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IMPACT OF THE YOUNG OFFENDERS ACT
ON DISPOSITIONS IN THE JUVENILE JUSTICE SYSTEM

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1988

Submitted to the Department of Criminology,
University of Ottawa, in partial fulfillment of
the requirements for the degree of Master of Arts.



Joan McCowan, Ottawa, Canada, 1988.

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CHAPTER ONE

THE JUVENILE JUSTICE SYSTEM IN CANADA

The basic philosophy underlying a juvenile justice system at any given point in time is best illustrated by the principles written into the legislation at that time and by the prevailing attitudes of society toward young people. The Young Offenders Act, proclaimed in April 1984, indicates a change in this philosophy. The principles of the new Young Offenders Act, were summarized by former Solicitor General Robert Kaplan and were considered to reflect the current attitudes of society toward youth:

The Act balances the rights of society, the responsibility that young persons must bear for their actions, and the special needs and rights of our young people. In doing so, it is in keeping with the philosophy and circumstances of our time (Kaplan, 1982:1).

The attitude of society toward youth at the turn of this century was portrayed by Section 38 of the Juvenile Delinquents Act (1929) which stated that:

the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by his parents, and

that as far as practicable every juvenile delinquent shall be treated, not as criminal, but as a misdirected and misguided child and one needing aid, encouragement, help and assistance.

Judges were granted a great deal of discretion and power to intervene in the lives of children in attempts to act as firm, but understanding, surrogate parents. Under the Juvenile Delinquents Act, the Positivist school of thought dominated the justice system, with an emphasis on treatment at the expense of due process rights. When society lost faith in the effectiveness of the rehabilitative model, a return to the Classicist way of thinking was evident under the Young Offenders Act.

While the philosophies underlying the juvenile justice system are not new, the concept of balancing the interests of society and the offender is unique, as opposed to focusing on one at the expense of the other. The new young offenders legislation represents the first attempt to blend several models into one justice system and it is difficult to guess at this point whether the procedures and sentencing options will enable the courts to successfully balance society's right for protection while holding a young offender responsible and accountable for his offence.

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This study looks at the shift in philosophy of the juvenile justice system in Canada in terms of these evolving attitudes of society toward youth and the law and seeks to determine the extent to which the shift influenced the manner in which delinquent youth were treated.

Philosophy Underlying the Juvenile Justice System

Prior to the 1700's, children were considered to be responsible adults at the age of seven and older children were simply viewed as small adults who tended to be ignored or exploited. Between the sixteenth and eighteenth centuries, the concept of childhood arose in Western Europe as people came to realize that children were a specific group having special needs and requiring nurturance and protection (Aries, 1962).

The concept of a separate legal status for children was influenced by English common law which recognized as early as the Middle Ages that children had a limited ability to understand and appreciate the difference between right and wrong. The common-law defence of *doli incapax* was a rule of law stating that a child under a certain age was presumed to be incapable of forming the necessary intent to commit a crime. Despite the existence of this special defence, children under the age of twelve were tried in

adult court up until the mid-nineteenth century and, if found guilty, were placed in adult prisons or were frequently executed for more serious offences (Bala & Clarke, 1981:163).

During the 1700's, the criminal justice system began to see some improvements, largely as a result of influential reform movements. Advocates of these reforms were students of classical criminology, based on the work of Cesare di Beccaria, who focussed on free will and hedonism as the underlying causes of man's behaviour and his responsibility to fellow citizens under social contract (Kittrie, 1971:22). Beccaria attacked the arbitrary and inconsistent criminal justice practices of the mid-eighteenth century in favour of due process and rights of individuals and, subsequently, he became a major influence in reforming criminal justice of the time (Kittrie, 1971:24).

The positivist school of criminology developed from the work of Cesare Lombroso, largely in response to the failure of the classical model to account for the diversity of criminal types. Lombroso argued that man is biologically determined and that criminal behaviour is based on a combination of heredity, upbringing, social status, and other factors beyond the individual's control. Positivists

argue that punishing the individual does not work and might result in even more damage. Instead, they advocate rehabilitation (Huff, 1980:159).

Indeterminate sentences are based on the positivist notion that delinquent behaviour is rooted in defects in the individual's past and is a product of undersocialization. Delinquency is seen as a symptom of this underlying condition in need of treatment. Intervention by the state to subject a juvenile to treatment until he was cured or rehabilitated was justified since the state had a natural right to protect itself and its members from antisocial behaviour (Archambault, 1983:2). Indeterminate sentences were favoured since it was unknown how long it would take to rehabilitate the young offender (Reid & Reitsma-Street, 1984:4).

The Juvenile Delinquents Act was based on the positivist notion that society has a responsibility to respond to the needs of the child and family (Reid & Reitsma-Street, 1984:4). The doctrine of *parens patriae* allowed the juvenile court to act as a firm, but understanding surrogate parent with the power to intervene in the "best interests of the child" if the family or school failed to raise the child properly. The act also allowed

the courts to be informal and flexible in order to deal creatively with young persons and their problems.

In the late nineteenth and early twentieth centuries, children were seen as poor, innocent beings in need of protection from the corrupting influences of society and they should not be imprisoned. A substantial amount of discretion under the Act, a wide range of sentences, and the ability to make the sentence indeterminate gave judges a great deal of power over these children (Caputo, 1987:128). The goal of juvenile justice was the prevention of the antisocial syndrome by modifying criminogenic environments, in particular, the family environment, and rehabilitating the antisocial youth. The youth was looked at in his entirety in developing an appropriate disposition and this disposition could, in turn, be further modified to fit the changing needs and circumstances of that youth (Reid & Reitsma-Street, 1984:4).

A number of dispositions, especially in the United States, were raising the question of whether the courts were using the extensive powers granted them for dealing with young persons in the "best interests" of the child, and by the early 1960's, the Juvenile Delinquents Act was being described as "benevolent tyranny". There were questions and

concerns raised by lawyers and children's rights advocates with respect to the lack of due process (Leschied & Gendreau, 1986:318). In addition to this a growing disillusionment in Canada and the United States with treatment-based systems led to calls for reform of the juvenile justice system, in terms of abandoning rehabilitation in favour of a punishment and deterrence philosophy. There was also a push in the other direction for the creation of a less formal system which would prevent the child being stigmatized.

Reformers began to consider the potentially negative effects of children being officially processed and labelled as delinquents. This new way of thinking was based on the labelling or social reaction theories of Becker, Lemert, Erikson, Kitsuse and Schur who suggest that crime is relative, in that it is socially defined (Huff, 1980:170). Attempts were made to protect children from this labelling process and the juvenile justice system was restructured to include diversion programs which would deal with the children less formally. It was soon discovered, however, that diversion increased the problems facing juveniles. They had even fewer rights and protections, there was a widening of the net effect, court intervention continued,

and there was no proof that diversion was any more effective in preventing delinquency (Caputo, 1987:130).

The juvenile justice system continued to be criticized for its ineffectiveness and, over a period of fifteen years, the federal government examined the problem. In 1965, the Department of Justice Committee on Juvenile Delinquency proposed the Children and Young Persons Act. In 1971, a proposal for a Young Offenders Act was submitted. This was followed in 1975 by a Bill for Young Persons in Conflict with the Law Act. In the late 1970's, another Young Offenders Act was proposed (Bala & Clarke, 1981:211). The main question in the resolution of the problem appeared to be the determination of the role of the juvenile justice system. On the one hand, there were advocates of the Positivist School of thought, including social workers, treatment professionals and children's rights activists who advocated a treatment approach to juvenile justice legislation. On the other hand, there were those speaking from a Classical point of view such as lawyers, police and magistrates, who favoured a more punitive approach. The resolution of this debate, was to be determined by society's changing beliefs regarding youth and crime (Reid & Reitsma-Street, 1984:2).

Judge Omer Archambault, at the time Director of the federal Solicitor General's Young Offender's Policy Unit summarizes how these evolving beliefs towards youth and crime led to the change:

The Young Offenders Act ... is in response to this evolution of cultural values and attitudes towards criminal justice. The legislation is based on a new set of fundamental assumptions reflecting this evolution and inspired ... by extensive knowledge of human behavior generally and the moral and psychological development of children in particular (1983:3).

Classicists suggest that society is based on a social contract between individuals. The state exercises its powers only to the extent of protecting individual rights and freedoms. Crime is that which violates not only the personal safety of, but also the social contract between individuals as it is expressed in laws made by the state. Under section 3(1)(b) of the YOA:

society must, although it has the responsibility to take reasonable measures to prevent criminal conduct by young persons, be afforded the necessary protection from illegal behaviour

The most effective way of preserving the social contract is through the protection of society, due process, individual legal rights and an emphasis on accountability.

The Classicist influence of due process of the offender before the law under the Young Offenders Act is illustrated by the recent formalization of procedures, the addition of defence lawyers and the emphasis on criminal behavior in juvenile courts. Section 3(1)(e) states that:

young persons have rights and freedoms in their own right, including those stated in the Canadian Charter of Rights and Freedoms or in the Canadian Bill of Rights, and in particular a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them, and young persons should have special guarantees of their rights and freedoms.

Classicists are opposed to the arbitrary administration of justice including the discretion, exceptions, and personal whim of judges. They prefer a universal system of justice that would apply equally to all men. Crime is the infringement of a legal code, not of a behavioral or social norm. The only way to determine whether an act is truly criminal is through "due process" of the law.

An emphasis on minimal intervention ensures that courts limit themselves to dealing only with the criminal behavior of youths, leaving their other needs to the appropriate child welfare agencies. In contrast to the broad scope of offences covered by the Juvenile Delinquents Act, the use of the criminal code under the Young Offenders Act is consistent with the classicist notion of punishments being well-defined, thereby providing what should be a nondiscretionary and uniform system of rational punishment. "Specific behaviours threatening social or economic relationships are codified into offences with fixed, proportionate punishments" (Reid & Reitsma-Street, 1984:3). Thus, charges against a young offender can no longer be based on status offences as they could under the Juvenile Delinquents Act.

The positivist-based, welfare-oriented philosophy of the Juvenile Delinquents Act had been criticized for failing to protect the legal rights of children in lieu of treatment. Proponents of the Classical School of thought were successful in shifting the emphasis to young offenders being held accountable for their actions and society being protected from illegal behavior, while accompanied by

appropriate protections for young people who are accused of violating the law (Bala & Lilles, 1982:73).

The new legislation, however, retains a number of features of the Juvenile Delinquents Act. This, Archambault (1983:7) claims, is the result of attempts to strike a reasonable balance between the needs of young persons and the interests of society. The Young Offenders Act persists in the belief that young persons should be dealt with differently than adults. A young person will be held responsible for his behaviour because crime is a rational and calculated activity in which he engages to obtain pleasurable ends. At the same time, the new legislation recognizes "adolescence" as a stage where individuals are less mature cognitively, psychologically and socially than adults. Consequently, people in this age group require more care and education before they can join adult society (Awad, 1987:442). Section 3(1)(a) of the YOA maintains that:

while young persons should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offences should nonetheless bear responsibility for their contraventions

Furthermore, while the youth system and the adult system share the principles of rights, responsibilities and public protection, the youth system is unique in its recognition of the immaturity of youth and its special tolerance for the behaviour of this age group. Under section 3(1)(c) of the Declaration of Principles:

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.

The older the young person becomes, the less understanding is society and the justice system until the youth is considered ready to be treated as an adult. Society also recognizes that the development does not occur at the same rate in all juveniles and, therefore, there is flexibility of the eight principles which allows an adjustment to any of these different levels of development. The increased use of pre-disposition reports introduces the young offender to the court and provides the background material necessary to develop a disposition specifically based on the needs of the young person (Archambault, 1983:7). Again, this is

reminiscent of the "best interests" notion under the Juvenile Delinquents Act.

Under the Young Offenders Act, there continues to be a concern for the family unit as observed under the old legislation, and a preference to not interfere unless the care provided to the child is completely inadequate.

Section 3(1)(h) of the YOA reads:

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.

Parents must be notified of any arrest, detention and court proceeding that involves their child and are allowed to make representations at specific stages of the process: on an application for transfer to adult court, prior to a disposition, and upon a review of disposition (Archambault, 1983:7).

Another unusual feature of the Young Offenders Act making it distinct from the adult system, is the use of review procedures to allow the system to monitor and modify a judge's decision. Thus, in sharp contrast to the Juvenile

Delinquents Act, where judges had unlimited powers as to a youth's disposition, the judicial process is much more visible to society and magistrates are now made accountable for their decisions.

Reid and Reitsma-Street (1984) examine the assumptions and beliefs about youth, society and the state in relation to the development and implementation of social policy for young offenders. Upon analysis of the principles of the Young Offenders Act, they find that the underlying philosophy not only represents a balance between the welfare (Positivist) and justice (Classical) models, but also the emergence of a third model, the crime control model. This model emphasizes security and maintenance of moral, economic and political order whereby "laws defining criminal behavior are flexible and broad, encompassing any behaviour perceived as immoral, unmanageable or threatening to the collective order" (1984:4).

These authors point out that, one of the major problems behind juvenile justice systems is that governments go ahead and change legislation and policies involving youth, despite the lack of conclusive data regarding the effectiveness of any one model. For example, the United States and Canada have both recently changed from a welfare

to a justice system, whereas England and Scotland have shifted their systems from justice to welfare models. These drastic system reversals lead to extreme situations with serious problems at each extreme. Reid and Reitsma-Street suggest there may be benefits to blending the values of several models in order to avoid these problems (1984:11-12).

The Young Offenders Act has a built-in capability to adapt to change through the upcoming years. The Declaration of Principles is very broad and seems to include the philosophies of both Acts:

... it can be said that the Act is then able more easily to adapt as societal views change: today one stresses those principles and provisions which suggest a "criminal code for children"; tomorrow, when and if the pendulum shifts once again, the needs-oriented provisions ... can be emphasized

(Thomson, 1983:27).

They admit however, that this is the ideal, and that problems regarding varying access to funding and conflicting ideologies of those responsible for enforcing the act will influence the implementation of provisions. There is still a great deal of discretion as to what model is to be used

and they suggest that the justice system may need to strike a balance between these three models according to: the specific stage of the juvenile justice process, the type of juvenile crime involved, and the seriousness and frequency of the young person's criminal activity.

Dispositions under the Juvenile Delinquents Act and the Young Offenders Act

Dispositions available to a juvenile court judge under the JDA were markedly different from those that are currently available under the YOA. The JDA provided the juvenile court judge with a great deal of discretion in determining what type of sentence to impose as per section 20(1) of the act:

In the case of a child adjudged to be a juvenile delinquent the court may, in its discretion, take either one or more of the several courses of action hereinafter in this section set out, as it may in its judgment deem proper in the circumstances of the case...

A judge could adjourn the proceedings for an indefinite period, he could order a child to be committed indefinitely to the care of a training school or children's aid society,

or he could order a juvenile back to court to have his sentence reviewed up until he turned twenty-one.

In contrast, the YOA eliminates much of this discretion, and requires the judiciary to act in accordance with the Declaration of Principles outlined in Section 3 of the YOA, in particular, section 3(1)(f) which states that "...the rights and freedoms of young persons include a right to the least possible interference with freedom that is consistent with the protection of society ...". Furthermore, all sentences must be of fixed duration. Judges are given the opportunity to participate in the court proceedings but only to the extent of acting as an impartial arbitrator. Rather than determining solely what would be in the best interests of the child, the duty of the judge under the YOA is to weigh the interests of society while considering the needs and rights of the young person. A closer look at the specific dispositions under each act illustrates the vast differences between the two.

