentences should be harsher/the same as adults or less harsh than adult sentences

purpose	youth court sentences should be less harsh than adult sentences		youth court sentences should be harsher/same as adult sentences	
	Youth	adult	youth	adult
expressing the community's disapproval of the crime	7.55	7.18	7.77	7.45
detering the offender and other persons from committing offences	8.11	7.98	8.22	8.28
separating offenders from society	5.76	6.36	6.38	7.35
assisting in the rehabilitation of offenders	8.15	7.88	8.11	7.72
compensating victims or the community	7.05	7.18	7.84	7.87

BETWEEN SUBJECTS	Effect	Df	MS	F	sig of F
	Survey	1	.88	.09	$p=.766$ (n.s.)
	less harsh/harsher-same as	1	149.55	14.92	$p<.001$
	survey x less harsh/harsher-same as	1	1.52	.15	$p=.697$ (n.s.)
	error(between)	918	10.02		

WITHIN SUBJECTS	Effect	Df	MS	F	sig of F
	Purposes	4	356.90	85.54	$p<.001$
	survey by purposes	4	44.15	10.58	$p<.001$
	less harsh/harsher-same as x purposes	4	30.98	7.43	$p<.001$
	survey by less harsh/harsher-same as x purposes	4	2.14	.51	$p=.726$ (n.s.)
	error(within)	3672	4.17		

As in the previous table (Table 7), Table 8 reveals that while the two groups in this analysis (less harsh vs. harsher/the same as) differed in how they rated the various purposes of sentencing, the variation in purposes of sentencing for youths or adults did not depend upon their beliefs about the severity of sentences. Thus, purposes of sentencing for adults and youth were rated differently regardless of respondents' views of the severity of sentencing for youths and adults.

What all of this implies then, is that even for respondents who oppose the separation of systems of justice based upon age or those that want sentences for youths to be the same as, or harsher than adults, distinctions were still made in what sentencing should accomplish for youths as opposed to adults. This may in part be explained by the finding that public punitiveness (as measured by opposition to a separate youth justice system) may be related less to a desire to punish, and more to the perception that sanctions other than prison are being ineffectively administered (Sprott 1998). Thus, it is not surprising that on a philosophical level people do distinguish justice responses based upon the age of the offender. But on a practical level, opposing differences in justice responses based upon age may be linked to other more complex issues related to the administration of justice.

Conclusions:

In the final analysis, the ‘youthfulness’ of a young offender appears not to influence public ratings of the offender or their preferred sentences. Instead, any descriptive information at all was associated with less harsh responses in this study. Thus, as with the two court observation chapters which showed that age and youthfulness did not affect the outcomes of court cases, the construct of ‘maturity’ also appears to have little bearing on public sentencing preferences and ratings of a young offender. Where age appears to come into the equation, however, is with respect to the purposes of sentencing for adult vs. youthful offenders. Even for those respondents who opposed a separate youth justice system or those who thought that sentences for youths should be the same as or harsher than adults, there were significant differences in what a sentence should

accomplish based on whether the offender was an adult or a youth. For the most part, the public favoured rehabilitative purposes of sentencing as being more important for youths than for adults.

Chapter Five - Conclusion

The ambivalence found in the *YOA* probably reflects a level of societal ambivalence in Canada about the appropriate response to young offenders. On the one hand, there is a feeling that adolescents who violate the criminal law need help to enable them to grow into productive, law-abiding citizens. ...On the other hand, there is a widespread public concern about the need to control youthful criminality and protect society (Bala 1992: 32).

The passage above notes that there is a dual approach when constructing young people in conflict with the law. There is a concern with both protecting ‘youthful offenders’ and responsabilizing ‘young offenders’. The apparent ambivalence regarding the place of youth on the ‘continuum of responsibility’ provided my initial interest in undertaking this research. Each of the preceding chapters analyzed whether decisions made about youth in conflict with the law were based upon a view of adolescence as a homogenous stage or as a developmental transition toward adulthood. The lack of clarity can, perhaps, best be understood by examining how ‘youthfulness’ is differentially regulated in other arenas depending upon the context.