Discharges and Adjournments

Several options might have been considered if a judge believed that the experience of attending court would

have sufficient impact on the child, or that an official warning was all that was necessary to impose upon the first time, non-serious offender. The JDA outlines these options:

S. 16 The Court may postpone or adjourn the hearing of a charge of delinquency for such period or periods as the court may deem advisable, or may postpone or adjourn the hearing sine die.

S.20(1)(a) suspend final disposition;

S. 20.(1)(b) adjourn the hearing or disposition of the case from time to time for any definite or indefinite period;

Proceedings could be adjourned before or after adjudication and this adjournment could be for a definite or indefinite period. Whichever course of action was taken, if the child became involved further with the law, he could be brought back and dealt with by the court, although this rarely occurred (Bala & Corrado, 1985:95). This form of disposition was similar to the notion of absolute or conditional discharges for adults under the Canadian Criminal Code, however, there was no specific provision under the JDA.

Section 20(1)(a) of the YOA clarifies the use of discharges, stating that the court may:

by order direct, that the young person be discharged absolutely, if the court considers it to be in the best interests of the young person and not contrary to the public interest

Thus, the judge may grant an absolute discharge with conditions attached, however, he no longer has special powers of adjournment, nor does he have the power to adjourn the hearing sine die or to adjourn the hearing or disposition for an indefinite period (Bala, Lilles & Thomson, 1982:616). While there is no specific section outlined in the YOA for a conditional discharge, sections 36 and 45 of the act offer a similar disposition (Bala, Lilles & Thomson, 1982:178).

Fines

Section 20(1)(c) of the JDA allowed the court to "impose a fine not exceeding twenty-five dollars, which may be paid in periodical amounts or otherwise." Fines were not used very often because the maximum amount was small and parents often ended up paying it themselves (Bala & Clarke, 1981:195). In contrast, the section dealing with fines under the YOA, states that the court may "impose on the young person a fine not exceeding one thousand dollars to be

paid at such time and on such terms as the court may fix" (paragraph 20(1)(b)). Subsection 21(1) prevents the court from imposing an excessively harsh fine by requiring that consideration be given "to the present and future means of the young person to pay."

A young person may also be given the option of participating in a work program, under subsection 21(2), that would allow him to work off the fine "by earning credits for work performed in a program established for that purpose."

Probation

Probation was the most frequently used disposition under the JDA. Section 20 (d) allowed the juvenile court to "commit the child to the care or custody of a probation officer or of any other suitable person." The Department of Justice Committee on Juvenile Delinquency defined probation as:

a form of disposition under which an offender who has been found to have committed an offence may be released by the court, subject to the supervision of a probation officer and to certain conditions imposed by the court (1965:173)

Supervision by a probation officer was not necessarily required, but if it was used, the duties of the officer would involve providing the child with counselling and advice in addition to regular supervision, and ensuring that the child was complying with the conditions of the order. The probation officer would report the child's progress to the court and if the child failed to satisfy any of the conditions of the probation order, he could be brought back to the court for further disposition (Bala & Clarke, 1981:195).

Under the YDA, subsection 20(1)(j) allows the court to "place the young person on probation ... for a specified period not exceeding two years." Section 23 of the act outlines the conditions which must be contained in the probation order, as well as a variety of options that allow any further reasonable conditions that the court considers necessary "for securing the good conduct of the young person and for preventing the commission by the young person of other offences" (S.23(2)(g)). Furthermore, section 20(6) requires that, in considering probation as a disposition the court must "state its reasons therefor in the record of the case", and must provide a copy of "the reasons for the disposition" (S. 20,(6)(b)). This should have the effect

of ensuring more consistency among judges and the preparation of well-reasoned probation orders (Bala, Lilles & Thomson, 1982:629).

Other Conditions

Under subsection 20(1)(g) of the JDA, the court could "impose upon the delinquent such further or other conditions as may be deemed advisable". This allowed the court to impose additional conditions on the young person that were not covered by other subsections regarding dispositions. Consequently, in acting as a wise parent might, the judge could suspend a young person's driver's license for a period of time. A similar, but narrower provision exists in subsection 20(1)(l) of the YOA which allows the court to "impose on the young person such other reasonable and ancillary conditions as it deems advisable and in the best interests of the young person and the public" (Bala, Lilles & Thomson, 1982:629-31).

A subsection under the JDA, 20(1)(g), allowed the courts to use community service orders or restitution as an alternative to, or condition of, probation. CSO's became popular as it became increasingly clear that regular forms of punishment failed to impress upon juvenile delinquents

the seriousness of their behaviour (Bala, Lilles & Thomson, 1982:631). Community service orders for juveniles are defined by the Office of the Chief Judge, Provincial Court (Family Division) as:

a judicial order to perform a service for the benefit of the community at large or one or more of its members. Its purpose is to sensitize an offender to the aftermath of an event by emphasizing the relationship between an offence and the ethical responsibility imposed by society to make reparation (1979).

The type of activity, the location and the duration could be specified by the judge or left up to the probation officer and it could include working in, or maintenance of church property, hospital grounds, community centres or other duties (Bala, Lilles & Thomson, 1982:631). CSO's offered an alternative to judges who might have considered restitution as a condition of probation for a youth who did not have the means to pay, or from a youth who would be unaffected by the sentence because his parents took on the responsibility of compensating the victim.

The accountability notion behind the community service order ties in well with the philosophy underlying

the YOA and, consequently, there is a strong emphasis on the use of CSO's and restitution as alternatives to regular forms of disposition. The YOA authorizes the youth court judge to:

20(1)(f) ...order the young person to compensate any person in kind or by way of personal services at such time and on such terms as the court may fix for any loss, damage or injury suffered by that person ...

20(1)(g) ...order the young person to perform a community service at such time and on such terms as the court may fix...

In addition, the young person can be required to repay an innocent purchaser of stolen property that was subsequently returned to its owner (S.20(1)(e)). However, an order for community service cannot exceed 240 hours or twelve months from the date of the order, and it must not interfere with the child's regular school and work. Furthermore, consent must be obtained from the person or organization to be compensated, and from the provincial director, and the court must be satisfied that the young person is a suitable candidate to perform the service (S.21(3) - (10)).

Placement out of the Home

The Department of Justice Committee on Juvenile Delinquency noted that suitable parents or parental substitutes are important for instilling adequate social values in the child, and that delinquency is often associated with a social background provided by inadequate parents. The pre-sentence investigation enables the court to determine whether serious emotional or behavioural problems of a child would improve if he was removed from an unsatisfactory home situation. If this was considered to be the case, the judge would then determine whether the juvenile could be left in the community, or if the community would be better served by confining the child to an institution (1965:176-7). According to the JDA, a judge had the authority to place a child with virtually anyone if this was done in the best interests of the child and the community (Bala, Lilles & Thomson, 1982:639).

A foster home placement involved the child living with a family that had been chosen by the probation officer. The family usually received some financial compensation in return. A group home or treatment home placement usually involved several children living together under the supervision of a professional staff (Bala & Clarke, 1981:196). These homes were publicly or privately operated

and financed by the provincial government and the municipality.

The juvenile court was authorized by subsection 20(1)(f) of the JDA to "cause the child to be placed in a suitable family home as a foster home, subject to the friendly supervision of a probation officer and the further order of the court." A probation officer would be assigned to supervise each child in a group or foster home and report back to the judge as to the child's progress. If the child was considered to be making unsatisfactory progress, the case could be brought back to the court or, the child or probation officer could request a review (Bala & Clarke, 1981:196).

Subsection 20(1)(h) of the JDA authorized the court to "commit the child to the charge of any children's aid society..." The Children's Aid Society operates its own group and foster homes as well as other assessment and treatment facilities, and a child could be placed in a home under the provincial Child Welfare Act or the JDA. A custody order under the Child Welfare Act was based on whether the child was "in need of protection" whereas, under the JDA, a custody order was based on whether the child had been adjudged a delinquent. Once the child was committed to

the charge of a children's aid society, he became a ward of the society for a fixed period not exceeding twelve months, as per subsection 30(2) of the Child Welfare Act (Bala, Lilles & Thomson, 1982:641). The juvenile court, subsequently, had no authority to deal with the child unless a new offence was committed.

Under the YOA, judges no longer have the power to place a child into foster care or into the care of a children's aid society. This serves to clarify the distinction between a young offender and a child in need of protection (Bala, Lilles & Thomson, 1982:641). Open custody is defined by subsection 24.1(1) as:

(a) a community residential centre, group home, child care institution, or forest or wilderness camp, or

(b) any other like place or facility...

This definition is broad enough to include corporate-owned homes, provided that they are designated by the Lieutenant Governor in Council for this purpose. It would also be possible to place the young person in a group home by using subsection 23(2)(f), which allows the court to order as a condition of probation, "that the young person reside in

such place as the provincial director may specify" (Bala, Lilles & Thomson, 1982:648).

Training Schools/Secure Custody

Industrial or training schools in Ontario were regulated by the Training Schools Act, which set out guidelines for administration, and the procedures and criteria for admissions. Section 2 of the act states that "(t)he purpose of a training school is to provide the children therein with training and treatment and with moral, physical, academic and vocational education." Training schools were the responsibility of the provinces, which meant that there could be considerable variation between provinces in the organization and management requirements of these facilities (Bala, Lilles & Thomson, 1982:654). In Ontario, training schools were administered by the Ontario Ministry of Community and Social Services.

Subsection 20(1)(i) of the JDA permitted the court to "commit the child to an industrial school duly approved by the Lieutenant-Governor in council." As was the case in committing a child to the care of a children's aid society, once a child was committed to a training school, section 21 of the JDA removed the authority of the juvenile court to

deal with the child unless a new offence had been committed. Furthermore, section 17(2) of the Training Schools Act removed the rights of the parent or guardian once the child was committed to a training school.

There were often problems interrelating the Training Schools Act and the JDA. Under section 9 of the Training Schools Act, for example, children between the ages of twelve and sixteen were admitted. The JDA, on the other hand, allowed the court to commit a delinquent between the ages of seven and twenty-one to training school. It was determined that the provisions in the JDA could override those in the Training Schools Act, particularly when it was considered to be in the best interests of the child. The same conditions applied to conflicts in age limits with respect to children's aid committals according to the federal JDA and the provincial Child Welfare Act (Wilson, 1978:80-1).

There were no guidelines to assist the judge in determining whether institutional confinement was the most appropriate sentence and it was usually left to the judge's discretion (Bala, Lilles & Thomson, 1982:657). However, he could request some form of expert advice in making his decision, for example, by having a social history report

prepared by a probation officer, or a more elaborate report by a psychologist or psychiatrist (Bala & Clarke, 1981:199). Committal to a training school was usually for an indefinite period and the child would remain in custody until the training school authorities decided that he was ready for release.

In 1975, section 8 of the Ontario Training Schools Act was repealed following ten years of debate. This section authorized the court to ~~commit~~ a child to training school for incorrigibility, regardless of whether they had broken any law. Two main reasons for the repeal of this section were the changing philosophy in the 1960's and 70's with respect to delinquency and the growth of community-based residential homes, which were seen as a viable alternative to training schools (Grant, 1984:293).

Once the authorities decided that a child could be transferred back into the community, he was usually placed in a foster or group home, and eventually back to his own family. Throughout this time, he remained a Crown ward and was supervised by a probation or "after-care" officer. If any problems arose, he could be returned to the training school (Bala & Clarke, 1981:198). Wardship would

automatically be terminated once the child turned eighteen or earlier at the discretion of the institution.

Under the YOA, secure custody is the most severe form of disposition available to a judge. Section 24.1(1) provides a definition:

"secure custody" means custody in a place or facility designated by the Lieutenant Governor in Council of a province for the secure containment or restraint of young persons, and includes a place or facility within a class of such places or facilities so designated.

Subsections 3(1)(f) and (h) in the Declaration of Principles refer to the notions of "least possible interference with freedom that is consistent with the protection of society", and removal from the home only "when measures that provide for continuing parental supervision are inappropriate." Subsection 24(1) of the YOA requires the judge to order and consider a pre-disposition report, prior to making an order for committal to custody. Furthermore, since committal to custody is considered to be the most extreme disposition available under the YOA, guidelines are provided for the judge in deciding between open and secure custody.

Two objective factors must be taken into consideration prior to considering any form of committal: age, and seriousness of the offence, as well as a subjective assessment by the court as to whether custody would be the most suitable disposition in terms of protecting society and meeting the needs of the young person. Sections 24.1(3) and (4) deal with the conditions of committal to secure custody according to whether the person is above or below the age of fourteen (Wilson & Tomlinson, 1986:368). Twelve and thirteen year olds are to be placed in secure custody only if the offence carries a term of life imprisonment, if the child escapes or if he has a record of serious offences under the JDA or the YOA. A child over the age of fourteen cannot be committed to secure custody unless the penalty for adults would be five years or more, if the offence was an escape from custody or if there was a record of serious offences.

In general, a young person may only be committed to secure custody if it is necessary for the protection of society and if it would best serve the needs of the young person. Clearly, the requirement that these guidelines be followed illustrate the direct contrast to committals to training school under the JDA, where level of custody and

length of committal were determined by the individual training school.

Reviews and Rehearings

A juvenile could be brought back to court under subsection 20(1)(b) and 20(3) of the JDA after a disposition was made, either to review the child's progress or to alter his disposition. A hearing could technically occur any time up until the juvenile turned twenty-one, and could result in a new disposition being imposed or possibly even a transfer to adult court.

While dispositions under the YOA must be for a fixed period of time, section 28 provides for automatic judicial review of dispositions. Under subsection 28(1), after the youth has been in custody for one year and if it appears that the offender has made sufficient progress or, that the circumstances which led to the custodial disposition have changed, the provincial director must order a review of the disposition. Furthermore, under subsection 28(3), a review must be ordered after the youth has served six months if the young person, his parent, or the Attorney General make a request. The judge may, subsequently, under subsection 28(17), confirm the disposition, order that the young person

be transferred from secure to open custody, or transfer, the person from custody to probation.

Chapter Two

ASSESSING THE IMPACT OF THE YOUNG OFFENDERS ACT

ON THE JUVENILE JUSTICE SYSTEM

The changes in the philosophy, and in the dispositions available for dealing with juvenile delinquents, suggest the possibility of a change in youth court dispositions. Leschied and Jaffe (1985,1987) looked at dispositions made under the JDA and the YOA on a groups of young offenders, under the age of 16, in south west and central west Ontario. They found that the number of charges for twelve to fifteen year olds have remained the same under the new act, despite the fact that police no longer charge children between the ages of seven and eleven. Furthermore, they found that the total number of dispositions remained similar with approximately half of the children receiving probation, slightly more than under the JDA (1985:1). At the same time, however, they discovered a significant increase in committals to custody. Under the JDA, committals to custody (training school) accounted for 5% of dispositions whereas under the YOA, committals to custody (open or secure), accounted for 11% of the dispositions. The number of orders made to either open custody or secure custody were about equal. Furthermore, the average length of detention at the pre-trial and pre-disposition levels have increased and the average length of stay in secure

custody has increased approximately 21%, from 12.2 days to 14.8 days (1985:2).

In a later study, Leschied and Jaffe (1987:423) examined the same-aged population as before in the calendar year 1985 and compared this to the previous year 1984 under the YOA and 1983 under the JDA. They found similar results, and they suggest this may signal a consistent trend. Committals to custody continued to be high during the second year of the YOA, in contrast to committals to training school under the JDA, although there was a slight decrease when compared to committals to custody during 1984. This may be due to the use of the provision for appeals which may reduce the severity of the disposition. Appeal court judges may be attempting to control the "overzealousness" of youth court judges in their efforts to tie deterrence and accountability into dispositions (1987:427). Community service orders and victim reconciliation were used more often in 1985, constituting almost 20% of dispositions, compared to less than three percent in 1983 under the JDA (1987:426).

Requests by the court for pre-disposition reports occurred in one out of five cases, whereas needs-based psychological assessments were requested in only one out of every twenty cases (1985:3). This trend of few requests for

clinical assessments continued to be low in the later study. There was also a decrease in the use of treatment. Only five treatment orders were made under subsection 20(1)(i) of the YOA and two of these five were terminated when the young persons withdrew their consent for treatment.

Leschied and Jaffe suggest that these findings seem to reflect the different philosophies underlying the YOA and the JDA. An increase in the use of custody and a decrease in requests for clinical assessments despite the Act's recognition that young person's have "special needs" seems to offer support for the changing attitudes from a treatment to a punishment orientation (1985:5). Judges may prefer to focus on personal responsibility and accountability of the young person while, at the same time, considering the deterrence potential of the punishment provisions. This view would be consistent with the finding that Victim Offender Reconciliation Programs and Community Service Orders are becoming increasingly popular, under the YOA. In stressing accountability for behaviour, judges may use these forms of disposition to illustrate to the child the seriousness of his behaviour (1987:426).

The authors suggest that the increase use of pre-trial detention may be related to the fact that the courts are more rigidly following the due process rules of

procedure. Consequently, obtaining counsel, notifying parents, and time required to complete social histories may require detaining the youth for some time (1985:5).

The results of their study show that custody orders doubled under the YOA and Leschied and Jaffe speculate on the reasons for this. Prior to implementation of the new legislation, it was anticipated that more use of open custody facilities would be made for youths who had been committed to training schools under the JDA. It appears, however, that open custody has simply emerged as a concept of its own since the numbers of youths detained in secure custody remains virtually the same as those who had been committed to training schools under the JDA. It seems likely that youths currently being placed into open custody are being drawn from the same type of young persons who, under the JDA, were placed into the care of a children's aid society or a group home (1985:3).

There is the possibility that judges are making use of open custody for three reasons. Firstly, judges no longer have the option of ordering a child into the care of children's aid or foster homes. Secondly, judges can no longer order a child to seek treatment and, consequently, may assume that open custody provides the only alternative that has some security. Finally, judges may be opting for

an open custody disposition in cases where the offence is not serious enough to warrant secure custody as per section 24.1(3) of the YOA, yet the judge seeks some form of containment for the high risk young offender (1985:3-4).

Furthermore, the finding that victim reconciliation and community service orders are being used more often under the YOA, leads to the question of whether the youths receiving these forms of disposition would have been sentenced to probation under the old legislation. Does the availability of these options to the judge merely lead to the effect of "widening the net"? Again, judges may assume that young offenders should be held more accountable for their antisocial behaviours and, consequently, prefer to order the youth to make up for his wrongdoings.

The impact of legislation upon dispositions must necessarily involve those engaged in the decision-making process. Haldane, Elliot and Whitehead (1972:233) note that the character of the judicial process is basically determined by the judge and that the type of disposition will be determined by the philosophy of the judge towards the perceived objectives of dispositions: punishment, rehabilitation, deterrence, or the protection of society (1972:233). If there are differences in objectives, then disparities tend to occur. Personal attitudes of judges,

professional and life experiences, and amount of discretion may all affect a judge's decision.

Under the JDA, judges had wide discretionary powers in choosing dispositions and the philosophy of the court which stressed treatment as opposed to punishment, individualized justice, and disposition to fit the crime, allowed certain extra-legal factors to be taken into consideration in determining a child's needs (Kueneman & Linden, 1983:219-20). Haldane et al., for example, found a positive relationship between receipt of a major disposition by a juvenile and: low social class, low income, broken home, unmarried parents, families judged to be unstable, parental history of legal involvement and an over-crowded home (1972:240). Under this treatment orientation, the judge attempted to determine how much 'help' the offender 'needed' and then decided on a disposition that would enable the offender to be 'helped' for as long as necessary (Cousineau & Veevers, 1972:258).

Kueneman and Linden note, however, that the courts were becoming more legalistic in the few years previous to the implementation of the YOA, and judges were taking legal factors into consideration more, particularly following a number of Supreme Court decisions in the United States which led to an increasing emphasis on due process and an

adversarial approach within the juvenile justice system. Consequently, they found that such legal variables as number of current offences and extent of prior record were related to severity of disposition, while extra-legal factors were found to play a very minor role, although age and whether a youth worked or attended school did have some impact (1983:220).

Judges who are determining sentences under a due process orientation are more likely to subjectively balance the severity of the punishment with the severity of the offence committed (Cousineau & Veevers, 1972:258). Kueneman and Linden (1983:219) agree, stating that courts which operate according to a legalistic model consider only legal factors based on a philosophy that emphasizes equal justice for all and punishment to fit the crime.

Under the YOA, the objectives that judge's should be considering are set out in the principles of the Act. Moyer and Carrington (1983) report on the findings of the Key Actors Survey which was carried out by the Ministry of the Solicitor General of Canada in the summer of 1982. The study examined the opinions of judges and other professionals - defence counsel, probation officers, police and crown attorneys - towards the forthcoming YOA. They found that judges in Ontario were generally in agreement

with items in the Declaration of Principle including the emphasis on the rights of young persons, accountability, responsibility and protection of society and on the special needs of young persons. They also agreed that the degree of accountability of young persons should be less than that expected of adults; that removal from parental supervision should only be used as a last resort; and that young persons should have the right to participate in the processes that lead to decisions which affect them (1983:12-13). However, they were slightly less favourable towards the principle that young persons should have the right to the least possible interference with their freedom (1983:16), and towards the provision that young persons should have special guarantees of their rights and freedoms (1983:13).

Most Ontario judges were in agreement that young persons should have the right to counsel, and Moyer and Carrington suggest this may reflect the opinion of judges that a juvenile's best interests are served by strictly adhering to due process in court, especially since judges did not agree that participation of defence counsel interferes with the treatment and rehabilitative efforts of the court. Furthermore, those who supported the Act do not necessarily disagree with an approach that incorporates a *parens patriae* role for the juvenile court (1983:117). This

seems to indicate a willingness on the part of judges to balance the needs of the young offender while protecting his rights and following a due process approach (1983:53).

While Moyer and Carrington did not find any overall consistent trends in this study, they did find that the position of Key Actors in the system and the jurisdiction in which they worked were more directly related to opinions than age, years in the profession, community size, degree of involvement in delinquency, familiarity with the contents of the YOA, and other attitudes towards the functioning of the juvenile justice system (1983:118). In general, most of the Key Actors were against such provisions as the maximum three year disposition, the increase in the upper age limit, and the destruction of records for indictable offences. At the same time, however, there was general support from these Actors with respect to right to appeal, the right to legal representation, detention separate from adults, and most of the notice to appear provisions. Reactions to other aspects of the YOA were primarily determined by the Actors' role in the system, jurisdiction in which they worked and, possibly, by the specific interests of their professional roles (1983:119).

Overall, judges were at the middle of the response continuum; that is, they tended to be more supportive of the

provisions of the YOA than police and crown attorneys, but less supportive than probation officers and defence counsel. This suggests that a struggle continues between those professionals working in the field who advocate a needs-oriented approach in dealing with young offenders (probation officers, defence counsel), and those who advocate a more punitive approach (police, crown attorneys). It seems appropriate then, that judges act as the arbitrators between these two groups since they are the ones who are required to make the ultimate decision with respect to dispositions. Moreover, their opinions seem to more closely reflect the philosophy of the YOA which seeks to balance the needs and the rights of the young offender.

It is interesting to note that judges with more than eleven years of experience were more likely to disapprove with the philosophy of the Act than those who had five years experience or less (Moyer & Carrington, 1983:17), and the older the judge the more likely he disagrees with the elimination of status offences (1983:36). The more time judges had spent specifically on juvenile delinquency matters, the more likely they were to agree with the special guarantees of rights for young offenders and with the principle of "least possible interference with freedom" (1983:17). It may be that as judge's become more

experienced working within the terms of the YOA, and as a new generation of judges enter the system, there may be implications for future trends in dispositions.

Specific findings of the Key Actor Survey with respect to judge's attitudes towards disposition may have some implications for decision-making. Most of the judges approved of the increase in maximum amount of fine to \$1,000 (1983:68); the establishment of fine option programs (1983:63); the provision for alternative measures; the annual review of custodial dispositions (1983:71); and the principle that removal from parental supervision should be used only as a last resort (1983:66). Judges tended to disapprove of the provision for establishment of provincial boards to review custodial dispositions, and Moyer and Carrington suggest that because these judges were also likely to agree that the youth court should retain jurisdiction over all dispositions until they are completed, this may reflect a concern with the court having the authority to make dispositions that cannot be overruled (1983:75).

Most judges disapproved of the maximum three year sentence for offences that could lead to life imprisonment for adults (1983:55). There was less opposition to the maximum two year length for other, non-"life" offences and

judges who spent more time sitting on juvenile delinquency proceedings were more likely to agree with this provision (1983:59). A relationship was found between approval of disposition length and judges' perceptions of the quality of youth services in their community. Those who agreed to the two year term tended to perceive the overall quality of community services as higher than those who disapproved of the measure. At the same time, the less they approved of the two year term, the more likely they were to perceive the quality of services as low (1983:62). Consequently, judges do appear to take the availability of services for youths into consideration when deciding on disposition, and this suggests that the availability of alternative measures could further influence decision-making.

The Key Actor survey does not directly question judges about their attitudes in general towards the principle of alternative measures, and this limits any conclusions that may be drawn about judge's perceptions. However, the study did show that Ontario judges do tend to agree that alternatives may be used only if the youth consents and if there is evidence to proceed. They also agree that alternatives may not be used if the youth denies involvement or if he wants the charge dealt with by the court and the judge must dismiss a charge when a young

person has fully complied with alternative measures. Approval of these specific provisions for alternative measures did appear to be consistent with a general belief in minimal interference and a commitment to the due process model for juvenile justice (1983:103).

A recent judgment by the Ontario Court of Appeal that the lack of alternative measures programs in Ontario contravenes the equality provisions of the Charter or Rights, may have implications for judicial decision-making on dispositions (The Ottawa Citizen, 1988:A4). The YOA provides provinces with the authority to develop measures to deal with young offenders other than through the court process. Ontario has not established any formal programs to date because of certain reservations about the effectiveness of these programs in keeping an accused from becoming a repeat offender, and concerns that some youths may feel pressured to admit responsibility for an offence in order to avoid going to court. Ontario intends to set up an interim program pending the outcome of an appeal to the Supreme Court of Canada, however, it is not yet known whether the program will continue if the Supreme Court decides to support Ontario.

The general perception following the implementation of the YOA was that, while the number and type of charges

for 12 to 15 year olds and total number of dispositions remained the same, there had been a change in type of dispositions. Statistics gathered in the first few years of the Act suggested that there had been a significant increase in committals to custody and in the length of stay in secure custody (Leschied & Jaffe, 1985). Similar results were found for the year 1985, which led to speculation that this reflected a consistent trend (Leschied & Jaffe, 1987). Other provinces such as Manitoba, Saskatchewan, British Columbia, Nova Scotia and Alberta reported similar trends up until 1986 (Leschied & Gendreau, 1986:319).

Leschied and Gendreau suggest that the Declaration of Principles in the YOA reflect an attempt to create an 'equitable' system of justice where dispositions are meant to 'fit the crime'. This ties in with many of the policies arising from the justice model in the United States. The only difference with the U.S. model is the principle of the YOA which states that young offenders have special needs requiring guidance and assistance, and young offenders have a right to the least possible interference with freedom that is consistent with the protection of society. This has caused some ambivalence in terms of where to place the emphasis in determining dispositions.. They predict that there will continue to be an increase in incarceration and

less emphasis on treatment, partly because of the "just deserts" philosophy but also because, in most cases, the judge's hands are tied when the young offender refuses to consent to treatment. This leaves the judge with no other option but to use custody in order to best protect society from those who represent a threat (1986:319).

The data upon which most of these studies were based were gathered only up until 1986, the second full year following implementation of the new legislation and, therefore, care should be taken before drawing premature conclusions. Several possibilities may have caused changes in the form of dispositions for young offenders. Firstly, the implementation of the YOA has been left up to the individual provinces and, different ideologies and fiscal capabilities between the provinces may lead to major discrepancies in how the same offence, committed by a similar type of individual, is dealt with by different provinces.

A similar problem is that provincial governments may not be providing sufficient treatment and rehabilitation as alternatives to custody (Philip & Slobodian, 1987:49) and judges may not be satisfied with the community services available. In Ontario, the lack of alternative measures programs may result in many judges simply resorting to

custody. The provinces seem to be focussing attention and budgets on increasing beds rather than on implementing services in the community for dealing with young offenders (Calgary Herald, 1986:A1,A2).

As Leschied and Jaffe (1985) pointed out, judges may prefer open custody sentences because, under the YOA, they no longer have the authority to make these youths' wards of child welfare agencies and judges may not want to return them to their families. At the same time, a judge may sentence a youth to open custody because the youth has no home at all and the judge would like to see him off the street, under some form of supervision (Winnipeg Free Press, 1985:3).

A fourth issue to consider is that, unlike adults, youths do not get time off for good behaviour, nor are they paroled after serving two-thirds of their sentence. If a young offender and an adult are both sentenced to six months in custody, for example, the youth will serve the full six months and the adult may be required to complete only four months. Moreover, the use of the determinate sentence in youth court is a new concept for most judges who had previously left sentence length to the discretion of the training school or Children's Aid Society administrators. Consequently, judges may be erring on the side of caution in

placing more offenders in custody. Open custody may also be to the judge's liking since it offers a middle ground between secure custody and no custodial term, and the judge may believe that some form of supervision is necessary.

A final suggestion has been that the increase in sentences may simply be attributed to growing pains of the new legislation. It was mentioned earlier that many of the reports claiming that sentences had increased, including the present study, relied on data that was gathered up until 1986, covering the first two and one-half years of the Act. Since that time, there has been no apparent attempt to confirm these findings and this may be due to the fact that dispositions have actually undergone a settling period. If this is the case, there may be little difference between current dispositions and dispositions under the JDA.

A more qualitative attempt to review the situation has involved interviews with a number of officials at various levels of the juvenile justice system. The general consensus of these people is that, in the first few years of the Act, sentences had increased, however this is no longer the case. Ann Sheffield, from the Ministry of Community and Social Services notes that when the YOA came into effect there was a great deal of confusion and judges, in testing the waters, may have used longer sentences (Personal

Communication, February 24, 1988). She also suggests that judges may be using "open custody" or "probation with an order to reside" as dispositions to fill the void that was created by removal of the CAS option. Furthermore, despite the different legislation judges continue to have the same concerns that a juvenile receive adequate home care and, in this respect, open custody does appear to be getting similar cases as the Children's Aid Society did under the JDA. Finally, similar children are still committing the same offences and judges have concerns about them being properly supervised and, subsequently, want them in some form of custody.