For example, as noted in the introductory chapter, adolescents are prohibited from engaging in a range of ‘adult-like’ activities in wider society. And there is a fair amount of consensus among adults regarding the age at which adolescents should be able to participate in certain ‘adult-like’ behaviours (Paglia and Room 1998, Dekovic, Noom and Meeus 1997). Young people under fourteen cannot consent to sexual relations. Those who are less than sixteen in Ontario cannot receive welfare benefits. While sixteen and seventeen year olds may make a case for receiving welfare, their cheques are issued to a ‘responsible person’ on their behalf. Anyone under nineteen in Ontario cannot purchase or consume alcohol, though consumption is allowed at a younger age if served at home

by parents. Thus, it appears from these examples that in defining when young people are legally permitted to engage in a variety of 'adult-like' behaviours, adolescence is viewed as a continuum where, generally speaking, a higher age is associated with fewer prohibitions.

When it comes to the youth justice system, there is also a belief that age and one's level of maturity are important factors in responding to youthful criminality. The youth justice system tries to respond to the needs of youth in conflict with the law, and also attempts to ascertain some level of accountability for criminal activity. Section 3 of the *YOA*, the Declaration of Principle, discusses young people's state of dependency along with the protection of the public and accountability. This applies to all young offenders regardless of age, lending credence to the model of youth as a homogenous group. At the same time, the *YOA* makes distinctions based upon chronological age specifically as it concerns serious offences and the applicability of transfer to adult court. Therefore, young people under the age of twelve who commit offences are not held criminally responsible. Offenders under the age of fourteen are not eligible to be transferred to adult court no matter how serious the offence. Young people who commit certain serious violent offences are presumptively seen as adults if they are sixteen or seventeen years old. And at eighteen, criminal accountability occurs in the adult criminal justice system.

Therefore, the view of adolescence in the youth justice context is ambiguous. There appear to be two different models constructing adolescence at work in the youth justice context. Adolescence can be interpreted either as a distinct stage or as a period of developmental transition leading up to adulthood.

The ambivalence in responding to youth who commit offences has been apparent since the inception of separate legislation. Youth who are fourteen and older have always been subject to transfer to adult court --under both the *JDA* and the *YOA*. In the original *YOA* there was a short-lived provision which stated that secure custody could not normally be used for those under fourteen. In addition, Bill C-37 (1995) created a further demarcation with the presumptive transfer provisions at the ages of sixteen and seventeen. So within the framework of separate youth justice legislation in Canada since 1908, there have always been stipulations attached to individual cases, where chronological age becomes important.

How do these models play out in the youth justice system?

An interesting example of the differing interpretations of mitigated responsibility comes from the Supreme Court of Canada case *R v. J (T.J)*. The young offender in this case was a mature seventeen year old charged with first-degree murder in the sexual assault and murder of a three-year old girl. He had a common-law wife, a child, and also worked for his cousin as a roofer. At issue was whether or not the police complied with the *Charter of Rights and Freedoms* as well as s.56 of the *YOA*, which provides additional protections to young people at arrest in terms of questioning, and the taking of statements. In trying to understand how a youth's maturity and competence factors into their ability to understand their rights, Justice Cory put forward the following:

By its enactment of s. 56, Parliament has recognized the problems and difficulties that beset young people when confronted by authority. It may seem unnecessary and frustrating to the police and society that a worldly-wise smug, 17-year-old with apparent anti-social tendencies should receive the benefit of this section. Yet it must be remembered that the section is to protect all young people of 17 years or less (*R v. J(T.J)*(1990) 59 C.C.C.(3d) 1 (S.C.C.)p.8).

L'Heureux-Dubé J. takes quite a different stance in accounting for the effects of maturity on decision-making. After referring to arguments made by Parliamentarians who were opposed to the inclusion of sixteen and seventeen year olds into the *YOA*, she goes on to relate the following:

...young offenders suspected of criminal offences should be treated in a manner befitting their ages. ..Adolescence cannot be viewed as a snapshot in time. Those youths between the ages of 12 and 18 cannot be aggregated and dealt with uniformly without regard for the discrepancies in their faculties and competence.

Within this “child-adult grouping” there are those that are more “child” and those that are more “adult”. We should be especially sensitive to 12- and 13-year olds at the younger end of the spectrum. Their youth borders on that age considered too young to be included within the scope of the Act entirely. Conversely, 17-year-olds are on the brink of adulthood, months away from attaining their full measure of protection under the Canadian Charter of Rights and Freedoms, but no more(*R v. J(T.J)*(1990) 59 C.C.C.(3d)1 (S.C.C.)p.14,15).