Laurent Couture of the Ottawa area office of the Ministry of Community and Social Services, doesn't see a major difference in sentencing patterns (Personal Communication, February 5, 1988). He has found that the number of offenders under the YOA have either remained the same or decreased slightly and if any changes have occurred, secure custody has decreased while open custody has increased. Judges are attempting to make use of the "least restrictive alternative" provisions of the Act, trying other forms of disposition prior to using custody including probation, fines and diversion. He also points out that judges vary in their dispositions; while some believe in the

"sharp shock" treatment, others believe in using a more welfare-oriented approach.

Joan Cote, a supervisor in one open custody facility for 12 to 15 year old young offenders has found that more youths are being sentenced to open custody and less to secure because judges like having the option of open custody and prefer to give second chances (Personal Communication, February 19, 1988). Valerie Stairs, s supervisor of a secure custody facility in Ottawa agrees, adding that under the YOA, youths are being sentenced more often to probation as well as open custody (Personal Communication, February 16, 1988). Her perception is that secure custody dispositions are now shorter and given less frequently, with average sentences of about three months. Shortly after the YOA came in there were actually very few sentenced to secure custody. In the next few months, sentence gradually lengthened and over the years this again tapered off. Criteria for admission to a secure custody facility is actually very strict so that judges cannot use this form of disposition on a whim or to merely teach the youth a lesson.

Madeline Roussy, a probation officer in the Ottawa Juvenile Probation office has detected no major changes in the types of offences being dealt with under the YOA; there is a wider range of dispositions for dealing with these

offences and the courts are taking a more legalistic approach by considering the nature of the offence and the previous record of the offender, rather than the child's best interests (Personal Communication, March 25, 1988). In contrast to the views of other juvenile justice personnel, she disagrees that judges are sentencing youths to open custody to fill the void created by removing the court's authority to place young offenders in Children's Aid group homes. In fact, she points out that one judge has made it very clear there should be no confusion between the two; child welfare legislation already exists for dealing with children in need of protection.

These same officials in the juvenile justice system have also pointed out the difficulties involved in comparing dispositions under the YOA and under the JDA. The most frequently mentioned problem is that dispositions cannot be compared at face value; numerous other factors must be taken into consideration. Andy Birkenmeyer, from the Ministry of the Attorney General, points out that sentences under the JDA were indeterminate and the actual sentence length was determined by the staff of training schools (Personal Communication, January 12, 1988). Data from his Ministry only looks at cases that were disposed of by the Court and consequently, one would have to go back to the

training school records for comparison with length of secure custody dispositions under the YOA.

Laurent Couture notes that Ontario is one of the few provinces that have a Phase I and Phase Two split structure and this may lead to further complications in comparing data. It would seem logical that no changes have occurred for 12 to 15 year olds because they are, and always have been dealt with by the Ministry of Community and Social Services. On the other hand, there may be large differences in dispositions for 16 and 17 year olds between being treated as adults at the time of the JDA, and being treated as young offenders under the Ministry of Correctional Services.

Numerous problems arise at the very source of the data collection process in terms of unreliability. One staff member at a young offenders facility, who is responsible for providing statistics to the Ministry of Community and Social Services, states that the forms they are required to fill out were changed under the new Act and she has problems fitting her numbers into these forms (Personal Communication, February 11, 1988). As a result, she argues that the problem is one of subjectivity in that her perception of what goes into these forms may differ from what is actually read by the computers at the head office.

Jane Rodgers, from the research division of the Ministry of Community and Social Services in Toronto, says that this is a common problem because the Ministry is decentralized, with different regions and facilities developing their own systems for collecting the information (Personal Communication, March 1, 1988).

Common sense would suggest that there should, in fact, be no change in dispositions since the judges making the decisions are the same as those under the JDA. If we assume that the types of offences resulting in charges are the same as well, then there should be no reason for a difference in dispositions to occur. The data implies that sentences for similar offences increased due to the philosophy of the Act which places a greater emphasis on punishment than on treatment. However, it is far too simplistic to assume that, at midnight on March 31, 1984, judges decide to become more punitive. Therefore, if types of offences do not change and, if the point of view of the judges do not change, then why was a change found?

The present study attempts to determine the impact of the YOA on judicial dispositions for Phase I young offenders in the Provincial Court (Family Division), Frontenac County. The hypothesis examined is that the Young

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Offenders Act has not caused a change in youth court dispositions.

Chapter Three

METHODOLOGY

Leschied and Jaffe were the first to examine the sentencing trends in the juvenile justice system following implementation of the new legislation. They conducted two studies. In both of these studies, they looked at the dispositions under the JDA and the YOA in Southwest and Central West Ontario, a heavily urbanized part of the province in an area which covers nine counties and where approximately forty percent of Ontario's young persons live. The data used to compare dispositions in this study were obtained from the Ontario Ministry of the Attorney General. In the first study the statistics were gathered for the first eight months of the new legislation in 1984 and the same eight month period (April 1 to November 30) of the previous year. Using actual numbers and percentages they compared the charges, the dispositions (probation, C.A.S./open custody, and training school/secure custody orders) and the requests for social history and psychological/psychiatric reports. In their second study, Leschied and Jaffe looked at dispositions for the same age group between April 1 and November 30, 1985 and compared the

same variables as in the first study, again using actual numbers and percentages.

In 1985 many newspapers (Calgary Herald, Winnipeg Free Press, The Globe and Mail, The Ottawa Citizen), were reporting that an increase in number and length of incarcerations for young offenders had been the effect of implementation of the YOA. The articles relied on statements made by the Ontario Ministry of Community and Social Services, referring to statistics relating to the numbers of children becoming involved with the law and the manner in which they were dealt with (Globe and Mail, 1986:14).

The studies of Leschied and Jaffe (1985, 1987) have a number of shortcomings. One shortcoming is the possible lack of similarity in the dispositions compared. Leschied and Jaffe (1985, 1987) compared committal to secure custody under the YOA with committal to training school under the JDA, and they compared dispositions involving open custody under the YOA, with dispositions involving detention in a C.A.S. group home under the JDA.

In attempts to distinguish children in need of protection from young offenders, the power of a judge to place a youth in a group home was removed and the concept of

"open custody" was introduced. The expectation was that those who would have been committed to training schools under the old legislation would be diverted into open custody, and that "children in need of protection" who had previously been placed with delinquent youths in group homes would then be dealt with under appropriate child welfare legislation. While both CAS group home and open custody placements both involve youths living in structured environments, those in open custody are under strict supervision and they require temporary passes before they may leave the facility. Furthermore, in contrast to admission to training school under the JDA, criteria for admission to secure custody under the YOA are very strict such that the youth must have committed a serious offence, he must possess a record of previous offences or the offence must have involved an escape from custody. Under the JDA, judges were given no guidelines to follow in determining whether a training school placement would be the most appropriate disposition and it was usually left to the judge's discretion. Once placed in a training school, the youth would usually remain until the training school authorities deemed that he was ready for release. Secure custody sentences, on the other hand, are required to be for

a specified period of time. Efforts to regroup youths and reduce the number of committals, led to the possibility that the dispositions would deal with different types of children and this possibility adds to the difficulties in assessing the impact of the YOA on these forms of dispositions.

A second and more serious problem with studies which have attempted to assess the impact of the YOA on dispositions has been the lack of controls for the type of offender brought to and dealt with in court. It naturally follows that if the type of offender brought to court when the YOA was operative was different from the type of offender brought to court when the JDA was operative, then the sentencing must be different; different not because of a change in philosophy but because of a change in the nature of the cases dealt with. A difference in sentencing because of a change in philosophy would occur if there was a change in sentencing, without a change in the nature of the cases dealt with.

Taking these problems into account a study of the changes in disposition brought about by changes in the law must compare not only the dispositions under the two Acts but the types of individuals brought before court and the

types of individuals given a particular disposition. This study thus comprises:

- (a) the comparison of dispositions under the JDA and YOA,
- (b) the comparison of the individuals dealt with by the court under the JDA and the YOA,
- (c) the comparison of the individuals given a particular disposition under the JDA and the YOA.

In late 1986, Kim Huartson a graduate student at the University of Ottawa, attempted to conduct a similar study (Personal Communication, April 15, 1988). He approached various officials in the local juvenile justice system in order to gain access to youth court files. However, he was told that those in charge of maintaining the files were precluded from granting access to him because section 38(1) of the YOA which reads:

Subject to this section, no person shall publish by any means any report

- (a) of an offence committed or alleged to have been committed by a young person . . . , or
- (b) of a hearing, adjudication, disposition or appeal concerning a young person who committed or is alleged to have committed an offence.

This in spite of the fact that section 44.1(1)(k)(i) of the Act states:

A record of a case . . . shall, on request be made available for inspection at any time before or after proceedings in the case are completed to

(k) any person who is deemed by a youth court judge to have a valid interest in the record, for research or statistical purposes, if the judge is satisfied that the disclosure is desirable in the public interest

This section has not as yet been tested and to date, no one has been willing to do this.

Huartson encountered further difficulties from the fact that, prior to the release of any information, each individual case was required to be reviewed by a judge to determine whether it should be opened. This eliminated any opportunity to collect a random sample of subjects. To get the Judges approval a list of the files to which access was sought had to be presented to the judge and the list could not be prepared without access to the files. According to the juvenile probation office, the matter would require settlement by their legal department and that could take several months.

Huartson also contacted the Ministry of Community and Social Services and, from his discussions, he detected an extreme reluctance on the part of officials to have any form of research done on the impact of the YOA. He could not determine the reason for this reluctance. However, it seems to have been at this point that officials in the juvenile justice system were claiming that the initial changes in the sentences under the YOA were tapering off.

In this study an attempt is made to control for the nature of the case and data required concerning the dispositions as well as the type of individual dealt with. At the minimum, information was required on the age and sex of the offender, type of offence, history of past offences (previous record and previous disposition), and other potentially relevant factors including presence of defence counsel and parents, and preparation of any reports - all of which are considered relevant for a study of sentencing.

Carol Wilson who, at the time, was a probation officer for the Ministry of Community and Social Services, obtained permission from Judge Pedlar of the Family Court in Kingston to collect information from court dockets at the Provincial Court (Family Division), Frontenac County. The data spans two calendar years, one year prior to and one

year following the implementation of the YOA. The year in which the new legislation came into effect was left out to avoid confounding the results with problems involved in the transition period. The JDA cases were taken from the dockets for January 1 to December 31, 1983 and the YOA cases were taken from the dockets for January 1 to December 31, 1986. The entire dockets for both years were used and all data were taken from court files. Subjects who made an initial appearance at court and were sentenced during the specified time frame were used for this study. Some of the subjects were diverted and charges withdrawn, and so, only those cases that showed up on the docket were used. A few (n=5) JDA files were not available due to transfers to other court systems. Some YOA files had been destroyed, however, basic information about charges, gender and outcome were available from the court dockets.

After the data was collected, all of the information was stored on a Lotus 1,2,3 file. The Lotus 1,2,3 is a software package for doing spreadsheet programs useful for performing calculations in accounting and for making rows, columns and matrices. However, it is not necessarily the most efficient type of program for doing a statistical analysis. The data collection was completed at about the

same time that Ms. Wilson was transferred to Probation and Parole with the Ministry of Correctional Services and, consequently, she was unable to carry out the data analysis.

In the fall of 1987, it was learned that Ms. Wilson had collected this data and, with an interest in conducting a study of dispositions, this writer approached her about the possibility of conducting the analysis (Personal Communication, September 29, 1988). The data was initially stored in Kingston by Darren Dougall, executive coordinator of the Frontenac Diversion Program, on a high density disk drive which allows more information to be compressed into a smaller area. Problems arose in trying to read the data because the computer used initially could not read the data since it only had a low density disk drive. This problem was solved by having the information in Kingston put onto a low density disk drive. Despite this, a number of people attempted to access the information and, when this writer was finally successful in getting a hard copy of the data, it was decided that the analysis should be done by hand since the sample size was small and it would take the same amount of time to complete as to condense all of the variables so that they could be calculated by the computer.

The variables on which data was collected by Ms. Wilson were later regrouped by this writer into eleven specific categories as follows:

1. Age: A - 8

B - 9

C - 10

D - 11

E - 12

F - 13

G - 14

H - 15

I - 16

J - 17

2. Sex: A - Male

B - Female

3. Current Offence (Charges):

A - Break and Enter

B - Theft under

C - Theft over

D - Possession under

E - Possession over

F - Wilful Damage

- G - Breach of Probation
- H - Assaultive
- I - Sexual
- J - Drugs & Alcohol
- K - Highway Traffic Act
- L - Liquor License Act
- M - Other Criminal Code
- N - Other Provincial Offences Act

4. Conviction:

- A - Yes
- B - No

5. Parents in Attendance:

- A - Yes
- B - No

6. Counsel Present:

- A - Duty Counsel
- B - Retained Counsel
- C - None
- D - Other

7. Plea:

- A - Guilty
- B - Not Guilty
- C - No Plea

8. Reports:

- A - Family Court Clinic Assessment
- B - Social History Report
- C - Predisposition Report
- D - No Report

9. Previous Convictions:

- A - No previous convictions
- B - 1 - 2
- C - 3 - 5
- D - 5 - 10
- E - more than 10

10. Previous Sentencing:

- A - Sine Die
- B - Absolute Discharge
- C - CSO
- D - Probation 1 - 6 months
- E - Probation 7 - 12 months
- F - Probation 13 - 18 months
- G - Probation 19 - 24 months
- H - CAS wardship/ Open Custody
- I - Training School/ Secure Custody
- J - Fine
- K - On Disposition at Time of Offence

L - No previous disposition

11. Current Sentencing:

A - Sine Die

B - Absolute Discharge

C - Community Service Order

D - Probation 1 - 6 months

E - Probation 7 - 12 months

F - Probation 13 - 18 months

G - Probation 19 - 24 months

H - CAS wardship/ Open Custody

I - Training School/ Secure Custody

J - Fine

K - No Disposition

While a total of 83 variables had been included in the initial data collection phase, certain ones were dropped since they were unlikely to affect the type of disposition.

Others were regrouped into 11 categories in order to facilitate analysis. Thus, for example, of the original variables taken, age and sex were used in their original format; the current offence category remains the same, except that where a youth was charged with more than one offence, only the more serious offence was used for this

study; initially, convictions had been listed according to each offence, however, this was reduced to a simple yes/no response; parents in attendance retained the same two-way format; presence of defence counsel was kept in the original four response category; where plea of the youth originally consisted of guilty or not guilty, a third category was added in cases where no plea was entered; similarly, for the preparation of a report, in addition to Family Court Clinic Assessment, Social History Report and Pre-Disposition Report, a fourth category was added where no report was completed; the original category for number of adjournments was deleted; however, for interests sake, the total number under both Acts ranged from 0 to 7; the category pertaining to whether a youth had previously been diverted was dropped since this category was incomplete and, where in some cases a charge was dropped so that the youth could enter a diversion program, this did not always occur; while previous convictions were retained, the type of previous convictions was deleted since much of this information was incomplete. In some cases, for example, a child may have had 5 previous convictions but only one type was recorded (ie. theft). Consequently, only actual numbers were used and these were grouped as follows (A: 0), (B: 1 - 2), (C: 3 - 4), (D: 5 -

10), (E: more than 10); previous sentencing retained its original format, except that number of community service order hours were deleted, and an additional category was added where there had been no previous sentencing; whether or not a youth was serving a sentence when he committed the current offence was taken into account; current sentences retained their original format of classification according to type of disposition, except that again, number of community service order hours was deleted and an additional category was added where there was no disposition given; finally, a number of post-dispositional factors had been included in the original data collection, however, this was deleted since much of the information had been unavailable.

Once this regrouping had been completed, it was necessary to drop those cases where the age of the young offender was not available since age was considered to be a relevant background characteristic of the offender. As a result, the total number of JDA cases was reduced from 123 subjects to 119 subjects, and the total number of YOA cases was reduced from 170 cases to 91 cases.

Each case was then examined individually and the relevant factors were classified according to a letter system following the format of the eleven categories. As an

example, information for offender 1, charged under the JDA, was recorded on a 3" x 5" index card as follows: G A F A B A A C A L D which means that the offender was a 14 year old male charged and convicted of wilful damage; his parents were not present and he was represented by duty counsel; he pleaded guilty and a social history report was completed on him; he had no prior convictions or dispositions and he received one to six months probation. The same procedure was followed for the remaining 118 cases under the JDA and the 91 cases under the YOA.

In the next step, the index cards for those cases charged under the JDA were sorted according to disposition. All youths receiving disposition A, for example, were grouped together as were all those receiving disposition B, C and so on. The dispositions under the JDA and the YOA were then compared, followed by a comparison of the type of person and case dealt with under each legislation, using:

- (a) age
- (b) sex
- (c) type of offence
- (d) previous history
- (e) whether legally represented
- (f) whether parents were present

(g) whether pre-disposition reports were made.

The data was analyzed using the chi square test. This test presents the determination of the existence of any significant difference in the studied characteristic as manifested by the two groups. The test indicates whether the groups studied could be considered samples of same populations or of two different populations as far as the variable considered is concerned. Next, the cases for each type of disposition were examined to determine what type of case received what type of disposition. Computed was the probability that a particular type of case would receive a particular type of disposition. These probabilities under the JDA and the YOA were then compared.

Chapter FourRESULTS

The sample contained 119 youths dealt with under the JDA and 91 under the YOA. Three of the youths dealt with under the JDA were sent to training school, three were committed to the care of a Children's Aid Society with two of these receiving probation as well, 34 were put on probation, 4 were given a community service order in addition to the probation. In 75 cases, there was either an absolute discharge or a finding of innocence or, on a finding of guilt, the case was adjourned sine die or no disposition was made. Under the YOA, 12 were placed in secure custody, two of them with open custody in addition, three of them with probation, and another 2 with open custody and probation in addition. Placed in open custody alone were four and placed in open custody and probation were another four. Placed on probation were 36 and placed on probation with a community service order were 16. Nine were fined and in 10 cases there was an absolute discharge or no disposition made (Table 1). The differences in disposition under the two Acts are statistically significant.

When the youths dealt with by the courts under the two Acts are considered, it is found that, under the JDA,

TABLE 1
DISPOSITIONS FOR YOUTHS UNDER THE TWO LEGISLATIONS

CURRENT DISPOSITION	JDA	YOA
CAS WARDSHIP/ OPEN CUSTODY	1	4
TRAINING SCHOOL/SECURE CUSTODY	3	5
FINE	0	9
PROBATION (1 - 6 MONTHS)	14	15
PROBATION (7 - 12 MONTHS)	18	18
PROBATION (13 - 18) MONTHS)	2	3
ABSOLUTE DISCHARGE	0	2
SINE DIE	8	0
COMMUNITY SERVICE ORDER AND 1 - 6 MONTHS PROBATION	3	7
COMMUNITY SERVICE ORDER AND 7 - 12 MONTHS PROBATION	1	6
COMMUNITY SERVICE ORDER AND 13 - 18 MONTHS PROBATION	0	3
SECURE CUSTODY AND 7 - 12 MONTHS PROBATION	0	3
CAS WARDSHIP/OPEN CUSTODY AND 1 - 6 MONTHS PROBATION	1	1
CAS WARDSHIP/OPEN CUSTODY AND 7 - 12 MONTHS PROBATION	1	3
OPEN CUSTODY AND SECURE CUSTODY	0	2
OPEN AND SECURE CUSTODY AND 1 - 6 MONTHS PROBATION	0	1
OPEN AND SECURE CUSTODY AND 7 - 12 MONTHS PROBATION	0	1
NO DISPOSITION	67	8
TOTAL	119	91

$$\chi^2 = 81.9$$

$$df = 17$$

χ^2 is significant at the .001 level

$$\chi^2 (17) = 81.9, p < .001$$

one 8 year old, seven 9 year olds, six 10 year olds and four 11 year olds were charged compared to none under the age of charged under the YOA, since the jurisdiction of the courts under the JDA began at an earlier age. At the same time, two 17 year olds and fifteen 16 year olds were charged as a result of the extended maximum jurisdiction of the YOA, compared to only five 16 year olds charged under the YOA. Under the JDA, six 12 year olds, twelve 13 year olds, thirty-six 14 year olds and forty-two 15 year olds were charged. Under the YOA, four 12 year olds, five 13 year olds, twenty-one 14 year olds and forty-four 15 year olds were charged (Table 2). Statistical significance was found for the differences in ages for youths under the two Acts.

Eighty-two males and 37 females were charged under the JDA, and 82 males and 9 females were charged under the YOA (Table 3). The differences in sex under the JDA and under the YOA are statistically significant.

Fourteen different types of charges were included and, for both Acts, the most frequent charges were for theft under and break and enter. Seventeen youths were charged with break and enter under the JDA, compared to 28 charged under the YOA and 52 youths were charged with theft under in the JDA while 14 were charged with this offence under the

TABLE 2

AGE OF YOUTHS DEALT WITH UNDER THE TWO LEGISLATIONS

AGE	JDA	YOA
8	1	0
9	7	0
10	6	0
11	4	0
12	6	4
13	12	5
14	36	21
15	42	44
16	5	15
17	0	2
TOTAL	119	91

 $\chi^2 = 29.09$

df = 9

 χ^2 is significant at the .001 level $\chi^2(9) = 29.09, p < .001$

TABLE 3

SEX OF YOUTHS DEALT WITH UNDER THE TWO LEGISLATIONS

SEX	JDA	YOA
MALE	82	82
FEMALE	37	9
TOTAL	119	91

$\chi^2 = 13.54$

df = 1

χ^2 is significant at the .001 level

$\chi^2 (1) = 13.54, p < .001$

YOA. Under the JDA, 7 youths were charged with theft over, 8 with possession under, 1 with possession over, 6 with wilful damage, 7 with drug and alcohol offences, 3 with a Highway Traffic Act offence, 3 with a Liquor License offence, 6 with an "Other Criminal Code" offence and two with a Provincial Offence. Under the YOA, 2 youths were charged with theft over, 1 with possession under, none with possession over, 6 with wilful damage, 11 with breach of probation, 7 with assault, 3 with a sexual offence, none with a drug and alcohol offence, 8 with a Highway Traffic offence, none with a Liquor License offence, 9 with an "Other Criminal Code" offence and 2 with a Provincial Offence (Table 4). These differences in current offences under the two Acts were found to be statistically significant.

Specific guidelines in the YOA with respect to notification of parents are reflected in the fact that parents were more than five times more likely to be present in court under the YOA. While parents were present in only 12 cases under the JDA, they were present in 63 cases under the YOA (Table 5). Statistical significance was found for the differences in presence of parents under the two Acts.

The differences in representation by defence counsel between the two Acts was also found to be statistically

TABLE 4

CURRENT OFFENCE OF YOUTHS DEALT WITH UNDER THE TWO LEGISLATIONS

CURRENT OFFENCE	JDA	YOA
BREAK AND ENTER	17	28
THEFT UNDER	52	14
THEFT OVER	7	2
POSSESSION UNDER	8	1
POSSESSION OVER	1	0
WILFUL DAMAGE	6	6
BREACH OF PROBATION	7	11
ASSAULT	5	7
SEXUAL	0	3
DRUG AND ALCOHOL	2	0
HIGHWAY TRAFFIC ACT	3	8
LIQUOR LICENSE ACT	3	0
OTHER CRIMINAL CODE	6	9
PROVINCIAL OFFENCE	2	2
TOTAL	119	91

 $\chi^2 = 42.87$
 $df = 13$
 χ^2 is significant at the .001 level

 $\chi^2 (13) = 42.87, p < .001$

TABLE 5

PRESENCE OF PARENTS FOR YOUTHS DEALT WITH UNDER THE TWO LEGISLATIONS

PARENTS PRESENT	JDA	YOA
YES	12	63
NO	107	28
TOTAL	119	91

$\chi^2 = 78.56$

df = 1

χ^2 is significant at the .001 level

$\chi^2 (1) = 78.56, p < .001$

significant. Under the JDA, 58 youths were represented by duty counsel, 41 were represented by retained counsel and 20 youths had no counsel. Under the YOA, 43 youths had duty counsel, 42 had retained counsel, 1 was represented by some "Other" counsel and only 5 were not represented by counsel (Table 6).

Pre-disposition reports were prepared for more youths under the YOA than were social history reports under the JDA and this may be related to the requirement in the YOA that a pre-disposition report be completed where any form of custodial disposition is being considered. These differences between the Acts were statistically significant. Under the JDA, a Family Court Clinic Assessment was prepared for one youth, a pre-disposition report was not completed for any youth, social history reports were prepared for 20 youths and, in 98 cases, no reports were prepared. No Family Court Clinic Assessments were prepared for youths under the YOA, pre-disposition reports were prepared for 35 youths, a social history report was not prepared for any youth and, in 56 cases, no reports were prepared (Table 7).

Youths under the YOA were more likely to have a prior record than JDA youths and, subsequently, to have served a previous disposition. These differences between

TABLE 6

PRESENCE OF DEFENCE COUNSEL FOR YOUTHS
DEALT WITH UNDER THE TWO LEGISLATIONS

TYPE OF DEFENCE COUNSEL	JDA	YOA
DUTY COUNSEL	58	43
RETAINED COUNSEL	41	42
NO COUNSEL	20	5
OTHER	0	1
TOTAL	119	91

$$\chi^2 = 8.66$$

$$df = 3$$

χ^2 is significant at the .05 level

$$\chi^2 (3) = 8.66, p < .05$$

TABLE 7

PREPARATION OF REPORTS FOR YOUTHS
DEALT WITH UNDER THE TWO LEGISLATIONS

TYPE OF REPORT	JDA	YOA
FAMILY COURT CLINIC ASSESSMENT	1	0
PRE-DISPOSITION REPORT	0	35
SOCIAL HISTORY REPORT	20	0
NO REPORTS	98	56
TOTAL	119	91

$\chi^2 = 64.89$
 $df = 3$

χ^2 is significant at the .001 level

$\chi^2 (3) = 64.89, p < .001$

the Acts were both found to be statistically significant. Under the JDA, 101 youths had no previous convictions, thirteen youths had 1 to 2 prior convictions, four had 3 to 4 prior convictions, one had 5 to 10 previous convictions and none had more than 10. Under the YOA, 53 youths had no prior convictions, seventeen had 1 to 2 previous convictions, fourteen had 3 to 4 previous convictions, six had 5 to 10 previous convictions and one had more than 10 (Table 8).

Under the JDA, 102 youths had no previous dispositions, 2 were adjourned sine die and none were fined. One youth received a community service order and probation and 9 received probation: one for 1 to 6 months and eight for 7 to 12 months. Two youths had previously been sentenced to Children's Aid Society wardship and 3 had been sentenced to training school. Under the YOA, 52 youths had no previous disposition, 1 was adjourned sine die and 2 received fines. One youth received probation with a community service order, eight received probation for 1 to 6 months, eight received probation for 7 to 12 months and three received probation for 13 to 18 months. Eight youths had previously been sentenced to open custody and 8 had been sentenced to secure custody (Table 9).

TABLE 8

PREVIOUS CONVICTIONS FOR YOUTHS

DEALT WITH UNDER THE TWO LEGISLATIONS

NUMBER OF PREVIOUS CONVICTIONS	JDA	YOA
NONE	101	53
1 to 2	13	17
3 to 4	4	14
5 to 10	1	6
MORE THAN 10	0	1
TOTAL	119	91

$$\chi^2 = 22.28$$

$$df = 4$$

χ^2 is significant at the .001 level

$$\chi^2 (4) = 22.28, p < .001$$

TABLE 9
PREVIOUS DISPOSITIONS FOR YOUTHS
DEALT WITH UNDER THE TWO LEGISLATIONS

PREVIOUS DISPOSITION	JDA	YOA
SINE DIE	2	1
COMMUNITY SERVICE ORDER AND PROBATION	1	1
PROBATION (1 to 6 MONTHS)	1	8
PROBATION (7 to 12 MONTHS)	8	8
PROBATION (13 to 18 MONTHS)	0	3
CAS. WARDSHIP/OPEN CUSTODY	2	8
TRAINING SCHOOL/SECURE CUSTODY	3	8
FINE	0	2
NO PREVIOUS DISPOSITION	102	52
TOTAL	119	91

$$\chi^2 = 29.69$$

$$df = 8$$

χ^2 is significant at the .001 level

$$\chi^2 (8) = 29.69, p < .001$$

When the youths given a particular disposition are considered, it is found that all three sent to training school under the JDA were males. They were 13, 14 and 15 years old. The 13 year old was charged with theft under, the 14 year old was charged with an "Other Criminal Code" offence, and the 15 year old was charged with break and enter. The 13 year old had 3 to 4 previous convictions and for these offences he had been placed in the care of a Children's Aid Society, was committed to training school and placed on probation. In the present case, he was represented by retained counsel, he did not have his parents present in court and a social history report was prepared on him. The 14 year old had 1 to 2 previous convictions and he was subsequently committed to a training school. He was represented by retained counsel, his parents were not present in court and no report was prepared on him. The 15 year old also had 3 to 4 previous convictions for which he received probation. He was represented by retained counsel, his parents were not present and no report was prepared on him. All of these youths were serving previous dispositions at the time of being charged with the current offence.

Of the 3 committed to the care of the Children's Aid Society under the JDA, two were female and one was a male. One female was 15 years old. She was charged with breach of

probation following a previous conviction which resulted in a sentence of 1 to 6 months probation. She was represented by duty counsel, her parents were not present and a Family Court Clinic Assessment was completed on her. The other female who was placed on probation in addition was 13 years old and charged with an "Other Criminal Code" offence. She had no previous convictions, she was represented by retained counsel, her parents were not present, and a social history report was prepared on her. The male, also given probation in addition was 14 years old and charged with theft under. He also had no previous convictions, he was represented by retained counsel, his parents were not present, and no report was completed for him.