Even at the level of the Supreme Court, there is disagreement in interpreting how an offender's age and state of maturity apply to youth court cases. The findings from the present study provide some degree of insight into the practical application of age related constructs in youth justice decision-making.

Summary of Findings

The two court observation studies and the analysis of the Statistics Canada data support the perspective that youth in conflict with the law are treated as a homogenous group. Though the maturity of a youth might seem as if it should be important, age (both chronological and apparent) does not appear to be important in decision-making. The results from this study indicate that at two major decision making points in the youth justice process (pre-trial detention and sentencing) young people, for the most part, are dealt with as a homogeneous category. This is interesting because at one point (their 12th birthday) they are one day beyond being incapable of being criminally responsible, and

the day before their 18th birthday they are one day before being fully responsible for their crimes as adults. Only on some of the more marginal issues like 'boundary conditions' and 'curfew orders' is there any indication that age is a consideration in court decisions.

The public, as well, seems not to respond to the apparent (social) maturity of youths, but does differentiate in how they want young people to be sentenced. Most notably, the public rated different goals of sentencing to be important depending upon whether the offender was an adult or a youth. This is not a "leniency-harshness" finding. Instead, there appears to be an interest in distinguishing correctional responses for youthful offenders compared with adults.

The Disappearance of Youth?

What this may suggest is that for criminal justice purposes, the public and the youth justice system find it is easier to think of youth who are between twelve and eighteen as a single homogenous group. Incorporating the differences among youth demands a further dimension of decision-making that is not currently being considered by court practitioners. For example, this study has found that court decisions are based mainly on legal factors, as is the case with adults. But there is little in the way of differentiating *among* youth unless one gets down to the level of individual controls. For example, only in cases of serious violent offences is there explicit mention of an offender's chronological age (in reference to transfer). And as revealed in the present study, in less significant areas, such as with boundary conditions and curfews, 'younger' youth were treated differently --they were more likely to be given these conditions than were 'older' youth.

It is also useful to remember how this homogenized view of youth is characterized. For instance, there was little evidence in this study to suggest that youth were being treated explicitly as 'youth' in court. There was no mention of the 'responsible person' provision specific to youth in pre-trial detention hearings. And there was limited use of the special sentencing principles of the *YOA* with the exception of the 'adult' principle of deterrence. Therefore the homogenized view of youth appears to be more closely associated with the principles of the adult justice model. As a consequence, young people at one end of the spectrum (12 and 13 year olds) are being grouped together and dealt with primarily within a deterrence-based model aimed at controlling the offending behaviour of older youth.

Remembering that there are differences among youth:

The differences that exist among youth should be carefully considered. As noted in the introductory chapter, a large body of developmental research informs us of the significant differences among adolescents in this age group. Younger youths are at a greater disadvantage when it comes to understanding and competently participating in the legal process (Scott and Grisso 1997, Abramovitch, Higgins-Biss and Biss 1993, Peterson-Badali and Koegl 1999). Thus, it is surprising to see that court decisions do not vary based upon age group. Furthermore, it is disconcerting to note that the adversarial process for youth in courts is limited. This study showed that concrete case planning by defense counsel in sentencing cases was a rarity. In addition, the decision to detain at bail hearings was predominantly a function of the decision made by the Crown Attorney. Not only does this crime control atmosphere put all young offenders at a disadvantage, but

given the greater lack of understanding among younger youth, the protection of their due process rights are further compromised.

Developmental research also shows that differences exist among adolescents in terms of rational choice and reasoning skills. Younger adolescents engage in simpler decision-making processes. They are less capable of imagining risky consequences, and only consider a limited range of consequences during hypothetical problem solving situations (Scott and Grisso 1997). Given these differences, it is also surprising to find that when references to principles of sentencing were made in court in this study, the most predominant was the principle of deterrence. The presumption that youth rationally choose to commit offences is not supported by the available evidence (Doob, Marinos and Varma 1995).