Placed on probation under the JDA were 34 youths. Of these, 8 males and 6 females received probation for 1 to 6 months. One of these males was 12 years old, 4 were 14 years old, 2 were 15 years old and 1 was 16 years old. The 12 year old male was charged with theft under and had no previous convictions. He was represented by duty counsel, his parents were not present and a social history report was completed on him. The 14 year old males were charged with theft under, wilful damage, assault and breach of probation. All except the one charged with breach of probation had no previous convictions. All, except the one charged with

assault who was not represented, were represented by duty counsel. All of them did not have their parents in court. All except the one charged with breach of probation, had a social history or pre-disposition report prepared. The one charged with breach of probation had no report prepared. Of the two 15 year old males, one was charged with an "Other Criminal Code" offence. He had 3 to 4 prior convictions for which he was committed to a Children's Aid Society in addition to receiving probation. He was serving this previous disposition at the time of his current charge. He was represented by retained counsel, his parents were not present in court and no report was completed on him. The other 15 year old was charged with a drug and alcohol offence and he had no previous convictions. He was represented by retained counsel, his parents were present in court and no report was completed on him. The 16 year old male was charged under the Highway Traffic Act. He had 1 to 2 prior convictions and was adjourned sine die. He was represented in court by duty counsel, his parents were not present and no report was completed on him. Of the 6 females who were placed on probation for 1 to 6 months, one was 13 years old, two were 14 years old and three were 15 years old. The 13 year old was charged with theft under and had no previous convictions. She was represented by duty

counsel, her parents were not present, and a social history report was prepared on her. The two 14 year old females also had no previous convictions, did not have their parents present in court and had no report completed on them. One of them was charged with theft under and was represented by duty counsel while the other was charged under the Liquor License Act and was represented in court by retained counsel. Of the three 15 year old females, one was charged under the Liquor License Act and two with possession under. None of them had prior convictions. The one charged under the Liquor License Act was not represented by counsel, her parents were not present in court and a social history report was completed on her. The other two were represented by retained counsel, and no pre-disposition report or social history report was prepared on them. One did not have her parents present in court; the other did.

Eighteen youths received 7 to 12 months probation under the JDA. Fourteen of them were male and 4 were female. Of the males, one was 10 years old, 6 were 14 years old, 5 were aged 15 and 2 were aged 16. The 10 year old was charged with possession under. He had 1 to 2 prior convictions for which he received probation and a community service order and he was serving this disposition at the time of his current charge. He was represented by duty

counsel, his parents were not present, and no report was completed on him. Of the 14 year old males, 2 were charged with theft under, 2 with theft over, one with an "Other Criminal Code" offence and one with a Provincial offence. All of them, with the exception of one charged with theft under, had no previous convictions and all of them, with the exception of the one charged with "Other Criminal Code Offence" had a social history report prepared on them. The youth charged with a Provincial offence was represented by retained counsel and his parents were present in court. The youth charged with an "Other Criminal Code" offence was represented by retained counsel; his parents were not present. The 2 youths charged with theft over were both represented by duty counsel. The parents were present in one case but not in the other. Of the 2 youths charged with theft under, the one who had no prior convictions was represented by retained counsel; his parents were not present. The other one had 1 to 2 prior convictions and had received 7 to 12 months probation. He was represented by duty counsel; his parents were not present. Of the 15 year old males, 1 was charged with theft under, 1 was charged with a drug and alcohol offence and 3 were charged with break and enter. The one charged with the drug and alcohol offence was represented by duty counsel. The one charged

with break and enter with a previous record was also represented by duty counsel. All the others were represented by retained counsel. All, with the exception of one charged with break and enter had no previous convictions. All, with the exception of the one charged with a drug and alcohol offence did not have their parents in court. None of them had a social history or pre-disposition report prepared on them except for the one charged with theft under. The two 16 year old males were charged with break and enter. Neither youth had any prior convictions, both were represented by retained counsel, parents were present in both cases and one had a social history report prepared on him while the other had none.

Of the 4 females who received 7 to 12 months probation under the JDA, one was 13 years old, one was aged 14 and 2 were aged 15. The 13 year old was charged with theft under and had no prior convictions. She was represented by duty counsel, her parents were not present and a social history report was completed on her. The 14 year old was charged with breach of probation and she had previously been convicted of 1 to 2 prior offences for which she received probation which subsequently resulted in her current charge. She was represented by retained counsel, her parents were not present in court and no report was

prepared on her. Of the two 15 year old females, one was charged with theft under and the other with assault. The youth charged with theft under had previously been convicted of 1 to 2 offences and this was adjourned sine die. She was represented by retained counsel, her parents were not present and a social history report was completed on her. The female charged with assault had no previous record. She was represented by retained counsel, her parents were present and a social history report was completed on her.

Two males received 13 to 18 months probation under the JDA. One was 13 years old and the other was 15. The 13 year old youth was charged with theft under and he had previously been convicted of 1 to 2 offences for which he received probation. He was represented by retained counsel, his parents were present and a social history report was completed on him. The 15 year old youth was charged under the Highway Traffic Act. He also had 1 to 2 prior convictions for which he received probation. He was represented by retained counsel, his parents were present and a social history report was completed on him as well.

Four youths charged under the JDA received probation with the condition to complete a community service order. All were males and 3 received a community service order and 1 to 6 months probation while one received a community

service order and 7 to 12 months probation. The last youth, age 14, was charged with theft over and he had no prior convictions. He was represented by duty counsel, his parents were not present, and no report was completed. Of the 3 remaining youths, one was age 9, one was age 10 and one was age 15. The 9 year old was charged with wilful damage and he had no prior convictions. He was represented by duty counsel, his parents were not present, and a social history report was completed on him. The 10 year old was also charged with wilful damage and had no prior conviction. He was represented by duty counsel, his parents were present, and no report was completed on him. The 15 year old was charged with wilful damage and had no prior convictions. He was represented by retained counsel, his parents were not present, and no report was completed on him.

Seventy-five youths received no disposition under the JDA including eight who were convicted but were adjourned sine die. Of the 8 who were adjourned sine die, 3 were male and 5 were female. Of the males, one was 14 years old and the other 2 were 15. The 14 year old was charged with theft under and had no prior record. He was represented by duty counsel, his parents were not present and no report was completed on him. Of the two 15 year

olds, one was charged with wilful damage and the other was charged under the Highway Traffic Act. The one charged with wilful damage had no prior convictions and he was represented by a lawyer. His parents were not present and a social history report was completed on him. The one charged under the Highway Traffic Act also had no prior record. He was represented by duty counsel, his parents were not present and no report was completed. Of the 5 females, one was 11 years old, two were 14 years old and two were 15 years old. The 11 year old was charged with a provincial offence and he had no prior record. He was represented by retained counsel, his parents were not present and no report was prepared. Both of the 14 year old females were charged with theft under and neither had a prior record. One was represented by duty counsel while the other was represented by a lawyer. Parents were not present and no reports were completed in either case. Both of the 15 year old females were charged with theft under as well, and neither had a prior record. One was represented by duty counsel and one by retained counsel. Parents were not present in either case and no reports were completed for either youth.

The remaining 67 youths who were either not convicted or, were convicted but received no disposition, consisted of 47 males and 20 females. Of the males, there

was one 8 year old, six 9 year olds, three 10 year olds, three 11 year olds, three 12 year olds, four 13 year olds, nine 14 year olds, seventeen 15 year olds and one 16 year olds. The 8 year old was charged with theft under, and he had no prior record. He was represented by retained counsel, his parents were not present and no report was completed on him. Of the six 9 year olds, one was charged with break and enter, 3 with theft under, and 2 with possession under. The one charged with break and enter had no prior record and he was not represented by any counsel. His parents were not present and no report was completed on him. None of the three youths charged with theft under had prior records and all were represented by duty counsel. Parents were not present in any of the cases and no reports were prepared. The two youths charged with possession under also had no previous convictions and were represented by duty counsel. Parents were not present in court in either case and no reports were prepared on these three youths. The three 10 year olds were charged with break and enter, theft under and possession under. None of them had a previous record. The first two of these youths were represented by duty counsel and the other had no counsel. In none of the cases were parents present, and no reports were prepared. The three 11 year olds were charged with

break and enter, theft under and possession under. None of the youths had a prior record. The first two were represented by duty counsel and the other by retained counsel. Parents were not present in any of the cases and no reports were completed. Of the three 12 year old males, one was charged with break and enter, one with theft under and one with theft over and none had any prior convictions. The first was represented by duty counsel, the second by retained counsel and the third had no counsel. Parents were not present in any of the cases and no reports were completed. The four 13 year old males were charged with break and enter, assault, and 2 with theft under. The one charged with break and enter had no prior conviction and was not represented by counsel. His parents were not present and no report was completed. The youth charged with assault also had no prior record and was represented by retained counsel. His parents were not present and no report was completed. Neither of the youths charged with theft under had any prior convictions. Both were represented by duty counsel, parents were not present in either case, and no reports were completed. Three of the 14 year old males were charged with break and enter, four were charged with theft under, one was charged with possession over and one was charged with assault. None of the youths charged with break

and enter had a prior record. One was represented by retained counsel and two had duty counsel. Parents were not present in any of the cases and no reports were prepared for any of the youths. None of the four charged with theft under had a prior record. One was represented by retained counsel while the other 3 had duty counsel. Parents were not present in any of the cases and no reports were completed. The youth charged with possession over also had no prior record. He was not represented by any counsel, his parents were not present and no reports were prepared. The youth charged with assault had no prior record and was not represented by counsel. His parents were not present, and no reports were completed. Of the seventeen 15-year old males, 2 were charged with an "Other Criminal Code" offence, one with assault, 2 with breach of probation, one with possession under, 2 with theft over, 6 with theft under, and 3 with break and enter. The 3 charged with break and enter had no prior record and all were represented by retained counsel. Parents were not present in any of the cases and no reports were prepared. None of the 6 youths charged with theft under had any prior records. Two of them were represented by duty counsel and four had no counsel. Parents were not present in any of the cases and no reports were prepared. The 2 youths charged with theft over had no

prior record and they were both represented by duty counsel. Parents were not present in either case and no reports were completed. The youth charged with possession under had no prior record, he was represented by retained counsel, his parents were not present and no reports were completed. The two youths charged with breach of probation each had 1 to 2 prior convictions and each received probation and the failure to comply with this disposition led to the current charge. Neither of these youths were represented by counsel, parents were present in only one case, and reports were not completed for either youth. The 15 year old male who was charged with assault had no prior convictions and he was represented by duty counsel. His parents were not present and no report was completed. Neither of the 2 youths charged with an "Other Criminal Code" offence had any previous convictions. One was represented by duty counsel and the other by retained counsel. Parents were not present in either case and no reports were prepared. The 16 year old male was charged with breach of probation. He had 3 to 4 previous convictions for which he subsequently received probation and this led to his current charge. He was represented by duty counsel, his parents were not present and no report was completed on him.

Of the 20 females who received no disposition under the JDA, one was 10 years old, three were 12 years old, three were 13 years old, seven were 14 years old, five were 15 years old and 1 was 16 years old. The 10 year old was charged with theft under and she had no prior convictions. She was represented by duty counsel, her parents were not present and no report was prepared on her. The three 12 year old females were all charged with theft under and none of them had a prior record. Two of them were represented by duty counsel and one had no counsel. Parents were not present and reports were not prepared for any of these youths. The three 13 year old females were also all charged with theft under and none had a previous record. They were all represented by duty counsel, parents were not present in any of the cases and no reports were completed. Of the seven 14 year old females, 6 were charged with theft under and one was charged with wilful damage. The one charged with wilful damage had no prior record and she was represented by retained counsel. Her parents were not present and no report was completed on her. None of the 6 who were charged with theft under had a prior record. Three of them were represented by duty counsel and three had no counsel. Parents were not present in any of the cases and no reports were completed. Of the five 15 year old females,

3 were charged with theft under, one was charged with theft over and one was charged under the Liquor License Act. The last female had no previous record and she was represented by retained counsel. Her parents were not present and no report was completed. The youth charged with theft over also had no prior record and she was represented by retained counsel. Her parents were not present and no report was completed on her. None of the females charged with theft under had a prior record. Two of them were represented by duty counsel and one had no counsel. Parents were not present in any of the cases and no reports were completed. The 16 year old female was charged with breach of probation. She had previously been convicted of 1 to 2 offences for which she received an order to the care of a Children's Aid Society as well as probation and she received her current charge while serving this disposition. She was represented by duty counsel. Her parents were not present and no report was prepared on her.

Under the YOA, four males and one female were sentenced to secure custody. All of them were 15 years old. The female was charged with breach of probation and all of the males were charged with an "Other Criminal Code" offence. The female had 5 to 10 previous convictions for which she had received probation for 1 to 6 months with a

condition to complete a community service order. She had also received sentences involving placement with a Children's Aid Society as well as training school, and she was charged with her current offence while serving the previous disposition. She was not represented by counsel, her parents were not present and a pre-disposition report was completed on her. All of the males had previous convictions: two had 3 to 4 and two had 5 to 10. One of the males who had 3 to 4 previous convictions received 1 to 6 months probation and was serving this at the time of being charged with the present offence. He was represented by duty counsel, his parents were present in court and no report was completed for him. The other male with 3 to 4 prior convictions subsequently received 7 to 12 months probation as well as CAS wardship and training school committal. He was also on disposition at the time of his current charge. He was represented by duty counsel, his parents were present, and no report was prepared for him. One of the males with 5 to 10 prior convictions was previously placed in the care of a CAS and received 7 to 12 months probations and he was charged with his current offence while serving these dispositions. He was represented by retained counsel, his parents were not present in court and a pre-disposition report was completed

on him. The other male with 5 to 10 prior convictions had previously received a CAS wardship, committal to training school and was placed on probation for 7 to 12 months. He was represented by duty counsel, his parents were not present and no report was completed for him.

Three males, two age 15 and one age 14, were sentenced to secure custody and 7 to 12 months probation. All of them were charged with break and enter. The 14 year old had more than 10 prior convictions for which he received both open and secure custody as well as probation, first for 1 to 6 months and then for 7 to 12 months. He was on disposition at the time of the current charge. He was represented by retained counsel, his parents were not present in court and a pre-disposition report was completed on him. Both of the 15 year olds had 3 to 4 previous convictions. One of them received secure custody and 7 to 12 months probation. He was represented by retained counsel, his parents were present in court and a pre-disposition report was prepared on him. The other 15 year old was previously sentenced to open and secure custody and was placed on probation for 19 to 24 months. He was on disposition at the time of the current charge. He was represented by duty counsel, his parents were present and a pre-disposition report was prepared on him.

Two males, age 13 and 16, and two females, age 15 and 17, were sentenced to open custody under the YOA. The 13 year old male was charged with theft under and he had 3 to 4 prior convictions for which he received an open custody disposition and 13 to 18 months probation. He was represented by duty counsel, his parents were not present in court and no reports were completed on him. The 16 year old male was charged with an "Other Criminal Code" offence. He also had 3 to 4 prior convictions and he subsequently received open custody and 13 to 18 months probation. He was serving this disposition at the time of his current charge. He was represented by duty counsel, his parents were not present in court, and a pre-disposition report was prepared on him. The 15 year old female was charged with an "Other Criminal Code" offence, and she had 1 to 2 prior convictions for which she received open custody and 13 to 18 months probation. Her current charge occurred while she was serving this previous disposition. She was represented by duty counsel, her parents were not present in court, and no reports were completed on her. The 17 year old female was charged with breach of probation. She had 3 to 4 previous convictions and was sentenced to open custody and 7 to 12 months probation. She was serving this disposition at the time of her current charge. She was represented by retained

counsel, her parents were present and a report was not completed on her.

Four males, age 13, 14, 15 and 16, were sentenced under the YOA to open custody as well as probation. The 16 year old was charged under the Highway Traffic Act and he had no previous convictions. He was represented by retained counsel, his parents were present and a pre-disposition report was prepared on him. The other 3 males were all charged with break and enter. They all had 1 to 2 previous convictions for which they received probation and all were on disposition at the time of the current charge. The 14 year old was represented by retained counsel while the other 2 had duty counsel. Parents were present in all cases and pre-disposition reports were prepared on all of them.

Two males, age 15 and 16 years, were sentenced to both open and secure custody under the YOA. The 15 year old was charged with an "Other Criminal Code" offence. He had 3 to 4 prior convictions for which he received both open and secure custody and he was charged with his current offence at the time that he was serving his previous disposition. He was represented by retained counsel, his parents were present in court, and a pre-disposition report was completed on him. The 16 year old male was charged with break and enter. He had no previous convictions, he was represented

by duty counsel, his parents were present and no report was completed on him.

Two 15 year old males were also sentenced under the YOA to both open and secure custody and were also placed on probation. One was charged with break and enter and he had 3 to 4 prior convictions and he received 1 to 6 months probation as a result. He was on disposition at the time of his current offence. He was represented by retained counsel, his parents were not present and a pre-disposition report was prepared on him. The other male receiving this disposition had been charged with assault. He had no previous convictions, he was represented by retained counsel, his parents were present and a pre-disposition report was completed on him.

Under the YOA, 36 youths were placed on probation. Of these, 13 males and 2 females received probation for 1 to 6 months. One male was 12 years old, 5 were aged 14, 6 aged 15 and 1 aged 16. The 12 year old was charged with break and enter and had 3 to 4 prior convictions for which he received open custody and probation and he was serving this disposition at the time of his current charge. He was represented by retained counsel, his parents were present in court and a pre-disposition report was prepared on him. Of the five 14 year old males, one was charged with theft under

and he had no prior convictions. He was represented by duty counsel, his parents were present and no report was completed on him. A second 14 year old male was charged with breach of probation. He had 1 to 2 prior convictions and subsequently, received probation with a condition to perform a community service order. He was charged with his current offence while serving this disposition. He was represented by duty counsel, his parents were present and no report was completed on him. One 14 year old male was charged with break and enter. He had no prior convictions, he was represented by duty counsel and his parents were present. No reports were completed on him. Two of the 14 year old males were charged with assault and neither had any prior convictions. Both were represented by retained counsel, parents were present in each case, and neither had a report prepared on him. Of the six 15 year old males, 1 was charged with break and enter, 2 were charged with theft under, 1 was charged with a sexual offence, 1 with an "Other Criminal Code" offence and 1 with a Provincial offence. The one charged with break and enter had 1 to 2 previous offences and was fined. He was represented by duty counsel, his parents were not present and no report was completed on him. The youth charged with a sexual offence also had no prior convictions, he was represented by duty counsel, his

parents were present and a pre-disposition report was completed on him. The male charged with an "Other Criminal Code" offence had no previous convictions. He was represented by duty counsel, his parents were present and in court no report was completed on him. The youth charged with a provincial offence had 3 to 4 prior convictions. He was represented by retained counsel, his parents were not present and no report was prepared. The remaining two 15 year old males were both charged with theft under and neither had any previous convictions. Both were represented by duty counsel, parents were present in both cases, and reports were not prepared for either youth. The 16 year old male was charged with break and enter. He had 1 to 2 prior convictions and subsequently received open custody and probation. He received his current charge while serving this disposition. He was represented by duty counsel, His parents were not present and no report was completed on him. The 2 females who received 1 to 6 months probation were aged 15 and 16. Both were charged with theft under and neither had any prior convictions. Neither were represented in court by counsel, parents were present in both cases and no report was completed in either case.

Eighteen youths received 7 to 12 months probation under the YOA, all were male. One was 12 years old, 3 were

13 years old, 6 were aged 14, 5 aged 15 and 3 were aged 16. The 12 year old was charged with breach of probation and he had 3 to 4 prior convictions for which he received a fine and probation which led to his current charge. He was represented by duty counsel, his parents were not present, and a pre-disposition report was completed on him. The three 13 year old males were charged with break and enter, theft under and assault. The one charged with break and enter had no prior convictions, he was represented by retained counsel, his parents were present and no report was completed on him. The youth charged with theft under also had no previous record. He was represented by retained counsel, his parents were present and a pre-disposition report was prepared on him. The one charged with assault had no prior record. He was also represented by retained counsel, his parents were present, and a pre-disposition report was completed on him. Of the six 14 year old males, one was charged with a sexual offence and the remaining 5 were charged with break and enter. The youth charged with the sexual offence had no prior convictions. He was represented by duty counsel, his parents were present and no reports were completed on him. Of the 5 males charged with break and enter, one had previously been convicted of 1 to 2 offences for which he received probation and he was serving

this disposition at the time of his current charge. He was represented by retained counsel, his parents were not present, and no report was completed on him. None of the remaining 4 youths charged with break and enter had a prior record, all were represented by retained counsel, parents were present in 3 of the cases and in these 3 cases, a pre-disposition report was completed. No report was prepared for the youth who had no parents present. Of the five 15 year old males, one was charged with theft under, 2 with theft over, one with wilful damage and one with assault. The youth charged with theft under had no prior convictions. He was represented by retained counsel, his parents were not present and no report was prepared on him. The youth who was charged with wilful damage also had no previous convictions. He was represented by duty counsel, his parents were present and a pre-disposition report was completed on him. The youth who was charged with assault had no previous record. He was represented by retained counsel, his parents were not present and a pre-disposition report was completed on him. Of the 2 charged with theft over, one had 1 to 2 prior convictions for which he received probation. He was represented by retained counsel, his parents were present and a pre-disposition report was completed on him. The youth with no prior record was

represented by duty counsel, his parents were present, and no report was completed on him. Of the three 16 year old males, two were charged with break and enter and one with breach of probation. The youth charged with breach had a prior record for which he received probation and this subsequently led to his current charge. He was represented by duty counsel, his parents were not present, and no report was completed on him. Neither of the two youths charged with break and enter had a prior record. Both were represented in court by retained counsel, parents were present in both cases and one had a pre-disposition report completed on him while the other did not.

Three youths received 13 to 18 months probation under the YOA. Two of them were male and one was female. Of the 2 males, one was 14 years old and the other was 15. The 14 year old was charged with break and enter and he had no prior record. He was represented retained counsel, his parents were present and a pre-disposition report was prepared on him. The 15 year old was charged with breach of probation. He had 5 to 10 previous convictions for which he received probation and this led to his current charge. He was represented by retained counsel, his parents were present and a pre-disposition report was prepared on him. The female was 15 years old and was charged with breach of

probation. She had previously been convicted of 1 to 2 offences and received probation and this led to her current charge. She was represented by duty counsel, her parents were not present, and a pre-disposition report was completed on her.

Sixteen youths received probation and a community service order as a disposition under the YOA. All were male. Seven received 1 to 6 months probation, 6 received 7 to 12 months probation, and 3 received 13 to 18 months probation. Of those who received a community service order and 1 to 6 months probation, 1 was 12 years old, 2 were age 14, 2 were age 15 and 2 were age 16. The 12 year old was charged with break and enter and he had no prior record. He was represented by duty counsel, his parents were present and a pre-disposition report was completed on him. Of the two 14 year olds, one was charged with theft under and one was charged with possession under. Neither had a prior record, both were represented by duty counsel, their parents were present, and reports were not prepared for either youth. One 15 year old male was charged with theft under while the other was charged under the Highway Traffic Act. The one charged with theft under had no prior convictions and was represented by duty counsel. His parents were present and no report was completed. The youth charged

under the Highway Traffic Act. also had no previous convictions. He was represented by retained counsel, his parents were present, and no report was completed for him. Of the two 16 year old youths, one was charged with wilful damage and the other was charged with an "Other Criminal Code" offence. The latter youth had no previous convictions and he was represented by retained counsel. His parents were present and no report was prepared. The youth charged with wilful damage had 5 to 10 prior convictions and was adjourned sine die. He was represented by retained counsel, his parents were not present and no report was completed on him. Of the 6 males who received a community service order and 7 to 12 months probation, 3 were 14 years old and 3 were age 15. The 14 year olds were charged with break and enter, theft under and wilful damage. The one charged with break and enter had no prior convictions and he was represented by retained counsel. His parents were present and no report was completed on him. The youth charged with theft under had 1 to 2 prior convictions for which he received probation. He was represented by retained counsel, his parents were present and no report was completed on him. The youth charged with wilful damage had 1 to 2 prior convictions for which he received probation. He was represented by retained counsel, his parents were present

and no report was completed on him. Of the three 15 year olds, 2 were charged with break and enter and 1 was charged with assault. The last youth had previously received probation and he was serving this disposition at the time of his current charge. He was represented by retained counsel, his parents were present and a pre-disposition report was completed on him. Neither of the youths charged with break and enter had a prior record. Both were represented by retained counsel, parents were present in both cases and a pre-disposition report was completed for one while no reports were completed for the other. Three males received a community service order and 13 to 18 months probation under the YOA and 1 of them was 14 years old while the other 2 were 16 years old. The 14 year old was charged with wilful damage and had no previous convictions. He was represented by retained counsel, his parents were present and a pre-disposition report was completed on him. Of the two 16 year old youths, one was charged with wilful damage and the other with assault. The youth charged with wilful damage had 3 to 4 prior convictions for which he received probation and he was serving this disposition at the time of his current offence. He was represented by retained counsel, his parents were not present and no report was completed on him. The youth charged with assault had 3 to 4

prior convictions for which he received both open and secure custody as well as probation and he was on disposition at the time of his current charge. He was represented by retained counsel, his parents were present, and no report was completed.

There were 9 cases under the YOA where a fine was the disposition. Of these nine, 8 were males and 1 was female. The female was 15 years old and was charged with break and enter. She had no prior record, she was represented by duty counsel, her parents were present, and no report was completed. Of the 8 males, 1 was 14 years old and 7 were 15 years old. The 14 year old was charged under the Highway Traffic Act and he had no prior record. He was represented by duty counsel, his parents were present and no report was completed on him. Of the seven 15 year olds, five were charged under the Highway Traffic Act, one was charged with a Provincial offence, and one was charged with breach of probation. The youth charged with breach of probation had 1 to 2 prior convictions for which he received probation and it was the failure to comply with this disposition which led to his current charge. He was represented by duty counsel, his parents were present and a pre-disposition report was completed on him. The youth charged with a Provincial offence had no prior record and he

was represented by duty counsel. His parents were present and no report was completed on him. None of the 5 youths charged under the Highway Traffic Act had a prior record and all were represented by duty counsel. Parents were present in four cases but not in one. No reports were completed for any of these youths.

Eight males and 2 females charged under the YOA received no disposition. Of the 8 males, one was 12 years old, one was 14 years old, 3 were 15 years old, 2 were 16 years old and one was 17 years old. The 12 year old was charged with wilful damage and he had no prior convictions. He was not represented by counsel, his parents were not present and no report was completed on him. The 14 year old was charged with break and enter and he had no prior record. He was represented by retained counsel, his parents were not present and no report was completed on him. Of the three 15 year old males, 2 were charged with theft under and one was charged with a sexual offence. The last youth had 1 to 2 prior convictions and subsequently received probation. He was serving this disposition at the time of his current charge. Retained counsel represented this youth in court, his parents were present and a Family Court Clinic Assessment was prepared on him. Neither of the two youths charged with theft under had a prior record. Both were

represented by duty counsel, parents were not present in either case and no reports were prepared on them. One of the two 16 year old males was charged with breach of probation. The one charged with break and enter had 5 to 10 previous convictions for which he received open custody and probation and he was serving this disposition at the time of his current charge. He was represented by duty counsel, his parents were not present, and no reports were prepared on him. The youth charged with breach of probation had 1 to 2 previous convictions and subsequently received probation, and it was a failure to comply with this disposition which led to his current charge. He was represented by duty counsel, his parents were present, and no report was completed on him. The 17 year old male was charged with breach of probation and he had 1 to 2 prior convictions for which he received probation. He was not represented by any counsel, his parents were not present and no report was prepared on him. The 2 females were 15 and 16 years old. The 15 year old was charged with theft under and she had no prior record. She was represented in court by some "other" type of counsel. Her parents were not present and no reports were completed. The 16 year old female was charged with breach of probation and she had no prior record. She

was represented by duty counsel, her parents were present and no report was prepared.

This analysis reveals that youths who receive training school/secure custody dispositions tend to be male 13, 14 and 15 year olds who have numerous prior convictions for which they had previously been sentenced to CAS wardship/open custody and training school/secure custody. Those receiving CAS wardship/open custody dispositions committed relatively less serious offences and had fewer prior convictions than training school/secure custody youths and previous dispositions for them usually involved CAS/open custody and/or probation.

There were no consistent types of offences committed by youths who received 1 to 6 months probation and few had a prior record. However, as the length of probation period increased, the youths who received this disposition were more likely to have a prior record and to have received previous dispositions involving probation. Furthermore, the characteristics of youths receiving 13 to 18 months probation become increasingly similar to those youths who receive the combination of CAS wardship/open custody and probation. The fact that reports were completed for all of the youths who received 13 to 18 months probation under both

Acts suggests that many of them came very close to receiving the custodial disposition.

Community service orders were used more frequently under the YOA, consistent with the increased emphasis on responsibility in the new legislation, and this disposition tends to be popular with judges under both Acts for offences involving wilful damage. Fines were not used under the JDA but they were used fairly often under the YOA for 15 year old males with no prior record.

Parents were present in more cases under the YOA than under the JDA, probably because of the more formal notification procedures under the new legislation. Youths were more likely to be represented by some form of counsel under the YOA and reports tended to be prepared more often for YOA youths than JDA youths, again, probably as a result of the stricter procedures outlined in the YOA. Under both Acts, youths seem to be given several chances before more serious forms of disposition are used and, in some cases, youths under the YOA had committed more prior offences before receiving dispositions involving custody. There are, however, cases that were similar - same age, same sex, same offence, same previous history, same legal representation and same interest by parents - dealt with under both the JDA and YOA, but the dispositions were not always the same.

Chapter Five

CONCLUSIONS AND DISCUSSION

The principles underlying any juvenile justice legislation tend to reflect prevailing societal attitudes toward young people. Prior to the 1700's, children were seen as small adults and they were dealt with by the same criminal justice system. Classical thinkers initiated reforms of the criminal justice system and this helped to improve social conditions of children, however, they continued to be subjected to the same punishments as adults. In the late 19th century, advocates of the Positivist School emphasized the need for special protections for children and this led to extensive powers being granted to intervene in the life of a child in order to serve his "best interests". The current attitudes of society toward youth reflect a return to Classical thinking in an attempt to balance the protection of society with an emphasis upon responsibility and accountability of young person's for their behaviour while, at the same time, recognizing the special needs and rights of young people.

Certain principles in the YOA do seem to be having the intended effect on the manner in which youths are dealt with in the juvenile justice system. The emphasis upon rights of young persons is reflected in the increase in

legal representation of youths, more frequent preparation of reports and increased likelihood of parents being present in court. The increase in the use of community service orders and of fines as dispositions is consistent with the emphasis upon accountability and responsibility for young offenders. Furthermore, it has been argued that, following enactment of the YOA in April 1984, a shift occurred from an emphasis on rehabilitation and indeterminate sentences under the JDA to an emphasis on punishment and determinate sentences under the new legislation, and that this may have led to a subsequent increase in frequency and length of custodial dispositions. Research studies (Leschied & Jaffe, 1985, 1987) have shown that, while the number of youths charged and the number sentenced to probation remains the same between the two Acts, there has been an increase in the number of committals to custody and in the average length of detention. There has been speculation that this may be a reflection of the principle under the YOA which stresses protection from young persons who represent a threat to society.