"Re-establishing" youth as a concept:

To some extent the findings reported here are not surprising since the *YOA* resembles the adult justice model in many respects. However, the recently proposed replacement to the *YOA*, Bill C-3 (1999), the *Youth Criminal Justice Act* may represent an attempt at 're-establishing' the category of youth as more differentiated from the adult justice model than is the case with the *YOA*. The *YCJA* puts forward special procedures for youth in conflict with the law that do not exist for adults. For example, at various stages in the justice process, the *YCJA* supports the use of extrajudicial measures. At the initial stage of the process, police officers are encouraged to refer youth to community-based programs, use cautions, or take no measures at all where appropriate. There are also explicit provisions at other stages in the process. For pretrial detention hearings, a

judge must inquire into the availability of a responsible person, which presumably will lead to the greater use of this provision. In addition, detention can only be used in cases where the offence would, upon conviction, warrant a committal to custody. In sentencing, there are specific principles and factors to be considered in sentencing youths. There are also explicit restrictions on the use of custody, reserving its use for violent offenders or those that have previously failed to comply with non-custodial sentences.

The *YCJA* appears to be more explicit in creating leniency or special treatment for youths as opposed to adults which stands in stark contrast to the selective incapacitation rationale being used in sentencing in the state of Virginia. In Virginia, youthful status has become an *aggravating* factor at sentencing for drug offences, fraud and larceny. The younger the offender, the more points there are against him and the more likely he will be placed in custody (Tonry 1999).

While the newly proposed *YCJA* appears to carve out a more distinct space for youth in conflict with the law, there are still some significant challenges to 're-establishing youth'. First, the present study reveals that existing legislative provisions are not necessarily utilized in court decisions. This analysis has revealed that there was little use made of the specific provisions of the *YOA* in court hearings. While this may be a function of the general similarities between the *YOA* and the adult justice model, it still suggests that changes in legislation may not enter the realm of youth court decision-making and that there is very little of 'seeing youth' taking place in court hearings. Consequentially, the likelihood that new legislation will fundamentally alter decision-making practices is evidently problematic.

Second, there is still the persistent issue of ambivalence surrounding the treatment of youth. For example, the category of ‘youth’ appears to be even more homogenized under the *YCJA*. As recently as 1994, Bill C-37 specified differences among youth in terms of transfer, where sixteen and seventeen year old offenders would be presumptively transferred for serious violent offences, but the general age at which transfer was applicable was fourteen. Only six years later, the *YCJA* proposes to lower the age of presumptive transfer to include fourteen and fifteen year old youths. Now, only twelve and thirteen year olds are explicitly distinguished from the rest of youth in the proposed legislation. So while there appears to be a move to re-establish youth as a concept in the form of special procedures apart from adults, there does not appear to be a movement to establish differences *among* youth.

Therefore, the *Youth Criminal Justice Act* may end up carving out a space for youth which is either broad or deep. A deepening of the space may accommodate the wide range of developmental differences that this six-year stage of development encompasses. The greater use of extra-judicial measures and special procedures which are distinct from the adult model may allow for more meaningful responses, thus distinguishing among young people coming before the law. The more distressing view is that this space may be broadened, and the categories of ‘youth’ collapsed even further as can be seen with the proposal to lower presumptive transfer to the age of fourteen. Additionally, if the lack of consideration for youth-centred principles continues to exist under the new legislation, this may result in casting the net even wider. For example, as this research has shown, when judges did take account of youthful status, it appeared to be in relation to the use of ‘boundary conditions’ or ‘curfew’ orders for younger youth.

Thus, while trying to account for youthful status, the tools that judges use to do this may result in a widening of the net of control and the potential for greater coercion of younger youths. Thus, the courts may continue to decide cases involving very young adolescents in a manner which resembles the adult criminal model, and in accounting for 'youth' the result may be increased social control.

Conclusion

This study provides a first step in understanding how decisions about youth in conflict with the law are affected by notions of age and maturity. But, in view of the fact that the court observation data were collected only in Toronto, additional research on decision-making in courts in other locations would be highly useful. It may be possible that significant relationships exist between age and court outcomes in smaller communities, where court practitioners may have a greater knowledge of the background of particular youths. It would also be valuable to understand the factors that relate to court decisions made for adults and how these compare to the findings reported for youth in this study.

What we can take from this study is a greater understanding of the construction of youth in conflict with the law. If we are concerned with carving out a space for young offenders, this space must be able to accommodate the developmental differences of this population. Furthermore, the specific provisions of the legislation need to be reflected in courtroom decisions. The proposed *Youth Criminal Justice Act* may provide the means to improve our response to all youth who come in conflict with the law. Future research will tell us if we are successful in doing so.

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