This study sought to ascertain whether there were changes in dispositions resulting from changes in the law, and attempted to compensate for the shortcomings of previous studies by controlling for the nature of the cases and the

type of individual brought before the courts. Firstly, it compared the dispositions under the two Acts and found that there were differences between the dispositions. As a result, the hypothesis that the YOA should have no impact on dispositions was rejected. Youths who were sentenced under the JDA were more likely to receive no disposition, while those sentenced under the YOA were more likely to receive a fine, longer periods of probation, a community service order in addition to probation, or a custodial disposition.

Secondly, the study examined the types of individuals brought to court and differences were found in background factors of these individuals under the two Acts. Under the JDA, the jurisdiction of the courts began at an earlier age and, consequently, many youths were in a lower age group under the old legislation. At the same time, as a result of the extended maximum jurisdiction under the YOA, many youths are in the upper age range and it may be that 14, 15, and 16 year olds are more likely to have a previous history of convictions.

Thirdly, individuals who were given a particular disposition under the JDA and the YOA were also found to differ in terms of background characteristics. Under the YOA, youths are more likely to have a previous history of offences. If we assume that judges under the YOA are, in

fact, following a legalistic model and considering legal factors such as prior record and seriousness of offence, then it makes sense that youths with a previous history of offences will receive more severe forms of dispositions. Under the JDA, on the other hand, the courts took into consideration various extra-legal factors in arriving at their decisions as to the most appropriate type of disposition, however, variables such as these were not included in this study.

Finally, when individuals given a particular disposition under each Act were matched according to common background factors such as age, sex, offence and previous history, it was found that the probability of receiving a more severe form of disposition was greater for youths under the YOA. There were 15 situations in which youths dealt with under the JDA and the YOA had identical background factors. Consideration of these situations shows that:

- 1) A 12 year old male charged with break and enter and with no previous convictions has a 100% chance of receiving no disposition under the JDA, while under the YOA he has the same chance of receiving a community service order in addition to 1 to 6 months probation.
- 2) A 13 year old male charged with theft under or with assault and with no prior record has a 100% chance of

receiving no disposition under the JDA, while under the YOA he has a 100% chance of receiving 7 to 12 months probation.

3) A 13 year old male charged with theft under and with a prior record has a 50 % chance of being committed to the combination of training school, a Children's Aid Society and probation and a 50% chance of receiving 7 to 12 months probation under the JDA, while under the YOA he has a 100% chance of receiving open custody and probation.

4) A 14 year old male charged with theft under and with a prior record has a 12.5% chance of receiving CAS wardship and probation, a 25% chance of receiving 7 to 12 months probation, and a 62.5% chance of receiving no disposition. Under the YOA, he has a 50% chance of receiving 1 to 6 months probation and a 50% chance of receiving a community service order in addition to 1 to 6 months probation.

5) A 14 year old male charged with break and enter and with no previous convictions has a 100% probability of receiving no disposition under the JDA while under the YOA, he has only a 12.5% chance of receiving no disposition; he also has a 12.5% chance of receiving 1 to 6 months probation, a 50% chance of receiving 7 to 12 months probation, a 12.5% chance of receiving 13 to 18 months probation, and a 12.5% chance of receiving a community service order in addition to 7 to 12 months probation.

6) A 15 year old male charged with theft over and with no previous convictions has a 33.3% probability of receiving a community service order in addition to probation and a 66.6% probability of receiving no disposition, while he has a 100% probability of receiving 7 to 12 months probation under the YOA.

7) A 15 year old male charged with break and enter and with a prior record has a 50% chance of receiving 7 to 12 months probation and a 50% chance of receiving training school under the JDA, while under the YOA he has a 60% chance of getting secure custody and probation, a 20% chance of getting open custody and secure custody in addition to probation and a 20% chance of getting 1 to 6 months probation.

8) A 15 year old male charged with break and enter and with no prior record has a 40% chance of receiving 7 to 12 months probation and a 60% chance of receiving no disposition under the JDA, while under the YOA there is a 100% chance of getting a community service order in addition to 7 to 12 months probation.

9) A 15 year old male charged with theft under and with no previous record has a 14.3% chance of getting 7 to 12 months probation and an 85.7% chance of getting no disposition. Under the YOA, he has a 33.3% chance of getting 1 to 6

months probation, a 16.6% chance of getting 7 to 12 months probation, a 33.3% chance of getting no disposition, and a 16.6% chance of getting a community service order in addition to 1 to 6 months probation.

10) A 15 year old male charged with breach of probation and with a prior record has a 100% chance of receiving no disposition under the JDA, while under the YOA he has a 50% chance of receiving 13 to 18 months probation and a 50% chance of receiving a fine.

11) A 15 year old male charged under the Highway Traffic Act and with no prior record has a 100% chance of receiving no disposition under the JDA, while under the YOA he has a 14.3% chance of receiving a community service order in addition to 1 to 6 months probation, and an 85.7% chance of receiving a fine.

12) A 15 year old female charged with theft under and with no prior record has a 100% chance of receiving no disposition under the JDA, while under the YOA, she has only a 50% chance of receiving no disposition and she has a 50% chance of receiving 1 to 6 months probation.

13) A 15 year old female charged with breach of probation and with a prior record has, under the JDA, a 100% chance of receiving a committal to a Children's Aid Society while under the YOA she has a 50% chance of receiving secure

custody and the same probability of receiving 13 to 18 months probation.

14) A 16 year old male charged with break and enter and with no prior record has a 100% chance of receiving 7 to 12 months probation under the JDA while under the YOA, he has only a 50% chance of receiving 7 to 12 months probation and a 50% chance of receiving both open custody and secure custody.

15) A 16 year old female charged with breach of probation and with a prior record has a 100% chance of receiving no disposition while under the YOA she has the same probability of receiving no disposition.

Certain factors other than those considered in this study, or at least certain different factors, must play a role in the judicial decision-making process. These may be such extra-legal factors as family stability and appropriateness of the home environment; variables taken into consideration under a treatment model. If these were being emphasized under the JDA, then this may account for the differences found both in the types of individuals dealt with under the two Acts, and for the differences found in the types of dispositions.

Another limitation of this study is that almost half of the YOA cases had to be dropped because one of the most

important background characteristics - age of the young person - was not available. In total, 79 cases were dropped, of which 61 were male and 18 were female. Forty-one of the males were charged with theft under, 3 were charged with break and enter, 1 was charged with a drug and alcohol offence, 2 were charged with a Liquor License offence, 4 were charged with possession under, 4 were charged with wilful damage, 1 was charged with a Criminal Code offence, 2 were charged with assault, 1 was charged under the Highway Traffic Act, 1 was charged with theft over and, for 1 youth no offence was recorded. Of the females, 16 were charged with theft under, 1 was charged with a Liquor License offence and 1 was charged with assault. With the exception of one male charged with theft under and who received secure custody in the present case, none of the youths had a prior record and none received a disposition for the current offence, either because they were found not guilty, the charge was dropped, or the youth was referred to a diversion program. While the inclusion of these cases may have made a difference in the results found in this study, a chi square analysis which includes these cases shows that differences still exist between dispositions under the two Acts.

In summary, an examination of any statistics on dispositions must include consideration of a number of

factors. Firstly, data which has been collected by other sources must be treated with caution and variables should be clearly defined. Secondly, research should concentrate on an investigation of the phase between 1986 and the present time to determine whether there has, in fact, been a levelling off period. Thirdly, the characteristics of young offenders receiving similar dispositions must be taken into consideration before assuming that sentencing strategies have changed. Finally, research should attempt to examine the point of view of judges, whose philosophies will be the strongest determinant upon type of disposition chosen.

References:

- Archambault, O. (1983) "Young Offenders Act:
Philosophy and Principles". Provincial
Judges Journal, 7(2), 1-7.
- Aries, P. (1962) Centuries of Childhood. New York:
Random House.
- Awad, George A. (1987) "A Critique of the Principles
of the Young Offenders Act". Canadian Journal
of Psychiatry, 32(6), 440-443.
- Bala, Nicholas C. and Kenneth L. Clarke. (1981)
The Child and the Law. Toronto: McGraw-Hill
Ryerson Ltd.
- Bala, Nicholas and Raymond Corrado. (1985) Juvenile
Justice in Canada: A Comparative Study
Ottawa: Research Division, Programs Branch,
Solicitor General of Canada.
- Bala, Nicholas C. and Heino Lilles. (1982) The
Young Offenders Act: Annotated. Ottawa:
Communications Division, Solicitor General
of Canada.
- Bala, Nicholas, Heino Lilles and G. Thomson. (1982)

- Canadian Children's Law: Case Notes and Materials. Toronto: Butterworth & Company.
- Calgary Herald. (1986) July 15 (C. Howes, "More Teens Jailed Longer under New Act").
- Caputo, T.C. (1987) "The Young Offenders Act: Children's Rights, Children's Wrongs". Canadian Public Policy, 13(2), 125-143.
- Child Welfare Act, R.S.O. 1980, c.66.
- Cousineau, D.F. and J.E. Veevers. (1972) "Juvenile Justice: An Analysis of the Canadian Young Offenders Act" in C.L. Boydell, C.F. Grindstaff and P.C. Whitehead (eds.), Deviant Behaviour and Societal Reaction. Toronto: Holt, Rinehart and Winston of Canada, Ltd., 243-261.
- Farrington, David P. (1979) Juvenile Justice in England and Canada. Ottawa: Solicitor General of Canada.
- The Globe and Mail. (1985) August 6 ("Custody sentences increase under Young Offenders Act: Trends in Juvenile Justice Examined").
- Grant, Ian. (1984) "The 'Incorrigible' Juvenile:

History and Prerequisites of Reform in Ontario".

Canadian Journal of Family Law 4(3), -293-318.

Hagan, John and Jeffrey Leon. (1977) "Rediscovering Delinquency: Social History, Political Ideology and the Sociology of Law". American Sociological Review, 42, 587-598.

Haldane, L.H., D.H. Elliott and P.C. Whitehead.

(1972) "Particularism in the Sentencing of Juvenile Delinquents" in C.L. Boydell, C.F.

Grindstaff and P.C. Whitehead (eds.), Deviant Behaviour and Societal Reaction. Toronto: Holt, Rinehart and Winston of Canada, Ltd., 231-243.

Huff, C. Ronald. (1980) "Historical Explanations of Crime: From Demons to Politics" in D. H. Kelly (ed.), Criminal Behavior: Readings in Criminology. New York: St. Martin's Press, 155-174.

Hylton, John H. (1985) "Judging Young Offenders" Policy Options, 6, 25-28.

Juvenile Delinquents Act, S.C. 1929, C. 46.

Kaplan, R. (1982) House of Commons Standing

Committee on Justice and Legal Affairs Issue

65:9, 1.

Kittrie, Nicholas, N. (1971) The Right to be

Different: Deviance and Enforced Therapy

Baltimore: The Johns Hopkins University Press.

Kueneman, Rod, and Rick Linden. (1983) "Factors

Affecting Dispositions in the Winnipeg Juvenile

Court" in Raymond R. Corrado, Marc LeBlanc and

Jean Trepanier (eds.) Current Issues in

Juvenile Justice. Toronto: Butterworths,

219-235.

Leschied, Alan and Paul Gendreau. (1986) "The

Declining Role of Rehabilitation in Canadian

Juvenile Justice: Implications of Underlying

Theory in the Young Offenders Act". Canadian

Journal of Criminology, 28, 315-322.

Leschied, Alan W. and Peter G. Jaffe. (1985)

"Implications of the Young Offenders Act in

Modifying the Juvenile Justice System: Some

Early Trends" in Nicholas Bala and Heino

Lilles (eds.), Young Offenders Act Update.

Toronto: Butterworths.

Leschied, Alan W. and Peter G. Jaffe. (1987) "Impact of the Young Offenders Act on Court Dispositions: A Comparative Analysis". Canadian Journal of Criminology, 29(4), 421-430.

Moyer, Sharon and Peter J. Carrington. (1983)

Opinions of Key Actors in the Juvenile Justice System on the Young Offenders Act. Ottawa:

Research Division, Solicitor General of Canada.

Office of the Chief Judge, Provincial Court (Family Division. (1979) Preliminary Report on the State of Community Service Orders in the Provincial Court (Family Division), Province of Ontario.

Ottawa Citizen (1985) October 21 ("More Youths Jailed under the New Act").

Ottawa Citizen (1988) March 25 (S. Barron, "Ontario Will Fight Young Offenders Ruling").

Philip, Tom and Linda Slobodian. (1987) "Swift Kick in the Pants: That's what Young Offenders get

under the Law." Alberta Report. 14(22), 49-50.

Reid, Susan, A. and Marge Reitsma-Street.

"Assumptions and Implications of New Canadian Legislation for Young Offenders". Canadian Criminology Forum, 7, 1-19.

Report of the Department of Justice Committee on Juvenile Delinquency. (1965) Juvenile Delinquency in Canada. Ottawa: The Queen's Printer.

Thomson, G.M. (1983) "Commentary on the Young Offenders' Act". Provincial Judges Journal, 7(2), 27-34.

Training Schools Act, R.S.O. 1970, C.467.

Vold, George B. (1979) Theoretical Criminology. New York: Oxford University Press.

Weiler, Richard "Are we ready for the YOA?" Perception, 7(4), 15-17.

Wilson, Jeffery and Mary Tomlinson. Children and the Law. Toronto: Butterworths & Company.

Winnipeg Free Press. (1985) May 13 (P. Martin,

*Youth Sentences Harsher under New Law,

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Officials Say").

Young Offenders Act, R.S.C. 1982, C. 110.

ABSTRACT

The principles which underlie juvenile justice legislation at any given point in history tend to reflect prevailing societal attitudes toward young people. Prior to the 1700's, delinquent children were held responsible for their misconduct and were dealt with by the same criminal justice system as were adults. Classical thinkers were responsible for initiating reforms and improvements of the criminal justice system, however, children continued to be subjected to the same punishments as adults. In the late nineteenth century, advocates of the Positivist School of criminology argued that children should not be held responsible for their behaviour and the focus shifted to the need for special protections for children. Extensive powers and discretion were granted to the court in order to serve the "best interests" of the offender. The principles of the Young Offenders Act appear to reflect the current attitude of society toward youth and a return to Classical thinking. An attempt is made under the new legislation to balance the principles of protection of society with responsibility and accountability for behaviour while, at the same time, recognizing the special needs and rights of young people.

Studies have suggested that, following implementation of the YOA in April, 1984, a shift occurred

from an emphasis on rehabilitation and indeterminate sentences under the JDA to an emphasis on punishment and determinate sentences under the new legislation, and a subsequent increase in frequency and length of custodial dispositions. Evidence shows that, while the number of youths charged and the number sentenced to probation has remained the same, committals to custody and average length of detention have increased. Furthermore, victim reconciliation and community service orders are being used more often as dispositions under the YOA, consistent with the principle accountability of young offenders.

The present study attempts to determine if the YOA has, in fact, had an impact upon dispositions in youth court by attempting to control for the nature of the cases and the type of individual brought before the courts. Differences were found between dispositions used and, it was shown by matching youths under each Act on age, sex, offence and previous history, that similar youths did not necessarily receive the same dispositions; the probability of receiving a more severe form of disposition is greater for youths under the YOA than for youths with similar background characteristics and current offence under the JDA. There were also differences in the type of individual being dealt with by the court under each Act. Individuals who were

given a particular disposition under the JDA and the YOA were also found to differ in terms of background characteristics. A number of reasons for the discovery of a change in dispositions are discussed.